

FEDERAL HOUSING FINANCE REFORM ACT OF 2005

—————
JULY 14, 2005.—Ordered to be printed
—————

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1461]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1461) to reform the regulation of certain housing-related Government-sponsored enterprises, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

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

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

Subtitle A—Improvement of safety and soundness

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

Subtitle B—Improvement of mission supervision

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

Subtitle C—Prompt corrective action

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

Subtitle D—Enforcement actions

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

Subtitle E—General provisions

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

TITLE II—FEDERAL HOME LOAN BANKS

Sec. 201. Definitions.
Sec. 202. Directors.
Sec. 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
Sec. 204. Joint activities of banks.
Sec. 205. Sharing of information between Federal Home Loan Banks.
Sec. 206. Reorganization of banks and voluntary merger.
Sec. 207. Securities and Exchange Commission disclosure.
Sec. 208. Community financial institution members.
Sec. 209. Technical and conforming amendments.
Sec. 210. Study of affordable housing program use for long-term care facilities.
Sec. 211. Effective date.

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

Subtitle A—Office of Federal Housing Enterprise Oversight

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

Subtitle B—Federal Housing Finance Board

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

Subtitle C—Department of Housing and Urban Development

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

SEC. 2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

“(C) each Federal home loan bank.

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

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

“(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity; and

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

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

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

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

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

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

(11) by inserting after paragraph (1) the following new paragraphs:

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

“(3) AUTHORIZING STATUTES.—The term ‘authorizing statutes’ means—

“(A) the Federal National Mortgage Association Charter Act;

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

“(C) the Federal Home Loan Bank Act.

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

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

Subtitle A—Improvement of Safety and Soundness

SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FINANCE AGENCY.

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

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

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

“(b) GENERAL SUPERVISORY AND REGULATORY AUTHORITY.—

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

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

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

“SEC. 1312. DIRECTOR.

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

“(b) APPOINTMENT; TERM.—

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

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

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

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

“(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development shall serve as the Director until a successor has been appointed under paragraph (1).

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

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

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

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

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

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

“(e) DEPUTY DIRECTOR FOR HOUSING.—

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

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

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

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

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

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

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

SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR.

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

“SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

“(a) DUTIES.—

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

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

“(B) to ensure that—

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

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

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

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

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

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

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

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

“(c) LITIGATION AUTHORITY.—

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

“(2) SUBJECT TO SUIT.—Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity or director or officer thereof with respect to any matter under this title or any other applicable provision of law, rule, order, or regulation under this title, in the United States district court for the judicial district in

which the regulated entity has its principal place of business, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

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

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

“(1) adequacy of internal controls and information systems taking into account the nature and scale of business operations;

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

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

“(4) management of interest rate risk exposure;

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

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

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

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

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

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

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

“(12) such other operational and management standards as the Director determines to be appropriate.

“(b) FAILURE TO MEET STANDARDS.—

“(1) PLAN REQUIREMENT.—

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

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

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

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

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

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

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

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

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

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

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

“(ii) Require the regulated entity—

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

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

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

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

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

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

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

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

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

SEC. 103. HOUSING FINANCE OVERSIGHT BOARD.

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

“SEC. 1313B. HOUSING FINANCE OVERSIGHT BOARD.

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

“(b) DUTIES.—

“(1) IN GENERAL.—The Board shall advise the Director with respect to overall strategies and policies in carrying out the duties of the Director under this title, at the request of the Director and at the initiative of the Board, and shall carry out such functions as otherwise provided by law.

“(2) LIMITATION.—The Director may not delegate to the Board any of the functions, powers, or duties of the Director.

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

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

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

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

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

“(A) one individual who has extensive experience and expertise in the capital markets (including debt markets), the secondary mortgage market, and mortgage-backed securities; and

“(B) one individual who has extensive experience and expertise in mortgage finance (including single family and multifamily housing mortgage finance), development of affordable housing, and economic development and revitalization.

“(d) TERMS AND VACANCIES.—

“(1) TERMS.—Each member of the Board pursuant to paragraph (4) shall be appointed for a term of 3 years, and may be removed by the President only for cause.

“(2) VACANCIES.—A member of the Board appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member of the Board may serve after the expiration of the member’s term until a successor has been appointed.

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

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

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

- “(2) hold any office, position, or employment in any regulated entity or regulated entity-affiliated party.
- “(g) FULL-TIME MEMBERS AND STAFF.—
- “(1) FULL-TIME MEMBERS.—The members of the Board pursuant to subsection (c)(4) shall serve on a full-time basis.
- “(2) STAFF.—The staff of the Board shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that each member of the Board pursuant to paragraph (4) may appoint one staff member without regard to the such provisions governing appointments in the competitive service and such staff members may be paid by the Board without regard to the such provisions relating to classification and General Schedule pay rates.
- “(h) MEETINGS.—
- “(1) IN GENERAL.—The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.
- “(2) SPECIAL MEETINGS.—Any member of the Board may, upon giving written notice to the Director, require a special meeting of the Board, which shall be convened by the Director within 30 days after such notice.
- “(i) TESTIMONY.—On an annual basis, the Board shall testify before Congress regarding—
- “(1) the safety and soundness of the regulated entities;
- “(2) any material deficiencies in the conduct of the operations of the regulated entities;
- “(3) the overall operational status of the regulated entities;
- “(4) an evaluation of the performance of the regulated entities in carrying out their respective missions;
- “(5) operations, resources, and performance of the Agency and the Board; and
- “(6) such other matters relating to the Agency, the Board, and the regulated entities, and their fulfillment of their missions, as the Board determines appropriate.
- “(j) COSTS.—Costs of the Board, including staff, shall be paid by the Agency as a cost and expense of the Agency.
- “(k) EXEMPTION.—Notwithstanding any other provision of law, the provisions of section 552b of title 5, United States Code, shall not apply to the Board.”.
- (b) ANNUAL REPORT OF THE DIRECTOR.—Section 1319B(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 4521 (a)) is amended—
- (1) in paragraph (3), by striking “and” at the end; and
- (2) by striking paragraph (4) and inserting the following new paragraphs:
- “(4) an assessment of the Board with respect to—
- “(A) the safety and soundness of the regulated entities;
- “(B) any material deficiencies in the conduct of the operations of the regulated entities;
- “(C) the overall operational status of the regulated entities;
- “(D) an evaluation of the performance of the regulated entities in carrying out their missions, including compliance of the enterprises with the housing goals under subpart B of part 2 of this subtitle and compliance of the Federal home loan banks with the community investment and affordable housing programs under subsections (i) and (j) of section 10 of the Federal Home Loan Bank Act;
- “(E) an evaluation of the performance of the Agency in fulfilling its duties and responsibilities under law; and
- “(F) such other matters relating to the Board and the fulfillment of its duties as the Board considers appropriate;
- “(5) operations, resources, and performance of the Agency; and
- “(6) such other matters relating to the Agency and its fulfillment of its mission.”.

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

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

- (1) in the section heading, by striking “ENTERPRISES” and inserting “REGULATED ENTITIES”;
- (2) in subsection (a)—
- (A) in the subsection heading, by striking “Special Reports and Reports of Financial Condition” and inserting “Regular and Special Reports”;
- (B) in paragraph (1)—

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

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

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

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

“(c) REPORTS OF FRAUDULENT FINANCIAL TRANSACTIONS.—

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

“(2) PROTECTION FROM LIABILITY FOR REPORTS.—

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

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

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

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

SEC. 105. DISCLOSURE OF CHARITABLE CONTRIBUTIONS BY ENTERPRISES.

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

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

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

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

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

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

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

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

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

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

SEC. 106. ASSESSMENTS.

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

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

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

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

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

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

(2) in subsection (b)—

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

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

(C) in paragraph (1)—

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

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

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

(D) in paragraph (3)—

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

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

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

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

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

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

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

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

“(c) INCREASED COSTS OF REGULATION.—

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

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

“(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized or as the result of supervisory or enforcement activities under subtitle B or C for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.”.

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

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

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

“(f) TREATMENT OF ASSESSMENTS.—

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

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

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

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

“(5) AVAILABILITY OF OVERSIGHT FUND AMOUNTS.—Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date under section 185 of the Federal Housing Finance Reform Act of 2005), and any amounts remaining from assessments on the Federal Home Loan banks pursuant to section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

“(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

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

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

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

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

“(h) AUDIT OF AGENCY.—

“(1) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the U.S. generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. All such books, ac-

counts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

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

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

SEC. 107. EXAMINERS AND ACCOUNTANTS.

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

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

(2) in subsection (b)—

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

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

(3) in subsection (c)—

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

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

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

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

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

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

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

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

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

(1) in the section heading, by striking “REPORTS” and inserting “GAO AUDITS”;

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

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

SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE COMPENSATION.

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

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

SEC. 109. REVIEWS OF REGULATED ENTITIES.

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

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

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

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

SEC. 110. REGULATIONS AND ORDERS.

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

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

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

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

(3) by striking subsection (c).

SEC. 111. RISK-BASED CAPITAL REQUIREMENTS.

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

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

“(a) **IN GENERAL.**—

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

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

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

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

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

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

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

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

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

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

SEC. 112. MINIMUM AND CRITICAL CAPITAL LEVELS.

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

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

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

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

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

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

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

“(2) determines that the regulated entity has violated any of the prudential management and operations standards established pursuant to section 1313A and, as a result of such violation, is operating in an unsafe and unsound manner.

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

“(f) PERIODIC REVIEW.—The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal home loan banks, and the minimum capital levels established for such regulated entities pursuant to this section. The Director may, by regulations issued under section 1319G(b), adjust the minimum capital levels as necessary, based on the Director’s review.”.

(b) CRITICAL CAPITAL LEVELS.—

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

(A) by striking “For” and inserting “(a) Enterprises.—For”; and
(B) by adding at the end the following new subsection:

“(b) FEDERAL HOME LOAN BANKS.—

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

“(2) CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.—In establishing the critical capital level under paragraph (1) for the Federal home loan banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.”.

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

SEC. 113. REVIEW OF AND AUTHORITY OVER ENTERPRISE ASSETS AND LIABILITIES.

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

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

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

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

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

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

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

SEC. 114. CORPORATE GOVERNANCE OF ENTERPRISES.

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

“SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.

“(a) BOARD OF DIRECTORS.—

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

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

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

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

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

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

“(b) COMMITTEES OF BOARDS OF DIRECTORS.—

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

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

“(A) Audit committee.

“(B) Compensation committee.

“(C) Nominating/corporate governance committee.

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

“(c) COMPENSATION.—

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

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

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

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

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

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

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

“(d) CODE OF CONDUCT AND ETHICS.—

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

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

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

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

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

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

“(3) Compensation programs of the enterprise.

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

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

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

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

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

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

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

“(i) COMPLIANCE PROGRAM.—

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

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

“(j) RISK MANAGEMENT PROGRAM.—

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

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

“(k) COMPLIANCE WITH OTHER LAWS.—

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

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

the Sarbanes-Oxley Act of 2002, subject to such requirements as provided by subsection (l) of this section.

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

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

SEC. 115. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

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

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

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

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

SEC. 116. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

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

(1) in section 1003 (12 U.S.C. 3302)—

(A) in paragraph (1), by inserting “Director of the Federal Housing Finance Agency,” after “Supervision,”; and

(B) in paragraph (3), by striking “or a credit union,” and inserting “a credit union, or a regulated entity (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502)).”;

(2) in section 1004 (12 U.S.C. 3303)—

(A) in paragraph (4), by inserting a semicolon at the end;

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

(C) by inserting after paragraph (4) the following new paragraph:

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

(3) in section 1006(d) (12 U.S.C. 3305(d)), by striking “and employees of the Federal Housing Finance Board”.

SEC. 117. GUARANTEE FEE STUDY.

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

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

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

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

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

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

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

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

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

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

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

SEC. 118. CONFORMING AMENDMENTS.

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

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

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

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

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

(5) by striking “Office” each place such term appears in such part (except in sections 1312(b)(5), 1315(b), and 1316(g), and section 1317(c)) and inserting “Agency”;

(6) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) in the subsection heading, by striking “Office Personnel” and inserting “In General”; and

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

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

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

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

(A) by striking “(a) In General.—Each enterprise” and inserting “Each regulated entity”; and

(B) by striking subsection (b);

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

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

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

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

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

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

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

(2) in section 309—

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

(B) in subsection (m)—

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

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

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

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

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

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

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

- (B) section 303(h)(2) (12 U.S.C. 1452(h)(2)); and
- (C) section 307(c)(1) (12 U.S.C. 1456(c)(1));
- (2) in sections 303(h)(1) and 307(f)(1) (12 U.S.C. 1452(h)(1), 1456(f)(1)), by striking “Banking, Finance and Urban Affairs” each place such term appears and inserting “Financial Services”;
- (3) in section 306(i) (12 U.S.C. 1455(i))—
 - (A) by striking “1316(c)” and inserting “306(c)”;
 - (B) by striking “section 106” and inserting “section 1316”;
- (4) in section 307 (12 U.S.C. 1456)—
 - (A) in subsection (e)—
 - (i) in paragraph (1), by striking “Secretary” the second place such term appears and inserting “Director”; and
 - (ii) in paragraph (2), by striking “Secretary” the second place such term appears and inserting “Director”; and
 - (iii) by striking “Secretary” each other place such term appears and inserting “Director of the Federal Housing Finance Agency”; and
 - (B) in subsection (f), by striking “Secretary” each place such term appears and inserting “Director of the Federal Housing Finance Agency”.

Subtitle B—Improvement of Mission Supervision

SEC. 121. TRANSFER OF PROGRAM AND ACTIVITIES APPROVAL AND HOUSING GOAL OVERSIGHT.

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

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

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

- (2) by striking sections 1321 and 1322.

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

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

“SEC. 1321. REVIEW AND APPROVAL BY DIRECTOR OF NEW PROGRAMS AND BUSINESS ACTIVITIES OF ENTERPRISES.

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

“(b) **NEW PROGRAMS.**—

“(1) **PRIOR APPROVAL REQUIREMENT.**—An enterprise may not commence any new program before it has obtained the approval of the Director, pursuant to this subsection, for the new program.

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

“(3) **NOTICE.**—Immediately upon receipt of a complete application for a new program, the Director shall cause to be published in the Federal Register notice of the receipt of such application and of the period for public comment pursuant to paragraph (4) regarding such new program, and a description of the new program proposed by the application.

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

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

“(6) **STANDARD FOR APPROVAL.**—The Director may approve, or conditionally approve, a new program of an enterprise only if the Director determines, taking

into consideration any relevant information and comments received during the public comment period, that such new program—

“(A) does not contravene and is not inconsistent with the purposes of this title, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act, as such purposes are determined taking into consideration the definitions of the terms ‘mortgage loan origination’ and ‘secondary mortgage market’ pursuant to section 1303;

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

“(C) is in the public interest.

“(7) LIMITATION.—The Director, in implementing this subsection, may not prevent an enterprise from continuing to offer the automated loan underwriting system in existence on the date of the enactment of the Federal Housing Finance Reform Act of 2005 or continuing to engage in counseling and education activities.

“(c) NEW BUSINESS ACTIVITIES.—

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

“(A) contravenes or is inconsistent with the purposes of this title, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act;

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

“(C) is not in the public interest.

“(2) NOTIFICATION OF NEW BUSINESS ACTIVITIES.—An enterprise that undertakes any new business activity shall provide written notice of the activity to the Director and may commence the new business activity only in accordance with paragraph (4).

“(3) DIRECTOR DETERMINATION OF APPLICABLE PROCEDURE.—

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

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

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

“(ii) the new business activity described in the notice shall be considered a new program for purposes of this section; and

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

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

“(A) if the Director issues a written approval regarding such new business activity, immediately upon such issuance or at such other time as provided by the Director in such letter; or

“(B) if, during the 30-day period beginning upon receipt by the Director of notice pursuant to paragraph (2) regarding a new business activity, the Director has not issued to the enterprise a written approval or denial of the new business activity, upon the expiration of such 30-day period.

“(d) APPROVAL AND CONDITIONAL APPROVAL.—The Director may at any time conditionally approve the undertaking of a particular new program or new business activity by an enterprise and set forth the terms and conditions that apply to the program or activity with which the enterprise shall comply if it undertakes the new program or activity. Such approval may, in the discretion of the Director, be in the form of a written agreement between the enterprise and the Director and shall be subject to such terms and conditions therein. Such a written agreement or conditional approval shall be enforceable under subtitle C.

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

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

“(2) such activity shall be considered a new business activity for purposes of this section; and

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

“(f) EFFECT ON OTHER AUTHORITIES.—

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

“(2) REQUESTS FOR INFORMATION.—Nothing in this section may be construed to limit the right of the Director at any time to request additional information from an enterprise concerning any business activity.

“(3) NO IMPLIED RIGHT OF ACTION.—This section shall not create any private right of action against an enterprise or any director or executive officer of an enterprise, or impair any private right of action under other applicable law.

“(4) NO LIMITATION.—Nothing in this section may be construed to restrict the general supervisory and regulatory authority of the Director over all programs, products, activities, or business operations of any kind.

“(g) REPORT ON PROGRAMS AND BUSINESS ACTIVITIES.—Not later than the expiration of the 180-day period beginning on the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, each enterprise shall submit to the Director a report identifying and describing each program and business activity of the enterprise engaged in or existing as of the submission of the report.

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

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

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

(2) by inserting after paragraph (16) the following new paragraph:

“(19) NEW BUSINESS ACTIVITY.—The term ‘new business activity’ means, with respect to an enterprise, a business activity that—

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

“(B) the enterprise has not previously obtained authorization, pursuant to the provisions of section 1321(c), to offer, undertake, transact, conduct, or engage in.”;

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

(4) by inserting after paragraph (14) the following new paragraph:

“(16) MORTGAGE MARKETS.—The terms ‘mortgage loan origination’ and ‘secondary mortgage market’ shall have such meanings as the Director shall, by regulation, prescribe consistent with the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act. The Director shall issue such regulations not later than the expiration of the 12-month period beginning on the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, and the Director shall review such regulations on a periodic basis.”;

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

(6) by inserting after paragraph (4) the following new paragraph:

“(5) BUSINESS ACTIVITY.—The term ‘business activity’ means, with respect to an enterprise, any offering, undertaking, transacting, conducting, or engaging in any conduct, activity, or product by the enterprise, as the Director shall provide.”

(c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

SEC. 123. CONFORMING LOAN LIMITS.

(a) FANNIE MAE.—

(1) **GENERAL LIMIT.**—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by striking the 7th and 8th sentences and inserting the following new sentences: “Such limitations shall not exceed \$359,650 for a mortgage secured by a single-family residence, \$460,400 for a mortgage secured by a 2-family residence, \$556,500 for a mortgage secured by a 3-family residence, and \$691,600 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or fourth-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).”

(2) **HIGH-COST AREA LIMIT.**—Section 302(b)(2) of the Federal National Mortgage Association Charter Act is (12 U.S.C. 1717(b)(2)) is amended by adding after the period at the end the following: “Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 123(d)(3) of the Federal Housing Finance Reform Act of 2005, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the corporation.”

(b) **FREDDIE MAC.**—

(1) **GENERAL LIMIT.**— Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by striking the 6th and 7th sentences and inserting the following new sentences: “Such limitations shall not exceed \$359,650 for a mortgage secured by a single-family residence, \$460,400 for a mortgage secured by a 2-family residence, \$556,500 for a mortgage secured by a 3-family residence, and \$691,600 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or fourth-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).”

(2) **HIGH-COST AREA LIMIT.**—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by adding after the period at the end the following: “Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 123(d)(3) of the Federal Housing Finance Reform Act of 2005, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the Corporation.”

(c) **HOUSING PRICE INDEX.**—Subpart A of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (as amended by the preceding provisions of this Act) is amended by inserting after section 1321 (as added by section 122 of this Act) the following new section:

“SEC. 1322. HOUSING PRICE INDEX.

“(a) **IN GENERAL.**—The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise

Oversight of the Department of Housing and Urban Development before the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

“(b) GAO AUDIT.—

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

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

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

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

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

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

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

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

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

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

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

(3) DETERMINATION.—

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

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

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

(A) a report that—

(i) describes the study under this subsection; and

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

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

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

(5) DEFINITION.—For purposes of this subsection, the term “conforming loan limits for high-cost areas” means the dollar amount limitations applicable under the section 302(b)(2) of the Federal National Mortgage Association Charter Act and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as

amended by subsections (a) and (b) of this section) for areas described in the last sentence of such sections (as so amended).

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

(1) **ADJUSTMENT FOR YEAR INTERVENING BEFORE EFFECTIVE DATE.—**Notwithstanding section 302(b)(2) of the Federal National Mortgage Association Charter Act and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act, as amended by this section, the maximum dollar amount limitations in such sections shall be adjusted on the effective date under section 185 of this Act, and the limitations as so adjusted shall be immediately effective, so that the limitations under such sections applicable to the year in which such effective date occurs are equal to the limitations in effect under such sections immediately before such effective date.

(2) **FURTHER ADJUSTMENTS.—**After such effective date, the dollar amount limitations as adjusted pursuant to paragraph (1) shall be considered “such amount (as it may have been previously adjusted)” for purposes of section 302(b)(2) of the Federal National Mortgage Association Charter Act and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act.

SEC. 124. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

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

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

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

“(b) **CONTENTS.—**The report shall—

“(1) discuss the extent to which—

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

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

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

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

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

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

“(4) examine actions that—

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

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

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

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

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

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

“(6) examine actions each regulated entity has undertaken and could undertake to promote and expand opportunities for first-time homebuyers;

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

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

“(9) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime loans (as identified in accordance with the regulations issued pursuant to section 124(b) of the Fed-

eral Housing Finance Reform Act of 2005) and compare the characteristics of subprime loans purchased and securitized by the enterprises to other loans purchased and securitized by the enterprises

“(c) DATA COLLECTION AND REPORTING.—

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

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

“(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

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

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

“(iii) the terms of the mortgage;

“(iv) the creditworthiness of the borrower or borrowers; and

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

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

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

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

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

SEC. 125. REVISION OF HOUSING GOALS.

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

“SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

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

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

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

“(b) ELIMINATING INTEREST RATE DISPARITIES.—

“(1) IN GENERAL.—In establishing and implementing the housing goals under this subpart, the Director shall require the enterprises to disclose appropriate information to allow the Director to assess if there are any disparities in interest rates charged on mortgages to borrowers who are minorities as compared with borrowers of similar creditworthiness who are not minorities, as evidenced in reports pursuant to the Home Mortgage Disclosure Act of 1975.

“(2) REPORT AND REMEDY.—Upon a finding by the Director, pursuant to the information provided by an enterprise in paragraph (1), that a pattern of disparities in interest rates exists, the Director shall—

“(A) submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report detailing the disparities; and

“(B) require the enterprise to take such action as the Director deems appropriate pursuant to this Act to remedy the interest rate disparities identified.

“(3) PROTECTION OF IDENTITY.—In carrying out this subsection, the Director shall ensure that no information is made public that would reasonably allow identification, directly or indirectly, of an individual borrower.

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

“SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

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

- “(1) Low-income families.
- “(2) Families that reside in low-income areas.
- “(3) Very low-income families.

“(b) DETERMINATION OF COMPLIANCE.—The Director shall determine, for each year that the housing goal under this section is in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing goal established under this section for such year. An enterprise shall be considered to be in compliance with such a goal for a year only if—

“(1) for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by each enterprise in such year that serve such families, meets or exceeds

“(2) the target for the year for such type of family that is established under subsection (c).

“(c) ANNUAL TARGETS.—

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

“(2) AUTHORITY TO INCREASE TARGETS.—

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

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

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

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

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

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

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

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

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

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

“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE GOAL.

“(a) ESTABLISHMENT.—

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

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

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

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

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

“(A) national multifamily mortgage credit needs;

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

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

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

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

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

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

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

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

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

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

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

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

“SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS.

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

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

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

“(2) efforts to meet the goal would result in the constraint of liquidity, overinvestment in certain market segments, or other consequences contrary to the

intent of this subpart, or section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716(3)) or section 301(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note), as applicable.

“(c) DETERMINATION.—The Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend such period for a single additional 15-day period, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to the United States District Court for the District of Columbia or the United States district court in the jurisdiction in which the headquarters of an enterprise is located.”.

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

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

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

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

(1) in paragraph (26), by striking “60 percent” each place such term appears and inserting “50 percent”;

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

(3) by inserting after paragraph (22) the following new paragraph:

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

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

(5) by inserting after paragraph (13) the following new paragraph:

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

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

(7) by inserting after paragraph (11) the following new paragraph:

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

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

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

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

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

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

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

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

SEC. 126. DUTY TO SERVE UNDERSERVED MARKETS.

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

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

(2) by striking subsection (b);

(3) in subsection (a)—

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

- (B) in paragraph (3), by inserting “and” after the semicolon at the end;
- (C) in paragraph (4), by striking “; and” and inserting a period;
- (D) by striking paragraph (5); and
- (E) by redesignating such subsection as subsection (b);
- (4) by inserting before subsection (b) (as so redesignated by paragraph (3)(E) of this subsection) the following new subsection:
- “(a) DUTY TO SERVE UNDERSERVED MARKETS.—
- “(1) DUTY.—In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.
- “(2) UNDERSERVED MARKETS.—To meet its duty under paragraph (1), each enterprise shall comply with the following requirements with respect to the following underserved markets:
- “(A) MANUFACTURED HOUSING.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.
- “(B) AFFORDABLE HOUSING PRESERVATION.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—
- “(i) the project-based and tenant-based rental assistance programs under section 8 of the United States Housing Act of 1937;
- “(ii) the program under section 236 of the National Housing Act;
- “(iii) the below-market interest rate mortgage program under section 221(d)(4) of the National Housing Act;
- “(iv) the supportive housing for the elderly program under section 202 of the Housing Act of 1959;
- “(v) the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act; and
- “(vi) the rural rental housing program under section 515 of the Housing Act of 1949.
- “(C) RURAL AND OTHER UNDERSERVED MARKETS.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Secretary identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area.”; and
- (5) by adding at the end the following new subsection:
- “(c) EVALUATION AND REPORTING OF COMPLIANCE.—
- “(1) IN GENERAL.—Not later than 6 months after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).
- “(2) SEPARATE EVALUATIONS.—In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration—
- “(A) the development of loan products and more flexible underwriting guidelines;
- “(B) the extent of outreach to qualified loan sellers in each of such underserved markets; and

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

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

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

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

“(4) ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—The duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under sections 1332, 1333, and 1334 are enforceable. Such duty shall not be enforceable under any other provision of this title (including subpart C of this part) other than this section or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.”.

SEC. 127. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

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

(1) in subsection (b)—

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

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

(C) in paragraph (2)—

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

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

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

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

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

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

(D) in paragraph (3)—

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

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

and

(iii) in subparagraph (C)—

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

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

(2) in subsection (c)—

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

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

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

(B) in paragraph (2)—

- (i) by striking “CONTENTS.—Each housing plan” and inserting “HOUSING PLAN.—If the Director requires a housing plan under this section, such a plan”; and
- (ii) in subparagraph (B), by inserting “and changes in its operations” after “improvements”;
- (C) in paragraph (3)—
 - (i) by inserting “comply with any remedial action or” before “submit a housing plan”; and
 - (ii) by striking “under subsection (b)(3) that a housing plan is required”;
- (D) in paragraph (4), by striking the first two sentences and inserting the following: “The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines such extension necessary.”; and

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

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

SEC. 128. AFFORDABLE HOUSING FUND.

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

“SEC. 1337. AFFORDABLE HOUSING FUND.

“(a) ESTABLISHMENT AND PURPOSE.—Each enterprise shall establish and manage an affordable housing fund in accordance with this section. The purpose of the affordable housing fund shall be—

- “(1) to increase homeownership for extremely low-and very low-income families;
- “(2) to increase investment in housing in low-income areas, and areas designated as qualified census tracts or an area of chronic economic distress pursuant to section 143(j) of the Internal Revenue Code of 1986 (26 U.S.C. 143(j));
- “(3) to increase and preserve the supply of rental and owner-occupied housing for extremely low- and very low-income families; and
- “(4) to increase investment in economic and community development in economically underserved areas.

“(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

“(1) IN GENERAL.—In accordance with regulations issued by the Director under subsection (1) and subject to paragraph (2) of this subsection, each enterprise shall allocate to the affordable housing fund established under subsection (a) by the enterprise, in each year beginning after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, 5 percent of the after-tax income of the enterprise for the preceding year.

“(2) LIMITATION.—An enterprise shall not be required to make an allocation for a year to the affordable housing fund of the enterprise established under subsection (a) unless—

- “(A) the enterprise is classified by the Director at the time of such allocation as adequately capitalized; and
- “(B) the enterprise generated after-tax income for the preceding year.

“(3) DETERMINATION OF AFTER-TAX INCOME.—For purposes of this section, the term ‘after-tax income’ means, with respect to an enterprise for a year, the amount reported by the enterprise for such year in the enterprise’s annual report for such year that is filed with the Securities and Exchange Commission, except that for any year in which no such filing is made by an enterprise or such filing is not timely made, such term means the amount determined by the Director based on the income tax return filings of the enterprise.

“(c) SELECTION OF ACTIVITIES FUNDED USING AFFORDABLE HOUSING FUND AMOUNTS.—Amounts from the affordable housing fund of the enterprise may be used, or committed for use, only for activities that—

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

- “(2) are selected for funding by the enterprise in accordance with the process and criteria for such selection established pursuant to subsection (1)(2)(C).
- “(d) ELIGIBLE ACTIVITIES.—Amounts from the affordable housing fund of an enterprise shall be eligible for use, or for commitment for use, only for assistance for—
- “(1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B), except that amounts provided from the Fund may be used for the benefit only of extremely low- and very low-income families;
- “(2) the production, preservation, and rehabilitation of housing for homeownership, including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs, that—
- “(A) is available for purchase only for use as a principal residence by families that qualify both as—
- “(i) extremely low- and very-low income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and
- “(ii) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this section be considered to refer to assistance from the affordable housing fund of the enterprise;
- “(B) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act; and
- “(C) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and
- “(3) leveraged grants under subsection (e).
- “(e) LEVERAGED GRANTS.—
- “(1) IN GENERAL.—Pursuant to regulations issued by the Director, each enterprise shall carry out a program under this subsection to make leveraged grants from amounts in the affordable housing fund of the enterprise, subject to the requirements under this subsection.
- “(2) ELIGIBLE PURPOSES.—Amounts from the affordable housing fund of an enterprise may be used only for leveraged grants under paragraph (4) for—
- “(A) the development, preservation, rehabilitation, or purchase of affordable housing that meets underserved needs for affordable housing;
- “(B) community or economic development activities in economically underserved areas; or
- “(C) a combination of the activities identified in subparagraphs (A) and (B).
- “(3) ELIGIBLE SPONSORS.—A leveraged grant under this subsection may be made only on behalf of a sponsor that meets such requirements as the Director shall establish for experience and success in carrying out the types of activities proposed under the application of the sponsor, such as the following entities:
- “(A) A low-income housing fund.
- “(B) A housing finance agency of a State or unit of general local government.
- “(C) A non-profit organization having as one of its principal purposes the development or management of affordable housing.
- “(D) A community development financial institution.
- “(E) A national non-profit housing intermediary.
- “(F) A community development corporation.
- “(G) A community development entity.
- “(4) ELIGIBLE USES.—Amounts from the affordable housing fund of an enterprise may be used under this subsection only for the following types of leveraged grants:
- “(A) To provide loan loss reserves.
- “(B) To capitalize a revolving loan fund.
- “(C) To provide equity capitalization of an affordable housing fund.
- “(D) To provide equity capitalization of a community development or economic development fund.
- “(E) For risk sharing loans.
- “(F) For the funding of a specific, detailed investment plan that identifies the specific types of uses and the expected timeframes with respect to such uses.
- “(5) APPLICATIONS.—The Director shall provide, in the application process established pursuant to subsection (1)(2)(C), for eligible sponsors under paragraph

(3) of this subsection to submit applications to an enterprise for leveraged grants pursuant to this subsection, which shall include a detailed description of—

“(A) the types of affordable housing or community or economic development activities for which the leveraged grant is made;

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

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

“(D) and the expected time frame of the leveraged grant under this subsection.

“(6) LIMITATIONS.—The Director shall by regulation—

“(A) ensure that leveraged grants pursuant to this subsection are designed to alleviate need for affordable housing in underserved markets identified in section 1335(a) having the greatest need for such housing or to address community and economic development needs in economically underserved areas having the greatest need; and

“(B) any returns from leveraged grants under this subsection accrue to the affordable housing fund of the enterprise and are available for use only as provided under this section.

“(f) LIMITATIONS ON USE.—

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

“(2) AMOUNTS FOR LEVERAGED GRANTS.—Of any amounts allocated pursuant to subsection (b) in each year to the affordable housing fund of an enterprise, not more than 12.5 percent shall be used for leveraged grants under subsection (e).

“(3) DEADLINE FOR COMMITMENT OR USE.—Any amounts allocated to the affordable housing fund of an enterprise shall be used or committed for use within two years of the date of such allocation.

“(4) USE OF RETURNS.—Any return on investment of any amounts allocated pursuant to subsection (b) to the affordable housing fund of an enterprise shall be available for use by the enterprise only for eligible activities under subsection (d).

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

“(A) provide that, except as provided in subparagraph (B), amounts allocated to the affordable housing fund of an enterprise may not be used for administrative, outreach, or other costs of—

“(i) the enterprise; or

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

“(B) limit the amount of any such contributions that may be used for administrative costs of the enterprise of maintaining the affordable housing fund and carrying out the program under this section.

“(6) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS.—In determining compliance with the housing goals under this subpart, the Director may not consider amounts used under this section for eligible activities under subsection (d). The Director shall give credit toward the achievement of such housing goals to purchases of mortgages for housing that receives funding under this section, but only to the extent that such purchases are funded other than under this section.

“(7) PROHIBITION OF CERTAIN SUBGRANTS.—The Director shall, by regulation, ensure that amounts from the affordable housing fund of an enterprise awarded under this section to a national non-profit housing intermediary are not used for the purpose of distributing subgrants to other non-profit entities.

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

“(1) QUARTERLY REPORTS.—The Director shall require each enterprise to submit a report, on a quarterly basis, to the Director and the affordable housing board established under subsection (j) describing the activities funded under this section during such quarter with amounts from the affordable housing fund of the enterprise established under this section. The Director shall make such reports publicly available. The affordable housing board shall review each report by an enterprise to determine the consistency of such activities funded with the criteria for selection of such activities established pursuant to subsection (1)(2)(C).

“(2) REPLENISHMENT.—If the affordable housing board determines that an activity funded by an enterprise with amounts from the affordable housing fund of the enterprise is not consistent with the criteria established pursuant to subsection (1)(2)(C), the board shall notify the Director and the Director shall re-

quire the enterprise to allocate to such affordable housing fund (in addition to amounts allocated in compliance with subsection (b)) an amount equal to the sum of the amounts from the affordable housing fund used and further committed for use for such activity.

“(h) CAPITAL REQUIREMENTS.—The utilization or commitment of amounts from the affordable housing fund of an enterprise shall not be subject to the risk-based capital requirements established pursuant to section 1361(a).

“(i) REPORTING REQUIREMENT.—Each enterprise shall include, in the report required under section 309(m) of the Federal National Mortgage Association Charter Act or section 307(f) of the Federal Home Loan Mortgage Corporation Act, as applicable, a description of the actions taken by the enterprise to utilize or commit amounts allocated under this section to the affordable housing fund of the enterprise established under this section.

“(j) AFFORDABLE HOUSING BOARD.—

“(1) APPOINTMENT.—The Director shall appoint an affordable housing board of 7, 9, or 11 persons, who shall include—

“(A) the Director, or the Director’s designee;

“(B) the Secretary of Housing and Urban Development, or the Secretary’s designee;

“(C) the Secretary of Agriculture, or the Secretary’s designee;

“(D) 2 persons from for-profit organizations or businesses actively involved in providing or promoting affordable housing for extremely low- and very low-income households; and

“(E) 2 persons from nonprofit organizations actively involved in providing or promoting affordable housing for extremely low- and very low-income households.

“(2) TERMS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term of each member of the affordable housing board appointed pursuant to paragraph (1) (but not including members appointed pursuant to subparagraphs (A), (B), and (C)) shall be 3 years.

“(B) INITIAL APPOINTEES.—The Director shall appoint the initial members of the affordable housing board not later than the expiration of the 60-day period beginning on the date of the enactment of this Act. As designated by the Director at the time of appointment, of the members of the affordable housing board first appointed pursuant to paragraph (1) (but not including members appointed pursuant to subparagraphs (A), (B), and (C))—

“(i) in the case of a board having 7 members—

“(I) one shall be appointed for a term of one year; and

“(II) one shall be appointed for a term of two years;

“(ii) in the case of a board having 9 members—

“(I) two shall be appointed for a term of one year; and

“(II) two shall be appointed for a term of two years; and

“(iii) in the case of a board having 11 members—

“(I) two shall be appointed for a term of one year; and

“(II) three shall be appointed for a term of two years;

“(3) DUTIES.—The affordable housing board shall meet not less than quarterly—

“(A) to determine extremely low- and very low-income housing needs;

“(B) to advise the Director with respect to—

“(i) establishment of the selection criteria under subsection (l)(2)(C) that provide for appropriate use of amounts from the affordable housing funds of the enterprises to meet such needs; and

“(ii) operation of, and changes to, the program under this section appropriate to meet such needs; and

“(C) to review the reports submitted by the enterprises pursuant to subsection (g)(1) to determine whether the activities funded using amounts from the affordable housing funds of the enterprises comply with the regulations issued pursuant to subsection (l)(2)(C) and inform the Director of such determinations, for purposes of subsection (g)(2).

“(4) EXPENSES AND PER DIEM.—Members of the board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(5) ADVISORY COMMITTEE.—The board shall be considered an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

“(6) DURATION.—The board shall have continued existence until terminated by law.

“(k) DEFINITION.—For purposes of this section, the term ‘economically underserved area’ means an area that predominantly includes census tracts for which—

“(1) at least 20 percent of the population is below the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section), applicable to a family of the size involved; or

“(2) median family income does not exceed the greater of—

“(A) 80 percent of the median family income for the metropolitan statistical area in which such census tracts are located; or

“(B) 80 percent of the median family income for the State in which such census tracts are located.

“(1) REGULATIONS.—

“(1) IN GENERAL.—The Director shall issue regulations to carry out this section.

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

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

“(B) a requirement that the Director ensure that the affordable housing fund of each enterprise is audited not less than annually to ensure compliance with this section;

“(C) requirements for a process for application to, and selection by, an enterprise for activities to be funded with amounts from the affordable housing fund, which shall provide that—

“(i) selection shall be based upon specific criteria, including a prioritization of funding based upon—

“(I) greatest impact;

“(II) geographic diversity;

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

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

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

“(ii) an enterprise may not require for such selection that an activity involve financing or underwriting of any kind by the enterprise (other than funding through the affordable housing fund of the enterprise) and may not give preference in such selection to activities that involve such financing; and

“(D) requirements to ensure that amounts from the affordable housing funds of the enterprises used for rental housing under subsection (d)(1) are used only for the benefit of extremely low- and very-low income families.

“(3) LIMITATION.—Any regulations issued by the Director pursuant to this section shall be no more restrictive on the enterprises’ activities in connection with the allocation of after-tax income under this section than the regulations issued to implement the affordable housing program of the Federal home loan banks pursuant to section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).”

(b) CONTRIBUTIONS FOR 2006.—

(1) RESERVATION AND CONTRIBUTION.—In 2006, each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992) shall reserve for contribution to the affordable housing fund to be established by the enterprise pursuant to section 1337 of such Act (as amended by subsection (a) of this section), an amount equal to 3.5 percent of the after-tax income of the enterprise for 2005. Upon the establishment of such affordable housing fund, each enterprise shall allocate to such fund the amounts reserved under this subsection by the enterprise.

(2) EXCEPTION TO DEADLINE FOR COMMITMENT.—Section 1337(e)(2) of the Housing and Community Development Act of 1992 (as amended by subsection (a) of this section) shall not apply to amounts allocated to the affordable housing fund of an enterprise pursuant to paragraph (1).

(3) AFTER-TAX INCOME.—For purposes of this subsection, the term “after-tax income” has the meaning provided in subsection (b)(3) of the new section 1337 to be inserted by the amendment made by subsection (a) of this section.

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

SEC. 129. CONSISTENCY WITH MISSION.

Subpart B of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4561 et seq.) is amended by adding after section 1337, as added by section 127 of this Act, the following new section:

“SEC. 1338. CONSISTENCY WITH MISSION.

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

SEC. 130. ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

“(A) comply with the goal or goals;

“(B) submit a report under section 1314;

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

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

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

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

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

(4) by striking subsection (d).

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

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

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

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

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

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

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

- “(3) submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;
- “(4) comply with any provision of this part or any order, rule or regulation under this part;
- “(5) submit a housing plan pursuant to section 1336(c) within the required period; or
- “(6) comply with a housing plan for the enterprise under section 1336(c).
- “(b) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Director, may not exceed—
- “ (1) for any failure described in paragraph (1), (5), or (6) of subsection (a), \$50,000 for each day that the failure occurs; and
- “ (2) for any failure described in paragraph (2), (3), or (4) of subsection (a), \$20,000 for each day that the failure occurs.”;
- (2) in subsection (c)—
- (A) in paragraph (1)—
- (i) in subparagraph (A), by inserting “and” after the semicolon at the end;
- (ii) in subparagraph (B), by striking “; and” and inserting a period; and
- (iii) by striking subparagraph (C); and
- (B) in paragraph (2), by inserting after the period at the end the following: “In determining the penalty under subsection (a)(1), the Director shall give consideration to the length of time the enterprise should reasonably take to achieve the goal.”;
- (3) in the first sentence of subsection (d)—
- (A) by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,”; and
- (B) by inserting “, or request that the Attorney General of the United States bring such an action” before the period at the end;
- (4) by striking subsection (f); and
- (5) by redesignating subsection (g) as subsection (f).
- (d) ENFORCEMENT OF SUBPOENAS.—Section 1348(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4588(c)) is amended—
- (1) by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,”; and
- (2) by inserting “or request that the Attorney General of the United States bring such an action,” after “District of Columbia.”
- (e) CONFORMING AMENDMENT.—The heading for subpart C of part 2 of subtitle A of the Housing and Community Development Act of 1992 is amended to read as follows:

“Subpart C—Enforcement”.

SEC. 131. CONFORMING AMENDMENTS.

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

- (1) by striking “Secretary” each place such term appears in such part and inserting “Director”;
- (2) in the section heading for section 1323 (12 U.S.C. 4543), by inserting “OF ENTERPRISES” before the period at the end;
- (3) by striking section 1327 (12 U.S.C. 4547);
- (4) by striking section 1328 (12 U.S.C. 4548);
- (5) in sections 1345(c)(1)(A) and 1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(b)), by striking “Secretary’s” each place such term appears and inserting “Director’s”; and
- (6) by striking section 1349 (12 U.S.C. 4589).

Subtitle C—Prompt Corrective Action

SEC. 141. CAPITAL CLASSIFICATIONS.

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

- (1) in the heading for subsection (a) by striking “In General” and inserting “Enterprises”;
- (2) in subsection (c)—
- (A) by striking “subsection (b)” and inserting “subsection (c)”;

- (B) by striking “enterprises” and inserting “regulated entities”; and
 (C) by striking the last sentence;
- (3) by redesignating subsections (c) (as so amended by paragraph (2) of this subsection) and (d) as subsections (d) and (f), respectively;
- (4) by striking subsection (b) and inserting the following new subsections:
- “(b) FEDERAL HOME LOAN BANKS.—
- “(1) ESTABLISHMENT AND CRITERIA.—For purposes of this subtitle, the Director shall, by regulation—
- “(A) establish the capital classifications specified under paragraph (2) for the Federal home loan banks;
- “(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and
- “(C) shall classify the Federal home loan banks according to such capital classifications.
- “(2) CLASSIFICATIONS.—The capital classifications specified under this paragraph are—
- “(A) adequately capitalized;
- “(B) undercapitalized;
- “(C) significantly undercapitalized; and
- “(D) critically undercapitalized.
- “(c) DISCRETIONARY CLASSIFICATION.—
- “(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify a regulated entity under paragraph (2) if—
- “(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;
- “(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or
- “(C) pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.
- “(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify a regulated entity—
- “(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;
- “(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and
- “(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.”; and
- (5) by inserting after subsection (d) (as so redesignated by paragraph (3) of this subsection), the following new subsection:
- “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—
- “(1) IN GENERAL.—A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.
- “(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—
- “(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and
- “(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.”.
- (b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Housing and Community Development Act of 1992 (as added by paragraph (4) of this subsection), relating to capital classifications for the Federal home loan banks.

SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED REGULATED ENTITIES.

Section 1365 of the Housing and Community Development Act of 1992 (12 U.S.C. 4615) is amended—

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

(2) in subsection (a)—

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

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

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

“(A) closely monitor the condition of any regulated entity that is classified as undercapitalized;

“(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and

“(C) periodically review the plan, restrictions, and requirements applicable to the undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.”;

and

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

“(4) RESTRICTION OF ASSET GROWTH.—A regulated entity that is classified as undercapitalized shall not permit its average total assets (as such term is defined in section 1316(b) during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

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

“(B) any increase in total assets is consistent with the plan; and

“(C) the ratio of total capital to assets for the regulated entity increases during the calendar quarter at a rate sufficient to enable the entity to become adequately capitalized within a reasonable time.

“(5) PRIOR APPROVAL OF ACQUISITIONS, NEW PROGRAMS, AND NEW BUSINESS ACTIVITIES.—A regulated entity that is classified as undercapitalized shall not, directly or indirectly, acquire any interest in any entity or engage in any new program or new business activity unless—

“(A) the Director has accepted the capital restoration plan of the regulated entity, the entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

“(B) the Director determines that the proposed action will further the purpose of this section.”;

(3) in the subsection heading for subsection (b), by striking “FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED”; and

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

“(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to a regulated entity that is classified as undercapitalized, any of the actions authorized to be taken under section 1366 with respect to a regulated entity that is classified as significantly undercapitalized, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.”.

SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED REGULATED ENTITIES.

Section 1366 of the Housing and Community Development Act of 1992 (12 U.S.C. 4616) is amended—

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

(2) in subsection (a)(2)(A), by striking “enterprise” the last place such term appears;

(3) in subsection (b)—

(A) in the subsection heading, by striking “Discretionary Supervisory Actions” and inserting “Specific Actions”;

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

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

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

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

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

“(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the entity became undercapitalized. Dismissal under this subparagraph shall not be construed

to be a removal pursuant to the Director's enforcement powers provided in section 1377.

“(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).”; and

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

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

(4) by redesignating subsection (c) as subsection (d); and

(5) by inserting after subsection (b) the following new subsection:

“(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—A regulated entity that is classified as significantly undercapitalized may not, without prior written approval by the Director—

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

“(2) provide compensation to any executive officer at a rate exceeding that of officer's average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became undercapitalized.”.

SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

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

“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

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

“(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if any of the grounds under paragraph (3) exist, at the discretion of the Director, the Director may establish a conservatorship or receivership, as appropriate, for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

“(2) APPOINTMENT.—In any conservatorship or receivership established under this section, the Director shall appoint the Agency as conservator or receiver.

“(3) GROUNDS FOR APPOINTMENT.—The grounds for appointing a conservator or receiver for a regulated entity are as follows:

“(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

“(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

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

“(ii) any unsafe or unsound practice.

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

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

“(E) CONCEALMENT.—Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

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

“(G) LOSSES.—The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).

“(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

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

or

“(ii) weaken the condition of the regulated entity.

“(I) CONSENT.—The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

“(J) UNDERCAPITALIZATION.—The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3) or in regulations issued pursuant to section 1364(b), as applicable), and—

“(i) has no reasonable prospect of becoming adequately capitalized;

“(ii) fails to become adequately capitalized, as required by—

“(I) section 1365(a)(1) with respect to an undercapitalized regulated entity; or

“(II) section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;

“(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

“(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

“(K) CRITICAL UNDERCAPITALIZATION.—The regulated entity is critically undercapitalized, as defined in section 1364(a)(4) or in regulations issued pursuant to section 1364(b), as applicable.

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

“(4) JUDICIAL REVIEW.—

“(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

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

“(5) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

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

“(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

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

“(2) GENERAL POWERS.—

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

“(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

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

“(B) OPERATE THE REGULATED ENTITY.—The Agency may, as conservator or receiver—

“(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

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

“(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver; and

“(iv) preserve and conserve the assets and property of such regulated entity.

“(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

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

“(i) necessary to put the regulated entity in a sound and solvent condition; and

“(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

“(E) ADDITIONAL POWERS AS RECEIVER.—The Agency may, as receiver, place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity, having due regard to the conditions of the housing finance market.

“(F) ORGANIZATION OF NEW REGULATED ENTITIES.—The Agency may, as receiver, organize a successor regulated entity that will operate pursuant to subsection (i).

“(G) TRANSFER OF ASSETS AND LIABILITIES.—The Agency may, as conservator or receiver, transfer any asset or liability of the regulated entity in default without any approval, assignment, or consent with respect to such transfer. Any Federal home loan bank may, with the approval of the Agency, acquire the assets of any Bank in conservatorship or receivership, and assume the liabilities of such Bank

“(H) PAYMENT OF VALID OBLIGATIONS.—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity in accordance with the prescriptions and limitations of this section.

“(I) SUBPOENA AUTHORITY.—

“(i) IN GENERAL.—

“(I) IN GENERAL.—The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

“(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power exercised under this subparagraph in the same manner as such provisions apply under that section.

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

“(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379D.

“(J) CONTRACTING FOR SERVICES.—The Agency may, as conservator or receiver, provide by contract for the carrying out of any of its functions, activities, actions, or duties as conservator or receiver.

“(K) INCIDENTAL POWERS.—The Agency may, as conservator or receiver—

“(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

“(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

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

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

“(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

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

“(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

“(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

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

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

“(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

“(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

“(A) DETERMINATION PERIOD.—

“(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

“(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

“(iii) MAILING OF NOTICE SUFFICIENT.—The notification requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

“(I) on the books of the regulated entity;

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

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

“(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

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

“(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

“(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i), or the date specified in the notice required under paragraph (3)(C), which is proved to the satisfaction of the receiver.

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

“(D) AUTHORITY TO DISALLOW CLAIMS.—

“(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

“(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

“(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

“(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

“(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to any extension of credit from any Federal Reserve Bank, Federal home loan bank, or the Treasury of the United States.

“(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the determination of the Agency under subparagraph (D) to disallow a claim. This subparagraph shall not effect the authority of a claimant to obtain de novo judicial review of a claim pursuant to paragraph (6).

“(F) LEGAL EFFECT OF FILING.—

“(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

“(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

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

“(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

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

“(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

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

“(7) REVIEW OF CLAIMS.—

“(A) OTHER REVIEW PROCEDURES.—

“(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

“(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

“(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Agency may establish both binding and nonbinding processes, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

“(B) CONSIDERATION OF INCENTIVES.—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

“(8) EXPEDITED DETERMINATION OF CLAIMS.—

“(A) ESTABLISHMENT REQUIRED.—The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

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

“(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

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

“(i) determine—

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

“(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

“(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

“(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

“(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

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

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

“(E) LEGAL EFFECT OF FILING.—

“(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

“(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of

the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

“(9) PAYMENT OF CLAIMS.—

“(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

- “(i) allowed by the receiver;
- “(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or
- “(iii) determined by the final judgment of any court of competent jurisdiction.

“(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing, and executed by an authorized official of the regulated entity, except that such requirements for qualified financial contracts shall be applied in a manner consistent with reasonable business trading practices in the financial contracts market.

“(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency, by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

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

“(10) SUSPENSION OF LEGAL ACTIONS.—

“(A) IN GENERAL.—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

- “(i) 45 days, in the case of any conservator; and
- “(ii) 90 days, in the case of any receiver.

“(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

“(11) ADDITIONAL RIGHTS AND DUTIES.—

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

“(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Agency as conservator or receiver shall—

- “(i) have all the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and
- “(ii) not be required to post any bond in order to pursue such remedies.

“(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

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

- “(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any regulated entity for which the Agency has been appointed receiver; or
- “(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

“(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which maintains stability in the housing finance markets and, to the extent consistent with that goal—

- “(i) maximizes the net present value return from the sale or disposition of such assets;
 - “(ii) minimizes the amount of any loss realized in the resolution of cases; and
 - “(iii) ensures adequate competition and fair and consistent treatment of offerors.
- “(12) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—
- “(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—
- “(i) in the case of any contract claim, the longer of—
 - “(I) the 6-year period beginning on the date the claim accrues; or
 - “(II) the period applicable under State law; and
 - “(ii) in the case of any tort claim, the longer of—
 - “(I) the 3-year period beginning on the date the claim accrues; or
 - “(II) the period applicable under State law.
- “(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—
- “(i) the date of the appointment of the Agency as conservator or receiver; or
 - “(ii) the date on which the cause of action accrues.
- “(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—
- “(A) IN GENERAL.—In the case of any tort claim described under subparagraph (B) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.
- “(B) CLAIMS DESCRIBED.—A tort claim referred to under subparagraph (A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.
- “(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—
- “(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.
- “(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.
- “(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.
- “(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.
- “(15) FRAUDULENT TRANSFERS.—
- “(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of a regulated entity-affiliated party, or any person who the conservator or receiver determines is a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.
- “(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—
- “(i) the initial transferee of such transfer or the regulated entity-affiliated party or person for whose benefit such transfer was made; or

“(ii) any immediate or mediate transferee of any such initial transferee.

“(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The conservator or receiver may not recover under subparagraph (B) from—

“(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

“(ii) any immediate or mediate good faith transferee of such transferee.

“(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

“(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Agency or such conservator under the control of the court, and appointing a trustee to hold such assets.

“(17) STANDARDS OF PROOF.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

“(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for the breach of an agreement executed or approved in writing by such receiver or conservator after the date of its appointment, shall be paid as an administrative expense of the receiver or conservator.

“(B) NO LIMITATION OF POWER.—Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

“(19) GENERAL EXCEPTIONS.—

“(A) LIMITATIONS.—The rights of a conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

“(B) MORTGAGES HELD IN TRUST.—

“(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, held in trust, custodial, or agency capacity by a regulated entity for the benefit of persons other than the regulated entity shall not be available to satisfy the claims of creditors generally.

“(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, described under clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in a pool of mortgages in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

“(iii) LIABILITY OF RECEIVER.—The liability of a receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance set forth in the regulations of the Director.

“(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

“(1) IN GENERAL.—Unsecured claims against a regulated entity, or a receiver, that are proven to the satisfaction of the receiver shall have priority in the following order:

“(A) Administrative expenses of the receiver.

“(B) Any other general or senior liability of the regulated entity and claims of other Federal home loan banks arising from their payment obligations (including joint and several payment obligations).

“(C) Any obligation subordinated to general creditors.

“(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

“(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Agency may make such other payments to creditors necessary to maximize the present value return from the sale or disposition or such regulated entity’s as-

sets or to minimize the amount of any loss realized in the resolution of cases so long as all creditors similarly situated receive not less than the amount provided under subsection (e)(2).

“(3) DEFINITION.—The term ‘administrative expenses of the receiver’ shall include the actual, necessary costs and expenses incurred by the receiver in preserving the assets of the regulated entity or liquidating or otherwise resolving the affairs of the regulated entity. Such expenses shall include obligations that are incurred by the receiver after appointment as receiver that the Director determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

“(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

“(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

“(A) to which such regulated entity is a party;

“(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

“(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

“(2) TIMING OF REPUDIATION.—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

“(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

“(A) IN GENERAL.—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

“(i) limited to actual direct compensatory damages; and

“(ii) determined as of—

“(I) the date of the appointment of the conservator or receiver;

or

“(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

“(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term ‘actual direct compensatory damages’ shall not include—

“(i) punitive or exemplary damages;

“(ii) damages for lost profits or opportunity; or

“(iii) damages for pain and suffering.

“(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

“(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

“(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

“(4) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.—

“(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

“(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

“(i) be entitled to the contractual rent accruing before the later of the date—

“(I) the notice of disaffirmance or repudiation is mailed; or

“(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

“(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

“(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

“(5) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.—

“(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

“(i) treat the lease as terminated by such repudiation; or

“(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

“(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of such subparagraph—

“(i) the lessee—

“(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

“(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

“(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

“(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

“(A) IN GENERAL.—If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

“(i) treat the contract as terminated by such repudiation; or

“(ii) remain in possession of such real property.

“(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of such subparagraph—

“(i) the purchaser—

“(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

“(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

“(ii) the conservator or receiver shall—

“(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

“(II) deliver title to the purchaser in accordance with the provisions of the contract; and

“(III) have no obligation under the contract other than the performance required under subclause (II).

“(C) ASSIGNMENT AND SALE ALLOWED.—

“(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

“(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

“(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

“(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

“(i) a claim to be paid in accordance with subsections (b) and (e); and

“(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

“(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other per-

son before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

“(i) the other party shall be paid under the terms of the contract for the services performed; and

“(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

“(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

“(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

“(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) and notwithstanding any other provision of this Act, any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

“(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts described in clause (i); or

“(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

“(B) APPLICABILITY OF OTHER PROVISIONS.—Paragraph (10) of subsection (b) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

“(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

“(i) IN GENERAL.—Notwithstanding paragraph (11) or any other Federal or State laws relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

“(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

“(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection:

“(i) QUALIFIED FINANCIAL CONTRACT.—The term ‘qualified financial contract’ means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

“(ii) SECURITIES CONTRACT.—The term ‘securities contract’—

“(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

“(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

“(III) means any option entered into on a national securities exchange relating to foreign currencies;

“(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

“(V) means any margin loan;

“(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) means any combination of the agreements or transactions referred to in this clause;

“(VIII) means any option to enter into any agreement or transaction referred to in this clause;

“(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

“(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

“(iii) COMMODITY CONTRACT.—The term ‘commodity contract’ means—

“(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

“(II) with respect to a foreign futures commission merchant, a foreign future;

“(III) with respect to a leverage transaction merchant, a leverage transaction;

“(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

“(V) with respect to a commodity options dealer, a commodity option;

“(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) any combination of the agreements or transactions referred to in this clause;

“(VIII) any option to enter into any agreement or transaction referred to in this clause;

“(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

“(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

“(iv) FORWARD CONTRACT.—The term ‘forward contract’ means—

“(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

“(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

“(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

“(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

“(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(v) REPURCHASE AGREEMENT.—The term ‘repurchase agreement’ (which definition also applies to a reverse repurchase agreement)—

“(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

“(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

“(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

“(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

“(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

“(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organiza-

tion for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

“(vi) SWAP AGREEMENT.—The term ‘swap agreement’ means—

“(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

“(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

“(III) any combination of agreements or transactions referred to in this clause;

“(IV) any option to enter into any agreement or transaction referred to in this clause;

“(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

“(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

“(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

“(viii) TRANSFER.—The term ‘transfer’ means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including

retention of title as a security interest and foreclosure of the regulated entity's equity of redemption.

“(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (13) of this subsection), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

“(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more such qualified financial contracts; or

“(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

“(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (d)(1) of this section.

“(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

“(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

“(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ‘walkaway clause’ means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.

“(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

“(A) transfer to 1 person—

“(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

“(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

“(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

“(iv) all property securing or any other credit enhancement for any contract described in clause (i) or any claim described in clause (ii) or (iii) under any such contract; or

“(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

“(10) NOTIFICATION OF TRANSFER.—

“(A) IN GENERAL.—If—

“(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity, and

“(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

“(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

“(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under para-

graph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

“(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

“(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

“(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

“(iii) NOTICE.—For purposes of this paragraph, the Agency as receiver or conservator of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity if the Agency has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

“(C) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term ‘business day’ means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

“(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

“(A) disaffirm or repudiate all qualified financial contracts between—

“(i) any person or any affiliate of such person; and

“(ii) the regulated entity in default; or

“(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

“(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

“(13) AUTHORITY TO ENFORCE CONTRACTS.—

“(A) IN GENERAL.—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver, the conservator or receiver may enforce any contract or regulated entity bond entered into by the regulated entity.

“(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director’s or officer’s liability insurance contract or surety bond under other applicable law.

“(C) CONSENT REQUIREMENT.—

“(i) IN GENERAL.—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

“(I) 45 days after the date of appointment of a conservator; or

“(II) 90 days after the date of appointment of a receiver.

“(ii) EXCEPTIONS.—This paragraph shall—

“(I) not apply to a director’s or officer’s liability insurance contract;

“(II) not apply to the rights of parties to any qualified financial contracts under subsection (d)(8); and

“(III) not be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

“(14) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act

“(15) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

“(A) any extension of credit from any Federal home loan bank or Federal Reserve Bank to any regulated entity; or

“(B) any security interest in the assets of the regulated entity securing any such extension of credit.

“(e) VALUATION OF CLAIMS IN DEFAULT.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

“(2) MAXIMUM LIABILITY.—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall equal the lesser of—

“(A) the amount such claimant would have received if the Agency had liquidated the assets and liabilities of such regulated entity without exercising the authority of the Agency under subsection (i) of this section; or

“(B) the amount of proceeds realized from the performance of contracts or sale of the assets of the regulated entity.

“(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

“(g) LIABILITY OF DIRECTORS AND OFFICERS.—

“(1) IN GENERAL.—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Agency, which action is prosecuted wholly or partially for the benefit of the Agency—

“(A) acting as conservator or receiver of such regulated entity, or

“(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

“(2) NO LIMITATION.—Nothing in this paragraph shall impair or affect any right of the Agency under other applicable law.

“(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

“(i) LIMITED-LIFE REGULATED ENTITIES.—

“(1) ORGANIZATION.—

“(A) PURPOSE.—If a regulated entity is in default, or if the Agency anticipates that a regulated entity will default, the Agency may organize a limited-life regulated entity with those powers and attributes of the regulated entity in default or in danger of default that the Director determines necessary, subject to the provisions of this subsection. The Director shall grant a temporary charter to the limited-life regulated entity, and the limited-life regulated entity shall operate subject to that charter.

“(B) AUTHORITIES.—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

“(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, provided that the liabilities assumed shall not exceed the amount of assets of the limited-life regulated entity;

“(ii) purchase such assets of the regulated entity that is in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate; and

“(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

“(2) CHARTER.—

“(A) CONDITIONS.—The Agency may grant a temporary charter if the Agency determines that the continued operation of the regulated entity in default or in danger of default is in the best interest of the national economy and the housing markets.

“(B) TREATMENT AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

“(C) MANAGEMENT.—A limited-life regulated entity, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

“(D) BYLAWS.—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

“(3) CAPITAL STOCK.—No capital stock need be paid into a limited-life regulated entity by the Agency.

“(4) INVESTMENTS.—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal Reserve bank.

“(5) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

“(6) WINDING UP.—

“(A) IN GENERAL.—Subject to subparagraph (B), unless Congress authorizes the sale of the capital stock of the limited-life regulated entity, not later than 2 years after the date of its organization, the Agency shall wind up the affairs of the limited-life regulated entity.

“(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of the limited-life regulated entity for 3 additional 1-year periods.

“(7) TRANSFER OF ASSETS AND LIABILITIES.—

“(A) IN GENERAL.—

“(i) TRANSFER OF ASSETS AND LIABILITIES.—The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with paragraph (1).

“(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is transferred to a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of such regulated entity in default, or in danger in default, as the Agency may, in its discretion, determine to be appropriate in accordance with paragraph (1).

“(iii) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities of a regulated entity in default, or in danger of default, transferred to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

“(8) PROCEEDS.—To the extent that available proceeds from the limited-life regulated entity exceed amounts required to pay obligations, such proceeds may be paid to the regulated entity in default, or in danger of default.

“(9) POWERS.—

“(A) IN GENERAL.—Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

“(i) the Agency may—

“(I) remove the directors of a limited-life regulated entity; and

“(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity;

“(ii) the Agency may indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

“(iii) the board of directors of a limited-life regulated entity—

“(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

“(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

“(B) STAY OF JUDICIAL ACTION.—Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of up to 45 days at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

“(10) OBTAINING OF CREDIT AND INCURRING OF DEBT.—

“(A) IN GENERAL.—The limited-life regulated entity may obtain unsecured credit and incur unsecured debt in the ordinary course of business.

“(B) INABILITY TO OBTAIN CREDIT.—If the limited-life regulated entity is unable to obtain unsecured credit the Director may authorize the obtaining of credit or the incurring of debt—

“(i) with priority over any or all administrative expenses;

“(ii) secured by a lien on property that is not otherwise subject to a lien; or

“(iii) secured by a junior lien on property that is subject to a lien.

“(C) LIMITATIONS.—

“(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by the regulated entity) only if—

“(I) the limited-life regulated entity is unable to obtain such credit otherwise; and

“(II) there is adequate protection of the interest of the holder of the lien on the property which such senior or equal lien is proposed to be granted.

“(ii) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

“(D) AFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this paragraph to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

“(11) ISSUANCE OF PREFERRED DEBT.—A limited-life regulated entity may, subject to the approval of the Director and subject to such terms and conditions as the Director may prescribe, issue notes, bonds, or other debt obligations of a class to which all other debt obligations of the limited-life regulated entity shall be subordinate in right and payment.

“(12) NO FEDERAL STATUS.—

“(A) AGENCY STATUS.—A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

“(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

“(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

“(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

“(13) ADDITIONAL POWERS.—In addition to any other powers granted under this subsection, a limited-life regulated entity may—

“(A) extend a maturity date or change in an interest rate or other term of outstanding securities;

“(B) issue securities of the limited-life regulated entity, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purposes; and

“(C) take any other action not inconsistent with this section.

“(j) OTHER EXEMPTIONS.—When acting as a receiver, the following provisions shall apply with respect to the Agency:

“(1) EXEMPTION FROM TAXATION.—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, country, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

“(2) EXEMPTION FROM ATTACHMENT AND LIENS.—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

“(3) EXEMPTION FROM PENALTIES AND FINES.—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

“(k) PROHIBITION OF CHARTER REVOCATION.—In no case may a receiver appointed pursuant to this section revoke, annul, or terminate the charter of a regulated entity.”.

(b) CONFORMING AMENDMENTS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 is amended by striking sections 1369 (12 U.S.C. 4619), 1369A (12 U.S.C. 4620), and 1369B (12 U.S.C. 4621).

SEC. 145. CONFORMING AMENDMENTS.

Title XIII of the Housing and Community Development Act of 1992, as amended by the preceding provisions of this Act, is further amended—

(1) in sections 1365 (12 U.S.C. 4615) through 1369D (12 U.S.C. 4623), but not including section 1367 (12 U.S.C. 4617) as added by section 144 of this Act—

(A) by striking “An enterprise” each place such term appears and inserting “A regulated entity”;

(B) by striking “an enterprise” each place such term appears and inserting “a regulated entity”; and

(C) by striking “the enterprise” each place such term appears and inserting “the regulated entity”;

(2) in section 1366 (12 U.S.C. 4616)—

(A) in subsection (b)(7), by striking “section 1369 (excluding subsection (a)(1) and (2))” and inserting “section 1367”; and

(B) in subsection (d), by striking “the enterprises” and inserting “the regulated entities”;

(3) in section 1368(d) (12 U.S.C. 4618(d)), by striking “Committee on Banking, Finance and Urban Affairs” and inserting “Committee on Financial Services”;

(4) in section 1369C(c) (12 U.S.C. 4622(c)), by striking “any enterprise” and inserting “any regulated entity”; and

(5) in subsections (a) and (d) of section 1369D, by striking “section 1366 or 1367 or action under section 1369” each place such phrase appears and inserting “section 1367”.

Subtitle D—Enforcement Actions

SEC. 161. CEASE-AND-DESIST PROCEEDINGS.

Section 1371 of the Housing and Community Development Act of 1992 (12 U.S.C. 4631) is amended—

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

“(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the opinion of the Director, a regulated entity or any regulated entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or is violating or has violated, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or such party a notice of charges in respect thereof. The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

“(b) **ISSUANCE FOR UNSATISFACTORY RATING.**—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of this subsection.”;

(2) in subsection (c)(2), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”; and

(3) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”

(B) in paragraph (1)—

(i) by striking “an executive officer or director” and inserting “a regulated entity affiliated party”;

(ii) by inserting “(including reimbursement of compensation under section 1318)” after “reimbursement”;

(C) in paragraph (6), by striking “and” at the end;

(D) by redesignating paragraph (7) as paragraph (8); and

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

“(7) to effect an attachment on a regulated entity or regulated entity-affiliated party subject to an order under this section or section 1372; and”.

SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.

Section 1372 of the Housing and Community Development Act of 1992 (12 U.S.C. 4632) is amended—

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

“(a) **FOUNDATIONS FOR ISSUANCE.**—Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the regulated entity or any regulated entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the regulated entity, or is likely to weaken the condition of the regulated entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the regulated entity or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).”;

(2) in subsection (b), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”;

(3) in subsection (d)—

(A) by striking “An enterprise, executive officer, or director” and inserting “A regulated entity or regulated entity-affiliated party”; and

(B) by striking “the enterprise, executive officer, or director” and inserting “the regulated entity or regulated entity-affiliated party”; and

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

“(e) **ENFORCEMENT.**—In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this section, the Director may apply to the United States District Court for the District of Columbia

or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.”.

SEC. 163. PREJUDGMENT ATTACHMENT.

The Housing and Community Development Act of 1992 is amended by inserting after section 1375 (12 U.S.C. 4635) the following new section:

“SEC. 1375A. PREJUDGMENT ATTACHMENT.

“(a) **IN GENERAL.**—In any action brought pursuant to this title, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought pursuant to this title, the court may, upon application of the Director or Attorney General, as applicable, issue a restraining order that—

“(1) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

“(2) appoints a person on a temporary basis to administer the restraining order.

“(b) **STANDARD.**—

“(1) **SHOWING.**—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subsection (a) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

“(2) **STATE PROCEEDING.**—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party’s right to due process as Rule 65 (as modified with respect to such proceeding by paragraph (1)), the relief sought under subsection (a) may be requested under the laws of such State.”.

SEC. 164. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Housing and Community Development Act of 1992 (12 U.S.C. 4635) is amended—

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

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

(2) in subsection (b), by striking “or 1376” and inserting “1376, or 1377”.

SEC. 165. CIVIL MONEY PENALTIES.

Section 1376 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “or any executive officer or” and inserting “any executive officer of a regulated entity, any regulated entity-affiliated party, or any”; and

(B) in paragraph (1)—

(i) by striking “the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act” and inserting “any provision of any of the authorizing statutes”;

(ii) by striking “or Act” and inserting “or statute”;

(iii) by striking “or subsection” and inserting “, subsection”; and

(iv) by inserting “, or paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act” before the semicolon at the end;

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

“(b) **AMOUNT OF PENALTY.**—

“(1) **FIRST TIER.**—Any regulated entity which, or any regulated entity-affiliated party who—

“(A) violates any provision of this title, any provision of any of the authorizing statutes, or any order, condition, rule, or regulation under any such title or statute, except that the Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of

section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;

“(B) violates any final or temporary order or notice issued pursuant to this title;

“(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity;

“(D) violates any written agreement between the regulated entity and the Director; or

“(E) engages in any conduct the Director determines to be an unsafe or unsound practice, shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which such violation continues.

“(2) SECOND TIER.—Notwithstanding paragraph (1)—

“(A) if a regulated entity, or a regulated entity-affiliated party—

“(i) commits any violation described in any subparagraph of paragraph (1);

“(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such regulated entity; or

“(iii) breaches any fiduciary duty; and

“(B) the violation, practice, or breach—

“(i) is part of a pattern of misconduct;

“(ii) causes or is likely to cause more than a minimal loss to such regulated entity; or

“(iii) results in pecuniary gain or other benefit to such party, the regulated entity or regulated entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which such violation, practice, or breach continues.

“(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any regulated entity which, or any regulated entity-affiliated party who—

“(A) knowingly—

“(i) commits any violation or engages in any conduct described in any subparagraph of paragraph (1);

“(ii) engages in any unsafe or unsound practice in conducting the affairs of such regulated entity; or

“(iii) breaches any fiduciary duty; and

“(B) knowingly or recklessly causes a substantial loss to such regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach, shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

“(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

“(A) in the case of any person other than a regulated entity, an amount not to exceed \$2,000,000; and

“(B) in the case of any regulated entity, \$2,000,000.”;

(3) in subsection (c)(1)(B), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”;

(4) in subsection (d), by striking the first sentence and inserting the following: “If a regulated entity or regulated entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may, in the discretion of the Director, bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity or regulated entity affiliated party and such other relief as may be available, or request that the Attorney General of the United States bring such an action.”; and

(5) in subsection (g), by striking “subsection (b)(3)” and inserting “this section, unless authorized by the Director by rule, regulation, or order”.

SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Subtitle C of title XIII of the Housing and Community Development Act of 1992 is amended—

- (1) by redesignating sections 1377, 1378, 1379, 1379A, and 1379B (12 U.S.C. 4637–41) as sections 1379, 1379A, 1379B, 1379C, and 1379D, respectively; and
 (2) by inserting after section 1376 (12 U.S.C. 4636) the following new section:

“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

“(a) **AUTHORITY TO ISSUE ORDER.**—Whenever the Director determines that—

- “(1) any regulated entity-affiliated party has, directly or indirectly—
 “(A) violated—
 “(i) any law or regulation;
 “(ii) any cease-and-desist order which has become final;
 “(iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or
 “(iv) any written agreement between such regulated entity and the Director;
 “(B) engaged or participated in any unsafe or unsound practice in connection with any regulated entity; or
 “(C) committed or engaged in any act, omission, or practice which constitutes a breach of such party’s fiduciary duty;
 “(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—
 “(A) such regulated entity has suffered or will probably suffer financial loss or other damage; or
 “(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and
 “(3) such violation, practice, or breach—
 “(A) involves personal dishonesty on the part of such party; or
 “(B) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity, the Director may serve upon such party a written notice of the Director’s intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any regulated entity.

“(b) **SUSPENSION ORDER.**—

“(1) **SUSPENSION OR PROHIBITION AUTHORITY.**—If the Director serves written notice under subsection (a) to any regulated entity-affiliated party of the Director’s intention to issue an order under such subsection, the Director may—

- “(A) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—
 “(i) determines that such action is necessary for the protection of the regulated entity; and
 “(ii) serves such party with written notice of the suspension order; and
 “(B) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party.

“(2) **EFFECTIVE PERIOD.**—Any suspension order issued under this subsection—

- “(A) shall become effective upon service; and
 “(B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—
 “(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or
 “(ii) the effective date of an order issued by the Director to such party under subsection (a).

“(3) **COPY OF ORDER.**—If the Director issues a suspension order under this subsection to any regulated entity-affiliated party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

“(c) **NOTICE, HEARING, AND ORDER.**—A notice of intention to remove a regulated entity-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of a regulated entity shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representa-

tive, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the regulated entity, as it may deem appropriate, together with an order prohibiting compensation described in subsection (b)(1)(B). Any such order shall become effective at the expiration of 30 days after service upon such regulated entity and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

“(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

“(1) participate in any manner in the conduct of the affairs of any regulated entity;

“(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

“(3) violate any voting agreement previously approved by the Director; or

“(4) vote for a director, or serve or act as a regulated entity-affiliated party.

“(e) INDUSTRY-WIDE PROHIBITION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or prohibited from participating in the conduct of the affairs of a regulated entity may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity.

“(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any regulated entity-affiliated party or prohibits such party from participating in the conduct of the affairs of a regulated entity, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

“(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

“(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

“(g) STAY OF SUSPENSION AND PROHIBITION OF REGULATED ENTITY-AFFILIATED PARTY.—Within 10 days after any regulated entity-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension and/or prohibition and any prohibition under subsection (b)(1)(B) pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

“(h) SUSPENSION OR REMOVAL OF REGULATED ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.—

“(1) SUSPENSION OR PROHIBITION.—

“(A) IN GENERAL.—Whenever any regulated entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party—

“(i) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity; and

“(ii) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with

the period of any such suspension or with any resignation, removal, retirement, or other termination of employment or office of the party.

“(B) PROVISIONS APPLICABLE TO NOTICE.—

“(i) COPY.—A copy of any notice under paragraph (1)(A) shall also be served upon the regulated entity.

“(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

“(2) REMOVAL OR PROHIBITION.—

“(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against a regulated entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order that—

“(i) removes such party from office or prohibits such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director; and

“(ii) prohibits the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the termination of employment or office of the party.

“(B) PROVISIONS APPLICABLE TO ORDER.—

“(i) COPY.—A copy of any order under paragraph (2)(A) shall also be served upon the regulated entity, whereupon the regulated entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

“(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in regulated entity affairs, and to prohibit compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party, pursuant to subsections (a), (d), or (e) of this section.

“(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

“(3) AUTHORITY OF REMAINING BOARD MEMBERS.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

“(4) HEARING REGARDING CONTINUED PARTICIPATION.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the regulated entity-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity or threaten to impair public confidence in the regulated entity. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further

participation in any manner in the conduct of the affairs of the regulated entity, and prohibiting compensation in connection with termination will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

“(i) HEARINGS AND JUDICIAL REVIEW.—

“(1) VENUE AND PROCEDURE.—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the regulated entity is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

“(2) REVIEW OF ORDER.—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the regulated entity or the regulated entity-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the regulated entity is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

“(3) PROCEEDINGS NOT TREATED AS STAY.—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.”.

(b) CONFORMING AMENDMENTS.—

(1) 1992 ACT.—Section 1317(f) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(f)) is amended by striking “section 1379B” and inserting “section 1379D”.

(2) FANNIE MAE CHARTER ACT.—The second sentence of subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by striking “The” and inserting “Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the”.

(3) FREDDIE MAC ACT.—The second sentence of subparagraph (A) of section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by striking “The” and inserting “Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the”.

SEC. 167. CRIMINAL PENALTY.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377 (as added by the preceding provisions of this Act) the following new section:

“SEC. 1378. CRIMINAL PENALTY.

“Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an

order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.”.

SEC. 168. SUBPOENA AUTHORITY.

Section 1379D(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4641(c)), as so redesignated by section 165(a)(1) of this Act, is further amended—

- (1) by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,”;
- (2) by inserting “or request that the Attorney General of the United States bring such an action,” after “District of Columbia,”; and
- (3) by striking “or may, under the direction and control of the Attorney General, bring such an action”.

SEC. 169. CONFORMING AMENDMENTS.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 is amended—

- (1) in section 1372(c)(1) (12 U.S.C. 4632(c)), by striking “that enterprise” and inserting “that regulated entity”;
- (2) in section 1379 (12 U.S.C. 4637), as so redesignated by section 165(a)(1) of this Act—
 - (A) by inserting “, or of a regulated entity-affiliated party,” before “shall not affect”; and
 - (B) by striking “such director or executive officer” each place such term appears and inserting “such director, executive officer, or regulated entity-affiliated party”;
- (3) in section 1379A (12 U.S.C. 4638), as so redesignated by section 165(a)(1) of this Act, by inserting “or against a regulated entity-affiliated party,” before “or impair”;
- (4) by striking “An enterprise” each place such term appears in such subtitle and inserting “A regulated entity”;
- (5) by striking “an enterprise” each place such term appears in such subtitle and inserting “a regulated entity”;
- (6) by striking “the enterprise” each place such term appears in such subtitle and inserting “the regulated entity”; and
- (7) by striking “any enterprise” each place such term appears in such subtitle and inserting “any regulated entity”.

Subtitle E—General Provisions

SEC. 181. PRESIDENTIALLY APPOINTED DIRECTORS OF ENTERPRISES.

(a) **FANNIE MAE.**—

(1) **IN GENERAL.**—Subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended—

- (A) in the first sentence, by striking “eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom” and inserting “not less than 7 and not more than 15 persons, who”;
- (B) in the second sentence, by striking “appointed by the President”;
- (C) in the third sentence—
 - (i) by striking “appointed or”; and
 - (ii) by striking “, except that any such appointed member may be removed from office by the President for good cause”;
- (D) in the fourth sentence, by striking “elective”; and
- (E) by striking the fifth sentence.

(2) **TRANSITIONAL PROVISION.**—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under section 185 occurs.

(b) **FREDDIE MAC.**—

(1) **IN GENERAL.**—Paragraph (2) of section 303(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)) is amended—

- (A) in subparagraph (A)—
 - (i) in the first sentence, by striking “18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom” and inserting “not less than 7 and not more than 15 persons, who”; and

- (ii) in the second sentence, by striking “appointed by the President of the United States”;
- (B) in subparagraph (B)—
 - (i) by striking “such or”; and
 - (ii) by striking “, except that any appointed member may be removed from office by the President for good cause”; and
- (C) in subparagraph (C)—
 - (i) by striking the first sentence; and
 - (ii) by striking “elective”.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the Board of Directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under section 185 occurs.

SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY AND SOUNDNESS, AND MISSION OF ENTERPRISES.

Not later than the expiration of the 12-month period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall submit a report to the Congress which shall include—

- (1) a description of the portfolio holdings of the enterprises (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) in mortgages (including whole loans and mortgage-backed securities), non-mortgages, and other assets;
- (2) a description of the risk implications for the enterprises of such holdings and the consequent risk management undertaken by the enterprises (including the use of derivatives for hedging purposes), compared with off-balance sheet liabilities of the enterprises (including mortgage-backed securities guaranteed by the enterprises);
- (3) an analysis of portfolio holdings for safety and soundness purposes;
- (4) an assessment of whether portfolio holdings fulfill the mission purposes of the enterprises under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act; and
- (5) an analysis of the potential systemic risk implications for the enterprises, the housing and capital markets, and the financial system of portfolio holdings, and whether such holdings should be limited or reduced over time.

SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.

(a) 1992 Act.—Title XIII of the Housing and Community Development Act of 1992 is amended by striking section 1383 (12 U.S.C. 1451 note).

(b) TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking “Office of Federal Housing Enterprise Oversight” and inserting “Federal Housing Finance Agency”.

(c) FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking “Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development” and inserting “Director of the Federal Housing Finance Agency”.

(d) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(e) TITLE 5, UNITED STATES CODE.—

(1) DIRECTOR’S PAY RATE.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:
“ Director of the Federal Housing Finance Agency.”

(2) DEPUTY DIRECTORS’ PAY RATE.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:
“ Deputy Directors, Federal Housing Finance Agency (3).”

(3) PAY RATE FOR MEMBERS OF HOUSING FINANCE OVERSIGHT BOARD.—Section 5315 of title 5, United States Code, is amended by adding at the end the following new item:
“ Members, Housing Finance Oversight Board.”

(4) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking “the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development” and inserting “the Federal Housing Finance Agency”.

(f) INSPECTOR GENERAL ACT OF 1978.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

(g) FEDERAL DEPOSIT INSURANCE ACT.—Section 11(t)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C.1821(t)(2)(A)) is amended by adding at the end the following new clause:

“(vii) The Federal Housing Finance Agency.”.

(h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT.—Section 10001 of the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those In Bosnia (42 U.S.C. 3548) is amended—

(1) by striking “the Government National Mortgage Association, and the Office of Federal Housing Enterprise Oversight” and inserting “and the Government National Mortgage Association”; and

(2) by striking “, the Government National Mortgage Association, or the Office of Federal Housing Enterprise Oversight” and inserting “or the Government National Mortgage Association”.

(i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Section 302(b)(4) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12851(b)(4)) is amended by striking “the chairperson of the Federal Housing Finance Board” and inserting “the Director of the Federal Housing Finance Agency”.

SEC. 184. STUDY OF ALTERNATIVE SECONDARY MARKET SYSTEMS.

(a) IN GENERAL.—The Director of the Federal Housing Finance Agency, in consultation with the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, and the Secretary of Housing and Urban Development, shall conduct a comprehensive study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance, taking into consideration changes in the structure of financial and housing finance markets and institutions since the creation of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(b) CONTENTS.—The study under this section shall—

(1) include, among the alternatives to the current secondary market system analyzed—

(A) repeal of the chartering Acts for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) establishing bank-like mechanisms for granting new charters for limited purpose mortgage securitization entities;

(C) permitting the Director of the Federal Housing Finance Agency to grant new charters for limited purpose mortgage securitization entities, which shall include analyzing the terms on which such charters should be granted, including whether such charters should be sold, or whether such charters and the charters for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should be taxed or otherwise assessed a monetary price; and

(D) such other alternatives as the Director considers appropriate;

(2) examine all of the issues involved in making the transition to a completely private secondary mortgage market system;

(3) examine the technological advancements the private sector has made in providing liquidity in the secondary mortgage market and how such advancements have affected liquidity in the secondary mortgage market; and

(4) examine how taxpayers would be impacted by each alternative system, including the complete privatization of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(c) REPORT.—The Director of the Federal Housing Finance Agency shall submit a report to the Congress on the study not later than the expiration of the 12-month period beginning on the effective date under section 185.

SEC. 185. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 1-year period beginning on the date of the enactment of this Act.

TITLE II—FEDERAL HOME LOAN BANKS

SEC. 201. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) by striking paragraphs (1), (10), and (11);

(2) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively;

(3) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10), respectively; and

(4) by adding at the end the following:

“(11) DIRECTOR.—The term ‘Director’ means the Director of the Federal Housing Finance Agency.

“(12) AGENCY.—The term ‘Agency’ means the Federal Housing Finance Agency.”

SEC. 202. DIRECTORS.

(a) ELECTION.—Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

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

“(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

“(1) IN GENERAL.—The management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate, each of whom shall be elected by the members and shall be a citizen of the United States.

“(2) MEMBER DIRECTORS.—A majority of the directors of each Bank shall be officers or directors of a member of such Bank that is located in the district in which such Bank is located.

“(3) INDEPENDENT DIRECTORS.—At least one-third of the directors of each Bank shall be independent directors as follows:

“(A) IN GENERAL.—Each independent director shall be a bona fide resident of the district in which such Bank is located.

“(B) PUBLIC INTEREST DIRECTORS.—At least 2 of the independent directors under this paragraph of each Bank shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

“(C) OTHER DIRECTORS.—Each independent director that is not a public interest director under subparagraph (B) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

“(D) CONFLICTS OF INTEREST.—An independent director under this paragraph of a Bank may not, during such director’s term of office, serve as an officer of any Federal Home Loan Bank or as a director or officer of any member of a Bank.”;

(2) in subsection (b)—

(A) in the first sentence, by striking “directorship” and inserting “member directorship pursuant to subsection (a)(2)” ; and

(B) by inserting after the period at the end of the first sentence the following new sentence: “Each independent directorship pursuant to subsection (a)(3) shall be filled by election by a plurality of the votes of the members of the Bank at large, in which election each member shall be entitled to nominate candidates and to cast the same number of votes as in an election to fill a directorship allocated to the member’s State.”;

(3) in subsection (c), by striking the second, third, and fifth sentences;

(4) in subsection (d)—

(A) in the first sentence, by striking “, whether elected or appointed,”;

(B) in the second sentence, by striking “or appointed”; and

(C) in the third sentence, by striking “an elective” each place such term appears and inserting “a”; and

(5) by striking “elective” each place such term appears (except in subsection (e)).

(b) TERMS.—

(1) IN GENERAL.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended—

(A) in the first sentence, by striking “3 years” and inserting “4 years”; and

(B) in the second sentence—

(i) by striking “Federal Home Loan Bank System Modernization Act of 1999” and inserting “Federal Housing Finance Reform Act of 2005”; and

(ii) by striking “1/3” and inserting “1/4”.

(2) SAVINGS PROVISION.—The amendments made by paragraph (1) shall not apply to the term of office of any director of a Federal home loan bank who is

serving as of the effective date of this Act under section 211, including any director elected to fill a vacancy in any such office.

(c) VACANCIES.—Subsection (f) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(f)) is amended to read as follows:

“(f) VACANCIES.—A Bank director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. In the event of a vacancy in any Bank directorship, such vacancy shall be filled by an affirmative vote of a majority of the remaining Bank directors, regardless of whether such remaining Bank directors constitute a quorum of the Bank’s board of directors. A Bank director so elected shall satisfy the requirements for eligibility which were applicable to his predecessor. If any Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant.”.

(d) COMPENSATION.—Subsection (i) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended to read as follows:

“(i) DIRECTORS’ COMPENSATION.—

“(1) IN GENERAL.—Each Federal home loan bank may pay the directors on the board of directors for the bank reasonable and appropriate compensation for the time required of such directors, and reasonable and appropriate expenses incurred by such directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors and subject to the approval of the Director.

“(2) ANNUAL REPORT BY THE BOARD.—The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks.”.

(e) TRANSITION RULE.—Any member of the board of directors of a Federal Home Loan Bank serving as of the effective date under section 211 may continue to serve as a member of such board of directors for the remainder of the term of such office as provided in section 7 of the Federal Home Loan Bank Act, as in effect before such effective date.

SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVERSIGHT OF FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), other than in provisions of that Act added or amended otherwise by this Act, is amended—

(1) by striking sections 2A and 2B (12 U.S.C. 1422a, 1422b);

(2) in section 6 (12 U.S.C. 1426(b)(1))—

(A) in subsection (b)(1), in the matter preceding subparagraph (A), by striking “Finance Board approval” and inserting “approval by the Director”; and

(B) in each of subsections (c)(4)(B) and (d)(2), by striking “Finance Board regulations” each place that term appears and inserting “regulations of the Director”;

(3) in section 8 (12 U.S.C. 1428), in the section heading, by striking “BY THE BOARD”;

(4) in section 10(b) (12 U.S.C. 1430), by striking “by formal resolution”;

(5) in section 11 (12 U.S.C. 1431)—

(A) in subsection (b)—

(i) in the first sentence—

(I) by striking “The Board” and inserting “The Office of Finance, as agent for the Banks,”; and

(II) by striking “the Board” and inserting “such Office”; and

(ii) in the second and fourth sentences, by striking “the Board” each place such term appears and inserting “the Office of Finance”;

(B) in subsection (c)—

(i) by striking “the Board” the first place such term appears and inserting “the Office of Finance, as agent for the Banks,”; and

(ii) by striking “the Board” the second place such term appears and inserting “such Office”; and

(C) in subsection (f)—

(i) by striking the two commas after “permit” and inserting “or”; and

(ii) by striking the comma after “require”;

(6) in section 15 (12 U.S.C. 1435), by inserting “or the Director” after “the Board”;

(7) in section 18 (12 U.S.C. 1438), by striking subsection (b);

(8) in section 21 (12 U.S.C. 1441)—

(A) in subsection (b)—

(i) in paragraph (5), by striking “Chairperson of the Federal Housing Finance Board” and inserting “Director”; and

- (ii) in the heading for paragraph (8), by striking “FEDERAL HOUSING FINANCE BOARD” and inserting “DIRECTOR”; and
- (B) in subsection (i), in the heading for paragraph (2), by striking “FEDERAL HOUSING FINANCE BOARD” and inserting “DIRECTOR”;
- (9) in section 23 (12 U.S.C. 1443), by striking “Board of Directors of the Federal Housing Finance Board” and inserting “Director”;
- (10) by striking “the Board” each place such term appears in such Act (except in section 15 (12 U.S.C. 1435), section 21(f)(2) (12 U.S.C. 1441(f)(2)), subsections (a), (k)(2)(B)(i), and (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), subsections (e)(7), (f)(2)(C), and (k)(7)(B)(ii) of section 21B (12 U.S.C. 1441b), and the first two places such term appears in section 22 (12 U.S.C. 1442)) and inserting “the Director”;
- (11) by striking “The Board” each place such term appears in such Act (except in sections 7(e) (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b)) and inserting “The Director”;
- (12) by striking “the Board’s” each place such term appears in such Act and inserting “the Director’s”;
- (13) by striking “The Board’s” each place such term appears in such Act and inserting “The Director’s”;
- (14) by striking “The Finance Board” each place such term appears in such Act and inserting “The Director”;
- (15) by striking “the Finance Board” each place such term appears in such Act and inserting “the Director”;
- (16) by striking “Federal Housing Finance Board” each place such term appears and inserting “Director”;
- (17) in section 11(i) (12 U.S.C. 1431(i)), by striking “the Chairperson of”; and
- (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)), by striking “Chairperson of the”.

SEC. 204. JOINT ACTIVITIES OF BANKS.

Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended by adding at the end the following new subsection:

“(l) JOINT ACTIVITIES.—Subject to the regulation of the Director, any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for, or providing services to, the Banks on a common or collective basis, or may require that the Office of Finance perform such functions or services, but only if the Banks are otherwise authorized to perform such functions or services individually.”.

SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

(a) IN GENERAL.—The Federal Home Loan Bank Act is amended by inserting after section 20 (12 U.S.C. 1440) the following new section:

“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

“(a) REGULATORY AUTHORITY.—The Director shall prescribe such regulations as may be necessary to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability.

“(b) NO WAIVER OF PRIVILEGE.—The Director shall not be deemed to have waived any privilege applicable to any information concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purpose of enabling the recipient to evaluate the nature and extent of its joint and several liability.”.

(b) REGULATIONS.—The regulations required under the amendment made by subsection (a) shall be issued in final form not later than 6 months after the effective date under section 211 of this Act.

SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY MERGER.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended—

- (1) by inserting “(a) REORGANIZATION.—” before “Whenever”; and
- (2) by striking “liquidated or” each place such phrase appears;
- (3) by striking “liquidation or”; and
- (4) by adding at the end the following new subsection:

“(b) VOLUNTARY MERGERS.—Any Bank may, with the approval of the Director, and the approval of the boards of directors of the Banks involved, merge with another Bank. The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any such voluntary merger, including the procedures for Bank member approval.”.

SEC. 207. SECURITIES AND EXCHANGE COMMISSION DISCLOSURE.

(a) IN GENERAL.—The Federal Home Loan Banks shall be exempt from compliance with—

- (1) sections 13(e), 14(a), 14(c), and 17A of the Securities Exchange Act of 1934 and related Commission regulations; and
 - (2) section 15 of that Act and related Securities and Exchange Commission regulations with respect to transactions in capital stock of the Banks.
- (b) **MEMBER EXEMPTION.**—The members of the Federal Home Loan Banks shall be exempt from compliance with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Securities Exchange Act of 1934 and related Securities and Exchange Commission regulations with respect to their ownership of, or transactions in, capital stock of the Federal Home Loan Banks.
- (c) **EXEMPTED AND GOVERNMENT SECURITIES.**—
- (1) **CAPITAL STOCK.**—The capital stock issued by each of the Federal Home Loan Banks under section 6 of the Federal Home Loan Bank Act are—
 - (A) exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933; and
 - (B) “exempted securities” within the meaning of section 3(a)(12)(A) of the Securities Exchange Act of 1934.
 - (2) **OTHER OBLIGATIONS.**—The debentures, bonds, and other obligations issued under section 11 of the Federal Home Loan Bank Act are—
 - (A) exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933;
 - (B) “government securities” within the meaning of section 3(a)(42) of the Securities Exchange Act of 1934;
 - (C) excluded from the definition of “government securities broker” within section 3(a)(43) of the Securities Exchange Act of 1934;
 - (D) excluded from the definition of “government securities dealer” within section 3(a)(44) of the Securities Exchange Act of 1934; and
 - (E) “government securities” within the meaning of section 2(a)(16) of the Investment Company Act of 1940.
- (d) **EXEMPTION FROM REPORTING REQUIREMENTS.**—The Federal Home Loan Banks shall be exempt from periodic reporting requirements pertaining to—
- (1) the disclosure of related party transactions that occur in the ordinary course of business of the Banks with their members; and
 - (2) the disclosure of unregistered sales of equity securities.
- (e) **TENDER OFFERS.**—The Securities and Exchange Commission’s rules relating to tender offers shall not apply in connection with transactions in capital stock of the Federal Home Loan Banks.
- (f) **REGULATIONS.**—In issuing final regulations to implement provisions of this section, the Securities and Exchange Commission shall consider the distinctive characteristics of the Federal Home Loan Banks when evaluating the accounting treatment with respect to the payment to Resolution Funding Corporation, the role of the combined financial statements of the twelve Banks, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of the obligations of the Banks.

SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.

- (a) **TOTAL ASSET REQUIREMENT.**—Paragraph (10) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(10)), as so redesignated by section 201(3) of this Act, is amended by striking “\$500,000,000” each place such term appears and inserting “\$1,000,000,000”.
- (b) **USE OF ADVANCES FOR COMMUNITY DEVELOPMENT ACTIVITIES.**—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—
- (1) in paragraph (2)(B)—
 - (A) by striking “and”; and
 - (B) by inserting “, and community development activities” before the period at the end;
 - (2) in paragraph (3)(E), by inserting “or community development activities” after “agriculture.”; and
 - (3) in paragraph (6)—
 - (A) by striking “and”; and
 - (B) by inserting “, and ‘community development activities’” before “shall”.

SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.

- (a) **RIGHT TO FINANCIAL PRIVACY ACT OF 1978.**—Section 1113(o) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(o)) is amended—
- (1) by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”; and
 - (2) by striking “Federal Housing Finance Board’s” and inserting “Federal Housing Finance Agency’s”.
- (b) **RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.**—Section 117(e) of the Riegle Community Development and Regulatory Im-

provement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

(c) TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by striking “Federal Housing Finance Board” each place such term appears in each of sections 212, 657, 1006, 1014, and inserting “Federal Housing Finance Agency”.

(d) MAHRA ACT OF 1997.—Section 517(b)(4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

(e) TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

(f) ACCESS TO LOCAL TV ACT OF 2000.—Section 1004(d)(2)(D)(iii) of the Launching Our Communities’ Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)(iii)) is amended by striking “Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE FOR LONG-TERM CARE FACILITIES.

The Comptroller General shall conduct a study of the use of affordable housing programs of the Federal home loan banks under section 10(j) of the Federal Home Loan Bank Act to determine how and the extent to which such programs are used to assist long-term care facilities for low- and moderate-income individuals, and the effectiveness and adequacy of such assistance in meeting the needs of affected communities. The study shall examine the applicability of such use to the affordable housing programs required to be established by the enterprises pursuant to the amendment made by section 128 of this Act. The Comptroller General shall submit a report to the Director of the Federal Housing Finance Agency and the Congress regarding the results of the study not later than the expiration of the 1-year period beginning on the date of the enactment of this Act.

SEC. 211. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 1-year period beginning on the date of the enactment of this Act.

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

Subtitle A—Office of Federal Housing Enterprise Oversight

SEC. 301. ABOLISHMENT OF OFHEO.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of the enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of the enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight shall, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

(1) manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee pursuant to section 303; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as employees of an agency of the United States for purposes

of any other provision of law before the effective date of the transfer of any such employee pursuant to section 303.

(d) **USE OF PROPERTY AND SERVICES.—**

(1) **PROPERTY.—**The Director of the Federal Housing Finance Agency may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) **AGENCY SERVICES.—**Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) **SAVINGS PROVISIONS.—**

(1) **EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—**Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under or pursuant to the title XIII of the Housing and Community Development Act of 1992, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of law applicable with respect to such Office; and

(B) existed on the day before the abolishment under subsection (a) of this section.

(2) **CONTINUATION OF SUITS.—**No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

All regulations, orders, determinations, and resolutions that—

(1) were issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight; or

(B) a court of competent jurisdiction and that relate to functions transferred by this subtitle; and

(2) are in effect on the date of the abolishment under section 301(a) of this Act, shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, as the case may be, any court of competent jurisdiction, or operation of law.

SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

(a) **TRANSFER.—**Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Federal Housing Finance Agency for employment no later than the date of the abolishment under section 301(a) of this Act and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) **GUARANTEED POSITIONS.—**Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) **APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE EMPLOYEES.—**

(1) **IN GENERAL.—**In the case of employees occupying positions in the excepted service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) **DECLINE OF TRANSFER.**—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(d) **REORGANIZATION.**—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the date of the abolishment under section 201(a), that a reorganization of the combined work force is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) **EMPLOYEE BENEFIT PROGRAMS.**—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Director of the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Office of Federal Housing Enterprise Oversight, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 201(a) if—

(1) the employee does not elect to give up the benefit or membership in the program; and

(2) the benefit or program is continued by the Director of the Federal Housing Finance Agency;

The difference in the costs between the benefits which would have been provided by such agency and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.

Upon the abolishment under section 301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Federal Housing Finance Agency.

Subtitle B—Federal Housing Finance Board

SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.

(a) **IN GENERAL.**—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Federal Housing Finance Board (in this title referred to as the “Board”) is abolished.

(b) **DISPOSITION OF AFFAIRS.**—During the 1-year period beginning on the date of enactment of this Act, the Board, solely for the purpose of winding up the affairs of the Board—

(1) shall manage the employees of such Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 323; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

(c) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—The amendments made by titles I and II and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of such Board as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 323.

(d) **USE OF PROPERTY AND SERVICES.**—

(1) **PROPERTY.**—The Director of the Federal Housing Finance Agency may use the property of the Board to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) **AGENCY SERVICES.**—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the 1-year period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

(A) arises under the Federal Home Loan Bank Act or any other provision of law applicable with respect to such Board; and

(B) existed on the day before the effective date of the abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) IN GENERAL.—All regulations, orders, and determinations described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, or determination is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Board; or

(B) a court of competent jurisdiction and relates to functions transferred by this subtitle; and

(2) is in effect on the effective date of the abolishment under section 321(a).

SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

(a) TRANSFER.—Each employee of the Board shall be transferred to the Federal Housing Finance Agency for employment not later than the effective date of the abolishment under section 321(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 321(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Board accepting employment with the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency

or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 321(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) **COST DIFFERENTIAL.**—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.

Upon the effective date of the abolishment under section 321(a), all property of the Board shall transfer to the Director of the Federal Housing Finance Agency.

Subtitle C—Department of Housing and Urban Development

SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNCTIONS.

(a) **TERMINATION DATE.**—For purposes of this subtitle, the term “termination date” means the date that occurs one year after the date of the enactment of this Act.

(b) **DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.**—

(1) **IN GENERAL.**—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Director of the Office of Federal Housing Enterprise Oversight, shall determine—

(A) the functions, duties, and activities of the Secretary of Housing and Urban Development regarding oversight or regulation of the enterprises under or pursuant to the authorizing statutes, title XIII of the Housing and Community Development Act of 1992, and any other provisions of law, as in effect before the date of the enactment of this Act, but not including any such functions, duties, and activities of the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and such Office; and

(B) the employees of the Department of Housing and Urban Development necessary to perform such functions, duties, and activities.

(2) **ENTERPRISE-RELATED FUNCTIONS.**—For purposes of this subtitle, the term “enterprise-related functions of the Department” means the functions, duties, and activities of the Department of Housing and Urban Development determined under paragraph (1)(A).

(3) **ENTERPRISE-RELATED EMPLOYEES.**—For purposes of this subtitle, the term “enterprise-related employees of the Department” means the employees of the Department of Housing and Urban Development determined under paragraph (1)(B).

(c) **DISPOSITION OF AFFAIRS.**—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Housing and Urban Development (in this title referred to as the “Secretary”), solely for the purpose of winding up the affairs of the Secretary regarding the enterprise-related functions of the Department of Housing and Urban Development (in this title referred to as the “Department”) —

(1) shall manage the enterprise-related employees of the Department and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of any such employee under section 343; and

(2) may take any other action necessary for the purpose of winding up the enterprise-related functions of the Department.

(d) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—The amendments made by titles I and II and the termination of the enterprise-related functions of the Department under subsection (b) may not be construed to affect the status of any employee of the Department as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 343.

(e) **USE OF PROPERTY AND SERVICES.**—

(1) **PROPERTY.**—The Director of the Federal Housing Finance Agency may use the property of the Secretary to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) **AGENCY SERVICES.**—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Secretary regarding enterprise-related functions of the Department before the termination date under subsection (a) in connection with such functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(f) **SAVINGS PROVISIONS.**—

(1) **EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.**—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary, or any other person, which—

(A) arises under the authorizing statutes, title XIII of the Housing and Community Development Act of 1992, or any other provision of law applicable with respect to the Secretary, in connection with the enterprise-related functions of the Department; and

(B) existed on the day before the termination date under subsection (a).

(2) **CONTINUATION OF SUITS.**—No action or other proceeding commenced by or against the Secretary in connection with the enterprise-related functions of the Department shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Secretary or any member thereof as a party to any such action or proceeding.

SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) **IN GENERAL.**—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) **APPLICABILITY.**—A regulation, order, or determination is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Secretary; or

(B) a court of competent jurisdiction and that relate to the enterprise-related functions of the Department; and

(2) is in effect on the termination date under section 341(a).

SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES.

(a) **TRANSFER.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), each enterprise-related employee of the Department shall be transferred to the Federal Housing Finance Agency for employment not later than the termination date under section 341(a) and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(2) **AUTHORITY TO DECLINE.**—An enterprise-related employee of the Department may, in the discretion of the employee, decline transfer under paragraph (1) to a position in the Federal Housing Finance Agency and shall be guaranteed a position in the Department with the same status, tenure, grade, and pay as that held on the day immediately preceding the date that such declination was made. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date that the transfer would otherwise have occurred, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(b) **GUARANTEED POSITIONS.**—Each enterprise-related employee of the Department transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) **IN GENERAL.**—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) **DECLINE OF TRANSFER.**—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) **REORGANIZATION.**—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the termination date under section 341(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) **IN GENERAL.**—Any enterprise-related employee of the Department accepting employment with the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Department, as applicable, including insurance, to which such employee belongs on the termination date under section 341(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) **COST DIFFERENTIAL.**—The difference in the costs between the benefits which would have been provided by the Department and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

SEC. 344. TRANSFER OF APPROPRIATIONS, PROPERTY, AND FACILITIES.

Upon the termination date under section 341(a), all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department in connection with enterprise-related functions of the Department shall transfer to the Director of the Federal Housing Finance Agency. Unexpended funds transferred by this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

PURPOSE AND SUMMARY

H.R. 1461, the Federal Housing Finance Reform Act of 2005, establishes the Federal Housing Finance Agency, an independent agency to oversee the safe and sound operation as well as the mission functions of the government sponsored enterprises (GSEs)—Fannie Mae, Freddie Mac, and the 12 Federal Home Loan Banks. The Agency assumes the supervisory duties of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the Department of Housing and Urban Development (HUD).

H.R. 1461 was introduced on April 5, 2005, by Capital Markets, Insurance, and Government Sponsored Enterprises Subcommittee Chairman Richard Baker. The Agency created in this legislation is headed by a Director appointed by the President and confirmed by the Senate. There will be three deputy directors appointed by the Director. Additionally, an oversight board is created that will ad-

advise the Director on the supervision of the regulated entities. The oversight board will consist of the Director of the Agency, the Secretaries of Treasury and HUD, and 2 additional appointed directors.

The Director of the Agency has several important supervisory powers: (1) to adjust risk-based capital standards; (2) to adjust minimum capital levels on a permanent or temporary basis for the entities, as well as for specific programs of the enterprises; (3) to monitor and adjust the portfolio holdings of the enterprises in accordance with safety and soundness or mission related considerations; (4) to place a critically undercapitalized entity into receivership; (5) to set prudential management and operations standards; (6) to initiate prompt corrective actions for undercapitalized entities; (7) to take enforcement actions, such as cease-and-desist orders, civil money and criminal penalties; (8) to hire examiners and accountants; and (9) to prohibit or withhold executive compensation for wrongdoing. The regulated entities must also register at least one class of stock with the SEC under the Securities Exchange Act of 1934; the enterprises must make several corporate governance improvements and disclose charitable donations by an enterprise and enterprise insiders.

Under the legislation, the authority to review and approve new programs and activities is transferred from HUD to the Agency. New programs will be subject to a public notice and comment period prior to a determination by the Agency whether the program is permissible. The Agency must be notified of any new activities and an enterprise may not engage in a new activity until 30 days after notifying the Agency. The legislation permits the director to review existing activities to ensure that they are operating in a safe and sound manner and are in compliance with the mission of the enterprises.

The bill authorizes the Director to raise loan limits in areas that meet the definition of high-cost. A high-cost area would be one where the median home sales price exceeds the current national conforming loan limit. The high-cost area loan limit would be allowed to rise to the area's median home price but increases would be capped at 150 percent of the statutory loan limit—the same limit that now applies to Alaska, Hawaii, and the two island territories. For purposes of clarity and consistency, the Director should, to the maximum degree possible, utilize the same housing price methodology used to determine the national conforming loan limit in determining the high-cost area limit.

The affordable housing goals rewrite existing law to provide clarity and realign with the needs of low-income communities as well as financial institutions who are serving these low- and very-low income communities and families.

Under existing law, the enterprises were directed to meet three housing goals established by HUD. To meet these affordable housing goals, the enterprises were directed to purchase mortgages for households representing three income strata, commonly measured as area median income (AMI). These three income strata are: (1) moderate-income (100 percent AMI); (2) low-income (80 percent of AMI); and (3) very-low income (60 percent of AMI). In addition to these income based goals, the current law also directed the enterprises through goals to purchase mortgages in central cities, rural

areas and other underserved housing goals. These goals have been established by HUD as percentage-of-business requirements. In addition, HUD has established by regulation a multi-family subgoal, which was volume-based. The existing statute needed clarity to ensure that the enterprises, the public, as well as the regulator, could easily interpret and implement the intended affordable housing mission.

The bill generally realigns the affordable housing goals with the same regulatory requirements for Community Reinvestment Act-type loans; this approach should enable financial institutions to leverage more capital to meet the increasing needs in very-low income and low-income households and communities.

This legislation simplifies the affordable housing goals to require the enterprises to meet goals established by the Director for single and multifamily areas in low-income (80 percent of AMI) or very-low income (redefined as 50 percent of AMI), or in cases where low income housing tax credits properties are involved (60 percent of AMI). This simplification will place the enterprises on par with financial institutions, which also must meet affordable housing needs under CRA.

In establishing these goals, the legislation also recognizes that a verifiable measurement baseline is necessary to ensure consistency and accuracy over time. The Director must base the single-family goals on Home Mortgage Disclosure Act (HMDA) data by using 3-year averages to determine the market.

The Director may increase single-family goals above the averages established by the HMDA data to reflect expected changes in market performance based on various factors. This provision should provide the Director flexibility to continue the practice of considering the enterprises' penetration into the subprime and other markets.

While the legislation requires the Director to establish annual housing goals, the Director continues to have discretion to set goals for a multi-year period. Setting multi-year goals may be a more reasonable approach because it allows the enterprises time to plan and incorporate goal-qualifying activities into their longer-term business strategies.

The enterprises are required to serve underserved markets, such as manufactured housing, affordable housing preservation, and rural and other underserved markets. While the enterprises are required to develop loan products and flexible underwriting guidelines and to lead the industry, it is not intended that the Director would create percent-of-business or other numeric goals.

The Director may remove as well as add designated markets that reflect contemporary market needs, as identified by the Agency's data as well as information submitted by the public.

The legislation requires each enterprise to allocate 3.5 percent of its after-tax income during the first year after enactment, and 5 percent in subsequent years, to a new affordable housing fund, modeled after the Affordable Housing Program of the Federal Home Loan Banks. No allocation to this fund is required when an enterprise is less than adequately capitalized.

The enterprises' Affordable Housing Fund (AHF) will be targeted to those families that fall within extremely low- (30% of AMI) and very low-income (50% of AMI) levels. The very- and extremely-low

income families are traditionally the hardest groups to serve, and existing programs are often unable to provide the deep targeting necessary to address those incomes. With respect to rental housing projects, funding will be prioritized to the extent rents are affordable, especially for extremely low-income families.

The AHF provides resources to address the nation's most pressing housing problems. To promote new and innovative ways to address affordable housing needs, the bill is deliberately flexible. For example, the funds can be made available as grants, loans, or other forms of assistance for a specific project identified in a fund application. Amounts could also be used to fund loan loss reserves, revolving loans, and other forms of use which will leverage the funding of multiple projects under an investment plan identifying both the types of activities being undertaken and the expected time frame of such plan. No less than 10 percent of each enterprise's fund can be allocated for homeownership purposes such as down payment assistance, closing costs, and assistance for interest-rate buy-downs for very low and extremely low income households who are first-time homebuyers.

The Director shall establish criteria to ensure that AHF monies will be awarded through a competitive application process, similar to the FHLBs' AHP, taking into consideration prioritization of funding based on greatest impact, geographic diversity, the ability of an entity to obligate amounts and undertake activities in a timely manner, and, in the case of rental housing, the extent to which rents will remain affordable.

Like AHP, the enterprises will control distribution of their funds. However, the bill includes safeguards against possible abuses of the fund. First, the Director will appoint an affordable housing board, whose members will include the Secretaries of HUD and Agriculture, and two persons each from businesses and non-profits actively engaged in providing housing for very- or extremely-low income households. The board will be responsible for determining very- and extremely-low income housing needs and will advise the director on priorities for the use of funds. Second, the enterprises must submit quarterly public reports on how they are distributing the funds. Funds can only be used for production, preservation, and rehabilitation of affordable housing. Third, no amounts can be used for administrative costs or fees, or for activities outside the charters of the enterprises. If there is a finding that funds were improperly used, an enterprise must repay the funds to the AHF.

Requiring a percentage of funds to be directed for affordable housing will ensure that the enterprises' subsidies flow more effectively to homebuyers and renters. The restructured goals and the AHF will direct the enterprises to segments of the market that they have not previously reached.

A separate component of the AHF allows for use of a percentage of the funds for leveraged grants for affordable housing and community development purposes. No more than 12.5 percent of the AHF may be used for these activities.

Recipients of community development funds may include low-income housing funds, state or local housing finance agencies, affordable housing nonprofit organizations, community development financial institutions, national non-profit housing intermediaries, community development corporations, and community development

entities. Any funds awarded to a national non-profit housing intermediary may not be used to distribute sub-grants to other non-profit entities. Any returns from the community development grants accrue to the AHF.

H.R. 1461 permits the Director to establish capital classifications for the regulated entities similar to those which exist for financial institutions. If a regulated entity becomes undercapitalized or significantly undercapitalized, the Director may take actions to return the enterprise to financial health. If a regulated entity becomes critically undercapitalized, the Director may place the enterprise into conservatorship or receivership. The legislation specifically outlines how a receivership would function in such a situation. The receivership language was modeled after similar provisions in the Federal Deposit Insurance Act that apply to federally insured depositories.

The Agency is vested with cease-and-desist powers, if the Director has reasonable cause to believe that the regulated entity or an affiliated party is engaged in an unsafe or unsound practice or other violation of law. Additionally, violations of this Act may result in civil money and/or criminal penalties.

H.R. 1461 improves the operations of the Federal Home Loan Bank System by permitting the formation of joint offices by two or more Banks, requiring sharing of information among the Banks, and raising the eligibility cap for community financial institution members that use advances for additional lending activities. The legislation reforms the method by which each Bank elects its board of directors, requiring that one-third be independent directors with at least two being public interest directors.

The bill ensures that OFHEO, the FHFB, and the offices in HUD that oversee Fannie Mae and Freddie Mac will continue their supervisory roles during the one-year period between the enactment and effective dates. During this time, OFHEO, the FHFB, and HUD will have continued authority to issue regulations, ensure the safe and sound operation, and monitor the mission functions of the GSEs. On the effective date, all OFHEO, FHFB, and HUD employees involved in the oversight of the GSEs will be transferred to the new Agency. All of the existing regulations from the former regulatory agencies will remain in force under the new Agency.

BACKGROUND AND NEED FOR LEGISLATION

Fannie Mae and Freddie Mac were chartered by Congress in order to create a secondary market and increase liquidity in the home mortgage markets. Through their charters, the GSEs are granted special privileges not available to other private-sector firms. Both enterprises have a \$2.25 billion line-of-credit with the Treasury Department and they are exempt from state regulation, state income taxation, and SEC registration. The enterprises are able to borrow funds at a lower rate than other financial institutions primarily due to the perception that their debt is backed by the federal government. Additionally, these enterprises are exempt from the privacy protections provided to consumers through the Gramm-Leach-Bliley Act of 1999.

Fannie Mae and Freddie Mac are the dominant institutions in the secondary mortgage market. They buy residential mortgages from lenders and finance the purchases either by issuing debt secu-

rities or by packaging mortgages in the form of mortgage backed securities (MBS), on which they guarantee payment for a fee. Purchasers of the debt and MBS include mutual funds, major financial institutions, pension funds, insurance companies, individual investors, central banks, and other institutions in foreign countries. The safety and soundness of the enterprises is regulated by the Office of Federal Housing Enterprise Oversight (OFHEO). HUD is responsible for mission regulation of the enterprises.

In 2003, the Congressional Budget Office estimated that GSE status provided Fannie Mae and Freddie Mac a \$23 billion federal subsidy, of which \$13.6 billion was passed through to borrowers as lower mortgage rates; the remainder of the subsidy was retained for management compensation and shareholder returns (\$9.4 billion). Federal Reserve Board studies estimate that less than half of this subsidy actually passes through to borrowers.

The Federal Home Loan Bank System was established by Congress in 1932 to provide liquidity to home mortgage lenders. The Banks issue debt for which they are jointly and severally liable, and use the proceeds principally to make advances to their members. Member institutions primarily secure advances with residential mortgages and other housing-related assets. The Federal Home Loan Banks are supervised by the Federal Housing Finance Board, an independent agency of the executive branch consisting of 5 appointed members. The System fulfills its mission by providing members with access to funding, technical assistance, and special affordable housing and community development programs. The System encompasses twelve separate, regional Federal Home Loan Banks (FHLBs, or Banks), each of which is a member-owned cooperative. There are over 8,000 members in the System comprised of commercial banks, savings institutions, credit unions, and insurance companies.

The Affordable Housing Program (AHP) of the twelve FHLBanks is the largest private sector grant program for housing in the nation. The AHP is funded with 10 percent each of the FHLBanks' annual earnings and has been a significant source of funds for financing the production and revitalization of affordable housing for people with low- and moderate-incomes. The AHP is a competitive program that provides grants to finance the purchase, construction, or rehabilitation of owner-occupied or rental housing. Grants can also be used to lower the interest rate on loans or cover down payment and closing costs. AHP grants are flexible and often serve as a "bridge" for housing projects, providing "gap" financing to make thousands of housing projects and home purchases. In 2005, approximately \$230 million was made available for regional housing projects, creating almost 40,000 affordable housing units. Since the program's inception in 1991, over \$2.1 billion dollars in AHP funds have been awarded, creating almost 430,000 affordable housing units. H.R. 1461 creates a similar program for Fannie Mae and Freddie Mac to provide affordable housing investments.

As of June 30, 2004, Fannie Mae had total assets of \$940 billion, Freddie Mac \$805 billion, and the twelve FHLBs \$896 billion. As of the same date, Fannie Mae held \$940 billion in outstanding debt, Freddie Mac \$744 billion, and the FHLBs \$816 billion in debt.

Federal law explicitly exempts Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from the 10% of assets statutory limitation on commercial banks' holdings of the "investment securities" of individual firms. That exemption and the perception of a federal guarantee of the enterprises' obligations result in investors not limiting their holdings of those securities in the same way they limit their investments in debt issued by non-GSEs. In March 2000, the Undersecretary of the Treasury for Domestic Finance reported that at mid-year 1999 commercial banks held over \$210 billion in GSE debt, representing almost 4% of total bank assets and over one-third of total bank capital. In 2003, OFHEO determined that over 1,600 commercial banks held at least 51% of their capital in the form of debt issued by Fannie Mae and almost 1,000 commercial banks held at least 51% of their capital in the form of debt issued by Freddie Mac.

The GSEs hold mortgages and MBS in their retained, investment portfolios. By exploiting their borrowing advantage in the marketplace, the GSEs are able to purchase mortgages more profitably than others in the market. The GSEs then earn profits on the regular payments made on the mortgages. The combined portfolios of Fannie Mae and Freddie Mac have grown from \$138 billion in 1990 to \$1.6 trillion at yearend 2004. The Federal Home Loan Banks held \$115 billion at yearend 2004.

The result of these massive debt obligations and mortgage holdings is a large amount of risk being concentrated in very few institutions. An adverse market action or ill-advised investment could result in widespread losses to holders of this debt. Additionally, spikes or dips in interest rates could result in a very negative impact on the value of the retained portfolio. It is this overconcentration that has raised systemic risk concerns for Federal Reserve Board Chairman Greenspan and Treasury Secretary Snow.

In 1992, Congress established affordable housing goals for the enterprises to ensure a more targeted transfer of GSE benefits to the housing market. Even though the enterprises are required by charter to help facilitate affordable housing, HUD has found that the enterprises lag behind the private sector in their affordable housing performance. Each enterprise must create an affordable housing fund in order for more of the subsidy to pass through to consumers.

A report by the majority staff of the Committee found that the enterprises boosted their affordable housing performance by double counting loans, purchasing pools that were revocable, and acquiring decades-old mortgages.

In January 2003, Freddie Mac began a restatement of earnings following a refusal by its outside auditor to sign off on its financial statement. On June 9, 2003, the company announced that it would undertake a management reorganization because of accounting irregularities discovered during the company's restatement process. OFHEO initiated a special review of Freddie Mac to determine the extent of the wrongdoing. OFHEO also demanded the removal of additional members of the management team, who were involved in improper accounting practices.

In November 2003, Freddie Mac announced that they had overstated earnings by \$1 billion in 2001. The company said the error

in its 2001 earnings—restated to \$3.16 billion from \$4.15 billion—stemmed from failure to properly account for derivatives activity.

In December 2003, OFHEO released a report on the special examination of Freddie Mac finding that the enterprise disregarded accounting rules, internal controls, disclosure standards, and ultimately, the public trust in the pursuit of steady earnings growth. Furthermore, the report found that the Board of Directors was complacent and failed to exercise adequate oversight. It was determined that Freddie Mac had misstated its earnings by \$5 billion between 2001–2003.

OFHEO initiated a special examination of Fannie Mae shortly after completing its exam of Freddie Mac. A report of initial findings on Fannie Mae in September 2004 cited internal control deficiencies, violations of GAAP accounting standards, earnings manipulations to meet compensation targets, and questionable management oversight. Fannie Mae disputed these findings and sought a review of OFHEO's findings by the SEC.

The SEC concurred with OFHEO's findings of GAAP violations and directed Fannie Mae to restate its earnings for 2001–2003. As a result, Fannie Mae has been forced to recognize nearly \$12 billion in losses and has reorganized its senior management.

OFHEO concluded in December 2004 that Fannie Mae was “significantly undercapitalized” in the third quarter of 2004, and required that the enterprise's minimum capital requirement be increased by 30% to strengthen its financial position.

Since 2002 the Federal Home Loan Bank System has experienced several restatements and significant losses at some Banks. In 2004, the FHLBanks of Chicago and Seattle entered into written supervisory agreements with the FHFBS to implement changes to improve their risk management, capital structure, governance, and other practices and procedures.

HEARINGS

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on February 9, 2005, titled, “Accounting Irregularities at Fannie Mae and the Impact on Investors”. The following witness testified: Donald T. Nicolaisen, Chief Accountant, U.S. Securities and Exchange Commission.

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on March 9, 2005, titled “GSE Reform and the Federal Home Loan Bank System.” The following witnesses testified: The Honorable Ronald A. Rosenfeld, Chairman, Federal Housing Finance Board; Mr. David H. Hehman, President and Chief Executive Officer, Federal Home Loan Bank of Cincinnati; Mr. F. Weller Meyer, President and Chief Executive Officer, Acacia Federal Savings Bank; Mr. Jan Miller, President and Chief Executive Officer, Wainwright Bank; and Mr. Joseph F. Connors, Executive Vice President and Chief Financial Officer, Beneficial Savings Bank.

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing on April 6, 2005, titled, “Additional Accounting and Management Failures at Fannie Mae—OFHEO's Efforts to Ensure Safe and Sound Operations.” The following witness testified: the Honorable Armando Falcon, Director, Office of Federal Housing Enterprise Oversight.

The Financial Services Committee held a hearing on April 13, 2005, titled “The Administration’s Perspective on GSE Regulatory Reform.” The following witnesses testified: The Honorable John Snow, Secretary of the Treasury, and the Honorable Alfonso Jackson, Secretary of the Department of Housing and Urban Development.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 25, 2005, and ordered HR 1461, the Federal Housing Finance Reform Act of 2005, favorably reported to the House with an amendment by a record vote of 65 yeas and 5 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill, with an amendment, to the House with a favorable recommendation was agreed to by a record vote of 65 yeas and 5 nays (Record vote no. FC-5). The names of Members voting for and against follow:

RECORD VOTE NO. FC-5

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Oxley	X	.....	Mr. Frank (MA)	X	.....
Mr. Leach	X	.....	Mr. Kanjorski	X	.....
Mr. Baker	X	.....	Ms. Waters	X	.....
Ms. Pryce (OH)	X	.....	Mr. Sanders	X	.....
Mr. Bachus	X	.....	Mrs. Maloney	X	.....
Mr. Castle	X	.....	Mr. Gutierrez	X	.....
Mr. King (NY)	X	.....	Ms. Velázquez	X	.....
Mr. Royce .....	.....	X	Mr. Watt	X	.....
Mr. Lucas	X	.....	Mr. Ackerman	X	.....
Mr. Ney	X	.....	Ms. Hooley	X	.....
Mrs. Kelly	X	.....	Ms. Carson	X	.....
Mr. Paul .....	.....	X	Mr. Sherman	X	.....
Mr. Gillmor	X	.....	Mr. Meeks (NY)	X	.....
Mr. Ryan (KS)	X	.....	Ms. Lee	X	.....
Mr. LaTourette	X	.....	Mr. Moore (KS)	X	.....
Mr. Manzullo	X	.....	Mr. Capuano	X	.....
Mr. Jones (NC)	X	.....	Mr. Ford	X	.....
Mrs. Biggert	X	.....	Mr. Hinojosa	X	.....
Mr. Shays	X	.....	Mr. Crowley	X	.....
Mr. Fossella	X	.....	Mr. Clay	X	.....
Mr. Gary G. Miller (CA)	X	.....	Mr. Israel	X	.....
Mr. Tiberi	X	.....	Mrs. McCarthy	X	.....
Mr. Kennedy (MN)	X	.....	Mr. Baca	X	.....
Mr. Feeney .....	.....	X	Mr. Matheson	X	.....
Mr. Hensarling .....	.....	X	Mr. Lynch	X	.....
Mr. Garrett (NJ) .....	.....	X	Mr. Miller (NC)	X	.....
Ms. Brown-Waite (FL)	X	.....	Mr. Scott (GA)	X	.....
Mr. Barrett (SC)	X	.....	Mr. Davis (AL)	X	.....
Ms. Harris	X	.....	Mr. Al Green (TX)	X	.....
Mr. Renzi	X	.....	Mr. Cleaver	X	.....
Mr. Gerlach	X	.....	Ms. Bean	X	.....
Mr. Pearce	X	.....	Ms. Wasserman Schultz	X	.....
Mr. Neugebauer	X	.....	Ms. Moore (WI)	X	.....
Mr. Price (GA)	X	.....		
Mr. Fitzpatrick (PA)	X	.....		
Mr. Davis (KY)	X	.....		

RECORD VOTE NO. FC-5—Continued

Representative	Aye	Nay	Representative	Aye	Nay
Mr. McHenry	X				

Note: Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The following amendments were considered by record votes. The names of Members voting for and against follow:

An amendment to the amendment in the nature of a substitute by Mr. Kanjorski, No. 1e, establishing boards of enterprises, was NOT AGREED TO by a record vote of 35 yeas and 35 nays (Record vote no. FC-1).

RECORD VOTE NO. FC-1

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Oxley		X	Mr. Frank (MA)	X	
Mr. Leach		X	Mr. Kanjorski	X	
Mr. Baker		X	Ms. Waters	X	
Ms. Pryce (OH)		X	Mr. Sanders	X	
Mr. Bachus		X	Mrs. Maloney	X	
Mr. Castle		X	Mr. Gutierrez	X	
Mr. King (NY)		X	Ms. Velázquez	X	
Mr. Royce		X	Mr. Watt	X	
Mr. Lucas		X	Mr. Ackerman	X	
Mr. Ney		X	Ms. Hooley	X	
Mrs. Kelly		X	Ms. Carson	X	
Mr. Paul		X	Mr. Sherman	X	
Mr. Gillmor		X	Mr. Meeks (NY)	X	
Mr. Ryun (KS)		X	Ms. Lee	X	
Mr. LaTourette	X		Mr. Moore (KS)	X	
Mr. Manzullo		X	Mr. Capuano	X	
Mr. Jones (NC)		X	Mr. Ford	X	
Mrs. Biggert		X	Mr. Hinojosa	X	
Mr. Shays		X	Mr. Crowley	X	
Mr. Fossella		X	Mr. Clay	X	
Mr. Gary G. Miller (CA)		X	Mr. Israel	X	
Mr. Tiberi	X		Mrs. McCarthy	X	
Mr. Kennedy (MN)		X	Mr. Baca	X	
Mr. Feeney		X	Mr. Matheson	X	
Mr. Hensarling		X	Mr. Lynch	X	
Mr. Garrett (NJ)		X	Mr. Miller (NC)	X	
Ms. Brown-Waite (FL)		X	Mr. Scott (GA)	X	
Mr. Barrett (SC)		X	Mr. Davis (AL)	X	
Ms. Harris		X	Mr. Al Green (TX)	X	
Mr. Renzi		X	Mr. Cleaver	X	
Mr. Gerlach		X	Ms. Bean	X	
Mr. Pearce		X	Ms. Wasserman Schultz	X	
Mr. Neugebauer		X	Ms. Moore (WI)	X	
Mr. Price (GA)		X			
Mr. Fitzpatrick (PA)		X			
Mr. Davis (KY)		X			
Mr. McHenry		X			

Note: Mr. Sanders is an independent, but caucuses with the Democratic Caucus

An amendment to the amendment in the nature of a substitute by Mr. Paul, No. 1h, eliminating authority to borrow from the Treasury of the United States was NOT AGREED TO by a record vote of 14 yeas and 56 nays (FC-2).

RECORD VOTE NO. FC-2

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Oxley		X	Mr. Frank (MA)		X
Mr. Leach	X		Mr. Kanjorski		X
Mr. Baker	X		Ms. Waters		X
Ms. Pryce (OH)		X	Mr. Sanders		X
Mr. Bachus		X	Mrs. Maloney		X
Mr. Castle		X	Mr. Gutierrez		X
Mr. King (NY)		X	Ms. Velázquez		X
Mr. Royce	X		Mr. Watt		X
Mr. Lucas	X		Mr. Ackerman		X
Mr. Ney		X	Ms. Hooley		X
Mrs. Kelly		X	Ms. Carson		X
Mr. Paul	X		Mr. Sherman		X
Mr. Gillmor	X		Mr. Meeks (NY)		X
Mr. Ryun (KS)		X	Ms. Lee		X
Mr. LaTourette		X	Mr. Moore (KS)		X
Mr. Manzullo		X	Mr. Capuano		X
Mr. Jones (NC)	X		Mr. Ford		X
Mrs. Biggert		X	Mr. Hinojosa		X
Mr. Shays	X		Mr. Crowley		X
Mr. Fossella		X	Mr. Clay		X
Mr. Gary G. Miller (CA)		X	Mr. Israel		X
Mr. Tiberi		X	Mrs. McCarthy		X
Mr. Kennedy (MN)		X	Mr. Baca		X
Mr. Feeney	X		Mr. Matheson		X
Mr. Hensarling	X		Mr. Lynch		X
Mr. Garrett (NJ)	X		Mr. Miller (NC)		X
Ms. Brown-Waite (FL)		X	Mr. Scott (GA)		X
Mr. Barrett (SC)		X	Mr. Davis (AL)		X
Ms. Harris		X	Mr. Al Green (TX)		X
Mr. Renzi		X	Mr. Cleaver		X
Mr. Gerlach		X	Ms. Bean		X
Mr. Pearce	X		Ms. Wasserman Schultz		X
Mr. Neugebauer		X	Ms. Moore (WI)		X
Mr. Price (GA)	X				
Mr. Fitzpatrick (PA)		X			
Mr. Davis (KY)		X			
Mr. McHenry	X				

Note: Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

An amendment to the amendment in the nature of a substitute by Mr. Royce, No. 11, striking the Affordable Housing Fund was NOT AGREED TO by a record vote of 17 yeas and 53 nays (FC-3).

RECORD VOTE NO. FC-3

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Oxley		X	Mr. Frank (MA)		X
Mr. Leach		X	Mr. Kanjorski		X
Mr. Baker	X		Ms. Waters		X
Ms. Pryce (OH)	X		Mr. Sanders		X
Mr. Bachus	X		Mrs. Maloney		X
Mr. Castle		X	Mr. Gutierrez		X
Mr. King (NY)		X	Ms. Velázquez		X
Mr. Royce	X		Mr. Watt		X
Mr. Lucas	X		Mr. Ackerman		X
Mr. Ney		X	Ms. Hooley		X
Mrs. Kelly		X	Ms. Carson		X
Mr. Paul	X		Mr. Sherman		X
Mr. Gillmor		X	Mr. Meeks (NY)		X
Mr. Ryun (KS)	X		Ms. Lee		X
Mr. LaTourette		X	Mr. Moore (KS)		X
Mr. Manzullo	X		Mr. Capuano		X

RECORD VOTE NO. FC-3—Continued

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Jones (NC)	X		Mr. Ford		X
Mrs. Biggert		X	Mr. Hinojosa		X
Mr. Shays	X		Mr. Crowley		X
Mr. Fossella		X	Mr. Clay		X
Mr. Gary G. Miller (CA)		X	Mr. Israel		X
Mr. Tiberi		X	Mrs. McCarthy		X
Mr. Kennedy (MN)		X	Mr. Baca		X
Mr. Feeney	X		Mr. Matheson		X
Mr. Hensarling	X		Mr. Lynch		X
Mr. Garrett (NJ)	X		Mr. Miller (NC)		X
Ms. Brown-Waite (FL)	X		Mr. Scott (GA)		X
Mr. Barrett (SC)	X		Mr. Davis (AL)		X
Ms. Harris		X	Mr. Al Green (TX)		X
Mr. Renzi		X	Mr. Cleaver		X
Mr. Gerlach		X	Ms. Bean		X
Mr. Pearce	X		Ms. Wasserman Schultz		X
Mr. Neugebauer		X	Ms. Moore (WI)		X
Mr. Price (GA)	X				
Mr. Fitzpatrick (PA)		X			
Mr. Davis (KY)		X			
Mr. McHenry	X				

Note: Mr. Sanders is an independent, but caucuses with the Democratic Caucus

An amendment to the amendment in the nature of a substitute by Mr. Frank, No. 10, establishing a Federal Housing Finance Oversight Board as the regulator was **NOT AGREED TO** by a record vote of 33 yeas and 37 nays (FC-4).

RECORD VOTE NO. FC-4

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Oxley		X	Mr. Frank (MA)	X	
Mr. Leach		X	Mr. Kanjorski	X	
Mr. Baker		X	Ms. Waters	X	
Ms. Pryce (OH)		X	Mr. Sanders	X	
Mr. Bachus		X	Mrs. Maloney	X	
Mr. Castle		X	Mr. Gutierrez	X	
Mr. King (NY)		X	Ms. Velázquez	X	
Mr. Royce		X	Mr. Watt	X	
Mr. Lucas		X	Mr. Ackerman	X	
Mr. Ney		X	Ms. Hooey	X	
Mrs. Kelly		X	Ms. Carson	X	
Mr. Paul		X	Mr. Sherman	X	
Mr. Gillmor		X	Mr. Meeks (NY)	X	
Mr. Ryan (KS)		X	Ms. Lee	X	
Mr. LaTourette		X	Mr. Moore (KS)	X	
Mr. Manullo		X	Mr. Capuano	X	
Mr. Jones (NC)		X	Mr. Ford	X	
Mrs. Biggert		X	Mr. Hinojosa	X	
Mr. Shays		X	Mr. Crowley	X	
Mr. Fossella		X	Mr. Clay	X	
Mr. Gary G. Miller (CA)		X	Mr. Israel	X	
Mr. Tiberi		X	Mrs. McCarthy	X	
Mr. Kennedy (MN)		X	Mr. Baca	X	
Mr. Feeney		X	Mr. Matheson	X	
Mr. Hensarling		X	Mr. Lynch	X	
Mr. Garrett (NJ)		X	Mr. Miller (NC)	X	
Ms. Brown-Waite (FL)		X	Mr. Scott (GA)	X	
Mr. Barrett (SC)		X	Mr. Davis (AL)	X	
Ms. Harris		X	Mr. Al Green (TX)	X	
Mr. Renzi		X	Mr. Cleaver	X	
Mr. Gerlach		X	Ms. Bean	X	

RECORD VOTE NO. FC-4—Continued

Representative	Aye	Nay	Representative	Aye	Nay
Mr. Pearce		X	Ms. Wasserman Schultz	X	.....
Mr. Neugebauer		X	Ms. Moore (WI)	X	.....
Mr. Price (GA)		X			
Mr. Fitzpatrick (PA)		X			
Mr. Davis (KY)		X			
Mr. McHenry		X			

Note: Mr. Sanders is an independent, but caucuses with the Democratic Caucus

The following other amendments were also considered by the Committee:

An amendment in the nature of a substitute by Mr. Oxley, No. 1, making various substantive and technical changes to the bill, was AGREED TO, as amended, by a voice vote.

An en bloc amendment to the amendment in the nature of a substitute by Mr. Oxley, No. 1a, was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Gillmor, No. 1b, regarding disclosure of charitable contributions was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Gutierrez, No. 1c, regarding single family housing subgoals was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Bachus, No. 1d, requiring a guarantee fee study was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Royce, No. 1f, establishing a FHFA ombudsman was WITHDRAWN.

An amendment to the amendment in the nature of a substitute by Mr. Davis of Alabama, No. 1g, requiring an annual housing report was AGREED TO, as modified, by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Leach, No. 1i, regarding GSE mission oversight had a point of order sustained against its consideration.

An amendment to the amendment in the nature of a substitute by Mr. Royce, No. 1j, regarding Federal Financial Institutions Examination Council membership was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Meeks, No. 1k, eliminating interest rate disparities was AGREED TO, as modified, by a voice vote.

An amendment to the amendment in the nature of a substitute by Ms. Waters, No. 1m, placing a limitation on subgrants was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Renzi, No. 1n, modifying the definition of rural was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. McHenry, No. 1p, requiring a GSE study was WITHDRAWN.

An amendment to the amendment in the nature of a substitute by Mr. Gutierrez, No. 1q, regarding liability for certain reports of fraudulent financial transactions was AGREED TO, as modified, by voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Garrett, No. 1r, establishing portfolio limitations was WITHDRAWN.

An amendment to the amendment in the nature of a substitute by Mr. Gerlach, No. 1s, requiring a study of affordable housing program use for long-term care facilities was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Royce, No. 1t, striking age limitations on enterprise boards of directors was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Hensarling, No. 1u, requiring a study of alternative secondary market systems was AGREED TO by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Pearce, No. 1v, requiring recipient reports, was WITHDRAWN.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Federal Housing Finance Agency will oversee the safe and sound operation as well as the mission functions of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System. The Agency will be equipped with the tools and powers possessed by a world class financial regulator. The Agency will ensure that the GSEs do not pose a significant risk to the domestic or international financial system.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 30, 2005.

Hon. MICHAEL G. OXLEY,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1461, the Federal Housing Finance Reform Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), Mark Booth (for revenues), Sarah Puro (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

H.R. 1461—Federal Housing Finance Reform Act of 2004

Summary: Enacting H.R. 1461 would establish a single regulator—the Federal Housing Finance Agency (FHFA)—for government-sponsored enterprises (GSEs) involved in the home mortgage market. GSEs are privately owned, Congressionally chartered financial institutions created to enhance the availability of credit in the economy. The GSEs that would be regulated by FHFA under the bill include the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (FHLBs). These GSEs were created to increase the availability of credit for home mortgages.

FHFA would be an independent agency within the federal government with the authority to oversee the safety, soundness, and housing mission of these GSEs. Under H.R. 1461, FHFA would be authorized to collect fees from the GSEs and to spend such fees to pay for its operating costs. Because the GSEs would be compelled by the government to pay those fees, the amounts collected and spent should be recorded on the federal budget as governmental revenues and outlays, respectively. CBO estimates that the operations of FHFA would cost about \$100 million a year starting in 2007 and that fees collected by the agency would cover that spending.

The legislation also would require Fannie Mae and Freddie Mac to contribute 5 percent (3.5 percent in 2006) of their after-tax income, generally as reported to the Securities and Exchange Commission (SEC), to new affordable housing funds created by the bill. These funds would be used to provide grants and other types of financial assistance to increase home ownership among low-income households. Because these entities would be compelled to spend specified amounts of funds to meet a specific governmental pur-

pose, the collections and spending of the affordable housing funds should also be recorded on the federal budget. Spending from the funds should be recorded as federal outlays, and deposits to the funds should be shown as governmental revenues. As a result of the fees that would be collected and spent by FHFA and the transactions of the affordable housing funds, CBO estimates that enacting this legislation would increase direct spending by \$2.3 billion over the 2006–2010 period and by \$6.3 billion over the 2006–2015 period. We further estimate that the collection of the fees by FHFA and the creation of the affordable housing funds would increase federal revenues by \$2.7 billion over the 2006–2010 period and by \$6.0 billion over the 2006–2015 period.

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting H.R. 1461 would cause an increase in direct spending greater than \$5 billion in at least one of the 10-year periods between 2016 and 2056.

Finally, CBO estimates that implementing H.R. 1461 would result in net savings of about \$22 million in discretionary spending over the next five years, assuming that appropriations are reduced to reflect the changes in regulatory structure that would be established in the legislation. Those savings would result from a reduction in the regulatory responsibilities of the Department of Housing and Urban Development (HUD).

H.R. 1461 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the aggregate costs to state, local, and tribal governments would be minimal and would not exceed the threshold established in that act (\$62 million in 2005, adjusted annually for inflation).

The bill also would impose several private-sector mandates as defined in UMRA on Fannie Mae, Freddie Mac, and the FHLBs. CBO estimates that the aggregate direct cost of those mandates would exceed the annual threshold established by UMRA (\$123 million in 2005, adjusted annually for inflation) in each of the first five years the mandates are in effect.

Estimated cost to the Federal Government: For this estimate, CBO assumes that H.R. 1461 will be enacted by the end of fiscal year 2005, that FHFA would become operational beginning in fiscal year 2007, and that appropriation actions consistent with this bill will occur. The bill's estimated budgetary impact is shown in Table 1. The costs of this legislation fall within budget function 370 (commerce and housing credit).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF H.R. 1461

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	360	650	680	710	750
Estimated Outlays	0	340	590	670	710
CHANGES IN REVENUES					
Estimated Revenues	360	590	560	570	600
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	–4	–3	–5	–5	–5

TABLE 1. ESTIMATED BUDGETARY IMPACT OF H.R. 1461—Continued

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
Estimated Outlays	-4	-3	-5	-5	-5

Basis of estimate: The budgetary impact of the bill would stem mostly from the establishment of a new regulator for the GSEs and from the creation of the affordable housing funds of Fannie Mae and Freddie Mac.

Background on GSE regulation

Currently, HUD is responsible for setting affordable housing goals for Fannie Mae and Freddie Mac and ensuring that these two GSEs meet such goals. HUD's oversight activities are funded from the agency's annual appropriation. (In 2004, HUD spent about \$4 million to perform those oversight responsibilities.) In addition, the Office of Federal Housing Enterprise Oversight (OFHEO), an independent agency within HUD, currently oversees the financial safety and soundness of these two GSEs. OFHEO is funded through annual assessments collected from Fannie Mae and Freddie Mac; the collection and spending of those assessments are subject to appropriation actions. In 2005, OFHEO was authorized to collect and spend about \$60 million to perform its duties.

The FHLB system, which consists of 12 regionally based banks, is currently regulated by the Federal Housing Finance Board (FHFB). FHFB is an independent agency that oversees the financial safety and soundness of the FHLBs as well as their mission compliance; it is funded through annual assessments collected from the earnings of the FHLBs. The collection and spending of these annual assessment are not subject to appropriation action. In 2005, FHFB anticipates that assessments and spending will total about \$36 million.

Under H.R. 1461, beginning in 2007, FHFA would assume all of the responsibilities associated with oversight of the GSEs' housing mission, which are currently under HUD's jurisdiction. Additionally, enacting H.R. 1461 would abolish OFHEO and FHFB one year following its enactment, and their functions and current staff would be transferred to FHFA. The legislation also would establish an Inspector General within FHFA.

Direct spending and revenues

CBO estimates that the collection and spending of fees by FHFA would increase direct spending and revenues by about \$980 million over the next 10 years.

We also estimate that enacting the affordable housing fund provisions of H.R. 1461 would increase direct spending by about \$5.4 billion over the next 10 years and increase federal revenues by \$5.1 billion over the same period. CBO assumes that Fannie Mae and Freddie Mac would begin making deposits to their affordable housing funds in 2006, and that spending from the funds would begin in 2007 after FHFA becomes operational and issues regulations governing the administration of the affordable housing funds. The estimated impact of the bill on direct spending and revenues over the 2006–2015 period is shown in Table 2.

FHFA Fees and Spending. While many of the activities currently performed by HUD, OFHEO, and FHFB would continue under H.R. 1461, enacting this legislation also would establish some new authorities, such as the authority to liquidate a troubled or insolvent GSE and the authority to limit the portfolio holdings of the GSEs (that is, the amount of mortgages that are held instead of re-packaged and then sold as mortgage-backed securities) to ensure financial soundness. In addition, the GSEs would not be able to undertake any new program or business activity without prior approval from the Director of FHFA. Also, section 106 of this legislation would authorize the Director of FHFA to assess fees on the housing-related GSEs each year to obtain funding for reasonable costs and expenses associated with FHFA's responsibilities. Those fees paid by the GSEs should be classified as governmental revenues because they would be imposed through the exercise of the government's sovereign power. The expenditure of the fees collected by FHFA would be government spending.

TABLE 2. ESTIMATED IMPACT OF H.R. 1461 ON DIRECT SPENDING AND REVENUES

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
FHFA fees:										
Estimated Budget Authority	0	100	100	100	110	110	110	110	120	120
Estimated Outlays	0	100	100	100	110	110	110	110	120	120
Estimated Revenues	0	100	100	100	110	110	110	110	120	120
Affordable housing funds:										
Estimated Budget Authority	360	550	580	610	640	670	700	730	760	800
Estimated Outlays	0	240	490	570	600	630	660	690	720	750
Estimated Revenues	360	490	460	470	490	510	540	560	580	610
Total:										
Estimated Budget Authority	360	650	680	710	750	780	810	840	880	920
Estimated Outlays	0	340	590	670	710	740	770	800	840	870
Estimated Revenues	360	590	560	570	600	620	650	670	700	730

Revenue Effects of the Fees Assessed by FHFA. CBO estimates that FHFA would require annual funding in the neighborhood of \$100 million, approximately the amount that will be spent under current law to oversee the GSEs in 2005. Under the bill, the first assessment by FHFA would occur in 2007, and CBO estimates that resulting collections would total \$980 million over the 2007–2015 period. We expect that the fees assessed by FHFA would be roughly the same amount currently paid to OFHEO and FHFB. CBO estimates that any increase in costs stemming from the new responsibilities of FHFA would be offset by savings from merging the technical and administrative functions of OFHEO and FHFB.

The new collections under the bill should be treated as governmental revenues in the budget. Because the new fees paid by the GSEs to FHFA would be approximately equal to the amounts they would pay to OFHEO and FHFB under current law, taxable incomes of Fannie Mae and Freddie Mac or of other entities in the economy would not change significantly.

Spending Effects of the Fees Assessed by FHFA. CBO expects that such spending would begin in 2007 after FHFA is established. We estimate that, in most years, FHFA would spend the total amount of fees it collects from the GSEs. Thus, enacting this provision would increase federal outlays by about \$410 million over the

2007–2010 period and by about \$980 million over the 2007–2015 period.

Affordable Housing Funds. Section 128 of this legislation would establish affordable housing funds at both Fannie Mae and Freddie Mac. To support such funds, each of these GSEs would be required to contribute 5 percent (3.5 percent in 2006) of their after-tax income for the preceding year, provided that the GSE is adequately capitalized and has generated after-tax income for the year. The funds could be used to provide grants and subsidies to state and local agencies, nonprofit groups that are dedicated to increasing home ownership for extremely low- and very low-income families, and community development financial institutions that support investment in regions with a significant population of households below the poverty level. Such grants could be used, for example, to contribute to loan loss reserves, provide down-payment assistance, and subsidize the cost of certain home loans.

The funds' resources could not be used to purchase mortgages or pay other corporate expenses other than maintaining the fund. Because the affordable housing goals that would be established by section 125 of this legislation could only be met by Fannie Mae and Freddie Mac through the purchase of certain types of mortgages, the new affordable housing funds would not directly contribute to meeting those goals. (However, any mortgages that are made possible by the funds and are subsequently purchased by the GSEs could be used to meet the new affordable housing goals.)

The Director of FHFA would promulgate the regulations governing how the GSEs administer the affordable housing funds. The Director also would appoint a board consisting of 7, 9, or 11 persons, including the Director and the Secretaries of HUD and Agriculture, that would advise the Director on criteria for appropriate uses of the funds and review reports submitted by Fannie Mae and Freddie Mac to determine compliance with the regulations governing the funds.

The allocations to the affordable housing funds should be considered governmental revenues because the bill mandates their expenditure for a governmental purpose. Although the funds would remain in the possession of the GSEs, they are removed from private control and converted to government use through an exercise of sovereign power. The deposit of specific amounts into the new funds would be compulsory, not voluntary. Likewise, expenditures from the funds would be a form of federal spending because the affordable housing funds may be obligated only for purposes specified in the bill. FHFA would enforce the requirement for deposits into the affordable housing funds and would oversee spending of those funds to ensure compliance with federal purposes.

Revenue Effects of the Affordable Housing Funds. The estimated revenue effect of establishing the funds consists of two broad components. First, the levy of 5 percent of after-tax net income (3.5 percent in 2006) would be accounted for as a revenue when credited to the affordable housing funds. The total combined after-tax income for these GSEs has averaged \$10 billion over the past five years. Assuming that future income would continue around this average and increase by CBO's forecast of the growth in gross domestic product (GDP), CBO estimates that in 2005 the GSEs would have available about \$10 billion in after-tax income. The first as-

assessment for the affordable housing funds would be mandated to occur in 2006 and would total an estimated \$360 million. Over the 2006–2015 period, assessments would total an estimated \$6.4 billion.

Second, the spending of amounts from the affordable housing funds would generate deductions against taxable corporate profits for the two GSEs. If the GSEs' taxable profits were reduced as a result of the affordable housing program, they would pay lower corporate income taxes. If the GSEs passed through some of the assessments to customers in the form of higher fees, other taxable incomes in the economy would presumably be lower. Therefore, CBO estimates that the payments from the affordable housing funds would reduce total taxable incomes in the economy and thus diminish federal tax receipts by 25 percent of the amount of those payments. In 2007, CBO estimates that about \$240 million would be spent from the funds, reducing revenues by about \$60 million in that year. Over the 2006–2015 period, CBO estimates that this second effect would reduce revenues by about \$1.3 billion.

Spending Effects of the Affordable Housing Funds. Expenditures from the funds should be treated as direct spending of the federal government. CBO expects that such spending would begin in 2007 after FHFA is established. We estimate that enacting this provision would increase federal outlays by \$1.9 billion over the 2006–2010 period and \$5.4 billion over the 2006–2015 period.

The bill requires that amounts allocated to the affordable housing funds be committed for use within two years. CBO estimates that the lag between the recording of federal revenues and the spending of amounts in fund would result in a net reduction in the federal deficit in 2006 and 2007. After 2007, the estimated reduction in taxable income and its effect on tax revenues would result in increased deficits. Over the 2006–2015 period, CBO estimates that revenues would be increased by about \$5.1 billion and direct spending would be increased by \$5.4 billion, for a net increase in the deficit of almost \$300 million.

Other effects on spending

Enacting H.R. 1461 also could further affect direct spending and revenues because this bill would provide for civil and criminal penalties against GSEs or a party affiliated with them for various violations of law. While enacting the legislation would expand the number of possible violations, CBO has no reason to expect that the amount of fines assessed would significantly increase under the bill. In fact, prior to the large fine paid by Freddie Mac in 2003 (\$125 million) and the amount paid by one of its former employees (\$125,000), no fines had been collected from any of the housing-related GSEs.

Section 115 of the bill would direct GSEs to register their capital stock with the SEC under the Securities Act of 1934. Registering under this act involves standardized disclosure of certain financial information but does not include any payment of fees associated with other securities laws.

Under current law, GSEs are exempt from registering their capital stock with the SEC. However, Fannie Mae is currently registering with the SEC voluntarily, and Freddie Mac intends to do the same in the near future. In addition, the FHLBs are expected

to register by August 2005. Based on information provided by the SEC, CBO estimates that implementing section 115 of H.R. 1461 would impose no significant costs on the SEC.

In addition, enacting this legislation would abolish FHFBS and thus the receipts collected and spent by this regulatory body would no longer appear in the budget beginning in 2007. Because collections and spending by FHFBS are about equal, eliminating FHFBS would have no net budgetary effect.

Spending subject to appropriation

Changes in HUD's Regulatory Responsibilities. Beginning in 2007, CBO estimates that implementing the bill would reduce HUD spending by about \$5 million a year because FHFA would take over HUD's current GSE-oversight responsibilities.

GAO Studies and Audits. Enacting H.R. 1461 would require GAO to conduct several studies and audits over the next five years, including a study that would examine the practices used by the GSEs to set guarantee fees and an audit of the methodology used by FHFA to calculate changes in housing prices. Based on information from GAO, CBO estimates that GAO would incur costs of about \$3 million over the next five years to carry out its responsibilities under this legislation. The bill also would require GAO to conduct annual audits of the financial transactions associated with the new regulator. However, the costs associated with the annual audits could be funded through the assessments collected by FHFA.

Elimination of OFHEO. After OFHEO is abolished, beginning in 2007, the collections received and spent by this regulatory body will no longer appear in the budget. Because collections are about equal to spending, the elimination of OFHEO would have no net budgetary effect.

Estimated long-term effects on direct spending: Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting H.R. 1461 would cause an increase in direct spending greater than \$5 billion in at least one of the 10-year periods between 2016 and 2056.

Estimated impact on state, local, and tribal governments: Several provisions of H.R. 1461 would preempt state law and thus constitute intergovernmental mandates as defined in UMRA. Those provisions would allow FHFA to act outside the authority of state law in some circumstances and would preempt state statute-of-limitation and contract laws. Those preemptions would primarily occur in the unlikely instance that FHFA serves as the receiver or conservator of a regulated entity. CBO estimates that the aggregate costs to states of complying with these mandates would be minimal and would not exceed the threshold established in UMRA (\$62 million in 2005, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 1461 would impose several private-sector mandates, as defined in UMRA, on Fannie Mae, Freddie Mac, and the FHLBs. CBO estimates that the aggregate direct cost of those mandates would exceed the annual threshold established by UMRA (\$123 million in 2005, adjusted annually for inflation) in each of the first five years the mandates are in effect.

Affordable housing funds

The most costly mandate is the requirement that Fannie Mae and Freddie Mac establish and manage affordable housing funds to increase homeownership for low-income families and to increase investment in low-income areas. The bill would require the GSEs to contribute 5 percent of their annual after-tax income for the preceding year to the fund beginning in 2007. (That percentage would be 3.5 percent in 2006.) Based on their historical net earnings, CBO estimates that the direct cost of those mandatory contributions would be approximately \$360 million in 2006. Assuming continued growth in net earnings for those GSEs, the cost of those contributions could increase to more than \$600 million in 2010.

Regulatory functions

The bill would establish a new federal regulator for Fannie Mae, Freddie Mac, and the FHLBs. Under current law, those GSEs pay assessments to their regulators. Under the bill, they would pay assessments for the operation of their new regulator—the Federal Housing Finance Agency. The duty to pay those fees would be a private-sector mandate, but CBO expects that the new fees would not differ significantly from the amounts the GSEs would otherwise pay to their current regulators.

The bill also would authorize FHFA to liquidate an insolvent GSE, to increase the amount of capital GSEs must hold, and to limit the portfolio holdings of the GSEs to ensure financial soundness. In addition, the GSEs would be required to receive approval from FHFA before beginning any new program or activity. Such new authority would impose private-sector mandates on the GSEs when it is utilized. The cost to the GSEs would depend on how the regulations governing such authority are implemented. Because that information is not available, CBO cannot determine the cost of those mandates.

In addition, the bill would impose new mandates on the housing-related GSEs by requiring them to report in a timely manner the discovery of certain fraudulent financial transactions and by requiring Fannie Mae and Freddie Mac to submit an annual report to FHFA on certain charitable contributions. According to industry sources, the direct cost of providing those reports would be minimal.

Registration of capital stock

The bill also would require the housing-related GSEs to register at least one class of their capital stock with the SEC under the Securities Act of 1934. Registering under this act involves standardized disclosure of certain financial information but does not include payment of fees associated with other securities laws. According to the SEC, Fannie Mae has registered, Freddie Mac intends to do so in the near future, and the FHLBs are expected to register by August 2005. Therefore, the direct cost to the GSEs to comply with the mandate would be minimal.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Revenues: Mark Booth; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis and G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, July 14, 2005.

Hon. MICHAEL G. OXLEY,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: On May 25, the Committee on Financial Services ordered H.R. 1461, "Federal Housing Finance Reform Act of 2005," reported to the House. Thank you for consulting with the Committee on Government Reform on those matters in H.R. 1461 within the Committee's jurisdiction including provisions regarding the civil service and the Freedom of Information Act. I am writing to confirm our mutual understanding with respect to the consideration of H.R. 1461.

In the interest of expediting the House's consideration of H.R. 1461, the Committee on Government Reform will not request a sequential referral of the bill. However, the Committee does so only with the understanding that this procedural route will not prejudice the Committee's jurisdictional interest and its prerogatives in this bill or similar legislation.

I respectfully request your support for the appointment of outside conferees from the Committee on Government Reform should H.R. 1461 or a similar Senate bill be considered in conference with the Senate. Finally, I request that you include our exchange of letters on this matter in the Financial Services Committee Report on H.R.

1461 and in the Congressional Record during consideration of this bill on the House floor. Thank you for your attention to these matters.

Sincerely,

TOM DAVIS, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, July 14, 2005.

Hon. TOM DAVIS,
*Chairman, Committee on Government Reform,
Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN DAVIS: Thank you for your letter concerning H.R. 1461, the “Federal Housing Finance Reform Act of 2005,” which the Committee on Financial Services has ordered reported. This bill will be considered by the House shortly.

I want to confirm our mutual understanding with respect to the consideration of this bill. I acknowledge that portions of the bill as reported fall within the jurisdiction of the Committee on Government Reform, and I appreciate your cooperation in moving the bill to the House floor expeditiously. I further agree that your decision to not to proceed on this bill will not prejudice the Committee on Government Reform with respect to its prerogatives on this or similar legislation. I would support your request for conferees on those provisions within your jurisdiction in the event of a House-Senate conference.

I will include a copy of this letter and your response in the Congressional Record and in the Committee on Financial Services report on the bill. Thank you again for your assistance.

Yours truly,

MICHAEL G. OXLEY, *Chairman.*

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “Federal Housing Finance Reform Act of 2005.”

Section 2. Definitions

This section defines various terms referred to in the bill, including “regulated entities” that refer to Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.

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

Subtitle A—Improvement of Safety and Soundness

Section 101. Establishment of the Federal Housing Finance Agency

Creates the Federal Housing Finance Agency as an independent Agency of the Federal government, headed by a presidentially appointed Director, to oversee Fannie Mae, Freddie Mac and the Federal Home Loan Bank System. The Director has a term of 5 years and can be removed only for cause. There are three Deputy Direc-

tors, appointed by the Director, for the Division of Enterprise Regulation, the Division of Federal Home Loan Bank Regulation, and for Housing.

Section 102. Duties and authorities of Director

The principal duties of the Director will be to oversee the operations of the regulated entities and ensure their safe and sound operation as well as oversee their housing mission. Regarding their housing mission, the Director must ensure that “the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets that minimize the cost of housing finance.” The phrase “minimize the cost of housing finance” is not intended to be a separate or additional duty, but simply acknowledges that lower housing costs are a natural consequence of liquid, efficient, competitive, and resilient national housing finance markets. The Director will establish prudential management and operations standards for each regulated entity. The Director is given enforcement authority for failure to meet those standards and will have general regulatory authority.

Section 103. Housing Finance Oversight Board

A board, consisting of the Director, as chair, the Secretaries of Treasury and HUD, and two additional appointed members, will advise the Director on strategies and policies in carrying out the duties of the Director. The additional directors are presidentially appointed, have a term of 3 years, and can be removed only for cause. The board meets by notice of the Director, but at least every three months.

Section 104. Authority to require reports by regulated entities

The Director may require the regulated entities to submit regular reports on condition, management, activities, or operations, and any special reports. Reports of fraudulent financial transactions must be submitted to the Director.

Section 105. Disclosure of charitable contributions by enterprises

The enterprises must submit annually to the Director a report on the total value of contributions made by the enterprise to non-profit organizations during its previous fiscal year. This report must also include contributions given to charities affiliated with enterprise insiders.

Section 106. Assessments

Permits the Agency to obtain funding for reasonable costs and expenses on an annual basis through assessments on the regulated entities. The amounts received by the Director are not to be considered government funds or appropriated monies. In making annual assessments and disbursing funds for agency expenses, the Director should, as much as possible, have assessments from Fannie Mae and Freddie Mac be used for supervision of those regulated entities and assessments from the Federal Home Loan Banks be used for supervision of those entities.

Section 107. Examiners and accountants

Grants the Agency special authority to hire examiners, accountants, economists, and experts in financial markets and technology.

Section 108. Prohibition and withholding of executive compensation

Grants the Agency the authority to require a regulated entity to withhold compensation for wrongdoing by an executive of a regulated entity. The Agency may take into consideration any factors it deems relevant in making a determination to withhold compensation. The approval of an agreement or contract does not preclude the Agency's ability to make such a determination.

Section 109. Reviews of regulated entities

The Director may contract with any entity that the Director considers appropriate to conduct a review.

Section 110. Regulations and orders

The Director will issue any regulations, guidelines, and orders necessary to carry out the duties of the Director.

Section 111. Risk-based capital requirements

The Agency is authorized to establish risk-based capital requirements for the regulated entities to ensure they operate in a safe and sound manner with sufficient permanent capital to support risk-taking. This section does not eliminate current risk-based capital regulations, which will remain in effect unless amended by the Director.

Section 112. Minimum and critical capital levels

The Director is permitted to raise minimum capital levels, by regulation, to ensure the regulated entities operate in a safe and sound manner, notwithstanding their capital classifications. The Director may, by order, also require temporary increases in minimum capital or, by order or regulation, require that additional capital be held for a particular program. The Director will periodically review the capital levels of the regulated entities and may, by regulation, make adjustments based on the review. The Director cannot lower minimum capital levels below current statutory levels.

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

The Director will periodically review the assets and liabilities of Fannie Mae and Freddie Mac and, upon review and notwithstanding capital classifications, may require the disposition or acquisition of certain assets and liabilities, if the Director determines such action is consistent with the safety and soundness or mission of the enterprise.

Section 114. Corporate governance of enterprises

This section codifies the recent rulemaking by OFHEO for improvements in corporate governance, regarding boards of directors, compensation, codes of conduct, audits, compliance, risk management, and other matters.

Section 115. Required registration under Securities Exchange Act of 1934

Requires each regulated entity to register at least one class of stock with the SEC.

Section 116. Financial Institutions Examination Council

The Director is provided membership on the Federal Financial Institutions Examination Council (FFIEC), which prescribes uniform standards for examination of financial institutions, with federal financial regulators as members.

Section 117. Guarantee fee study

The Government Accountability Office (GAO), in consultation with federal financial regulators and HUD, will, within one year of enactment, submit to Congress a study concerning the pricing, transparency, and reporting of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks regarding guarantee fees and the practices of other participants in the business of mortgage purchases and securitization.

Section 118. Conforming amendments

Makes changes that are necessary to conform existing law with new provisions in H.R. 1461, such as eliminating references to the "Office of Federal Housing Enterprise Oversight" and replacing them with the "Federal Housing Finance Agency," striking sections made unnecessary by earlier parts of the bill, and striking outdated provisions pertaining to the issuance of regulations.

Subtitle B—Improvement of Mission Supervision

Section 121. Transfer of program and activities approval and housing goal oversight

This section transfers authority to approve programs and to oversee the mission requirements of Fannie Mae and Freddie Mac from HUD to the Agency.

Section 122. Review by Director of new programs and activities of enterprises

An enterprise may not undertake a new program, including a pilot program, until there has been a determination by the Director, following public notice and a 30-day comment period, that the new program is permissible. The Director may approve, or conditionally approve, a new program, only if: (1) the new program does not contravene and is not inconsistent with this Act or the enterprise's chartering act, taking into consideration the terms "mortgage loan origination" and "secondary mortgage market;" (2) is not inconsistent with the safety and soundness of the enterprise; and (3) is in the public interest. The Director may not prevent an enterprise from continuing to offer the automated underwriting system in existence on the date of enactment or continuing to engage in counseling or education activities. The Committee does not intend that the regulations required under new Section 1303(16) would prohibit Fannie Mae or Freddie Mac from offering existing automated loan underwriting systems to any originator of mortgage loans including mortgage brokers. Nonmaterial changes to auto-

mated underwriting systems would not be subject to new program or new activity review under this section.

The Director may prohibit a new business activity, if: (1) it contravenes or is inconsistent with this Act or the enterprise's chartering act; (2) is inconsistent with the safety and soundness of the enterprise; or (3) is not in the public interest. Notice of new business activities must be filed with the Director, who has 30 days to approve, conditionally approve, or disapprove any new activity. If the Director does not act within the 30-day time period, the enterprise may commence the new activity. Immediately upon receipt of the notice of the new activity, the Director must determine if the proposed activity consists of, relates to, or involves a new program. If such a determination is made, the approval procedures for new programs will apply.

Business activities of the enterprises mean any offering, undertaking, transacting, conducting, or engaging in any conduct, activity or product. New activities are material changes to activities engaged in on the effective date and any activities that the enterprises have not been authorized to undertake. The Director is also required to define the terms "mortgage loan origination" and "secondary mortgage market" consistent with the chartering acts. None of this section's provisions limits the Director's ability to review existing programs or activities to ensure that they are being conducted in a safe and sound manner and in compliance with the mission of the enterprises.

Section 123. Conforming loan limit

Subsections (a) and (b) of this section update statutory language from 1981 that set conforming loan limits for Fannie Mae and Freddie Mac, and provided for adjustments upward through an index/housing survey. While the conforming loan limit has been raised every year since 1981, this section merely inserts 2005 conforming loan limits that were set by the current regulator at \$359,650 for a one-unit single family residence; \$460,400 for a two-unit family residence; \$556,500 for a three-unit family residence and \$691,600 for a four-unit family residence. The subsections allow for these limits to be adjusted annually, starting on January 1 after the effective date of this legislation, to reflect increases and, for the first time, decreases in housing prices, and a new method for establishing annual adjustments authorized in subsection (c).

These subsections also authorize Fannie Mae and Freddie Mac to further increase loan limits above the conforming loan limits in an area in which the median home price is greater than the conforming loan limit. The enterprises may adjust loan limits in any such area up to the lesser of 150 percent of the conforming loan limit or the area median home price. This increase applies only to mortgages on which are based securities issued and sold by an enterprise. This provision is different than current law that provides similar loan limit adjustments for Alaska, Hawaii, Guam and the Virgin Islands set at 150 percent of the conforming loan limit, without any relationship to median home prices.

Subsection (c) requires the Director to develop a Housing Price Index, which would be subject to a GAO audit on the methodology and timing of the index followed by a report to Congress. Subsection (d) requires the Director to conduct a study, within six

months of the effective date, of issues related to loan limits in high cost areas. If the study concludes that the restriction only to mortgages securitized by an enterprise causes an increase in the cost to borrowers, the Director would have authority to terminate restrictions.

Subsection (e) allows adjustment of conforming loan limits under current law during the interim period between the enactment and effective dates to account for increases in home prices under the existing index.

Section 124. Annual housing report regarding regulated entities

The Director must submit an annual report to Congress after reviewing the Affordable Housing Activities Reports (AHARs) submitted by Fannie Mae and Freddie Mac and certain reports on the FHLBs in supporting low income housing and community development.

The Director's report will examine the affordable housing goals and how each enterprise is complying with those goals and the housing fund provisions, the progress of the FHLBs in their Affordable Housing Program (AHP), and whether the regulated entities are achieving their respective missions. The bill requires detailed reporting by the Agency on housing and affordable housing issues and requires a detailed monthly survey of mortgage markets to assist the Agency in this report and in the establishment of the housing price index methodology to determine loan limits. Data collected for the monthly survey must be made public, but the Agency may modify the data in order to not reveal a borrower's identity.

This provision also requires the Agency, consistent with the Administrative Procedures Act, to formulate standards by which loans purchased and/or securitized by the enterprises shall be characterized as subprime loans. These standards are solely to provide data to identify the extent to which each enterprise is engaged in purchasing or other secondary market activities involving subprime loans.

The Agency must also in its report identify the extent to which each enterprise is purchasing and securitizing subprime loans, and compare the characteristics of subprime loans purchased and securitized by the enterprises with other loans.

Section 125. Revision of housing goals

This section eliminates the current housing goals and replaces them with three single-family housing goals and a multifamily special affordable housing goal, to be established annually. A deadline for the annual goals must be adopted to allow sufficient planning by the enterprises to meet the goals.

In establishing and implementing the goals, the Director must require the enterprises to disclose appropriate information to allow the Director to assess if there are any disparities in interest rates between minorities and non-minorities of similar creditworthiness. If the Director determines that interest rate disparities exist, those findings must be reported to Congress and the Director must instruct the enterprise to take appropriate action to remedy the interest rate disparities identified.

This section requires the Director to establish three single-family purchase goals for conventional, conforming, single-family, owner-

occupied, purchase money mortgages, financing housing for: (1) families with incomes of 80 percent or less of area median income (AMI); (2) families in census tracts with median incomes of 80 percent or less of AMI and families with incomes less than 100 percent of AMI who reside in minority tracts; and (3) families with incomes of 50 percent or less of AMI.

Compliance with the single-family goals for each year will be measured by whether the numerical target established by the Director is met or exceeded. Such targets are to be established prospectively, using a rolling average of data derived from the Home Mortgage Disclosure Act (HMDA) for the three immediately preceding years for which information under HMDA is publicly available, except that the Director may increase such targets to reflect expected changes in market performance.

The Director will notify each enterprise 30 days prior to determination of compliance with the single-family goals, and before public notice. The enterprises have 30 days from receipt of notice to comment on the determination.

The Director is required to establish a Multifamily Special Affordable Goal for each of the following types of multifamily housing: (1) mortgages that finance dwelling units for families with incomes of 50 percent or less of AMI, and (2) mortgages that finance dwelling units assisted by the low-income housing tax credit, which are affordable to under 60 percent of AMI. The Director is also instructed to establish additional requirements within the Multifamily Special Affordable Goal for small loans measured by either mortgage amounts or number of dwelling units in the project or both.

The establishment of the multifamily goals must be based on certain statutory factors including national multifamily mortgage credit needs, the size of the multifamily market, the ability of enterprises to lead the industry in making multifamily mortgage credit available for underserved markets, such as for small multifamily projects of 5–50 units, multifamily projects in need of rehabilitation, and properties located in rural areas defined to include micropolitan areas and tribal lands.

The Director is instructed to determine compliance with both the Multifamily Special Affordable Goal and the additional requirement to purchase smaller multifamily loans.

Under this section, an enterprise may petition the Director, in writing, for a reduction in the housing goals. The Director may reduce the goal level only if market and economic conditions or the financial condition of the enterprise requires such action, or if efforts to meet the goal would result in liquidity constraints, overinvestment in certain market segments, or other consequences contrary to the enterprise's purpose. The Director is required to make a determination regarding any proposed reduction within 30 days of receipt of the petition. The 30-day period may be extended, only if the Director requires additional information from the enterprise. A denial from the Director to reduce the level of the goal may be appealed in the courts.

Section 126. Duty to serve underserved markets

This section adds a duty to increase liquidity of mortgage investments and improve the distribution of investment capital available

for mortgage financing for underserved markets. This section instructs the enterprises to undertake activities relating to mortgages on housing for very low (50 percent and less of AMI), low (80 percent and less of AMI) and moderate (100 percent and less of AMI) income families.

To meet this duty, each enterprise must lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market in manufactured housing, preservation of affordable housing (including through current government programs), and rural housing. The Director is also authorized to establish other underserved markets that lack adequate credit through conventional lending sources.

Within six months of the effective date, the Director must establish a manner for evaluating compliance of the enterprises under each of the three categories of the duty to serve provisions. When evaluating compliance, the Director will take into consideration: (1) the development of loan products and more flexible underwriting guidelines; (2) the extent of outreach to qualified loan sellers in underserved markets; and (3) the volume of loans purchased in such underserved markets.

The Director must report to Congress annually on this evaluation and the duty to serve provisions are enforceable under the same provisions as the housing goals.

Section 127. Monitoring and enforcing compliance with housing goals

The Director is authorized to take a number of steps to enforce compliance, including cease-and-desist orders, refusal to authorize new activities or programs, and civil money penalties not to exceed \$50,000 per day, if the enterprise has failed to meet a housing goal, has failed to submit a housing plan if required, submits an unacceptable plan, fails to comply with the plan, or violates any other rule, regulation, or order relative to the housing goals.

Section 128. Affordable housing fund

Subsections (a) through (d) establish the affordable housing fund, outline eligible activities, and specify the amounts to be allocated by each enterprise.

The purpose of the affordable housing fund is to: (1) increase homeownership for extremely low-income families, defined as 30 percent of area median income (AMI) and very low-income families, defined as 50 percent of AMI; (2) increase investment in housing in low-income areas and areas designated as qualified census tracts or an area of chronic economic distress; (3) increase and preserve the supply of rental and owner-occupied housing for extremely low- and very low-income families; and (4) increase investment in economic and community development in economically underserved areas. "Economically underserved areas" are defined as census tracts where 20 percent of the population is below the poverty line or median family income does not exceed the greater of 80 percent of AMI or 80 percent of state median income.

In 2006, each enterprise will reserve 3.5 percent of its 2005 after-tax income for the fund. After establishing the affordable housing fund, each enterprise allocates 5 percent of after-tax income annu-

ally to the fund, provided each enterprise is adequately capitalized and generates after-tax income for the preceding year.

Fund monies will be used only for: (1) the production, preservation, and rehabilitation of rental housing for extremely low- and very low-income families; (2) the production, preservation and rehabilitation of housing for homeownership, such as down payment assistance, closing costs, and assistance for interest-rate buy-downs, for extremely low- and very-low income families who are first-time homebuyers; and (3) leveraged grants. At least 10% of the affordable housing fund monies must be used for homeownership activities.

In subsection (e), each enterprise is authorized to distribute no more than 12.5 percent of the overall fund monies for leveraged grants. Eligible purposes for leveraged grants are: (1) development, preservation, rehabilitation, or purchase of affordable housing that meets underserved needs for affordable housing; and (2) community or economic development activities in economically underserved areas; or (3) a combination of those two. Recipients of leveraged grants shall include only certain entities, such as a low income housing funds, state or local housing finance agencies, non-profit affordable housing organizations, community development financial institutions, national non-profit housing intermediaries, community development corporations, and community development entities.

Eligible uses of leveraged grants are limited to providing loan loss reserves, capitalizing a revolving loan fund, providing equity capitalization to an affordable housing fund, capitalizing a community development or economic development fund, establishing risk sharing loans, and funding specific investment plans. The distribution of leveraged grants is subject to an application process established through regulation by the Agency and any returns from leveraged grants accrue to the affordable housing fund.

In subsection (f), any amounts allocated from the affordable housing fund must be used or committed within two years, and any return on investment from fund monies shall be used only for eligible uses of the fund. The Director shall issue regulations to ensure that monies may not be used for administrative, outreach, or other costs incurred by the enterprises or any fund recipients, except that the Director may allow certain administrative costs to be used by the enterprises for maintaining the affordable housing fund and carrying out the program. This subsection also specifically prohibits the use of the affordable housing fund monies to count toward housing goals, unless non-fund monies are used to purchase the mortgages.

The Director, through regulation, must ensure that funds awarded to a national non-profit housing intermediary are not used to distribute sub-grants to other non-profit entities.

Subsection (g) requires the enterprises to submit quarterly reports to the Director and the Affordable Housing Board outlining the activities funded through the affordable housing fund. These reports will be made publicly available. The Affordable Housing Board shall review each report to determine whether the funded activities are consistent with the criteria established by the Director. Any failure to use these funds properly will result in an enterprise having to replace those funds.

Subsection (j) requires the Director to appoint an Affordable Housing Board comprised of 7, 9, or 11 persons. The Board shall at least include the Director, the Secretaries of HUD and Agriculture, two persons from for-profit housing organizations, and 2 persons from non-profit housing organizations. The non-governmental members of the Affordable Housing Board shall be limited to a term of three years. The Affordable Housing Board shall meet at least four times a year to determine extremely low- and very low-income housing needs and to provide advice to the Director on establishing the selection criteria for the affordable housing fund. Additional tasks of the Affordable Housing Board shall include a review of the operations under the affordable housing fund and a review of the quarterly reports submitted by the enterprises that outline activities funded by the affordable housing fund.

The Director shall issue regulations to carry out the affordable housing fund, including an annual audit of each enterprise's affordable housing fund activities. The Director shall also issue regulations outlining that the selection of funded activities shall be based on a specific criteria, including a prioritization of funding based upon greatest impact, geographic diversity, the ability of an entity to obligate amounts and undertake activities in a timely manner, and, in the case of rental housing, the extent and duration for which rents will remain affordable.

Section 129. Consistency with mission

This section clarifies that the changes made relating to housing goals, duty to serve, and the affordable housing fund should not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the charter acts of the enterprises.

Section 130. Enforcement

This section expands the enforcement authority currently provided the HUD Secretary with respect to enforcement of the enterprises' housing goals. The expanded authority allows the Director to issue and serve a notice of charges and to impose cease and desist and civil money penalties on an enterprise, if the Director determines that the enterprise has: (1) failed to meet a housing goal; (2) failed to submit a report under section 1314 or certain other sections; (3) failed to submit an acceptable housing plan, if required; or (4) fails to comply with the plan or any other order, rule, or regulation under sections 1321 through 1348 of the Housing and Community Development Act of 1992, as amended by this bill.

The Director may directly seek enforcement in the United States District Court for the District of Columbia or the United States District Court within the jurisdiction of which the headquarters of the enterprise is located.

Section 131. Conforming amendments

Makes changes that are necessary to conform existing law with new provisions in H.R. 1461, such as eliminating references to the "Secretary of HUD" and replacing them with the "Director," striking sections made unnecessary by earlier parts of the bill, and striking outdated provisions pertaining to the issuance of regulations.

Subtitle C—Prompt Corrective Action

Section 141. Capital classifications

This section establishes capital classifications for the Federal Home Loan Banks as well as for Fannie Mae and Freddie Mac. Those regulated entities can be classified as: adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The Director may reclassify a regulated entity at any time, if: (1) the Director determines in writing that a regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, the value of the property securitized has decreased significantly; (2) after notice and hearing, the Director determines that the entity is in an unsafe or unsound condition; or (3) if the entity is engaging in an unsafe or unsound practice, as deemed by the Director under section 1371(b).

A regulated entity will make no capital distribution if, after making the distribution, the entity would be undercapitalized.

Section 142. Supervisory actions applicable to undercapitalized regulated entities

If a regulated entity becomes undercapitalized, it will be monitored for compliance with a capital restoration plan and will require prior approval of any new programs or activities. Additionally, the Director will have the authority to restrict the asset growth of an undercapitalized entity. Undercapitalized entities may not acquire any interest in any entity or engage in a new program or activity without prior approval from the Director. If the Director determines it is necessary, the Director also may use authority and take actions applicable to significantly undercapitalized enterprises.

Section 143. Supervisory actions applicable to significantly undercapitalized regulated entities

This section makes existing discretionary actions mandatory for significantly undercapitalized entities. The Director must take one or more supervisory actions to improve the management of the entity, including the ordering of a new election for the board of directors, dismissal of directors or executive officers, or requiring the entity to employ qualified management. Additionally, a significantly undercapitalized regulated entity cannot, without prior written approval by the Director, pay any bonus to any executive officer or provide compensation to any executive officer that exceeds that officer's average rate of compensation from the preceding calendar year.

Section 144. Authority over critically undercapitalized regulated entities

The Director may establish a conservatorship or receivership over critically undercapitalized entities for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity. The grounds for appointing a conservator or receiver include: assets are insufficient to cover obligations; there is a substantial dissipation of assets due to violations of law or unsafe or unsound practices; an unsafe or unsound condition; violations of cease-and-

desist orders; concealment of books, papers, records or assets; the inability to meet obligations; losses that will deplete all of its capital; any violation of law likely to cause insolvency or substantial dissipation of assets or earnings; by resolution of a regulated entity's board of directors; undercapitalization; critical undercapitalization; or a determination that an entity is guilty of money laundering.

The Agency, as conservator or receiver, may issue regulations as appropriate for the conduct of the conservatorship or receivership. The Agency succeeds to all the rights, titles, powers, and privileges of the regulated entity and of any stockholder, officer, or director of such regulated entity, and title to the books, records, and assets of any other legal custodian of such regulated entity. The Agency shall take over all assets and obligations of the regulated entity, perform all functions of the regulated entity, and preserve and conserve the assets and property of the regulated entity.

The Agency, as conservator, may take such action as may be necessary to put the regulated entity into a sound and solvent condition, and to carry out the business of the entity. As receiver, the Agency may place a regulated entity into liquidation having due regard for the housing finance market and may organize a successor entity.

The Agency, as conservator or receiver, may transfer any asset or liability of the regulated entity in default without any approval, assignment or consent. Any Federal Home Loan Bank may acquire the assets of any Bank with the approval of the Agency. The Agency, as conservator or receiver, shall pay all valid obligations of the regulated entity, to the extent proceeds of operations or sales are available. The Agency shall have the authority to issue subpoenas for the purposes of carrying out its authorities, and may contract for services relating to the carrying out of its functions, actions, activities, or duties. The Agency also is granted any incidental authorities it may need to carry out its powers as conservator or receiver.

The Agency, as receiver, must promptly publish and mail notice to the creditors of the regulated entities to present their claims to the receiver. The receiver may allow or disallow claims by creditors according to the provisions set forth in this section. The right of a conservator or receiver shall be subject to the limitations on the powers of a receiver under section 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 concerning financial system risk. Also, mortgages, or interest in a pool of mortgages, held in trust, custodial, or agency capacity by a regulated entity shall not be available to satisfy the claims of creditors generally. Such mortgages or interest in a pool of mortgages shall be held by the conservator or receiver for the beneficial owners of such mortgages in accordance with the terms of the agreement creating such trust, custodial, or agency agreement.

The Agency as conservator or receiver may disaffirm or repudiate any contract or lease to which the regulated entity is a party the performance of which the conservator or receiver determines to be burdensome and the repudiation of which will promote the orderly administration of the affairs of the regulated entity. Specific provisions are established for the treatment of qualified financial contracts, including swap agreements and master agreements.

The Agency may organize a limited-life regulated entity (LLRE) if a regulated entity is in default or it is in danger of default. The Director shall grant a temporary charter to the LLRE and the LLRE shall assume the liabilities of the regulated entity, purchase the assets of the regulated entity, and perform any other temporary functions which the Agency may prescribe. The Agency will not have the authority to revoke the charter of a regulated entity.

Section 145. Conforming amendments

This section makes changes that are necessary to conform existing law with the new provisions included in H.R. 1461.

Subtitle D—Enforcement Actions

Section 161. Cease-and-desist proceedings

If a regulated entity or regulated entity affiliated party is engaged in, has engaged in, or is about to engage in, an unsafe or unsound practice or is violating, has violated, or is about to violate a law, rule, or condition, the Director may issue and serve a notice of charges with respect to these actions. The Director may deem an entity to be engaged in unsafe and unsound practices if the entity receives a less than satisfactory rating for asset quality, management, earnings, or liquidity in its most recent exam.

Section 162. Temporary cease-and-desist proceedings

Whenever the Director determines that the violation or threatened violation or unsafe or unsound practice specified in the notice of charges is likely to cause insolvency or a significant dissipation of assets or earnings or is likely to weaken the condition of the regulated entity prior to completion of the proceedings for issuance of a permanent cease-and-desist order, the Director may issue a temporary cease-and-desist order requiring the regulated entity to discontinue such violation or practice and to take affirmative action to prevent or remedy such condition. The Agency may enforce these orders through its independent litigation authority.

Section 163. Prejudgment attachment

In any action brought pursuant to this title, or to enforce an order for money damages, restitution, or civil money penalties, the Director or the Attorney General may seek prohibitions against the withdrawal, transfer, removal, dissipation of any funds, assets, or other property.

Section 164. Enforcement and jurisdiction

The Director is granted independent litigation authority to enforce the provisions under this title.

Section 165. Civil money penalties

Violations of this title, the authorizing statutes, or any order, condition, rule, regulation, or the engaging in unsafe or unsound practices shall result in civil money penalties of not more than \$10,000 for each day which the violation continues.

If a regulated entity or regulated entity affiliated party commits any violation described above, recklessly engages in unsafe or unsound practices, or breaches any fiduciary duty and these actions

are part of a pattern of misconduct, will result in more than a minimal loss, or result in a pecuniary gain or other benefit, the party shall forfeit and pay a civil penalty of not more than \$50,000 for each day which the violation continues.

If a regulated entity or regulated entity affiliated party knowingly commits any violation described above, engages in unsafe or unsound practices, or breaches any fiduciary duty, and knowingly and recklessly causes a substantial loss to such regulated entity results in a substantial pecuniary gain or other benefit, the party by reason of such violation, practice, or breach shall forfeit the gain and pay a civil penalty in an amount not to exceed the maximum amount permitted for each day which the violation continues. The maximum daily amount for any civil money penalty that can be assessed is not to exceed \$2,000,000 for any individual and shall be \$2,000,000 for any regulated entity.

Section 166. Removal and prohibition authority

The Director may by order suspend a party from office or prohibit such party from further participation in the affairs of the regulated entity, if the Director determines that the party has violated a law, order, or condition; engaged in any unsafe and unsound activity; or committed a violation of fiduciary duty and that such action is necessary for the protection of the regulated entity, there has been an adverse financial impact on the entity, or such breach was willful and dishonest.

A party that is suspended and/or prohibited from participation in the affairs of a regulated entity under this section may apply to the courts for a stay of such suspension.

Section 167. Criminal penalty

This section provides that a person, who is subject to a removal or prohibition order and who knowingly participated directly or indirectly in the conduct of the affairs of any regulated entity, shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

Section 168. Subpoena authority

The Agency is granted the power to issue and enforce subpoenas.

Section 169. Conforming amendments

This section includes various conforming amendments.

Subtitle E—General Provisions

Section 181. Presidentially appointed directors of enterprises

The boards of Fannie Mae and Freddie Mac will no longer have presidentially appointed directors. The size of the boards may vary from 7–15 members.

Section 182. Report on portfolio operations, safety and soundness, and mission of enterprises

Within a year, the Agency must submit a report to Congress on the portfolio holdings of Fannie Mae and Freddie Mac, a description of risk implications, and analyses of safety and soundness, mission, and systemic risk factors.

Section 183. Conforming and technical amendments

This section includes various conforming amendments.

Section 184. Study of alternative secondary market systems

The Agency, in consultation with the Federal Reserve, the Department of Treasury, and the Department of Housing and Urban Development, shall conduct a study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance.

Section 185. Effective date

Except as specifically provided, this legislation shall take effect on the expiration of the 1-year period beginning on the date of enactment.

TITLE II—FEDERAL HOME LOAN BANKS*Section 201. Definitions*

New definitions are provided.

Section 202. Directors

The board of a Federal Home Loan Bank will have 13 elected directors, unless the Director otherwise decides, with terms of four years. The members of a Federal Home Loan Bank shall have a majority of the board seats. One-third of the directors will be independent with at least 2 being public interest directors. Each Bank may pay directors for reasonable compensation and expenses.

Section 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks

The Federal Housing Finance Board is abolished and replaced by the Federal Housing Finance Agency.

Section 204. Joint activities of banks

Any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for or providing services to the Banks on a common or collective basis. This section is not intended to broaden the activities of the Banks, but to provide the Banks a means through which they can more efficiently conduct some of their business operations.

Section 205. Sharing of information between Federal Home Loan Banks

The Director shall prescribe rules to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability within the Bank System.

Section 206. Reorganization of banks and voluntary merger

Any Federal Home Loan Bank may merge with another upon approval of their boards and of the Director of the Agency.

Section 207. Securities and Exchange Commission disclosure

The Federal Home Loan Banks are exempted from compliance with some disclosures under the Securities and Exchange Act of

1934 and some SEC regulations relating to capital stock registered pursuant to this act and other obligations.

Section 208. Community financial institution members

Eligibility for Federal Home Loan Bank members to use advances for small businesses, farms, and agribusinesses, or use such loans as collateral for advances, is raised to \$1 billion in assets and such community financial institutions may also use advances for community development lending and such loans as collateral for advances.

Section 209. Technical and conforming amendments

Makes changes that are necessary to conform existing law with new provisions included in H.R. 1461, such as eliminating references to the "Office of Federal Housing Enterprise Oversight" and the "Federal Housing Finance Board," replacing them with the "Director of the Federal Housing Finance Agency," setting the pay scale for the Director and Deputy Directors, striking sections made unnecessary by other parts of the bill, and establishing an Office of the Inspector General.

Section 210. Study of affordable housing program use for long-term care facilities

GAO is required to study the use of the Federal Home Loan Banks' Affordable Housing Program to fund long-term care facilities for low- and moderate-income individuals and its applicability to the affordable housing funds of the enterprises.

Section 211. Effective date

This title will be effective one year from the date of enactment.

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

Subtitle A—Office of Federal Housing Enterprise Oversight

Section 301. Abolishment of OFHEO

The Office of Federal Housing Enterprise Oversight (OFHEO) is abolished one year after the date of enactment. During that one-year period, OFHEO will continue to have oversight and regulatory authority for the safety and soundness of Fannie Mae and Freddie Mac; OFHEO will fulfill all its current duties during this time period.

Section 302. Continuation and coordination of certain regulations

All regulations and other regulatory actions relating to the oversight of the enterprises will remain in effect and be enforceable at the Agency.

Section 303. Transfer and rights of employees of OFHEO

Employees transferred will be guaranteed a position with the Agency and will retain their benefits for one year following the transfer.

Section 304. Transfer of property and facilities

The property of OFHEO will become the property of the Agency.

Subtitle B—Federal Housing Finance Board*Section 321. Abolishment of the Federal Housing Finance Board*

The Federal Housing Finance Board is abolished one year after the date of enactment. During that one-year period, the Finance Board will continue to have oversight and regulatory authority for the safety and soundness and mission of the Federal Home Loan Bank System.

Section 322. Continuation and coordination of certain regulations

All regulations and other regulatory actions relating to the oversight of the Federal Home Loan Banks will remain in effect and be enforceable at the Agency.

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

Employees transferred will be guaranteed a position with the Agency and will retain their benefits for one year following the transfer.

Section 324. Transfer of property and facilities

The property of FHFB will become the property of the Agency.

Subtitle C—Department of Housing and Urban Development*Section 341. Termination of enterprise-related functions*

The Secretary of HUD, in consultation with the Director of OFHEO, will determine, within 6 months of enactment, which functions and employees of HUD are “enterprise-related” and will transfer to the Agency on the effective date. During the one-year period between the enactment and effective dates, HUD will continue to oversee the affordable housing goals, new programs, and mission of the enterprises.

Section 342. Continuation and coordination of certain regulations

All regulations and other regulatory actions relating to oversight of the enterprises will remain in effect and be enforceable at the Agency.

Section 343. Transfer and rights of employees

Employees transferring will be guaranteed a position in the Agency and will retain their benefits for one year following the transfer.

Section 344. Transfer of appropriations, property, and facilities

The property and unexpended appropriations of HUD related to enterprise oversight will transfer to the Agency.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

* * * * *

TITLE XIII—GOVERNMENT SPONSORED ENTERPRISES

* * * * *

SEC. 1303. DEFINITIONS.

For purposes of this title:

(1) * * *

(2) *AGENCY.*—*The term “Agency” means the Federal Housing Finance Agency.*

(3) *AUTHORIZING STATUTES.*—*The term “authorizing statutes” means—*

(A) *the Federal National Mortgage Association Charter Act;*

(B) *the Federal Home Loan Mortgage Corporation Act;*
and

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

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

(5) *BUSINESS ACTIVITY.*—*The term “business activity” means, with respect to an enterprise, any offering, undertaking, transacting, conducting, or engaging in any conduct, activity, or product by the enterprise, as the Director shall provide.*

[(2)] (6) *CAPITAL DISTRIBUTION.*—

(A) *IN GENERAL.*—*The term “capital distribution” means—*

(i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of [the enterprise] *the regulated entity;*

(ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by [the enterprise] *the regulated entity* of such shares; and

* * * * *

(B) *EXCEPTION.*—*Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of [the enterprise] the regulated entity under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 or any sub-*

stantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

[(3)] (7) COMPENSATION.—The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

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

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

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

[(4)] (9) CORE CAPITAL.—The term “core capital” means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) * * *

* * * * *

[(5)] (10) DIRECTOR.—The term “Director” means the Director of the [Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Federal Housing Finance Agency*.

[(6)] (11) ENTERPRISE.—The term “enterprise” means—

(A) * * *

* * * * *

[(7)] (12) EXECUTIVE OFFICER.—The term “executive officer” means, with respect to [an enterprise] *a regulated entity*, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(13) EXTREMELY LOW-INCOME.—The term “extremely low-income” means—

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

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

(14) FEDERAL HOME LOAN BANK.—The term “Federal home loan bank” means a bank established under the authority of the Federal Home Loan Bank Act.

[(8)] (15) LOW-INCOME.—The term “low-income” means—

(A) * * *

(B) in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the [Secretary] Director.

(16) LOW-INCOME AREA.—The term “low income area” means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is lo-

cated, and, for the purposes of section 1332(a)(2), shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts.

[(9)] (17) MEDIAN INCOME.—The term “median income” means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the **[Secretary] Director**.

[(10)] (18) MODERATE-INCOME.—The term “moderate-income” means—

(A) * * *

(B) in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the **[Secretary] Director**.

(19) MORTGAGE MARKETS.—*The terms “mortgage loan origination” and “secondary mortgage market” shall have such meanings as the Director shall, by regulation, prescribe consistent with the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act. The Director shall issue such regulations not later than the expiration of the 12-month period beginning on the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, and the Director shall review such regulations on a periodic basis.*

[(11)] (20) MORTGAGE PURCHASES.—The term “mortgage purchases” includes mortgages purchased for portfolio or securitization.

[(12)] (21) MULTIFAMILY HOUSING.—The term “multifamily housing” means a residence consisting of more than 4 dwelling units.

(22) NEW BUSINESS ACTIVITY.—*The term “new business activity” means, with respect to an enterprise, a business activity that—*

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

(B) the enterprise has not previously obtained authorization, pursuant to the provisions of section 1321(c), to offer, undertake, transact, conduct, or engage in.

[(13)] (23) NEW PROGRAM.—The term “new program” means, with respect to an enterprise, any program for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in, conventional mortgages that—

(A) * * *

* * * * *

[(14) OFFICE.—The term “Office” means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

[(15) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.]

(24) REGULATED ENTITY.—*The term “regulated entity” means—*

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

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

(C) each Federal home loan bank.

(25) REGULATED ENTITY-AFFILIATED PARTY.—The term “regulated entity-affiliated party” means—

(A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity; and

(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant); and

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

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

[(16)] (27) SINGLE FAMILY HOUSING.—The term “single family housing” means a residence consisting of 1 to 4 dwelling units.

[(17)] (28) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

[(18)] (29) TOTAL CAPITAL.—The term “total capital” means, with respect to an enterprise, the sum of the following:

(A) * * *

* * * * *

[(19)] (30) VERY LOW-INCOME.—The term “very low-income” means—

(A) in the case of owner-occupied units, income not in excess of [(60)] 50 percent of area median income; and

(B) in the case of rental units, income not in excess of [(60)] 50 percent of area median income, with adjustments for smaller and larger families, as determined by the [(Secretary)] Director.

* * * * *

Subtitle A—Supervision and Regulation of Enterprises

PART 1—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

ISEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT.

[[There is hereby established an office within the Department of Housing and Urban Development, which shall be known as the Office of Federal Housing Enterprise Oversight.

ISEC. 1312. DIRECTOR.

[(a) APPOINTMENT.—The Office shall be under the management of a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the nomination of such individual for appointment as Director.

[(b) TERM.—The Director shall be appointed for a term of 5 years.

[(c) VACANCY.—A vacancy in the position of Director shall be filled in the manner in which the original appointment was made under subsection (a).

[(d) SERVICE AFTER END OF TERM.—A Director may serve after the expiration of the term for which the Director was appointed until a successor Director has been appointed.

[(e) DEPUTY DIRECTOR.—

[(1) IN GENERAL.—The Office shall have a Deputy Director who shall be appointed by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Deputy Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the appointment of such individual as Deputy Director.

[(2) FUNCTIONS.—The Deputy Director shall have such functions, powers, and duties as the Director shall prescribe. In the event of the death, resignation, sickness, or absence of the Director, the Deputy Director shall serve as acting Director until the return of the Director or the appointment of a successor pursuant to subsection (c).

ISEC. 1313. DUTY AND AUTHORITY OF DIRECTOR.

[(a) DUTY.—The duty of the Director shall be to ensure that the enterprises are adequately capitalized and operating safely, in accordance with this title.

[(b) AUTHORITY EXCLUSIVE OF SECRETARY.—The Director is authorized, without the review or approval of the Secretary, to make

such determinations, take such actions, and perform such functions as the Director determines necessary regarding—

[(1) the issuance of regulations to carry out this part, subtitle B, and subtitle C (including the establishment of capital standards pursuant to subtitle B);

[(2) examinations of the enterprises under section 1317;

[(3) determining the capital levels of the enterprises and classification of the enterprises within capital classifications established under subtitle B;

[(4) decisions to appoint conservators for the enterprises;

[(5) administrative and enforcement actions under subtitle B, actions taken under subtitle C with respect to enforcement of subtitle B, and other matters relating to safety and soundness;

[(6) approval of payments of capital distributions by the enterprises under section 303(c)(2) of the Federal National Mortgage Association Charter Act and section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act;

[(7) requiring the enterprises to submit reports under section 1314 of this title, section 309(k) of the Federal National Mortgage Association Charter Act, and section 307(c) of the Federal Home Loan Mortgage Corporation Act;

[(8) prohibiting the payment of excessive compensation by the enterprises to any executive officer of the enterprises under section 1318;

[(9) the management of the Office, including the establishment and implementation of annual budgets, the hiring of, and compensation levels for, personnel of the Office, and annual assessments for the costs of the Office;

[(10) conducting research and financial analysis; and

[(11) the submission of reports required by the Director under this title.

[(c) **AUTHORITY SUBJECT TO APPROVAL OF SECRETARY.**—Any determinations, actions, and functions of the Director not referred to in subsection (b) shall be subject to the review and approval of the Secretary.

[(d) **DELEGATION OF AUTHORITY.**—The Director may delegate to officers and employees of the Office any of the functions, powers, and duties of the Director, as the Director considers appropriate.

[(e) **INDEPENDENCE IN PROVIDING INFORMATION TO CONGRESS.**—The Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.]

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

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

(b) **GENERAL SUPERVISORY AND REGULATORY AUTHORITY.**—

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

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

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

SEC. 1312. DIRECTOR.

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

(b) *APPOINTMENT; TERM.*—

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

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

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

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

(5) *TRANSITIONAL PROVISION.*—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development shall serve as the Director until a successor has been appointed under paragraph (1).

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

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

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

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

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

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

(e) DEPUTY DIRECTOR FOR HOUSING.—

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

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

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

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

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

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

SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

(a) DUTIES.—

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

(A) to oversee the operations of each regulated entity; and

(B) to ensure that—

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

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

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

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

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

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

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

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

(c) *LITIGATION AUTHORITY.*—

(1) *IN GENERAL.*—*In enforcing any provision of this title, any regulation or order prescribed under this title, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys.*

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

SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.

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

(1) *adequacy of internal controls and information systems taking into account the nature and scale of business operations;*

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

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

(4) *management of interest rate risk exposure;*

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

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

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

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

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

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

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

(12) such other operational and management standards as the Director determines to be appropriate.

(b) **FAILURE TO MEET STANDARDS.**—

(1) **PLAN REQUIREMENT.**—

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

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

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

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

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

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

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

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

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

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

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

of the entity may increase from one calendar quarter to another.

(ii) Require the regulated entity—

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

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

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

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

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

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

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

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

SEC. 1313B. HOUSING FINANCE OVERSIGHT BOARD.

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

(b) **DUTIES.**—

(1) **IN GENERAL.**—The Board shall advise the Director with respect to overall strategies and policies in carrying out the duties of the Director under this title, at the request of the Director and at the initiative of the Board, and shall carry out such functions as otherwise provided by law.

(2) **LIMITATION.**—The Director may not delegate to the Board any of the functions, powers, or duties of the Director.

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

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

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

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

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

(A) one individual who has extensive experience and expertise in the capital markets (including debt markets), the secondary mortgage market, and mortgage-backed securities; and

(B) one individual who has extensive experience and expertise in mortgage finance (including single family and multifamily housing mortgage finance), development of af-

fordable housing, and economic development and revitalization.

(d) **TERMS AND VACANCIES.**—

(1) **TERMS.**—Each member of the Board pursuant to paragraph (4) shall be appointed for a term of 3 years, and may be removed by the President only for cause.

(2) **VACANCIES.**—A member of the Board appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member of the Board may serve after the expiration of the member's term until a successor has been appointed.

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

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

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

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

(g) **FULL-TIME MEMBERS AND STAFF.**—

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

(2) **STAFF.**—The staff of the Board shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that each member of the Board pursuant to paragraph (4) may appoint one staff member without regard to the such provisions governing appointments in the competitive service and such staff members may be paid by the Board without regard to the such provisions relating to classification and General Schedule pay rates.

(h) **MEETINGS.**—

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

(2) **SPECIAL MEETINGS.**—Any member of the Board may, upon giving written notice to the Director, require a special meeting of the Board, which shall be convened by the Director within 30 days after such notice.

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

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

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

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

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

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

(6) *such other matters relating to the Agency, the Board, and the regulated entities, and their fulfillment of their missions, as the Board determines appropriate.*

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

(k) *EXEMPTION.—Notwithstanding any other provision of law, the provisions of section 552b of title 5, United States Code, shall not apply to the Board.*

SEC. 1314. AUTHORITY TO REQUIRE REPORTS BY [ENTERPRISES] REGULATED ENTITIES.

(a) **[SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION] REGULAR AND SPECIAL REPORTS.—**

(1) **[FINANCIAL CONDITION] REGULAR REPORTS.—**The Director may require **[an enterprise] a regulated entity** to submit **[reports of financial condition and operations] regular reports on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate** (in addition to the annual and quarterly reports required under section 309(k) of the Federal National Mortgage Association Charter Act and section 307(c) of the Federal Home Loan Mortgage Corporation Act).

(2) **SPECIAL REPORTS.—**The Director may also require **[an enterprise] a regulated entity** to submit special reports *on any of the topics specified in paragraph (1) or such other topics* whenever, in the judgment of the Director, such reports are necessary to carry out the purposes of this title.

(3) **LIMITATION.—**The Director may not require the inclusion, in any report pursuant to paragraph (1) or (2), of any information that is not reasonably obtainable by **[the enterprise] the regulated entity**.

(4) **NOTICE AND DECLARATION.—**The Director shall notify **[the enterprise] the regulated entity**, a reasonable period in advance of the date for submission of any report under this subsection, of any specific information to be contained in the report and the date for the submission of the report. Each report under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of **[the enterprise] the regulated entity** to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(b) **CAPITAL DISTRIBUTIONS.—**The Director may require **[an enterprise] a regulated entity** to submit a report to the Director after the declaration of any capital distribution by **[the enterprise] the regulated entity** and before making the capital distribution. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.

(c) **REPORTS OF FRAUDULENT FINANCIAL TRANSACTIONS.—**

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

(2) *PROTECTION FROM LIABILITY FOR REPORTS.—*

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 1315. PERSONNEL.

(a) **OFFICE PERSONNEL.—THE** *IN GENERAL.*—*Subject to titles III and IV of the Federal Housing Finance Reform Act of 2005, the Director may appoint and fix the compensation of such officers and employees of the [Office] Agency as the Director considers necessary to carry out the functions of the Director and the [Office] Agency. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.*

(b) **COMPARABILITY OF COMPENSATION WITH FEDERAL BANKING AGENCIES.**—*In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.*

(c) **PERSONNEL OF OTHER FEDERAL AGENCIES.**—*In carrying out the duties of the [Office] Agency, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.*

[(d) REIMBURSEMENT OF HUD.—*The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office.]*

[(e)] (d) OUTSIDE EXPERTS AND CONSULTANTS.—*Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the [Office] Agency.*

[(f) EQUAL OPPORTUNITY REPORT.—*Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 1312, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—*

[(1) a complete description of the equal opportunity, affirmative action, and minority business enterprise utilization programs of the Office; and

[(2) such recommendations for administrative and legislative action as the Director determines appropriate to carry out such programs.]

SEC. 1316. FUNDING.

[(a) ANNUAL ASSESSMENTS.—*The Director may, to the extent provided in appropriation Acts, establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office, including the expenses of any examinations under section 1317. The initial annual assessment shall include any startup*

costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year.】

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

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

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

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

(b) ALLOCATION OF ANNUAL ASSESSMENT TO 【ENTERPRISES】 REGULATED ENTITIES.—

(1) AMOUNT OF PAYMENT.—【Each enterprise】 *Each regulated entity shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of 【each enterprise】 each regulated entity bears to the total assets of 【both enterprises】 all of the regulated entities.*

(2) TIMING OF PAYMENT.—*The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.*

【(3) DEFINITION.—For the purpose of this section, the term “total assets” means, with respect to an enterprise, the sum of—】

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

(A) Enterprises.—*With respect to an enterprise, the sum of—*

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

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

【(C)】 *(iii) other off-balance-sheet obligations as determined by the Director.*

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

【(c) DEFICIENCIES DUE TO INCREASED COSTS OF REGULATION.—The semiannual payments made pursuant to subsection (b) by any enterprise that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise.】

(c) INCREASED COSTS OF REGULATION.—

(1) INCREASE FOR INADEQUATE CAPITALIZATION.—*The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subtitle B) as*

adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.

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

(3) *ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized or as the result of supervisory or enforcement activities under subtitle B or C for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.*

(d) *SURPLUS.—[If] Except with respect to amounts collected pursuant to subsection (a)(3), if any amount from any annual assessment collected from [an enterprise] a regulated entity remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from [the enterprise] the regulated entity for the following year.*

(e) *INITIAL SPECIAL ASSESSMENT.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the enterprises shall each pay into the Federal Housing Enterprises Oversight Fund established under subsection (f) an initial assessment of \$1,500,000 to cover the startup costs of the Office, including space and modifications thereof, capital equipment, supplies, recruitment, and activities of the Office during the period preceding the first annual assessment under subsection (a). Any amounts collected from an enterprise under this subsection shall be credited against the first annual assessment collected pursuant to subsection (a), and are hereby appropriated, and shall be available and used, without fiscal year limitation, as provided in this section.*

(f) *FUND.—There is established in the Treasury of the United States a fund to be known as the Federal Housing Enterprises Oversight Fund. Any assessments collected pursuant to this section shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriation Acts and subsection (e), for—*

[(1) carrying out the responsibilities of the Director relating to the enterprises; and

[(2) necessary administrative and nonadministrative expenses of the Office to carry out the purposes of this title.

(g) *BUDGET AND FINANCIAL REPORTS.—*

【(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Director shall submit a copy of the financial operating plans and forecasts for the Office to the Secretary and the Director of the Office of Management and Budget.

【(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Director shall submit a copy of the report of the results of the operations of the Office during such period to the Secretary and the Director of the Office of Management and Budget.

【(3) INCLUSION IN PRESIDENT'S BUDGET.—The annual plans, forecasts, and reports required under this subsection shall be included (A) in the Budget of the United States in the appropriate form, and (B) in the congressional justifications of the Department of Housing and Urban Development for each fiscal year in a form determined by the Secretary.】

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

(f) *TREATMENT OF ASSESSMENTS.*—

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

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

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

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

(5) *AVAILABILITY OF OVERSIGHT FUND AMOUNTS.*—*Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date under section 185 of the Federal Housing Finance Reform Act of 2005), and any amounts remaining from assessments on the Federal Home Loan banks pursuant to section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.*

(g) *BUDGET AND FINANCIAL MANAGEMENT.*—

(1) *FINANCIAL OPERATING PLANS AND FORECASTS.*—*The Director shall provide to the Director of the Office of Management and Budget copies of the Director's financial operating plans*

and forecasts as prepared by the Director in the ordinary course of the Agency's operations, and copies of the quarterly reports of the Agency's financial condition and results of operations as prepared by the Director in the ordinary course of the Agency's operations.

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

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

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

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

(h) *AUDIT OF AGENCY.*—

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

(2) *REPORT.*—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope

of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.

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

SEC. 1317. EXAMINATIONS.

(a) ANNUAL EXAMINATION.—The Director shall annually conduct an on-site examination under this section of **[each enterprise]** *each regulated entity* to determine the condition of **[the enterprise]** *the regulated entity* for the purpose of ensuring its financial safety and soundness. *Each examination under this subsection of a regulated entity shall include a review of the procedures required to be established and maintained by the regulated entity pursuant to section 1314(c) (relating to fraudulent financial transactions) and the report regarding each such examination shall describe any problems with such procedures maintained by the regulated entity.*

(b) OTHER EXAMINATIONS.—In addition to annual examinations under subsection (a), the Director may conduct an examination under this section *of a regulated entity* whenever the Director determines that an examination is necessary **[to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness]** *or appropriate.*

(c) EXAMINERS.—The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision for the services of examiners *to conduct examinations under this section.* The Director shall reimburse such agencies for any costs of providing examiners **[from amounts available in the Federal Housing Enterprises Oversight Fund].**

* * * * *

(e) TECHNICAL EXPERTS.—The Director may obtain the services of any technical experts the Director considers appropriate to provide temporary technical assistance relating to examinations to the Di-

rector, officers, and employees of the [Office] Agency. The Director shall describe, in the record of each examination, the nature and extent of any such temporary technical assistance.

(f) OATHS, EVIDENCE, AND SUBPOENA POWERS.—In connection with examinations under this section, the Director shall have the authority provided under [section 1379B] *section 1379D*.

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

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

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

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

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

SEC. 1318. PROHIBITION [OF EXCESSIVE] AND WITHHOLDING OF EXECUTIVE COMPENSATION.

(a) IN GENERAL.—The Director shall prohibit [the enterprises] *the regulated entities* from providing compensation to any executive officer of [the enterprise] *the regulated entity* that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

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

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

[(b)] (d) PROHIBITION OF SETTING COMPENSATION.—In carrying out subsection (a), the Director may not prescribe or set a specific level or range of compensation.

[SEC. 1319. AUTHORITY TO PROVIDE FOR REVIEW OF ENTERPRISES BY RATING ORGANIZATION.]

SEC. 1319. REVIEWS OF REGULATED ENTITIES.

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity *that the Director considers appropriate, including an entity effectively recognized by the*

Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers, to conduct a review of **the enterprises** *the regulated entities*.

SEC. 1319A. EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS.

[(a) IN GENERAL.—Each enterprise] *Each regulated entity* shall establish a minority outreach program to ensure the inclusion (to the maximum extent possible) in contracts entered into by the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

[(b) REPORT.—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act, each enterprise shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken by the enterprise pursuant to subsection (a).]

SEC. 1319B. ANNUAL REPORTS BY DIRECTOR.

(a) **GENERAL REPORT.—**The Director shall submit to the **Committee on Banking, Finance and Urban Affairs** *Committee on Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than June 15 of each year, a written report, which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this title;

(2) a description of the financial safety and soundness of **each enterprise** *each regulated entity*, including the results and conclusions of the annual examinations of **the enterprises** *the regulated entities* conducted under section 1317(a);

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

[(4) a description of—

[(A) whether the procedures established by each enterprise pursuant to section 102(b)(3) of the Flood Disaster Protection Act of 1973 are adequate and being complied with, and

[(B) the results and conclusions of any examination, as determined necessary by the Director, to determine the compliance of the enterprises with the requirements of section 102(b)(3) of such Act, which shall include a description of the methods used to determine compliance and the types and sources of deficiencies (if any), and identify any corrective measures that have been taken to remedy any such deficiencies,

except that the information described in this paragraph shall be included only in each of the first, third, and fifth annual reports under this subsection required to be submitted after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.]

- (4) *an assessment of the Board with respect to—*
 - (A) *the safety and soundness of the regulated entities;*
 - (B) *any material deficiencies in the conduct of the operations of the regulated entities;*
 - (C) *the overall operational status of the regulated entities;*
 - (D) *an evaluation of the performance of the regulated entities in carrying out their missions, including compliance of the enterprises with the housing goals under subpart B of part 2 of this subtitle and compliance of the Federal home loan banks with the community investment and affordable housing programs under subsections (i) and (j) of section 10 of the Federal Home Loan Bank Act;*
 - (E) *an evaluation of the performance of the Agency in fulfilling its duties and responsibilities under law; and*
 - (F) *such other matters relating to the Board and the fulfillment of its duties as the Board considers appropriate;*
- (5) *operations, resources, and performance of the Agency; and*
- (6) *such other matters relating to the Agency and its fulfillment of its mission.*

(b) **REPORT ON ENFORCEMENT ACTIONS.**—Not later than March 15 of each year, the Director shall submit to the [Committee on Banking, Finance and Urban Affairs] *Committee on Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subtitle C and describing the disposition of each request, which shall include statements of—

- (1) * * *
- * * * * *

SEC. 1319C. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) **IN GENERAL.**—The Director shall make available to the public—

- (1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director’s discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of [the enterprise] *the regulated entity*;

* * * * *

(c) **DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.**—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of [the enterprise] *the regulated entity*, the Director may delay the public disclosure of such order for a reasonable time.

* * * * *

SEC. 1319D. LIMITATION ON SUBSEQUENT EMPLOYMENT.

Neither the Director nor any former officer or employee of the [Office] *Agency* who, while employed by the [Office] *Agency*, was

compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under section 5107 of title 5, United States Code, may accept compensation from **[an enterprise]** *a regulated entity* during the 2-year period beginning on the date of separation from employment by the **[Office]** *Agency*.

SEC. 1319E. AUDITS BY GAO.

The Comptroller General shall audit the operations of the **[Office]** *Agency* in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the **[Office]** *Agency* shall be made available to the Comptroller General. Audits under this section shall be conducted annually for the first 2 fiscal years following the date of the enactment of this Act and as appropriate thereafter.

SEC. 1319F. INFORMATION, RECORDS, AND MEETINGS.

For purposes of subchapter II of chapter 5 of title 5, United States Code—

[(1) the Office, and

[(2) the Department of Housing and Urban Development,

with respect to activities under this title,

shall be considered agencies responsible for the regulation or supervision of financial institutions. **]**, *the Agency shall be considered an agency responsible for the regulation or supervision of financial institutions.*

SEC. 1319G. REGULATIONS AND ORDERS.

[(a) AUTHORITY.—The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this title before the expiration of the 18-month period beginning on the appointment of the Director under section 1312. Such regulations and orders shall be subject to the approval of the Secretary only to the extent provided in subsections (b) and (c) of section 1313. **]**

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

[(b) NOTICE AND COMMENT.—Any regulations issued by the Director under this section, *this title, or any of the authorizing statutes* shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

[(c) CONGRESSIONAL REVIEW.—The Director may not publish any regulation for comment under subsection (b) unless, not less than 15 days before it is published for comment, the Director has submitted a copy of the regulation, in the form it is intended to be proposed, to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. **]**

[PART 2—AUTHORITY OF SECRETARY]

**PART 2—PROGRAM AND ACTIVITIES APPROVAL
BY DIRECTOR, CORPORATE GOVERNANCE,
AND ESTABLISHMENT OF HOUSING GOALS**

Subpart A—General Authority

[SEC. 1321. REGULATORY AUTHORITY.

【Except for the authority of the Director of the Office of Federal Housing Enterprise Oversight described in section 1313(b) and all other matters relating to the safety and soundness of the enterprises, the Secretary of Housing and Urban Development shall have general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act are accomplished.

[SEC. 1322. PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.

【(a) AUTHORITY.—The Secretary shall require each enterprise to obtain the approval of the Secretary for any new program of the enterprise before implementing the program.

【(b) STANDARD FOR APPROVAL.—

【(1) PERMANENT STANDARD.—Except as provided in paragraph (2), the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

【(A) for a new program of the Federal National Mortgage Association, the Secretary determines that the program is not authorized under paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act, or under section 304 of such Act;

【(B) for a new program of the Federal Home Loan Mortgage Corporation, the Secretary determines that the program is not authorized under section 305(a) (1), (4), or (5) of the Federal Home Loan Mortgage Corporation Act; or

【(C) the Secretary determines that the new program is not in the public interest.

【(2) TRANSITION STANDARD.—Before the date occurring 12 months after the date of the effectiveness of the regulations under section 1361(e) establishing the risk-based capital test, the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

【(A) The Secretary makes a determination as described in paragraph (1) (A), (B), or (C); or

【(B) the Director determines that the new program would risk significant deterioration of the financial condition of the enterprise.

【(c) PROCEDURE FOR APPROVAL.—

【(1) SUBMISSION OF REQUEST.—To obtain the approval of the Secretary for purposes of subsection (a), an enterprise shall submit to the Secretary a written request for approval of the new program that describes the program.

【(2) RESPONSE.—The Secretary shall, not later than the expiration of the 45-day period beginning upon the submission of

a request for approval, approve the request or submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report explaining the reasons for not approving the request. The Secretary may extend such period for a single additional 15-day period only if the Secretary requests additional information from the enterprise.

[(3) FAILURE TO RESPOND.—If the Secretary fails to approve the request or fails to submit a report under paragraph (2) during the period under such paragraph, the request shall be considered to have been approved.]

[(4) REVIEW OF DISAPPROVAL.—

[(A) UNAUTHORIZED NEW PROGRAMS.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subparagraph (A) or (B) of subsection (b)(1), the Secretary shall provide the enterprise submitting the request with a timely opportunity to review and supplement the administrative record.]

[(B) NEW PROGRAMS NOT IN PUBLIC INTEREST.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subsection (b)(1)(C) or (b)(2)(B), the Secretary shall provide the enterprise submitting the request notice of, and opportunity for, a hearing on the record regarding such disapproval.]

SEC. 1321. REVIEW AND APPROVAL BY DIRECTOR OF NEW PROGRAMS AND BUSINESS ACTIVITIES OF ENTERPRISES.

(a) *LIMITATION ON AUTHORITY TO UNDERTAKE PROGRAMS AND ACTIVITIES.*—An enterprise may not undertake any new program, including a pilot program, or any new business activity except in accordance with the procedures set forth in this section and orders and regulations issued under this section.

(b) *NEW PROGRAMS.*—

(1) *PRIOR APPROVAL REQUIREMENT.*—An enterprise may not commence any new program before it has obtained the approval of the Director, pursuant to this subsection, for the new program.

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

(3) *NOTICE.*—Immediately upon receipt of a complete application for a new program, the Director shall cause to be published in the Federal Register notice of the receipt of such application and of the period for public comment pursuant to paragraph (4) regarding such new program, and a description of the new program proposed by the application.

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

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

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

(A) does not contravene and is not inconsistent with the purposes of this title, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act, as such purposes are determined taking into consideration the definitions of the terms “mortgage loan origination” and “secondary mortgage market” pursuant to section 1303;

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

(C) is in the public interest.

(7) *LIMITATION.*—The Director, in implementing this subsection, may not prevent an enterprise from continuing to offer the automated loan underwriting system in existence on the date of the enactment of the Federal Housing Finance Reform Act of 2005 or continuing to engage in counseling and education activities.

(c) *NEW BUSINESS ACTIVITIES.*—

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

(A) contravenes or is inconsistent with the purposes of this title, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act;

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

(C) is not in the public interest.

(2) *NOTIFICATION OF NEW BUSINESS ACTIVITIES.*—An enterprise that undertakes any new business activity shall provide written notice of the activity to the Director and may commence the new business activity only in accordance with paragraph (4).

(3) *DIRECTOR DETERMINATION OF APPLICABLE PROCEDURE.*—

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

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

(i) the Director shall notify the enterprise of the determination;

(ii) the new business activity described in the notice shall be considered a new program for purposes of this section; and

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

(4) **COMMENCEMENT.**—An enterprise may commence a new business activity—

(A) if the Director issues a written approval regarding such new business activity, immediately upon such issuance or at such other time as provided by the Director in such letter; or

(B) if, during the 30-day period beginning upon receipt by the Director of notice pursuant to paragraph (2) regarding a new business activity, the Director has not issued to the enterprise a written approval or denial of the new business activity, upon the expiration of such 30-day period.

(d) **APPROVAL AND CONDITIONAL APPROVAL.**—The Director may at any time conditionally approve the undertaking of a particular new program or new business activity by an enterprise and set forth the terms and conditions that apply to the program or activity with which the enterprise shall comply if it undertakes the new program or activity. Such approval may, in the discretion of the Director, be in the form of a written agreement between the enterprise and the Director and shall be subject to such terms and conditions therein. Such a written agreement or conditional approval shall be enforceable under subtitle C.

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

(1) the Director shall notify the enterprise of the determination;

(2) such activity shall be considered a new business activity for purposes of this section; and

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

(f) **EFFECT ON OTHER AUTHORITIES.**—

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

(2) **REQUESTS FOR INFORMATION.**—Nothing in this section may be construed to limit the right of the Director at any time to request additional information from an enterprise concerning any business activity.

(3) **NO IMPLIED RIGHT OF ACTION.**—This section shall not create any private right of action against an enterprise or any director or executive officer of an enterprise, or impair any private right of action under other applicable law.

(4) **NO LIMITATION.**—Nothing in this section may be construed to restrict the general supervisory and regulatory authority of

the Director over all programs, products, activities, or business operations of any kind.

(g) **REPORT ON PROGRAMS AND BUSINESS ACTIVITIES.**—*Not later than the expiration of the 180-day period beginning on the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, each enterprise shall submit to the Director a report identifying and describing each program and business activity of the enterprise engaged in or existing as of the submission of the report.*

(h) **REGULATIONS.**—*The Director shall by order or regulation issue rules and procedures to implement this section, including in the discretion of the Director, such definitions, interpretations, forms, and other guidances as the Director considers appropriate.*

SEC. 1322. HOUSING PRICE INDEX.

(a) **IN GENERAL.**—*The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.*

(b) **GAO AUDIT.**—

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

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

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

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

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

SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.

(a) **BOARD OF DIRECTORS.**—

(1) **INDEPENDENCE.**—*A majority of seated members of the board of directors of each enterprise shall be independent board members, as defined under rules set forth by the New York*

Stock Exchange, as such rules may be amended from time to time.

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

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

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

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

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

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

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

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

(A) *Audit committee.*

(B) *Compensation committee.*

(C) *Nominating/corporate governance committee.*

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

(c) *COMPENSATION.*—

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

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

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

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

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

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

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

(d) *CODE OF CONDUCT AND ETHICS.*—

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

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

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

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

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

(3) Compensation programs of the enterprise.

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

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

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

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

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

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

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

(i) *COMPLIANCE PROGRAM.*—

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

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

(j) *RISK MANAGEMENT PROGRAM.*—

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

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

(k) *COMPLIANCE WITH OTHER LAWS.*—

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

(2) *REGISTERED COMMON STOCK.*—An enterprise that has its common stock registered with the Securities and Exchange Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of the sections of the Securities Ex-

change Act of 1934 and the Sarbanes-Oxley Act of 2002, subject to such requirements as provided by subsection (l) of this section.

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

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

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

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

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

SEC. 1323. PUBLIC ACCESS TO MORTGAGE INFORMATION OF ENTERPRISES.

(a) *IN GENERAL.—The [Secretary] Director shall make available to the public, in forms useful to the public (including forms accessible by computers), the data submitted by the enterprises in the reports required under section 309(m) of the Federal National Mortgage Association Charter Act or section 307(e) of the Federal Home Loan Mortgage Corporation Act.*

(b) *ACCESS.—*

(1) *PROPRIETARY DATA.—Except as provided in paragraph (2), the [Secretary] Director may not make available to the public data that the [Secretary] Director determines pursuant to section 1326 are proprietary information.*

(2) *EXCEPTION.—The [Secretary] Director shall not restrict access to the data provided in accordance with section 309(m)(1)(A) of the Federal National Mortgage Association Charter Act or section 307(e)(1)(A) of the Federal Home Loan Mortgage Corporation Act.*

(c) *FEES.—The [Secretary] Director may charge reasonable fees to cover the cost of making data available under this section to the public.*

[SEC. 1324. ANNUAL HOUSING REPORT.

[(a) IN GENERAL.—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act and section 307(f) of the Federal Home Loan Mortgage Corporation Act, the Secretary shall submit a report, as part of the annual report under section 1328(a) of this title, on the extent to which each enterprise is achieving the annual housing goals established under subpart B of this part and the purposes of the enterprise established by law.

[(b) CONTENTS.—The report shall—

[(1) aggregate and analyze census tract data to assess the compliance of each enterprise with the central cities, rural areas, and other underserved areas housing goal and to determine levels of business in central cities, rural areas, underserved areas, low- and moderate-income census tracts, minority census tracts, and other geographical areas deemed appropriate by the Secretary;

[(2) aggregate and analyze data on income to assess the compliance of each enterprise with the low- and moderate-income and special affordable housing goals;

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

[(4) examine actions that each enterprise has undertaken or could undertake to promote and expand the annual goals established under sections 1332, 1333, and 1334, and the purposes of the enterprise established by law;

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

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

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

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

[(6) examine actions each enterprise has undertaken and could undertake to promote and expand opportunities for first-time homebuyers; and

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

SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

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

(b) *CONTENTS.*—The report shall—

(1) *discuss the extent to which—*

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

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

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

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

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

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

(4) examine actions that—

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

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

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

(A) the availability and liquidity of mortgage credit;

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

(C) any factors inhibiting such standardization and securitization;

(6) examine actions each regulated entity has undertaken and could undertake to promote and expand opportunities for first-time homebuyers;

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

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

(9) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime loans (as identified in accordance with the regulations issued pursuant to section 124(b) of the Federal Housing Finance Reform Act of 2005) and compare the characteristics of subprime loans purchased and securitized by the enterprises to other loans purchased and securitized by the enterprises

(c) DATA COLLECTION AND REPORTING.—

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

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

(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

(i) the price of the house that secures the mortgage;

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

(iii) the terms of the mortgage;

(iv) the creditworthiness of the borrower or borrowers; and

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

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

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

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

SEC. 1325. FAIR HOUSING.

The [Secretary] Director shall—

(1) * * *

(2) by regulation, require each enterprise to submit data to the [Secretary] Director to assist the [Secretary] Director in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act;

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

* * * * *

SEC. 1326. PROHIBITION OF PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION.

(a) IN GENERAL.—The [Secretary] Director may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 1323 of this title, section 309(n)(3) of the Federal National Mortgage Association Charter Act, or section 307(f)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) PROTECTION OF INFORMATION ON HOUSING ACTIVITIES.—The [Secretary] Director shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 309(n) of the Federal National Mortgage Association Charter Act or section 307(f) of the Federal Home Loan Mortgage Corporation Act that the [Secretary] Director determines is proprietary.

* * * * *

[SEC. 1327. AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.

[The Secretary shall require each enterprise to submit reports on its activities to the Secretary as the Secretary considers appropriate.

[SEC. 1328. REPORTS BY SECRETARY.

[(a) ANNUAL REPORT.—The Secretary shall, not later than June 30 of each year, submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of each enterprise.

[(b) VIEWS ON BUDGET AND FINANCIAL PLANS OF ENTERPRISES.—On an annual basis, the Secretary shall provide the Committees referred to in subsection (a) with comments on the plans, forecasts, and reports required under section 1316(g).]

Subpart B—Housing Goals**[SEC. 1331. ESTABLISHMENT.**

[(a) IN GENERAL.—The Secretary shall establish, by regulation, housing goals under this subpart for each enterprise. The housing goals shall include a low- and moderate-income housing goal pursuant to section 1332, a special affordable housing goal pursuant to section 1333, and a central cities, rural areas, and other underserved areas housing goal pursuant to section 1334. The Secretary shall implement this subpart in a manner consistent with section 301(3) of the Federal National Mortgage Association Charter Act and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act.

[(b) CONSIDERATION OF UNITS IN MULTIFAMILY HOUSING.—In establishing any goal under this subpart, the Secretary may take into consideration the number of housing units financed by any mortgage on multifamily housing purchased by an enterprise.

[(c) ADJUSTMENT OF HOUSING GOALS.—Except as otherwise provided in this title, from year to year the Secretary may, by regulation, adjust any housing goal established under this subpart.

[SEC. 1332. LOW- AND MODERATE-INCOME HOUSING GOAL.

[(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing for low- and moderate-income families. The Secretary may establish separate specific subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

[(b) FACTORS TO BE APPLIED.—In establishing the goal under this section, the Secretary shall consider—

[(1) national housing needs;

[(2) economic, housing, and demographic conditions;

[(3) the performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;

[(4) the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;

[(5) the ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and

[(6) the need to maintain the sound financial condition of the enterprises.

[(c) USE OF BORROWER AND TENANT INCOME.—

[(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

[(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

[(B) in the case of a rental dwelling—

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

[(ii) the rent levels affordable to low- and moderate-income families, where the data referred to in clause (i) are not available.

[(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

[(d) TRANSITION.—

[(1) INTERIM TARGET.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for low- and moderate-income mortgage purchases for each enterprise shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

[(2) INTERIM GOAL.—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

[(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

[(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

[(3) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

[SEC. 1333. SPECIAL AFFORDABLE HOUSING GOAL.

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—The Secretary shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families. The special affordable housing goal established under this

section for an enterprise shall not be less than 1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year.

[(2) STANDARDS.—In establishing the special affordable housing goal for an enterprise, the Secretary shall consider—

[(A) data submitted to the Secretary in connection with the special affordable housing goal for previous years;

[(B) the performance and efforts of the enterprise toward achieving the special affordable housing goal in previous years;

[(C) national housing needs within the categories set forth in this section;

[(D) the ability of the enterprise to lead the industry in making mortgage credit available for low-income and very low-income families; and

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

[(b) FULL CREDIT ACTIVITIES.—

[(1) IN GENERAL.—The Secretary shall give full credit toward achievement of the special affordable housing goal under this section (for purposes of section 1336) to the following activities:

[(A) FEDERALLY RELATED MORTGAGES.—The purchase or securitization of federally insured or guaranteed mortgages, if—

[(i) such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal agency;

[(ii) participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

[(iii) the mortgages involved are on housing that otherwise qualifies under such goal to be considered for purposes of such goal.

[(B) PORTFOLIOS.—The purchase or refinancing of existing, seasoned portfolios of loans, if—

[(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and

[(ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal.

[(C) RTC AND FDIC LOANS.—The purchase of direct loans made by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation, if such loans—

[(i) are not guaranteed by such agencies themselves or other Federal agencies;

[(ii) are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

[(iii) are made for the purchase of housing that otherwise qualifies under such goal to be considered for purposes of such goal.

[(2) EXCLUSION.—No credit toward the achievement of the special affordable housing goal may be given to the purchase

or securitization of mortgages associated with the refinancing of the existing enterprise portfolios.

[(c) USE OF BORROWER AND TENANT INCOME.—

[(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

[(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage;
or

[(B) in the case of a rental dwelling—

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

[(ii) the rent levels affordable to low-income and very low-income families, where the data referred to in clause (i) are not available.

[(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

[(d) TRANSITION.—

[(1) FNMA MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal National Mortgage Association shall include mortgage purchases of not less than \$2,000,000,000 (for such 2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

[(2) FHLMC MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal Home Loan Mortgage Corporation shall include mortgage purchases of not less than \$1,500,000,000 (for such 2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

[(3) INCOME CHARACTERISTICS FOR MORTGAGE PURCHASES.—

[(A) MULTIFAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on multifamily housing that are purchased and contribute to the achievement of such goals—

[(i) 45 percent shall be mortgages on multifamily housing affordable to low-income families; and

[(ii) 55 percent shall be mortgages on multifamily housing in which—

[(I) at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the median income for the area; or

[(II) at least 40 percent of the units are affordable to very low-income families.

[(B) SINGLE FAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2)

shall provide that, of mortgages on single family housing that are purchased and contribute to the achievement of such goals—

[(i) 45 percent shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income; and

[(ii) 55 percent shall be mortgages of very low-income families.

[(C) COMPLIANCE WITH SPECIAL AFFORDABLE HOUSING GOALS.—Only the portion of mortgages on multifamily housing purchased by an enterprise that are attributable to units affordable to low-income families shall contribute to the achievement of the special affordable housing goals under subparagraph (A)(ii).

[(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

[SEC. 1334. CENTRAL CITIES, RURAL AREAS, AND OTHER UNDERSERVED AREAS HOUSING GOAL.

[(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas. The Secretary may establish separate subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

[(b) FACTORS TO BE APPLIED.—In establishing the housing goal under this section, the Secretary shall consider—

[(1) urban and rural housing needs and the housing needs of underserved areas;

[(2) economic, housing, and demographic conditions;

[(3) the performance and efforts of the enterprises toward achieving the central cities, rural areas, and other underserved areas housing goal in previous years;

[(4) the size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

[(5) the ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

[(6) the need to maintain the sound financial condition of the enterprises.

[(c) LOCATION OF PROPERTIES.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on the location of the properties subject to mortgages purchased by each enterprise.

[(d) TRANSITION.—

[(1) INTERIM TARGET.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for purchases by each enterprise of mortgages on housing located in central cities shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

[(2) INTERIM GOAL.—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

[(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

[(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

[(3) DEFINITION OF CENTRAL CITY.—For purposes of this subsection, the term “central city” means any political subdivision designated as a central city by the Office of Management and Budget.

[(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.]

SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

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

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

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

(b) *ELIMINATING INTEREST RATE DISPARITIES.*—

(1) *IN GENERAL.*—In establishing and implementing the housing goals under this subpart, the Director shall require the enterprises to disclose appropriate information to allow the Director to assess if there are any disparities in interest rates charged on mortgages to borrowers who are minorities as compared with borrowers of similar creditworthiness who are not minorities, as evidenced in reports pursuant to the Home Mortgage Disclosure Act of 1975.

(2) *REPORT AND REMEDY.*—Upon a finding by the Director, pursuant to the information provided by an enterprise in paragraph (1), that a pattern of disparities in interest rates exists, the Director shall—

(A) submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking,

Housing, and Urban Affairs of the Senate a report detailing the disparities; and

(B) require the enterprise to take such action as the Director deems appropriate pursuant to this Act to remedy the interest rate disparities identified.

(3) PROTECTION OF IDENTITY.—In carrying out this subsection, the Director shall ensure that no information is made public that would reasonably allow identification, directly or indirectly, of an individual borrower.

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

SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

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

(1) Low-income families.

(2) Families that reside in low-income areas.

(3) Very low-income families.

(b) DETERMINATION OF COMPLIANCE.—The Director shall determine, for each year that the housing goal under this section is in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing goal established under this section for such year. An enterprise shall be considered to be in compliance with such a goal for a year only if—

(1) for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by each enterprise in such year that serve such families, meets or exceeds

(2) the target for the year for such type of family that is established under subsection (c).

(c) ANNUAL TARGETS.—

(1) IN GENERAL.—Except as provided in paragraph (2), for each of the types of families described in subsection (a), the target under this subsection for a year shall be the average percentage, for the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 is publicly available, of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages originated in such year that serves such type of family, as determined by the Director using the information obtained and determined pursuant to paragraphs (3) and (4).

(2) AUTHORITY TO INCREASE TARGETS.—

(A) IN GENERAL.—The Director may, for any year, establish by regulation, for any or all of the types of families described in subsection (a), percentage targets that are higher than the percentages for such year determined pursuant to paragraph (1), to reflect expected changes in market performance related to such information under the Home Mortgage Disclosure Act of 1975.

(B) *FACTORS.*—In establishing any targets pursuant to subparagraph (A), the Director shall consider the following factors:

- (i) *National housing needs.*
- (ii) *Economic, housing, and demographic conditions.*
- (iii) *The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.*
- (iv) *The size of the conventional mortgage market serving each of the types of families described in subsection (a) relative to the size of the overall conventional mortgage market.*
- (v) *The need to maintain the sound financial condition of the enterprises.*

(3) *HMDA INFORMATION.*—The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 regarding conventional, conforming, single-family, owner-occupied, purchase money mortgages originated and purchased for the previous year.

(4) *CONFORMING MORTGAGES.*—In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (3), as rounded to the nearest thousand dollars.

(d) *NOTICE OF DETERMINATION AND ENTERPRISE COMMENT.*—

(1) *NOTICE.*—Within 30 days of making a determination under subsection (b) regarding a compliance of an enterprise for a year with the housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (c).

(2) *COMMENT PERIOD.*—The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

(e) *USE OF BORROWER INCOME.*—In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 1336), the Director shall consider a mortgagor's income to be such income at the time of origination of the mortgage.

SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE GOAL.

(a) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—The Director shall establish, by regulation, an annual goal for the purchase by each enterprise of each of the following types of mortgages on multifamily housing:

(A) *Mortgages that finance dwelling units for very low-income families.*

(B) *Mortgages that finance dwelling units assisted by the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986.*

(2) *ADDITIONAL REQUIREMENTS FOR SMALLER PROJECTS.*—The Director shall establish, within the goal under this section, ad-

ditional requirements for the purchase by each enterprise of mortgages described in paragraph (1) for multifamily housing projects of a smaller or limited size, which may be based on the number of dwelling units in the project or the amount of the mortgage, or both, and shall include multifamily housing projects of such smaller sizes as are typical among such projects that serve rural areas.

(3) FACTORS.—In establishing the goal under this section relating to mortgages on multifamily housing for an enterprise, the Director shall consider—

(A) national multifamily mortgage credit needs;

(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

(C) the size of the multifamily mortgage market;

(D) the ability of the enterprise to lead the industry in making mortgage credit available, especially for underserved markets, such as for small multifamily projects of 5 to 50 units, multifamily properties in need of rehabilitation, and multifamily properties located in rural areas; and

(E) the need to maintain the sound financial condition of the enterprise.

(b) UNITS FINANCED BY HOUSING FINANCE AGENCY BONDS.—The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 1336) to dwelling units in multifamily housing that otherwise qualifies under such goal and that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, but only if—

(1) such bonds are secured by a guarantee of the enterprise;

or

(2) are not investment grade and are purchased by the enterprise.

(c) USE OF TENANT INCOME OR RENT.—The Director shall monitor the performance of each enterprise in meeting the goals established under this section and shall evaluate such performance (for purposes of section 1336) based on—

(1) the income of the prospective or actual tenants of the property, where such data are available; or

(2) where the data referred to in paragraph (1) are not available, rent levels affordable to low-income and very low-income families.

A rent level shall be considered to be affordable for purposes of this subsection for an income category referred to in this subsection if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) DETERMINATION OF COMPLIANCE.—The Director shall, for each year that the housing goal under this section is in effect pursuant to section 1331(a), determine whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS.

(a) *AUTHORITY.*—An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal for such year established pursuant to this subpart.

(b) *STANDARD FOR REDUCTION.*—The Director may reduce the level for a goal pursuant to such a petition only if—

(1) market and economic conditions or the financial condition of the enterprise require such action; or

(2) efforts to meet the goal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of this subpart, or section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716(3)) or section 301(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note), as applicable.

(c) *DETERMINATION.*—The Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend such period for a single additional 15-day period, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to the United States District Court for the District of Columbia or the United States district court in the jurisdiction in which the headquarters of an enterprise is located.

SEC. 1335. DUTY TO SERVE UNDERSERVED MARKETS AND OTHER REQUIREMENTS.

(a) *DUTY TO SERVE UNDERSERVED MARKETS.*—

(1) *DUTY.*—In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.

(2) *UNDERSERVED MARKETS.*—To meet its duty under paragraph (1), each enterprise shall comply with the following requirements with respect to the following underserved markets:

(A) *MANUFACTURED HOUSING.*—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

(B) *AFFORDABLE HOUSING PRESERVATION.*—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—

(i) the project-based and tenant-based rental assistance programs under section 8 of the United States Housing Act of 1937;

(ii) the program under section 236 of the National Housing Act;

(iii) the below-market interest rate mortgage program under section 221(d)(4) of the National Housing Act;

(iv) the supportive housing for the elderly program under section 202 of the Housing Act of 1959;

(v) the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act; and

(vi) the rural rental housing program under section 515 of the Housing Act of 1949.

(C) *RURAL AND OTHER UNDERSERVED MARKETS.*—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Secretary identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area.

[(a)] (b) *IN GENERAL.*—To meet the [low- and moderate-income housing goal under section 1332, the special affordable housing goal under section 1333, and the central cities, rural areas, and other underserved areas housing goal under section 1334] housing goals established under this subpart and to carry out the duty under subsection (a) of this section, each enterprise shall—

(1) * * *

* * * * *

(3) take affirmative steps to—

(A) * * *

* * * * *

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures; and

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers[; and].

[(5) assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997.]

[(b) *AFFORDABLE HOUSING GOALS.*—Actions taken under subsection (a)(5) shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 1332, 1333, and 1334 for any fiscal year, as determined by the Secretary.]

(c) *EVALUATION AND REPORTING OF COMPLIANCE.*—

(1) *IN GENERAL.*—Not later than 6 months after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance.

Using such method, the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).

(2) *SEPARATE EVALUATIONS.—In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration—*

(A) the development of loan products and more flexible underwriting guidelines;

(B) the extent of outreach to qualified loan sellers in each of such underserved markets; and

(C) the volume of loans purchased in each of such underserved markets.

SEC. 1336. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

(a) **IN GENERAL.—**

(1) **AUTHORITY.—**The **Secretary** Director shall monitor and enforce compliance with the housing goals established under **sections 1332, 1333, and 1334,** *this subpart and with the duty under section 1335A of each enterprise with respect to underserved markets, as provided in this section.*

(2) **GUIDELINES.—**The **Secretary** Director shall establish guidelines to measure the extent of compliance with the housing goals, which may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the **Secretary** Director deems appropriate.

(3) **EXTENT OF COMPLIANCE.—**In determining compliance with the housing goals established under this subpart, the **Secretary** Director—

(A) * * *

* * * * *

(4) **ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—***The duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under sections 1332, 1333, and 1334 are enforceable. Such duty shall not be enforceable under any other provision of this title (including subpart C of this part) other than this section or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.*

(b) **NOTICE AND PRELIMINARY DETERMINATION OF FAILURE TO MEET GOALS.—**

(1) NOTICE.—If the Secretary determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, the Secretary shall provide written

notice to the enterprise of such a determination, the reasons for such determination, the requirement to submit a housing plan under subsection (c) of this section, and the information on which the Secretary based the determination or imposed such requirement.】

(1) NOTICE.—*If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.*

(2) RESPONSE PERIOD.—

(A) IN GENERAL.—During the 30-day period beginning on the date that an enterprise is provided notice under paragraph (1), the enterprise may submit to the 【Secretary】 *Director* any written information that the enterprise considers appropriate for consideration by the 【Secretary】 *Director* in *finally* determining whether such failure has occurred or whether the achievement of such goal was or is feasible.

【(B) EXTENDED PERIOD.—The Secretary may extend the period under subparagraph (A) for good cause for not more than 30 additional days.

【(C) SHORTENED PERIOD.—The Secretary may shorten the period under subparagraph (A) for good cause.】

(B) EXTENSION OR SHORTENING OF PERIOD.—*The Director may—*

- (i) *extend the period under subparagraph (A) for good cause for not more than 30 additional days; and*
- (ii) *shorten the period under subparagraph (A) for good cause.*

【(D)】 (C) FAILURE TO RESPOND.—The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the 【Secretary】 *Director*.

(3) CONSIDERATION OF INFORMATION AND DETERMINATION.—

(A) IN GENERAL.—After the expiration of the response period under paragraph (2) or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the 【Secretary】 *Director* shall 【determine】 *issue a final determination of* (i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal, and (ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

(B) CONSIDERATIONS.—In making such *final* determinations, the 【Secretary】 *Director* shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) NOTICE.—The 【Secretary】 *Director* shall provide written notice to the enterprise, the 【Committee on Banking, Finance and Urban Affairs】 *Committee on Financial*

Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, of—

(i) each *final* determination that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;

(ii) each *final* determination that the achievement of a housing goal was or is feasible; and

(iii) the reasons for each such *final* determination.

Such notice shall respond to any information submitted during the response period.

[(c) HOUSING PLANS.—

[(1) REQUIREMENT.—If the Secretary finds pursuant to subsection (b), that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, and that the achievement of the housing goal was or is feasible, the Secretary shall require the enterprise to submit a housing plan under this subsection for approval by the Secretary.]

(c) CEASE AND DESIST ORDERS, CIVIL MONEY PENALTIES, AND REMEDIES INCLUDING HOUSING PLANS.—

(1) REQUIREMENT.—*If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan or the Director finds that the enterprise has failed to meet any housing goal under this subpart, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, or order other remedies as set forth in paragraph (7) of this subsection.*

(2) [CONTENTS.—Each housing plan] **HOUSING PLAN.—***If the Director requires a housing plan under this section, such a plan shall be a feasible plan describing the specific actions the enterprise will take—*

(A) to achieve the goal for the next calendar year; or

(B) if the [Secretary] Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements *and changes in its operations* as are reasonable in the remainder of such year.

The plan shall be sufficiently specific to enable the [Secretary] Director to monitor compliance periodically.

(3) DEADLINE FOR SUBMISSION.—The [Secretary] Director shall, by regulation, establish a deadline for an enterprise to *comply with any remedial action* or submit a housing plan to the [Secretary] Director, which may not be more than 45 days after the enterprise is provided notice [under subsection (b)(3) that a housing plan is required]. The regulations shall provide

that the [Secretary] *Director* may extend the deadline to the extent that the [Secretary] *Director* determines necessary. Any extension of the deadline shall be in writing and for a time certain.

(4) APPROVAL.—[The Secretary shall review each housing plan submitted under this subsection and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Secretary may extend the period for approval or disapproval for a single additional 30-day period if the Secretary determines it necessary.] *The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines such extension necessary.* The [Secretary] *Director* shall approve any plan that the [Secretary] *Director* determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act (as applicable), this title, and any other applicable laws and regulations.

(5) NOTICE OF APPROVAL AND DISAPPROVAL.—The [Secretary] *Director* shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(6) RESUBMISSION.—If the initial housing plan submitted by an enterprise is disapproved, the enterprise shall submit an amended plan acceptable to the [Secretary] *Director* within 30 days or such longer period that the [Secretary] *Director* determines is in the public interest.

(7) ADDITIONAL REMEDIES FOR FAILURE TO MEET GOALS.—*In addition to ordering a housing plan under this section, issuing cease and desist orders under section 1341, and ordering civil money penalties under section 1345, the Director may seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this Act to prohibit the enterprise from entering into new programs and new business activities and to order the enterprise to suspend programs and business activities pending its achievement of the goal.*

[SEC. 1337. REPORTS DURING TRANSITION.

[Each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report for each transitional housing goal for the enterprise under section 1332(d), 1333(d), or 1334(d), describing the actions the enterprise plans to take to meet such goal. Each such report shall be submitted within 45 days after the establishment of the goal for which the report is submitted.

[SEC. 1338. EFFECTIVE DATE OF TRANSITION GOALS.

[The housing goals established under sections 1332(d), 1333(d), and 1334(d) shall not become effective until January 1, 1993.]

SEC. 1337. AFFORDABLE HOUSING FUND.

(a) *ESTABLISHMENT AND PURPOSE.*—Each enterprise shall establish and manage an affordable housing fund in accordance with this section. The purpose of the affordable housing fund shall be—

(1) to increase homeownership for extremely low- and very low-income families;

(2) to increase investment in housing in low-income areas, and areas designated as qualified census tracts or an area of chronic economic distress pursuant to section 143(j) of the Internal Revenue Code of 1986 (26 U.S.C. 143(j));

(3) to increase and preserve the supply of rental and owner-occupied housing for extremely low- and very low-income families; and

(4) to increase investment in economic and community development in economically underserved areas.

(b) *ALLOCATION OF AMOUNTS BY ENTERPRISES.*—

(1) *IN GENERAL.*—In accordance with regulations issued by the Director under subsection (l) and subject to paragraph (2) of this subsection, each enterprise shall allocate to the affordable housing fund established under subsection (a) by the enterprise, in each year beginning after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, 5 percent of the after-tax income of the enterprise for the preceding year.

(2) *LIMITATION.*—An enterprise shall not be required to make an allocation for a year to the affordable housing fund of the enterprise established under subsection (a) unless—

(A) the enterprise is classified by the Director at the time of such allocation as adequately capitalized; and

(B) the enterprise generated after-tax income for the preceding year.

(3) *DETERMINATION OF AFTER-TAX INCOME.*—For purposes of this section, the term “after-tax income” means, with respect to an enterprise for a year, the amount reported by the enterprise for such year in the enterprise’s annual report for such year that is filed with the Securities and Exchange Commission, except that for any year in which no such filing is made by an enterprise or such filing is not timely made, such term means the amount determined by the Director based on the income tax return filings of the enterprise.

(c) *SELECTION OF ACTIVITIES FUNDED USING AFFORDABLE HOUSING FUND AMOUNTS.*—Amounts from the affordable housing fund of the enterprise may be used, or committed for use, only for activities that—

(1) are eligible under subsection (d) for such use; and

(2) are selected for funding by the enterprise in accordance with the process and criteria for such selection established pursuant to subsection (l)(2)(C).

(d) *ELIGIBLE ACTIVITIES.*—Amounts from the affordable housing fund of an enterprise shall be eligible for use, or for commitment for use, only for assistance for—

(1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B), except that amounts provided from the

Fund may be used for the benefit only of extremely low- and very low-income families;

(2) the production, preservation, and rehabilitation of housing for homeownership, including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs, that—

(A) is available for purchase only for use as a principal residence by families that qualify both as—

(i) extremely low- and very-low income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

(ii) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this section be considered to refer to assistance from the affordable housing fund of the enterprise;

(B) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act; and

(C) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

(3) leveraged grants under subsection (e).

(e) LEVERAGED GRANTS.—

(1) IN GENERAL.—Pursuant to regulations issued by the Director, each enterprise shall carry out a program under this subsection to make leveraged grants from amounts in the affordable housing fund of the enterprise, subject to the requirements under this subsection.

(2) ELIGIBLE PURPOSES.—Amounts from the affordable housing fund of an enterprise may be used only for leveraged grants under paragraph (4) for—

(A) the development, preservation, rehabilitation, or purchase of affordable housing that meets underserved needs for affordable housing;

(B) community or economic development activities in economically underserved areas; or

(C) a combination of the activities identified in subparagraphs (A) and (B).

(3) ELIGIBLE SPONSORS.—A leveraged grant under this subsection may be made only on behalf of a sponsor that meets such requirements as the Director shall establish for experience and success in carrying out the types of activities proposed under the application of the sponsor, such as the following entities:

(A) A low-income housing fund.

(B) A housing finance agency of a State or unit of general local government.

- (C) A non-profit organization having as one of its principal purposes the development or management of affordable housing.
- (D) A community development financial institution.
- (E) A national non-profit housing intermediary.
- (F) A community development corporation.
- (G) A community development entity.
- (4) *ELIGIBLE USES.*—Amounts from the affordable housing fund of an enterprise may be used under this subsection only for the following types of leveraged grants:
- (A) To provide loan loss reserves.
- (B) To capitalize a revolving loan fund.
- (C) To provide equity capitalization of an affordable housing fund.
- (D) To provide equity capitalization of a community development or economic development fund.
- (E) For risk sharing loans.
- (F) For the funding of a specific, detailed investment plan that identifies the specific types of uses and the expected timeframes with respect to such uses.
- (5) *APPLICATIONS.*—The Director shall provide, in the application process established pursuant to subsection (1)(2)(C), for eligible sponsors under paragraph (3) of this subsection to submit applications to an enterprise for leveraged grants pursuant to this subsection, which shall include a detailed description of—
- (A) the types of affordable housing or community or economic development activities for which the leveraged grant is made;
- (B) the type of eligible leveraged grants under paragraph (4) to be made in the project;
- (C) the types, sources, and amounts of other funding for the project;
- (D) and the expected time frame of the leveraged grant under this subsection.
- (6) *LIMITATIONS.*—The Director shall by regulation—
- (A) ensure that leveraged grants pursuant to this subsection are designed to alleviate need for affordable housing in underserved markets identified in section 1335(a) having the greatest need for such housing or to address community and economic development needs in economically underserved areas having the greatest need; and
- (B) any returns from leveraged grants under this subsection accrue to the affordable housing fund of the enterprise and are available for use only as provided under this section.
- (f) *LIMITATIONS ON USE.*—
- (1) *AMOUNTS FOR HOMEOWNERSHIP.*—Of any amounts allocated pursuant to subsection (b) in each year to the affordable housing fund of an enterprise, not less than 10 percent shall be used for activities under paragraph (2) of subsection (d).
- (2) *AMOUNTS FOR LEVERAGED GRANTS.*—Of any amounts allocated pursuant to subsection (b) in each year to the affordable housing fund of an enterprise, not more than 12.5 percent shall be used for leveraged grants under subsection (e).

(3) *DEADLINE FOR COMMITMENT OR USE.*—Any amounts allocated to the affordable housing fund of an enterprise shall be used or committed for use within two years of the date of such allocation.

(4) *USE OF RETURNS.*—Any return on investment of any amounts allocated pursuant to subsection (b) to the affordable housing fund of an enterprise shall be available for use by the enterprise only for eligible activities under subsection (d).

(5) *ADMINISTRATIVE COSTS.*—The Director shall, by regulation—

(A) provide that, except as provided in subparagraph (B), amounts allocated to the affordable housing fund of an enterprise may not be used for administrative, outreach, or other costs of—

(i) the enterprise; or

(ii) any recipient of amounts from the affordable housing fund; and

(B) limit the amount of any such contributions that may be used for administrative costs of the enterprise of maintaining the affordable housing fund and carrying out the program under this section.

(6) *PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS.*—In determining compliance with the housing goals under this subpart, the Director may not consider amounts used under this section for eligible activities under subsection (d). The Director shall give credit toward the achievement of such housing goals to purchases of mortgages for housing that receives funding under this section, but only to the extent that such purchases are funded other than under this section.

(7) *PROHIBITION OF CERTAIN SUBGRANTS.*—The Director shall, by regulation, ensure that amounts from the affordable housing fund of an enterprise awarded under this section to a national non-profit housing intermediary are not used for the purpose of distributing subgrants to other non-profit entities.

(g) *CONSISTENCY OF USE WITH HOUSING NEEDS.*—

(1) *QUARTERLY REPORTS.*—The Director shall require each enterprise to submit a report, on a quarterly basis, to the Director and the affordable housing board established under subsection (j) describing the activities funded under this section during such quarter with amounts from the affordable housing fund of the enterprise established under this section. The Director shall make such reports publicly available. The affordable housing board shall review each report by an enterprise to determine the consistency of such activities funded with the criteria for selection of such activities established pursuant to subsection (l)(2)(C).

(2) *REPLENISHMENT.*—If the affordable housing board determines that an activity funded by an enterprise with amounts from the affordable housing fund of the enterprise is not consistent with the criteria established pursuant to subsection (l)(2)(C), the board shall notify the Director and the Director shall require the enterprise to allocate to such affordable housing fund (in addition to amounts allocated in compliance with subsection (b)) an amount equal to the sum of the amounts from

the affordable housing fund used and further committed for use for such activity.

(h) *CAPITAL REQUIREMENTS.*—*The utilization or commitment of amounts from the affordable housing fund of an enterprise shall not be subject to the risk-based capital requirements established pursuant to section 1361(a).*

(i) *REPORTING REQUIREMENT.*—*Each enterprise shall include, in the report required under section 309(m) of the Federal National Mortgage Association Charter Act or section 307(f) of the Federal Home Loan Mortgage Corporation Act, as applicable, a description of the actions taken by the enterprise to utilize or commit amounts allocated under this section to the affordable housing fund of the enterprise established under this section.*

(j) *AFFORDABLE HOUSING BOARD.*—

(1) *APPOINTMENT.*—*The Director shall appoint an affordable housing board of 7, 9, or 11 persons, who shall include—*

(A) the Director, or the Director’s designee;

(B) the Secretary of Housing and Urban Development, or the Secretary’s designee;

(C) the Secretary of Agriculture, or the Secretary’s designee;

(D) 2 persons from for-profit organizations or businesses actively involved in providing or promoting affordable housing for extremely low- and very low-income households; and

(E) 2 persons from nonprofit organizations actively involved in providing or promoting affordable housing for extremely low- and very low-income households.

(2) *TERMS.*—

(A) IN GENERAL.—*Except as provided in subparagraph (B), the term of each member of the affordable housing board appointed pursuant to paragraph (1) (but not including members appointed pursuant to subparagraphs (A), (B), and (C)) shall be 3 years.*

(B) INITIAL APPOINTEES.—*The Director shall appoint the initial members of the affordable housing board not later than the expiration of the 60-day period beginning on the date of the enactment of this Act. As designated by the Director at the time of appointment, of the members of the affordable housing board first appointed pursuant to paragraph (1) (but not including members appointed pursuant to subparagraphs (A), (B), and (C))—*

(i) in the case of a board having 7 members—

(I) one shall be appointed for a term of one year; and

(II) one shall be appointed for a term of two years;

(ii) in the case of a board having 9 members—

(I) two shall be appointed for a term of one year; and

(II) two shall be appointed for a term of two years; and

(iii) in the case of a board having 11 members—

(I) two shall be appointed for a term of one year; and

- (II) three shall be appointed for a term of two years;
- (3) DUTIES.—The affordable housing board shall meet not less than quarterly—
- (A) to determine extremely low- and very low-income housing needs;
- (B) to advise the Director with respect to—
- (i) establishment of the selection criteria under subsection (l)(2)(C) that provide for appropriate use of amounts from the affordable housing funds of the enterprises to meet such needs; and
- (ii) operation of, and changes to, the program under this section appropriate to meet such needs; and
- (C) to review the reports submitted by the enterprises pursuant to subsection (g)(1) to determine whether the activities funded using amounts from the affordable housing funds of the enterprises comply with the regulations issued pursuant to subsection (l)(2)(C) and inform the Director of such determinations, for purposes of subsection (g)(2).
- (4) EXPENSES AND PER DIEM.—Members of the board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.
- (5) ADVISORY COMMITTEE.—The board shall be considered an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).
- (6) DURATION.—The board shall have continued existence until terminated by law.
- (k) DEFINITION.—For purposes of this section, the term “economically underserved area” means an area that predominantly includes census tracts for which—
- (1) at least 20 percent of the population is below the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section), applicable to a family of the size involved; or
- (2) median family income does not exceed the greater of—
- (A) 80 percent of the median family income for the metropolitan statistical area in which such census tracts are located; or
- (B) 80 percent of the median family income for the State in which such census tracts are located.
- (l) REGULATIONS.—
- (1) IN GENERAL.—The Director shall issue regulations to carry out this section.
- (2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—
- (A) authority for the Director to audit, provide for an audit, or otherwise verify an enterprise’s activities, to ensure compliance with this section;
- (B) a requirement that the Director ensure that the affordable housing fund of each enterprise is audited not less than annually to ensure compliance with this section;
- (C) requirements for a process for application to, and selection by, an enterprise for activities to be funded with

amounts from the affordable housing fund, which shall provide that—

(i) selection shall be based upon specific criteria, including a prioritization of funding based upon—

(I) greatest impact;

(II) geographic diversity;

(III) ability to obligate amounts and undertake activities so funded in a timely manner;

(IV) in the case of rental housing projects under subsection (d)(1), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families; and

(V) in the case of rental housing projects under subsection (d)(1), the extent of the duration for which such rents will remain affordable; and

(ii) an enterprise may not require for such selection that an activity involve financing or underwriting of any kind by the enterprise (other than funding through the affordable housing fund of the enterprise) and may not give preference in such selection to activities that involve such financing; and

(D) requirements to ensure that amounts from the affordable housing funds of the enterprises used for rental housing under subsection (d)(1) are used only for the benefit of extremely low- and very-low income families.

(3) *LIMITATION.*—Any regulations issued by the Director pursuant to this section shall be no more restrictive on the enterprises' activities in connection with the allocation of after-tax income under this section than the regulations issued to implement the affordable housing program of the Federal home loan banks pursuant to section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

SEC. 1338. CONSISTENCY WITH MISSION.

This subpart may not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

[Subpart C—Enforcement of Housing Goals]

Subpart C—Enforcement

SEC. 1341. CEASE-AND-DESIST PROCEEDINGS.

[(a) **GROUNDS FOR ISSUANCE.**—The Secretary may issue and serve a notice of charges under this section upon an enterprise if, in the determination of the Secretary—

[(1) the enterprise has failed to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

[(2) the enterprise is engaging or has engaged, or the Secretary has reasonable cause to believe that the enterprise is about to engage, in any failure to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

【(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.】

(a) *GROUNDS FOR ISSUANCE.*—*The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines—*

(1) *the enterprise has failed to meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336;*

(2) *the enterprise has failed to submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;*

(3) *the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;*

(4) *the enterprise has violated any provision of this part or any order, rule or regulation under this part;*

(5) *the enterprise has failed to submit a housing plan that complies with section 1336(c) within the applicable period; or*

(6) *the enterprise has failed to comply with a housing plan under section 1336(c).*

(b) *PROCEDURE.*—

(1) *NOTICE OF CHARGES.*—Each notice of charges shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

(2) *ISSUANCE OF ORDER.*—If the 【Secretary】 *Director* finds on the record made at such hearing that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 1342(a)(4)), the 【Secretary】 *Director* may issue and serve upon the enterprise an order 【requiring the enterprise to (A) submit a housing plan in compliance with section 1336(c), (B) comply with the housing plan, or (C) provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.】 *requiring the enterprise to—*

(A) *comply with the goal or goals;*

(B) *submit a report under section 1314;*

(C) *comply with any provision this part or any order, rule or regulation under such part;*

(D) *submit a housing plan in compliance with section 1336(c);*

(E) *comply with a housing plan submitted under section 1336(c); or*

(F) *provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section*

307 of the Federal Home Loan Mortgage Corporation Act, as applicable.

(c) **EFFECTIVE DATE.**—An order under this section shall become effective upon the expiration of the 30-day period beginning on the *date of the service of the order upon the enterprise* (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the **【Secretary】 Director** or otherwise, as provided in this subpart.

【(d) TRANSITION PERIOD LIMITATION.—The Secretary may not impose any cease-and-desist order under this section for any failure by an enterprise, during the 2-year period beginning on the January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with the approved plan.】

SEC. 1342. HEARINGS.

(a) * * *

* * * * *

(b) **ISSUANCE OF ORDER.**—

(1) **IN GENERAL.**—After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the **【Secretary】 Director** for final decision, the **【Secretary】 Director** shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an order or orders consistent with the provisions of this subpart.

(2) **MODIFICATION.**—Judicial review of any such order shall be exclusively as provided in section 1343. Unless such a petition for review is timely filed as provided in section 1343, and thereafter until the record in the proceeding has been filed as so provided, the **【Secretary】 Director** may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the **【Secretary】 Director** considers proper. Upon such filing of the record, the **【Secretary】 Director** may modify, terminate, or set aside any such order with permission of the court.

SEC. 1343. JUDICIAL REVIEW.

(a) **COMMENCEMENT.**—An enterprise that is a party to a proceeding under section 1341 or 1345 may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the **【Secretary】 Director** be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the **【Secretary】 Director**.

(b) **FILING OF RECORD.**—Upon receiving a copy of a petition, the **【Secretary】 Director** shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(c) **JURISDICTION.**—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the **【Secretary】 Director** shall (except as provided in the last sentence of

section 1342(b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the **【Secretary】 Director**.

* * * * *

(e) **ORDER TO PAY PENALTY.**—Such court shall have the authority in any such review to order payment of any penalty imposed by the **【Secretary】 Director** under this subpart.

(f) **NO AUTOMATIC STAY.**—The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the **【Secretary】 Director**.

SEC. 1344. ENFORCEMENT AND JURISDICTION.

【(a) ENFORCEMENT.—The Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 1341 or 1345. Such court shall have jurisdiction and power to order and require compliance herewith.**】**

(a) ENFORCEMENT.—*The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under section 1341 or 1345, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.*

* * * * *

SEC. 1345. CIVIL MONEY PENALTIES.

【(a) AUTHORITY.—The Secretary may impose a civil money penalty, in accordance with the provisions of this section, on any enterprise that has failed—

【(1) to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

【(2) to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

【(3) to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

【(b) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed—

【(1) for any failure described in subsection (a)(1), \$25,000 for each day that the failure occurs; and

【(2) for any failure described in subsection (a) (2) or (3), \$10,000 for each day that the failure occurs.】****

(a) AUTHORITY.—*The Director may impose a civil money penalty, in accordance with the provisions of this section, on any enterprise that has failed to—*

(1) meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336(b);

(2) submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(3) submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

(4) comply with any provision of this part or any order, rule or regulation under this part;

(5) submit a housing plan pursuant to section 1336(c) within the required period; or

(6) comply with a housing plan for the enterprise under section 1336(c).

(b) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Director, may not exceed—

(1) for any failure described in paragraph (1), (5), or (6) of subsection (a), \$50,000 for each day that the failure occurs; and

(2) for any failure described in paragraph (2), (3), or (4) of subsection (a), \$20,000 for each day that the failure occurs.

(c) PROCEDURES.—

(1) ESTABLISHMENT.—The [Secretary] Director shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

(A) shall provide for the [Secretary] Director to notify the enterprise in writing of the [Secretary's] Director's determination to impose the penalty, which shall be made on the record; and

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 1342[; and].

[(C) may provide for review by the Director for any determination or order, or interlocutory ruling, arising from a hearing.]

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the [Secretary] Director shall give consideration to such factors as the gravity of the offense, any history of prior offenses, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the [Secretary] Director may determine, by regulation, to be appropriate. *In determining the penalty under subsection (a)(1), the Director shall give consideration to the length of time the enterprise should reasonably take to achieve the goal.*

(d) ACTION TO COLLECT PENALTY.—If an enterprise fails to comply with an order by the [Secretary] Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 1342 and 1343, the [Secretary] Director may [request the Attorney General of the United States to], *in the discretion of the Director*, bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise and such other relief as may be available, *or request that the Attorney General of the United States bring such an action.* The monetary judgment may, in the court's discretion, include the attorneys fees and other ex-

penses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

(e) SETTLEMENT BY **[SECRETARY] DIRECTOR**.—The **[Secretary] Director** may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

[f] TRANSITION PERIOD LIMITATION.—The Secretary may not impose any civil money penalty under this section for any failure by an enterprise, during the 2-year period beginning on January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with an approved plan.

[g] f) DEPOSIT OF PENALTIES.—The **[Secretary] Director** shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

SEC. 1346. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) IN GENERAL.—The **[Secretary] Director** shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the **[Secretary] Director** or any modification to or termination thereof, unless the **[Secretary] Director**, in the Secretary's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the **[Secretary] Director** under this subpart and that has become final in accordance with sections 1342 and 1343; and

* * * * *

(b) HEARINGS.—All hearings with respect to any notice of charges issued by the **[Secretary] Director** shall be open to the public, unless the **[Secretary] Director**, in the **[Secretary's] Director's** discretion, determines that holding an open hearing would be contrary to the public interest.

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the **[Secretary] Director** makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial soundness of the enterprise, the **[Secretary] Director** may delay the public disclosure of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The **[Secretary] Director** may file any document or part thereof under seal in any hearing under this subpart if the **[Secretary] Director** determines in writing that disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The **[Secretary] Director** shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the **[Secretary] Director** under this subpart.

(f) DISCLOSURES TO CONGRESS.—This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

SEC. 1347. NOTICE OF SERVICE.

Any service required or authorized to be made by the [Secretary] Director under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the [Secretary] Director may by regulation or otherwise provide.

SEC. 1348. SUBPOENA AUTHORITY.

(a) IN GENERAL.—In the course of or in connection with any administrative proceeding under this subpart, the [Secretary] Director shall have the authority—

(1) * * *

* * * * *

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the [Secretary] Director.

* * * * *

(c) ENFORCEMENT.—The [Secretary] Director may [request the Attorney General of the United States to], *in the discretion of the Director*, bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, or request that the Attorney General of the United States bring such an action, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section. Such courts shall have jurisdiction and power to order and require compliance therewith.

* * * * *

[SEC. 1349. REGULATIONS.

[The Secretary shall issue any final regulations necessary to implement the provisions of this part (not including the provisions of sections 1332(d), 1333(d), and 1334(d), relating to transition housing goals) not later than the expiration of the 18-month period beginning on the date of the enactment of this Act. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.]

* * * * *

[Subtitle B—Required Capital Levels for Enterprises and Special Enforcement Powers

[SEC. 1361. RISK-BASED CAPITAL LEVELS.

(a) RISK-BASED CAPITAL TEST.—The Director shall, by regulation, establish a risk-based capital test under this section for the enterprises. When applied to an enterprise, the risk-based capital test shall determine the amount of total capital for the enterprise

that is sufficient for the enterprise to maintain positive capital during a 10-year period in which the following circumstances occur (in this section referred to as the “stress period”):

【(1) CREDIT RISK.—With respect to mortgages owned or guaranteed by the enterprise and other obligations of the enterprise, losses occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing practice for that industry in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years, experienced the highest rates of default and severity of mortgage losses, in comparison with such rates of default and severity of mortgage losses in other such areas for any period of such duration.

【(2) INTEREST RATE RISK.—

【(A) IN GENERAL.—Interest rates decrease as described in subparagraph (B) or increase as described in subparagraph (C), whichever would require more capital for the enterprise.

【(B) DECREASES.—The 10-year constant maturity Treasury yield decreases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield decreases to the lesser of—

【(i) 600 basis points below the average yield during the preceding 9 months, or

【(ii) 60 percent of the average yield during the preceding 3 years,

but in no case to a yield less than 50 percent of the average yield during the preceding 9 months.

【(C) INCREASES.—The 10-year constant maturity Treasury yield increases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield increases to the greater of—

【(i) 600 basis points above the average yield during the preceding 9 months, or

【(ii) 160 percent of the average yield during the preceding 3 years,

but in no case to a yield greater than 175 percent of the average yield during the preceding 9 months.

【(D) DIFFERENT TERMS TO MATURITY.—Yields of Treasury instruments with other terms to maturity will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director.

【(E) LARGE INCREASES IN YIELDS.—If the 10-year constant maturity Treasury yield is assumed to increase by more than 50 percent over the average yield during the preceding 9 months, the Director shall adjust the losses in paragraphs (1) and (3) to reflect a correspondingly higher rate of general price inflation.

【(3) NEW BUSINESS.—

[(A) IN GENERAL.—Any contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period. No other purchases of mortgages shall be assumed, except as provided in subparagraph (B).

[(B) ADDITIONAL NEW BUSINESS.—The Director may, after consideration of each of the studies required by subparagraph (C), assume that the enterprise conducts additional new business during the stress period consistent with the following—

[(i) AMOUNT AND PRODUCT TYPES.—The amount and types of mortgages purchased and their financing will be reasonably related to recent experience and the economic characteristics of the stress period.

[(ii) LOSSES.—Default and loss severity characteristics of mortgages purchased will be reasonably related to historical experience.

[(iii) PRICING.—Prices charged by the enterprise in purchasing new mortgages will be reasonably related to recent experience and the economic characteristics of the stress period. The Director may assume that a reasonable period of time would lapse before the enterprise would recognize and react to the characteristics of the stress period.

[(iv) INTEREST RATE RISK.—Interest rate risk on new mortgages purchased will occur to an extent reasonably related to historical experience.

[(v) RESERVES.—The enterprise must maintain reserves during and at the end of the stress period on new business conducted during the first 5 years of the stress period reasonably related to the expected future losses on such business, consistent with generally accepted accounting principles and industry accounting practice.

[(C) STUDIES.—Within 1 year after regulations are first issued under subsection (e), the Director of the Congressional Budget Office, and the Comptroller General of the United States shall each submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study of the advisability and appropriate form of any new business assumptions under subparagraph (B).

[(D) EFFECTIVE DATE.—The provisions of subparagraph (B) shall become effective 4 years after regulations are first issued under subsection (e).

[(4) OTHER ACTIVITIES.—Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, on the basis of available information, to be consistent with the stress period.

[(b) CONSIDERATIONS.—

[(1) IN GENERAL.—In establishing the risk-based capital test under subsection (a), the Director shall take into account appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and any other factors the Director considers appropriate.

[(2) CONSISTENCY.—Characteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period.

[(c) RISK-BASED CAPITAL LEVEL.—For purposes of this subtitle, the risk-based capital level for an enterprise shall be equal to the sum of the following amounts:

[(1) CREDIT AND INTEREST RATE RISK.—The amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

[(2) MANAGEMENT AND OPERATIONS RISK.—To provide for management and operations risk, 30 percent of the amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

[(d) DEFINITIONS.—For purposes of this section:

[(1) SEASONING.—The term “seasoning” means the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured, determined on an annual basis by region, in accordance with the Constant Quality Home Price Index published by the Secretary of Commerce (or any index of similar quality, authority, and public availability that is regularly used by the Federal Government).

[(2) TYPE OF MORTGAGE PRODUCT.—The term “type of mortgage product” means a classification of one or more mortgage products, as established by the Director, which have similar characteristics from each set of characteristics under the following subparagraphs:

[(A) The property securing the mortgage is—

[(i) a residential property consisting of 1 to 4 dwelling units; or

[(ii) a residential property consisting of more than 4 dwelling units.

[(B) The interest rate on the mortgage is—

[(i) fixed; or

[(ii) adjustable.

[(C) The priority of the lien securing the mortgage is—

[(i) first; or

[(ii) second or other.

[(D) The term of the mortgage is—

[(i) 1 to 15 years;

[(ii) 16 to 30 years; or

[(iii) more than 30 years.

[(E) The owner of the property is—

[(i) an owner-occupant; or

[(ii) an investor.

[(F) The unpaid principal balance of the mortgage—

[(i) will amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage;

[(ii) will not amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage; or

[(iii) may increase significantly at some time during the term of the mortgage.

[(G) Any other characteristics of the mortgage, as the Director may determine.

[(e) REGULATIONS.—

[(1) ISSUANCE.—The Director shall issue final regulations establishing the risk-based capital test under this section not later than the expiration of the 18-month period beginning on the date of the appointment of the Director. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code, and shall take effect upon issuance.

[(2) CONTENTS.—The regulations under this subsection shall contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, and prepayment rates). The regulations shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

[(3) CONFIDENTIALITY OF INFORMATION.—Any person that receives any book, record, or information from the Director or an enterprise to enable the risk-based capital test to be applied shall—

[(A) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the enterprise; and

[(B) be exempt from section 552 of title 5, United States Code, with respect to the book, record, or information.

[(f) AVAILABILITY OF MODEL.—The Director shall provide copies of the statistical model or models used to implement the risk-based capital test under this section to the Secretary, the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Comptroller General of the United States, and the Director of the Congressional Budget Office. The Director shall make copies of such model or models available for public acquisition and may charge a reasonable fee for such copies.]

Subtitle B—Required Capital Levels for Regulated Entities, Special Enforcement Powers, and Reviews of Assets and Liabilities

SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED ENTITIES.

(a) *IN GENERAL.*—

(1) *ENTERPRISES.*—The Director shall, by regulation, establish risk-based capital requirements for the enterprises to ensure that the enterprises operate in a safe and sound manner, maintaining sufficient capital and reserves to support the risks that arise in the operations and management of the enterprises.

(2) *FEDERAL HOME LOAN BANKS.*—The Director shall establish risk-based capital standards under section 6 of the Federal Home Loan Bank Act for the Federal home loan banks.

(b) *CONFIDENTIALITY OF INFORMATION.*—Any person that receives any book, record, or information from the Director or a regulated entity to enable the risk-based capital requirements established under this section to be applied shall—

(1) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the regulated entity; and

(2) be exempt from section 552 of title 5, United States Code, with respect to the book, record, or information.

(c) *NO LIMITATION.*—Nothing in this section shall limit the authority of the Director to require other reports or undertakings, or take other action, in furtherance of the responsibilities of the Director under this Act.

SEC. 1362. MINIMUM CAPITAL LEVELS.

(a) **[IN GENERAL]** *ENTERPRISES.*—For purposes of this subtitle, the minimum capital level for each enterprise shall be the sum of—

(1) * * *

* * * * *

[(b) TRANSITION.—Notwithstanding subsection (a), during the 18-month period beginning upon the date of the enactment of this Act, the minimum capital level for each enterprise shall be the sum of—

[(1) 2.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

[(2) 0.40 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

[(3) 0.40 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).**]**

(b) *FEDERAL HOME LOAN BANKS.*—For purposes of this subtitle, the minimum capital level for each Federal home loan bank shall be the minimum capital required to be maintained to comply with the leverage requirement for the bank established under section 6(a)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

(c) *ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.*—Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 1319G(b), establish a minimum capital level for the enterprises, for the Federal home loan banks, or for

both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal home loan banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

(d) **AUTHORITY TO REQUIRE TEMPORARY INCREASE.**—Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity for such period as the Director may provide if the Director—

(1) makes any of the determinations specified in subparagraphs (A) through (C) of section 1364(c)(1); or

(2) determines that the regulated entity has violated any of the prudential management and operations standards established pursuant to section 1313A and, as a result of such violation, is operating in an unsafe and unsound manner.

(e) **AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL AND RESERVE REQUIREMENTS FOR PARTICULAR PROGRAMS.**—The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any program or activity of a regulated entity as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

(f) **PERIODIC REVIEW.**—The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal home loan banks, and the minimum capital levels established for such regulated entities pursuant to this section. The Director may, by regulations issued under section 1319G(b), adjust the minimum capital levels as necessary, based on the Director's review.

SEC. 1363. CRITICAL CAPITAL LEVELS.

[For] (a) ENTERPRISES.—For purposes of this subtitle, the critical capital level for each enterprise shall be the sum of—

(1) * * *

* * * * *

(b) **FEDERAL HOME LOAN BANKS.**—

(1) **IN GENERAL.**—For purposes of this subtitle, the critical capital level for each Federal home loan bank shall be such amount of capital as the Director shall, by regulation require.

(2) **CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.**—In establishing the critical capital level under paragraph (1) for the Federal home loan banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.

SEC. 1364. CAPITAL CLASSIFICATIONS.

(a) **[IN GENERAL] ENTERPRISES.**—For purposes of this subtitle, the Director shall classify the enterprises according to the following capital classifications:

(1) * * *

* * * * *

[(b) DISCRETIONARY CLASSIFICATION.—If at any time the Director determines in writing that an enterprise is engaging in conduct not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly, the Director may classify the enterprise—

[(1) as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;

[(2) as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized; and

[(3) as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized.]]

(b) *FEDERAL HOME LOAN BANKS.*—

(1) *ESTABLISHMENT AND CRITERIA.*—*For purposes of this subtitle, the Director shall, by regulation—*

(A) *establish the capital classifications specified under paragraph (2) for the Federal home loan banks;*

(B) *establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and*

(C) *shall classify the Federal home loan banks according to such capital classifications.*

(2) *CLASSIFICATIONS.*—*The capital classifications specified under this paragraph are—*

(A) *adequately capitalized;*

(B) *undercapitalized;*

(C) *significantly undercapitalized; and*

(D) *critically undercapitalized.*

(c) *DISCRETIONARY CLASSIFICATION.*—

(1) *GROUND FOR RECLASSIFICATION.*—*The Director may reclassify a regulated entity under paragraph (2) if—*

(A) *at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;*

(B) *after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or*

(C) *pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.*

(2) *RECLASSIFICATION.*—*In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify a regulated entity—*

(A) *as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;*

(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.

[(c)] (d) QUARTERLY DETERMINATION.—The Director shall determine the capital classification of the [enterprises] regulated entities for purposes of this subtitle on not less than a quarterly basis (and as appropriate under [subsection (b)] subsection (c)). [The first such determination shall be made during the 3-month period beginning on the appointment of the Director.]

(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

(1) IN GENERAL.—A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and

(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.

[(d)] (f) IMPLEMENTATION.—Notwithstanding any other provision of this section, during the period beginning on the date of the enactment of this Act and ending upon the effective date of section 1365 (as provided in section 1365(c)), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 1362.

SEC. 1365. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED [ENTERPRISES] REGULATED ENTITIES.

(a) MANDATORY ACTIONS.—

(1) REQUIRED MONITORING.—The Director shall—

(A) closely monitor the condition of any regulated entity that is classified as undercapitalized;

(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to the undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

[(1)] (2) CAPITAL RESTORATION PLAN.—[An enterprise] A regulated entity that is classified as undercapitalized shall, within the time period provided in section 1369C (b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.

[(2)] (3) RESTRICTION ON CAPITAL DISTRIBUTIONS.—[An enterprise] A regulated entity that is classified as undercapitalized may not make any capital distribution that would result in [the enterprise] the regulated entity being reclassified as significantly undercapitalized or critically undercapitalized.

(4) *RESTRICTION OF ASSET GROWTH.*—A regulated entity that is classified as undercapitalized shall not permit its average total assets (as such term is defined in section 1316(b) during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(A) the Director has accepted the capital restoration plan of the regulated entity;

(B) any increase in total assets is consistent with the plan; and

(C) the ratio of total capital to assets for the regulated entity increases during the calendar quarter at a rate sufficient to enable the entity to become adequately capitalized within a reasonable time.

(5) *PRIOR APPROVAL OF ACQUISITIONS, NEW PROGRAMS, AND NEW BUSINESS ACTIVITIES.*—A regulated entity that is classified as undercapitalized shall not, directly or indirectly, acquire any interest in any entity or engage in any new program or new business activity unless—

(A) the Director has accepted the capital restoration plan of the regulated entity, the entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Director determines that the proposed action will further the purpose of this section.

(b) *DISCRETIONARY RECLASSIFICATION [FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED].*—The Director may reclassify as significantly undercapitalized [an enterprise] a regulated entity that is classified as undercapitalized (and [the enterprise] the regulated entity shall be subject to the provisions of section 1366) if—

(1) [the enterprise] the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by [the enterprise] the regulated entity; or

(2) the Director determines that [the enterprise] the regulated entity has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

[(c) *EFFECTIVE DATE.*—This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 1361(e) establishing the risk-based capital test.]

(c) *OTHER DISCRETIONARY SAFEGUARDS.*—The Director may take, with respect to a regulated entity that is classified as undercapitalized, any of the actions authorized to be taken under section 1366 with respect to a regulated entity that is classified as significantly undercapitalized, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.

SEC. 1366. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED [ENTERPRISES] ENTITIES.

(a) * * *

(2) *RESTRICTIONS ON CAPITAL DISTRIBUTIONS.*—

(A) PRIOR APPROVAL.—An enterprise that is classified as significantly undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as critically undercapitalized. An enterprise that is classified as significantly undercapitalized **enterprise** may not make any other capital distribution unless the Director approves the distribution.

* * * * *

(b) **DISCRETIONARY SUPERVISORY ACTIONS SPECIFIC ACTIONS.**—In addition to any other actions taken by the Director (including actions under subsection (a)), the Director **may, at any time, take any** shall carry out this section by taking, at any time, one or more of the following actions with respect to an enterprise that is classified as significantly undercapitalized:

(1) * * *

* * * * *

(5) **IMPROVEMENT OF MANAGEMENT.**—Take one or more of the following actions:

(A) **NEW ELECTION OF BOARD.**—Order a new election for the board of directors of the regulated entity.

(B) **DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.**—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the Director's enforcement powers provided in section 1377.

(C) **EMPLOY QUALIFIED EXECUTIVE OFFICERS.**—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).

[(5)] (6) RECLASSIFICATION FROM SIGNIFICANTLY TO CRITICALLY UNDERCAPITALIZED.—The Director may reclassify as critically undercapitalized an enterprise that is classified as significantly undercapitalized (and the enterprise shall be subject to the provisions of section 1367) if—

(A) * * *

* * * * *

[(6)] (7) CONSERVATORSHIP.—Appoint a conservator for the enterprise in accordance with the provisions of **section 1369 (excluding subsection (a) (1) and (2))** section 1367, but only if the Director determines—

(A) * * *

* * * * *

(8) **OTHER ACTION.**—Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph.

(c) **RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.**—A regulated entity that is classified as significantly undercapitalized may not, without prior written approval by the Director—

(1) pay any bonus to any executive officer; or

(2) provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became undercapitalized.

[(c)] (d) EFFECTIVE DATE.—This section shall take effect upon the first classification of [the enterprises] *the regulated entities* within capital classifications that occurs under section 1364.

[SEC. 1367. APPOINTMENT OF CONSERVATORS FOR CRITICALLY UNDERCAPITALIZED ENTERPRISES.

[(a) APPOINTMENT.—

[(1) IN GENERAL.—Upon a determination and notice under section 1368(d) that an enterprise is critically undercapitalized and not later than 30 days after providing notice under section 1369(a)(3), the Director shall appoint a conservator for the enterprise in accordance with the provisions of section 1369 (excluding subsections (a) (1) and (2)).

[(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may determine not to appoint a conservator for an enterprise classified as critically undercapitalized, but only pursuant to a written finding by the Director, with the written concurrence of the Secretary of the Treasury, that—

[(A) the appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

[(B) the public interest would be better served by taking some other enforcement action authorized under this title.

[(b) AUTHORITY.—The Director shall have the authority to take any actions under sections 1365 and 1366 with respect to an enterprise under conservatorship.

[(c) APPROVAL OF ACTIVITIES.—

[(1) CONSERVATOR.—The conservator of any enterprise classified as critically undercapitalized may undertake an activity subject to the approval of the Secretary under section 1322 of this title only with the additional approval of the Director.

[(2) NO CONSERVATOR.—If the Director determines under subsection (a)(2) not to appoint a conservator for an enterprise classified as critically undercapitalized, the provisions of section 1366 shall apply with respect to the enterprise.

[(d) EFFECTIVE DATE.—This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 1364.]

SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

(a) APPOINTMENT OF AGENCY AS CONSERVATOR OR RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if any of the grounds under paragraph (3) exist, at the discretion of the Director, the Director may establish a conservatorship or receivership, as appropriate, for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

(2) APPOINTMENT.—In any conservatorship or receivership established under this section, the Director shall appoint the Agency as conservator or receiver.

(3) *GROUNDS FOR APPOINTMENT.*—*The grounds for appointing a conservator or receiver for a regulated entity are as follows:*

(A) *ASSETS INSUFFICIENT FOR OBLIGATIONS.*—*The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.*

(B) *SUBSTANTIAL DISSIPATION.*—*Substantial dissipation of assets or earnings due to—*

(i) *any violation of any provision of Federal or State law; or*

(ii) *any unsafe or unsound practice.*

(C) *UNSAFE OR UNSOUND CONDITION.*—*An unsafe or unsound condition to transact business.*

(D) *CEASE-AND-DESIST ORDERS.*—*Any willful violation of a cease-and-desist order that has become final.*

(E) *CONCEALMENT.*—*Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.*

(F) *INABILITY TO MEET OBLIGATIONS.*—*The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.*

(G) *LOSSES.*—*The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).*

(H) *VIOLATIONS OF LAW.*—*Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—*

(i) *cause insolvency or substantial dissipation of assets or earnings; or*

(ii) *weaken the condition of the regulated entity.*

(I) *CONSENT.*—*The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.*

(J) *UNDERCAPITALIZATION.*—*The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3) or in regulations issued pursuant to section 1364(b), as applicable), and—*

(i) *has no reasonable prospect of becoming adequately capitalized;*

(ii) *fails to become adequately capitalized, as required by—*

(I) *section 1365(a)(1) with respect to an undercapitalized regulated entity; or*

(II) *section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;*

(iii) *fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or*

(iv) *materially fails to implement a capital restoration plan submitted and accepted under section 1369C.*

(K) *CRITICAL UNDERCAPITALIZATION.*—*The regulated entity is critically undercapitalized, as defined in section*

1364(a)(4) or in regulations issued pursuant to section 1364(b), as applicable.

(L) *MONEY LAUNDERING.*—The Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

(4) *JUDICIAL REVIEW.*—

(A) *IN GENERAL.*—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

(B) *REVIEW.*—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

(5) *DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.*—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

(6) *AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.*—When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

(b) *POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.*—

(1) *RULEMAKING AUTHORITY OF THE AGENCY.*—The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) *GENERAL POWERS.*—

(A) *SUCCESSOR TO REGULATED ENTITY.*—The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

(B) *OPERATE THE REGULATED ENTITY.*—The Agency may, as conservator or receiver—

(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

(ii) collect all obligations and money due the regulated entity;

- (iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver; and
- (iv) preserve and conserve the assets and property of such regulated entity.

(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

(D) POWERS AS CONSERVATOR.—The Agency may, as conservator, take such action as may be—

- (i) necessary to put the regulated entity in a sound and solvent condition; and
- (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

(E) ADDITIONAL POWERS AS RECEIVER.—The Agency may, as receiver, place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity, having due regard to the conditions of the housing finance market.

(F) ORGANIZATION OF NEW REGULATED ENTITIES.—The Agency may, as receiver, organize a successor regulated entity that will operate pursuant to subsection (i).

(G) TRANSFER OF ASSETS AND LIABILITIES.—The Agency may, as conservator or receiver, transfer any asset or liability of the regulated entity in default without any approval, assignment, or consent with respect to such transfer. Any Federal home loan bank may, with the approval of the Agency, acquire the assets of any Bank in conservatorship or receivership, and assume the liabilities of such Bank

(H) PAYMENT OF VALID OBLIGATIONS.—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity in accordance with the prescriptions and limitations of this section.

(I) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—

(I) IN GENERAL.—The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power exercised under this subparagraph in the same manner as such provisions apply under that section.

(ii) *AUTHORITY OF DIRECTOR.*—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

(iii) *RULE OF CONSTRUCTION.*—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379D.

(J) *CONTRACTING FOR SERVICES.*—The Agency may, as conservator or receiver, provide by contract for the carrying out of any of its functions, activities, actions, or duties as conservator or receiver.

(K) *INCIDENTAL POWERS.*—The Agency may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

(3) *AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.*—

(A) *IN GENERAL.*—The Agency may, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4).

(B) *NOTICE REQUIREMENTS.*—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) *MAILING REQUIRED.*—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

(i) at the last address of the creditor appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity within 30 days after the discovery of such name and address.

(4) *RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.*—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(5) *PROCEDURES FOR DETERMINATION OF CLAIMS.*—

(A) *DETERMINATION PERIOD.*—

(i) *IN GENERAL.*—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) *EXTENSION OF TIME.*—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

(iii) *MAILING OF NOTICE SUFFICIENT.*—The notification requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books of the regulated entity;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) *CONTENTS OF NOTICE OF DISALLOWANCE.*—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) *ALLOWANCE OF PROVEN CLAIM.*—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i), or the date specified in the notice required under paragraph (3)(C), which is proved to the satisfaction of the receiver.

(C) *DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.*—Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

(D) *AUTHORITY TO DISALLOW CLAIMS.*—

(i) *IN GENERAL.*—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) *PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.*—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

(iii) *EXCEPTIONS.*—No provision of this paragraph shall apply with respect to any extension of credit from

any Federal Reserve Bank, Federal home loan bank, or the Treasury of the United States.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the determination of the Agency under subparagraph (D) to disallow a claim. This subparagraph shall not effect the authority of a claimant to obtain de novo judicial review of a claim pursuant to paragraph (6).

(F) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

(B) STATUTE OF LIMITATIONS.—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

(7) REVIEW OF CLAIMS.—

(A) OTHER REVIEW PROCEDURES.—

(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Agency may establish both binding and

nonbinding processes, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

(B) CONSIDERATION OF INCENTIVES.—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established under subparagraph (A), the Director shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Agency denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) *NO PREJUDICE TO OTHER ACTIONS.*—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

(9) *PAYMENT OF CLAIMS.*—

(A) *IN GENERAL.*—The receiver may, in the discretion of the receiver, and to the extent funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

- (i) allowed by the receiver;
- (ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or
- (iii) determined by the final judgment of any court of competent jurisdiction.

(B) *AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.*—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing, and executed by an authorized official of the regulated entity, except that such requirements for qualified financial contracts shall be applied in a manner consistent with reasonable business trading practices in the financial contracts market.

(C) *PAYMENT OF DIVIDENDS ON CLAIMS.*—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency, by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) *RULEMAKING AUTHORITY OF THE DIRECTOR.*—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of regulated entities following satisfaction by the receiver of the principal amount of all creditor claims.

(10) *SUSPENSION OF LEGAL ACTIONS.*—

(A) *IN GENERAL.*—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any receiver.

(B) *GRANT OF STAY BY ALL COURTS REQUIRED.*—Upon receipt of a request by any conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(11) *ADDITIONAL RIGHTS AND DUTIES.*—

(A) *PRIOR FINAL ADJUDICATION.*—The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

(B) *RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.*—In the event of any appealable judgment, the Agency as conservator or receiver shall—

(i) have all the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) *NO ATTACHMENT OR EXECUTION.*—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) *LIMITATION ON JUDICIAL REVIEW.*—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any regulated entity for which the Agency has been appointed receiver; or

(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

(E) *DISPOSITION OF ASSETS.*—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which maintains stability in the housing finance markets and, to the extent consistent with that goal—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases; and

(iii) ensures adequate competition and fair and consistent treatment of offerors.

(12) *STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.*—

(A) *IN GENERAL.*—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—
(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) *DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.*—For purposes of subparagraph (A), the date on

which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

- (i) the date of the appointment of the Agency as conservator or receiver; or
- (ii) the date on which the cause of action accrues.

(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(A) IN GENERAL.—In the case of any tort claim described under subparagraph (B) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(B) CLAIMS DESCRIBED.—A tort claim referred to under subparagraph (A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(15) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of a regulated entity-affiliated party, or any person who the conservator or receiver determines is a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay,

or defraud the regulated entity, the Agency, the conservator, or receiver.

(B) *RIGHT OF RECOVERY.*—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the regulated entity-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) *RIGHTS OF TRANSFEREE OR OBLIGEE.*—The conservator or receiver may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) *RIGHTS UNDER THIS PARAGRAPH.*—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(16) *ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.*—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Agency or such conservator under the control of the court, and appointing a trustee to hold such assets.

(17) *STANDARDS OF PROOF.*—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(18) *TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for the breach of an agreement executed or approved in writing by such receiver or conservator after the date of its appointment, shall be paid as an administrative expense of the receiver or conservator.

(B) *NO LIMITATION OF POWER.*—Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(19) *GENERAL EXCEPTIONS.*—

(A) *LIMITATIONS.*—The rights of a conservator or receiver appointed under this section shall be subject to the limita-

tions on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

(B) MORTGAGES HELD IN TRUST.—

(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, held in trust, custodial, or agency capacity by a regulated entity for the benefit of persons other than the regulated entity shall not be available to satisfy the claims of creditors generally.

(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, described under clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in a pool of mortgages in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

(iii) LIABILITY OF RECEIVER.—The liability of a receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance set forth in the regulations of the Director.

(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a regulated entity, or a receiver, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any other general or senior liability of the regulated entity and claims of other Federal home loan banks arising from their payment obligations (including joint and several payment obligations).

(C) Any obligation subordinated to general creditors.

(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Agency may make such other payments to creditors necessary to maximize the present value return from the sale or disposition or such regulated entity's assets or to minimize the amount of any loss realized in the resolution of cases so long as all creditors similarly situated receive not less than the amount provided under subsection (e)(2).

(3) DEFINITION.—The term "administrative expenses of the receiver" shall include the actual, necessary costs and expenses incurred by the receiver in preserving the assets of the regulated entity or liquidating or otherwise resolving the affairs of the regulated entity. Such expenses shall include obligations that are incurred by the receiver after appointment as receiver that the Director determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) *AUTHORITY TO REPUDIATE CONTRACTS.*—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

(A) to which such regulated entity is a party;

(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

(2) *TIMING OF REPUDIATION.*—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) *CLAIMS FOR DAMAGES FOR REPUDIATION.*—

(A) *IN GENERAL.*—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) *NO LIABILITY FOR OTHER DAMAGES.*—For purposes of subparagraph (A), the term “actual direct compensatory damages” shall not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) *MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.*—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

(4) *LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.*—

(A) *IN GENERAL.*—If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) *PAYMENTS OF RENT.*—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

(5) *LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.*—

(A) *IN GENERAL.*—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation;

or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) *PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.*—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) *CONTRACTS FOR THE SALE OF REAL PROPERTY.*—

(A) *IN GENERAL.*—If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) *PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.*—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) *ASSIGNMENT AND SALE ALLOWED.*—

(i) *IN GENERAL.*—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

(ii) *NO LIABILITY AFTER ASSIGNMENT AND SALE.*—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

(7) *PROVISIONS APPLICABLE TO SERVICE CONTRACTS.*—

(A) *SERVICES PERFORMED BEFORE APPOINTMENT.*—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (b) and (e); and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) *SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.*—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) and notwithstanding any other provision of this Act, any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Paragraph (10) of subsection (b) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11) or any other Federal or State laws relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regu-

lated entity, or any conservator or receiver appointed for such regulated entity.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(V) means any margin loan;

(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) means any combination of the agreements or transactions referred to in this clause;

(VIII) means any option to enter into any agreement or transaction referred to in this clause;

(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), to-

gether with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) **COMMODITY CONTRACT.**—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is re-

ferred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) **FORWARD CONTRACT.**—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) **REPURCHASE AGREEMENT.**—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government

securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term "qualified foreign government security" means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) SWAP AGREEMENT.—The term "swap agreement" means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate

floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other stat-

ute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

(vii) *TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.*

(viii) *TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the regulated entity’s equity of redemption.*

(E) *CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (13) of this subsection), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—*

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable non-insolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more such qualified financial contracts; or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) *CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (d)(1) of this section.*

(G) *WALKAWAY CLAUSES NOT EFFECTIVE.—*

(i) *IN GENERAL.*—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

(ii) *WALKAWAY CLAUSE DEFINED.*—For purposes of this subparagraph, the term “walkaway clause” means a provision in a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party’s status as a non-defaulting party.

(9) *TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.*—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

(A) transfer to 1 person—

(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

(iv) all property securing or any other credit enhancement for any contract described in clause (i) or any claim described in clause (ii) or (iii) under any such contract; or

(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

(10) *NOTIFICATION OF TRANSFER.*—

(A) *IN GENERAL.*—If—

(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity, and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) *CERTAIN RIGHTS NOT ENFORCEABLE.*—

(i) *RECEIVERSHIP.*—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) *CONSERVATORSHIP.*—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

(iii) *NOTICE.*—For purposes of this paragraph, the Agency as receiver or conservator of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity if the Agency has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) *BUSINESS DAY DEFINED.*—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) *DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.*—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the regulated entity in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) *CERTAIN SECURITY INTERESTS NOT AVOIDABLE.*—No provision of this subsection shall be construed as permitting the

avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

(13) *AUTHORITY TO ENFORCE CONTRACTS.*—

(A) *IN GENERAL.*—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver, the conservator or receiver may enforce any contract or regulated entity bond entered into by the regulated entity.

(B) *CERTAIN RIGHTS NOT AFFECTED.*—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or surety bond under other applicable law.

(C) *CONSENT REQUIREMENT.*—

(i) *IN GENERAL.*—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

(I) 45 days after the date of appointment of a conservator; or

(II) 90 days after the date of appointment of a receiver.

(ii) *EXCEPTIONS.*—This paragraph shall—

(I) not apply to a director's or officer's liability insurance contract;

(II) not apply to the rights of parties to any qualified financial contracts under subsection (d)(8); and

(III) not be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

(14) *SAVINGS CLAUSE.*—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act

(15) *EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.*—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve Bank to any regulated entity; or

(B) any security interest in the assets of the regulated entity securing any such extension of credit.

(e) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

(2) MAXIMUM LIABILITY.—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall equal the lesser of—

(A) the amount such claimant would have received if the Agency had liquidated the assets and liabilities of such regulated entity without exercising the authority of the Agency under subsection (i) of this section; or

(B) the amount of proceeds realized from the performance of contracts or sale of the assets of the regulated entity.

(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

(g) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Agency, which action is prosecuted wholly or partially for the benefit of the Agency—

(A) acting as conservator or receiver of such regulated entity, or

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(2) NO LIMITATION.—Nothing in this paragraph shall impair or affect any right of the Agency under other applicable law.

(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

(i) LIMITED-LIFE REGULATED ENTITIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—If a regulated entity is in default, or if the Agency anticipates that a regulated entity will default, the Agency may organize a limited-life regulated entity with those powers and attributes of the regulated entity in default or in danger of default that the Director determines necessary, subject to the provisions of this subsection. The Director shall grant a temporary charter to the limited-life

regulated entity, and the limited-life regulated entity shall operate subject to that charter.

(B) *AUTHORITIES.*—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, provided that the liabilities assumed shall not exceed the amount of assets of the limited-life regulated entity;

(ii) purchase such assets of the regulated entity that is in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

(2) *CHARTER.*—

(A) *CONDITIONS.*—The Agency may grant a temporary charter if the Agency determines that the continued operation of the regulated entity in default or in danger of default is in the best interest of the national economy and the housing markets.

(B) *TREATMENT AS BEING IN DEFAULT FOR CERTAIN PURPOSES.*—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

(C) *MANAGEMENT.*—A limited-life regulated entity, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

(D) *BYLAWS.*—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

(3) *CAPITAL STOCK.*—No capital stock need be paid into a limited-life regulated entity by the Agency.

(4) *INVESTMENTS.*—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal Reserve bank.

(5) *EXEMPT STATUS.*—Notwithstanding any other provision of Federal or State law, the limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(6) *WINDING UP.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), unless Congress authorizes the sale of the capital stock of the limited-life regulated entity, not later than 2 years after the date of its organization, the Agency shall wind up the affairs of the limited-life regulated entity.

(B) *EXTENSION.*—The Director may, in the discretion of the Director, extend the status of the limited-life regulated entity for 3 additional 1-year periods.

(7) TRANSFER OF ASSETS AND LIABILITIES.—

(A) IN GENERAL.—

(i) TRANSFER OF ASSETS AND LIABILITIES.—*The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with paragraph (1).*

(ii) SUBSEQUENT TRANSFERS.—*At any time after a charter is transferred to a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of such regulated entity in default, or in danger in default, as the Agency may, in its discretion, determine to be appropriate in accordance with paragraph (1).*

(iii) EFFECTIVE WITHOUT APPROVAL.—*The transfer of any assets or liabilities of a regulated entity in default, or in danger of default, transferred to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.*

(8) PROCEEDS.—*To the extent that available proceeds from the limited-life regulated entity exceed amounts required to pay obligations, such proceeds may be paid to the regulated entity in default, or in danger of default.*

(9) POWERS.—

(A) IN GENERAL.—*Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—*

(i) *the Agency may—*

(I) *remove the directors of a limited-life regulated entity; and*

(II) *fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity;*

(ii) *the Agency may indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and*

(iii) *the board of directors of a limited-life regulated entity—*

(I) *shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and*

(II) *may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.*

(B) STAY OF JUDICIAL ACTION.—*Any judicial action to which a limited-life regulated entity becomes a party by vir-*

tue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of up to 45 days at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

(10) **OBTAINING OF CREDIT AND INCURRING OF DEBT.**—

(A) **IN GENERAL.**—*The limited-life regulated entity may obtain unsecured credit and incur unsecured debt in the ordinary course of business.*

(B) **INABILITY TO OBTAIN CREDIT.**—*If the limited-life regulated entity is unable to obtain unsecured credit the Director may authorize the obtaining of credit or the incurring of debt—*

(i) with priority over any or all administrative expenses;

(ii) secured by a lien on property that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property that is subject to a lien.

(C) **LIMITATIONS.**—

(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by the regulated entity) only if—

(I) the limited-life regulated entity is unable to obtain such credit otherwise; and

(II) there is adequate protection of the interest of the holder of the lien on the property which such senior or equal lien is proposed to be granted.

(ii) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

(D) **AFFECT ON DEBTS AND LIENS.**—*The reversal or modification on appeal of an authorization under this paragraph to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.*

(11) **ISSUANCE OF PREFERRED DEBT.**—*A limited-life regulated entity may, subject to the approval of the Director and subject to such terms and conditions as the Director may prescribe, issue notes, bonds, or other debt obligations of a class to which all other debt obligations of the limited-life regulated entity shall be subordinate in right and payment.*

(12) **NO FEDERAL STATUS.**—

(A) **AGENCY STATUS.**—*A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.*

(B) *EMPLOYEE STATUS.*—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

(13) *ADDITIONAL POWERS.*—In addition to any other powers granted under this subsection, a limited-life regulated entity may—

(A) extend a maturity date or change in an interest rate or other term of outstanding securities;

(B) issue securities of the limited-life regulated entity, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purposes; and

(C) take any other action not inconsistent with this section.

(j) *OTHER EXEMPTIONS.*—When acting as a receiver, the following provisions shall apply with respect to the Agency:

(1) *EXEMPTION FROM TAXATION.*—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, country, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) *EXEMPTION FROM ATTACHMENT AND LIENS.*—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

(3) *EXEMPTION FROM PENALTIES AND FINES.*—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

(k) *PROHIBITION OF CHARTER REVOCATION.*—In no case may a receiver appointed pursuant to this section revoke, annul, or terminate the charter of a regulated entity.

SEC. 1368. NOTICE OF CLASSIFICATION AND ENFORCEMENT ACTION.

(a) * * *

* * * * *

(d) CONSIDERATION OF INFORMATION AND DETERMINATION.—After the expiration of the response period under subsection (c) or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by the enterprise during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to the enterprise, the **Committee on Banking, Finance and Urban Affairs** *Committee on Financial Services* of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

* * * * *

SEC. 1369. APPOINTMENT OF CONSERVATORS.**[(a) APPOINTMENT.—**

[(1) DISCRETIONARY AUTHORITY.—The Director may, after providing notice under paragraph (3), appoint a conservator for an enterprise upon a determination in writing—

[(A) that alternative remedies available to the Director under this title are not satisfactory; and

[(B) that—

[(i) the enterprise is not likely to pay its obligations in the normal course of business;

[(ii) the enterprise has incurred or is reasonably likely to incur losses that would deplete substantially all of its core capital and it is unlikely that the enterprise will replenish its core capital within a reasonable period;

[(iii) the enterprise has concealed or is concealing books, papers, records, or assets of the enterprise that are material to the discharge of the Director's responsibilities under this subtitle, or has refused or is refusing to submit such books, papers, records, or information regarding the affairs of the enterprise for inspection to the Director upon request; or

[(iv) the enterprise has willfully violated, or is willfully violating, a final cease-and-desist order under section 1371.

[(2) CONSENT OF ENTERPRISE.—Notwithstanding paragraph (1), the Director may appoint a conservator for an enterprise if the enterprise, by an affirmative vote of a majority of the members of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

[(3) NOTICE.—Upon making a determination under paragraph (1) of this subsection or under section 1366 or 1367 to appoint a conservator for an enterprise, or upon consent of the enterprise under paragraph (2) to such an appointment, the Director shall provide written notice to the enterprise, the Committee on Banking, Finance and Urban Affairs of the

House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate—

[(A) that a conservator will be appointed for the enterprise;

[(B) stating the reasons for the appointment of the conservator; and

[(C) identifying the person or governmental agency that the Director intends to appoint as conservator.

[(4) QUALIFICATIONS.—The conservator shall be—

[(A) the Director or any other governmental agency; or

[(B) any person that—

[(i) has no claim against, or financial interest in, the enterprise or other basis for a conflict of interest; and

[(ii) has the financial and management expertise necessary to direct the operations and affairs of the enterprise.

[(b) JUDICIAL REVIEW.—

[(1) TIMING AND JURISDICTION.—Except as provided in paragraph (2), an enterprise for which a conservator is appointed (pursuant to this section or section 1366 or 1367) may bring an action in the United States District Court for the District of Columbia for an order requiring the Director to terminate the appointment of the conservator. The court, upon the merits, shall dismiss such action or shall direct the Director to terminate the appointment of the conservator. Such an action may be commenced only during the 20-day period beginning upon the appointment of the conservator.

[(2) CONSENSUAL APPOINTMENTS.—Appointment of a conservator pursuant to consent of the enterprise under subsection (a)(2) shall not be subject to judicial review under this subsection.

[(3) STANDARD OF REVIEW.—A decision of the Director to appoint a conservator may be set aside under this subsection only if the court finds that the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

[(4) LIMITATION ON JURISDICTION.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of powers or functions of a conservator.

[(c) REPLACEMENT.—The Director may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the right of the enterprise under subsection (b) to obtain judicial review of the decision of the Director to appoint a conservator.

[(d) EXAMINATIONS.—The Director may examine and supervise any enterprise in conservatorship during the period in which the enterprise continues to operate as a going concern.

[(e) TERMINATION.—

[(1) DISCRETIONARY.—At any time the Director determines that termination of a conservatorship pursuant to an appointment under subsection (a) is in the public interest and may safely be accomplished, the Director may terminate the conservatorship and permit the enterprise to resume the trans-

action of its business subject to such terms, conditions, and limitations as the Director may prescribe.

[(2) MANDATORY.—The Director shall terminate a conservatorship initiated pursuant to section 1366 or 1367 upon a determination by the Director that the enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise established under section 1362, and may by written order prescribe such terms, conditions, and limitations on the enterprise as the Director considers appropriate.

[(3) TERMS.—Any terms, conditions, and limitations imposed by the Director upon termination of a conservatorship shall be enforceable and reviewable under the provisions of sections 1374 and 1375, to the same extent as any cease-and-desist order issued pursuant to subtitle C.

[SEC. 1369A. POWERS OF CONSERVATORS.

[(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the enterprise under conservatorship and may operate the enterprise in the name of the enterprise, unless the Director provides otherwise.

[(b) ADDITIONAL POWER.—A conservator may avoid any security interest taken by a creditor with the intent to hinder, delay, or defraud the enterprise or the creditors of the enterprise.

[(c) LIMITATIONS BY DIRECTOR.—A conservator shall be subject to any rules, regulations, and orders issued from time to time by the Director and, except as otherwise specifically provided in such rules, regulations, or orders or in section 1369B, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations applicable to directors, officers, or employees of the enterprise.

[(d) ENFORCEMENT OF CONTRACTS.—

[(1) IN GENERAL.—A conservator may enforce any contract described in paragraph (2), notwithstanding any provision of the contract providing for the termination, default, acceleration, or other exercise of rights upon, or solely by reason of, the insolvency of the enterprise or the appointment of a conservator.

[(2) ENFORCEABLE CONTRACTS.—Any contract that is within a class of contracts shall be enforceable under paragraph (1) if the Director—

[(A) determines that the continued enforceability of such class of contracts is necessary to achieve the purpose of the conservatorship; and

[(B) specifically provides for the enforceability of such class of contracts in a regulation or order, issued for the purpose of this subsection, which describes such class.

[(3) APPLICABILITY.—This subsection and any regulation or order issued under this subsection shall apply only to contracts entered into, modified, extended, or renewed after the effective date of the regulation or order.

[(e) STAYS.—

[(1) IN GENERAL.—Not later than 45 days after appointment pursuant to section 1366, 1367, or 1369, or 45 days after receipt of actual notice of an action or proceeding that is pending at the time of appointment, a conservator may request that

any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period not exceeding 45 days after the request. Upon petition, the court shall grant such stay as to all parties.

[(2) FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator appointed for an enterprise is a Federal agency or an officer or employee of the Federal Government, the conservator may make a request for a stay under paragraph (1) only with the prior consent of the Attorney General and subject to the direction and control of the Attorney General.

[(f) PAYMENT OF CREDITORS.—The Director may require a conservator to set aside and make available for payment to creditors any amounts that the Director determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

[(g) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Director may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

[(h) EXPENSES.—All expenses of a conservatorship pursuant to this section (including compensation pursuant to subsection (f)) shall be paid by the enterprise under conservatorship and shall be secured by a lien on the enterprise, which shall have priority over any other lien.

[(i) CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE.—A conservator shall be subject to any laws and regulations relating to conflicts of interest and financial disclosure that apply to employees of the Office.

[SEC. 1369B. LIABILITY PROTECTION FOR CONSERVATORS.

[(a) FEDERAL AGENCIES AND EMPLOYEES.—In any case in which a conservator appointed under this subtitle is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

[(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.

[(c) INDEMNIFICATION.—The Director, with the approval of the Attorney General, may indemnify the conservator on such terms as the Director considers appropriate.]

SEC. 1369C. CAPITAL RESTORATION PLANS.

(a) * * *

* * * * *

(c) APPROVAL.—The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to [any enterprise] *any regulated entity* submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

* * * * *

SEC. 1369D. JUDICIAL REVIEW OF DIRECTOR ACTION.

(a) JURISDICTION.—

(1) FILING OF PETITION.—[An enterprise] *A regulated entity* that is not classified as critically undercapitalized and is the subject of a classification under section 1364 or a discretionary supervisory action taken under this subtitle by the Director (other than action to appoint a conservator under [section 1366 or 1367 or action under section 1369]) *section 1367* may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

* * * * *

(d) LIMITATION ON JURISDICTION.—Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subtitle (other than appointment of a conservator under [section 1366 or 1367 or action under section 1369]) *section 1367*) or to review, modify, suspend, terminate, or set aside such classification or action.

SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABILITIES.

(a) *IN GENERAL.*—The Director shall conduct, on a periodic basis, a review of the on-balance sheet and off-balance sheet assets and liabilities of each enterprise.

(b) *AUTHORITY TO REQUIRE DISPOSITION OR ACQUISITION.*—Pursuant to such a review and notwithstanding the capital classifications of the enterprises, the Director may by order require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset or liability, if the Director determines that such action is consistent with the safe and sound operation of the enterprise or with the purposes of this Act or any of the authorizing statutes.

Subtitle C—Enforcement Provisions**SEC. 1371. CEASE-AND-DESIST PROCEEDINGS.**

[(a) GROUND FOR ISSUANCE AGAINST ADEQUATELY CAPITALIZED ENTERPRISES.—The Director may issue and serve a notice of

charges under this section upon an enterprise that is classified (for purposes of subtitle B) as adequately capitalized or upon any executive officer or director of such an enterprise, if in the determination of the Director, the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

【(1) any conduct that threatens to cause a significant depletion of the core capital of the enterprise;

【(2) any conduct or violation that may result in the issuance of an order described in subsection (d)(1); or

【(3) any conduct that violates—

【(A) any provision of this title, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any order, rule, or regulation under any such title or Act, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act; or

【(B) any written agreement entered into by the enterprise with the Director.

【(b) **GROUND FOR ISSUANCE AGAINST UNDERCAPITALIZED, SIGNIFICANTLY UNDERCAPITALIZED, AND CRITICALLY UNDERCAPITALIZED ENTERPRISES.**—The Director may issue and serve a notice of charges under this section upon an enterprise classified (for purposes of subtitle B) as undercapitalized, significantly undercapitalized, or critically undercapitalized, or any executive officer or director of any such enterprise, if in the determination of the Director the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

【(1) any conduct likely to result in a material depletion of the core capital of the enterprise, or

【(2) any conduct or violation described in paragraph (2) or (3) of subsection (a),

except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act.】

(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.**—*If, in the opinion of the Director, a regulated entity or any regulated entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or is violating or has violated, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the*

regulated entity or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or such party a notice of charges in respect thereof. The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

(b) **ISSUANCE FOR UNSATISFACTORY RATING.**—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of this subsection.

(c) **PROCEDURE.**—

(1) * * *

(2) **ISSUANCE OF ORDER.**—If the Director finds on the record made at such hearing that any conduct or violation specified in the notice of charges has been established (or **the enterprise** the regulated entity consents pursuant to section 1373(a)(4)), the Director may issue and serve upon the **enterprise, executive officer, or director** regulated entity or regulated entity-affiliated party an order requiring such party to cease and desist from any such conduct or violation and to take affirmative action to correct or remedy the conditions resulting from any such conduct or violation.

(d) **AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR ACTIVITIES.**—The authority under this section and section 1372 to issue any order requiring an **enterprise, executive officer, or director** regulated entity or regulated entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any conduct or violation with respect to which such order is issued includes the authority—

(1) to require **an executive officer or a director** a regulated entity affiliated party to make restitution to, or provide reimbursement (including reimbursement of compensation under section 1318), indemnification, or guarantee against loss to **the enterprise** the regulated entity to the extent that such person—

(A) * * *

* * * * *

(2) to require **an enterprise** a regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of **the enterprise** the regulated entity;

(4) to require **the enterprise** the regulated entity to dispose of any asset involved;

(5) to require **the enterprise** the regulated entity to rescind agreements or contracts;

(6) to require **the enterprise** *the regulated entity* to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); **and**

(7) *to effect an attachment on a regulated entity or regulated entity-affiliated party subject to an order under this section or section 1372; and*

[(7)] (8) to require **the enterprise** *the regulated entity* to take such other action as the Director determines appropriate.

(e) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this section or section 1372 includes the authority to place limitations on the activities or functions of **the enterprise** *the regulated entity* or any executive officer or director of **the enterprise** *the regulated entity*.

(f) **EFFECTIVE DATE.**—An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon **the enterprise** *the regulated entity*, executive officer, or director concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subtitle.

SEC. 1372. TEMPORARY CEASE-AND-DESIST ORDERS.

[(a) GROUND FOR ISSUANCE AND SCOPE.—Whenever the Director determines that any conduct or violation, or threatened conduct or violation, specified in the notice of charges served upon the enterprise, executive officer, or director pursuant to section 1371 (a) or (b), or the continuation thereof, is likely—

[(1) to cause insolvency,

[(2) to cause a significant depletion of the core capital of the enterprise, or

[(3) otherwise to cause irreparable harm to the enterprise, prior to the completion of the proceedings conducted pursuant to section 1371(c), the Director may issue a temporary order requiring the enterprise, executive officer, or director to cease and desist from any such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).]

(a) GROUND FOR ISSUANCE.—Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the regulated entity or any regulated entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the regulated entity, or is likely to weaken the condition of the regulated entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the regulated entity or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).

(b) **EFFECTIVE DATE.**—An order issued pursuant to subsection (a) shall become effective upon service upon the **enterprise**, executive

officer, or director] *regulated entity or regulated entity-affiliated party* and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 1371.

(c) INCOMPLETE OR INACCURATE RECORDS.—

(1) TEMPORARY ORDER.—If a notice of charges served under section 1371 (a) or (b) specifies on the basis of particular facts and circumstances that the books and records of [the enterprise] *the regulated entity* served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of [the enterprise] *the regulated entity* or the details of the purpose of any transaction or transactions that may have a material effect on the financial condition of [that enterprise] *that regulated entity*, the Director may issue a temporary order requiring—

(A) * * *

* * * * *

(2) EFFECTIVE PERIOD.—Any temporary order issued under paragraph (1)—

(A) * * *

(B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—

(i) * * *

(ii) the date the Director determines, by examination or otherwise, that the books and records of [the enterprise] *the regulated entity* are accurate and reflect the financial condition of [the enterprise] *the regulated entity*.

(d) JUDICIAL REVIEW.—[An enterprise, executive officer, or director] *A regulated entity or regulated entity-affiliated party* that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon [the enterprise, executive officer, or director] *the regulated entity or regulated entity-affiliated party* under section 1371 (a) or (b). Such court shall have jurisdiction to issue such injunction.

[(e) ENFORCEMENT BY ATTORNEY GENERAL.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order or may, under the direction and control of the Attorney General, bring such an action. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.]

(e) ENFORCEMENT.—*In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this section, the Director may apply to the United States*

District Court for the District of Columbia or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

* * * * *

SEC. 1375. ENFORCEMENT AND JURISDICTION.

[(a) ENFORCEMENT.—The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subtitle or subtitle B or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.]

(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

(b) LIMITATION ON JURISDICTION.—Except as otherwise provided in this subtitle and sections 1369 and 1369D, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 1371, 1372, [or 1376] 1376, or 1377, or subtitle B, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 1375A. PREJUDGMENT ATTACHMENT.

(a) IN GENERAL.—In any action brought pursuant to this title, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought pursuant to this title, the court may, upon application of the Director or Attorney General, as applicable, issue a restraining order that—

(1) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(2) appoints a person on a temporary basis to administer the restraining order.

(b) STANDARD.—

(1) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subsection (a) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(2) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by paragraph (1)),

the relief sought under subsection (a) may be requested under the laws of such State.

SEC. 1376. CIVIL MONEY PENALTIES.

(a) **IN GENERAL.**—The Director may impose a civil money penalty in accordance with this section on **any enterprise** *any regulated entity, [or any executive officer or] any executive officer of a regulated entity, any regulated entity-affiliated party, or any director of any enterprise* **any regulated entity**, that—

(1) violates any provision of this title, **the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act** *any provision of any of the authorizing statutes, or any order, rule, or regulation under any such title [or Act] or statute*, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act **[or subsection]**, *subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;*

* * * * *

(3) violates any written agreement between **the enterprise** *the regulated entity* and the Director; or

(4) engages in any conduct that causes or is likely to cause a loss to **the enterprise** *the regulated entity*.

(b) AMOUNT OF PENALTY.—

(1) FIRST TIER.—The Director may impose a penalty on an enterprise for any violation described in paragraphs (1) through (3) of subsection (a). The amount of a penalty under this paragraph shall not exceed \$5,000 for each day that a violation continues.

(2) SECOND TIER.—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$10,000, or on an enterprise in an amount not to exceed \$25,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct—

(A) is part of a pattern of misconduct; or

(B) involved recklessness and caused or would be likely to cause a material loss to the enterprise.

(3) THIRD TIER.—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$100,000, or on an enterprise in an amount not to exceed \$1,000,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the enterprise. **]**

(b) AMOUNT OF PENALTY.—

(1) FIRST TIER.—*Any regulated entity which, or any regulated entity-affiliated party who—*

(A) violates any provision of this title, any provision of any of the authorizing statutes, or any order, condition, rule, or regulation under any such title or statute, except that the Director may not, pursuant to this section, enforce

compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;

(B) violates any final or temporary order or notice issued pursuant to this title;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity;

(D) violates any written agreement between the regulated entity and the Director; or

(E) engages in any conduct the Director determines to be an unsafe or unsound practice, shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which such violation continues.

(2) **SECOND TIER.**—Notwithstanding paragraph (1)—

(A) if a regulated entity, or a regulated entity-affiliated party—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such regulated entity; or

(iii) breaches any fiduciary duty; and

(B) the violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such regulated entity; or

(iii) results in pecuniary gain or other benefit to such party, the regulated entity or regulated entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which such violation, practice, or breach continues.

(3) **THIRD TIER.**—Notwithstanding paragraphs (1) and (2), any regulated entity which, or any regulated entity-affiliated party who—

(A) knowingly—

(i) commits any violation or engages in any conduct described in any subparagraph of paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such regulated entity; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach, shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

(4) **MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).**—The maximum daily amount of

any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than a regulated entity, an amount not to exceed \$2,000,000; and

(B) in the case of any regulated entity, \$2,000,000.

(c) PROCEDURES.—

(1) ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b). Such standards and procedures—

(A) shall provide for the Director to notify **the enterprise** *the regulated entity* in writing of the Director's determination to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the **enterprise, executive officer, or director** *regulated entity or regulated entity-affiliated party* has been given an opportunity for a hearing on the record pursuant to section 1373; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of **the enterprise** *the regulated entity*, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) REVIEW OF IMPOSITION OF PENALTY.—The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 1374.

(d) ACTION TO COLLECT PENALTY.—**If an enterprise, executive officer, or director fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, executive officer, or director and such other relief as may be available, or may, under the direction and control of the Attorney General, bring such an action.** *If a regulated entity or regulated entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may, in the discretion of the Director, bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity or regulated entity affiliated party and such other relief as may be available, or request that the Attorney General of the United States bring such an action.* The monetary judgment may, in the discre-

tion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

* * * * *

(g) PROHIBITION OF REIMBURSEMENT OR INDEMNIFICATION.—~~【An enterprise】~~ *A regulated entity* may not reimburse or indemnify any individual for any penalty imposed under ~~【subsection (b)(3)】~~ *this section, unless authorized by the Director by rule, regulation, or order.*

* * * * *

SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

(a) *AUTHORITY TO ISSUE ORDER.*—*Whenever the Director determines that—*

(1) *any regulated entity-affiliated party has, directly or indirectly—*

(A) *violated—*

(i) *any law or regulation;*

(ii) *any cease-and-desist order which has become final;*

(iii) *any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or*

(iv) *any written agreement between such regulated entity and the Director;*

(B) *engaged or participated in any unsafe or unsound practice in connection with any regulated entity; or*

(C) *committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;*

(2) *by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—*

(A) *such regulated entity has suffered or will probably suffer financial loss or other damage; or*

(B) *such party has received financial gain or other benefit by reason of such violation, practice, or breach; and*

(3) *such violation, practice, or breach—*

(A) *involves personal dishonesty on the part of such party; or*

(B) *demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity, the Director may serve upon such party a written notice of the Director's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any regulated entity.*

(b) *SUSPENSION ORDER.*—

(1) *SUSPENSION OR PROHIBITION AUTHORITY.*—*If the Director serves written notice under subsection (a) to any regulated entity-affiliated party of the Director's intention to issue an order under such subsection, the Director may—*

(A) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

(i) determines that such action is necessary for the protection of the regulated entity; and

(ii) serves such party with written notice of the suspension order; and

(B) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party.

(2) *EFFECTIVE PERIOD.*—Any suspension order issued under this subsection—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—

(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

(ii) the effective date of an order issued by the Director to such party under subsection (a).

(3) *COPY OF ORDER.*—If the Director issues a suspension order under this subsection to any regulated entity-affiliated party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

(c) *NOTICE, HEARING, AND ORDER.*—A notice of intention to remove a regulated entity-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of a regulated entity shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the regulated entity, as it may deem appropriate, together with an order prohibiting compensation described in subsection (b)(1)(B). Any such order shall become effective at the expiration of 30 days after service upon such regulated entity and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) *PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.*—Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any regulated entity;

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

(3) violate any voting agreement previously approved by the Director; or

(4) vote for a director, or serve or act as a regulated entity-affiliated party.

(e) *INDUSTRY-WIDE PROHIBITION.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or prohibited from participating in the conduct of the affairs of a regulated entity may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity.

(2) *EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.*—If, on or after the date an order is issued under this section which removes or suspends from office any regulated entity-affiliated party or prohibits such party from participating in the conduct of the affairs of a regulated entity, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

(3) *VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.*—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

(f) *APPLICABILITY.*—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

(g) *STAY OF SUSPENSION AND PROHIBITION OF REGULATED ENTITY-AFFILIATED PARTY.*—Within 10 days after any regulated entity-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension and/or prohibition and any prohibition under subsection (b)(1)(B) pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(h) *SUSPENSION OR REMOVAL OF REGULATED ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.*—

(1) *SUSPENSION OR PROHIBITION.*—

(A) *IN GENERAL.*—Whenever any regulated entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is pun-

ishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party—

(i) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity; and

(ii) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the period of any such suspension or with any resignation, removal, retirement, or other termination of employment or office of the party.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) **COPY.**—A copy of any notice under paragraph (1)(A) shall also be served upon the regulated entity.

(ii) **EFFECTIVE PERIOD.**—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

(2) REMOVAL OR PROHIBITION.—

(A) **IN GENERAL.**—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against a regulated entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order that—

(i) removes such party from office or prohibits such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director; and

(ii) prohibits the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the termination of employment or office of the party.

(B) PROVISIONS APPLICABLE TO ORDER.—

(i) **COPY.**—A copy of any order under paragraph (2)(A) shall also be served upon the regulated entity, whereupon the regulated entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

(ii) **EFFECT OF ACQUITTAL.**—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in regulated entity affairs, and to prohibit compensation or other payment of money or other thing of current or potential value in

connection with any resignation, removal, retirement, or other termination of employment or office of the party, pursuant to subsections (a), (d), or (e) of this section.

(iii) *EFFECTIVE PERIOD.*—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

(3) *AUTHORITY OF REMAINING BOARD MEMBERS.*—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

(4) *HEARING REGARDING CONTINUED PARTICIPATION.*—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the regulated entity-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity or threaten to impair public confidence in the regulated entity. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity, and prohibiting compensation in connection with termination will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(i) *HEARINGS AND JUDICIAL REVIEW.*—

(1) *VENUE AND PROCEDURE.*—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the regu-

lated entity is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(2) *REVIEW OF ORDER.*—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the regulated entity or the regulated entity-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the regulated entity is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(3) *PROCEEDINGS NOT TREATED AS STAY.*—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

SEC. 1378. CRIMINAL PENALTY.

Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

SEC. [1377] 1379. NOTICE AFTER SEPARATION FROM SERVICE.

The resignation, termination of employment or participation, or separation of a director or executive officer of [an enterprise] *a regulated entity, or of a regulated entity-affiliated party*, shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subtitle against any [such director or executive officer] *such director, executive officer, or regulated entity-affiliated party*, if such notice is served before the end of the 2-year period beginning on the date [such director or executive officer] *such director, executive officer, or regulated entity-affiliated party* ceases to be associated with [the enterprise] *the regulated entity*.

SEC. [1378] 1379A. PRIVATE RIGHTS OF ACTION.

This title and the amendments made by this title shall not create any private right of action on behalf of any person against [an enterprise] *a regulated entity*, or any director or executive officer of [an enterprise] *a regulated entity, or against a regulated entity-affiliated party*, or impair any existing private right of action under other applicable law.

SEC. [1379] 1379B. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) * * *

* * * * *

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of [the enterprise] *the regulated entity*, the Director may delay the public disclosure of such order for a reasonable time.

* * * * *

SEC. [1379A] 1379C. NOTICE OF SERVICE.

Any service required or authorized to be made by the Director under this subtitle may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

SEC. [1379B] 1379D. SUBPOENA AUTHORITY.

(a) * * *

* * * * *

(c) ENFORCEMENT.—The Director may [request the Attorney General of the United States to], *in the discretion of the Director*, bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, *or request that the Attorney General of the United States bring such an action*, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section [or may, under the direction and control of the Attorney General, bring such an action]. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) FEES AND EXPENSES.—Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by [an

enterprise] *a regulated entity* may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by [the enterprise] *the regulated entity* or from its assets.

Subtitle D—Amendments to Charter Acts of Enterprises

* * * * *

SEC. 1383. IMPLEMENTATION.

[(a) IN GENERAL.—The Secretary of Housing and Urban Development and the Director, as appropriate, shall issue any final regulations necessary to implement the amendments made by this subtitle not later than the expiration of the 18-month period beginning on the date of the enactment of this Act.

[(b) NOTICE AND COMMENT.—The regulations under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.]

* * * * *

SECTION 111 OF THE ACT OF OCTOBER 28, 1974

(Public Law 93–495)

AN ACT To increase deposit insurance from \$20,000 to \$40,000, to provide full insurance for public unit deposits of \$100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

INDEPENDENCE OF FINANCIAL REGULATORY AGENCIES

SEC. 111. No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, [the Federal Housing Finance Board] *the Director of the Federal Housing Finance Agency*, or the National Credit Union Administration to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

FEDERAL HOME LOAN BANK ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Federal Home Loan Bank Act.”

DEFINITIONS

SEC. 2. As used in this Act—

【(1) BOARD.—The terms “Finance Board” and “Board” mean the Federal Housing Finance Board established under section 2A.】

【(2)】 (1)(A) BANK.—The term “Federal Home Loan Bank” or “Bank” means a bank established under the authority of the Federal Home Loan Bank Act.

(B) BANK SYSTEM.—The term “Federal Home Loan Bank System” means the Federal Home Loan Banks under the supervision of 【the Board】 *the Director*.

【(3)】 (2) STATE.—The term “State”, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

【(4)】 (3) The term “member” means any institution which has subscribed for the stock of a Federal Home Loan Bank.

【(5)】 (4) The term “home mortgage loan” means a loan made by a member upon the security of a home mortgage.

【(6)】 (5) The term “home mortgage” means a mortgage upon real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by 【the Board】 *the Director*, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under this Act to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

【(7)】 (6) The term “unpaid principal,” when used in respect of a loan secured by a home mortgage means the principal thereof less the sum of (1) payments made on such principal, and (2) in cases where shares or stock are pledged as security for the loan, the payments made on such shares or stock plus earnings or dividends apportioned or credited thereon.

【(8)】 (7) An “amortized” or “installment” home mortgage loan shall, for the purposes of this Act, be a home mortgage loan to be repaid or liquidated in not less than eight years by means of regular weekly, monthly, or quarterly payments made directly in reduction of the debt or upon stock or shares pledged as collateral for the repayment of such loan.

【(9)】 (8) SAVINGS ASSOCIATION.—The term “savings association” has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.

【(10) CHAIRPERSON.—The term “Chairperson” means the Chairperson of the Board.

【(11) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.】

【(12)】 (9) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” means—

(A) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), and

(B) except as used in sections 21A and 21B, an insured credit union (as defined in section 101 of the Federal Credit Union Act).

[(13)] (10) COMMUNITY FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term “community financial institution” means a member—

(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

(ii) that has, as of the date of the transaction at issue, less than **[\$500,000,000]** *\$1,000,000,000* in average total assets, based on an average of total assets over the 3 years preceding that date.

(B) ADJUSTMENTS.—The **[\$500,000,000]** *\$1,000,000,000* limit referred to in subparagraph (A)(ii) shall be adjusted annually by **[the Finance Board]** *the Director*, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

(11) DIRECTOR.—*The term “Director” means the Director of the Federal Housing Finance Agency.*

(12) AGENCY.—*The term “Agency” means the Federal Housing Finance Agency.*

[SEC. 2A. FEDERAL HOUSING FINANCE BOARD.]

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—There is established the Federal Housing Finance Board, which shall succeed to the authority of the Federal Home Loan Bank Board with respect to the Federal Home Loan Banks.

[(2) STATUS.—The Board shall be an independent agency in the executive branch of the Government.

[(3) DUTIES.—

[(A) SAFETY AND SOUNDNESS.—The primary duty of the Board shall be to ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.

[(B) OTHER DUTIES.—To the extent consistent with subparagraph (A), the duties of the Board shall also be—

[(i)] to supervise the Federal Home Loan Banks;

[(ii)] to ensure that the Federal Home Loan Banks carry out their housing finance mission; and

[(iii)] to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets.

[(b) MANAGEMENT.—

[(1) IN GENERAL.—The management of the Board shall be vested in a Board of Directors consisting of 5 directors as follows:

[(A)] The Secretary who shall serve without additional compensation.

[(B)] Four citizens of the United States, appointed by the President, by and with the advice and consent of the Senate, each of whom shall hold office for a term of 7 years.

[(2) PROVISIONS RELATING TO APPOINTED DIRECTORS.—

[(A) IN GENERAL.—The directors appointed pursuant to paragraph (1)(B) shall be from among persons with extensive experience or training in housing finance or with a commitment to providing specialized housing credit. An appointed director shall not hold any other appointed office during his or her term as director. Not more than 3 directors shall be members of the same political party. Not more than 1 appointed director shall be from any single district of the Federal Home Loan Bank System. Nominations pursuant to this subparagraph shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs.

[(B) CONSUMER REPRESENTATIVE.—At least 1 director shall be chosen from an organization with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

[(C) LIMITATIONS ON CONFLICTS OF INTEREST.—No director may—

[(i) serve as a director or officer of any Federal Home Loan Bank or any member of any Bank; or

[(ii) hold shares of, or any other financial interest in, any member of any such Bank.

[(D) CLARIFICATION OF STATUS.—

[(i) IN GENERAL.—The directors appointed pursuant to paragraph (1)(B) shall serve on a full-time basis after December 31, 1993.

[(ii) RULE OF CONSTRUCTION.—Clause (i) shall not be construed as implying that any other position may be filled or held on a less than full-time basis.

[(3) INITIAL TERMS.—Notwithstanding paragraph (2), of the directors first appointed—

[(A) one shall be appointed for a term of 1 year;

[(B) one shall be appointed for a term of 3 years; and

[(C) one shall be appointed for a term of 5 years.

[(c) CHAIRPERSON; TRANSITIONAL PROVISIONS.—

[(1) IN GENERAL.—The President shall designate 1 of the appointed directors to be the Chairperson of the Board. The Chairperson shall designate another director to serve as Acting Chairperson during the absence or disability of the Chairperson.

[(2) TRANSITIONAL PROVISION.—Beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, until such time that at least 2 directors are appointed and confirmed pursuant to subsection (b), the Secretary shall act for all purposes and with the full powers of the Board of Directors. The Secretary may utilize the services of employees from the Department of Housing and Urban Development to perform services for the Board of Directors during such transition period.

[(d) VACANCIES.—

[(1) IN GENERAL.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made. Any director appointed to fill a vacancy occurring before the expiration of the term for which such director's pred-

cessor was appointed shall be appointed only for the remainder of such term. Each director may continue to serve until a successor has been appointed and qualified.

[(2) THE SECRETARY.—In the event of a vacancy in the office of Secretary or during the absence or disability of the Secretary, the Acting Secretary shall act as a director in place of the Secretary.

[SEC. 2B. POWERS AND DUTIES.

[(a) GENERAL POWERS.—The Board shall have the following powers:

[(1) To supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of this Act.

[(2) To suspend or remove for cause a director, officer, employee, or agent of any Federal Home Loan Bank or joint office. The cause of such suspension or removal shall be communicated in writing to such director, officer, employee, or agent and to such Bank or joint office. Notwithstanding any other provision of this Act, no officer, employee, or agent of a Bank or joint office shall be a Federal officer or employee under any definition of either term in title 5, United States Code.

[(3) To determine necessary expenditures of the Board under this Act and the manner in which such expenditures shall be incurred, allowed, and paid.

[(4) To use the United States mails in the same manner and under the same conditions as a department or agency of the United States.

[(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the Bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice in conducting the business of the bank, or any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency, in accordance with the procedures provided in subsection (c) or (f) of section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to issue an order requiring a party to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a Bank or any executive officer or director of a Bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage

Corporation Act with respect to the Federal housing enterprises under subtitle C (other than section 1371) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

[(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.

[(7) To act in its own name and through its own attorneys—

[(A) in enforcing any provision of this Act or any regulation promulgated under this Act; or

[(B) in any action, suit, or proceeding to which the Finance Board is a party that involves the Board's regulation or supervision of any Federal home loan bank.

[(b) STAFF.—

[(1) BOARD STAFF.—Subject to title IV of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may employ, direct, and fix the compensation and number of employees, attorneys, and agents of the Federal Housing Finance Board, except that in no event shall the Board delegate any function to any employee, administrative unit of any Bank, or joint office of the Federal Home Loan Bank System. The prohibition contained in the preceding sentence shall not apply to the delegation of ministerial functions including issuing consolidated obligations pursuant to section 11(b). In directing and fixing such compensation, the Board shall consult with and maintain comparability with the compensation at the Federal bank regulatory agencies. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States, except the Chairperson and other Directors shall be compensated as prescribed in sections 5314 and 5315 of title 5, United States Code, respectively.

[(2) ABOLITION OF JOINT OFFICES.—The joint or collective offices of the Federal Home Loan Bank System, except for the Office of Finance, are hereby abolished.

[(c) RECEIPTS OF THE BOARD.—Receipts of the Board derived from assessments levied upon the Federal Home Loan Banks and from other sources (other than receipts from the sale of consolidated Federal Home Loan Bank bonds and debentures issued under section 11 of this Act) shall be deposited in the Treasury of the United States. Salaries of the directors and other employees of the Board and all other expenses thereof may be paid from such assessments or other sources and shall not be construed to be Government Funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or any other authority.

[(d) ANNUAL REPORT.—The Board shall make an annual report to the Congress.]

FEDERAL HOME LOAN BANKS

SEC. 3. As soon as practicable [the Board] *the Director* shall divide the continental United States, Puerto Rico, the Virgin Islands, Guam, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of

business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by [the Board] *the Director*, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable [the Board] *the Director* shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by [the Board] *the Director*. Its title shall include the name of the city at which it is established.

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) IN GENERAL.—Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution (as defined in section 2 of this Act), shall be eligible to become a member of a Federal Home Loan Bank if such institution—

(A) is duly organized under the laws of any State or of the United States;

(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and

(C) makes such home mortgage loans as, in the judgment of [the Board] *the Director*, are long-term loans (except that in the case of a savings bank, this subparagraph applies only if, in the judgment of [the Board] *the Director*, its time deposits, as defined in section 19 of the Federal Reserve Act, warrant its making such loans).

* * * * *

(3) CERTAIN INSTITUTIONS.—An insured depository institution commencing its initial business operations after January 1, 1989, may become a member of a Federal Home Loan Bank if it complies with regulations and orders prescribed by [the Board] *the Director* for the 10 percent asset requirement (described in the paragraph (2)) within one year after the commencement of its operations.

* * * * *

(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of [the Board] *the Director*.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon

subjecting itself to such inspection and regulation as [the Board] *the Director* shall prescribe, be eligible to become a member.

SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

(a) REGULATIONS.—

(1) CAPITAL STANDARDS.—Not later than 18 months after the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, [the Finance Board] *the Director* shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

(A) * * *

* * * * *

(3) RISK-BASED CAPITAL STANDARDS.—

[(A) IN GENERAL.—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

[(i) the credit risk to which the Federal home loan bank is subject; and

[(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.]

(A) *RISK-BASED CAPITAL STANDARDS.—The Director shall, by regulation, establish risk-based capital standards for the Federal home loan banks to ensure that the Federal home loan banks operate in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise in the operations and management of the Federal home loans banks.*

(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—In establishing the risk-based standard under subparagraph [(A)(ii)] (A), [the Finance Board] *the Director* shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as [the Finance Board] *the Director* determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

(4) OTHER REGULATORY REQUIREMENTS.—The regulations issued by [the Finance Board] *the Director* under paragraph (1) shall—

(A) * * *

* * * * *

(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

(A) * * *

(B) total capital of a Federal home loan bank shall include—

- (i) permanent capital;
- (ii) the amounts paid for the Class A stock;
- (iii) consistent with generally accepted accounting principles, and subject to the regulation of **the Finance Board** *the Director*, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and
- (iv) any other amounts from sources available to absorb losses incurred by the bank that **the Finance Board** *the Director* determines by regulation to be appropriate to include in determining total capital.

(6) TRANSITION PERIOD.—Notwithstanding any other provision of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by **the Finance Board** *the Director* and implemented by such bank.

(b) CAPITAL STRUCTURE PLAN.—

(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by **the Finance Board** *the Director* of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for **the Finance Board** approval *approval by the Director* a plan establishing and implementing a capital structure for such bank that—

(A) * * *

* * * * *

(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by **the Finance Board** *the Director*.

(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to **the Finance Board** *the Director* for approval any modifications that the bank proposes to make to an approved capital structure plan.

(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

(1) MINIMUM INVESTMENT.—

(A) * * *

(B) INVESTMENT ALTERNATIVES.—

(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by **the Finance Board** *the Director*.

* * * * *

(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by **the Finance Board** *the Director* under subsection (a).

(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by **the Finance Board** *the Director*, and shall require each member to comply promptly with any adjustments to the required minimum investment.

* * * * *

(4) CLASSES OF STOCK.—

(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by **the Finance Board** *the Director* in accordance with its regulations.

(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with **Finance Board regulations** *regulations of the Director* and market requirements.

(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by **the Finance Board** *the Director*.

* * * * *

(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with **the Finance Board** *the Director*, each Federal home loan bank shall conduct a review of the plan by—

(A) * * *

* * * * *

(d) TERMINATION OF MEMBERSHIP.—

(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank if the member provides written notice to the bank of its intent to do so and if, on the date of withdrawal, there is in effect a certification by **the Finance Board** *the Director* that the withdrawal will not cause the Federal Home Loan Bank System to fail to meet its obligation under section 21B(f)(2)(C) to contribute to the debt service for

the obligations issued by the Resolution Funding Corporation. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

(2) INVOLUNTARY WITHDRAWAL.—

(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to [Finance Board regulations] *regulations of the Director*, it determines that—

(i) * * *

* * * * *

(f) IMPAIRMENT OF CAPITAL.—If [the Finance Board] *the Director* or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of [the Finance Board] *the Director* while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

(g) REJOINING AFTER DIVESTITURE OF ALL SHARES.—

(1) * * *

(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of [the Finance Board] *the Director* and the requirements of this Act.

* * * * *

MANAGEMENT OF BANKS

SEC. 7. [(a) The management of each Federal Home Loan Bank shall be vested in a board of fourteen directors, eight of whom shall be elected by the members as hereinafter provided in this section and six of whom shall be appointed by the Board referred to in section 2A, all of whom shall be citizens of the United States, and each of whom shall be either a bona fide resident of the district in which such bank is located or an officer or director of a member of such bank located in that district: *Provided*, That in any district which includes five or more States the Board may by regulation increase the elective directors to a number not exceeding thirteen and may increase the appointive directors to a number not exceeding three-fourths the number of elective directors: *Provided further*, That, if at any time the number of elective directors in the case of any district is not at least equal to the number of States in such district the Board shall exercise the authority conferred by the next preceding proviso so as to increase such elective directors to a number at least equal to the number of States in such district. At least

2 of the Federal Home Loan Bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal Home Loan Bank director who is appointed pursuant to this subsection may, during such Bank director's term of office, serve as an officer of any Federal Home Loan Bank or a director or officer of any member of a Bank, or hold shares, or any other financial interest in, any member of a Bank.】

(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

(1) *IN GENERAL.*—*The management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate, each of whom shall be elected by the members and shall be a citizen of the United States.*

(2) *MEMBER DIRECTORS.*—*A majority of the directors of each Bank shall be officers or directors of a member of such Bank that is located in the district in which such Bank is located.*

(3) *INDEPENDENT DIRECTORS.*—*At least one-third of the directors of each Bank shall be independent directors as follows:*

(A) *IN GENERAL.*—*Each independent director shall be a bona fide resident of the district in which such Bank is located.*

(B) *PUBLIC INTEREST DIRECTORS.*—*At least 2 of the independent directors under this paragraph of each Bank shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.*

(C) *OTHER DIRECTORS.*—*Each independent director that is not a public interest director under subparagraph (B) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.*

(D) *CONFLICTS OF INTEREST.*—*An independent director under this paragraph of a Bank may not, during such director's term of office, serve as an officer of any Federal Home Loan Bank or as a director or officer of any member of a Bank.*

(b) Each 【elective directorship】 *member directorship pursuant to subsection (a)(2) shall be designated by 【the Board】 the Director as representing the members located in a particular State, and shall be filled by a person who is an officer or director of a member located in that State, each of which members shall be entitled to nominate an eligible person for such directorship, and such office shall be filled from such nominees by a plurality of the votes which such members may cast in an election held for the purpose of filling such office, in which election each such member may cast for such office a number of votes equal to the number of shares of stock in such bank required by this Act to be held by such member at the end of the calendar year next preceding the election, as determined pursuant to regulation of 【the Board】 the Director, but*

not in excess of the average number of shares of stock in such bank required by this Act to be held at the end of such calendar year by the respective members of such bank located in such State, as so determined. *Each independent directorship pursuant to subsection (a)(3) shall be filled by election by a plurality of the votes of the members of the Bank at large, in which election each member shall be entitled to nominate candidates and to cast the same number of votes as in an election to fill a directorship allocated to the member's State.* No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection and in subsection (c) of this section, the term "member" means a member of a Federal home loan bank which was a member of such bank at the end of such calendar year.

(c) The number of [elective] directorships designated as representing the members located in each separate State in a bank district shall be determined by [the Board] *the Director* in the approximate ratio of the percentage of the required stock, as determined pursuant to regulation of [the Board] *the Director*, of the members located in that State at the end of the calendar year next preceding the date of the election to the total required stock, as so determined, of all members of such bank at the end of such year, except that in the case of each State such number shall not be less than one and shall not be more than six. [Notwithstanding any other provision of this section, if at any time the number of elective directorships so designated as representing the members located in any State would not be at least equal to the total number of elective directorships which, on December 31, 1960, were filled by officers or directors of members whose principal places of business were located in such State, the Board shall add to the board of directors of the bank of the district in which such State is located such number of elective directorships, and shall so designate the directorship or directorships thus added, that the number of elective directorships designated as representing the members located in such State will equal said total number. Any elective directorship so added shall exist only until the expiration of its first term. The Board] *The Director* shall, with respect to each member of a Federal home loan bank, designate the State in the district of such bank in which such member shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be located, and may from time to time change any such designation, but if the principal place of business of any such member is located in a State of such district it shall be the duty of [the Board] *the Director* to designate such State as the State in which such member shall, for said purposes, be deemed to be located. [As used in the second sentence of this subsection, the term "total number of elective directorships" means the total number of elective directorships on the board of directors of the bank of the district in which such State was located on December 31, 1960, and the term "members" where used for the second time in such sentence means members of such bank.]

(d) The term of each director[, whether elected or appointed,] shall be [3] 4 years. The board of directors of each Federal home loan bank and [the Finance Board] *the Director* shall adjust the terms of members first elected [or appointed] after the date of the

enactment of the **【Federal Home Loan Bank System Modernization Act of 1999】** *Federal Housing Finance Reform Act of 2005* to ensure that the terms of the members of the board of directors are staggered with approximately **【 $\frac{1}{3}$ 】** $\frac{1}{4}$ of the terms expiring each year. If any person, before or after, or partly before and partly after, the date of the enactment of this sentence, has been elected to each of three consecutive full terms as **【an elective】** a director of a Federal home loan bank in any **【elective】** directorship or **【elective】** directorships and has served for all or part of each of said terms, such person shall not be eligible for election to **【an elective】** a directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms. **【The Board】** *The Director* is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

* * * * *

【(f) VACANCIES.—

【(1) IN GENERAL.—A Bank director appointed or elected to fill a vacancy shall be appointed or elected for the unexpired term of his or her predecessor in office.

【(2) APPOINTED BANK DIRECTORS.—In the event of a vacancy in any appointive Bank directorship, such vacancy shall be filled through appointment by the Board for the unexpired term. If any appointive Bank director shall cease to have the qualifications set forth in subsection (a), the office held by such person shall immediately become vacant, but such person may continue to act as a Bank director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

【(3) ELECTED BANK DIRECTORS.—In the event of a vacancy in any elective Bank directorship, such vacancy shall be filled by an affirmative vote of a majority of the remaining Bank directors, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. A Bank director so elected shall satisfy the requirements for eligibility which were applicable to his predecessor. If any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director.】

(f) VACANCIES.—A Bank director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. In the event of a vacancy in any Bank directorship, such vacancy shall be filled by an affirmative vote of a majority of the remaining Bank directors, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. A Bank director so elected shall satisfy the requirements for eligibility which were applicable to his predecessor. If any Bank director shall cease to

have any qualification set forth in this section, the office held by such person shall immediately become vacant.

* * * * *

(h) If at any time when nominations are required members shall hold less than \$1,000,000 of the capital stock of the Federal home loan bank, [the Board] *the Director* shall appoint a director or directors to fill the place or places for which such nominations are required, and [the Board] *the Director* may, prior to the filing of the certificate mentioned in section 12, appoint directors who shall be respectively designated by it as appointive directors and as [elective] directors, in accordance with the provisions of this section.

[(i) DIRECTORS' COMPENSATION.—

[(1) IN GENERAL.—Subject to paragraph (2), each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by the such directors, subject to the approval of the board.

[(2) LIMITATION.—

[(A) IN GENERAL.—The annual salary of each of the following members of the board of directors of a Federal home loan bank may not exceed the amount specified:

[(In the case of the—	The annual compensation may not exceed—
Chairperson	\$25,000
Vice Chairperson	\$20,000
All other members	\$15,000.

[(B) ADJUSTMENT.—Beginning January 1, 2001, each dollar amount referred to in the table in subparagraph (A) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

[(C) EXPENSES.—Subparagraph (A) shall not be construed as prohibiting the reimbursement of expenses incurred by members of the board of directors of any Federal home loan bank in connection with service on the board of directors.]

(i) DIRECTORS' COMPENSATION.—

(1) IN GENERAL.—*Each Federal home loan bank may pay the directors on the board of directors for the bank reasonable and appropriate compensation for the time required of such directors, and reasonable and appropriate expenses incurred by such directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors and subject to the approval of the Director.*

(2) ANNUAL REPORT BY THE BOARD.—*The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks.*

* * * * *

(1) *WITHHOLDING OF COMPENSATION.*—Notwithstanding any other provision of this section, a Federal home loan bank shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).

EXAMINATIONS AND STUDIES [BY THE BOARD]

SEC. 8. [The Board] *The Director* shall cause to be made from time to time examinations of the laws of the various States of the United States and the regulations and procedure thereunder governing conditions under which institutions of the kinds which may become members or nonmember borrowers under this Act are permitted to be formed or to do business, or relating to the conveying or recording of land titles, or to homestead and other rights, or to the enforcement of the rights of holders of mortgages on lands securing loans, or otherwise. If any such examination shall indicate, in the opinion of [the Board] *the Director*, that under the laws of any such State or the regulations or procedure thereunder there would be inadequate protection to a Federal Home Loan Bank in making or collecting advances under this Act, [the Board] *the Director* may withhold or limit the operation of any Federal Home Loan Bank in such State until satisfactory conditions of law, regulation, or procedure shall be established. In any State where State examination of members or nonmember borrowers is deemed inadequate for the purposes of the Federal Home Loan Banks, [the Board] *the Director* shall establish such examination, all or part of the cost of which may be considered as part of the cost of making advances in such State. The banks and/or [the Board] *the Director* may make studies of trends of home and other property values, methods of appraisals, and other subjects such as they may deem useful for the general guidance of their policies and operations and those of institutions authorized to secure advances.

* * * * *

SEC. 10. ADVANCES TO MEMBERS.

(a) IN GENERAL.—

(1) * * *

(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

(A) providing funds to any member for residential housing finance; and

(B) providing funds to any community financial institution for small businesses, small farms, [and] small agribusinesses, *and community development activities*.

(3) COLLATERAL.—A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

(A) * * *

* * * * *

(E) Secured loans for small business, agriculture, *or community development activities* or securities representing a

whole interest in such secured loans, in the case of any community financial institution.

* * * * *

(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—**[The Board]** *The Director* may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

(6) DEFINITIONS.—For purposes of this subsection, the terms “small business”, “agriculture”, “small farm”, **[and]** “small agri-business”, and “community development activities” shall have the meanings given those terms by regulation of **[the Finance Board]** *the Director*.

(b) For the purposes of this section, each Federal Home Loan Bank shall have power to make, or to cause or require to be made, such appraisals and other investigations as it may deem necessary. No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Federal Home Loan Bank shall be accepted if any director, officer, employee, attorney, or agent of the Federal Home Loan Bank or of the borrowing institution is personally liable thereon, unless **[the Board]** *the Director* has specifically approved **[by formal resolution]** such acceptance.

* * * * *

(g) COMMUNITY SUPPORT REQUIREMENTS.—

(1) IN GENERAL.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, **[the Board]** *the Director* shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

* * * * *

(j) AFFORDABLE HOUSING PROGRAM.—

(1) IN GENERAL.—Pursuant to regulations promulgated by **[the Board]** *the Director*, each Bank shall establish an Affordable Housing Program to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(2) STANDARDS.—**[The Board’s]** *The Director’s* regulations shall permit Bank members to use subsidized advances received from the Banks to—

(A) * * *

* * * * *

(6) GROUNDS FOR SUSPENDING CONTRIBUTIONS.—

(A) IN GENERAL.—If a Bank finds that the payments required under this paragraph are contributing to the financial instability of such Bank, it may apply to the **[Federal Housing Finance Board]** *Director* for a temporary suspension of such payments.

(B) FINANCIAL INSTABILITY.—In determining the financial instability of a Bank, the **[Federal Housing Finance**

Board] *Director* shall consider such factors as (i) whether the Bank's earnings are severely depressed, (ii) whether there has been a substantial decline in membership capital, and (iii) whether there has been a substantial reduction in advances outstanding.

(C) REVIEW.—[The Board] *The Director* shall review the application and any supporting financial data and issue a written decision approving or disapproving such application. [The Board's] *The Director's* decision shall be accompanied by specific findings and reasons for its action.

(D) MONITORING SUSPENSION.—If [the Board] *the Director* grants a suspension, it shall specify the period of time such suspension shall remain in effect and shall continue to monitor the Bank's financial condition during such suspension.

(E) LIMITATIONS ON GROUNDS FOR SUSPENSION.—[The Board] *The Director* shall not suspend payments to the Affordable Housing Program if the Bank's reduction in earnings is a result of (i) a change in the terms for advances to members which is not justified by market conditions, (ii) inordinate operating and administrative expenses, or (iii) mismanagement.

(F) The [Federal Housing Finance Board] *Director* shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 60 days before such suspension takes effect. Such suspension shall become effective unless a joint resolution is enacted disapproving such suspension.

(7) FAILURE TO USE AMOUNTS FOR AFFORDABLE HOUSING.—If any Bank fails to utilize or commit the full amount provided in this subsection in any year, 90 percent of the amount that has not been utilized or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund administered by [the Board] *the Director*. The 10 percent of the unutilized and uncommitted amount retained by a Bank should be fully utilized or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Under regulations established by [the Board] *the Director*, funds from the Affordable Housing Reserve Fund may be made available to any Bank to meet additional affordable housing needs in such Bank's district pursuant to this section.

* * * * *

(9) REGULATIONS.—The [Federal Housing Finance Board] *Director* shall promulgate regulations to implement this subsection. Such regulations shall, at a minimum—

(A) * * *

* * * * *

(11) ADVISORY COUNCIL.—Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in its district. The Advisory Council shall meet with representatives of the board

of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the district and on the utilization of the advances for these purposes. Each Advisory Council established under this paragraph shall submit to **the Board** *the Director* at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

(12) REPORTS TO CONGRESS.—

(A) **The Board** *The Director* shall monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by the Banks and the utilization of advances for these purposes.

(B) The analyses submitted by the Advisory Councils to **the Board** *the Director* under paragraph (11) shall be included as part of the report required by this paragraph.

* * * * *

SEC. 10b. (a) IN GENERAL.—Each Federal Home Loan Bank is authorized to make advances to nonmember mortgagees approved under title II of the National Housing Act. Such mortgagees must be chartered institutions having succession and subject to the inspection and supervision of some governmental agency, and whose principal activity in the mortgage field must consist of lending their own funds. Such advances shall not be subject to the other provisions and restrictions of this Act, but shall be made upon the security of insured mortgages, insured under title II of the National Housing Act. Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by **the Board** *the Director*, but no advance may be for an amount in excess of 90 per centum of the unpaid principal of the mortgage loan given as security.

* * * * *

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by **the Board** *the Director* to borrow and give security therefor and to pay interest thereon, to issue debentures, bonds, or other obligations upon such terms and conditions as **the Board** *the Director* may approve, and to do all things necessary for carrying out the provisions of this Act and all things incident thereto.

(b) **The Board** *The Office of Finance, as agent for the Banks*, may issue consolidated Federal Home Loan Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this Act, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as **the Board** *such Office* may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither **the Board** *such Office of Finance* nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures

issued under this section and outstanding shall at no time exceed five times the total paid-in capital of all the Federal Home Loan Banks as of the time of the issue of such debentures. It shall be the duty of **the Board** *such Office of Finance* not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 10(a) of this Act by all the Federal Home Loan Banks.

(c) At any time that no debentures are outstanding under this Act, or in order to refund all outstanding consolidated debentures issued under this section, **the Board** *the Office of Finance, as agent for the Banks*, may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as **the Board** *such Office* may prescribe.

(d) **The Board** *The Director* shall have full power to require any Federal Home Loan Bank to deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.

(e)(1) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as **the Board** *the Director* may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not incidental to activities authorized by this Act.

(2)(A) **The Board** *The Director* may, subject to such rules and regulations, including definitions of terms used in this paragraph, as **the Board** *the Director* shall from time to time prescribe, authorize Federal Home Loan Banks to be drawees of, and to engage in, or be agents or intermediaries for, or otherwise participate or assist in, the collection and settlement of (including presentment, clearing, and payment of, and remitting for), checks, drafts, or any other negotiable or nonnegotiable items or instruments of payment drawn on or issued by members of any Federal Home Loan Bank or by institutions which are eligible to make application to become members pursuant to section 4, and to have such incidental powers as **the Board** *the Director* shall find necessary for the exercise of any such authorization.

(B) A Federal Home Loan Bank shall make charges, to be determined and regulated by **the Board** *the Director* consistent with the principles set forth in section 11A(c) of the Federal Reserve Act, or utilize the services of, or act as agent for, or be a member of, a Federal Reserve bank, clearinghouse, or any other public or private financial institution or other agency, in the exercise of any powers or functions pursuant to this paragraph.

(C) **The Board** *The Director* is authorized, with respect to participation in the collection and settlement of any items by Federal Home Loan Banks, and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks, to prescribe rules and regulations regarding the rights, powers, responsibilities, duties, and liabilities, including standards relating thereto, of such Federal Home Loan Banks, associations, or banks and other parties to any such items or their collection and

settlement. In prescribing such rules and regulations, **the Board** *the Director* may adopt or apply, in whole or in part, general banking usage and practices, and, in instances or respects in which they would otherwise not be applicable, Federal Reserve regulations and operating letters, the Uniform Commercial Code, and clearinghouse rules.

(f) **The Board** *The Director* is authorized and empowered to permit~~[,] or to require[.]~~ Federal Home Loan Banks, upon such terms and conditions as **the Board** *the Director* may prescribe, to rediscount the discounted notes of members held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section.

(g) Each Federal Home Loan Bank shall at all times have at least an amount equal to the current deposits received from its members invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed five years which are made to members, upon such terms and conditions as **the Board** *the Director* may prescribe, and (4) advances with a maturity of not to exceed five years which are made to members whose creditor liabilities (not including advances from the Federal Home Loan Bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as **the Board** *the Director* may prescribe.

(h) Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (g)) as are not required for advances to members, may be invested, to such extent as the bank may deem desirable and subject to such regulations, restrictions, and limitations as may be prescribed by **the Board** *the Director*, in obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association, or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, in the stock of the Federal National Mortgage Association in stock, obligations, or other securities of any small business investment company formed pursuant to section 301 of the Small Business Investment Act of 1958, for the purpose of aiding members of the Federal Home Loan Bank System, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

(i) The Secretary of the Treasury is authorized in his discretion to purchase any obligations issued pursuant to this section, as heretofore, now, or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include such purchases. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by

him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public-debt transactions of the United States. The Secretary of the Treasury shall not at any time purchase any obligations under this paragraph if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this paragraph to an amount greater than \$4,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions as shall be determined by the Secretary of the Treasury and shall bear such rate of interest as may be determined by the Secretary of the Treasury taking into consideration the current average market yield for the month preceding the month of such purchase on outstanding marketable obligations of the United States.

In addition to obligations authorized to be purchased by the preceding paragraph, the Secretary of the Treasury is authorized to purchase any obligations issued pursuant to this section in amounts not to exceed \$2,000,000,000. The authority provided in this paragraph shall expire August 10, 1975.

Notwithstanding the foregoing, the authority provided in this subsection may be exercised during any calendar quarter beginning after the date of enactment of the Depository Institutions Amendments of 1974 only if the Secretary of the Treasury and [the Chairperson of the Board] *the Director* certify to the Congress that (1) alternative means cannot be effectively employed to permit members of the Federal Home Loan Bank System to continue to supply reasonable amounts of funds to the mortgage market, and (2) the ability to supply such funds is substantially impaired because of monetary stringency and a high level of interest rates. Any funds borrowed under this subsection shall be repaid by the Home Loan Banks at the earliest practicable date.

* * * * *

(1) *JOINT ACTIVITIES.*—Subject to the regulation of the Director, any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for, or providing services to, the Banks on a common or collective basis, or may require that the Office of Finance perform such functions or services, but only if the Banks are otherwise authorized to perform such functions or services individually.

INCORPORATION OF BANKS, AND CORPORATE POWERS

SEC. 12. (a) The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as [the Board] *the Director* may prescribe, make and file with [the Board] *the Director* at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as [the Board] *the Director* may require. Upon the making and filing of such organization certificate with [the Board] *the Director*, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by [the Board] *the Director* it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may

be necessary or convenient for the transaction of its business; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by [the Finance Board] *the Director*. No officer, employee, attorney, or agent of a Federal home loan bank who receives compensation, may be a member of the board of directors. Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally.

(b) Subject to such regulations as may be prescribed by [the Board] *the Director*, one or more Federal home loan banks may acquire, hold, or dispose of, in whole or in part, or facilitate such acquisition, holding, or disposition by members of any such bank of, housing project loans, or interests therein, having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961, as now or hereafter in effect, or loans, or interests therein, having the benefit of any guaranty under section 224 of such Act, or any commitment or agreement with respect to such loans, or interests therein, made pursuant to either of such sections. This authority extends to the acquisition, holding, and disposition of loans, or interests therein, having the benefit of any guaranty under section 221 or 222 of the Foreign Assistance Act of 1961, as amended by section 105 of the Foreign Assistance Act of 1969 or as hereafter amended or extended, or of any commitment or agreement for any such guaranty.

* * * * *

SEC. 15. Obligations of the Federal Home Loan Banks issued with the approval of the Board *or the Director* under this Act shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal reserve banks are authorized to act as depositaries, custodians, and/or fiscal agents for Federal Home Loan Banks in the general performance of their powers under this Act. All obligations of Federal Home Loan Banks shall plainly state that such obligations are not obligations of the United States and are not guaranteed by the United States.

RESERVES AND DIVIDENDS

SEC. 16. (a) Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as [the Board] *the Director* shall require from time to time. No dividends shall be paid except out of previously retained earnings or current net earnings remaining after reductions for all re-

serves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this Act have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 21 or payments relating to the Funding Corporation Principal Fund under section 21B(e). The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by **the Board** *the Director*, in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

(b) Notwithstanding subsection (a) or any other provision of this Act, if **the Board** *the Director* determines that severe financial conditions exist threatening the stability of member institutions, **the Board** *the Director* may suspend temporarily the requirements of subsection (a) that a portion of net earnings be set aside semiannually by each Federal Home Loan Bank to a reserve account and permit each Federal Home Loan Bank to declare and pay dividends out of undivided profits.

(c) EXCEPTION IN CASE OF LOSSES IN CONNECTION WITH FINANCING CORPORATION STOCK.—

(1) IN GENERAL.—Notwithstanding subsection (a) of this section, if—

(A) * * *

(B) **the Board** *the Director* determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a)) to zero,

the Board *the Director* may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 21(d)(7)) or the reserve account required by the first 2 sentences of subsection (a).

(2) REQUIREMENTS OF SECTION 21 NOT AFFECTED.—Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by **the Board** *the Director* under paragraph (1), the applicable provisions of section 21 shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made.

ADMINISTRATIVE EXPENSES

SEC. 18.

(b) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—The Board may impose a semiannual assessment on the Federal Home Loan Banks, the aggregate

amount of which is sufficient to provide for the payment of the Board's estimated expenses for the period for which such assessment is made.

【(2) DEFICIENCIES.—If, at any time, amounts available from any assessment for any semiannual period are insufficient to cover the expenses of the Board incurred in carrying out the provisions of this Act during such period, the Board may make an immediate assessment against the Banks to cover the amount of the deficiency for such semiannual period.

【(3) SURPLUSES.—If, at the end of any semiannual period for which an assessment is made, any amount remains from such assessment, such amount will be deducted from the assessment on the Banks by the Board for the following semiannual period.】

* * * * *

EXAMINATIONS AND 【REPORTS】 GAO AUDITS

SEC. 20. 【The Board shall from time to time, at least annually, require examinations and reports of condition of all Federal Home Loan Banks in such form as the Board shall prescribe and shall furnish periodically statements based upon the reports of the banks to the Board. For the purposes of this Act, examiners appointed by the Board shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act and the Federal Reserve Act, and shall have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law.】 *The Federal home loan banks shall be subject to examinations by the Director to the extent provided in section 1317 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517).* In addition to such examinations, the Comptroller General may audit or examine 【the Board and】 the Banks, to determine the extent to which 【the Board and】 the Banks are fairly and effectively fulfilling the purposes of this Act.

SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

(a) REGULATORY AUTHORITY.—*The Director shall prescribe such regulations as may be necessary to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability.*

(b) NO WAIVER OF PRIVILEGE.—*The Director shall not be deemed to have waived any privilege applicable to any information concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purpose of enabling the recipient to evaluate the nature and extent of its joint and several liability.*

SEC. 21. FINANCING CORPORATION.

(a) ESTABLISHMENT.—Notwithstanding any other provision of law, the 【Federal Housing Finance Board】 Director shall charter a corporation to be known as the Financing Corporation.

(b) MANAGEMENT OF FINANCING CORPORATION.—

(1) DIRECTORATE.—The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

(B) 2 members selected by the **【Federal Housing Finance Board】** *Director* from among the presidents of the Federal Home Loan Banks.

* * * * *

(5) CHAIRPERSON.—The **【Chairperson of the Federal Housing Finance Board】** *Director* shall select the chairperson of the Directorate from among the 3 members of the Directorate.

(6) STAFF.—

(A) NO PAID EMPLOYEES.—The Financing Corporation shall have no paid employees.

(B) POWERS.—The Directorate may, with the approval of the **【Federal Housing Finance Board】** *Director*, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

(7) ADMINISTRATIVE EXPENSES.—

(A) * * *

(B) PRO RATA DISTRIBUTION.—The amount each Federal Home Loan Bank shall pay shall be determined by the **【Federal Housing Finance Board】** *Director* by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

(i) the aggregate amount the **【Federal Housing Finance Board】** *Director* required such bank to invest in the Financing Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) (as computed without regard to paragraph (3) or (6) of such subsection); by

(ii) the aggregate amount the **【Federal Housing Finance Board】** *Director* required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

* * * * *

(8) REGULATION BY **【FEDERAL HOUSING FINANCE BOARD】** *DIRECTOR*.—The Directorate shall be subject to such regulations, orders, and directions as the **【Federal Housing Finance Board】** *Director* may prescribe.

* * * * *

(c) POWERS OF FINANCING CORPORATION.—The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the **【Federal Housing Finance Board】** *Director* may prescribe:

(1) * * *

* * * * *

(d) CAPITALIZATION OF FINANCING CORPORATION.—

(1) PURCHASE OF CAPITAL STOCK BY FEDERAL HOME LOAN BANKS.—

(A) IN GENERAL.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the [Federal Housing Finance Board] *Director* may prescribe under this subsection.

(B) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the [Federal Housing Finance Board] *Director* and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the [Federal Housing Finance Board] *Director* at not less than par value.

* * * * *

(4) PRO RATA DISTRIBUTION OF 1ST \$1,000,000,000 INVESTED IN FINANCING CORPORATION BY HOME LOAN BANKS.—Of the first \$1,000,000,000 in the aggregate which the Thrift Depositor Protection Oversight Board pursuant to section 21B or the [Federal Housing Finance Board] *Director* under this section (as the case may be) may require the Federal Home Loan Banks collectively to invest in the stock of the Funding Corporation or invest in the capital stock of the Financing Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Thrift Depositor Protection Oversight Board or the [Federal Housing Finance Board] *Director* (as the case may be) by multiplying the aggregate amount of such payment or investment by all Banks by the percentage appearing in the following table for each such Bank:

Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF \$1,000,000,000.—With respect to any amount in excess of the \$1,000,000,000 amount referred to in paragraph (4) which the [Federal Housing Finance Board] *Director* may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the [Federal Housing Finance Board] *Director* by multiplying such excess amount by the percentage arrived at by dividing—

(A) * * *

* * * * *

(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the **【Federal Housing Finance Board】** *Director* under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the “excess amount”)—

(i) the **【Federal Housing Finance Board】** *Director* shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

(ii) the **【Federal Housing Finance Board】** *Director* shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

* * * * *

(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING HOME LOAN BANKS.—The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the **【Federal Housing Finance Board】** *Director* by multiplying the excess amount by the percentage arrived at by dividing—

(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

(ii) the aggregate amount of such stock held by all remaining banks at such time.

(C) PURCHASE PROCEDURE.—The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the **【Federal Housing Finance Board】** *Director* by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

* * * * *

(E) TRANSFER TO ACCOUNT FOR PURCHASE OF STOCK REQUIRED.—Of the net earnings for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as

the **[Federal Housing Finance Board]** *Director* shall prescribe by regulations) the balance in which shall be available only for such purchases.

* * * * *

(e) OBLIGATIONS OF THE FINANCING CORPORATION.—

(1) LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.—
The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the **[Federal Housing Finance Board]** *Director*) shall not exceed the lesser of—

(A) * * *

* * * * *

(4) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—
Obligations issued under this section by the Financing Corporation with the approval of the **[Federal Housing Finance Board]** *Director* shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

* * * * *

(9) MINORITY PARTICIPATION IN PUBLIC OFFERINGS.—The **[Chairperson of the Federal Housing Finance Board]** *Director* and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of obligations issued under this section.

* * * * *

(g) USE AND DISPOSITION OF ASSETS OF THE FINANCING CORPORATION NOT INVESTED IN FSLIC.—

(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the **[Federal Housing Finance Board]** *Director*, assets of the Financing Corporation, which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and after such date in capital certificates issued by the FSLIC Resolution Fund, shall be invested in—

(A) * * *

* * * * *

(i) TERMINATION OF THE FINANCING CORPORATION.—

(1) * * *

(2) **[FEDERAL HOUSING FINANCE BOARD]** *DIRECTOR* AUTHORITY TO CONCLUDE THE AFFAIRS OF FINANCING CORPORATION.—
Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the **[Federal Housing Finance Board]** *Director* may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the **[Federal Housing Finance Board]** *Director* determines to be

necessary to settle and conclude the affairs of the Financing Corporation.

(j) REGULATIONS.—The [Federal Housing Finance Board] *Director* may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

* * * * *

SEC. 21A. THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD AND RESOLUTION TRUST CORPORATION.

(a) * * *

* * * * *

(h) GUARANTEES OF FSLIC.—

(1) ASSUMPTION BY CORPORATION.—On the date of the enactment of this section, the Corporation shall, by operation of law (and without further action by the Corporation, the Thrift Depositor Protection Oversight Board, the [Federal Housing Finance Board] *Director*, the Federal Savings and Loan Insurance Corporation, or any court), assume all rights and obligations of the Federal Savings and Loan Insurance Corporation with respect to any guarantee issued by the Federal Savings and Loan Insurance Corporation during the period beginning on January 1, 1989, and ending on such date of enactment, in connection with any loan to any savings association by any Federal Reserve bank or Federal Home Loan Bank (hereinafter in this subsection referred to as a “lender”).

* * * * *

SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) * * *

* * * * *

(c) MANAGEMENT OF FUNDING CORPORATION.—

(1) * * *

* * * * *

(6) STAFF.—

(A) NO PAID EMPLOYEES.—The Funding Corporation shall have no paid employees.

(B) POWERS.—The Directorate may, with the approval of the [Federal Housing Finance Board] *Director* authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Funding Corporation in such manner as may be necessary to carry out the functions of the Funding Corporation.

* * * * *

(e) CAPITALIZATION OF FUNDING CORPORATION, ETC.—

(1) * * *

* * * * *

(4) PRO RATA DISTRIBUTION OF FIRST \$1,000,000,000 INVESTED IN FUNDING CORPORATION BY FEDERAL HOME LOAN BANKS.—Of the first \$1,000,000,000 of the aggregate that the [Federal Housing Finance Board] *Director* (pursuant to section 21) or the Thrift Depositor Protection Oversight Board (under this section) may require the Federal Home Loan Banks collectively

to invest in the capital stock of the Financing Corporation or invest in the capital stock of the Funding Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to the Bank) shall invest shall be determined by the **[Federal Housing Finance Board] Director** or the Thrift Depositor Protection Oversight Board (as the case may be) by multiplying the aggregate amount of such investment by all Banks by the percentage appearing in the following table for each such Bank:

Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

* * * * *

(f) OBLIGATIONS OF FUNDING CORPORATION.—

(1) * * *

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

(A) * * *

(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

(i) * * *

(ii) ANNUAL DETERMINATION.—**[The Board] The Director** annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of \$300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations, in consultation with the Secretary of the Treasury.

(iii) PAYMENT TERM ALTERATIONS.—**[The Board] The Director** shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the Banks is equivalent to the value of an annuity referred to in clause (ii).

(iv) TERM BEYOND MATURITY.—If the Board extends the term of payment obligations beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.0 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause

(ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.0 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the Banks to the Treasury, [the Finance Board] *the Director* shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.

* * * * *

SEC. 22. MEMBER FINANCIAL INFORMATION.

(a) IN GENERAL.—In order to enable the Federal Home Loan Banks to carry out the provisions of this Act, the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision, upon request by any Federal Home Loan Bank—

(1) * * *

* * * * *

In addition, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision shall make available to [the Board] *the Director* or any Federal Home Loan Bank the financial reports filed by members of any Bank to enable [the Board] *the Director* or a Bank to compile and publish cost of funds indices or other financial or statistical reports.

(b) CONSENT BY MEMBERS.—Every member of a Federal Home Loan Bank shall, as a condition precedent thereto, be deemed—

(1) to consent to such examinations as the Bank or [the Board] *the Director* may require for the purposes of this Act;

(2) to agree that reports of examinations by local, State, or Federal agencies or institutions may be furnished by such authorities to the Bank or [the Board] *the Director* upon request; and

* * * * *

SEC. 23. FORMS OF BANK STOCK AND OBLIGATIONS.

Any stock, debentures, bonds, notes, or other obligations issued under the authority of this Act may be issued in uncertificated form, utilizing a book entry method, or in certificated form under such rules, regulations, or guidelines as the [Board of Directors of the Federal Housing Finance Board] *Director* may provide.

SEC. 24. (a) * * *

(b) In all respects, but subject to such additional rules and regulations as [the Board] *the Director* may provide, any such organization shall be a member for the purposes of this Act.

SEC. 25. Each Federal Home Loan Bank shall have succession until dissolved by [the Board] *the Director* under this Act or by further Act of Congress.

SEC. 26. (a) REORGANIZATION.—Whenever [the Board] *the Director* finds that the efficient and economical accomplishment of the

purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as [the Board] *the Director* may prescribe, any Federal Home Loan Bank may be [liquidated or] reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such [liquidation or] reorganization, any other Federal Home Loan Bank may, with the approval of [the Board] *the Director*, acquire assets of any such [liquidated or] reorganized bank and assume liabilities thereof, in whole or in part.

(b) *VOLUNTARY MERGERS.*—Any Bank may, with the approval of the Director, and the approval of the boards of directors of the Banks involved, merge with another Bank. The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any such voluntary merger, including the procedures for Bank member approval.

* * * * *

**FEDERAL NATIONAL MORTGAGE ASSOCIATION
CHARTER ACT**

TITLE III—NATIONAL MORTGAGE ASSOCIATIONS

* * * * *

CREATION OF ASSOCIATION

SEC. 302. (a) * * *

(b)(1) * * *

(2) For the purposes set forth in section 301(a), the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as “conventional mortgages”). No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or any other seller currently engaged in

mortgage lending or investing activities. For the purpose of this section, the term “conventional mortgages” shall include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member of a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1954, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation. [Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.] *Such limitations shall not exceed \$359,650 for a mortgage secured by a single-family residence, \$460,400 for a mortgage secured by a 2-family residence, \$556,500 for a mortgage secured by a 3-family residence, and \$691,600 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or fourth-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).* The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. *Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 123(d)(3) of the Federal Housing Finance Reform Act of 2005, such*

increase shall apply only with respect to mortgages on which are based securities issued and sold by the corporation.

* * * * *

(6) The corporation may not implement any [new program (as such term is] *new program or new business activity (as such terms are defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) [before obtaining the approval of the Secretary under section 1322] except in accordance with section 1321 of such Act.*

* * * * *

CAPITALIZATION—FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 303. (a) * * *

* * * * *

(c)(1) * * *

(2) The corporation may not make any capital distribution that would decrease the total capital of the corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the corporation established under section 1361 of such Act or that would decrease the core capital of the corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the corporation established under section 1362 of such Act, without prior written approval of the distribution by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency.*

* * * * *

MANAGEMENT

SEC. 308. (a) * * *

(b) The Federal National Mortgage Association shall have a board of directors, which shall consist of [eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom] *not less than 7 and not more than 15 persons, who shall be elected annually by the common stockholders. [The] Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the board shall at all times have as members [appointed by the President] at least one person from the homebuilding industry, at least one person from the mortgage lending industry, at least one person from the real estate industry, and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households. Each member of the board of directors shall be [appointed or] elected for a term ending on the date of the next annual meeting of the stockholders[, except that any such appointed member may be removed from office by the President for good cause]. Any [elective] seat on the board which becomes vacant after the annual election of the direc-*

tors shall be filled by the board, but only for the unexpired portion of the term. [Any appointive seat which becomes vacant shall be filled by appointment of the President, but only for the unexpired portion of the term.] Within the limitations of law and regulation, the board shall determine the general policies which shall govern the operations of the corporation, and shall have power to adopt, amend, and repeal by laws governing the performance of the powers and duties granted to or imposed upon it by law. The board of directors shall select and effect the appointment of qualified persons to fill the offices of president and vice president, and such other offices as may be provided for in the bylaws. Any member of the board who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for his services.

GENERAL POWERS

SEC. 309. (a) * * *

* * * * *

(d)(1) * * *

* * * * *

(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (i) the comparability of the compensation policies of the corporation with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation's performance, and (iii) the comparability of the corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(B) Notwithstanding the first sentence of paragraph (2), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the corporation, unless such agreement or contract is approved in advance by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency*. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or con-

tract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

* * * * *

(4) *Notwithstanding any other provision of this section, the corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).*

* * * * *

(k)(1) The corporation shall submit to the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency* annual and quarterly reports of the financial condition and operations of the corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

* * * * *

(m)(1) The corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(E) any other characteristics that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

(2) The corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(H) any other information that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

* * * * *

(n)(1) The corporation shall submit to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the [Secretary] *Director of the Federal Housing Finance Agency* a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(2) The report under this subsection shall—

(A) * * *

* * * * *

(E) include, in aggregate form and by appropriate category, the data provided to the **Secretary** *Director of the Federal Housing Finance Agency* under subsection (m)(1)(B);

* * * * *

(L) include any other information that the **Secretary** *Director of the Federal Housing Finance Agency* considers appropriate.

(3)(A) The corporation shall make each report under this subsection available to the public at the principal and regional offices of the corporation.

(B) Before making a report under this subsection available to the public, the corporation may exclude from the report information that the **Secretary** *Director of the Federal Housing Finance Agency* has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

* * * * *

FEDERAL HOME LOAN MORTGAGE CORPORATION ACT

TITLE III—FEDERAL HOME LOAN MORTGAGE CORPORATION

* * * * *

ESTABLISHMENT OF THE CORPORATION

SEC. 303. (a)(1) * * *

(2)(A) The Board of Directors of the Corporation shall consist of **18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom** *not less than 7 and not more than 15 persons, who shall be elected annually by the voting common stockholders. [The] Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the Board of Directors shall at all times have as members [appointed by the President of the United States] at least 1 person from the homebuilding industry, at least 1 person from the mortgage lending industry, at least 1 person from the real estate industry, and at least 1 person from an organization that has represented consumer or community interests for not less than 2 years or 1 person who has demonstrated a career commitment to the provision of housing for low-income households.*

(B) Each member of the Board of Directors shall be **[such or]** elected for a term ending on the date of the next annual meeting of the voting common stockholders**[, except that any appointed member may be removed from office by the President for good cause].**

(C) **[Any appointive seat on the Board of Directors that becomes vacant shall be filled by appointment by the President of the United States, but only for the unexpired portion of the term.] Any [elective] seat on the Board of Directors that becomes vacant after**

the annual election of the directors shall be filled by the Board of Directors, but only for the unexpired portion of the term.

* * * * *

(b)(1) * * *

(2) The Corporation may not make any capital distribution that would decrease the total capital of the Corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the Corporation established under section 1361 of such Act or that would decrease the core capital of the Corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the Corporation established under section 1362 of such Act, without prior written approval of the distribution by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency*.

* * * * *

(h)(1) Not later than June 30, 1993, and annually thereafter, the Corporation shall submit a report to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (A) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses, (B) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the Corporation's performance, and (C) the comparability of the Corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the Corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(2) Notwithstanding the first sentence of subsection (c), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the Corporation, unless such agreement or contract is approved in advance by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency*. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this paragraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or con-

tract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

* * * * *

(4) Notwithstanding any other provision of this section, the Corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).

* * * * *

MORTGAGE OPERATIONS

SEC. 305. (a)(1) * * *

(2) No conventional mortgages secured by a property comprising one- to four-family dwelling units shall be purchased under this section if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation. The Corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The Corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. With respect to any transaction in which a seller contemporaneously sells mortgages originated more than one year old prior to the date of sale to the Corporation and receives in payment for such mortgages securities representing undivided interests only in those mortgages, the Corporation shall not impose any fee or charge upon an eligible seller which is not a member of a Federal Home Loan Bank which differs from that imposed upon an eligible seller which is such a member. The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation. [Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, and \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January

1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.】 *Such limitations shall not exceed \$359,650 for a mortgage secured by a single-family residence, \$460,400 for a mortgage secured by a 2-family residence, \$556,500 for a mortgage secured by a 3-family residence, and \$691,600 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or fourth-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)). The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 123(d)(3) of the Federal Housing Finance Reform Act of 2005, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the Corporation.*

(c) The Corporation may not implement any [new program (as such term is)] *new program or new business activity (as such terms are defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) [before obtaining the approval of the Secretary under section 1322] except in accordance with section 1321 of such Act.*

OBLIGATIONS AND SECURITIES

SEC. 306. (a) * * *

* * * * *

(i) Except for fees paid pursuant to sections 303(c) and [1316(c)] 306(c) of this Act and assessments pursuant to section [106] 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, or other security by the Corporation. No provision of this subsection

shall affect the purchase of any obligation by any Federal home loan bank pursuant to section 303(a).

* * * * *

MISCELLANEOUS PROVISIONS

SEC. 307. (a) * * *

* * * * *

(c)(1) The Corporation shall submit to the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency* annual and quarterly reports of the financial condition and operations of the Corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

* * * * *

(e)(1) The Corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(E) any other characteristics that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

(2) The Corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(H) any other information that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

* * * * *

(f)(1) The Corporation shall submit to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the [Secretary] *Director of the Federal Housing Finance Agency* a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(2) The report under this subsection shall—

(A) * * *

* * * * *

(E) include, in aggregate form and by appropriate category, the data provided to the [Secretary] *Director of the Federal Housing Finance Agency* under subsection (e)(1)(B);

* * * * *

(L) include any other information that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate.

(3)(A) The Corporation shall make each report under this subsection available to the public at the principal and regional offices of the Corporation.

(B) Before making a report under this subsection available to the public, the Corporation may exclude from the report information that the [Secretary] *Director of the Federal Housing Finance Agency* has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

* * * * *

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

SEC. 1001. This title may be cited as the “Federal Financial Institutions Examination Council Act of 1978”.

* * * * *

DEFINITIONS

SEC. 1003. As used in this title—

(1) the term “Federal financial institutions regulatory agencies” means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, *Director of the Federal Housing Finance Agency*, and the National Credit Union Administration;

* * * * *

(3) the term “financial institution” means a commercial bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, [or a credit union;] *a credit union, or a regulated entity (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502)).*

* * * * *

ESTABLISHMENT OF THE COUNCIL

SEC. 1004. (a) There is established the Financial Institutions Examination Council which shall consist of—

(1) * * *

* * * * *

(4) the Director, Office of Thrift Supervision;
(5) *the Director of the Federal Housing Finance Agency; and*

[(5)] (6) the Chairman of the National Credit Union Administration Board.

* * * * *

FUNCTIONS OF THE COUNCIL

SEC. 1006. (a) * * *

* * * * *

(d) The Council shall conduct schools for examiners and assistant examiners employed by the Federal financial institutions regulatory agencies. Such schools shall be open to enrollment by employees of State financial institutions supervisory agencies [and employees of the Federal Housing Finance Board] under conditions specified by the Council.

* * * * *

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * *

§ 212. Offer of loan or gratuity to financial institution examiner

(a) * * *

* * * * *

(c) DEFINITIONS.—In this section:

(1) * * *

(2) FEDERAL FINANCIAL INSTITUTION REGULATORY AGENCY.—The term “Federal financial institution regulatory agency” means—

(A) * * *

* * * * *

(E) the Federal Housing Finance [Board] Agency;

* * * * *

CHAPTER 31—EMBEZZLEMENT AND THEFT

* * * * *

§ 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the Federal Housing Finance [Board] Agency, Farm Credit Adminis-

tration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, or any community development financial institution receiving financial assistance under the Riegle Community Development and Regulatory Improvement Act of 1994, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * *

§ 1006. Federal credit institution entries, reports and transactions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance [Board] Agency, the Resolution Trust Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or

other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

* * * * *

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, any Federal home loan bank, the Federal Housing Finance [Board] Agency, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both. The term "State-chartered credit union" includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

* * * * *

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

* * * * *

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the [Office of Federal Housing Enterprise Oversight] *Federal Housing Finance Agency*, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

* * * * *

FLOOD DISASTER PROTECTION ACT OF 1973

* * * * *

TITLE I—EXPANSION OF NATIONAL FLOOD INSURANCE PROGRAM

* * * * *

FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS

SEC. 102. (a) * * *

* * * * *

(f) CIVIL MONETARY PENALTIES FOR FAILURE TO REQUIRE FLOOD INSURANCE OR NOTIFY.—

(1) * * *

* * * * *

(3) CIVIL MONETARY PENALTIES AGAINST GSE'S.—

(A) IN GENERAL.—If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency* to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess

a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

* * * * *

SECTION 5 OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT

TRANSFERS TO DEPARTMENT

SEC. 5. (a) * * *

* * * * *

[(d) Notwithstanding any other provision of this Act, the Secretary may not merge or consolidate the Office of Federal Housing Enterprise Oversight of the Department, or any of the functions or responsibilities of such Office, with any function or program administered by the Secretary.]

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * *

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

* * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) * * *

* * * * *

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Farm Credit Administration, [the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *the Federal Housing Finance Agency*, and the National Credit Union Administration;

* * * * *

SUBPART D—PAY AND ALLOWANCES

* * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * *

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.

* * * * *

【Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.】
Director of the Federal Housing Finance Agency.

* * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * *

Deputy Directors, Federal Housing Finance Agency (3).

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * *

Members, Housing Finance Oversight Board.

* * * * *

SECTION 8G OF THE INSPECTOR GENERAL ACT OF 1978

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International

Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance [Board] Agency, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, and the United States Postal Service;

* * * * *

SECTION 11 OF THE FEDERAL INSURANCE ACT

SEC. 11. (a) * * *

* * * * *

(t) AGENCIES MAY SHARE INFORMATION WITHOUT WAIVING PRIVILEGE.—

(1) * * *

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term “covered agency” means any of the following:

(i) * * *

* * * * *

(vii) *The Federal Housing Finance Agency.*

* * * * *

SECTION 10001 OF THE 1997 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR RECOVERY FROM NATURAL DISASTERS, AND FOR OVERSEAS PEACEKEEPING EFFORTS, INCLUDING THOSE IN BOSNIA

SEC. 10001. The Secretary shall submit semi-annually to the Committees on Appropriations a list of all contracts and task orders issued under such contracts in excess of \$250,000 which were entered into during the prior 6-month period by the Secretary, [the Government National Mortgage Association, and the Office of Federal Housing Enterprise Oversight] and the Government National Mortgage Association (or by any officer of the Department of Housing and Urban Development[, the Government National Mortgage Association, or the Office of Federal Housing Enterprise Oversight] or the Government National Mortgage Association acting in his or her capacity to represent the Secretary or these entities). Each list-

ing shall identify the parties to the contract, the term and amount of the contract, and the subject matter and responsibilities of the parties to the contract.

SECTION 302 OF THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT

SEC. 302. NATIONAL HOMEOWNERSHIP TRUST.

(a) * * *

(b) BOARD OF DIRECTORS.—The Trust shall be governed by a Board of Directors, which shall be composed of—

(1) * * *

* * * * *

(4) **the chairperson of the Federal Housing Finance Board** *the Director of the Federal Housing Finance Agency;*

* * * * *

SECTION 1113 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

EXCEPTIONS

SEC. 1113. (a) * * *

* * * * *

(o) This title shall not apply to the examination by or disclosure to the Federal Housing Finance **Board** *Agency* or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance **Board's** *Agency's* authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.

* * * * *

SECTION 117 OF THE RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994

SEC. 117. STUDIES AND REPORTS; EXAMINATION AND AUDIT.

(a) * * *

* * * * *

(e) CONSULTATION.—In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance **Board** *Agency*, the Farm Credit Administration, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

* * * * *

SECTION 517 OF THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

SEC. 517. RESTRUCTURING TOOLS.

(a) * * *

(b) RESTRUCTURING TOOLS.—In addition to the requirements of subsection (a) and to the extent these actions are consistent with this section and with the control of the Secretary of applicable accounts in the Treasury of the United States, an approved mortgage restructuring and rental assistance sufficiency plan under this subtitle may include one or more of the following actions:

(1) * * *

* * * * *

(4) CREDIT ENHANCEMENT.—Providing any additional State or local mortgage credit enhancements and risk-sharing arrangements that may be established with State or local housing finance agencies, the Federal Housing Finance [Board] Agency, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, to a modified or refinanced first mortgage.

* * * * *

SECTION 3502 OF TITLE 44, UNITED STATES CODE

§ 3502. Definitions

As used in this subchapter—

(1) * * *

* * * * *

(5) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance [Board] Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

* * * * *

SECTION 1004 OF THE LAUNCHING OUR COMMUNITIES’ ACCESS TO LOCAL TELEVISION ACT OF 2000

SEC. 1004. APPROVAL OF LOAN GUARANTEES.

(a) * * *

* * * * *

(d) REQUIREMENTS AND CRITERIA APPLICABLE TO APPROVAL.—

(1) * * *

(2) PREREQUISITES.—In addition to meeting the underwriting criteria under paragraph (1), a loan may not be guaranteed under this Act unless—

(A) * * *

* * * * *

(D)(i) * * *

* * * * *

(iii) no loan may be made for purposes of this Act by a governmental entity or affiliate thereof, or by the Federal Agricultural Mortgage Corporation, or any institution supervised by the **【Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board】** *Federal Housing Finance Agency*, or any affiliate of such entities;

* * * * *

ADDITIONAL AND DISSENTING VIEWS

ADDITIONAL VIEWS

We believe that an essential component of the legislation reported by the committee is the establishment of an Affordable Housing Fund for both Fannie Mae and Freddie Mac. Such establishment is patterned after the highly successful Affordable Housing Program (AHP) of the Federal Home Loan Banks, which has been in existence for more than a decade. This fund would address underserved housing markets through the provision of assistance for housing that would be affordable for very-low and extremely-low income families. This would fill a gap not being met in today's marketplace, in a manner consistent with the GSEs' charter and mission.

We understand that some members of the committee are opposed to the creation of an Affordable Housing Fund. However, we also note that an amendment to eliminate this provision from the bill failed on a vote of 53 to 17, with a majority of members from both sides of the aisle voting to retain the fund in the bill.

A common complaint by critics of the fund is that it would violate "free market principles." In response, we note that both Fannie Mae and Freddie Mac are both federally chartered and are Government Sponsored Enterprises (as are the Federal Home Loan Banks, which operate the AHP). These GSEs are unlike most private corporations in that they receive substantial federal governmental benefits, such as an exemption from state and local taxes and a federal line of credit.

Moreover, there is a consensus, explicitly shared by the housing policies of both Democratic and Republican administrations, that the free market cannot by itself meet the entire need for housing for those with the lack of income and resources that define the homeless and extremely low income families. Some form of subsidy or assistance is necessary to make housing affordable for families in these income categories. A GSE affordable housing fund would help fill this gap, while maximizing the role of the private sector by extending the scope of these privately owned, but governmentally sponsored, entities, which work in concert with other private sector mortgage loan originators.

We also note that criticisms of the fund do not square with the specific provisions of the bill. For example, the claim is made that funds may be used by organizations for their own activities or for advocacy purposes. In fact, the bill clearly states that funds may be used "only for the production, preservation, and rehabilitation" of housing, and it specifically prohibits any funds being used for "administrative, outreach, or other costs of" any fund applicant. It is our intent that 100% of the funds be used for housing.

The claim is also made that the fund would become a “slush fund” for the GSEs. In fact, the bill requires that funds be allocated under an application process according to criteria to be established by the regulator, that the fund be audited every year to ensure compliance with program rules, that fund use be monitored for compliance with affordability standards and other requirements, and that a GSE may not condition funding on applicants using that GSE for financing.

Therefore, we would oppose efforts made by these critics to weaken the fund’s impact or effectiveness as the bill moves to the full House for its consideration.

For example, we support retention of the provision now in the bill requiring that any investment returns in the fund must be used for other fund activities, and may not be retained by the GSEs. This avoids the potential conflict of interest that the GSEs might fund activities based on the likelihood of investment returns, instead of allocating funds based on the most meritorious fund applications.

We support the proposed 5% fund level, with a 3.5% transition level in the first year after bill enactment. We would not want to see the bill modified to have fund levels reduced, to have the fund’s implementation unnecessarily delayed or truncated, or to have funding made contingent on certain discretionary findings of the regulator.

We are somewhat disappointed that the bill’s fund provision did not permit, as last year’s Senate version did, the use of funds for internal GSE loan loss reserves, to cover potential risks of new or more flexible GSE loan products. However, we are pleased that the bill explicitly retains a provision to encourage the leveraging of funds through an externalized grant process through such purposes as loan loss reserves or revolving loan funds. Regardless of whether this leveraged grant option is or is not explicitly stated in the bill, we believe that the flexible fund use language stated elsewhere in the bill clearly permits such types and forms of fund use, with application selection based on the best projects being proposed.

With regard to the Congressional Budget Office (CBO) scoring of the Affordable Housing Fund, we note that the Fund actually reduces the deficit by \$370 million over the 5-year budget window the House uses for scoring provisions of this type. However, over a 10-year period, CBO scores the fund as increasing the deficit by \$280 million. This apparently results from CBO’s concluding that fund assessments are not counted as offsetting receipts—even though CBO claimed that the GSEs receive tens of billions of dollars in annual federal benefits—on the grounds that such benefits are not new and directly related to the fund contributions. This position appears inconsistent with CBO treatment of previous CBOGSE budget options and inconsistent with treatment of various items in the current budget.

Finally, we support the other housing mission provisions of the bill, including the improved targeting of numerical GSE housing goals and the section explicitly stating a GSE duty to serve underserved markets. With regard to the goals, we believe that the use of HMDA data as a factor in setting the housing goals is a useful statutory addition. However, such historical data should not be

used presumptively in setting prospective goals, but should just be one more factor to be taken into consideration. Actual HMDA data is probably of most use by the regulator during a multi-year goal promulgation, under which a regulator can use such data to make appropriate mid-course corrections if the overall market can be shown to deviate from the assumptions used in setting the multi-year goals.

We are also concerned that the goal realignment no longer measures mortgage refinancings in any way, and would urge consideration of the creation of home purchase refinancings as a statutory subgoal.

BARNEY FRANK.
MAXINE WATERS.

ADDITIONAL VIEWS

The bill reported out of the Committee provides the new regulator authority to order an enterprise to dispose of or acquire an asset or liability if the Director determines it is consistent with safety and soundness or the purposes of this legislation or the enterprises' charters, but does not require that the regulator place limits on the size of the enterprises or order reductions in their retained portfolios. We believe that this authority should be used only as necessary to ensure the safe and sound operation of the enterprises, not to place arbitrary limits on the size of retained portfolios.

We believe the strengthened safety and soundness oversight authority provided to the new regulator obviates any need for limits on the portfolios of the enterprises. In particular, this bill removes any restrictions on the type or level of risk-based capital that the regulator may require. We expect that the new regulator will use this expanded authority to determine whether the enterprises' existing risk-based capital rules, which focus primarily on interest rate risk, should be strengthened, supplemented, or replaced with capital requirements more explicitly focused on the particular assets held by the enterprises. As with banking institutions, a strong risk-based capital requirement, rather than inherently arbitrary limits on asset size, is the best means of assuring that the enterprises operate safely and do not pose a threat to the financial system.

Additionally, we believe that it would be inappropriate and counterproductive to adopt asset limits of the type proposed by the Administration, under which the enterprises could hold assets only at levels "necessary" to provide adequate liquidity to the mortgage markets. The enterprises generally purchase mortgages and mortgage-backed securities when prices are out of line with the broader markets, which provides a source of support, particularly in periods of market turmoil, that helps reduce volatility and keep mortgage funding costs stable. Limiting the portfolios of the enterprises to a level "necessary" to provide adequate liquidity to the markets effectively puts the regulator in the position of determining when mortgage rates are too high and liquidity is needed, turning what is currently a market function into a regulatory one.

Finally, portfolio limits will discourage the enterprises from creating innovative or tailored products to respond to market needs. Because such products are more difficult and expensive to securitize, limiting the ability of the enterprises to hold assets in portfolio will result in higher costs for any product that does not have a broad market. This is clearly contrary to a key goal of this legislation: to encourage the enterprises to do more to fulfill their housing missions.

BARNEY FRANK.

DISSENTING VIEWS

H.R. 1461 fails to address the core problems with the Government Sponsored Enterprises (GSEs). Furthermore, since this legislation creates new government programs that will further artificially increase the demand for housing, H.R. 1461 increases the economic damage that will occur when the housing bubble bursts. The main problem with the GSEs is the special privileges the federal government gives the GSEs. According to the Congressional Budget Office, the housing-related GSEs received almost 20 billion dollars worth of indirect federal subsidies in fiscal year 2004 alone.

One of the major privileges the federal government grants to the GSEs is a line of credit from the United States Treasury. According to some estimates, the line of credit may be worth over two billion dollars. GSEs also benefit from an explicit grant of legal authority given to the Federal Reserve to purchase the debt of the GSEs. GSEs are the only institutions besides the United States Treasury granted explicit statutory authority to monetize their debt through the Federal Reserve. This provision gives the GSEs a source of liquidity unavailable to their competitors.

This implicit promise by the government to bail out the GSEs in times of economic difficulty helps the GSEs attract investors who are willing to settle for lower yields than they would demand in the absence of the subsidy. Thus, the line of credit distorts the allocation of capital. More importantly, the line of credit is a promise on behalf of the government to engage in a massive unconstitutional and immoral income transfer from working Americans to holders of GSE debt. This is why I offered an amendment at the committee mark-up to cut off this line of credit. I was disappointed to see my colleagues reject this opportunity to protect taxpayers from having to bail out Fannie Mae and Freddie Mac when the housing bubble bursts.

The connection between the GSEs and the government helps isolate the GSEs' managements from market discipline. This isolation from market discipline is the root cause of the mismanagement occurring at Fannie and Freddie. After all, if investors did not believe that the federal government would bail out Fannie and Freddie if the GSEs faced financial crises, then investors would have forced the GSEs to provide assurances that the GSEs are following accepted management and accounting practices before investors would consider Fannie and Freddie to be good investments.

Federal Reserve Chairman Alan Greenspan has expressed concern that the government subsidies provided to the GSEs make investors underestimate the risk of investing in Fannie Mae and Freddie Mac. Although he has endorsed many of the regulatory "solutions" being considered here today, Chairman Greenspan has implicitly admitted the subsidies are the true source of the problems with Fannie and Freddie.

H.R. 1461 compounds these problems by further insulating the GSEs from market discipline. By creating a “world-class” regulator, Congress would send a signal to investors that investors need not concern themselves with investigating the financial health and stability of Fannie and Freddie since a “world-class” regulator is performing that function.

However, one of the forgotten lessons of the financial scandals of a few years ago is that the market is superior at discovering and punishing fraud and other misbehavior than are government regulators. After all, the market discovered, and began to punish, the accounting irregularities of Enron before the government regulators did.

Concerns have been raised about the new regulator’s independence from the Treasury Department. This is more than a bureaucratic “turf battle” as there are legitimate worries that isolating the regulator from Treasury oversight may lead to regulatory capture. Regulatory capture occurs when regulators serve the interests of the businesses they are supposed to be regulating instead of the public interest. While H.R. 1461 does have some provisions that claim to minimize the risk of regulatory capture, regulatory capture is always a threat where regulators have significant control over the operations of an industry. After all, the industry obviously has a greater incentive than any other stakeholder to influence the behavior of the regulator.

The flip side of regulatory capture is that managers and owners of highly subsidized and regulated industries are more concerned with pleasing the regulators than with pleasing consumers or investors, since the industries know that investors will believe all is well if the regulator is happy. Thus, the regulator and the regulated industry may form a symbiosis where each looks out for the other’s interests while ignoring the concerns of investors.

Furthermore, my colleagues should consider the constitutionality of an “independent regulator.” The Founders provided for three branches of government—an executive, a judiciary, and a legislature. Each branch was created as sovereign in its sphere, and there were to be clear lines of accountability for each branch. However, independent regulators do not fit comfortably within the three branches; nor are they totally accountable to any branch. Regulators at these independent agencies often make judicial-like decisions, but they are not part of the judiciary. They often make rules, similar to the ones regarding capital requirements, that have the force of law, but independent regulators are not legislative. And, of course, independent regulators enforce the laws in the same way, as do other parts of the executive branch; yet independent regulators lack the day-to-day accountability to the executive that provides a check on other regulators.

Thus, these independent regulators have a concentration of powers of all three branches and lack direct accountability to any of the democratically chosen branches of government. This flies in the face of the Founders’ opposition to concentrations of power and government bureaucracies that lack accountability. These concerns are especially relevant considering the remarkable degree of power and autonomy this bill gives to the regulator. For example, in the scheme established by H.R. 1461 the regulator’s budget is not sub-

ject to appropriations. This removes a powerful mechanism for holding the regulator accountable to Congress. While the regulator is accountable to a board of directors, this board may conduct all deliberations in private because it is not subject to the sunshine act.

Ironically, by transferring the risk of widespread mortgage defaults to the taxpayers through government subsidies and convincing investors that all is well because a “world-class” regulator is ensuring the GSEs’ soundness, the government increases the likelihood of a painful crash in the housing market. This is because the special privileges of Fannie and Freddie have distorted the housing market by allowing Fannie and Freddie to attract capital they could not attract under pure market conditions. As a result, capital is diverted from its most productive uses into housing. This reduces the efficacy of the entire market and thus reduces the standard of living of all Americans.

Despite the long-term damage to the economy inflicted by the government’s interference in the housing market, the government’s policy of diverting capital into housing creates a short-term boom in housing. Like all artificially created bubbles, the boom in housing prices cannot last forever. When housing prices fall, homeowners will experience difficulty as their equity is wiped out. Furthermore, the holders of the mortgage debt will also have a loss. These losses will be greater than they would have been had government policy not actively encouraged over-investment in housing.

H.R. 1461 further distorts the housing market by artificially inflating the demand for housing through the creation of a national housing trust fund. This fund further diverts capital to housing that, absent government intervention, would be put to a use more closely matching the demands of consumers. Thus, this new housing program will reduce efficacy and create yet another unconstitutional redistribution program.

Perhaps the Federal Reserve can stave off the day of reckoning by purchasing the GSEs’ debt and pumping liquidity into the housing market, but this cannot hold off the inevitable drop in the housing market forever. In fact, postponing the necessary and painful market corrections will only deepen the inevitable fall. The more people are invested in the market, the greater the effects across the economy when the bubble bursts.

Instead of addressing government policies encouraging the misallocation of resources to the housing market, H.R. 1461 further introduces distortion into the housing market by expanding the authority of federal regulators to approve the introduction of new products by the GSEs. Such regulation inevitably delays the introduction of new innovations to the market, or even prevents some potentially valuable products from making it to the market. Of course, these new regulations are justified in part by the GSEs’ government subsidies. We once again see how one bad intervention in the market (the GSEs’ government subsidies) leads to another (the new regulations).

In conclusion, H.R. 1461 compounds the problems with the GSEs and may increase the damage that will be inflicted by a bursting of the housing bubble. This is because this bill creates a new unaccountable regulator and introduces further distortions into the

housing market via increased regulatory power. H.R. 1461 also violates the Constitution by creating yet another unaccountable regulator with quasi-executive, judicial, and legislative powers. Instead of expanding unconstitutional and market distorting government bureaucracies, Congress should act to remove taxpayer support from the housing GSEs before the bubble bursts and taxpayers are once again forced to bail out investors who were misled by foolish government interference in the market.

RON PAUL.

