

110TH CONGRESS
1ST SESSION

H. R. 1427

AN ACT

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

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

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

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

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

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

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

Subtitle A—Improvement of Safety and Soundness

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

Sec. 102. Duties and authorities of Director.

Sec. 103. Federal Housing Enterprise Board.

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

Sec. 105. Disclosure of income and charitable contributions by enterprises.

Sec. 106. Assessments.

Sec. 107. Examiners and accountants.

Sec. 108. Prohibition and withholding of executive compensation.

Sec. 109. Reviews of regulated entities.

Sec. 110. Inclusion of minorities and women; diversity in Agency workforce.

Sec. 111. Regulations and orders.

Sec. 112. Non-waiver of privileges.

Sec. 113. Risk-Based capital requirements.

Sec. 114. Minimum and critical capital levels.

Sec. 115. Review of and authority over enterprise assets and liabilities.

Sec. 116. Corporate governance of enterprises.

Sec. 117. Required registration under Securities Exchange Act of 1934.

Sec. 118. Liaison with Financial Institutions Examination Council.

Sec. 119. Guarantee fee study.

Sec. 120. Conforming amendments.

Subtitle B—Improvement of Mission Supervision

Sec. 131. Transfer of product approval and housing goal oversight.

Sec. 132. Review of enterprise products.

Sec. 133. Conforming loan limits.

Sec. 134. Annual housing report regarding regulated entities.

Sec. 135. Annual reports by regulated entities on affordable housing stock.

Sec. 136. Mortgagor identification requirements for mortgages of regulated entities.

Sec. 137. Revision of housing goals.

Sec. 138. Duty to serve underserved markets.

Sec. 139. Monitoring and enforcing compliance with housing goals.

Sec. 140. Affordable Housing Fund.

Sec. 141. Consistency with mission.

Sec. 142. Enforcement.

Sec. 143. Conforming amendments.

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

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

Subtitle E—General Provisions

- Sec. 181. Boards of enterprises.
- Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.
- Sec. 183. Conforming and technical amendments.
- Sec. 184. Study of alternative secondary market systems.
- 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 of Department of Housing and Urban Development.
 Sec. 344. Transfer of appropriations, property, and facilities.

1 **SEC. 2. DEFINITIONS.**

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

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

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

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

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

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

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

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

3 “(18) REGULATED ENTITY.—The term ‘regu-
4 lated entity’ means—

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

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

9 “(C) each Federal home loan bank.

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

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

16 “(B) any shareholder, affiliate, consultant,
17 or joint venture partner of a regulated entity,
18 and any other person, as determined by the Di-
19 rector (by regulation or on a case-by-case basis)
20 that participates in the conduct of the affairs of
21 a regulated entity, except that a shareholder of
22 a regulated entity shall not be considered to
23 have participated in the affairs of that regu-
24 lated entity solely by reason of being a member
25 or customer of the regulated entity;

1 “(C) any independent contractor for a reg-
2 ulated entity (including any attorney, appraiser,
3 or accountant), if—

4 “(i) the independent contractor know-
5 ingly or recklessly participates in—

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

8 “(II) any breach of fiduciary
9 duty; or

10 “(III) any unsafe or unsound
11 practice; and

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

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

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

22 (9) by inserting after paragraph (7) the fol-
23 lowing new paragraph:

24 “(11) FEDERAL HOME LOAN BANK.—The term
25 ‘Federal home loan bank’ means a bank established

1 under the authority of the Federal Home Loan
2 Bank Act.”;

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

6 (11) by inserting after paragraph (1) the fol-
7 lowing new paragraphs:

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

10 “(3) AUTHORIZING STATUTES.—The term ‘au-
11 thORIZING statutes’ means—

12 “(A) the Federal National Mortgage Asso-
13 ciation Charter Act;

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

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

17 “(4) BOARD.—The term ‘Board’ means the
18 Federal Housing Enterprise Board established under
19 section 1313B.”.

1 **TITLE I—REFORM OF REGULA-**
2 **TION OF ENTERPRISES AND**
3 **FEDERAL HOME LOAN BANKS**
4 **Subtitle A—Improvement of Safety**
5 **and Soundness**

6 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**
7 **NANCE AGENCY.**

8 (a) IN GENERAL.—The Housing and Community De-
9 velopment Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
10 ed by striking sections 1311 and 1312 and inserting the
11 following:

12 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**
13 **FINANCE AGENCY.**

14 “(a) ESTABLISHMENT.—There is established the
15 Federal Housing Finance Agency, which shall be an inde-
16 pendent agency of the Federal Government.

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

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

22 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE
23 MAC, AND FEDERAL HOME LOAN BANKS.—The Di-
24 rector of the Federal Housing Finance Agency shall
25 have general supervisory and regulatory authority

1 over each regulated entity and shall exercise such
2 general regulatory and supervisory authority, includ-
3 ing such duties and authorities set forth under sec-
4 tion 1313 of this Act, to ensure that the purposes
5 of this Act, the authorizing statutes, and any other
6 applicable law are carried out. The Director shall
7 have the same supervisory and regulatory authority
8 over any joint office of the Federal home loan banks,
9 including the Office of Finance of the Federal Home
10 Loan Banks, as the Director has over the individual
11 Federal home loan banks.

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

16 **“SEC. 1312. DIRECTOR.**

17 “(a) ESTABLISHMENT OF POSITION.—There is estab-
18 lished the position of the Director of the Federal Housing
19 Finance Agency, who shall be the head of the Agency.

20 “(b) APPOINTMENT; TERM.—

21 “(1) APPOINTMENT.—The Director shall be ap-
22 pointed by the President, by and with the advice and
23 consent of the Senate, from among individuals who
24 are citizens of the United States, have a dem-
25 onstrated understanding of financial management or

1 oversight, and have a demonstrated understanding
2 of capital markets, including the mortgage securities
3 markets and housing finance.

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

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

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

18 “(5) TRANSITIONAL PROVISION.—Notwith-
19 standing paragraphs (1) and (2), the Director of the
20 Office of Federal Housing Enterprise Oversight of
21 the Department of Housing and Urban Development
22 shall serve as the Director until a successor has been
23 appointed under paragraph (1).

24 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-
25 TERPRISE REGULATION.—

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

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

13 “(d) DEPUTY DIRECTOR OF THE DIVISION OF FED-
14 ERAL HOME LOAN BANK REGULATION.—

15 “(1) IN GENERAL.—The Agency shall have a
16 Deputy Director of the Division of Federal Home
17 Loan Bank Regulation, who shall be appointed by
18 the Director from among individuals who are citi-
19 zens of the United States, have a demonstrated un-
20 derstanding of financial management or oversight
21 and of the Federal Home Loan Bank System and
22 housing finance.

23 “(2) FUNCTIONS.—The Deputy Director of the
24 Division of Federal Home Loan Bank Regulation
25 shall have such functions, powers, and duties with

1 respect to the oversight of the Federal home loan
2 banks as the Director shall prescribe.

3 “(e) DEPUTY DIRECTOR FOR HOUSING.—

4 “(1) IN GENERAL.—The Agency shall have a
5 Deputy Director for Housing, who shall be ap-
6 pointed by the Director from among individuals who
7 are citizens of the United States, and have a dem-
8 onstrated understanding of the housing markets and
9 housing finance and of community and economic de-
10 velopment.

11 “(2) FUNCTIONS.—The Deputy Director for
12 Housing shall have such functions, powers, and du-
13 ties with respect to the oversight of the housing mis-
14 sion and goals of the enterprises, and with respect
15 to oversight of the housing finance and community
16 and economic development mission of the Federal
17 home loan banks, as the Director shall prescribe.

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

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

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

1 “(3) have served as an executive officer or di-
2 rector of any regulated entity, or regulated entity-af-
3 filiated party, at any time during the 3-year period
4 ending on the date of appointment of such individual
5 as Director or Deputy Director.

6 “(g) OMBUDSMAN.—The Director shall establish the
7 position of the Ombudsman in the Agency. The Director
8 shall provide that the Ombudsman will consider com-
9 plaints and appeals from any regulated entity and any per-
10 son that has a business relationship with a regulated enti-
11 ty and shall specify the duties and authority of the Om-
12 budsman.”.

13 (b) APPOINTMENT OF DIRECTOR.—Notwithstanding
14 any other provision of law or of this Act, the President
15 may, any time after the date of the enactment of this Act,
16 appoint an individual to serve as the Director of the Fed-
17 eral Housing Finance Agency, as such office is established
18 by the amendment made by subsection (a). This sub-
19 section shall take effect on the date of the enactment of
20 this Act.

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

22 (a) IN GENERAL.—The Housing and Community De-
23 velopment Act of 1992 (12 U.S.C. 4513) is amended by
24 striking section 1313 and inserting the following new sec-
25 tions:

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

2 “(a) DUTIES.—

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

5 “(A) to oversee the operations of each reg-
6 ulated entity and any joint office of the Federal
7 Home Loan Banks; and

8 “(B) to ensure that—

9 “(i) each regulated entity operates in
10 a safe and sound manner, including main-
11 tenance of adequate capital and internal
12 controls;

13 “(ii) the operations and activities of
14 each regulated entity foster liquid, effi-
15 cient, competitive, and resilient national
16 housing finance markets that minimize the
17 cost of housing finance (including activities
18 relating to mortgages on housing for low-
19 and moderate- income families involving a
20 reasonable economic return that may be
21 less than the return earned on other activi-
22 ties);

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

1 “(iv) each regulated entity carries out
2 its statutory mission only through activi-
3 ties that are consistent with this title and
4 the authorizing statutes.

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

7 “(A) to review and, if warranted based on
8 the principal duties described in paragraph (1),
9 reject any acquisition or transfer of a control-
10 ling interest in an enterprise; and

11 “(B) to exercise such incidental powers as
12 may be necessary or appropriate to fulfill the
13 duties and responsibilities of the Director in the
14 supervision and regulation of each regulated en-
15 tity.

16 “(b) DELEGATION OF AUTHORITY.—The Director
17 may delegate to officers or employees of the Agency, in-
18 cluding each of the Deputy Directors, any of the functions,
19 powers, or duties of the Director, as the Director considers
20 appropriate.

21 “(c) LITIGATION AUTHORITY.—

22 “(1) IN GENERAL.—In enforcing any provision
23 of this title, any regulation or order prescribed under
24 this title, or any other provision of law, rule, regula-
25 tion, or order, or in any other action, suit, or pro-

1 ceeding to which the Director is a party or in which
2 the Director is interested, and in the administration
3 of conservatorships and receiverships, the Director
4 may act in the Director's own name and through the
5 Director's own attorneys, or request that the Attor-
6 ney General of the United States act on behalf of
7 the Director.

8 “(2) CONSULTATION WITH ATTORNEY GEN-
9 ERAL.—The Director shall provide notice to, and
10 consult with, the Attorney General of the United
11 States before taking an action under paragraph (1)
12 of this subsection or under section 1344(a), 1345(d),
13 1348(e), 1372(e), 1375(a), 1376(d), or 1379D(e),
14 except that, if the Director determines that any
15 delay caused by such prior notice and consultation
16 may adversely affect the safety and soundness re-
17 sponsibilities of the Director under this title, the Di-
18 rector shall notify the Attorney General as soon as
19 reasonably possible after taking such action.

20 “(3) SUBJECT TO SUIT.—Except as otherwise
21 provided by law, the Director shall be subject to suit
22 (other than suits on claims for money damages) by
23 a regulated entity or director or officer thereof with
24 respect to any matter under this title or any other
25 applicable provision of law, rule, order, or regulation

1 under this title, in the United States district court
2 for the judicial district in which the regulated entity
3 has its principal place of business, or in the United
4 States District Court for the District of Columbia,
5 and the Director may be served with process in the
6 manner prescribed by the Federal Rules of Civil
7 Procedure.

8 **“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS**
9 **STANDARDS.**

10 “(a) STANDARDS.—The Director shall establish
11 standards, by regulation, guideline, or order, for each reg-
12 ulated entity relating to—

13 “(1) adequacy of internal controls and informa-
14 tion systems, including information security and pri-
15 vacy policies and practices, taking into account the
16 nature and scale of business operations;

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

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

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

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

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

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

9 “(8) investments and acquisitions by a regu-
10 lated entity, to ensure that they are consistent with
11 the purposes of this Act and the authorizing stat-
12 utes;

13 “(9) maintenance of adequate records, in ac-
14 cordance with consistent accounting policies and
15 practices that enable the Director to evaluate the fi-
16 nancial condition of the regulated entity;

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

20 “(11) overall risk management processes, in-
21 cluding adequacy of oversight by senior management
22 and the board of directors and of processes and poli-
23 cies to identify, measure, monitor, and control mate-
24 rial risks, including reputational risks, and for ade-
25 quate, well-tested business resumption plans for all

1 major systems with remote site facilities to protect
2 against disruptive events; and

3 “(12) such other operational and management
4 standards as the Director determines to be appro-
5 priate.

6 “(b) FAILURE TO MEET STANDARDS.—

7 “(1) PLAN REQUIREMENT.—

8 “(A) IN GENERAL.—If the Director deter-
9 mines that a regulated entity fails to meet any
10 standard established under subsection (a)—

11 “(i) if such standard is established by
12 regulation, the Director shall require the
13 regulated entity to submit an acceptable
14 plan to the Director within the time al-
15 lowed under subparagraph (C); and

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

20 “(B) CONTENTS.—Any plan required
21 under subparagraph (A) shall specify the ac-
22 tions that the regulated entity will take to cor-
23 rect the deficiency. If the regulated entity is
24 undercapitalized, the plan may be a part of the

1 capital restoration plan for the regulated entity
2 under section 1369C.

3 “(C) DEADLINES FOR SUBMISSION AND
4 REVIEW.—The Director shall by regulation es-
5 tablish deadlines that—

6 “(i) provide the regulated entities with
7 reasonable time to submit plans required
8 under subparagraph (A), and generally re-
9 quire a regulated entity to submit a plan
10 not later than 30 days after the Director
11 determines that the entity fails to meet
12 any standard established under subsection
13 (a); and

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

17 “(2) REQUIRED ORDER UPON FAILURE TO SUB-
18 MIT OR IMPLEMENT PLAN.—If a regulated entity
19 fails to submit an acceptable plan within the time al-
20 lowed under paragraph (1)(C), or fails in any mate-
21 rial respect to implement a plan accepted by the Di-
22 rector, the following shall apply:

23 “(A) REQUIRED CORRECTION OF DEFI-
24 CIENCY.—The Director shall, by order, require
25 the regulated entity to correct the deficiency.

1 “(B) OTHER AUTHORITY.—The Director
2 may, by order, take one or more of the fol-
3 lowing actions until the deficiency is corrected:

4 “(i) Prohibit the regulated entity from
5 permitting its average total assets (as such
6 term is defined in section 1316(b)) during
7 any calendar quarter to exceed its average
8 total assets during the preceding calendar
9 quarter, or restrict the rate at which the
10 average total assets of the entity may in-
11 crease from one calendar quarter to an-
12 other.

13 “(ii) Require the regulated entity—

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

17 “(II) in the case of a Federal
18 home loan bank, to increase its ratio
19 of total capital (as such term is de-
20 fined in section 6(a)(5) of the Federal
21 Home Loan Bank Act (12 U.S.C.
22 1426(a)(5)) to assets.

23 “(iii) Require the regulated entity to
24 take any other action that the Director de-
25 termines will better carry out the purposes

1 of this section than any of the actions de-
2 scribed in this subparagraph.

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

7 “(A) the Director determines that the reg-
8 ulated entity fails to meet any standard pre-
9 scribed under subsection (a);

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

12 “(C) during the 18-month period before
13 the date on which the regulated entity first
14 failed to meet the standard, the entity under-
15 went extraordinary growth, as defined by the
16 Director.

17 “(c) OTHER ENFORCEMENT AUTHORITY NOT AF-
18 FECTED.—The authority of the Director under this sec-
19 tion is in addition to any other authority of the Director.”.

20 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
21 AND RECOMMENDATIONS.—Section 111 of Public Law
22 93–495 (12 U.S.C. 250) is amended by striking “the Fed-
23 eral Housing Finance Board” and inserting “the Director
24 of the Federal Housing Finance Agency”.

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

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

7 **“SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.**

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

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

16 “(c) COMPOSITION.—The Board shall be comprised
17 of 3 members, of whom—

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

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

22 “(3) one member shall be the Director, who
23 shall serve as the Chairperson of the Board.

24 “(d) MEETINGS.—

25 “(1) IN GENERAL.—The Board shall meet upon
26 notice by the Director, but in no event shall the

1 Board meet less frequently than once every 3
2 months.

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

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

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

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

14 “(3) the overall operational status of the regu-
15 lated entities;

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

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

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

1 (b) ANNUAL REPORT OF THE DIRECTOR.—Section
2 1319B(a) of the Housing and Community Development
3 Act of 1992 (12 U.S.C. 4521 (a)) is amended—

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

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

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

10 “(A) the safety and soundness of the regu-
11 lated entities;

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

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

16 “(D) an evaluation of the performance of
17 the regulated entities in carrying out their mis-
18 sions;

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

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

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

3 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
4 **LATED ENTITIES.**

5 Section 1314 of the Housing and Community Devel-
6 opment Act of 1992 (12 U.S.C. 4514) is amended—

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

9 (2) in subsection (a)—

10 (A) in the subsection heading, by striking
11 “SPECIAL REPORTS AND REPORTS OF FINAN-
12 CIAL CONDITION” and inserting “REGULAR
13 AND SPECIAL REPORTS”;

14 (B) in paragraph (1)—

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

18 (ii) by striking “reports of financial
19 condition and operations” and inserting
20 “regular reports on the condition (includ-
21 ing financial condition), management, ac-
22 tivities, or operations of the regulated enti-
23 ty, as the Director considers appropriate”;
24 and

1 (C) in paragraph (2), after “submit special
2 reports” insert “on any of the topics specified
3 in paragraph (1) or such other topics”; and
4 (3) by adding at the end the following new sub-
5 section:

6 “(c) REPORTS OF FRAUDULENT FINANCIAL TRANS-
7 ACTIONS.—

8 “(1) REQUIREMENT TO REPORT.—The Director
9 shall require a regulated entity to submit to the Di-
10 rector a timely report upon discovery by the regu-
11 lated entity that it has purchased or sold a fraudu-
12 lent loan or financial instrument or suspects a pos-
13 sible fraud relating to a purchase or sale of any loan
14 or financial instrument. The Director shall require
15 the regulated entities to establish and maintain pro-
16 cedures designed to discover any such transactions.

17 “(2) PROTECTION FROM LIABILITY FOR RE-
18 PORTS.—

19 “(A) IN GENERAL.—If a regulated entity
20 makes a report pursuant to paragraph (1), or
21 a regulated entity-affiliated party makes, or re-
22 quires another to make, such a report, and such
23 report is made in a good faith effort to comply
24 with the requirements of paragraph (1), such
25 regulated entity or regulated entity-affiliated

1 party shall not be liable to any person under
2 any law or regulation of the United States, any
3 constitution, law, or regulation of any State or
4 political subdivision of any State, or under any
5 contract or other legally enforceable agreement
6 (including any arbitration agreement), for such
7 report or for any failure to provide notice of
8 such report to the person who is the subject of
9 such report or any other person identified in
10 the report.

11 “(B) RULE OF CONSTRUCTION.—Subpara-
12 graph (A) shall not be construed as creating—

13 “(i) any inference that the term ‘per-
14 son’, as used in such subparagraph, may
15 be construed more broadly than its ordi-
16 nary usage so as to include any govern-
17 ment or agency of government; or

18 “(ii) any immunity against, or other-
19 wise affecting, any civil or criminal action
20 brought by any government or agency of
21 government to enforce any constitution,
22 law, or regulation of such government or
23 agency.”.

1 **SEC. 105. DISCLOSURE OF INCOME AND CHARITABLE CON-**
2 **TRIBUTIONS BY ENTERPRISES.**

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

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

9 “(1) REQUIRED DISCLOSURE.—The Director
10 shall, by regulation, require each enterprise to sub-
11 mit a report annually, in a format designated by the
12 Director, containing the following information:

13 “(A) TOTAL VALUE.—The total value of
14 contributions made by the enterprise to non-
15 profit organizations during its previous fiscal
16 year.

17 “(B) SUBSTANTIAL CONTRIBUTIONS.—If
18 the value of contributions made by the enter-
19 prise to any nonprofit organization during its
20 previous fiscal year exceeds the designated
21 amount, the name of that organization and the
22 value of contributions.

23 “(C) SUBSTANTIAL CONTRIBUTIONS TO IN-
24 SIDER-AFFILIATED CHARITIES.—Identification
25 of each contribution whose value exceeds the
26 designated amount that were made by the en-

1 enterprise during the enterprise’s previous fiscal
2 year to any nonprofit organization of which a
3 director, officer, or controlling person of the en-
4 terprise, or a spouse thereof, was a director or
5 trustee, the name of such nonprofit organiza-
6 tion, and the value of the contribution.

7 “(2) DEFINITIONS.—For purposes of this sub-
8 section—

9 “(A) the term ‘designated amount’ means
10 such amount as may be designated by the Di-
11 rector by regulation, consistent with the public
12 interest and the protection of investors for pur-
13 poses of this subsection; and

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

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

21 “(e) DISCLOSURE OF INCOME.—Each enterprise
22 shall include, in each annual report filed under section 13
23 of the Securities Exchange Act of 1934 (15 U.S.C. 78m),
24 the income reported by the issuer to the Internal Revenue

1 Service for the most recent taxable year. Such income
2 shall—

3 “(1) be presented in a prominent location in
4 each such report and in a manner that permits a
5 ready comparison of such income to income other-
6 wise required to be included in such reports under
7 regulations issued under such section; and

8 “(2) be submitted to the Securities and Ex-
9 change Commission in a form and manner suitable
10 for entry into the EDGAR system of such Commis-
11 sion for public availability under such system.”.

12 **SEC. 106. ASSESSMENTS.**

13 Section 1316 of the Housing and Community Devel-
14 opment Act of 1992 (12 U.S.C. 4516) is amended—

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

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

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

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

3 “(3) such amounts in excess of actual expenses
4 for any given year as deemed necessary by the Di-
5 rector to maintain a working capital fund in accord-
6 ance with subsection (e); and

7 “(4) the wind up of the affairs of the Office of
8 Federal Housing Enterprise Oversight and the Fed-
9 eral Housing Finance Board under title III of the
10 Federal Housing Finance Reform Act of 2007.”;

11 (2) in subsection (b)—

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

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

19 (C) in paragraph (1)—

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

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

1 (iii) by striking “both enterprises”
2 and inserting “all of the regulated enti-
3 ties”; and

4 (D) in paragraph (3)—

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

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

13 (iii) by striking the matter that pre-
14 cedes clause (i), as so redesignated, and in-
15 serting the following:

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

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

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

23 “(B) FEDERAL HOME LOAN BANKS.—With
24 respect to a Federal home loan bank, the total
25 assets of the Bank, as determined by the Direc-

1 tor in accordance with generally accepted ac-
2 counting principles.”;

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

5 “(c) INCREASED COSTS OF REGULATION.—

6 “(1) INCREASE FOR INADEQUATE CAPITALIZA-
7 TION.—The semiannual payments made pursuant to
8 subsection (b) by any regulated entity that is not
9 classified (for purposes of subtitle B) as adequately
10 capitalized may be increased, as necessary, in the
11 discretion of the Director to pay additional esti-
12 mated costs of regulation of the regulated entity.

13 “(2) ADJUSTMENT FOR ENFORCEMENT ACTIVI-
14 TIES.—The Director may adjust the amounts of any
15 semiannual payments for an assessment under sub-
16 section (a) that are to be paid pursuant to sub-
17 section (b) by a regulated entity, as necessary in the
18 discretion of the Director, to ensure that the costs
19 of enforcement activities under this Act for a regu-
20 lated entity are borne only by such regulated entity.

21 “(3) ADDITIONAL ASSESSMENT FOR DEFICI-
22 CIENCIES.—If at any time, as a result of increased
23 costs of regulation of a regulated entity that is not
24 classified (for purposes of subtitle B) as adequately
25 capitalized or as the result of supervisory or enforce-

1 ment activities under this Act for a regulated entity,
2 the amount available from any semiannual payment
3 made by such regulated entity pursuant to sub-
4 section (b) is insufficient to cover the costs of the
5 Agency with respect to such entity, the Director may
6 make and collect from such regulated entity an im-
7 mediate assessment to cover the amount of such de-
8 ficiency for the semiannual period. If, at the end of
9 any semiannual period during which such an assess-
10 ment is made, any amount remains from such as-
11 sessment, such remaining amount shall be deducted
12 from the assessment for such regulated entity for
13 the following semiannual period.”;

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

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

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

1 “(f) TREATMENT OF ASSESSMENTS.—

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

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

12 “(3) NO APPORTIONMENT OF FUNDS.—Not-
13 withstanding any other provision of law, the
14 amounts received by the Director from any assess-
15 ment under this section shall not be subject to ap-
16 portionment for the purpose of chapter 15 of title
17 31, United States Code, or under any other author-
18 ity.

19 “(4) USE OF FUNDS.—The Director may use
20 any amounts received by the Director from assess-
21 ments under this section for compensation of the Di-
22 rector and other employees of the Agency and for all
23 other expenses of the Director and the Agency.

24 “(5) AVAILABILITY OF OVERSIGHT FUND
25 AMOUNTS.—Notwithstanding any other provision of

1 law, any amounts remaining in the Federal Housing
2 Enterprises Oversight Fund established under this
3 section (as in effect before the effective date under
4 section 185 of the Federal Housing Finance Reform
5 Act of 2007), and any amounts remaining from as-
6 sessments on the Federal Home Loan banks pursu-
7 ant to section 18(b) of the Federal Home Loan
8 Bank Act (12 U.S.C. 1438(b)), shall, upon such ef-
9 fective date, be treated for purposes of this sub-
10 section as amounts received from assessments under
11 this section.

12 “(6) TREASURY INVESTMENTS.—

13 “(A) AUTHORITY.—The Director may re-
14 quest the Secretary of the Treasury to invest
15 such portions of amount received by the Direc-
16 tor from assessments paid under this section
17 that, in the Director’s discretion, are not re-
18 quired to meet the current working needs of the
19 Agency.

20 “(B) GOVERNMENT OBLIGATIONS.—Pursu-
21 ant to a request under subparagraph (A), the
22 Secretary of the Treasury shall invest such
23 amounts in government obligations guaranteed
24 as to principal and interest by the United
25 States with maturities suitable to the needs of

1 Agency and bearing interest at a rate deter-
2 mined by the Secretary of the Treasury taking
3 into consideration current market yields on out-
4 standing marketable obligations of the United
5 States of comparable maturity.

6 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

7 “(1) FINANCIAL OPERATING PLANS AND FORE-
8 CASTS.—The Director shall provide to the Director
9 of the Office of Management and Budget copies of
10 the Director’s financial operating plans and fore-
11 casts as prepared by the Director in the ordinary
12 course of the Agency’s operations, and copies of the
13 quarterly reports of the Agency’s financial condition
14 and results of operations as prepared by the Direc-
15 tor in the ordinary course of the Agency’s oper-
16 ations.

17 “(2) FINANCIAL STATEMENTS.—The Agency
18 shall prepare annually a statement of assets and li-
19 abilities and surplus or deficit; a statement of in-
20 come and expenses; and a statement of sources and
21 application of funds.

22 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
23 Agency shall implement and maintain financial man-
24 agement systems that comply substantially with
25 Federal financial management systems require-

1 ments, applicable Federal accounting standards, and
2 that uses a general ledger system that accounts for
3 activity at the transaction level.

4 “(4) ASSERTION OF INTERNAL CONTROLS.—
5 The Director shall provide to the Comptroller Gen-
6 eral an assertion as to the effectiveness of the inter-
7 nal controls that apply to financial reporting by the
8 Agency, using the standards established in section
9 3512(e) of title 31, United States Code.

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

19 “(h) AUDIT OF AGENCY.—

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

1 places where accounts of the Agency are normally
2 kept. The representatives of the Government Ac-
3 countability Office shall have access to the personnel
4 and to all books, accounts, documents, papers,
5 records (including electronic records), reports, files,
6 and all other papers, automated data, things, or
7 property belonging to or under the control of or used
8 or employed by the Agency pertaining to its financial
9 transactions and necessary to facilitate the audit,
10 and such representatives shall be afforded full facili-
11 ties for verifying transactions with the balances or
12 securities held by depositories, fiscal agents, and
13 custodians. All such books, accounts, documents,
14 records, reports, files, papers, and property of the
15 Agency shall remain in possession and custody of
16 the Agency. The Comptroller General may obtain
17 and duplicate any such books, accounts, documents,
18 records, working papers, automated data and files,
19 or other information relevant to such audit without
20 cost to the Comptroller General and the Comptroller
21 General's right of access to such information shall
22 be enforceable pursuant to section 716(c) of title 31,
23 United States Code.

24 “(2) REPORT.—The Comptroller General shall
25 submit to the Congress a report of each annual

1 audit conducted under this subsection. The report to
2 the Congress shall set forth the scope of the audit
3 and shall include the statement of assets and liabil-
4 ities and surplus or deficit, the statement of income
5 and expenses, the statement of sources and applica-
6 tion of funds, and such comments and information
7 as may be deemed necessary to inform Congress of
8 the financial operations and condition of the Agency,
9 together with such recommendations with respect
10 thereto as the Comptroller General may deem advis-
11 able. A copy of each report shall be furnished to the
12 President and to the Agency at the time submitted
13 to the Congress.

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

1 audit and report conducted by the Comptroller Gen-
2 eral. The Comptroller General shall credit funds
3 transferred to the account established for salaries
4 and expenses of the Government Accountability Of-
5 fice, and such amount shall be available upon receipt
6 and without fiscal year limitation to cover the full
7 costs of the audit and report.”.

8 **SEC. 107. EXAMINERS AND ACCOUNTANTS.**

9 (a) EXAMINATIONS.—Section 1317 of the Housing
10 and Community Development Act of 1992 (12 U.S.C.
11 4517) is amended—

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

21 (2) in subsection (b)—

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

24 (B) by striking “to determine the condition
25 of an enterprise for the purpose of ensuring its

1 financial safety and soundness” and inserting
2 “or appropriate”; and
3 (3) in subsection (c)—

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

7 (B) in the third sentence, by striking
8 “from amounts available in the Federal Hous-
9 ing Enterprises Oversight Fund”.

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

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

17 “(1) APPLICABILITY.—This section applies with
18 respect to any position of examiner, accountant, spe-
19 cialist in financial markets, specialist in information
20 technology, and economist at the Agency, with re-
21 spect to supervision and regulation of the regulated
22 entities, that is in the competitive service.

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

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

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

7 “(3) RULE OF CONSTRUCTION.—The appoint-
8 ment of a candidate to a position under the author-
9 ity of this subsection shall not be considered to
10 cause such position to be converted from the com-
11 petitive service to the excepted service.”.

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

14 (1) by striking the section heading and insert-
15 ing the following: “EXAMINATIONS AND GAO AU-
16 DITS”;

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

19 (3) by striking the first two sentences and in-
20 serting the following: “The Federal home loan banks
21 shall be subject to examinations by the Director to
22 the extent provided in section 1317 of the Federal
23 Housing Enterprises Financial Safety and Sound-
24 ness Act of 1992 (12 U.S.C. 4517).”.

1 **SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE**
2 **COMPENSATION.**

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

6 (1) in the section heading, by striking “**OF EX-**
7 **CESSIVE**” and inserting “**AND WITHHOLDING OF**
8 **EXECUTIVE**”;

9 (2) by redesignating subsection (b) as sub-
10 section (d); and

11 (3) by inserting after subsection (a) the fol-
12 lowing new subsections:

13 “(b) FACTORS.—In making any determination under
14 subsection (a), the Director may take into consideration
15 any factors the Director considers relevant, including any
16 wrongdoing on the part of the executive officer, and such
17 wrongdoing shall include any fraudulent act or omission,
18 breach of trust or fiduciary duty, violation of law, rule,
19 regulation, order, or written agreement, and insider abuse
20 with respect to the regulated entity. The approval of an
21 agreement or contract pursuant to section 309(d)(3)(B)
22 of the Federal National Mortgage Association Charter Act
23 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the
24 Federal Home Loan Mortgage Corporation Act (12 U.S.C.
25 1452(h)(2)) shall not preclude the Director from making
26 any subsequent determination under subsection (a).

1 “(c) WITHHOLDING OF COMPENSATION.—In car-
2 rying out subsection (a), the Director may require a regu-
3 lated entity to withhold any payment, transfer, or dis-
4 bursement of compensation to an executive officer, or to
5 place such compensation in an escrow account, during the
6 review of the reasonableness and comparability of com-
7 pensation.”.

8 (b) CONFORMING AMENDMENTS.—

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

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

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

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

9 (3) FEDERAL HOME LOAN BANKS.—Section 7
10 of the Federal Home Loan Bank Act (12 U.S.C.
11 1427) is amended by adding at the end the following
12 new subsection:

13 “(1) WITHHOLDING OF COMPENSATION.—Notwith-
14 standing any other provision of this section, a Federal
15 home loan bank shall not transfer, disburse, or pay com-
16 pensation to any executive officer, or enter into an agree-
17 ment with such executive officer, without the approval of
18 the Director, for matters being reviewed under section
19 1318 of the Federal Housing Enterprises Financial Safety
20 and Soundness Act of 1992 (12 U.S.C. 4518).”.

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

22 Section 1319 of the Housing and Community Devel-
23 opment Act of 1992 (12 U.S.C. 4519) is amended—

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

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

2 and

3 (2) by striking “is a nationally recognized” and
4 all that follows through “1934” and inserting the
5 following: “the Director considers appropriate, in-
6 cluding an entity that is registered under section 15
7 of the Securities Exchange Act of 1934 (15 U.S.C.
8 78a) as a nationally registered statistical rating or-
9 ganization”.

10 **SEC. 110. INCLUSION OF MINORITIES AND WOMEN; DIVER-**
11 **SITY IN AGENCY WORKFORCE.**

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

14 (1) in the section heading, by striking “**EQUAL**
15 **OPPORTUNITY IN SOLICITATION OF CON-**
16 **TRACTS**” and inserting “**MINORITY AND WOMEN**
17 **INCLUSION; DIVERSITY REQUIREMENTS**”;

18 (2) in subsection (a), by striking “(a) IN GEN-
19 ERAL.—Each enterprise” and inserting “(e) OUT-
20 REACH.—Each regulated entity”; and

21 (3) by striking subsection (b);

22 (4) by inserting before subsection (e), as so re-
23 designated by paragraph (2) of this section, the fol-
24 lowing new subsections:

25 “(a) **OFFICE OF MINORITY AND WOMEN INCLU-**
26 **SION**.—Each regulated entity shall establish an Office of

1 Minority and Women Inclusion, or designate an office of
2 the entity, that shall be responsible for carrying out this
3 section and all matters of the entity relating to diversity
4 in management, employment, and business activities in ac-
5 cordance with such standards and requirements as the Di-
6 rector shall establish.

7 “(b) INCLUSION IN ALL LEVELS OF BUSINESS AC-
8 TIVITIES.—Each regulated entity shall develop and imple-
9 ment standards and procedures to ensure, to the max-
10 imum extent possible, the inclusion and utilization of mi-
11 norities (as such term is defined in section 1204(c) of the
12 Financial Institutions Reform, Recovery, and Enforce-
13 ment Act of 1989 (12 U.S.C. 1811 note)) and women,
14 and minority- and women-owned businesses (as such
15 terms are defined in section 21A(r)(4) of the Federal
16 Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including
17 financial institutions, investment banking firms, mortgage
18 banking firms, asset management firms, broker-dealers, fi-
19 nancial services firms, underwriters, accountants, brokers,
20 investment consultants, and providers of legal services) in
21 all business and activities of the regulated entity at all
22 levels, including in procurement, insurance, and all types
23 of contracts (including contracts for the issuance or guar-
24 antee of any debt, equity, or mortgage-related securities,
25 the management of its mortgage and securities portfolios,

1 the making of its equity investments, the purchase, sale
2 and servicing of single- and multi-family mortgage loans,
3 and the implementation of its affordable housing program
4 and initiatives). The processes established by each regu-
5 lated entity for review and evaluation for contract pro-
6 posals and to hire service providers shall include a compo-
7 nent that gives consideration to the diversity of the appli-
8 cant.

9 “(c) APPLICABILITY.—This section shall apply to all
10 contracts of a regulated entity for services of any kind,
11 including services that require the services of investment
12 banking, asset management entities, broker-dealers, finan-
13 cial services entities, underwriters, accountants, invest-
14 ment consultants, and providers of legal services.

15 “(d) INCLUSION IN ANNUAL REPORTS.—Each regu-
16 lated entity shall include, in the annual report submitted
17 by the entity to the Director pursuant to section 309(k)
18 of the Federal National Mortgage Association Charter Act
19 (12 U.S.C. 1723a(k)), section 307(c) of the Federal Home
20 Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and
21 section 20 of the Federal Home Loan Bank Act (12
22 U.S.C. 1440), as applicable, detailed information describ-
23 ing the actions taken by the entity pursuant to this sec-
24 tion, which shall include a statement of the total amounts
25 paid by the entity to third party contractors since the last

1 such report and the percentage of such amounts paid to
2 businesses described in subsection (b) of this section.”;
3 and

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

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

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

15 “(2) sponsoring and recruiting at job fairs in
16 urban communities, and placing employment adver-
17 tisements in newspapers and magazines oriented to-
18 ward women and people of color;

19 “(3) partnering with organizations that are fo-
20 cused on developing opportunities for minorities and
21 women to place talented young minorities and
22 women in industry internships, summer employment,
23 and full-time positions; and

24 “(4) where feasible, partnering with inner-city
25 high schools, girls’ high schools, and high schools

1 with majority minority populations to establish or
2 enhance financial literacy programs and provide
3 mentoring.”.

4 **SEC. 111. REGULATIONS AND ORDERS.**

5 Section 1319G of the Housing and Community De-
6 velopment Act of 1992 (12 U.S.C. 4526) is amended—

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

9 “(a) **AUTHORITY.**—The Director shall issue any reg-
10 ulations, guidelines, and orders necessary to carry out the
11 duties of the Director under this title and each of the au-
12 thorizing statutes to ensure that the purposes of this title
13 and such statutes are accomplished.”;

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

17 (3) by striking subsection (c).

18 **SEC. 112. NON-WAIVER OF PRIVILEGES.**

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

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

23 “(a) **IN GENERAL.**—The submission by any person
24 of any information to the Agency for any purpose in the
25 course of any supervisory or regulatory process of the

1 Agency shall not be construed as waiving, destroying, or
2 otherwise affecting any privilege such person may claim
3 with respect to such information under Federal or State
4 law as to any person or entity other than the Agency.

5 “(b) RULE OF CONSTRUCTION.—No provision of sub-
6 section (a) may be construed as implying or establishing
7 that—

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

12 “(2) any person would waive any privilege ap-
13 plicable to any information by submitting the infor-
14 mation to the Agency, but for this subsection.”.

15 **SEC. 113. RISK-BASED CAPITAL REQUIREMENTS.**

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

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

21 “(a) IN GENERAL.—

22 “(1) ENTERPRISES.—The Director shall, by
23 regulation, establish risk-based capital requirements
24 for the enterprises to ensure that the enterprises op-
25 erate in a safe and sound manner, maintaining suffi-

1 cient capital and reserves to support the risks that
2 arise in the operations and management of the en-
3 terprises.

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

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

13 “(1) maintain the confidentiality of the book,
14 record, or information in a manner that is generally
15 consistent with the level of confidentiality established
16 for the material by the Director or the regulated en-
17 tity; and

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

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

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

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

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

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

17 **SEC. 114. MINIMUM AND CRITICAL CAPITAL LEVELS.**

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

21 (1) in subsection (a), by striking “IN GEN-
22 ERAL” and inserting “ENTERPRISES”; and

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

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

7 “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-
8 ITAL LEVELS.—Notwithstanding subsections (a) and (b)
9 and notwithstanding the capital classifications of the regu-
10 lated entities, the Director may, by regulations issued
11 under section 1319G, establish a minimum capital level
12 for the enterprises, for the Federal home loan banks, or
13 for both the enterprises and the banks, that is higher than
14 the level specified in subsection (a) for the enterprises or
15 the level specified in subsection (b) for the Federal home
16 loan banks, to the extent needed to ensure that the regu-
17 lated entities operate in a safe and sound manner.

18 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-
19 CREASE.—Notwithstanding subsections (a) and (b) and
20 any minimum capital level established pursuant to sub-
21 section (c), the Director may, by order, increase the min-
22 imum capital level for a regulated entity on a temporary
23 basis for such period as the Director may provide if the
24 Director—

1 “(1) makes any determination specified in sub-
2 paragraphs (A) through (C) of section 1364(c)(1);

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

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

15 “(e) **AUTHORITY TO ESTABLISH ADDITIONAL CAP-**
16 **ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR**
17 **PROGRAMS.**—The Director may, at any time by order or
18 regulation, establish such capital or reserve requirements
19 with respect to any program or activity of a regulated enti-
20 ty as the Director considers appropriate to ensure that
21 the regulated entity operates in a safe and sound manner,
22 with sufficient capital and reserves to support the risks
23 that arise in the operations and management of the regu-
24 lated entity.

1 “(f) PERIODIC REVIEW.—The Director shall periodi-
2 cally review the amount of core capital maintained by the
3 enterprises, the amount of capital retained by the Federal
4 home loan banks, and the minimum capital levels estab-
5 lished for such regulated entities pursuant to this section.
6 The Director shall rescind any temporary minimum cap-
7 ital level increase if the Director determines that the cir-
8 cumstances or facts justifying the temporary increase are
9 no longer present.”.

10 (b) CRITICAL CAPITAL LEVELS.—

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

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

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

18 “(b) FEDERAL HOME LOAN BANKS.—

19 “(1) IN GENERAL.—For purposes of this sub-
20 title, the critical capital level for each Federal home
21 loan bank shall be such amount of capital as the Di-
22 rector shall, by regulation require.

23 “(2) CONSIDERATION OF OTHER CRITICAL CAP-
24 ITAL LEVELS.—In establishing the critical capital
25 level under paragraph (1) for the Federal home loan

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

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

15 **SEC. 115. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
16 **ASSETS AND LIABILITIES.**

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

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

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

6 and

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

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

11 “(a) IN GENERAL.—The Director shall, by regula-
12 tion, establish standards by which the portfolio holdings,
13 or rate of growth of the portfolio holdings, of the enter-
14 prises will be deemed to be consistent with the mission
15 and the safe and sound operations of the enterprises. In
16 developing such standards, the Director shall consider—

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

18 “(2) the need for the portfolio in maintaining li-
19 quidity or stability of the secondary mortgage mar-
20 ket (including the market for the mortgage-backed
21 securities the enterprises issue);

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

1 “(4) the need for the portfolio to directly sup-
2 port the affordable housing mission of the enter-
3 prises;

4 “(5) the liquidity needs of the enterprises;

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

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

13 “(b) TEMPORARY ADJUSTMENTS.—The Director
14 may, by order, make temporary adjustments to the estab-
15 lished standards for an enterprise or both enterprises,
16 such as during times of economic distress or market dis-
17 ruption.

18 “(c) AUTHORITY TO REQUIRE DISPOSITION OR AC-
19 QUISITION.—The Director shall monitor the portfolio of
20 each enterprise. Pursuant to subsection (a) and notwith-
21 standing the capital classifications of the enterprises, the
22 Director may, by order, require an enterprise, under such
23 terms and conditions as the Director determines to be ap-
24 propriate, to dispose of or acquire any asset, if the Direc-

1 tor determines that such action is consistent with the pur-
2 poses of this Act or any of the authorizing statutes.”.

3 (b) REGULATIONS.—Not later than the expiration of
4 the 180-day period beginning on the effective date under
5 section 185, the Director of the Federal Housing Finance
6 Agency shall issue regulations pursuant to section
7 1369E(a) of the Housing and Community Development
8 Act of 1992 (as added by subsection (a) of this section)
9 establishing the portfolio holdings standards under such
10 section.

11 **SEC. 116. CORPORATE GOVERNANCE OF ENTERPRISES.**

12 The Housing and Community Development Act of
13 1992 is amended by inserting before section 1323 (12
14 U.S.C. 4543) the following new section:

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

16 “(a) BOARD OF DIRECTORS.—

17 “(1) INDEPENDENCE.—A majority of seated
18 members of the board of directors of each enterprise
19 shall be independent board members, as defined
20 under rules set forth by the New York Stock Ex-
21 change, as such rules may be amended from time to
22 time.

23 “(2) FREQUENCY OF MEETINGS.—To carry out
24 its obligations and duties under applicable laws,
25 rules, regulations, and guidelines, the board of direc-

1 tors of an enterprise shall meet at least eight times
2 a year and not less than once a calendar quarter.

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

7 “(4) QUORUM; PROHIBITION ON PROXIES.—For
8 the transaction of business, a quorum of the board
9 of directors of an enterprise shall be at least a ma-
10 jority of the seated board of directors and a board
11 member may not vote by proxy.

12 “(5) INFORMATION.—The management of an
13 enterprise shall provide a board member of the en-
14 terprise with such adequate and appropriate infor-
15 mation that a reasonable board member would find
16 important to the fulfillment of his or her fiduciary
17 duties and obligations.

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

23 “(b) COMMITTEES OF BOARDS OF DIRECTORS.—

24 “(1) FREQUENCY OF MEETINGS.—Any com-
25 mittee of the board of directors of an enterprise

1 shall meet with sufficient frequency to carry out its
2 obligations and duties under applicable laws, rules,
3 regulations, and guidelines.

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

7 “(A) Audit committee.

8 “(B) Compensation committee.

9 “(C) Nominating/corporate governance
10 committee.

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

19 “(c) COMPENSATION.—

20 “(1) IN GENERAL.—The compensation of board
21 members, executive officers, and employees of an en-
22 terprise—

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

1 “(B) shall be commensurate with the du-
2 ties and responsibilities of such persons;

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

5 “(D) shall not focus solely on earnings per-
6 formance, but shall take into account risk man-
7 agement, operational stability and legal and
8 regulatory compliance as well; and

9 “(E) shall be undertaken in a manner that
10 complies with applicable laws, rules, and regula-
11 tions.

12 “(2) REIMBURSEMENT.—If an enterprise is re-
13 quired to prepare an accounting restatement due to
14 the material noncompliance of the enterprise, as a
15 result of misconduct, with any financial reporting re-
16 quirement under the securities laws, the chief execu-
17 tive officer and chief financial officer of the enter-
18 prise shall reimburse the enterprise as provided
19 under section 304 of the Sarbanes-Oxley Act of
20 2002 (15 U.S.C. 7243). This provision does not oth-
21 erwise limit the authority of the Agency to employ
22 remedies available to it under its enforcement au-
23 thorities.

24 “(d) CODE OF CONDUCT AND ETHICS.—

1 “(1) IN GENERAL.—An enterprise shall estab-
2 lish and administer a written code of conduct and
3 ethics that is reasonably designed to assure the abil-
4 ity of board members, executive officers, and em-
5 ployees of the enterprise to discharge their duties
6 and responsibilities, on behalf of the enterprise, in
7 an objective and impartial manner, and that includes
8 standards required under section 406 of the Sar-
9 banes-Oxley Act of 2002 (15 U.S.C. 7264) and
10 other applicable laws, rules, and regulations.

11 “(2) REVIEW.—Not less than once every three
12 years, an enterprise shall review the adequacy of its
13 code of conduct and ethics for consistency with prac-
14 tices appropriate to the enterprise and make any ap-
15 propriate revisions to such code.

16 “(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF
17 DIRECTORS.—The board of directors of an enterprise shall
18 be responsible for directing the conduct and affairs of the
19 enterprise in furtherance of the safe and sound operation
20 of the enterprise and shall remain reasonably informed of
21 the condition, activities, and operations of the enterprise.
22 The responsibilities of the board of directors shall include
23 having in place adequate policies and procedures to assure
24 its oversight of, among other matters, the following:

1 “(1) Corporate strategy, major plans of action,
2 risk policy, programs for legal and regulatory com-
3 pliance and corporate performance, including pru-
4 dent plans for growth and allocation of adequate re-
5 sources to manage operations risk.

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

9 “(3) Compensation programs of the enterprise.

10 “(4) Integrity of accounting and financial re-
11 porting systems of the enterprise, including inde-
12 pendent audits and systems of internal control.

13 “(5) Process and adequacy of reporting, disclo-
14 sures, and communications to shareholders, inves-
15 tors, and potential investors.

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

18 “(7) Responsiveness of executive officers in pro-
19 viding accurate and timely reports to Federal regu-
20 lators and in addressing the supervisory concerns of
21 Federal regulators in a timely and appropriate man-
22 ner.

23 “(f) PROHIBITION OF EXTENSIONS OF CREDIT.—An
24 enterprise may not directly or indirectly, including
25 through any subsidiary, extend or maintain credit, arrange

1 for the extension of credit, or renew an extension of credit,
2 in the form of a personal loan to or for any board member
3 or executive officer of the enterprise, as provided by sec-
4 tion 13(k) of the Securities Exchange Act of 1934 (15
5 U.S.C. 78m(k)).

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

12 “(h) CHANGE OF AUDIT PARTNER.—An enterprise
13 may not accept audit services from an external auditing
14 firm if the lead or coordinating audit partner who has pri-
15 mary responsibility for the external audit of the enterprise,
16 or the external audit partner who has responsibility for
17 reviewing the external audit has performed audit services
18 for the enterprise in each of the five previous fiscal years.

19 “(i) COMPLIANCE PROGRAM.—

20 “(1) REQUIREMENT.—Each enterprise shall es-
21 tablish and maintain a compliance program that is
22 reasonably designed to assure that the enterprise
23 complies with applicable laws, rules, regulations, and
24 internal controls.

1 “(2) COMPLIANCE OFFICER.—The compliance
2 program of an enterprise shall be headed by a com-
3 pliance officer, however styled, who reports directly
4 to the chief executive officer of the enterprise. The
5 compliance officer shall report regularly to the board
6 of directors or an appropriate committee of the
7 board of directors on compliance with and the ade-
8 quacy of current compliance policies and procedures
9 of the enterprise, and shall recommend any adjust-
10 ments to such policies and procedures that the com-
11 pliance officer considers necessary and appropriate.

12 “(j) RISK MANAGEMENT PROGRAM.—

13 “(1) REQUIREMENT.—Each enterprise shall es-
14 tablish and maintain a risk management program
15 that is reasonably designed to manage the risks of
16 the operations of the enterprise.

17 “(2) RISK MANAGEMENT OFFICER.—The risk
18 management program of an enterprise shall be head-
19 ed by a risk management officer, however styled,
20 who reports directly to the chief executive officer of
21 the enterprise. The risk management officer shall re-
22 port regularly to the board of directors or an appro-
23 priate committee of the board of directors on compli-
24 ance with and the adequacy of current risk manage-
25 ment policies and procedures of the enterprise, and

1 shall recommend any adjustments to such policies
2 and procedures that the risk management officer
3 considers necessary and appropriate.

4 “(k) COMPLIANCE WITH OTHER LAWS.—

5 “(1) DEREGISTERED OR UNREGISTERED COM-
6 MON STOCK.—If an enterprise deregisters or has not
7 registered its common stock with the Securities and
8 Exchange Commission under the Securities Ex-
9 change Act of 1934, the enterprise shall comply or
10 continue to comply with sections 10A(m) and 13(k)
11 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78j–1(m), 78m(k)) and sections 302, 304, and 406
13 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241,
14 7243, 7264), subject to such requirements as pro-
15 vided by subsection (l) of this section.

16 “(2) REGISTERED COMMON STOCK.—An enter-
17 prise that has its common stock registered with the
18 Securities and Exchange Commission shall maintain
19 such registered status, unless it provides 60 days
20 prior written notice to the Director stating its intent
21 to deregister and its understanding that it will re-
22 main subject to the requirements of the sections of
23 the Securities Exchange Act of 1934 and the Sar-
24 banes-Oxley Act of 2002, subject to such require-
25 ments as provided by subsection (l) of this section.

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

5 “(m) MODIFICATION OF STANDARDS.—In connection
6 with standards of Federal or State law (including the Re-
7 vised Model Corporation Act) or New York Stock Ex-
8 change rules that are made applicable to an enterprise by
9 section 1710.10 of the Director’s rules (12 CFR 1710.10)
10 and by subsections (a), (b), (g), (i), (j), and (k) of this
11 section, the Director, in the Director’s sole discretion, may
12 modify the standards contained in this section or in part
13 1710 of the Director’s rules (12 CFR Part 1710) in ac-
14 cordance with section 553 of title 5, United States Code,
15 and upon written notice to the enterprise.”.

16 **SEC. 117. REQUIRED REGISTRATION UNDER SECURITIES**
17 **EXCHANGE ACT OF 1934.**

18 The Housing and Community Development Act of
19 1992 is amended by adding after section 1322A, as added
20 by the preceding provisions of this Act, the following new
21 section:

22 **“SEC. 1322B. REQUIRED REGISTRATION UNDER SECURI-**
23 **TIES EXCHANGE ACT OF 1934.**

24 “(a) IN GENERAL.—Each regulated entity shall reg-
25 ister at least one class of the capital stock of such regu-

1 lated entity, and maintain such registration with the Secu-
2 rities and Exchange Commission, under the Securities Ex-
3 change Act of 1934.

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

7 **SEC. 118. LIAISON WITH FINANCIAL INSTITUTIONS EXAM-**
8 **INATION COUNCIL.**

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

12 (1) in the section heading, by inserting after
13 “STATE” the following: “AND FEDERAL HOUSING FI-
14 NANCE AGENCY”; and

15 (2) by inserting after “financial institutions”
16 the following: “, and one representative of the Fed-
17 eral Housing Finance Agency,”.

18 **SEC. 119. GUARANTEE FEE STUDY.**

19 (a) IN GENERAL.—The Director of the Federal
20 Housing Finance Agency, in consultation with the heads
21 of the federal banking agencies, shall, not later than 18
22 months after the date of the enactment of this Act, submit
23 to the Congress a study concerning the pricing, trans-
24 parency and reporting of the Federal National Mortgage
25 Association, the Federal Home Loan Mortgage Corpora-

1 tion, and the Federal home loan banks with regard to
2 guarantee fees and concerning analogous practices, trans-
3 parency and reporting requirements (including advances
4 pricing practices by the Federal Home Loan Banks) of
5 other participants in the business of mortgage purchases
6 and securitization.

7 (b) FACTORS.—The study required by this section
8 shall examine various factors such as credit risk,
9 counterparty risk considerations, economic value consider-
10 ations, and volume considerations used by the regulated
11 entities (as such term is defined in section 1303 of the
12 Housing and Community Development Act of 1992) in-
13 cluded in the study in setting the amount of fees they
14 charge.

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

17 (1) the factors used by each enterprise (as such
18 term is defined in section 1303 of the Housing and
19 Community Development Act of 1992) in deter-
20 mining the amount of the guarantee fees it charges;

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

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

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

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

6 (6) a breakdown of the revenue and costs asso-
7 ciated with providing guarantees, based on product
8 type and risk classifications; and

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

12 (d) PROTECTION OF INFORMATION.—Nothing in this
13 section may be construed to require or authorize the Di-
14 rector of the Federal Housing Finance Agency, in connec-
15 tion with the study mandated by this section, to disclose
16 information of the enterprises or other organization that
17 is confidential or proprietary.

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

20 **SEC. 120. CONFORMING AMENDMENTS.**

21 (a) 1992 ACT.—Part 1 of subtitle A of title XIII of
22 the Housing and Community Development Act of 1992
23 (12 U.S.C. 4511 et seq.), as amended by the preceding
24 provisions of this Act, is further amended—

1 (1) by striking “an enterprise” each place such
2 term appears in such part (except in sections
3 1313(a)(2)(A), 1313A(b)(2)(B)(ii)(I), and
4 1316(b)(3)) and inserting “a regulated entity”;

5 (2) by striking “the enterprise” each place such
6 term appears in such part (except in section
7 1316(b)(3)) and inserting “the regulated entity”;

8 (3) by striking “the enterprises” each place
9 such term appears in such part (except in sections
10 1312(e)(2), and 1312(e)(2)) and inserting “the reg-
11 ulated entities”;

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

15 (5) by striking “Office” each place such term
16 appears in such part (except in sections 1311(b)(2),
17 1312(b)(5), 1315(b), and 1316(a)(4), (g), and (h),
18 1317(e), and 1319A(a)) and inserting “Agency”;

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

20 (A) in subsection (a)—

21 (i) in the subsection heading, by strik-
22 ing “OFFICE PERSONNEL” and inserting
23 “IN GENERAL”; and

1 (ii) by striking “The” and inserting
2 “Subject to title III of the Federal Hous-
3 ing Finance Reform Act of 2007, the”;

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

6 (C) by redesignating subsection (e) as sub-
7 section (d);

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

12 (8) in section 1319F (12 U.S.C. 4525), striking
13 all that follows “United States Code” and inserting
14 “, the Agency shall be considered an agency respon-
15 sible for the regulation or supervision of financial in-
16 stitutions.”.

17 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
18 The Federal National Mortgage Association Charter Act
19 (12 U.S.C. 1716 et seq.) is amended—

20 (1) by striking “Director of the Office of Fed-
21 eral Housing Enterprise Oversight of the Depart-
22 ment of Housing and Urban Development” each
23 place such term appears, and inserting “Director of
24 the Federal Housing Finance Agency”, in—

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

3 (B) section 309(d)(3)(B) (12 U.S.C.
4 1723a(d)(3)(B)); and

5 (C) section 309(k)(1); and
6 (2) in section 309—

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

11 (B) in subsection (m)—

12 (i) in paragraph (1), by striking “Sec-
13 retary” the second place such term ap-
14 pears and inserting “Director”;

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

18 (iii) by striking “Secretary” each
19 other place such term appears and insert-
20 ing “Director of the Federal Housing Fi-
21 nance Agency”; and

22 (C) in subsection (n), by striking “Sec-
23 retary” each place such term appears and in-
24 serting “Director of the Federal Housing Fi-
25 nance Agency”.

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

3 (1) by striking “Director of the Office of Fed-
4 eral Housing Enterprise Oversight of the Depart-
5 ment of Housing and Urban Development” each
6 place such term appears, and inserting “Director of
7 the Federal Housing Finance Agency”, in—

8 (A) section 303(b)(2) (12 U.S.C.
9 1452(b)(2));

10 (B) section 303(h)(2) (12 U.S.C.
11 1452(h)(2)); and

12 (C) section 307(c)(1) (12 U.S.C.
13 1456(c)(1));

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

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

19 (A) by striking “1316(c)” and inserting
20 “306(c)”; and

21 (B) by striking “section 106” and insert-
22 ing “section 1316”; and

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

24 (A) in subsection (e)—

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

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

7 (iii) by striking “Secretary” each
8 other place such term appears and insert-
9 ing “Director of the Federal Housing Fi-
10 nance Agency”; and

11 (B) in subsection (f), by striking “Sec-
12 retary” each place such term appears and in-
13 serting “Director of the Federal Housing Fi-
14 nance Agency”.

15 **Subtitle B—Improvement of** 16 **Mission Supervision**

17 **SEC. 131. TRANSFER OF PRODUCT APPROVAL AND HOUS-** 18 **ING GOAL OVERSIGHT.**

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

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

1 **“PART 2—PRODUCT APPROVAL BY DIRECTOR,**
2 **CORPORATE GOVERNANCE, AND ESTABLISH-**
3 **MENT OF HOUSING GOALS”;**

4 and

5 (2) by striking sections 1321 and 1322.

6 **SEC. 132. REVIEW OF ENTERPRISE PRODUCTS.**

7 (a) IN GENERAL.—Part 2 of subtitle A of title XIII
8 of the Housing and Community Development Act of 1992
9 is amended by inserting before section 1323 (12 U.S.C.
10 4543) the following new section:

11 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS**
12 **OF ENTERPRISES.**

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

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

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

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

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

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

11 “(5) the product does not materially impair the
12 efficiency of the mortgage finance system.

13 “(c) PROCEDURE FOR APPROVAL.—

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

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

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

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

8 “(4) OFFERING OF PRODUCT.—

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

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

18 “(d) EXPEDITED REVIEW.—

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

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

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

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

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

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

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

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

1 “(1) the automated loan underwriting system of
2 an enterprise in existence as of the date of the en-
3 actment of the Federal Housing Finance Reform
4 Act of 2007, including any upgrade to the tech-
5 nology, operating system, or software to operate the
6 underwriting system; or

7 “(2) any modification to the mortgage terms
8 and conditions or mortgage underwriting criteria re-
9 lating to the mortgages that are purchased or guar-
10 anteed by an enterprise: *Provided*, That such modi-
11 fications do not alter the underlying transaction so
12 as to include services or financing, other than resi-
13 dential mortgage financing, or create significant new
14 exposure to risk for the enterprise or the holder of
15 the mortgage.

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

18 “(1) the safety and soundness authority of the
19 Director over all new and existing products or activi-
20 ties; or

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

25 (b) CONFORMING AMENDMENTS.—

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

4 (A) by striking “implement any new pro-
5 gram” and inserting “initially offer any prod-
6 uct”;

7 (B) by striking “section 1303” and insert-
8 ing “section 1321(f)”; and

9 (C) by striking “before obtaining the ap-
10 proval of the Secretary under section 1322”
11 and inserting “except in accordance with sec-
12 tion 1321”.

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

16 (A) by striking “implement any new pro-
17 gram” and inserting “initially offer any prod-
18 uct”;

19 (B) by striking “section 1303” and insert-
20 ing “section 1321(f)”; and

21 (C) by striking “before obtaining the ap-
22 proval of the Secretary under section 1322”
23 and inserting “except in accordance with sec-
24 tion 1321”.

1 (3) 1992 ACT.—Section 1303 of the Housing
2 and Community Development Act of 1992 (12
3 U.S.C. 4502), as amended by section 2 of this Act,
4 is further amended—

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

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

10 **SEC. 133. CONFORMING LOAN LIMITS.**

11 (a) FANNIE MAE.—

12 (1) GENERAL LIMIT.—Section 302(b)(2) of the
13 Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1717(b)(2)) is amended—

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

17 (B) by striking the 7th and 8th sentences
18 and inserting the following new sentences: “For
19 2007, such limitations shall not exceed
20 \$417,000 for a mortgage secured by a single-
21 family residence, \$533,850 for a mortgage se-
22 cured by a 2-family residence, \$645,300 for a
23 mortgage secured by a 3-family residence, and
24 \$801,950 for a mortgage secured by a 4-family
25 residence, except that such maximum limita-

1 tions shall be adjusted effective January 1 of
2 each year beginning with 2008, subject to the
3 limitations in this paragraph. Each adjustment
4 shall be made by adding to or subtracting from
5 each such amount (as it may have been pre-
6 viously adjusted) a percentage thereof equal to
7 the percentage increase or decrease, during the
8 most recent 12-month or four-quarter period
9 ending before the time of determining such an-
10 nual adjustment, in the housing price index
11 maintained by the Director of the Federal
12 Housing Finance Agency (pursuant to section
13 1322 of the Housing and Community Develop-
14 ment Act of 1992 (12 U.S.C. 4541)).”.

15 (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)
16 of the Federal National Mortgage Association Char-
17 ter Act is (12 U.S.C. 1717(b)(2)) is amended by
18 adding after the period at the end the following:
19 “Such foregoing limitations shall also be increased
20 with respect to properties of a particular size located
21 in any area for which the median price for such size
22 residence exceeds the foregoing limitation for such
23 size residence, to the lesser of 150 percent of such
24 foregoing limitation for such size residence or the
25 amount that is equal to the median price in such

1 area for such size residence, except that, subject to
2 the order, if any, issued by the Director of the Fed-
3 eral Housing Finance Agency pursuant to section
4 133(d)(3) of the Federal Housing Finance Reform
5 Act of 2007, such increase shall apply only with re-
6 spect to mortgages on which are based securities
7 issued and sold by the corporation.”.

8 (b) FREDDIE MAC.—

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

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

14 (B) by striking the 6th and 7th sentences
15 and inserting the following new sentences: “For
16 2007, such limitations shall not exceed
17 \$417,000 for a mortgage secured by a single-
18 family residence, \$533,850 for a mortgage se-
19 cured by a 2-family residence, \$645,300 for a
20 mortgage secured by a 3-family residence, and
21 \$801,950 for a mortgage secured by a 4-family
22 residence, except that such maximum limita-
23 tions shall be adjusted effective January 1 of
24 each year beginning with 2008, subject to the
25 limitations in this paragraph. Each adjustment

1 shall be made by adding to or subtracting from
2 each such amount (as it may have been pre-
3 viously adjusted) a percentage thereof equal to
4 the percentage increase or decrease, during the
5 most recent 12-month or four-quarter period
6 ending before the time of determining such an-
7 nual adjustment, in the housing price index
8 maintained by the Director of the Federal
9 Housing Finance Agency (pursuant to section
10 1322 of the Housing and Community Develop-
11 ment Act of 1992 (12 U.S.C. 4541)).”

12 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)
13 of the Federal Home Loan Mortgage Corporation
14 Act is amended by adding after the period at the
15 end the following: “Such foregoing limitations shall
16 also be increased with respect to properties of a par-
17 ticular size located in any area for which the median
18 price for such size residence exceeds the foregoing
19 limitation for such size residence, to the lesser of
20 150 percent of such foregoing limitation for such
21 size residence or the amount that is equal to the me-
22 dian price in such area for such size residence, ex-
23 cept that, subject to the order, if any, issued by the
24 Director of the Federal Housing Finance Agency
25 pursuant to section 133(d)(3) of the Federal Hous-

1 ing Finance Reform Act of 2007, such increase shall
2 apply only with respect to mortgages on which are
3 based securities issued and sold by the Corpora-
4 tion.”.

5 (c) HOUSING PRICE INDEX.—Subpart A of part 2 of
6 subtitle A of title XIII of the Housing and Community
7 Development Act of 1992 (as amended by the preceding
8 provisions of this Act) is amended by inserting after sec-
9 tion 1321 (as added by section 132 of this Act) the fol-
10 lowing new section:

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

12 “(a) IN GENERAL.—The Director shall establish and
13 maintain a method of assessing the national average 1-
14 family house price for use for adjusting the conforming
15 loan limitations of the enterprises. In establishing such
16 method, the Director shall take into consideration the
17 monthly survey of all major lenders conducted by the Fed-
18 eral Housing Finance Agency to determine the national
19 average 1-family house price, the House Price Index main-
20 tained by the Office of Federal Housing Enterprise Over-
21 sight of the Department of Housing and Urban Develop-
22 ment before the effective date under section 185 of the
23 Federal Housing Finance Reform Act of 2007, any appro-
24 priate house price indexes of the Bureau of the Census

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

3 “(b) GAO AUDIT.—

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

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

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

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

24 “(3) REPORT.—Within 30 days of the comple-
25 tion of any audit conducted under this subsection,

1 the Comptroller General shall submit a report detail-
2 ing the results and conclusions of the audit to the
3 Director, the Committee on Financial Services of the
4 House of Representatives, and the Committee on
5 Banking, Housing, and Urban Affairs of the Sen-
6 ate.”.

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

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

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

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

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

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

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

13 (3) DETERMINATION.—

14 (A) IN GENERAL.—Not later than the ex-
15 piration of the six-month period specified in
16 paragraph (1), the Director of the Federal
17 Housing Finance Agency shall make a deter-
18 mination, based on the results of the study
19 under this subsection, of whether the restriction
20 of conforming loan limits for high-cost areas
21 only to mortgages on which are based securities
22 issued and sold by the Federal National Mort-
23 gage Association and the Federal Home Loan
24 Mortgage Corporation (as provided in the
25 amendments made by subsections (a)(2) and

1 (b)(2) of this section) will result in an increase
2 in the cost to borrowers for mortgages on hous-
3 ing in such high-cost areas.

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

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

14 (A) a report that—

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

17 (ii) sets forth the conclusions of the
18 study regarding the issues to be deter-
19 mined under paragraph (2); and

20 (B) notice of the determination of the Di-
21 rector under paragraph (3); and

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

24 (5) DEFINITION.—For purposes of this sub-
25 section, the term “conforming loan limits for high-

1 cost areas” means the dollar amount limitations ap-
2 plicable under the section 302(b)(2) of the Federal
3 National Mortgage Association Charter Act and sec-
4 tion 305(a)(2) of the Federal Home Loan Mortgage
5 Corporation Act (as amended by subsections (a) and
6 (b) of this section) for areas described in the last
7 sentence of such sections (as so amended).

8 **SEC. 134. ANNUAL HOUSING REPORT REGARDING REGU-**
9 **LATED ENTITIES.**

10 (a) IN GENERAL.—The Housing and Community De-
11 velopment Act of 1992 is amended by striking section
12 1324 (12 U.S.C. 4544) and inserting the following new
13 section:

14 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**
15 **LATED ENTITIES.**

16 “(a) IN GENERAL.—After reviewing and analyzing
17 the reports submitted under section 309(n) of the Federal
18 National Mortgage Association Charter Act, section
19 307(f) of the Federal Home Loan Mortgage Corporation
20 Act, and section 10(j)(11) of the Federal Home Loan
21 Bank Act (12 U.S.C. 1430(j)(11)), the Director shall sub-
22 mit a report, not later than October 30 of each year, to
23 the Committee on Financial Services of the House of Rep-
24 resentatives and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate, on the activities of each regu-
2 lated entity.

3 “(b) CONTENTS.—The report shall—

4 “(1) discuss the extent to which—

5 “(A) each enterprise is achieving the an-
6 nual housing goals established under subpart B
7 of this part;

8 “(B) each enterprise is complying with sec-
9 tion 1337;

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

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

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

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

23 “(4) examine actions that—

24 “(A) each enterprise has undertaken or
25 could undertake to promote and expand the an-

1 nual goals established under subpart B and the
2 purposes of the enterprise established by law;
3 and

4 “(B) each Federal home loan bank has
5 taken or could undertake to promote and ex-
6 pand the community investment program and
7 affordable housing program of the bank estab-
8 lished under section subsections (i) and (j) of
9 section 10 of the Federal Home Loan Bank
10 Act;

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

13 “(A) the availability and liquidity of mort-
14 gage credit;

15 “(B) the status of efforts to provide stand-
16 ard credit terms and underwriting guidelines
17 for multifamily housing and to securitize such
18 mortgage products; and

19 “(C) any factors inhibiting such standard-
20 ization and securitization;

21 “(6) examine actions each regulated entity has
22 undertaken and could undertake to promote and ex-
23 pand opportunities for first-time homebuyers, includ-
24 ing the use of alternative credit scoring;

1 “(7) describe any actions taken under section
2 1325(5) with respect to originators found to violate
3 fair lending procedures;

4 “(8) discuss and analyze existing conditions and
5 trends, including conditions and trends relating to
6 pricing, in the housing markets and mortgage mar-
7 kets; and

8 “(9) identify the extent to which each enter-
9 prise is involved in mortgage purchases and sec-
10 ondary market activities involving subprime loans
11 (as identified in accordance with the regulations
12 issued pursuant to section 134(b) of the Federal
13 Housing Finance Reform Act of 2007) and compare
14 the characteristics of subprime loans purchased and
15 securitized by the enterprises to other loans pur-
16 chased and securitized by the enterprises.

17 “(c) DATA COLLECTION AND REPORTING.—

18 “(1) IN GENERAL.—To assist the Director in
19 analyzing the matters described in subsection (b)
20 and establishing the methodology described in sec-
21 tion 1322, the Director shall conduct, on a monthly
22 basis, a survey of mortgage markets in accordance
23 with this subsection.

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

4 “(A) the characteristics of individual mort-
5 gages that are eligible for purchase by the en-
6 terprises and the characteristics of individual
7 mortgages that are not eligible for purchase by
8 the enterprises including, in both cases, infor-
9 mation concerning—

10 “(i) the price of the house that se-
11 cures the mortgage;

12 “(ii) the loan-to-value ratio of the
13 mortgage, which shall reflect any sec-
14 ondary liens on the relevant property;

15 “(iii) the terms of the mortgage;

16 “(iv) the creditworthiness of the bor-
17 rower or borrowers; and

18 “(v) whether the mortgage, in the
19 case of a conforming mortgage, was pur-
20 chased by an enterprise; and

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

23 “(3) PUBLIC AVAILABILITY.—The Director
24 shall make any data collected by the Director in con-
25 nection with the conduct of a monthly survey avail-

1 able to the public in a timely manner, provided that
2 the Director may modify the data released to the
3 public to ensure that the data is not released in an
4 identifiable form.

5 “(4) DEFINITION.—For purposes of this sub-
6 section, the term ‘identifiable form’ means any rep-
7 resentation of information that permits the identity
8 of a borrower to which the information relates to be
9 reasonably inferred by either direct or indirect
10 means.”.

11 (b) STANDARDS FOR SUBPRIME LOANS.—The Direc-
12 tor shall, not later than one year after the effective date
13 under section 185, by regulations issued under section
14 1316G of the Housing and Community Development Act
15 of 1992, establish standards by which mortgages pur-
16 chased and mortgages purchased and securitized shall be
17 characterized as subprime for the purpose of, and only for
18 the purpose of, complying with the reporting requirement
19 under section 1324(b)(9) of such Act.

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

22 The Housing and Community Development Act of
23 1992 is amended by inserting after section 1328 (12
24 U.S.C. 4548) the following new section:

1 **“SEC. 1329. ANNUAL REPORTS ON AFFORDABLE HOUSING**
2 **STOCK.**

3 “(a) IN GENERAL.—To obtain information helpful in
4 applying the formula under section 1337(c)(2) for the af-
5 fordable housing program under such section and for
6 other appropriate uses, the regulated entities shall con-
7 duct, or provide for the conducting of, a study on an an-
8 nual basis to determine the levels of affordable housing
9 inventory, and the changes in such levels, in communities
10 throughout the United States.

11 “(b) CONTENTS.—The annual study under this sec-
12 tion shall determine, for the United States, each State,
13 and each community within each State—

14 “(1) the level of affordable housing inventory,
15 including affordable rental dwelling units and afford-
16 able homeownership dwelling units;

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

20 “(A) any additions to such inventory,
21 disaggregated by the category of such additions
22 (including new construction or housing conver-
23 sion);

24 “(B) any subtractions from such inventory,
25 disaggregated by the category of such subtrac-

1 tions (including abandonment, demolition, or
2 upgrade to market-rate housing);

3 “(C) the number of new affordable dwell-
4 ing units placed in service; and

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

7 “(3) the types of financing used to build any
8 dwelling units added to such inventory level and the
9 period during which such units are required to re-
10 main affordable;

11 “(4) any excess demand for affordable housing,
12 including the number of households on rental hous-
13 ing waiting lists and the tenure of the wait on such
14 lists; and

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

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

21 “(d) REGULATIONS AND TIMING.—The Director
22 shall, by regulation, establish requirements for the studies
23 and reports under this section, including deadlines for the
24 submission of such annual reports and standards for de-
25 termining affordable housing.”.

1 **SEC. 136. MORTGAGOR IDENTIFICATION REQUIREMENTS**
2 **FOR MORTGAGES OF REGULATED ENTITIES.**

3 (a) IN GENERAL.—Subpart A of part 2 of subtitle
4 A of title XIII of the Housing and Community Develop-
5 ment Act of 1992 (12 U.S.C. 4541 et seq.), as amended
6 by the preceding provisions of this Act, is further amended
7 by adding at the end the following new section:

8 **“SEC. 1330. MORTGAGOR IDENTIFICATION REQUIREMENTS**
9 **FOR MORTGAGES OF REGULATED ENTITIES.**

10 “(a) LIMITATION.—The Director shall by regulation
11 establish standards, and shall enforce compliance with
12 such standards, that—

13 “(1) prohibit the enterprises from the purchase,
14 service, holding, selling, lending on the security of,
15 or otherwise dealing with any mortgage on a one- to
16 four-family residence that will be used as the prin-
17 cipal residence of the mortgagor that does not meet
18 the requirements under subsection (b); and

19 “(2) prohibit the Federal home loan banks from
20 providing any advances to a member for use in fi-
21 nancing, and from accepting as collateral for any ad-
22 vance to a member, any mortgage on a one- to four-
23 family residence that will be used as the principal
24 residence of the mortgagor that does not meet the
25 requirements under subsection (b).

1 “(b) IDENTIFICATION REQUIREMENTS.—The re-
2 quirements under this subsection with respect to a mort-
3 gage are that the mortgagor have, at the time of settle-
4 ment on the mortgage, a Social Security account num-
5 ber.”.

6 (b) FANNIE MAE.—Section 304 of the Federal Na-
7 tional Mortgage Association Charter Act (12 U.S.C. 1719)
8 is amended by adding at the end the following new sub-
9 section:

10 “(g) PROHIBITION REGARDING MORTGAGOR IDENTI-
11 FICATION REQUIREMENT.—Nothing in this Act may be
12 construed to authorize the corporation to purchase, serv-
13 ice, hold, sell, lend on the security of, or otherwise deal
14 with any mortgage that the corporation is prohibited from
15 so dealing with under the standards issued under section
16 1330 of the Housing and Community Development Act
17 of 1992 by the Director of the Federal Housing Finance
18 Agency.”.

19 (c) FREDDIE MAC.—Section 305 of the Federal
20 Home Loan Mortgage Corporation Act (12 U.S.C. 1454)
21 is amended by adding at the end the following new sub-
22 section:

23 “(d) PROHIBITION REGARDING MORTGAGOR IDENTI-
24 FICATION REQUIREMENTS.—Nothing in this Act may be
25 construed to authorize the Corporation to purchase, serv-

1 ice, hold, sell, lend on the security of, or otherwise deal
2 with any mortgage that the Corporation is prohibited from
3 so dealing with under the standards issued under section
4 1330 of the Housing and Community Development Act
5 of 1992 by the Director of the Federal Housing Finance
6 Agency.”.

7 (d) FEDERAL HOME LOAN BANKS.—Section 10(a) of
8 the Federal Home Loan Bank Act (12 U.S.C. 1430(a))
9 is amended—

10 (1) by redesignating paragraph (6) as para-
11 graph (7); and

12 (2) by inserting after paragraph (5) the fol-
13 lowing new paragraph:

14 “(6) PROHIBITION REGARDING MORTGAGOR
15 IDENTIFICATION REQUIREMENTS.—Nothing in this
16 Act may be construed to authorize a Federal Home
17 Loan Bank to provide any advance to a member for
18 use in financing, or accept as collateral for an ad-
19 vance under this section, any mortgage that a Bank
20 is prohibited from so accepting under the standards
21 issued under section 1330 of the Housing and Com-
22 munity Development Act of 1992 by the Director of
23 the Federal Housing Finance Agency.”.

1 **SEC. 137. REVISION OF HOUSING GOALS.**

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

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

7 “(a) IN GENERAL.—The Director shall establish, ef-
8 fective for the first year that begins after the effective date
9 under section 185 of the Federal Housing Finance Reform
10 Act of 2007 and each year thereafter, annual housing
11 goals, with respect to the mortgage purchases by the en-
12 terprises, as follows:

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

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

18 “(b) ELIMINATING INTEREST RATE DISPARITIES.—

19 “(1) IN GENERAL.—Upon request by the Direc-
20 tor, an enterprise shall provide to the Director, in a
21 form determined by the Director, data the Director
22 may review to determine whether there exist dispari-
23 ties in interest rates charged on mortgages to bor-
24 rowers who are minorities as compared with com-
25 parable mortgages to borrowers of similar credit-
26 worthiness who are not minorities.

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

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

10 “(B) require the enterprise to submit addi-
11 tional data with respect to any lender or lend-
12 ers, as appropriate and to the extent prac-
13 ticable, to the Director who shall submit any
14 such additional data to the regulatory or en-
15 forcement agency for appropriate action; and

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

19 “(3) ANNUAL REPORT TO CONGRESS.—The Di-
20 rector shall submit to the Committee on Financial
21 Services of the House of Representatives and the
22 Committee on Banking, Housing, and Urban Affairs
23 of the Senate a report describing the actions taken,
24 and being taken, by the Director to carry out this
25 subsection. No such report shall identify any lender

1 or lenders who have not been found to have engaged
2 in discriminatory lending practices pursuant to a
3 final adjudication on the record, and after oppor-
4 tunity for an administrative hearing, in accordance
5 with subchapter II of chapter 5 of title 5, United
6 States Code.

7 “(4) PROTECTION OF IDENTITY OF INDIVID-
8 UALS.—In carrying out this subsection, the Director
9 shall ensure that no property-related or financial in-
10 formation that would enable a borrower to be identi-
11 fied shall be made public.

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

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

20 “(a) IN GENERAL.—The Director shall establish an-
21 nual goals for the purchase by each enterprise of conven-
22 tional, conforming, single-family, purchase money mort-
23 gages financing owner-occupied and rental housing for
24 each of the following categories of families:

25 “(1) Low-income families.

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

2 “(3) Very low-income families.

3 “(b) REFINANCE SUBGOAL.—

4 “(1) IN GENERAL.—The Director shall establish
5 a separate subgoal within each goal under subsection
6 (a)(1) for the purchase by each enterprise of mort-
7 gages for low-income families on single family hous-
8 ing given to pay off or prepay an existing loan se-
9 cured by the same property. The Director shall, for
10 each year, determine whether each enterprise has
11 complied with the subgoal under this subsection in
12 the same manner provided under this section for de-
13 termining compliance with the housing goals.

14 “(2) ENFORCEMENT.—For purposes of section
15 1336, the subgoal established under paragraph (1)
16 of this subsection shall be considered to be a housing
17 goal established under this section. Such subgoal
18 shall not be enforceable under any other provision of
19 this title (including subpart C of this part) other
20 than section 1336 or under any provision of the
21 Federal National Mortgage Association Charter Act
22 or the Federal Home Loan Mortgage Corporation
23 Act.

24 “(c) DETERMINATION OF COMPLIANCE.—The Direc-
25 tor shall determine, for each year that the housing goals

1 under this section are in effect pursuant to section
2 1331(a), whether each enterprise has complied with the
3 single-family housing goals established under this section
4 for such year. An enterprise shall be considered to be in
5 compliance with such a goal for a year only if, for each
6 of the types of families described in subsection (a), the
7 percentage of the number of conventional, conforming,
8 single-family, owner-occupied or rental, as applicable, pur-
9 chase money mortgages purchased by each enterprise in
10 such year that serve such families, meets or exceeds the
11 target for the year for such type of family that is estab-
12 lished under subsection (d).

13 “(d) ANNUAL TARGETS.—

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

1 using the information obtained and determined pur-
2 suant to paragraphs (3) and (4).

3 “(2) AUTHORITY TO INCREASE TARGETS.—

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

13 “(B) FACTORS.—In establishing any tar-
14 gets pursuant to subparagraph (A), the Direc-
15 tor shall consider the following factors:

16 “(i) National housing needs.

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

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

23 “(iv) The size of the conventional
24 mortgage market serving each of the types
25 of families described in subsection (a) rel-

1 ative to the size of the overall conventional
2 mortgage market.

3 “(v) The ability of the enterprise to
4 lead the industry in making mortgage
5 credit available.

6 “(vi) The need to maintain the sound
7 financial condition of the enterprises.

8 “(3) HMDA INFORMATION.—The Director
9 shall annually obtain information submitted in com-
10 pliance with the Home Mortgage Disclosure Act of
11 1975 regarding conventional, conforming, single-
12 family, owner-occupied or rental, as applicable, pur-
13 chase money mortgages originated and purchased
14 for the previous year.

15 “(4) CONFORMING MORTGAGES.—In deter-
16 mining whether a mortgage is a conforming mort-
17 gage for purposes of this paragraph, the Director
18 shall consider the original principal balance of the
19 mortgage loan to be the principal balance as re-
20 ported in the information referred to in paragraph
21 (3), as rounded to the nearest thousand dollars.

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

24 “(1) NOTICE.—Within 30 days of making a de-
25 termination under subsection (c) regarding a compli-

1 ance of an enterprise for a year with a housing goal
2 established under this section and before any public
3 disclosure thereof, the Director shall provide notice
4 of the determination to the enterprise, which shall
5 include an analysis and comparison, by the Director,
6 of the performance of the enterprise for the year and
7 the targets for the year under subsection (d).

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

12 “(f) USE OF BORROWER INCOME.—In monitoring
13 the performance of each enterprise pursuant to the hous-
14 ing goals under this section and evaluating such perform-
15 ance (for purposes of section 1336), the Director shall
16 consider a mortgagor’s income to be such income at the
17 time of origination of the mortgage.

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

23 **“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING**
24 **GOAL.**

25 “(a) ESTABLISHMENT.—

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

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

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

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

13 “(2) ADDITIONAL REQUIREMENTS FOR SMALL-
14 ER PROJECTS.—The Director shall establish, within
15 the goal under this section, additional requirements
16 for the purchase by each enterprise of mortgages de-
17 scribed in paragraph (1) for multifamily housing
18 projects of a smaller or limited size, which may be
19 based on the number of dwelling units in the project
20 or the amount of the mortgage, or both, and shall
21 include multifamily housing projects of such smaller
22 sizes as are typical among such projects that serve
23 rural areas.

24 “(3) FACTORS.—In establishing the goal under
25 this section relating to mortgages on multifamily

1 housing for an enterprise for a year, the Director
2 shall consider—

3 “(A) national multifamily mortgage credit
4 needs;

5 “(B) the performance and effort of the en-
6 terprise in making mortgage credit available for
7 multifamily housing in previous years;

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

10 “(D) the ability of the enterprise to lead
11 the industry in making mortgage credit avail-
12 able, especially for underserved markets, such
13 as for small multifamily projects of 5 to 50
14 units, multifamily properties in need of rehabili-
15 tation, and multifamily properties located in
16 rural areas; and

17 “(E) the need to maintain the sound finan-
18 cial condition of the enterprise.

19 “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-
20 CY BONDS.—The Director shall give credit toward the
21 achievement of the multifamily special affordable housing
22 goal under this section (for purposes of section 1336) to
23 dwelling units in multifamily housing that otherwise quali-
24 fies under such goal and that is financed by tax-exempt

1 or taxable bonds issued by a State or local housing finance
2 agency, but only if such bonds—

3 “(1) are secured by a guarantee of the enter-
4 prise; or

5 “(2) are not investment grade and are pur-
6 chased by the enterprise.

7 “(c) USE OF TENANT INCOME OR RENT.—The Di-
8 rector shall monitor the performance of each enterprise
9 in meeting the goals established under this section and
10 shall evaluate such performance (for purposes of section
11 1336) based on—

12 “(1) the income of the prospective or actual
13 tenants of the property, where such data are avail-
14 able; or

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

18 A rent level shall be considered to be affordable for pur-
19 poses of this subsection for an income category referred
20 to in this subsection if it does not exceed 30 percent of
21 the maximum income level of such income category, with
22 appropriate adjustments for unit size as measured by the
23 number of bedrooms.

24 “(d) DETERMINATION OF COMPLIANCE.—The Direc-
25 tor shall, for each year that the housing goal under this

1 section is in effect pursuant to section 1331(a), determine
2 whether each enterprise has complied with such goal and
3 the additional requirements under subsection (a)(2).

4 **“SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING**
5 **GOALS.**

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

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

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

16 “(2) efforts to meet the goal would result in the
17 constraint of liquidity, over-investment in certain
18 market segments, or other consequences contrary to
19 the intent of this subpart, or section 301(3) of the
20 Federal National Mortgage Association Charter Act
21 (12 U.S.C. 1716(3)) or section 301(3) of the Fed-
22 eral Home Loan Mortgage Corporation Act (12
23 U.S.C. 1451 note), as applicable.

24 “(c) **DETERMINATION.**—The Director shall make a
25 determination regarding any proposed reduction within 30

1 days of receipt of the petition regarding the reduction. The
2 Director may extend such period for a single additional
3 15-day period, but only if the Director requests additional
4 information from the enterprise. A denial by the Director
5 to reduce the level of any goal under this section may be
6 appealed to the United States District Court for the Dis-
7 trict of Columbia or the United States district court in
8 the jurisdiction in which the headquarters of an enterprise
9 is located.”.

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

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

17 (2) in section 1336(a)(1) (12 U.S.C.
18 4566(a)(1)), by striking “sections 1332, 1333, and
19 1334,” and inserting “this subpart”.

20 (c) DEFINITIONS.—Section 1303 of the Housing and
21 Community Development Act of 1992 (12 U.S.C. 4502),
22 as amended by the preceding provisions of this Act, is fur-
23 ther amended—

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

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

6 (3) by inserting after paragraph (18) the fol-
7 lowing new paragraph:

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

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

15 (5) by inserting after paragraph (12) the fol-
16 lowing new paragraph:

17 “(15) LOW-INCOME AREA.—The term ‘low in-
18 come area’ means a census tract or block numbering
19 area in which the median income does not exceed 80
20 percent of the median income for the area in which
21 such census tract or block numbering area is lo-
22 cated, and, for the purposes of section 1332(a)(2),
23 shall include families having incomes not greater
24 than 100 percent of the area median income who re-
25 side in minority census tracts.”;

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

3 (7) by inserting after paragraph (10) the fol-
4 lowing new paragraph:

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

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

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

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

17 (9) by inserting after paragraph (6) the fol-
18 lowing new paragraph:

19 “(7) CONFORMING MORTGAGE.—The term ‘con-
20 forming mortgage’ means, with respect to an enter-
21 prise, a conventional mortgage having an original
22 principal obligation that does not exceed the dollar
23 limitation, in effect at the time of such origination,
24 under, as applicable—

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

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

5 **SEC. 138. DUTY TO SERVE UNDERSERVED MARKETS.**

6 (a) ESTABLISHMENT AND EVALUATION OF PER-
7 FORMANCE.—Section 1335 of the Housing and Commu-
8 nity Development Act of 1992 (12 U.S.C. 4565) is amend-
9 ed—

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

13 (2) by striking subsection (b);

14 (3) in subsection (a)—

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

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

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

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

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

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

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

5 “(1) DUTY.—In accordance with the purpose of
6 the enterprises under section 301(3) of the Federal
7 National Mortgage Association Charter Act (12
8 U.S.C. 1716) and section 301(b)(3) of the Federal
9 Home Loan Mortgage Corporation Act (12 U.S.C.
10 1451 note) to undertake activities relating to mort-
11 gages on housing for very low-, low-, and moderate-
12 income families involving a reasonable economic re-
13 turn that may be less than the return earned on
14 other activities, each enterprise shall have the duty
15 to increase the liquidity of mortgage investments
16 and improve the distribution of investment capital
17 available for mortgage financing for underserved
18 markets.

19 “(2) UNDERSERVED MARKETS.—To meet its
20 duty under paragraph (1), each enterprise shall com-
21 ply with the following requirements with respect to
22 the following underserved markets:

23 “(A) MANUFACTURED HOUSING.—The en-
24 terprise shall lead the industry in developing
25 loan products and flexible underwriting guide-

1 lines to facilitate a secondary market for mort-
2 gages on manufactured homes for very low-,
3 low-, and moderate-income families.

4 “(B) AFFORDABLE HOUSING PRESERVA-
5 TION.—The enterprise shall lead the industry in
6 developing loan products and flexible under-
7 writing guidelines to facilitate a secondary mar-
8 ket to preserve housing affordable to very low-
9 , low-, and moderate-income families, including
10 housing projects subsidized under—

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

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

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

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

23 “(v) the supportive housing program
24 for persons with disabilities under section

1 811 of the Cranston-Gonzalez National Af-
2 fordable Housing Act;

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

8 “(vii) the rural rental housing pro-
9 gram under section 515 of the Housing
10 Act of 1949.

11 “(C) RURAL AND OTHER UNDERSERVED
12 MARKETS.—The enterprise shall lead the indus-
13 try in developing loan products and flexible un-
14 derwriting guidelines to facilitate a secondary
15 market for mortgages on housing for very low-
16 , low-, and moderate-income families in rural
17 areas, and for mortgages for housing for any
18 other underserved market for very low-, low-,
19 and moderate-income families that the Sec-
20 retary identifies as lacking adequate credit
21 through conventional lending sources. Such un-
22 derserved markets may be identified by bor-
23 rower type, market segment, or geographic
24 area.”; and

1 (5) by adding at the end the following new sub-
2 section:

3 “(c) EVALUATION AND REPORTING OF COMPLI-
4 ANCE.—

5 “(1) IN GENERAL.—Not later than 6 months
6 after the effective date under section 185 of the
7 Federal Housing Finance Reform Act of 2007, the
8 Director shall establish a manner for evaluating
9 whether, and the extent to which, the enterprises
10 have complied with the duty under subsection (a) to
11 serve underserved markets and for rating the extent
12 of such compliance. Using such method, the Director
13 shall, for each year, evaluate such compliance and
14 rate the performance of each enterprise as to extent
15 of compliance. The Director shall include such eval-
16 uation and rating for each enterprise for a year in
17 the report for that year submitted pursuant to sec-
18 tion 1319B(a).

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

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

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

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

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

13 (b) ENFORCEMENT.—Subsection (a) of section 1336
14 of the Housing and Community Development Act of 1992
15 (12 U.S.C. 4566(a)) is amended—

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

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

23 “(4) ENFORCEMENT OF DUTY TO PROVIDE
24 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—
25 The duty under section 1335(a) of each enterprise

1 to serve underserved markets (as determined in ac-
2 cordance with section 1335(c)) shall be enforceable
3 under this section to the same extent and under the
4 same provisions that the housing goals established
5 under this subpart are enforceable. Such duty shall
6 not be enforceable under any other provision of this
7 title (including subpart C of this part) other than
8 this section or under any provision of the Federal
9 National Mortgage Association Charter Act or the
10 Federal Home Loan Mortgage Corporation Act.”.

11 **SEC. 139. MONITORING AND ENFORCING COMPLIANCE**
12 **WITH HOUSING GOALS.**

13 (a) **ADDITIONAL CREDIT FOR CERTAIN MORT-**
14 **GAGES.**—Section 1336(a) of the Housing and Community
15 Development Act of 1992 (12 U.S.C. 4566(a)) is amend-
16 ed—

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

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

21 “(5) **ADDITIONAL CREDIT.**—The Director shall
22 assign more than 125 percent credit toward achieve-
23 ment, under this section, of the housing goals for
24 mortgage purchase activities of the enterprises that

1 comply with the requirements of such goals and sup-
2 port—

3 “(A) housing that meets energy efficiency
4 or other environmental standards that are es-
5 tablished by a Federal, State, or local govern-
6 mental authority with respect to the geographic
7 area where the housing is located or are other-
8 wise widely recognized; or

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

11 The availability of additional credit under this para-
12 graph shall not be used to increase any housing
13 goal, subgoal, or target established under this sub-
14 part.”.

15 (b) MONITORING AND ENFORCEMENT.—Section
16 1336 of the Housing and Community Development Act
17 of 1992 (12 U.S.C. 4566) is amended—

18 (1) in subsection (b)—

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

21 (B) by striking paragraph (1) and insert-
22 ing the following new paragraph:

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

1 fail, to meet any housing goal established under this
2 subpart, the Director shall provide written notice to
3 the enterprise of such a preliminary determination,
4 the reasons for such determination, and the informa-
5 tion on which the Director based the determina-
6 tion.”;

7 (C) in paragraph (2)—

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

10 (ii) by striking subparagraphs (B) and
11 (C) and inserting the following new sub-
12 paragraph:

13 “(B) EXTENSION OR SHORTENING OF PE-
14 RIOD.—The Director may—

15 “(i) extend the period under subpara-
16 graph (A) for good cause for not more
17 than 30 additional days; and

18 “(ii) shorten the period under sub-
19 paragraph (A) for good cause.”; and

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

22 (D) in paragraph (3)—

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

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

3 (iii) in subparagraph (C)—

4 (I) by striking “Committee on
5 Banking, Finance and Urban Affairs”
6 and inserting “Committee on Finan-
7 cial Services”; and

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

11 (2) in subsection (c)—

12 (A) by striking the subsection designation
13 and heading and all that follows through the
14 end of paragraph (1) and inserting the fol-
15 lowing:

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

19 “(1) REQUIREMENT.—If the Director finds,
20 pursuant to subsection (b), that there is a substan-
21 tial probability that an enterprise will fail, or has ac-
22 tually failed, to meet any housing goal under this
23 subpart and that the achievement of the housing
24 goal was or is feasible, the Director may require that
25 the enterprise submit a housing plan under this sub-

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

12 (B) in paragraph (2)—

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

17 (ii) in subparagraph (B), by inserting
18 “and changes in its operations” after “im-
19 provements”;

20 (C) in paragraph (3)—

21 (i) by inserting “comply with any re-
22 medial action or” before “submit a housing
23 plan”; and

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

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

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

13 “(7) **ADDITIONAL REMEDIES FOR FAILURE TO**
14 **MEET GOALS.**—In addition to ordering a housing
15 plan under this section, issuing cease and desist or-
16 ders under section 1341, and ordering civil money
17 penalties under section 1345, the Director may seek
18 other actions when an enterprise fails to meet a
19 goal, and exercise appropriate enforcement authority
20 available to the Director under this Act to prohibit
21 the enterprise from initially offering any product (as
22 such term is defined in section 1321(f)) or engaging
23 in any new activities, services, undertakings, and of-
24 ferings and to order the enterprise to suspend prod-

1 ucts and activities, services, undertakings, and offer-
2 ings pending its achievement of the goal.”.

3 **SEC. 140. AFFORDABLE HOUSING FUND.**

4 (a) IN GENERAL.—The Housing and Community De-
5 velopment Act of 1992 is amended by striking sections
6 1337 and 1338 (12 U.S.C. 4562 note) and inserting the
7 following new section:

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

9 “(a) ESTABLISHMENT AND PURPOSE.—The Direc-
10 tor, in consultation with the Secretary of Housing and
11 Urban Development, shall establish and manage an af-
12 fordable housing fund in accordance with this section,
13 which shall be funded with amounts allocated by the enter-
14 prises under subsection (b). The purpose of the affordable
15 housing fund shall be to provide formula grants to grant-
16 ees for use—

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

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

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

4 “(4) to increase investment in public infrastruc-
5 ture development in connection with housing assisted
6 under this section; and

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

11 “(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

12 “(1) IN GENERAL.—In accordance with regula-
13 tions issued by the Director under subsection (m)
14 and subject to paragraph (2) of this subsection and
15 subsection (i)(5), each enterprise shall allocate to the
16 affordable housing fund established under subsection
17 (a), in each of the years 2007 through 2011, an
18 amount equal to 1.2 basis points for each dollar of
19 the average total mortgage portfolio of the enter-
20 prise during the preceding year.

21 “(2) SUSPENSION OF CONTRIBUTIONS.—The
22 Director shall temporarily suspend the allocation
23 under paragraph (1) by an enterprise to the afford-
24 able housing fund upon a finding by the Director
25 that such allocations—

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

3 “(B) are causing, or would cause, the en-
4 terprise to be classified as undercapitalized; or

5 “(C) are preventing, or would prevent, the
6 enterprise from successfully completing a cap-
7 ital restoration plan under section 1369C.

8 “(3) 5-YEAR SUNSET AND REPORT.—

9 “(A) SUNSET.—The enterprises shall not
10 be required to make allocations to the afford-
11 able housing fund in 2012 or in any year there-
12 after.

13 “(B) REPORT ON PROGRAM CONTINU-
14 ANCE.—Not later than June 30, 2011, the Di-
15 rector shall submit to the Committee on Finan-
16 cial Services of the House of Representatives
17 and the Committee on Banking, Housing, and
18 Urban Affairs of the Senate a report making
19 recommendations on whether the program
20 under this section, including the requirement
21 for the enterprises to make allocations to the
22 affordable housing fund, should be extended
23 and on any modifications for the program.

24 “(4) PROHIBITION OF PASS-THROUGH OF COST
25 OF ALLOCATIONS.—The Director shall, by regula-

1 tion, prohibit each enterprise from redirecting such
2 costs, through increased charges or fees, or de-
3 creased premiums, or in any other manner, to the
4 originators of mortgages purchased or securitized by
5 the enterprise.

6 “(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

7 “(1) ALLOCATION FOR 2007.—

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

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

16 “(ii) The allocation percentage for the
17 Mississippi Development Authority shall be
18 25 percent.

19 “(B) USE IN DISASTER AREAS.—Afford-
20 able housing grant amounts for 2007 shall be
21 used only as provided in subsection (g) only for
22 such eligible activities in areas that were sub-
23 ject to a declaration by the President of a
24 major disaster or emergency under the Robert
25 T. Stafford Disaster Relief and Emergency As-

1 sistance Act (42 U.S.C. 5121 et seq.) in con-
2 nection with Hurricane Katrina or Rita of
3 2005.

4 “(2) ALLOCATION FORMULA FOR OTHER
5 YEARS.—The Secretary of Housing and Urban De-
6 velopment shall, by regulation, establish a formula to
7 allocate, among the States (as such term is defined
8 in section 1303) and federally recognized Indian
9 tribes, the amounts provided by the enterprises in
10 each year referred to subsection (b)(1), other than
11 2007, to the affordable housing fund established
12 under this section. The formula shall be based on
13 the following factors, with respect to each State and
14 tribe:

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

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

23 “(C) The percentage of persons in the
24 State or federally recognized Indian tribe that

1 are members of extremely low- or very low-in-
2 come families.

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

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

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

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

14 “(3) FAILURE TO ESTABLISH.—If, in any year
15 referred to in subsection (b)(1), other than 2007,
16 the regulations establishing the formula required
17 under paragraph (2) of this subsection have not
18 been issued by the date that the Director determines
19 the amounts described in subsection (d)(1) to be
20 available for affordable housing fund grants in such
21 year, for purposes of such year any amounts for a
22 State (as such term is defined in section 1303 of
23 this Act) that would otherwise be determined under
24 subsection (d) by applying the formula established
25 pursuant to paragraph (2) of this subsection shall be

1 determined instead by applying, for such State, the
2 percentage that is equal to the percentage of the
3 total amounts made available for such year for allo-
4 cation under subtitle A of title II of the Cranston-
5 Gonzalez National Affordable Housing Act (42
6 U.S.C. 12741 et seq.) that are allocated in such
7 year, pursuant to such subtitle, to such State (in-
8 cluding any insular area or unit of general local gov-
9 ernment, as such terms are defined in section 104
10 of such Act (42 U.S.C. 12704), that is treated as a
11 State under section 1303 of this Act) and to partici-
12 pating jurisdictions and other eligible entities within
13 such State.

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

16 “(1) FORMULA AMOUNT.—For each year re-
17 ferred to in subsection (b)(1), the Director shall de-
18 termine the formula amount under this section for
19 each grantee, which shall be the amount determined
20 for such grantee—

21 “(A) for 2007, by applying the allocation
22 percentages under subparagraph (A) of sub-
23 section (c)(1) to the sum of the total amounts
24 allocated by the enterprises to the affordable

1 housing fund for such year, less any amounts
2 used pursuant to subsection (i)(1); and

3 “(B) for any other year referred to in sub-
4 section (b)(1) (other than 2007), by applying
5 the formula established pursuant to paragraph
6 (2) of subsection (c) to the sum of the total
7 amounts allocated by the enterprises to the af-
8 fordable housing fund for such year and any re-
9 captured amounts available pursuant to sub-
10 section (i)(4), less any amounts used pursuant
11 to subsection (i)(1).

12 “(2) NOTICE.—In each year referred to in sub-
13 section (b)(1), not later than 60 days after the date
14 that the Director determines the amounts described
15 in paragraph (1) to be available for affordable hous-
16 ing fund grants to grantees in such year, the Direc-
17 tor shall cause to be published in the Federal Reg-
18 ister a notice that such amounts shall be so avail-
19 able.

20 “(3) GRANT AMOUNT.—

21 “(A) IN GENERAL.—For each year re-
22 ferred to in subsection (b)(1), the Director shall
23 make a grant from amounts in the affordable
24 housing fund to each grantee in an amount that
25 is, except as provided in subparagraph (B),

1 equal to the formula amount under this section
2 for the grantee. A grantee may designate a
3 State housing finance agency, housing and com-
4 munity development entity, tribally designated
5 housing entity (as such term is defined in sec-
6 tion 4 of the Native American Housing Assist-
7 ance and Self-Determination Act of 1997 (25
8 U.S.C. 4103)) or other qualified instrumentality
9 of the grantee to receive such grant amounts.

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

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

17 “(I) the amount of the grant for
18 the grantee for the succeeding year,
19 as determined pursuant to subpara-
20 graph (A), shall be reduced by the
21 amount by which such amounts re-
22 quired to be reimbursed or returned
23 exceed the amount actually reim-
24 bursed or returned; and

1 “(II) the amount of the grant for
2 the succeeding year for each other
3 grantee whose grant is not reduced
4 pursuant to subclause (I) shall be in-
5 creased by the amount determined by
6 applying the formula established pur-
7 suant to subsection (c)(2) to the total
8 amount of all reductions for all grant-
9 ees for such year pursuant to sub-
10 clause (I); or

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

21 “(e) GRANTEE ALLOCATION PLANS.—

22 “(1) IN GENERAL.—For each year that a grant-
23 ee receives affordable housing fund grant amounts,
24 the grantee shall establish an allocation plan in ac-
25 cordance with this subsection, which shall be a plan

1 for the distribution of such grant amounts of the
2 grantee for such year that—

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

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

8 “(C) includes performance goals, bench-
9 marks, and timetables for the grantee for the
10 production, preservation, and rehabilitation of
11 affordable rental and homeownership housing
12 with such grant amounts that comply with the
13 requirements established by the Director pursu-
14 ant to subsection (m)(2)(F).

15 “(2) ESTABLISHMENT.—In establishing an allo-
16 cation plan, a grantee shall notify the public of the
17 establishment of the plan, provide an opportunity for
18 public comments regarding the plan, consider any
19 public comments received, and make the completed
20 plan available to the public.

21 “(3) CONTENTS.—An allocation plan of a
22 grantee shall set forth the requirements for eligible
23 recipients under subsection (h) to apply to the
24 grantee to receive assistance from affordable housing

1 fund grant amounts, including a requirement that
2 each such application include—

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

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

9 “(f) SELECTION OF ACTIVITIES FUNDED USING AF-
10 FORDABLE HOUSING FUND GRANT AMOUNTS.—Afford-
11 able housing fund grant amounts of a grantee may be
12 used, or committed for use, only for activities that—

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

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

17 “(3) are selected for funding by the grantee in
18 accordance with the process and criteria for such se-
19 lection established pursuant to subsection (m)(2)(C).

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

23 “(1) the production, preservation, and rehabili-
24 tation of rental housing, including housing under the
25 programs identified in section 1335(a)(2)(B), except

1 that such grant amounts may be used for the benefit
2 only of extremely low- and very low-income families;

3 “(2) the production, preservation, and rehabili-
4 tation of housing for homeownership, including such
5 forms as downpayment assistance, closing cost as-
6 sistance, and assistance for interest-rate buy-downs,
7 that—

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

11 “(i) extremely low- and very-low in-
12 come families at the times described in
13 subparagraphs (A) through (C) of section
14 215(b)(2) of the Cranston-Gonzalez Na-
15 tional Affordable Housing Act (42 U.S.C.
16 12745(b)(2)); and

17 “(ii) first-time homebuyers, as such
18 term is defined in section 104 of the Cran-
19 ston-Gonzalez National Affordable Housing
20 Act (42 U.S.C. 12704), except that any
21 reference in such section to assistance
22 under title II of such Act shall for pur-
23 poses of this section be considered to refer
24 to assistance from affordable housing fund
25 grant amounts;

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

5 “(C) is subject to the same resale restric-
6 tions established under section 215(b)(3) of the
7 Cranston-Gonzalez National Affordable Hous-
8 ing Act and applicable to the participating ju-
9 risdiction that is the State in which such hous-
10 ing is located; and

11 “(D) is made available for purchase only
12 by, or in the case of assistance under this para-
13 graph, is made available only to, homebuyers
14 who have, before purchase—

15 “(i) completed a program of coun-
16 seling with respect to the responsibilities
17 and financial management involved in
18 homeownership that is approved by the Di-
19 rector; except that the Director may, at
20 the request of a State, waive the require-
21 ments of this subparagraph with respect to
22 a geographic area or areas within the State
23 if: (I) the travel time or distance involved
24 in providing counseling with respect to
25 such area or areas, as otherwise required

1 under this subparagraph, on an in-person
2 basis is excessive or the cost of such travel
3 is prohibitive; and (II) the State provides
4 alternative forms of counseling for such
5 area or areas, which may include inter-
6 active telephone counseling, on-line coun-
7 seling, interactive video counseling, and
8 interactive home study counseling and a
9 program of financial literacy and education
10 to promote an understanding of consumer,
11 economic, and personal finance issues and
12 concepts, including saving for retirement,
13 managing credit, long-term care, and es-
14 tate planning and education on predatory
15 lending, identity theft, and financial abuse
16 schemes relating to homeownership that is
17 approved by the Director, except that enti-
18 ties providing such counseling shall not
19 discriminate against any particular form of
20 housing; and

21 “(ii) demonstrated, in accordance with
22 regulations as the Director shall issue set-
23 ting forth requirements for sufficient evi-
24 dence, that they are lawfully present in the
25 United States; and

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

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

9 “(1) has demonstrated experience and capacity
10 to conduct an eligible activity under (g), as evi-
11 denced by its ability to—

12 “(A) own, construct or rehabilitate, man-
13 age, and operate an affordable multifamily rent-
14 al housing development;

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

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

20 “(D) construct related public infrastruc-
21 ture development activities in connection with
22 such housing activities;

23 “(2) demonstrates the ability and financial ca-
24 pacity to undertake, comply, and manage the eligible
25 activity;

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

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

15 “(i) LIMITATIONS ON USE.—

16 “(1) REQUIRED AMOUNT FOR REFCORP.—Of
17 the aggregate amount allocated pursuant to sub-
18 section (b) in each year to the affordable housing
19 fund, 25 percent shall be used as provided in section
20 21B(f)(2)(E) of the Federal Home Loan Bank Act
21 (12 U.S.C. 1441b(f)(2)(E)).

22 “(2) REQUIRED AMOUNT FOR HOMEOWNERSHIP
23 ACTIVITIES.—Of the aggregate amount of affordable
24 housing fund grant amounts provided in each year

1 to a grantee, not less than 10 percent shall be used
2 for activities under paragraph (2) of subsection (g).

3 “(3) MAXIMUM AMOUNT FOR PUBLIC INFRA-
4 STRUCTURE DEVELOPMENT ACTIVITIES IN CONNEC-
5 TION WITH AFFORDABLE HOUSING ACTIVITIES.—Of
6 the aggregate amount of affordable housing fund
7 grant amounts provided in each year to a grantee,
8 not more than 12.5 percent may be used for activi-
9 ties under paragraph (3) of subsection (g).

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

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

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

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

4 “(i) political activities;

5 “(ii) advocacy;

6 “(iii) lobbying, whether directly or
7 through other parties;

8 “(iv) counseling services;

9 “(v) travel expenses; and

10 “(vi) preparing or providing advice on
11 tax returns;

12 “(B) by regulation, provide that, except as
13 provided in subparagraph (C), affordable hous-
14 ing fund grant amounts of a grantee may not
15 be used for administrative, outreach, or other
16 costs of—

17 “(i) the grantee; or

18 “(ii) any recipient of such grant
19 amounts; and

20 “(C) by regulation, limit the amount of
21 any affordable housing fund grant amounts of
22 the grantee for a year that may be used for ad-
23 ministrative costs of the grantee of carrying out
24 the program required under this section to a
25 percentage of such grant amounts of the grant-

1 ee for such year, which may not exceed 10 per-
2 cent.

3 “(7) PROHIBITION OF CONSIDERATION OF USE
4 FOR MEETING HOUSING GOALS OR DUTY TO
5 SERVE.—In determining compliance with the hous-
6 ing goals under this subpart and the duty to serve
7 underserved markets under section 1335, the Direc-
8 tor may not consider any affordable housing fund
9 grant amounts used under this section for eligible
10 activities under subsection (g). The Director shall
11 give credit toward the achievement of such housing
12 goals and such duty to serve underserved markets to
13 purchases by the enterprises of mortgages for hous-
14 ing that receives funding from affordable housing
15 fund grant amounts, but only to the extent that
16 such purchases by the enterprises are funded other
17 than with such grant amounts.

18 “(8) ACCEPTABLE IDENTIFICATION REQUIRE-
19 MENT FOR OCCUPANCY OR ASSISTANCE.—

20 “(A) IN GENERAL.—Any assistance pro-
21 vided with any affordable housing grant
22 amounts may not be made available to, or on
23 behalf of, any individual or household unless the
24 individual provides, or, in the case of a house-
25 hold, all adult members of the household pro-

1 vide, personal identification in one of the fol-
2 lowing forms:

3 “(i) SOCIAL SECURITY CARD WITH
4 PHOTO IDENTIFICATION CARD OR REAL ID
5 ACT IDENTIFICATION.—

6 “(I) A social security card ac-
7 companied by a photo identification
8 card issued by the Federal Govern-
9 ment or a State Government; or

10 “(II) A driver’s license or identi-
11 fication card issued by a State in the
12 case of a State that is in compliance
13 with title II of the REAL ID Act of
14 2005 (title II of division B of Public
15 Law 109-13; 49 U.S.C. 30301 note).

16 “(ii) PASSPORT.—A passport issued
17 by the United States or a foreign govern-
18 ment.

19 “(iii) USCIS PHOTO IDENTIFICATION
20 CARD.—A photo identification card issued
21 by the Secretary of Homeland Security
22 (acting through the Director of the United
23 States Citizenship and Immigration Serv-
24 ices).

1 “(B) REGULATIONS.—The Director shall,
2 by regulation, require that each grantee and re-
3 cipient take such actions as the Director con-
4 siders necessary to ensure compliance with the
5 requirements of subparagraph (A).

6 “(j) ACCOUNTABILITY OF RECIPIENTS AND GRANT-
7 EES.—

8 “(1) RECIPIENTS.—

9 “(A) TRACKING OF FUNDS.—The Director
10 shall—

11 “(i) require each grantee to develop
12 and maintain a system to ensure that each
13 recipient of assistance from affordable
14 housing fund grant amounts of the grantee
15 uses such amounts in accordance with this
16 section, the regulations issued under this
17 section, and any requirements or condi-
18 tions under which such amounts were pro-
19 vided; and

20 “(ii) establish minimum requirements
21 for agreements, between the grantee and
22 recipients, regarding assistance from the
23 affordable housing fund grant amounts of
24 the grantee, which shall include—

1 “(I) appropriate continuing fi-
2 nancial and project reporting, record
3 retention, and audit requirements for
4 the duration of the grant to the re-
5 cipient to ensure compliance with the
6 limitations and requirements of this
7 section and the regulations under this
8 section; and

9 “(II) any other requirements that
10 the Director determines are necessary
11 to ensure appropriate grant adminis-
12 tration and compliance.

13 “(B) MISUSE OF FUNDS.—

14 “(i) REIMBURSEMENT REQUIRE-
15 MENT.—If any recipient of assistance from
16 affordable housing fund grant amounts of
17 a grantee is determined, in accordance
18 with clause (ii), to have used any such
19 amounts in a manner that is materially in
20 violation of this section, the regulations
21 issued under this section, or any require-
22 ments or conditions under which such
23 amounts were provided, the grantee shall
24 require that, within 12 months after the
25 determination of such misuse, the recipient

1 shall reimburse the grantee for such mis-
2 used amounts and return to the grantee
3 any amounts from the affordable housing
4 fund grant amounts of the grantee that re-
5 main unused or uncommitted for use. The
6 remedies under this clause are in addition
7 to any other remedies that may be avail-
8 able under law.

9 “(ii) DETERMINATION.—A determina-
10 tion is made in accordance with this clause
11 if the determination is—

12 “(I) made by the Director; or

13 “(II)(aa) made by the grantee;

14 “(bb) the grantee provides notifi-
15 cation of the determination to the Di-
16 rector for review, in the discretion of
17 the Director, of the determination;
18 and

19 “(cc) the Director does not sub-
20 sequently reverse the determination.

21 “(2) GRANTEES.—

22 “(A) REPORT.—

23 “(i) IN GENERAL.—The Director shall
24 require each grantee receiving affordable
25 housing fund grant amounts for a year to

1 submit a report, for such year, to the Di-
2 rector that—

3 “(I) describes the activities fund-
4 ed under this section during such year
5 with the affordable housing fund
6 grant amounts of the grantee; and

7 “(II) the manner in which the
8 grantee complied during such year
9 with the allocation plan established
10 pursuant to subsection (e) for the
11 grantee.

12 “(ii) PUBLIC AVAILABILITY.—The Di-
13 rector shall make such reports pursuant to
14 this subparagraph publicly available.

15 “(B) MISUSE OF FUNDS.—If the Director
16 determines, after reasonable notice and oppor-
17 tunity for hearing, that a grantee has failed to
18 comply substantially with any provision of this
19 section and until the Director is satisfied that
20 there is no longer any such failure to comply,
21 the Director shall—

22 “(i) reduce the amount of assistance
23 under this section to the grantee by an
24 amount equal to the amount affordable

1 housing fund grant amounts which were
2 not used in accordance with this section;

3 “(ii) require the grantee to repay the
4 Director an amount equal to the amount of
5 the amount affordable housing fund grant
6 amounts which were not used in accord-
7 ance with this section;

8 “(iii) limit the availability of assist-
9 ance under this section to the grantee to
10 activities or recipients not affected by such
11 failure to comply; or

12 “(iv) terminate any assistance under
13 this section to the grantee.

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

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

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

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

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

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

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

13 “(4) TOTAL MORTGAGE PORTFOLIO.—The term
14 ‘total mortgage portfolio’ means, with respect to a
15 year, the sum, for all mortgages outstanding during
16 that year in any form, including whole loans, mort-
17 gage-backed securities, participation certificates, or
18 other structured securities backed by mortgages, of
19 the dollar amount of the unpaid outstanding prin-
20 cipal balances under such mortgages. Such term in-
21 cludes all such mortgages or securitized obligations,
22 whether retained in portfolio, or sold in any form.
23 The Director is authorized to promulgate rules fur-
24 ther defining such term as necessary to implement
25 this section and to address market developments.

1 “(5) VERY-LOW INCOME FAMILY.—The term
2 ‘very low-income family’ has the meaning given such
3 term in section 1303, except that such term includes
4 any family that resides in a rural area that has an
5 income that does not exceed the poverty line (as
6 such term is defined in section 673(2) of the Omni-
7 bus Budget Reconciliation Act of 1981 (42 U.S.C.
8 9902(2)), including any revision required by such
9 section) applicable to a family of the size involved.

10 “(m) REGULATIONS.—

11 “(1) IN GENERAL.—The Director, in consulta-
12 tion with the Secretary of Housing and Urban De-
13 velopment, shall issue regulations to carry out this
14 section.

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

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

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

1 “(C) requirements for a process for appli-
2 cation to, and selection by, each grantee for ac-
3 tivities meeting the grantee’s priority housing
4 needs to be funded with affordable housing
5 fund grant amounts of the grantee, which shall
6 provide for priority in funding to be based
7 upon—

8 “(i) greatest impact;

9 “(ii) geographic diversity;

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

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

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

22 “(vi) the extent to which the applica-
23 tion makes use of other funding sources;
24 and

1 “(vii) the merits of an applicant’s pro-
2 posed eligible activity;

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

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

15 “(F) requirements and standards for es-
16 tablishment, by grantees (including the grantees
17 for 2007 pursuant to subsection (l)(2)(A)), of
18 performance goals, benchmarks, and timetables
19 for the production, preservation, and rehabilita-
20 tion of affordable rental and homeownership
21 housing with affordable housing fund grant
22 amounts.

23 “(n) ENFORCEMENT OF REQUIREMENTS ON ENTER-
24 PRISE.—Compliance by the enterprises with the require-
25 ments under this section shall be enforceable under sub-

1 part C. Any reference in such subpart to this part or to
2 an order, rule, or regulation under this part specifically
3 includes this section and any order, rule, or regulation
4 under this section.

5 “(o) AFFORDABLE HOUSING TRUST FUND.—If,
6 after the enactment of this Act, in any year, there is en-
7 acted any provision of Federal law establishing an afford-
8 able housing trust fund other than under this title for use
9 only for grants to provide affordable rental housing and
10 affordable homeownership opportunities, and the subse-
11 quent year is a year referred to in subsection (b)(1), the
12 Director shall in such subsequent year and any remaining
13 years referred to in subsection (b)(1) transfer to such af-
14 fordable housing trust fund the aggregate amount allo-
15 cated pursuant to subsection (b) in such year to the af-
16 fordable housing fund under this section, less any amounts
17 used pursuant to subsection (i)(1). For such subsequent
18 and remaining years, the provisions of subsections (c) and
19 (d) shall not apply. Notwithstanding any other provision
20 of law, assistance provided using amounts transferred to
21 such affordable housing trust fund pursuant to this sub-
22 section may not be used for any of the activities specified
23 in clauses (i) through (vi) of subsection (i)(6). Nothing
24 in this subsection shall be construed to alter the terms

1 and conditions of the affordable housing fund under this
2 section or to extend the life of such fund.

3 “(p) FUNDING ACCOUNTABILITY AND TRANS-
4 PARENCY.—Any grant under this section to a grantee
5 from the affordable housing fund established under sub-
6 section (a), any assistance provided to a recipient by a
7 grantee from affordable housing fund grant amounts, and
8 any grant, award, or other assistance from an affordable
9 housing trust fund referred to in subsection (o) shall be
10 considered a Federal award for purposes of the Federal
11 Funding Accountability and Transparency Act of 2006
12 (31 U.S.C. 6101 note). Upon the request of the Director
13 of the Office of Management and Budget, the Director of
14 the Federal Housing Finance Agency shall obtain and pro-
15 vide such information regarding any such grants, assist-
16 ance, and awards as the Director of the Office of Manage-
17 ment and Budget considers necessary to comply with the
18 requirements of such Act, as applicable pursuant to the
19 preceding sentence.”.

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

22 (1) IN GENERAL.—The Secretary of Housing
23 and Urban Development shall, not later than the ef-
24 fective date under section 185 of this Act, issue the
25 regulations establishing the affordable housing needs

1 formulas in accordance with the provisions of section
2 1337(e)(2) of the Housing and Community Develop-
3 ment Act of 1992, as such section is amended by
4 subsection (a) of this section.

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

7 (c) REFCORP PAYMENTS.—Section 21B(f)(2) of
8 the Federal Home Loan Bank Act (12 U.S.C.
9 1441b(f)(2)) is amended—

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

12 (2) by redesignating subparagraph (E) as sub-
13 paragraph (F); and

14 (3) by inserting after subparagraph (D) the fol-
15 lowing new subparagraph:

16 “(E) PAYMENTS BY FANNIE MAE AND
17 FREDDIE MAC.—To the extent that the
18 amounts available pursuant to subparagraphs
19 (A), (B), (C), and (D) are insufficient to cover
20 the amount of interest payments, each enter-
21 prise (as such term is defined in section 1303
22 of the Housing and Community Development
23 Act of 1992 (42 U.S.C. 4502)) shall transfer to
24 the Funding Corporation in each calendar year
25 the amounts allocated for use under this sub-

1 paragraph pursuant to section 1337(i)(1) of
2 such Act.”.

3 (d) GAO REPORT.—The Comptroller General shall
4 conduct a study to determine the effects that the afford-
5 able housing fund established under section 1337 of the
6 Housing and Community Development Act of 1992, as
7 added by the amendment made by subsection (a) of this
8 section, will have on the availability and affordability of
9 credit for homebuyers, including the effects on such credit
10 of the requirement under such section 1337(b) that the
11 Federal National Mortgage Association and Federal Home
12 Loan Mortgage Corporation make allocations of amounts
13 to such fund based on the average total mortgage port-
14 folios, and the extent to which the costs of such allocation
15 requirement will be borne by such entities or will be passed
16 on to homebuyers. Not later than the expiration of the
17 12-month period beginning on the date of the enactment
18 of this Act, the Comptroller General shall submit a report
19 to the Congress setting forth the results and conclusions
20 of such study. This subsection shall take effect on the date
21 of the enactment of this Act.

22 **SEC. 141. CONSISTENCY WITH MISSION.**

23 Subpart B of part 2 of subtitle A of title XIII of the
24 Housing and Community Development Act of 1992 (12
25 U.S.C. 4561 et seq.) is amended by adding after section

1 1337, as added by section 139 of this Act, the following
2 new section:

3 **“SEC. 1338. CONSISTENCY WITH MISSION.**

4 “This subpart may not be construed to authorize an
5 enterprise to engage in any program or activity that con-
6 travenes or is inconsistent with the Federal National
7 Mortgage Association Charter Act or the Federal Home
8 Loan Mortgage Corporation Act.”.

9 **SEC. 142. ENFORCEMENT.**

10 (a) CEASE-AND-DESIST PROCEEDINGS.—Section
11 1341 of the Housing and Community Development Act
12 of 1992 (12 U.S.C. 4581) is amended—

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

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

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

22 “(2) the enterprise has failed to submit a report
23 under section 1314, following a notice of such fail-
24 ure, an opportunity for comment by the enterprise,
25 and a final determination by the Director;

1 “(3) the enterprise has failed to submit the in-
2 formation required under subsection (m) or (n) of
3 section 309 of the Federal National Mortgage Asso-
4 ciation Charter Act, or subsection (e) or (f) of sec-
5 tion 307 of the Federal Home Loan Mortgage Cor-
6 poration Act;

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

10 “(5) the enterprise has failed to submit a hous-
11 ing plan that complies with section 1336(c) within
12 the applicable period; or

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

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

19 “(A) comply with the goal or goals;

20 “(B) submit a report under section 1314;

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

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

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

3 “(F) provide the information required
4 under subsection (m) or (n) of section 309 of
5 the Federal National Mortgage Association
6 Charter Act or subsection (e) or (f) of section
7 307 of the Federal Home Loan Mortgage Cor-
8 poration Act, as applicable.”;

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

11 (4) by striking subsection (d).

12 (b) AUTHORITY OF DIRECTOR TO ENFORCE NO-
13 TICES AND ORDERS.—Section 1344 of the Housing and
14 Community Development Act of 1992 (12 U.S.C. 4584)
15 is amended by striking subsection (a) and inserting the
16 following new subsection:

17 “(a) ENFORCEMENT.—The Director may, in the dis-
18 cretion of the Director, apply to the United States District
19 Court for the District of Columbia, or the United States
20 district court within the jurisdiction of which the head-
21 quarters of the enterprise is located, for the enforcement
22 of any effective and outstanding notice or order issued
23 under section 1341 or 1345, or request that the Attorney
24 General of the United States bring such an action. Such

1 court shall have jurisdiction and power to order and re-
2 quire compliance with such notice or order.”.

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

6 (1) by striking subsections (a) and (b) and in-
7 serting the following new subsections:

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

11 “(1) meet any housing goal established under
12 subpart B, following a written notice and determina-
13 tion of such failure in accordance with section
14 1336(b);

15 “(2) submit a report under section 1314, fol-
16 lowing a notice of such failure, an opportunity for
17 comment by the enterprise, and a final determina-
18 tion by the Director;

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

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

1 “(5) submit a housing plan pursuant to section
2 1336(e) within the required period; or

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

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

7 “(1) for any failure described in paragraph (1),
8 (5), or (6) of subsection (a), \$50,000 for each day
9 that the failure occurs; and

10 “(2) for any failure described in paragraph (2),
11 (3), or (4) of subsection (a), \$20,000 for each day
12 that the failure occurs.”;

13 (2) in subsection (c)—

14 (A) in paragraph (1)—

15 (i) in subparagraph (A), by inserting
16 “and” after the semicolon at the end;

17 (ii) in subparagraph (B), by striking
18 “; and” and inserting a period; and

19 (iii) by striking subparagraph (C);
20 and

21 (B) in paragraph (2), by inserting after
22 the period at the end the following: “In deter-
23 mining the penalty under subsection (a)(1), the
24 Director shall give consideration to the length

1 of time the enterprise should reasonably take to
2 achieve the goal.”;

3 (3) in the first sentence of subsection (d)—

4 (A) by striking “request the Attorney Gen-
5 eral of the United States to” and inserting “,
6 in the discretion of the Director,”; and

7 (B) by inserting “, or request that the At-
8 torney General of the United States bring such
9 an action” before the period at the end;

10 (4) by striking subsection (f); and

11 (5) by redesignating subsection (g) as sub-
12 section (f).

13 (d) ENFORCEMENT OF SUBPOENAS.—Section
14 1348(c) of the Housing and Community Development Act
15 of 1992 (12 U.S.C. 4588(c)) is amended—

16 (1) by striking “request the Attorney General
17 of the United States to” and inserting “, in the dis-
18 cretion of the Director,”; and

19 (2) by inserting “or request that the Attorney
20 General of the United States bring such an action,”
21 after “District of Columbia,”.

22 (e) CONFORMING AMENDMENT.—The heading for
23 subpart C of part 2 of subtitle A of title XIII of the Hous-
24 ing and Community Development Act of 1992 is amended
25 to read as follows:

1 **“Subpart C—Enforcement”.**

2 **SEC. 143. CONFORMING AMENDMENTS.**

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

6 (1) by striking “Secretary” each place such
7 term appears in such part and inserting “Director”;

8 (2) in the section heading for section 1323 (12
9 U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-
10 fore the period at the end;

11 (3) by striking section 1327 (12 U.S.C. 4547);

12 (4) by striking section 1328 (12 U.S.C. 4548);

13 (5) by redesignating section 1329 (as amended
14 by section 135) as section 1327;

15 (6) in sections 1345(c)(1)(A), 1346(a), and
16 1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and
17 4586(b)), by striking “Secretary’s” each place such
18 term appears and inserting “Director’s”; and

19 (7) by striking section 1349 (12 U.S.C. 4589).

20 **Subtitle C—Prompt Corrective**
21 **Action**

22 **SEC. 151. CAPITAL CLASSIFICATIONS.**

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

1 (1) in the heading for subsection (a), by strik-
2 ing “IN GENERAL” and inserting “ENTERPRISES”.

3 (2) in subsection (c)—

4 (A) by striking “subsection (b)” and in-
5 serting “subsection (e)”;

6 (B) by striking “enterprises” and inserting
7 “regulated entities”; and

8 (C) by striking the last sentence;

9 (3) by redesignating subsections (c) (as so
10 amended by paragraph (2) of this subsection) and
11 (d) as subsections (d) and (f), respectively;

12 (4) by striking subsection (b) and inserting the
13 following new subsections:

14 “(b) FEDERAL HOME LOAN BANKS.—

15 “(1) ESTABLISHMENT AND CRITERIA.—For
16 purposes of this subtitle, the Director shall, by regu-
17 lation—

18 “(A) establish the capital classifications
19 specified under paragraph (2) for the Federal
20 home loan banks;

21 “(B) establish criteria for each such cap-
22 ital classification based on the amount and
23 types of capital held by a bank and the risk-
24 based, minimum, and critical capital levels for
25 the banks and taking due consideration of the

1 capital classifications established under sub-
2 section (a) for the enterprises, with such modi-
3 fications as the Director determines to be ap-
4 propriate to reflect the difference in operations
5 between the banks and the enterprises; and

6 “(C) shall classify the Federal home loan
7 banks according to such capital classifications.

8 “(2) CLASSIFICATIONS.—The capital classifica-
9 tions specified under this paragraph are—

10 “(A) adequately capitalized;

11 “(B) undercapitalized;

12 “(C) significantly undercapitalized; and

13 “(D) critically undercapitalized.

14 “(c) DISCRETIONARY CLASSIFICATION.—

15 “(1) GROUNDS FOR RECLASSIFICATION.—The
16 Director may reclassify a regulated entity under
17 paragraph (2) if—

18 “(A) at any time, the Director determines
19 in writing that the regulated entity is engaging
20 in conduct that could result in a rapid depletion
21 of core or total capital or, in the case of an en-
22 terprise, that the value of the property subject
23 to mortgages held or securitized by the enter-
24 prise has decreased significantly;

1 “(B) after notice and an opportunity for
2 hearing, the Director determines that the regu-
3 lated entity is in an unsafe or unsound condi-
4 tion; or

5 “(C) pursuant to section 1371(b), the Di-
6 rector deems the regulated entity to be engag-
7 ing in an unsafe or unsound practice.

8 “(2) RECLASSIFICATION.—In addition to any
9 other action authorized under this title, including
10 the reclassification of a regulated entity for any rea-
11 son not specified in this subsection, if the Director
12 takes any action described in paragraph (1) the Di-
13 rector may classify a regulated entity—

14 “(A) as undercapitalized, if the regulated
15 entity is otherwise classified as adequately cap-
16 italized;

17 “(B) as significantly undercapitalized, if
18 the regulated entity is otherwise classified as
19 undercapitalized; and

20 “(C) as critically undercapitalized, if the
21 regulated entity is otherwise classified as sig-
22 nificantly undercapitalized.”; and

23 (5) by inserting after subsection (d) (as so re-
24 designated by paragraph (3) of this subsection), the
25 following new subsection:

1 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

2 “(1) IN GENERAL.—A regulated entity shall
3 make no capital distribution if, after making the dis-
4 tribution, the regulated entity would be under-
5 capitalized.

6 “(2) EXCEPTION.—Notwithstanding paragraph
7 (1), the Director may permit a regulated entity, to
8 the extent appropriate or applicable, to repurchase,
9 redeem, retire, or otherwise acquire shares or owner-
10 ship interests if the repurchase, redemption, retire-
11 ment, or other acquisition—

12 “(A) is made in connection with the
13 issuance of additional shares or obligations of
14 the regulated entity in at least an equivalent
15 amount; and

16 “(B) will reduce the financial obligations of
17 the regulated entity or otherwise improve the fi-
18 nancial condition of the entity.”.

19 (b) REGULATIONS.—Not later than the expiration of
20 the 180-day period beginning on the effective date under
21 section 185, the Director of the Federal Housing Finance
22 Agency shall issue regulations to carry out section 1364(b)
23 of the Housing and Community Development Act of 1992
24 (as added by paragraph (4) of this subsection), relating
25 to capital classifications for the Federal home loan banks.

1 **SEC. 152. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
2 **CAPITALIZED REGULATED ENTITIES.**

3 Section 1365 of the Housing and Community Devel-
4 opment Act of 1992 (12 U.S.C. 4615) is amended—

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

7 (2) in subsection (a)—

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

10 (B) by inserting before paragraph (2), as
11 so redesignated by subparagraph (A) of this
12 paragraph, the following paragraph:

13 “(1) **REQUIRED MONITORING.**—The Director
14 shall—

15 “(A) closely monitor the condition of any
16 regulated entity that is classified as under-
17 capitalized;

18 “(B) closely monitor compliance with the
19 capital restoration plan, restrictions, and re-
20 quirements imposed under this section; and

21 “(C) periodically review the plan, restric-
22 tions, and requirements applicable to the under-
23 capitalized regulated entity to determine wheth-
24 er the plan, restrictions, and requirements are
25 achieving the purpose of this section.”; and

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

3 “(4) RESTRICTION OF ASSET GROWTH.—A reg-
4 ulated entity that is classified as undercapitalized
5 shall not permit its average total assets (as such
6 term is defined in section 1316(b) during any cal-
7 endar quarter to exceed its average total assets dur-
8 ing the preceding calendar quarter unless—

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

11 “(B) any increase in total assets is con-
12 sistent with the plan; and

13 “(C) the ratio of total capital to assets for
14 the regulated entity increases during the cal-
15 endar quarter at a rate sufficient to enable the
16 entity to become adequately capitalized within a
17 reasonable time.

18 “(5) PRIOR APPROVAL OF ACQUISITIONS, NEW
19 PRODUCTS, AND NEW ACTIVITIES.—A regulated enti-
20 ty that is classified as undercapitalized shall not, di-
21 rectly or indirectly, acquire any interest in any entity
22 or initially offer any new product (as such term is
23 defined in section 1321(f)) or engage in any new ac-
24 tivity, service, undertaking, or offering unless—

1 “(A) the Director has accepted the capital
2 restoration plan of the regulated entity, the en-
3 tity is implementing the plan, and the Director
4 determines that the proposed action is con-
5 sistent with and will further the achievement of
6 the plan; or

7 “(B) the Director determines that the pro-
8 posed action will further the purpose of this
9 section.”;

10 (3) in the subsection heading for subsection (b),
11 by striking “FROM UNDERCAPITALIZED TO SIGNIFI-
12 CANTLY UNDERCAPITALIZED”; and

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

15 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
16 Director may take, with respect to a regulated entity that
17 is classified as undercapitalized, any of the actions author-
18 ized to be taken under section 1366 with respect to a regu-
19 lated entity that is classified as significantly undercapital-
20 ized, if the Director determines that such actions are nec-
21 essary to carry out the purpose of this subtitle.”.

1 **SEC. 153. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
2 **CANTLY UNDERCAPITALIZED REGULATED**
3 **ENTITIES.**

4 Section 1366 of the Housing and Community Devel-
5 opment Act of 1992 (12 U.S.C. 4616) is amended—

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

8 (2) in subsection (a)(2)(A), by striking “enter-
9 prise” the last place such term appears;

10 (3) in subsection (b)—

11 (A) in the subsection heading, by striking
12 “DISCRETIONARY SUPERVISORY ACTIONS” and
13 inserting “SPECIFIC ACTIONS”.

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

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

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

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

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

1 “(B) DISMISSAL OF DIRECTORS OR EXECU-
2 TIVE OFFICERS.—Require the regulated entity
3 to dismiss from office any director or executive
4 officer who had held office for more than 180
5 days immediately before the entity became
6 undercapitalized. Dismissal under this subpara-
7 graph shall not be construed to be a removal
8 pursuant to the Director’s enforcement powers
9 provided in section 1377.

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

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

17 “(8) OTHER ACTION.—Require the regulated
18 entity to take any other action that the Director de-
19 termines will better carry out the purpose of this
20 section than any of the actions specified in this
21 paragraph.”;

22 (4) by redesignating subsection (c) as sub-
23 section (d); and

24 (5) by inserting after subsection (b) the fol-
25 lowing new subsection:

1 “(c) RESTRICTION ON COMPENSATION OF EXECU-
2 TIVE OFFICERS.—A regulated entity that is classified as
3 significantly undercapitalized may not, without prior writ-
4 ten approval by the Director—

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

6 “(2) provide compensation to any executive offi-
7 cer at a rate exceeding that officer’s average rate of
8 compensation (excluding bonuses, stock options, and
9 profit sharing) during the 12 calendar months pre-
10 ceeding the calendar month in which the regulated
11 entity became undercapitalized.”.

12 **SEC. 154. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
13 **IZED REGULATED ENTITIES.**

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

17 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
18 **IZED REGULATED ENTITIES.**

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

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of Federal or State law, if any of the
23 grounds under paragraph (3) exist, at the discretion
24 of the Director, the Director may establish a con-
25 servatorship or receivership, as appropriate, for the

1 purpose of reorganizing, rehabilitating, or winding
2 up the affairs of a regulated entity.

3 “(2) APPOINTMENT.—In any conservatorship or
4 receivership established under this section, the Di-
5 rector shall appoint the Agency as conservator or re-
6 ceiver.

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

10 “(A) ASSETS INSUFFICIENT FOR OBLIGA-
11 TIONS.—The assets of the regulated entity are
12 less than the obligations of the regulated entity
13 to its creditors and others.

14 “(B) SUBSTANTIAL DISSIPATION.—Sub-
15 stantial dissipation of assets or earnings due
16 to—

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

19 “(ii) any unsafe or unsound practice.

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

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

1 “(E) CONCEALMENT.—Any concealment of
2 the books, papers, records, or assets of the reg-
3 ulated entity, or any refusal to submit the
4 books, papers, records, or affairs of the regu-
5 lated entity, for inspection to any examiner or
6 to any lawful agent of the Director.

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

11 “(G) LOSSES.—The regulated entity has
12 incurred or is likely to incur losses that will de-
13plete all or substantially all of its capital, and
14 there is no reasonable prospect for the regu-
15 lated entity to become adequately capitalized
16 (as defined in section 1364(a)(1)).

17 “(H) VIOLATIONS OF LAW.—Any violation
18 of any law or regulation, or any unsafe or un-
19 sound practice or condition that is likely to—

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

22 “(ii) weaken the condition of the regu-
23 lated entity.

24 “(I) CONSENT.—The regulated entity, by
25 resolution of its board of directors or its share-

1 holders or members, consents to the appoint-
2 ment.

3 “(J) UNDERCAPITALIZATION.—The regu-
4 lated entity is undercapitalized or significantly
5 undercapitalized (as defined in section
6 1364(a)(3) or in regulations issued pursuant to
7 section 1364(b), as applicable), and—

8 “(i) has no reasonable prospect of be-
9 coming adequately capitalized;

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

12 “(I) section 1365(a)(1) with re-
13 spect to an undercapitalized regulated
14 entity; or

15 “(II) section 1366(a)(1) with re-
16 spect to a significantly undercapital-
17 ized regulated entity;

18 “(iii) fails to submit a capital restora-
19 tion plan acceptable to the Agency within
20 the time prescribed under section 1369C;
21 or

22 “(iv) materially fails to implement a
23 capital restoration plan submitted and ac-
24 cepted under section 1369C.

1 “(K) CRITICAL UNDERCAPITALIZATION.—
2 The regulated entity is critically undercapital-
3 ized, as defined in section 1364(a)(4) or in reg-
4 ulations issued pursuant to section 1364(b), as
5 applicable.

6 “(L) MONEY LAUNDERING.—The Attorney
7 General notifies the Director in writing that the
8 regulated entity has been found guilty of a
9 criminal offense under section 1956 or 1957 of
10 title 18, United States Code, or section 5322 or
11 5324 of title 31, United States Code.

12 “(4) MANDATORY RECEIVERSHIP.—

13 “(A) IN GENERAL.—The Director shall ap-
14 point the Agency as receiver for a regulated en-
15 tity if the Director determines, in writing,
16 that—

17 “(i) the assets of the regulated entity
18 are, and during the preceding 30 calendar
19 days have been, less than the obligations of
20 the regulated entity to its creditors and
21 others; or

22 “(ii) the regulated entity is not, and
23 during the preceding 30 calendar days has
24 not been, generally paying the debts of the
25 regulated entity (other than debts that are

1 the subject of a bona fide dispute) as such
2 debts become due.

3 “(B) PERIODIC DETERMINATION RE-
4 QUIRED FOR CRITICALLY UNDER CAPITALIZED
5 REGULATED ENTITY.—If a regulated entity is
6 critically undercapitalized, the Director shall
7 make a determination, in writing, as to whether
8 the regulated entity meets the criteria specified
9 in clause (i) or (ii) of subparagraph (A)—

10 “(i) not later than 30 calendar days
11 after the regulated entity initially becomes
12 critically undercapitalized; and

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

15 “(C) DETERMINATION NOT REQUIRED IF
16 RECEIVERSHIP ALREADY IN PLACE.—Subpara-
17 graph (B) shall not apply with respect to a reg-
18 ulated entity in any period during which the
19 Agency serves as receiver for the regulated enti-
20 ty.

21 “(D) RECEIVERSHIP TERMINATES CON-
22 SERVATORSHIP.—The appointment under this
23 section of the Agency as receiver of a regulated
24 entity shall immediately terminate any con-

1 servatorship established under this title for the
2 regulated entity.

3 “(5) JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—If the Agency is ap-
5 pointed conservator or receiver under this sec-
6 tion, the regulated entity may, within 30 days
7 of such appointment, bring an action in the
8 United States District Court for the judicial
9 district in which the principal place of business
10 of such regulated entity is located, or in the
11 United States District Court for the District of
12 Columbia, for an order requiring the Agency to
13 remove itself as conservator or receiver.

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

19 “(6) DIRECTORS NOT LIABLE FOR ACQUI-
20 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
21 CEIVER.—The members of the board of directors of
22 a regulated entity shall not be liable to the share-
23 holders or creditors of the regulated entity for acqui-
24 escing in or consenting in good faith to the appoint-

1 ment of the Agency as conservator or receiver for
2 that regulated entity.

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

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

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

15 “(2) GENERAL POWERS.—

16 “(A) SUCCESSOR TO REGULATED ENTI-
17 TY.—The Agency shall, as conservator or re-
18 ceiver, and by operation of law, immediately
19 succeed to—

20 “(i) all rights, titles, powers, and
21 privileges of the regulated entity, and of
22 any stockholder, officer, or director of such
23 regulated entity with respect to the regu-
24 lated entity and the assets of the regulated
25 entity; and

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

4 “(B) OPERATE THE REGULATED ENTI-
5 TY.—The Agency may, as conservator or re-
6 ceiver—

7 “(i) take over the assets of and oper-
8 ate the regulated entity with all the powers
9 of the shareholders, the directors, and the
10 officers of the regulated entity and conduct
11 all business of the regulated entity;

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

14 “(iii) perform all functions of the reg-
15 ulated entity in the name of the regulated
16 entity which are consistent with the ap-
17 pointment as conservator or receiver; and

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

20 “(C) FUNCTIONS OF OFFICERS, DIREC-
21 TORS, AND SHAREHOLDERS OF A REGULATED
22 ENTITY.—The Agency may, by regulation or
23 order, provide for the exercise of any function
24 by any stockholder, director, or officer of any

1 regulated entity for which the Agency has been
2 named conservator or receiver.

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

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

8 “(ii) appropriate to carry on the busi-
9 ness of the regulated entity and preserve
10 and conserve the assets and property of
11 the regulated entity, including, if two or
12 more Federal home loan banks have been
13 placed in conservatorship contempora-
14 neously, merging two or more such banks
15 into a single Federal home loan bank.

16 “(E) ADDITIONAL POWERS AS RE-
17 CEIVER.—The Agency may, as receiver, place
18 the regulated entity in liquidation and proceed
19 to realize upon the assets of the regulated enti-
20 ty, having due regard to the conditions of the
21 housing finance market.

22 “(F) ORGANIZATION OF NEW REGULATED
23 ENTITIES.—The Agency may, as receiver, orga-
24 nize a successor regulated entity that will oper-
25 ate pursuant to subsection (i).

1 “(G) TRANSFER OF ASSETS AND LIABIL-
2 ITIES.—The Agency may, as conservator or re-
3 ceiver, transfer any asset or liability of the reg-
4 ulated entity in default without any approval,
5 assignment, or consent with respect to such
6 transfer. Any Federal home loan bank may,
7 with the approval of the Agency, acquire the as-
8 sets of any Bank in conservatorship or receiver-
9 ship, and assume the liabilities of such Bank.

10 “(H) PAYMENT OF VALID OBLIGATIONS.—
11 The Agency, as conservator or receiver, shall, to
12 the extent of proceeds realized from the per-
13 formance of contracts or sale of the assets of a
14 regulated entity, pay all valid obligations of the
15 regulated entity in accordance with the pre-
16 scriptions and limitations of this section.

17 “(I) SUBPOENA AUTHORITY.—

18 “(i) IN GENERAL.—

19 “(I) IN GENERAL.—The Agency
20 may, as conservator or receiver, and
21 for purposes of carrying out any
22 power, authority, or duty with respect
23 to a regulated entity (including deter-
24 mining any claim against the regu-
25 lated entity and determining and real-

1 izing upon any asset of any person in
2 the course of collecting money due the
3 regulated entity), exercise any power
4 established under section 1348.

5 “(II) APPLICABILITY OF LAW.—

6 The provisions of section 1348 shall
7 apply with respect to the exercise of
8 any power exercised under this sub-
9 paragraph in the same manner as
10 such provisions apply under that sec-
11 tion.

12 “(ii) AUTHORITY OF DIRECTOR.—A

13 subpoena or subpoena duces tecum may be
14 issued under clause (i) only by, or with the
15 written approval of, the Director, or the
16 designee of the Director.

17 “(iii) RULE OF CONSTRUCTION.—This

18 subsection shall not be construed to limit
19 any rights that the Agency, in any capac-
20 ity, might otherwise have under section
21 1317 or 1379D.

22 “(J) CONTRACTING FOR SERVICES.—The

23 Agency may, as conservator or receiver, provide
24 by contract for the carrying out of any of its

1 functions, activities, actions, or duties as con-
2 servator or receiver.

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

5 “(i) exercise all powers and authori-
6 ties specifically granted to conservators or
7 receivers, respectively, under this section,
8 and such incidental powers as shall be nec-
9 essary to carry out such powers; and

10 “(ii) take any action authorized by
11 this section, which the Agency determines
12 is in the best interests of the regulated en-
13 tity or the Agency.

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

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

20 “(B) NOTICE REQUIREMENTS.—The re-
21 ceiver, in any case involving the liquidation or
22 winding up of the affairs of a closed regulated
23 entity, shall—

24 “(i) promptly publish a notice to the
25 creditors of the regulated entity to present

1 their claims, together with proof, to the re-
2 ceiver by a date specified in the notice
3 which shall be not less than 90 days after
4 the publication of such notice; and

5 “(ii) republish such notice approxi-
6 mately 1 month and 2 months, respec-
7 tively, after the publication under clause
8 (i).

9 “(C) MAILING REQUIRED.—The receiver
10 shall mail a notice similar to the notice pub-
11 lished under subparagraph (B)(i) at the time of
12 such publication to any creditor shown on the
13 books of the regulated entity—

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

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

21 “(4) RULEMAKING AUTHORITY RELATING TO
22 DETERMINATION OF CLAIMS.—Subject to subsection
23 (c), the Director may prescribe regulations regarding
24 the allowance or disallowance of claims by the re-

1 ceiver and providing for administrative determina-
2 tion of claims and review of such determination.

3 “(5) PROCEDURES FOR DETERMINATION OF
4 CLAIMS.—

5 “(A) DETERMINATION PERIOD.—

6 “(i) IN GENERAL.—Before the end of
7 the 180-day period beginning on the date
8 on which any claim against a regulated en-
9 tity is filed with the Agency as receiver,
10 the Agency shall determine whether to
11 allow or disallow the claim and shall notify
12 the claimant of any determination with re-
13 spect to such claim.

14 “(ii) EXTENSION OF TIME.—The pe-
15 riod described in clause (i) may be ex-
16 tended by a written agreement between the
17 claimant and the Agency.

18 “(iii) MAILING OF NOTICE SUFFI-
19 CIENT.—The notification requirements of
20 clause (i) shall be deemed to be satisfied if
21 the notice of any determination with re-
22 spect to any claim is mailed to the last ad-
23 dress of the claimant which appears—

24 “(I) on the books of the regu-
25 lated entity;

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

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

5 “(iv) CONTENTS OF NOTICE OF DIS-
6 ALLOWANCE.—If any claim filed under
7 clause (i) is disallowed, the notice to the
8 claimant shall contain—

9 “(I) a statement of each reason
10 for the disallowance; and

11 “(II) the procedures available for
12 obtaining agency review of the deter-
13 mination to disallow the claim or judi-
14 cial determination of the claim.

15 “(B) ALLOWANCE OF PROVEN CLAIM.—
16 The receiver shall allow any claim received on
17 or before the date specified in the notice pub-
18 lished under paragraph (3)(B)(i), or the date
19 specified in the notice required under paragraph
20 (3)(C), which is proved to the satisfaction of
21 the receiver.

22 “(C) DISALLOWANCE OF CLAIMS FILED
23 AFTER END OF FILING PERIOD.—Claims filed
24 after the date specified in the notice published
25 under paragraph (3)(B)(i), or the date specified

1 under paragraph (3)(C), shall be disallowed and
2 such disallowance shall be final.

3 “(D) AUTHORITY TO DISALLOW CLAIMS.—

4 “(i) IN GENERAL.—The receiver may
5 disallow any portion of any claim by a
6 creditor or claim of security, preference, or
7 priority which is not proved to the satisfac-
8 tion of the receiver.

9 “(ii) PAYMENTS TO LESS THAN
10 FULLY SECURED CREDITORS.—In the case
11 of a claim of a creditor against a regulated
12 entity which is secured by any property or
13 other asset of such regulated entity, the re-
14 ceiver—

15 “(I) may treat the portion of
16 such claim which exceeds an amount
17 equal to the fair market value of such
18 property or other asset as an unse-
19 cured claim against the regulated en-
20 tity; and

21 “(II) may not make any payment
22 with respect to such unsecured por-
23 tion of the claim other than in connec-
24 tion with the disposition of all claims

1 of unsecured creditors of the regu-
2 lated entity.

3 “(iii) EXCEPTIONS.—No provision of
4 this paragraph shall apply with respect to
5 any extension of credit from any Federal
6 Reserve Bank, Federal home loan bank, or
7 the Treasury of the United States.

8 “(E) NO JUDICIAL REVIEW OF DETER-
9 MINATION PURSUANT TO SUBPARAGRAPH
10 (D).—No court may review the determination
11 of the Agency under subparagraph (D) to dis-
12 allow a claim. This subparagraph shall not af-
13 fect the authority of a claimant to obtain de
14 novo judicial review of a claim pursuant to
15 paragraph (6).

16 “(F) LEGAL EFFECT OF FILING.—

17 “(i) STATUTE OF LIMITATION
18 TOLLED.—For purposes of any applicable
19 statute of limitations, the filing of a claim
20 with the receiver shall constitute a com-
21 mencement of an action.

22 “(ii) NO PREJUDICE TO OTHER AC-
23 TIONS.—Subject to paragraph (10), the fil-
24 ing of a claim with the receiver shall not
25 prejudice any right of the claimant to con-

1 tinue any action which was filed before the
2 date of the appointment of the receiver,
3 subject to the determination of claims by
4 the receiver.

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

7 “(A) IN GENERAL.—The claimant may file
8 suit on a claim (or continue an action com-
9 menced before the appointment of the receiver)
10 in the district or territorial court of the United
11 States for the district within which the prin-
12 cipal place of business of the regulated entity is
13 located or the United States District Court for
14 the District of Columbia (and such court shall
15 have jurisdiction to hear such claim), before the
16 end of the 60-day period beginning on the ear-
17 lier of—

18 “(i) the end of the period described in
19 paragraph (5)(A)(i) with respect to any
20 claim against a regulated entity for which
21 the Agency is receiver; or

22 “(ii) the date of any notice of dis-
23 allowance of such claim pursuant to para-
24 graph (5)(A)(i).

1 “(B) STATUTE OF LIMITATIONS.—A claim
2 shall be deemed to be disallowed (other than
3 any portion of such claim which was allowed by
4 the receiver), and such disallowance shall be
5 final, and the claimant shall have no further
6 rights or remedies with respect to such claim,
7 if the claimant fails, before the end of the 60-
8 day period described under subparagraph (A),
9 to file suit on such claim (or continue an action
10 commenced before the appointment of the re-
11 ceiver).

12 “(7) REVIEW OF CLAIMS.—

13 “(A) OTHER REVIEW PROCEDURES.—

14 “(i) IN GENERAL.—The Agency shall
15 establish such alternative dispute resolu-
16 tion processes as may be appropriate for
17 the resolution of claims filed under para-
18 graph (5)(A)(i).

19 “(ii) CRITERIA.—In establishing alter-
20 native dispute resolution processes, the
21 Agency shall strive for procedures which
22 are expeditious, fair, independent, and low
23 cost.

24 “(iii) VOLUNTARY BINDING OR NON-
25 BINDING PROCEDURES.—The Agency may

1 establish both binding and nonbinding
2 processes, which may be conducted by any
3 government or private party. All parties,
4 including the claimant and the Agency,
5 must agree to the use of the process in a
6 particular case.

7 “(B) CONSIDERATION OF INCENTIVES.—
8 The Agency shall seek to develop incentives for
9 claimants to participate in the alternative dis-
10 pute resolution process.

11 “(8) EXPEDITED DETERMINATION OF
12 CLAIMS.—

13 “(A) ESTABLISHMENT REQUIRED.—The
14 Agency shall establish a procedure for expedited
15 relief outside of the routine claims process es-
16 tablished under paragraph (5) for claimants
17 who—

18 “(i) allege the existence of legally
19 valid and enforceable or perfected security
20 interests in assets of any regulated entity
21 for which the Agency has been appointed
22 receiver; and

23 “(ii) allege that irreparable injury will
24 occur if the routine claims procedure is fol-
25 lowed.

1 “(B) DETERMINATION PERIOD.—Before
2 the end of the 90-day period beginning on the
3 date any claim is filed in accordance with the
4 procedures established under subparagraph (A),
5 the Director shall—

6 “(i) determine—

7 “(I) whether to allow or disallow
8 such claim; or

9 “(II) whether such claim should
10 be determined pursuant to the proce-
11 dures established under paragraph
12 (5); and

13 “(ii) notify the claimant of the deter-
14 mination, and if the claim is disallowed,
15 provide a statement of each reason for the
16 disallowance and the procedure for obtain-
17 ing agency review or judicial determina-
18 tion.

19 “(C) PERIOD FOR FILING OR RENEWING
20 SUIT.—Any claimant who files a request for ex-
21 pedited relief shall be permitted to file a suit,
22 or to continue a suit filed before the appoint-
23 ment of the receiver, seeking a determination of
24 the rights of the claimant with respect to such
25 security interest after the earlier of—

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

4 “(ii) the date the Agency denies the
5 claim.

6 “(D) STATUTE OF LIMITATIONS.—If an
7 action described under subparagraph (C) is not
8 filed, or the motion to renew a previously filed
9 suit is not made, before the end of the 30-day
10 period beginning on the date on which such ac-
11 tion or motion may be filed under subparagraph
12 (B), the claim shall be deemed to be disallowed
13 as of the end of such period (other than any
14 portion of such claim which was allowed by the
15 receiver), such disallowance shall be final, and
16 the claimant shall have no further rights or
17 remedies with respect to such claim.

18 “(E) LEGAL EFFECT OF FILING.—

19 “(i) STATUTE OF LIMITATION
20 TOLLED.—For purposes of any applicable
21 statute of limitations, the filing of a claim
22 with the receiver shall constitute a com-
23 mencement of an action.

24 “(ii) NO PREJUDICE TO OTHER AC-
25 TIONS.—Subject to paragraph (10), the fil-

1 ing of a claim with the receiver shall not
2 prejudice any right of the claimant to con-
3 tinue any action that was filed before the
4 appointment of the receiver, subject to the
5 determination of claims by the receiver.

6 “(9) PAYMENT OF CLAIMS.—

7 “(A) IN GENERAL.—The receiver may, in
8 the discretion of the receiver, and to the extent
9 funds are available from the assets of the regu-
10 lated entity, pay creditor claims, in such man-
11 ner and amounts as are authorized under this
12 section, which are—

13 “(i) allowed by the receiver;

14 “(ii) approved by the Agency pursuant
15 to a final determination pursuant to para-
16 graph (7) or (8); or

17 “(iii) determined by the final judg-
18 ment of any court of competent jurisdic-
19 tion.

20 “(B) AGREEMENTS AGAINST THE INTER-
21 EST OF THE AGENCY.—No agreement that
22 tends to diminish or defeat the interest of the
23 Agency in any asset acquired by the Agency as
24 receiver under this section shall be valid against
25 the Agency unless such agreement is in writing,

1 and executed by an authorized official of the
2 regulated entity, except that such requirements
3 for qualified financial contracts shall be applied
4 in a manner consistent with reasonable business
5 trading practices in the financial contracts mar-
6 ket.

7 “(C) PAYMENT OF DIVIDENDS ON
8 CLAIMS.—The receiver may, in the sole discre-
9 tion of the receiver, pay from the assets of the
10 regulated entity dividends on proved claims at
11 any time, and no liability shall attach to the
12 Agency, by reason of any such payment, for
13 failure to pay dividends to a claimant whose
14 claim is not proved at the time of any such pay-
15 ment.

16 “(D) RULEMAKING AUTHORITY OF THE
17 DIRECTOR.—The Director may prescribe such
18 rules, including definitions of terms, as the Di-
19 rector deems appropriate to establish a single
20 uniform interest rate for, or to make payments
21 of post-insolvency interest to creditors holding
22 proven claims against the receivership estates of
23 regulated entities following satisfaction by the
24 receiver of the principal amount of all creditor
25 claims.

1 “(10) SUSPENSION OF LEGAL ACTIONS.—

2 “(A) IN GENERAL.—After the appointment
3 of a conservator or receiver for a regulated enti-
4 ty, the conservator or receiver may, in any judi-
5 cial action or proceeding to which such regu-
6 lated entity is or becomes a party, request a
7 stay for a period not to exceed—

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

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

12 “(B) GRANT OF STAY BY ALL COURTS RE-
13 QUIRED.—Upon receipt of a request by any
14 conservator or receiver under subparagraph (A)
15 for a stay of any judicial action or proceeding
16 in any court with jurisdiction of such action or
17 proceeding, the court shall grant such stay as
18 to all parties.

19 “(11) ADDITIONAL RIGHTS AND DUTIES.—

20 “(A) PRIOR FINAL ADJUDICATION.—The
21 Agency shall abide by any final unappealable
22 judgment of any court of competent jurisdiction
23 which was rendered before the appointment of
24 the Agency as conservator or receiver.

1 “(B) RIGHTS AND REMEDIES OF CONSER-
2 VATOR OR RECEIVER.—In the event of any ap-
3 pealable judgment, the Agency as conservator
4 or receiver shall—

5 “(i) have all the rights and remedies
6 available to the regulated entity (before the
7 appointment of such conservator or re-
8 ceiver) and the Agency, including removal
9 to Federal court and all appellate rights;
10 and

11 “(ii) not be required to post any bond
12 in order to pursue such remedies.

13 “(C) NO ATTACHMENT OR EXECUTION.—
14 No attachment or execution may issue by any
15 court upon assets in the possession of the re-
16 ceiver.

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

20 “(i) any claim or action for payment
21 from, or any action seeking a determina-
22 tion of rights with respect to, the assets of
23 any regulated entity for which the Agency
24 has been appointed receiver; or

1 “(ii) any claim relating to any act or
2 omission of such regulated entity or the
3 Agency as receiver.

4 “(E) DISPOSITION OF ASSETS.—In exer-
5 cising any right, power, privilege, or authority
6 as conservator or receiver in connection with
7 any sale or disposition of assets of a regulated
8 entity for which the Agency has been appointed
9 conservator or receiver, the Agency shall con-
10 duct its operations in a manner which main-
11 tains stability in the housing finance markets
12 and, to the extent consistent with that goal—

13 “(i) maximizes the net present value
14 return from the sale or disposition of such
15 assets;

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

18 “(iii) ensures adequate competition
19 and fair and consistent treatment of
20 offerors.

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

23 “(A) IN GENERAL.—Notwithstanding any
24 provision of any contract, the applicable statute
25 of limitations with regard to any action brought

1 by the Agency as conservator or receiver shall
2 be—

3 “(i) in the case of any contract claim,
4 the longer of—

5 “(I) the 6-year period beginning
6 on the date the claim accrues; or

7 “(II) the period applicable under
8 State law; and

9 “(ii) in the case of any tort claim, the
10 longer of—

11 “(I) the 3-year period beginning
12 on the date the claim accrues; or

13 “(II) the period applicable under
14 State law.

15 “(B) DETERMINATION OF THE DATE ON
16 WHICH A CLAIM ACCRUES.—For purposes of
17 subparagraph (A), the date on which the stat-
18 ute of limitations begins to run on any claim
19 described in such subparagraph shall be the
20 later of—

21 “(i) the date of the appointment of
22 the Agency as conservator or receiver; or

23 “(ii) the date on which the cause of
24 action accrues.

1 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
2 ACTION.—

3 “(A) IN GENERAL.—In the case of any tort
4 claim described under subparagraph (B) for
5 which the statute of limitations applicable
6 under State law with respect to such claim has
7 expired not more than 5 years before the ap-
8 pointment of the Agency as conservator or re-
9 ceiver, the Agency may bring an action as con-
10 servator or receiver on such claim without re-
11 gard to the expiration of the statute of limita-
12 tion applicable under State law.

13 “(B) CLAIMS DESCRIBED.—A tort claim
14 referred to under subparagraph (A) is a claim
15 arising from fraud, intentional misconduct re-
16 sulting in unjust enrichment, or intentional mis-
17 conduct resulting in substantial loss to the reg-
18 ulated entity.

19 “(14) ACCOUNTING AND RECORDKEEPING RE-
20 QUIREMENTS.—

21 “(A) IN GENERAL.—The Agency as conser-
22 vator or receiver shall, consistent with the ac-
23 counting and reporting practices and proce-
24 dures established by the Agency, maintain a full
25 accounting of each conservatorship and receiv-

1 ership or other disposition of a regulated entity
2 in default.

3 “(B) ANNUAL ACCOUNTING OR REPORT.—
4 With respect to each conservatorship or receiver-
5 ership, the Agency shall make an annual ac-
6 counting or report available to the Board, the
7 Comptroller General of the United States, the
8 Committee on Banking, Housing, and Urban
9 Affairs of the Senate, and the Committee on
10 Financial Services of the House of Representa-
11 tives.

12 “(C) AVAILABILITY OF REPORTS.—Any re-
13 port prepared under subparagraph (B) shall be
14 made available by the Agency upon request to
15 any shareholder of a regulated entity or any
16 member of the public.

17 “(D) RECORDKEEPING REQUIREMENT.—
18 After the end of the 6-year period beginning on
19 the date that the conservatorship or receiver-
20 ship is terminated by the Director, the Agency
21 may destroy any records of such regulated enti-
22 ty which the Agency, in the discretion of the
23 Agency, determines to be unnecessary unless di-
24 rected not to do so by a court of competent ju-

1 jurisdiction or governmental agency, or prohibited
2 by law.

3 “(15) FRAUDULENT TRANSFERS.—

4 “(A) IN GENERAL.—The Agency, as con-
5 servator or receiver, may avoid a transfer of
6 any interest of a regulated entity-affiliated
7 party, or any person who the conservator or re-
8 ceiver determines is a debtor of the regulated
9 entity, in property, or any obligation incurred
10 by such party or person, that was made within
11 5 years of the date on which the Agency was
12 appointed conservator or receiver, if such party
13 or person voluntarily or involuntarily made such
14 transfer or incurred such liability with the in-
15 tent to hinder, delay, or defraud the regulated
16 entity, the Agency, the conservator, or receiver.

17 “(B) RIGHT OF RECOVERY.—To the extent
18 a transfer is avoided under subparagraph (A),
19 the conservator or receiver may recover, for the
20 benefit of the regulated entity, the property
21 transferred, or, if a court so orders, the value
22 of such property (at the time of such transfer)
23 from—

24 “(i) the initial transferee of such
25 transfer or the regulated entity-affiliated

1 party or person for whose benefit such
2 transfer was made; or

3 “(ii) any immediate or mediate trans-
4 feree of any such initial transferee.

5 “(C) RIGHTS OF TRANSFEREE OR OBLI-
6 GEE.—The conservator or receiver may not re-
7 cover under subparagraph (B) from—

8 “(i) any transferee that takes for
9 value, including satisfaction or securing of
10 a present or antecedent debt, in good faith;
11 or

12 “(ii) any immediate or mediate good
13 faith transferee of such transferee.

14 “(D) RIGHTS UNDER THIS PARAGRAPH.—
15 The rights under this paragraph of the conser-
16 vator or receiver described under subparagraph
17 (A) shall be superior to any rights of a trustee
18 or any other party (other than any party which
19 is a Federal agency) under title 11, United
20 States Code.

21 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
22 JUNCTIVE RELIEF.—Subject to paragraph (17), any
23 court of competent jurisdiction may, at the request
24 of the conservator or receiver, issue an order in ac-
25 cordance with Rule 65 of the Federal Rules of Civil

1 Procedure, including an order placing the assets of
2 any person designated by the Agency or such conser-
3 vator under the control of the court, and appointing
4 a trustee to hold such assets.

5 “(17) STANDARDS OF PROOF.—Rule 65 of the
6 Federal Rules of Civil Procedure shall apply with re-
7 spect to any proceeding under paragraph (16) with-
8 out regard to the requirement of such rule that the
9 applicant show that the injury, loss, or damage is ir-
10 reparable and immediate.

11 “(18) TREATMENT OF CLAIMS ARISING FROM
12 BREACH OF CONTRACTS EXECUTED BY THE RE-
13 CEIVER OR CONSERVATOR.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of this subsection, any final and
16 unappealable judgment for monetary damages
17 entered against a receiver or conservator for the
18 breach of an agreement executed or approved in
19 writing by such receiver or conservator after the
20 date of its appointment, shall be paid as an ad-
21 ministrative expense of the receiver or conser-
22 vator.

23 “(B) NO LIMITATION OF POWER.—Nothing
24 in this paragraph shall be construed to limit the
25 power of a receiver or conservator to exercise

1 any rights under contract or law, including to
2 terminate, breach, cancel, or otherwise dis-
3 continue such agreement.

4 “(19) GENERAL EXCEPTIONS.—

5 “(A) LIMITATIONS.—The rights of a con-
6 servator or receiver appointed under this section
7 shall be subject to the limitations on the powers
8 of a receiver under sections 402 through 407 of
9 the Federal Deposit Insurance Corporation Im-
10 provement Act of 1991 (12 U.S.C. 4402
11 through 4407).

12 “(B) MORTGAGES HELD IN TRUST.—

13 “(i) IN GENERAL.—Any mortgage,
14 pool of mortgages, or interest in a pool of
15 mortgages, held in trust, custodial, or
16 agency capacity by a regulated entity for
17 the benefit of persons other than the regu-
18 lated entity shall not be available to satisfy
19 the claims of creditors generally.

20 “(ii) HOLDING OF MORTGAGES.—Any
21 mortgage, pool of mortgages, or interest in
22 a pool of mortgages, described under
23 clause (i) shall be held by the conservator
24 or receiver appointed under this section for
25 the beneficial owners of such mortgage,

1 pool of mortgages, or interest in a pool of
2 mortgages in accordance with the terms of
3 the agreement creating such trust, custo-
4 dial, or other agency arrangement.

5 “(iii) LIABILITY OF RECEIVER.—The
6 liability of a receiver appointed under this
7 section for damages shall, in the case of
8 any contingent or unliquidated claim relat-
9 ing to the mortgages held in trust, be esti-
10 mated in accordance set forth in the regu-
11 lations of the Director.

12 “(c) PRIORITY OF EXPENSES AND UNSECURED
13 CLAIMS.—

14 “(1) IN GENERAL.—Unsecured claims against a
15 regulated entity, or a receiver, that are proven to the
16 satisfaction of the receiver shall have priority in the
17 following order:

18 “(A) Administrative expenses of the re-
19 ceiver.

20 “(B) Any other general or senior liability
21 of the regulated entity and claims of other Fed-
22 eral home loan banks arising from their pay-
23 ment obligations (including joint and several
24 payment obligations).

1 “(C) Any obligation subordinated to gen-
2 eral creditors.

3 “(D) Any obligation to shareholders or
4 members arising as a result of their status as
5 shareholder or members.

6 “(2) CREDITORS SIMILARLY SITUATED.—All
7 creditors that are similarly situated under paragraph
8 (1) shall be treated in a similar manner, except that
9 the Agency may make such other payments to credi-
10 tors necessary to maximize the present value return
11 from the sale or disposition or such regulated enti-
12 ty’s assets or to minimize the amount of any loss re-
13 alized in the resolution of cases so long as all credi-
14 tors similarly situated receive not less than the
15 amount provided under subsection (e)(2).

16 “(3) DEFINITION.—The term ‘administrative
17 expenses of the receiver’ shall include the actual,
18 necessary costs and expenses incurred by the re-
19 ceiver in preserving the assets of the regulated entity
20 or liquidating or otherwise resolving the affairs of
21 the regulated entity. Such expenses shall include ob-
22 ligations that are incurred by the receiver after ap-
23 pointment as receiver that the Director determines
24 are necessary and appropriate to facilitate the

1 smooth and orderly liquidation or other resolution of
2 the regulated entity.

3 “(d) PROVISIONS RELATING TO CONTRACTS EN-
4 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
5 OR RECEIVER.—

6 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

7 In addition to any other rights a conservator or re-
8 ceiver may have, the conservator or receiver for any
9 regulated entity may disaffirm or repudiate any con-
10 tract or lease—

11 “(A) to which such regulated entity is a
12 party;

13 “(B) the performance of which the conser-
14 vator or receiver, in its sole discretion, deter-
15 mines to be burdensome; and

16 “(C) the disaffirmance or repudiation of
17 which the conservator or receiver determines, in
18 its sole discretion, will promote the orderly ad-
19 ministration of the affairs of the regulated enti-
20 ty.

21 “(2) TIMING OF REPUDIATION.—The conser-
22 vator or receiver shall determine whether or not to
23 exercise the rights of repudiation under this sub-
24 section within a reasonable period following such ap-
25 pointment.

1 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
2 ATION.—

3 “(A) IN GENERAL.—Except as otherwise
4 provided under subparagraph (C) and para-
5 graphs (4), (5), and (6), the liability of the con-
6 servator or receiver for the disaffirmance or re-
7 pudiation of any contract pursuant to para-
8 graph (1) shall be—

9 “(i) limited to actual direct compen-
10 satory damages; and

11 “(ii) determined as of—

12 “(I) the date of the appointment
13 of the conservator or receiver; or

14 “(II) in the case of any contract
15 or agreement referred to in paragraph
16 (8), the date of the disaffirmance or
17 repudiation of such contract or agree-
18 ment.

19 “(B) NO LIABILITY FOR OTHER DAM-
20 AGES.—For purposes of subparagraph (A), the
21 term ‘actual direct compensatory damages’ shall
22 not include—

23 “(i) punitive or exemplary damages;

24 “(ii) damages for lost profits or op-
25 portunity; or

1 “(iii) damages for pain and suffering.

2 “(C) MEASURE OF DAMAGES FOR REPUDI-
3 ATION OF FINANCIAL CONTRACTS.—In the case
4 of any qualified financial contract or agreement
5 to which paragraph (8) applies, compensatory
6 damages shall be—

7 “(i) deemed to include normal and
8 reasonable costs of cover or other reason-
9 able measures of damages utilized in the
10 industries for such contract and agreement
11 claims; and

12 “(ii) paid in accordance with this sub-
13 section and subsection (e), except as other-
14 wise specifically provided in this section.

15 “(4) LEASES UNDER WHICH THE REGULATED
16 ENTITY IS THE LESSEE.—

17 “(A) IN GENERAL.—If the conservator or
18 receiver disaffirms or repudiates a lease under
19 which the regulated entity was the lessee, the
20 conservator or receiver shall not be liable for
21 any damages (other than damages determined
22 under subparagraph (B)) for the disaffirmance
23 or repudiation of such lease.

24 “(B) PAYMENTS OF RENT.—Notwith-
25 standing subparagraph (A), the lessor under a

1 lease to which that subparagraph applies
2 shall—

3 “(i) be entitled to the contractual rent
4 accruing before the later of the date—

5 “(I) the notice of disaffirmance
6 or repudiation is mailed; or

7 “(II) the disaffirmance or repudi-
8 ation becomes effective, unless the les-
9 sor is in default or breach of the
10 terms of the lease;

11 “(ii) have no claim for damages under
12 any acceleration clause or other penalty
13 provision in the lease; and

14 “(iii) have a claim for any unpaid
15 rent, subject to all appropriate offsets and
16 defenses, due as of the date of the appoint-
17 ment, which shall be paid in accordance
18 with this subsection and subsection (e).

19 “(5) LEASES UNDER WHICH THE REGULATED
20 ENTITY IS THE LESSOR.—

21 “(A) IN GENERAL.—If the conservator or
22 receiver repudiates an unexpired written lease
23 of real property of the regulated entity under
24 which the regulated entity is the lessor and the
25 lessee is not, as of the date of such repudiation,

1 in default, the lessee under such lease may ei-
2 ther—

3 “(i) treat the lease as terminated by
4 such repudiation; or

5 “(ii) remain in possession of the lease-
6 hold interest for the balance of the term of
7 the lease, unless the lessee defaults under
8 the terms of the lease after the date of
9 such repudiation.

10 “(B) PROVISIONS APPLICABLE TO LESSEE
11 REMAINING IN POSSESSION.—If any lessee
12 under a lease described under subparagraph (A)
13 remains in possession of a leasehold interest
14 under clause (ii) of such subparagraph—

15 “(i) the lessee—

16 “(I) shall continue to pay the
17 contractual rent pursuant to the
18 terms of the lease after the date of
19 the repudiation of such lease; and

20 “(II) may offset against any rent
21 payment which accrues after the date
22 of the repudiation of the lease, and
23 any damages which accrue after such
24 date due to the nonperformance of

1 any obligation of the regulated entity
2 under the lease after such date; and

3 “(ii) the conservator or receiver shall
4 not be liable to the lessee for any damages
5 arising after such date as a result of the
6 repudiation other than the amount of any
7 offset allowed under clause (i)(II).

8 “(6) CONTRACTS FOR THE SALE OF REAL
9 PROPERTY.—

10 “(A) IN GENERAL.—If the conservator or
11 receiver repudiates any contract for the sale of
12 real property and the purchaser of such real
13 property under such contract is in possession,
14 and is not, as of the date of such repudiation,
15 in default, such purchaser may either—

16 “(i) treat the contract as terminated
17 by such repudiation; or

18 “(ii) remain in possession of such real
19 property.

20 “(B) PROVISIONS APPLICABLE TO PUR-
21 CHASER REMAINING IN POSSESSION.—If any
22 purchaser of real property under any contract
23 described under subparagraph (A) remains in
24 possession of such property under clause (ii) of
25 such subparagraph—

1 “(i) the purchaser—

2 “(I) shall continue to make all
3 payments due under the contract after
4 the date of the repudiation of the con-
5 tract; and

6 “(II) may offset against any such
7 payments any damages which accrue
8 after such date due to the non-
9 performance (after such date) of any
10 obligation of the regulated entity
11 under the contract; and

12 “(ii) the conservator or receiver
13 shall—

14 “(I) not be liable to the pur-
15 chaser for any damages arising after
16 such date as a result of the repudi-
17 ation other than the amount of any
18 offset allowed under clause (i)(II);

19 “(II) deliver title to the pur-
20 chaser in accordance with the provi-
21 sions of the contract; and

22 “(III) have no obligation under
23 the contract other than the perform-
24 ance required under subclause (II).

25 “(C) ASSIGNMENT AND SALE ALLOWED.—

1 “(i) IN GENERAL.—No provision of
2 this paragraph shall be construed as lim-
3 iting the right of the conservator or re-
4 ceiver to assign the contract described
5 under subparagraph (A), and sell the prop-
6 erty subject to the contract and the provi-
7 sions of this paragraph.

8 “(ii) NO LIABILITY AFTER ASSIGN-
9 MENT AND SALE.—If an assignment and
10 sale described under clause (i) is con-
11 summated, the conservator or receiver
12 shall have no further liability under the
13 contract described under subparagraph
14 (A), or with respect to the real property
15 which was the subject of such contract.

16 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
17 TRACTS.—

18 “(A) SERVICES PERFORMED BEFORE AP-
19 POINTMENT.—In the case of any contract for
20 services between any person and any regulated
21 entity for which the Agency has been appointed
22 conservator or receiver, any claim of such per-
23 son for services performed before the appoint-
24 ment of the conservator or the receiver shall
25 be—

1 “(i) a claim to be paid in accordance
2 with subsections (b) and (e); and

3 “(ii) deemed to have arisen as of the
4 date the conservator or receiver was ap-
5 pointed.

6 “(B) SERVICES PERFORMED AFTER AP-
7 POINTMENT AND PRIOR TO REPUDIATION.—If,
8 in the case of any contract for services de-
9 scribed under subparagraph (A), the conser-
10 vator or receiver accepts performance by the
11 other person before the conservator or receiver
12 makes any determination to exercise the right
13 of repudiation of such contract under this sec-
14 tion—

15 “(i) the other party shall be paid
16 under the terms of the contract for the
17 services performed; and

18 “(ii) the amount of such payment
19 shall be treated as an administrative ex-
20 pense of the conservatorship or receiver-
21 ship.

22 “(C) ACCEPTANCE OF PERFORMANCE NO
23 BAR TO SUBSEQUENT REPUDIATION.—The ac-
24 ceptance by any conservator or receiver of serv-
25 ices referred to under subparagraph (B) in con-

1 nection with a contract described in such sub-
2 paragraph shall not affect the right of the con-
3 servator or receiver to repudiate such contract
4 under this section at any time after such per-
5 formance.

6 “(8) CERTAIN QUALIFIED FINANCIAL CON-
7 TRACTS.—

8 “(A) RIGHTS OF PARTIES TO CON-
9 TRACTS.—Subject to paragraphs (9) and (10)
10 and notwithstanding any other provision of this
11 Act, any other Federal law, or the law of any
12 State, no person shall be stayed or prohibited
13 from exercising—

14 “(i) any right such person has to
15 cause the termination, liquidation, or accel-
16 eration of any qualified financial contract
17 with a regulated entity that arises upon
18 the appointment of the Agency as receiver
19 for such regulated entity at any time after
20 such appointment;

21 “(ii) any right under any security
22 agreement or arrangement or other credit
23 enhancement relating to one or more quali-
24 fied financial contracts described in clause
25 (i); or

1 “(iii) any right to offset or net out
2 any termination value, payment amount, or
3 other transfer obligation arising under or
4 in connection with 1 or more contracts and
5 agreements described in clause (i), includ-
6 ing any master agreement for such con-
7 tracts or agreements.

8 “(B) APPLICABILITY OF OTHER PROVI-
9 SIONS.—Paragraph (10) of subsection (b) shall
10 apply in the case of any judicial action or pro-
11 ceeding brought against any receiver referred to
12 under subparagraph (A), or the regulated entity
13 for which such receiver was appointed, by any
14 party to a contract or agreement described
15 under subparagraph (A)(i) with such regulated
16 entity.

17 “(C) CERTAIN TRANSFERS NOT AVOID-
18 ABLE.—

19 “(i) IN GENERAL.—Notwithstanding
20 paragraph (11) or any other Federal or
21 State laws relating to the avoidance of
22 preferential or fraudulent transfers, the
23 Agency, whether acting as such or as con-
24 servator or receiver of a regulated entity,
25 may not avoid any transfer of money or

1 other property in connection with any
2 qualified financial contract with a regu-
3 lated entity.

4 “(ii) EXCEPTION FOR CERTAIN
5 TRANSFERS.—Clause (i) shall not apply to
6 any transfer of money or other property in
7 connection with any qualified financial con-
8 tract with a regulated entity if the Agency
9 determines that the transferee had actual
10 intent to hinder, delay, or defraud such
11 regulated entity, the creditors of such reg-
12 ulated entity, or any conservator or re-
13 ceiver appointed for such regulated entity.

14 “(D) CERTAIN CONTRACTS AND AGREE-
15 MENTS DEFINED.—In this subsection:

16 “(i) QUALIFIED FINANCIAL CON-
17 TRACT.—The term ‘qualified financial con-
18 tract’ means any securities contract, com-
19 modity contract, forward contract, repur-
20 chase agreement, swap agreement, and any
21 similar agreement that the Agency deter-
22 mines by regulation, resolution, or order to
23 be a qualified financial contract for pur-
24 poses of this paragraph.

1 “(ii) SECURITIES CONTRACT.—The
2 term ‘securities contract’—

3 “(I) means a contract for the
4 purchase, sale, or loan of a security, a
5 certificate of deposit, a mortgage loan,
6 or any interest in a mortgage loan, a
7 group or index of securities, certifi-
8 cates of deposit, or mortgage loans or
9 interests therein (including any inter-
10 est therein or based on the value
11 thereof) or any option on any of the
12 foregoing, including any option to
13 purchase or sell any such security,
14 certificate of deposit, mortgage loan,
15 interest, group or index, or option,
16 and including any repurchase or re-
17 verse repurchase transaction on any
18 such security, certificate of deposit,
19 mortgage loan, interest, group or
20 index, or option;

21 “(II) does not include any pur-
22 chase, sale, or repurchase obligation
23 under a participation in a commercial
24 mortgage loan unless the Agency de-
25 termines by regulation, resolution, or

1 order to include any such agreement
2 within the meaning of such term;

3 “(III) means any option entered
4 into on a national securities exchange
5 relating to foreign currencies;

6 “(IV) means the guarantee by or
7 to any securities clearing agency of
8 any settlement of cash, securities, cer-
9 tificates of deposit, mortgage loans or
10 interests therein, group or index of se-
11 curities, certificates of deposit, or
12 mortgage loans or interests therein
13 (including any interest therein or
14 based on the value thereof) or option
15 on any of the foregoing, including any
16 option to purchase or sell any such se-
17 curity, certificate of deposit, mortgage
18 loan, interest, group or index, or op-
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-
22 ment or transaction that is similar to
23 any agreement or transaction referred
24 to in this clause;

1 “(VII) means any combination of
2 the agreements or transactions re-
3 ferred to in this clause;

4 “(VIII) means any option to
5 enter into any agreement or trans-
6 action referred to in this clause;

7 “(IX) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), (IV), (V), (VI), (VII), or
11 (VIII), together with all supplements
12 to any such master agreement, with-
13 out regard to whether the master
14 agreement provides for an agreement
15 or transaction that is not a securities
16 contract under this clause, except that
17 the master agreement shall be consid-
18 ered to be a securities contract under
19 this clause only with respect to each
20 agreement or transaction under the
21 master agreement that is referred to
22 in subclause (I), (III), (IV), (V), (VI),
23 (VII), or (VIII); and

24 “(X) means any security agree-
25 ment or arrangement or other credit

1 enhancement related to any agree-
2 ment or transaction referred to in this
3 clause, including any guarantee or re-
4 imbursement obligation in connection
5 with any agreement or transaction re-
6 ferred to in this clause.

7 “(iii) COMMODITY CONTRACT.—The
8 term ‘commodity contract’ means—

9 “(I) with respect to a futures
10 commission merchant, a contract for
11 the purchase or sale of a commodity
12 for future delivery on, or subject to
13 the rules of, a contract market or
14 board of trade;

15 “(II) with respect to a foreign fu-
16 tures commission merchant, a foreign
17 future;

18 “(III) with respect to a leverage
19 transaction merchant, a leverage
20 transaction;

21 “(IV) with respect to a clearing
22 organization, a contract for the pur-
23 chase or sale of a commodity for fu-
24 ture delivery on, or subject to the
25 rules of, a contract market or board

1 of trade that is cleared by such clear-
2 ing organization, or commodity option
3 traded on, or subject to the rules of,
4 a contract market or board of trade
5 that is cleared by such clearing orga-
6 nization;

7 “(V) with respect to a commodity
8 options dealer, a commodity option;

9 “(VI) any other agreement or
10 transaction that is similar to any
11 agreement or transaction referred to
12 in this clause;

13 “(VII) any combination of the
14 agreements or transactions referred to
15 in this clause;

16 “(VIII) any option to enter into
17 any agreement or transaction referred
18 to in this clause;

19 “(IX) a master agreement that
20 provides for an agreement or trans-
21 action referred to in subclause (I),
22 (II), (III), (IV), (V), (VI), (VII), or
23 (VIII), together with all supplements
24 to any such master agreement, with-
25 out regard to whether the master

1 agreement provides for an agreement
2 or transaction that is not a com-
3 modity contract under this clause, ex-
4 cept that the master agreement shall
5 be considered to be a commodity con-
6 tract under this clause only with re-
7 spect to each agreement or trans-
8 action under the master agreement
9 that is referred to in subclause (I),
10 (II), (III), (IV), (V), (VI), (VII), or
11 (VIII); or

12 “(X) any security agreement or
13 arrangement or other credit enhance-
14 ment related to any agreement or
15 transaction referred to in this clause,
16 including any guarantee or reimburse-
17 ment obligation in connection with
18 any agreement or transaction referred
19 to in this clause.

20 “(iv) FORWARD CONTRACT.—The
21 term ‘forward contract’ means—

22 “(I) a contract (other than a
23 commodity contract) for the purchase,
24 sale, or transfer of a commodity or
25 any similar good, article, service,

1 right, or interest which is presently or
2 in the future becomes the subject of
3 dealing in the forward contract trade,
4 or product or byproduct thereof, with
5 a maturity date more than 2 days
6 after the date the contract is entered
7 into, including, a repurchase trans-
8 action, reverse repurchase transaction,
9 consignment, lease, swap, hedge
10 transaction, deposit, loan, option, allo-
11 cated transaction, unallocated trans-
12 action, or any other similar agree-
13 ment;

14 “(II) any combination of agree-
15 ments or transactions referred to in
16 subclauses (I) and (III);

17 “(III) any option to enter into
18 any agreement or transaction referred
19 to in subclause (I) or (II);

20 “(IV) a master agreement that
21 provides for an agreement or trans-
22 action referred to in subclauses (I),
23 (II), or (III), together with all supple-
24 ments to any such master agreement,
25 without regard to whether the master

1 agreement provides for an agreement
2 or transaction that is not a forward
3 contract under this clause, except that
4 the master agreement shall be consid-
5 ered to be a forward contract under
6 this clause only with respect to each
7 agreement or transaction under the
8 master agreement that is referred to
9 in subclause (I), (II), or (III); or

10 “(V) any security agreement or
11 arrangement or other credit enhance-
12 ment related to any agreement or
13 transaction referred to in subclause
14 (I), (II), (III), or (IV), including any
15 guarantee or reimbursement obliga-
16 tion in connection with any agreement
17 or transaction referred to in any such
18 subclause.

19 “(v) REPURCHASE AGREEMENT.—The
20 term ‘repurchase agreement’ (which defini-
21 tion also applies to a reverse repurchase
22 agreement)—

23 “(I) means an agreement, includ-
24 ing related terms, which provides for
25 the transfer of one or more certifi-

1 cates of deposit, mortgage-related se-
2 curities (as such term is defined in
3 the Securities Exchange Act of 1934),
4 mortgage loans, interests in mortgage-
5 related securities or mortgage loans,
6 eligible bankers' acceptances, qualified
7 foreign government securities or secu-
8 rities that are direct obligations of, or
9 that are fully guaranteed by, the
10 United States or any agency of the
11 United States against the transfer of
12 funds by the transferee of such certifi-
13 cates of deposit, eligible bankers' ac-
14 ceptances, securities, mortgage loans,
15 or interests with a simultaneous
16 agreement by such transferee to
17 transfer to the transferor thereof cer-
18 tificates of deposit, eligible bankers'
19 acceptances, securities, mortgage
20 loans, or interests as described above,
21 at a date certain not later than 1 year
22 after such transfers or on demand,
23 against the transfer of funds, or any
24 other similar agreement;

1 “(II) does not include any repur-
2 chase obligation under a participation
3 in a commercial mortgage loan unless
4 the Agency determines by regulation,
5 resolution, or order to include any
6 such participation within the meaning
7 of such term;

8 “(III) means any combination of
9 agreements or transactions referred to
10 in subclauses (I) and (IV);

11 “(IV) means any option to enter
12 into any agreement or transaction re-
13 ferred to in subclause (I) or (III);

14 “(V) means a master agreement
15 that provides for an agreement or
16 transaction referred to in subclause
17 (I), (III), or (IV), together with all
18 supplements to any such master
19 agreement, without regard to whether
20 the master agreement provides for an
21 agreement or transaction that is not a
22 repurchase agreement under this
23 clause, except that the master agree-
24 ment shall be considered to be a re-
25 purchase agreement under this sub-

1 clause only with respect to each agree-
2 ment or transaction under the master
3 agreement that is referred to in sub-
4 clause (I), (III), or (IV); and

5 “(VI) means any security agree-
6 ment or arrangement or other credit
7 enhancement related to any agree-
8 ment or transaction referred to in
9 subclause (I), (III), (IV), or (V), in-
10 cluding any guarantee or reimburse-
11 ment obligation in connection with
12 any agreement or transaction referred
13 to in any such subclause.

14 For purposes of this clause, the term
15 ‘qualified foreign government security’
16 means a security that is a direct obligation
17 of, or that is fully guaranteed by, the cen-
18 tral government of a member of the Orga-
19 nization for Economic Cooperation and
20 Development (as determined by regulation
21 or order adopted by the appropriate Fed-
22 eral banking authority).

23 “(vi) SWAP AGREEMENT.—The term
24 ‘swap agreement’ means—

1 “(I) any agreement, including the
2 terms and conditions incorporated by
3 reference in any such agreement,
4 which is an interest rate swap, option,
5 future, or forward agreement, includ-
6 ing a rate floor, rate cap, rate collar,
7 cross-currency rate swap, and basis
8 swap; a spot, same day-tomorrow, to-
9 morrow-next, forward, or other for-
10 eign exchange or precious metals
11 agreement; a currency swap, option,
12 future, or forward agreement; an eq-
13 uity index or equity swap, option, fu-
14 ture, or forward agreement; a debt
15 index or debt swap, option, future, or
16 forward agreement; a total return,
17 credit spread or credit swap, option,
18 future, or forward agreement; a com-
19 modity index or commodity swap, op-
20 tion, future, or forward agreement; or
21 a weather swap, weather derivative, or
22 weather option;

23 “(II) any agreement or trans-
24 action that is similar to any other
25 agreement or transaction referred to

1 in this clause and that is of a type
2 that has been, is presently, or in the
3 future becomes, the subject of recur-
4 rent dealings in the swap markets (in-
5 cluding terms and conditions incor-
6 porated by reference in such agree-
7 ment) and that is a forward, swap, fu-
8 ture, or option on one or more rates,
9 currencies, commodities, equity securi-
10 ties or other equity instruments, debt
11 securities or other debt instruments,
12 quantitative measures associated with
13 an occurrence, extent of an occur-
14 rence, or contingency associated with
15 a financial, commercial, or economic
16 consequence, or economic or financial
17 indices or measures of economic or fi-
18 nancial risk or value;

19 “(III) any combination of agree-
20 ments or transactions referred to in
21 this clause;

22 “(IV) any option to enter into
23 any agreement or transaction referred
24 to in this clause;

1 “(V) a master agreement that
2 provides for an agreement or trans-
3 action referred to in subclause (I),
4 (II), (III), or (IV), together with all
5 supplements to any such master
6 agreement, without regard to whether
7 the master agreement contains an
8 agreement or transaction that is not a
9 swap agreement under this clause, ex-
10 cept that the master agreement shall
11 be considered to be a swap agreement
12 under this clause only with respect to
13 each agreement or transaction under
14 the master agreement that is referred
15 to in subclause (I), (II), (III), or (IV);
16 and

17 “(VI) any security agreement or
18 arrangement or other credit enhance-
19 ment related to any agreements or
20 transactions referred to in subclause
21 (I), (II), (III), (IV), or (V), including
22 any guarantee or reimbursement obli-
23 gation in connection with any agree-
24 ment or transaction referred to in any
25 such subclause.

1 Such term is applicable for purposes of
2 this subsection only and shall not be con-
3 strued or applied so as to challenge or af-
4 fect the characterization, definition, or
5 treatment of any swap agreement under
6 any other statute, regulation, or rule, in-
7 cluding the Securities Act of 1933, the Se-
8 curities Exchange Act of 1934, the Public
9 Utility Holding Company Act of 1935, the
10 Trust Indenture Act of 1939, the Invest-
11 ment Company Act of 1940, the Invest-
12 ment Advisers Act of 1940, the Securities
13 Investor Protection Act of 1970, the Com-
14 modity Exchange Act, the Gramm-Leach-
15 Bliley Act, and the Legal Certainty for
16 Bank Products Act of 2000.

17 “(vii) TREATMENT OF MASTER
18 AGREEMENT AS ONE AGREEMENT.—Any
19 master agreement for any contract or
20 agreement described in any preceding
21 clause of this subparagraph (or any master
22 agreement for such master agreement or
23 agreements), together with all supplements
24 to such master agreement, shall be treated
25 as a single agreement and a single quali-

1 fied financial contract. If a master agree-
2 ment contains provisions relating to agree-
3 ments or transactions that are not them-
4 selves qualified financial contracts, the
5 master agreement shall be deemed to be a
6 qualified financial contract only with re-
7 spect to those transactions that are them-
8 selves qualified financial contracts.

9 “(viii) TRANSFER.—The term ‘trans-
10 fer’ means every mode, direct or indirect,
11 absolute or conditional, voluntary or invol-
12 untary, of disposing of or parting with
13 property or with an interest in property,
14 including retention of title as a security in-
15 terest and foreclosure of the regulated en-
16 tity’s equity of redemption.

17 “(E) CERTAIN PROTECTIONS IN EVENT OF
18 APPOINTMENT OF CONSERVATOR.—Notwith-
19 standing any other provision of this Act (other
20 than paragraph (13) of this subsection), any
21 other Federal law, or the law of any State, no
22 person shall be stayed or prohibited from exer-
23 cising—

24 “(i) any right such person has to
25 cause the termination, liquidation, or accel-

1 eration of any qualified financial contract
2 with a regulated entity in a conservator-
3 ship based upon a default under such fi-
4 nancial contract which is enforceable under
5 applicable noninsolvency law;

6 “(ii) any right under any security
7 agreement or arrangement or other credit
8 enhancement relating to one or more such
9 qualified financial contracts; or

10 “(iii) any right to offset or net out
11 any termination values, payment amounts,
12 or other transfer obligations arising under
13 or in connection with such qualified finan-
14 cial contracts.

15 “(F) CLARIFICATION.—No provision of law
16 shall be construed as limiting the right or
17 power of the Agency, or authorizing any court
18 or agency to limit or delay, in any manner, the
19 right or power of the Agency to transfer any
20 qualified financial contract in accordance with
21 paragraphs (9) and (10) of this subsection or to
22 disaffirm or repudiate any such contract in ac-
23 cordance with subsection (d)(1) of this section.

24 “(G) WALKAWAY CLAUSES NOT EFFEC-
25 TIVE.—

1 “(i) IN GENERAL.—Notwithstanding
2 the provisions of subparagraphs (A) and
3 (E), and sections 403 and 404 of the Fed-
4 eral Deposit Insurance Corporation Im-
5 provement Act of 1991, no walkaway
6 clause shall be enforceable in a qualified fi-
7 nancial contract of a regulated entity in
8 default.

9 “(ii) WALKAWAY CLAUSE DEFINED.—
10 For purposes of this subparagraph, the
11 term ‘walkaway clause’ means a provision
12 in a qualified financial contract that, after
13 calculation of a value of a party’s position
14 or an amount due to or from 1 of the par-
15 ties in accordance with its terms upon ter-
16 mination, liquidation, or acceleration of the
17 qualified financial contract, either does not
18 create a payment obligation of a party or
19 extinguishes a payment obligation of a
20 party in whole or in part solely because of
21 such party’s status as a nondefaulting
22 party.

23 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
24 TRACTS.—In making any transfer of assets or liabil-
25 ities of a regulated entity in default which includes

1 any qualified financial contract, the conservator or
2 receiver for such regulated entity shall either—

3 “(A) transfer to 1 person—

4 “(i) all qualified financial contracts
5 between any person (or any affiliate of
6 such person) and the regulated entity in
7 default;

8 “(ii) all claims of such person (or any
9 affiliate of such person) against such regu-
10 lated entity under any such contract (other
11 than any claim which, under the terms of
12 any such contract, is subordinated to the
13 claims of general unsecured creditors of
14 such regulated entity);

15 “(iii) all claims of such regulated enti-
16 ty against such person (or any affiliate of
17 such person) under any such contract; and

18 “(iv) all property securing or any
19 other credit enhancement for any contract
20 described in clause (i) or any claim de-
21 scribed in clause (ii) or (iii) under any
22 such contract; or

23 “(B) transfer none of the financial con-
24 tracts, claims, or property referred to under

1 subparagraph (A) (with respect to such person
2 and any affiliate of such person).

3 “(10) NOTIFICATION OF TRANSFER.—

4 “(A) IN GENERAL.—If—

5 “(i) the conservator or receiver for a
6 regulated entity in default makes any
7 transfer of the assets and liabilities of such
8 regulated entity, and

9 “(ii) the transfer includes any quali-
10 fied financial contract,

11 the conservator or receiver shall notify any per-
12 son who is a party to any such contract of such
13 transfer by 5:00 p.m. (eastern time) on the
14 business day following the date of the appoint-
15 ment of the receiver in the case of a receiver-
16 ship, or the business day following such trans-
17 fer in the case of a conservatorship.

18 “(B) CERTAIN RIGHTS NOT ENFORCE-
19 ABLE.—

20 “(i) RECEIVERSHIP.—A person who is
21 a party to a qualified financial contract
22 with a regulated entity may not exercise
23 any right that such person has to termi-
24 nate, liquidate, or net such contract under
25 paragraph (8)(A) of this subsection or sec-

1 tion 403 or 404 of the Federal Deposit In-
2 surance Corporation Improvement Act of
3 1991, solely by reason of or incidental to
4 the appointment of a receiver for the regu-
5 lated entity (or the insolvency or financial
6 condition of the regulated entity for which
7 the receiver has been appointed)—

8 “(I) until 5:00 p.m. (eastern
9 time) on the business day following
10 the date of the appointment of the re-
11 ceiver; or

12 “(II) after the person has re-
13 ceived notice that the contract has
14 been transferred pursuant to para-
15 graph (9)(A).

16 “(ii) CONSERVATORSHIP.—A person
17 who is a party to a qualified financial con-
18 tract with a regulated entity may not exer-
19 cise any right that such person has to ter-
20 minate, liquidate, or net such contract
21 under paragraph (8)(E) of this subsection
22 or section 403 or 404 of the Federal De-
23 posit Insurance Corporation Improvement
24 Act of 1991, solely by reason of or inci-
25 dental to the appointment of a conservator

1 for the regulated entity (or the insolvency
2 or financial condition of the regulated enti-
3 ty for which the conservator has been ap-
4 pointed).

5 “(iii) NOTICE.—For purposes of this
6 paragraph, the Agency as receiver or con-
7 servator of a regulated entity shall be
8 deemed to have notified a person who is a
9 party to a qualified financial contract with
10 such regulated entity if the Agency has
11 taken steps reasonably calculated to pro-
12 vide notice to such person by the time
13 specified in subparagraph (A).

14 “(C) BUSINESS DAY DEFINED.—For pur-
15 poses of this paragraph, the term ‘business day’
16 means any day other than any Saturday, Sun-
17 day, or any day on which either the New York
18 Stock Exchange or the Federal Reserve Bank
19 of New York is closed.

20 “(11) DISAFFIRMANCE OR REPUDIATION OF
21 QUALIFIED FINANCIAL CONTRACTS.—In exercising
22 the rights of disaffirmance or repudiation of a con-
23 servator or receiver with respect to any qualified fi-
24 nancial contract to which a regulated entity is a

1 party, the conservator or receiver for such institution
2 shall either—

3 “(A) disaffirm or repudiate all qualified fi-
4 nancial contracts between—

5 “(i) any person or any affiliate of
6 such person; and

7 “(ii) the regulated entity in default; or

8 “(B) disaffirm or repudiate none of the
9 qualified financial contracts referred to in sub-
10 paragraph (A) (with respect to such person or
11 any affiliate of such person).

12 “(12) CERTAIN SECURITY INTERESTS NOT
13 AVOIDABLE.—No provision of this subsection shall
14 be construed as permitting the avoidance of any le-
15 gally enforceable or perfected security interest in any
16 of the assets of any regulated entity, except where
17 such an interest is taken in contemplation of the in-
18 solvency of the regulated entity, or with the intent
19 to hinder, delay, or defraud the regulated entity or
20 the creditors of such regulated entity.

21 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

22 “(A) IN GENERAL.—Notwithstanding any
23 provision of a contract providing for termi-
24 nation, default, acceleration, or exercise of
25 rights upon, or solely by reason of, insolvency

1 or the appointment of a conservator or receiver,
2 the conservator or receiver may enforce any
3 contract or regulated entity bond entered into
4 by the regulated entity.

5 “(B) CERTAIN RIGHTS NOT AFFECTED.—

6 No provision of this paragraph may be con-
7 strued as impairing or affecting any right of the
8 conservator or receiver to enforce or recover
9 under a director’s or officer’s liability insurance
10 contract or surety bond under other applicable
11 law.

12 “(C) CONSENT REQUIREMENT.—

13 “(i) IN GENERAL.—Except as other-
14 wise provided under this section, no person
15 may exercise any right or power to termi-
16 nate, accelerate, or declare a default under
17 any contract to which a regulated entity is
18 a party, or to obtain possession of or exer-
19 cise control over any property of the regu-
20 lated entity, or affect any contractual
21 rights of the regulated entity, without the
22 consent of the conservator or receiver, as
23 appropriate, for a period of—

24 “(I) 45 days after the date of ap-
25 pointment of a conservator; or

1 “(II) 90 days after the date of
2 appointment of a receiver.

3 “(ii) EXCEPTIONS.—This paragraph
4 shall—

5 “(I) not apply to a director’s or
6 officer’s liability insurance contract;

7 “(II) not apply to the rights of
8 parties to any qualified financial con-
9 tracts under subsection (d)(8); and

10 “(III) not be construed as per-
11 mitting the conservator or receiver to
12 fail to comply with otherwise enforce-
13 able provisions of such contracts.

14 “(14) SAVINGS CLAUSE.—The meanings of
15 terms used in this subsection are applicable for pur-
16 poses of this subsection only, and shall not be con-
17 strued or applied so as to challenge or affect the
18 characterization, definition, or treatment of any
19 similar terms under any other statute, regulation, or
20 rule, including the Gramm-Leach-Bliley Act, the
21 Legal Certainty for Bank Products Act of 2000, the
22 securities laws (as that term is defined in section
23 3(a)(47) of the Securities Exchange Act of 1934),
24 and the Commodity Exchange Act.

1 “(15) EXCEPTION FOR FEDERAL RESERVE AND
2 FEDERAL HOME LOAN BANKS.—No provision of this
3 subsection shall apply with respect to—

4 “(A) any extension of credit from any Fed-
5 eral home loan bank or Federal Reserve Bank
6 to any regulated entity; or

7 “(B) any security interest in the assets of
8 the regulated entity securing any such extension
9 of credit.

10 “(e) VALUATION OF CLAIMS IN DEFAULT.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of Federal law or the law of any State, and
13 regardless of the method which the Agency deter-
14 mines to utilize with respect to a regulated entity in
15 default or in danger of default, including trans-
16 actions authorized under subsection (i), this sub-
17 section shall govern the rights of the creditors of
18 such regulated entity.

19 “(2) MAXIMUM LIABILITY.—The maximum li-
20 ability of the Agency, acting as receiver or in any
21 other capacity, to any person having a claim against
22 the receiver or the regulated entity for which such
23 receiver is appointed shall equal the lesser of—

24 “(A) the amount such claimant would have
25 received if the Agency had liquidated the assets

1 and liabilities of such regulated entity without
2 exercising the authority of the Agency under
3 subsection (i) of this section; or

4 “(B) the amount of proceeds realized from
5 the performance of contracts or sale of the as-
6 sets of the regulated entity.

7 “(f) LIMITATION ON COURT ACTION.—Except as
8 provided in this section or at the request of the Director,
9 no court may take any action to restrain or affect the exer-
10 cise of powers or functions of the Agency as a conservator
11 or a receiver.

12 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

13 “(1) IN GENERAL.—A director or officer of a
14 regulated entity may be held personally liable for
15 monetary damages in any civil action by, on behalf
16 of, or at the request or direction of the Agency,
17 which action is prosecuted wholly or partially for the
18 benefit of the Agency—

19 “(A) acting as conservator or receiver of
20 such regulated entity, or

21 “(B) acting based upon a suit, claim, or
22 cause of action purchased from, assigned by, or
23 otherwise conveyed by such receiver or conser-
24 vator,

1 for gross negligence, including any similar conduct
2 or conduct that demonstrates a greater disregard of
3 a duty of care (than gross negligence) including in-
4 tentional tortious conduct, as such terms are defined
5 and determined under applicable State law.

6 “(2) NO LIMITATION.—Nothing in this para-
7 graph shall impair or affect any right of the Agency
8 under other applicable law.

9 “(h) DAMAGES.—In any proceeding related to any
10 claim against a director, officer, employee, agent, attorney,
11 accountant, appraiser, or any other party employed by or
12 providing services to a regulated entity, recoverable dam-
13 ages determined to result from the improvident or other-
14 wise improper use or investment of any assets of the regu-
15 lated entity shall include principal losses and appropriate
16 interest.

17 “(i) LIMITED-LIFE REGULATED ENTITIES.—

18 “(1) ORGANIZATION.—

19 “(A) PURPOSE.—If a regulated entity is in
20 default, or if the Agency anticipates that a reg-
21 ulated entity will default, the Agency may orga-
22 nize a limited-life regulated entity with those
23 powers and attributes of the regulated entity in
24 default or in danger of default that the Director
25 determines necessary, subject to the provisions

1 of this subsection. The Director shall grant a
2 temporary charter to the limited-life regulated
3 entity, and the limited-life regulated entity shall
4 operate subject to that charter.

5 “(B) AUTHORITIES.—Upon the creation of
6 a limited-life regulated entity under subpara-
7 graph (A), the limited-life regulated entity
8 may—

9 “(i) assume such liabilities of the reg-
10 ulated entity that is in default or in danger
11 of default as the Agency may, in its discre-
12 tion, determine to be appropriate, provided
13 that the liabilities assumed shall not exceed
14 the amount of assets of the limited-life reg-
15 ulated entity;

16 “(ii) purchase such assets of the regu-
17 lated entity that is in default, or in danger
18 of default, as the Agency may, in its dis-
19 cretion, determine to be appropriate; and

20 “(iii) perform any other temporary
21 function which the Agency may, in its dis-
22 cretion, prescribe in accordance with this
23 section.

24 “(2) CHARTER.—

1 “(A) CONDITIONS.—The Agency may
2 grant a temporary charter if the Agency deter-
3 mines that the continued operation of the regu-
4 lated entity in default or in danger of default
5 is in the best interest of the national economy
6 and the housing markets.

7 “(B) TREATMENT AS BEING IN DEFAULT
8 FOR CERTAIN PURPOSES.—A limited-life regu-
9 lated entity shall be treated as a regulated enti-
10 ty in default at such times and for such pur-
11 poses as the Agency may, in its discretion, de-
12 termine.

13 “(C) MANAGEMENT.—A limited-life regu-
14 lated entity, upon the granting of its charter,
15 shall be under the management of a board of
16 directors consisting of not fewer than 5 nor
17 more than 10 members appointed by the Agen-
18 cy.

19 “(D) BYLAWS.—The board of directors of
20 a limited-life regulated entity shall adopt such
21 bylaws as may be approved by the Agency.

22 “(3) CAPITAL STOCK.—No capital stock need
23 be paid into a limited-life regulated entity by the
24 Agency.

1 “(4) INVESTMENTS.—Funds of a limited-life
2 regulated entity shall be kept on hand in cash, in-
3 vested in obligations of the United States or obliga-
4 tions guaranteed as to principal and interest by the
5 United States, or deposited with the Agency, or any
6 Federal Reserve bank.

7 “(5) EXEMPT STATUS.—Notwithstanding any
8 other provision of Federal or State law, the limited-
9 life regulated entity, its franchise, property, and in-
10 come shall be exempt from all taxation now or here-
11 after imposed by the United States, by any territory,
12 dependency, or possession thereof, or by any State,
13 county, municipality, or local taxing authority.

14 “(6) WINDING UP.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), unless Congress authorizes the sale
17 of the capital stock of the limited-life regulated
18 entity, not later than 2 years after the date of
19 its organization, the Agency shall wind up the
20 affairs of the limited-life regulated entity.

21 “(B) EXTENSION.—The Director may, in
22 the discretion of the Director, extend the status
23 of the limited-life regulated entity for 3 addi-
24 tional 1-year periods.

25 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

1 “(A) IN GENERAL.—

2 “(i) TRANSFER OF ASSETS AND LI-
3 ABILITIES.—The Agency, as receiver, may
4 transfer any assets and liabilities of a reg-
5 ulated entity in default, or in danger of de-
6 fault, to the limited-life regulated entity in
7 accordance with paragraph (1).

8 “(ii) SUBSEQUENT TRANSFERS.—At
9 any time after a charter is transferred to
10 a limited-life regulated entity, the Agency,
11 as receiver, may transfer any assets and li-
12 abilities of such regulated entity in default,
13 or in danger in default, as the Agency
14 may, in its discretion, determine to be ap-
15 propriate in accordance with paragraph
16 (1).

17 “(iii) EFFECTIVE WITHOUT AP-
18 PROVAL.—The transfer of any assets or li-
19 abilities of a regulated entity in default, or
20 in danger of default, transferred to a lim-
21 ited-life regulated entity shall be effective
22 without any further approval under Fed-
23 eral or State law, assignment, or consent
24 with respect thereto.

1 “(8) PROCEEDS.—To the extent that available
2 proceeds from the limited-life regulated entity exceed
3 amounts required to pay obligations, such proceeds
4 may be paid to the regulated entity in default, or in
5 danger of default.

6 “(9) POWERS.—

7 “(A) IN GENERAL.—Each limited-life regu-
8 lated entity created under this subsection shall
9 have all corporate powers of, and be subject to
10 the same provisions of law as, the regulated en-
11 tity in default or in danger of default to which
12 it relates, except that—

13 “(i) the Agency may—

14 “(I) remove the directors of a
15 limited-life regulated entity; and

16 “(II) fix the compensation of
17 members of the board of directors and
18 senior management, as determined by
19 the Agency in its discretion, of a lim-
20 ited-life regulated entity;

21 “(ii) the Agency may indemnify the
22 representatives for purposes of paragraph
23 (1)(B), and the directors, officers, employ-
24 ees, and agents of a limited-life regulated

1 entity on such terms as the Agency deter-
2 mines to be appropriate; and

3 “(iii) the board of directors of a lim-
4 ited-life regulated entity—

5 “(I) shall elect a chairperson who
6 may also serve in the position of chief
7 executive officer, except that such per-
8 son shall not serve either as chair-
9 person or as chief executive officer
10 without the prior approval of the
11 Agency; and

12 “(II) may appoint a chief execu-
13 tive officer who is not also the chair-
14 person, except that such person shall
15 not serve as chief executive officer
16 without the prior approval of the
17 Agency.

18 “(B) STAY OF JUDICIAL ACTION.—Any ju-
19 dicial action to which a limited-life regulated
20 entity becomes a party by virtue of its acquisi-
21 tion of any assets or assumption of any liabil-
22 ities of a regulated entity in default shall be
23 stayed from further proceedings for a period of
24 up to 45 days at the request of the limited-life

1 regulated entity. Such period may be modified
2 upon the consent of all parties.

3 “(10) OBTAINING OF CREDIT AND INCURRING
4 OF DEBT.—

5 “(A) IN GENERAL.—The limited-life regu-
6 lated entity may obtain unsecured credit and
7 incur unsecured debt in the ordinary course of
8 business.

9 “(B) INABILITY TO OBTAIN CREDIT.—If
10 the limited-life regulated entity is unable to ob-
11 tain unsecured credit the Director may author-
12 ize the obtaining of credit or the incurring of
13 debt—

14 “(i) with priority over any or all ad-
15 ministrative expenses;

16 “(ii) secured by a lien on property
17 that is not otherwise subject to a lien; or

18 “(iii) secured by a junior lien on prop-
19 erty that is subject to a lien.

20 “(C) LIMITATIONS.—

21 “(i) IN GENERAL.—The Director,
22 after notice and a hearing, may authorize
23 the obtaining of credit or the incurring of
24 debt secured by a senior or equal lien on
25 property that is subject to a lien (other

1 than mortgages that collateralize the mort-
2 gage-backed securities issued or guaran-
3 teed by the regulated entity) only if—

4 “(I) the limited-life regulated en-
5 tity is unable to obtain such credit
6 otherwise; and

7 “(II) there is adequate protection
8 of the interest of the holder of the lien
9 on the property which such senior or
10 equal lien is proposed to be granted.

11 “(ii) BURDEN OF PROOF.—In any
12 hearing under this subsection, the Director
13 has the burden of proof on the issue of
14 adequate protection.

15 “(D) EFFECT ON DEBTS AND LIENS.—The
16 reversal or modification on appeal of an author-
17 ization under this paragraph to obtain credit or
18 incur debt, or of a grant under this section of
19 a priority or a lien, does not affect the validity
20 of any debt so incurred, or any priority or lien
21 so granted, to an entity that extended such
22 credit in good faith, whether or not such entity
23 knew of the pendency of the appeal, unless such
24 authorization and the incurring of such debt, or

1 the granting of such priority or lien, were
2 stayed pending appeal.

3 “(11) ISSUANCE OF PREFERRED DEBT.—A lim-
4 ited-life regulated entity may, subject to the ap-
5 proval of the Director and subject to such terms and
6 conditions as the Director may prescribe, issue
7 notes, bonds, or other debt obligations of a class to
8 which all other debt obligations of the limited-life
9 regulated entity shall be subordinate in right and
10 payment.

11 “(12) NO FEDERAL STATUS.—

12 “(A) AGENCY STATUS.—A limited-life reg-
13 ulated entity is not an agency, establishment, or
14 instrumentality of the United States.

15 “(B) EMPLOYEE STATUS.—Representa-
16 tives for purposes of paragraph (1)(B), interim
17 directors, directors, officers, employees, or
18 agents of a limited-life regulated entity are not,
19 solely by virtue of service in any such capacity,
20 officers or employees of the United States. Any
21 employee of the Agency or of any Federal in-
22 strumentality who serves at the request of the
23 Agency as a representative for purposes of
24 paragraph (1)(B), interim director, director, of-

1 ficer, employee, or agent of a limited-life regu-
2 lated entity shall not—

3 “(i) solely by virtue of service in any
4 such capacity lose any existing status as
5 an officer or employee of the United States
6 for purposes of title 5, United States Code,
7 or any other provision of law; or

8 “(ii) receive any salary or benefits for
9 service in any such capacity with respect to
10 a limited-life regulated entity in addition to
11 such salary or benefits as are obtained
12 through employment with the Agency or
13 such Federal instrumentality.

14 “(13) ADDITIONAL POWERS.—In addition to
15 any other powers granted under this subsection, a
16 limited-life regulated entity may—

17 “(A) extend a maturity date or change in
18 an interest rate or other term of outstanding
19 securities;

20 “(B) issue securities of the limited-life reg-
21 ulated entity, for cash, for property, for existing
22 securities, or in exchange for claims or inter-
23 ests, or for any other appropriate purposes; and

24 “(C) take any other action not inconsistent
25 with this section.

1 “(j) OTHER EXEMPTIONS.—When acting as a re-
2 ceiver, the following provisions shall apply with respect to
3 the Agency:

4 “(1) EXEMPTION FROM TAXATION.—The Agen-
5 cy, including its franchise, its capital, reserves, and
6 surplus, and its income, shall be exempt from all
7 taxation imposed by any State, country, munici-
8 pality, or local taxing authority, except that any real
9 property of the Agency shall be subject to State, ter-
10 ritorial, county, municipal, or local taxation to the
11 same extent according to its value as other real
12 property is taxed, except that, notwithstanding the
13 failure of any person to challenge an assessment
14 under State law of the value of such property, and
15 the tax thereon, shall be determined as of the period
16 for which such tax is imposed.

17 “(2) EXEMPTION FROM ATTACHMENT AND
18 LIENS.—No property of the Agency shall be subject
19 to levy, attachment, garnishment, foreclosure, or sale
20 without the consent of the Agency, nor shall any in-
21 voluntary lien attach to the property of the Agency.

22 “(3) EXEMPTION FROM PENALTIES AND
23 FINES.—The Agency shall not be liable for any
24 amounts in the nature of penalties or fines, includ-
25 ing those arising from the failure of any person to

1 pay any real property, personal property, probate, or
2 recording tax or any recording or filing fees when
3 due.

4 “(k) PROHIBITION OF CHARTER REVOCATION.—In
5 no case may a receiver appointed pursuant to this section
6 revoke, annul, or terminate the charter of a regulated enti-
7 ty.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) HOUSING AND COMMUNITY DEVELOPMENT
10 ACT OF 1992.—Subtitle B of title XIII of the Hous-
11 ing and Community Development Act of 1992 is
12 amended by striking sections 1369 (12 U.S.C.
13 4619), 1369A (12 U.S.C. 4620), and 1369B (12
14 U.S.C. 4621).

15 (2) FEDERAL HOME LOAN BANKS.—Section 25
16 of the Federal Home Loan Bank Act (12 U.S.C.
17 1445) is amended to read as follows:

18 **“SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.**

19 “Each Federal Home Loan Bank shall have succes-
20 sion until it is voluntarily merged with another Bank
21 under this Act, or until it is merged, reorganized, rehabili-
22 tated, liquidated, or otherwise wound up by the Director
23 in accordance with the provisions of section 1367 of the
24 Housing and Community Development Act of 1992, or by
25 further Act of Congress.”.

1 **SEC. 155. CONFORMING AMENDMENTS.**

2 Title XIII of the Housing and Community Develop-
3 ment Act of 1992, as amended by the preceding provisions
4 of this Act, is further amended—

5 (1) in sections 1365 (12 U.S.C. 4615) through
6 1369D (12 U.S.C. 4623), but not including section
7 1367 (12 U.S.C. 4617) as amended by section 154
8 of this Act—

9 (A) by striking “An enterprise” each place
10 such term appears and inserting “A regulated
11 entity”;

12 (B) by striking “an enterprise” each place
13 such term appears and inserting “a regulated
14 entity”; and

15 (C) by striking “the enterprise” each place
16 such term appears and inserting “the regulated
17 entity”;

18 (2) in section 1366 (12 U.S.C. 4616)—

19 (A) in subsection (b)(7), by striking “sec-
20 tion 1369 (excluding subsection (a)(1) and
21 (2))” and inserting “section 1367”; and

22 (B) in subsection (d), by striking “the en-
23 terprises” and inserting “the regulated enti-
24 ties”;

25 (3) in section 1368(d) (12 U.S.C. 4618(d)), by
26 striking “Committee on Banking, Finance and

1 Urban Affairs” and inserting “Committee on Finan-
2 cial Services”;

3 (4) in section 1369C (12 U.S.C. 4622)—

4 (A) in subsection (a)(4), by striking “ac-
5 tivities (including existing and new programs)”
6 and inserting “activities, services, undertakings,
7 and offerings (including existing and new prod-
8 ucts (as such term is defined in section
9 1321(f))”; and

10 (B) in subsection (c), by striking “any en-
11 terprise” and inserting “any regulated entity”;
12 and

13 (5) in subsections (a) and (d) of section 1369D,
14 by striking “section 1366 or 1367 or action under
15 section 1369)” each place such phrase appears and
16 inserting “section 1367”).

17 **Subtitle D—Enforcement Actions**

18 **SEC. 161. CEASE-AND-DESIST PROCEEDINGS.**

19 Section 1371 of the Housing and Community Devel-
20 opment Act of 1992 (12 U.S.C. 4631) is amended—

21 (1) by striking subsections (a) and (b) and in-
22 serting the following new subsections:

23 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
24 **TICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the
25 opinion of the Director, a regulated entity or any regulated

1 entity-affiliated party is engaging or has engaged, or the
2 Director has reasonable cause to believe that the regulated
3 entity or any regulated entity-affiliated party is about to
4 engage, in an unsafe or unsound practice in conducting
5 the business of the regulated entity or is violating or has
6 violated, or the Director has reasonable cause to believe
7 that the regulated entity or any regulated entity-affiliated
8 party is about to violate, a law, rule, or regulation, or any
9 condition imposed in writing by the Director in connection
10 with the granting of any application or other request by
11 the regulated entity or any written agreement entered into
12 with the Director, the Director may issue and serve upon
13 the regulated entity or such party a notice of charges in
14 respect thereof. The Director may not, pursuant to this
15 section, enforce compliance with any housing goal estab-
16 lished under subpart B of part 2 of subtitle A of this title,
17 with section 1336 or 1337 of this title, with subsection
18 (m) or (n) of section 309 of the Federal National Mort-
19 gage Association Charter Act (12 U.S.C. 1723a(m), (n)),
20 with subsection (e) or (f) of section 307 of the Federal
21 Home Loan Mortgage Corporation Act (12 U.S.C.
22 1456(e), (f)), or with paragraph (5) of section 10(j) of
23 the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).
24 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
25 regulated entity receives, in its most recent report of ex-

1 amination, a less-than-satisfactory rating for asset quality,
2 management, earnings, or liquidity, the Director may (if
3 the deficiency is not corrected) deem the regulated entity
4 to be engaging in an unsafe or unsound practice for pur-
5 poses of this subsection.”;

6 (2) in subsection (c)(2), by striking “enterprise,
7 executive officer, or director” and inserting “regu-
8 lated entity or regulated entity-affiliated party”; and

9 (3) in subsection (d)—

10 (A) in the matter preceding paragraph (1),
11 by striking “enterprise, executive officer, or di-
12 rector” and inserting “regulated entity or regu-
13 lated entity-affiliated party”;

14 (B) in paragraph (1)—

15 (i) by striking “an executive officer or
16 a director” and inserting “a regulated enti-
17 ty affiliated party”; and

18 (ii) by inserting “(including reim-
19 bursement of compensation under section
20 1318)” after “reimbursement”;

21 (C) in paragraph (6), by striking “and” at
22 the end;

23 (D) by redesignating paragraph (7) as
24 paragraph (8); and

1 (E) by inserting after paragraph (6) the
2 following new paragraph:

3 “(7) to effect an attachment on a regulated en-
4 tity or regulated entity-affiliated party subject to an
5 order under this section or section 1372; and”.

6 **SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

7 Section 1372 of the Housing and Community Devel-
8 opment Act of 1992 (12 U.S.C. 4632) is amended—

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

11 “(a) **GROUND FOR ISSUANCE.**—Whenever the Direc-
12 tor determines that the violation or threatened violation
13 or the unsafe or unsound practice or practices specified
14 in the notice of charges served upon the regulated entity
15 or any regulated entity-affiliated party pursuant to section
16 1371(a), or the continuation thereof, is likely to cause in-
17 solvency or significant dissipation of assets or earnings of
18 the regulated entity, or is likely to weaken the condition
19 of the regulated entity prior to the completion of the pro-
20 ceedings conducted pursuant to sections 1371 and 1373,
21 the Director may issue a temporary order requiring the
22 regulated entity or such party to cease and desist from
23 any such violation or practice and to take affirmative ac-
24 tion to prevent or remedy such insolvency, dissipation,
25 condition, or prejudice pending completion of such pro-

1 ceedings. Such order may include any requirement author-
2 ized under section 1371(d).”;

3 (2) in subsection (b), by striking “enterprise,
4 executive officer, or director” and inserting “regu-
5 lated entity or regulated entity-affiliated party”;

6 (3) in subsection (d)—

7 (A) by striking “An enterprise, executive
8 officer, or director” and inserting “A regulated
9 entity or regulated entity-affiliated party”; and

10 (B) by striking “the enterprise, executive
11 officer, or director” and inserting “the regu-
12 lated entity or regulated entity-affiliated party”;
13 and

14 (4) by striking subsection (e) and in inserting
15 the following new subsection:

16 “(e) ENFORCEMENT.—In the case of violation or
17 threatened violation of, or failure to obey, a temporary
18 cease-and-desist order issued pursuant to this section, the
19 Director may apply to the United States District Court
20 for the District of Columbia or the United States district
21 court within the jurisdiction of which the headquarters of
22 the regulated entity is located, for an injunction to enforce
23 such order, and, if the court determines that there has
24 been such violation or threatened violation or failure to

1 obey, it shall be the duty of the court to issue such injunc-
2 tion.”.

3 **SEC. 163. PREJUDGMENT ATTACHMENT.**

4 The Housing and Community Development Act of
5 1992 is amended by inserting after section 1375 (12
6 U.S.C. 4635) the following new section:

7 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

8 “(a) IN GENERAL.—In any action brought pursuant
9 to this title, or in actions brought in aid of, or to enforce
10 an order in, any administrative or other civil action for
11 money damages, restitution, or civil money penalties
12 brought pursuant to this title, the court may, upon appli-
13 cation of the Director or Attorney General, as applicable,
14 issue a restraining order that—

15 “(1) prohibits any person subject to the pro-
16 ceeding from withdrawing, transferring, removing,
17 dissipating, or disposing of any funds, assets or
18 other property; and

19 “(2) appoints a person on a temporary basis to
20 administer the restraining order.

21 “(b) STANDARD.—

22 “(1) SHOWING.—Rule 65 of the Federal Rules
23 of Civil Procedure shall apply with respect to any
24 proceeding under subsection (a) without regard to
25 the requirement of such rule that the applicant show

1 that the injury, loss, or damage is irreparable and
2 immediate.

3 “(2) STATE PROCEEDING.—If, in the case of
4 any proceeding in a State court, the court deter-
5 mines that rules of civil procedure available under
6 the laws of such State provide substantially similar
7 protections to a party’s right to due process as Rule
8 65 (as modified with respect to such proceeding by
9 paragraph (1)), the relief sought under subsection
10 (a) may be requested under the laws of such State.”.

11 **SEC. 164. ENFORCEMENT AND JURISDICTION.**

12 Section 1375 of the Housing and Community Devel-
13 opment Act of 1992 (12 U.S.C. 4635) is amended—

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

16 “(a) ENFORCEMENT.—The Director may, in the dis-
17 cretion of the Director, apply to the United States District
18 Court for the District of Columbia, or the United States
19 district court within the jurisdiction of which the head-
20 quarters of the regulated entity is located, for the enforce-
21 ment of any effective and outstanding notice or order
22 issued under this subtitle or subtitle B, or request that
23 the Attorney General of the United States bring such an
24 action. Such court shall have jurisdiction and power to

1 order and require compliance with such notice or order.”;

2 and

3 (2) in subsection (b), by striking “or 1376” and

4 inserting “1376, or 1377”.

5 **SEC. 165. CIVIL MONEY PENALTIES.**

6 Section 1376 of the Housing and Community Devel-

7 opment Act of 1992 (12 U.S.C. 4636) is amended—

8 (1) in subsection (a)—

9 (A) in the matter preceding paragraph (1),

10 by striking “, or any executive officer or direc-

11 tor” and inserting “or any regulated-entity af-

12 filiated party”; and

13 (B) in paragraph (1)—

14 (i) by striking “the Federal National

15 Mortgage Association Charter Act, the

16 Federal Home Loan Mortgage Corporation

17 Act” and inserting “any provision of any

18 of the authorizing statutes”;

19 (ii) by striking “or Act” and inserting

20 “or statute”;

21 (iii) by striking “or subsection” and

22 inserting “, subsection”; and

23 (iv) by inserting “, or paragraph (5)

24 or (12) of section 10(j) of the Federal

1 Home Loan Bank Act” before the semi-
2 colon at the end;

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

5 “(b) AMOUNT OF PENALTY.—

6 “(1) FIRST TIER.—Any regulated entity which,
7 or any regulated entity-affiliated party who—

8 “(A) violates any provision of this title,
9 any provision of any of the authorizing statutes,
10 or any order, condition, rule, or regulation
11 under any such title or statute, except that the
12 Director may not, pursuant to this section, en-
13 force compliance with any housing goal estab-
14 lished under subpart B of part 2 of subtitle A
15 of this title, with section 1336 or 1337 of this
16 title, with subsection (m) or (n) of section 309
17 of the Federal National Mortgage Association
18 Charter Act (12 U.S.C. 1723a(m), (n)), with
19 subsection (e) or (f) of section 307 of the Fed-
20 eral Home Loan Mortgage Corporation Act (12
21 U.S.C. 1456(e), (f)), or with paragraph (5) or
22 (12) of section 10(j) of the Federal Home Loan
23 Bank Act;

24 “(B) violates any final or temporary order
25 or notice issued pursuant to this title;

1 “(C) violates any condition imposed in
2 writing by the Director in connection with the
3 grant of any application or other request by
4 such regulated entity; or

5 “(D) violates any written agreement be-
6 tween the regulated entity and the Director,
7 shall forfeit and pay a civil money penalty of not
8 more than \$10,000 for each day during which such
9 violation continues.

10 “(2) SECOND TIER.—Notwithstanding para-
11 graph (1)—

12 “(A) if a regulated entity, or a regulated
13 entity-affiliated party—

14 “(i) commits any violation described
15 in any subparagraph of paragraph (1);

16 “(ii) recklessly engages in an unsafe
17 or unsound practice in conducting the af-
18 fairs of such regulated entity; or

19 “(iii) breaches any fiduciary duty; and

20 “(B) the violation, practice, or breach—

21 “(i) is part of a pattern of mis-
22 conduct;

23 “(ii) causes or is likely to cause more
24 than a minimal loss to such regulated enti-
25 ty; or

1 “(iii) results in pecuniary gain or
2 other benefit to such party,
3 the regulated entity or regulated entity-affiliated
4 party shall forfeit and pay a civil penalty of not
5 more than \$50,000 for each day during which such
6 violation, practice, or breach continues.

7 “(3) THIRD TIER.—Notwithstanding para-
8 graphs (1) and (2), any regulated entity which, or
9 any regulated entity-affiliated party who—

10 “(A) knowingly—

11 “(i) commits any violation or engages
12 in any conduct described in any subpara-
13 graph of paragraph (1);

14 “(ii) engages in any unsafe or un-
15 sound practice in conducting the affairs of
16 such regulated entity; or

17 “(iii) breaches any fiduciary duty; and

18 “(B) knowingly or recklessly causes a sub-
19 stantial loss to such regulated entity or a sub-
20 stantial pecuniary gain or other benefit to such
21 party by reason of such violation, practice, or
22 breach,

23 shall forfeit and pay a civil penalty in an amount not
24 to exceed the applicable maximum amount deter-

1 mined under paragraph (4) for each day during
2 which such violation, practice, or breach continues.

3 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
4 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—

5 The maximum daily amount of any civil penalty
6 which may be assessed pursuant to paragraph (3)
7 for any violation, practice, or breach described in
8 such paragraph is—

9 “(A) in the case of any person other than
10 a regulated entity, an amount not to exceed
11 \$2,000,000; and

12 “(B) in the case of any regulated entity,
13 \$2,000,000.”;

14 (3) in subsection (c)(1)(B), by striking “enter-
15 prise, executive officer, or director” and inserting
16 “regulated entity or regulated entity-affiliated
17 party”;

18 (4) in subsection (d), by striking the first sen-
19 tence and inserting the following: “If a regulated en-
20 tity or regulated entity-affiliated party fails to com-
21 ply with an order of the Director imposing a civil
22 money penalty under this section, after the order is
23 no longer subject to review as provided under sub-
24 section (c)(1) and section 1374, the Director may, in
25 the discretion of the Director, bring an action in the

1 United States District Court for the District of Co-
2 lumbia, or the United States district court within
3 the jurisdiction of which the headquarters of the reg-
4 ulated entity is located, to obtain a monetary judg-
5 ment against the regulated entity or regulated entity
6 affiliated party and such other relief as may be
7 available, or request that the Attorney General of
8 the United States bring such an action.”; and

9 (5) in subsection (g), by striking “subsection
10 (b)(3)” and inserting “this section, unless author-
11 ized by the Director by rule, regulation, or order”.

12 **SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.**

13 (a) IN GENERAL.—Subtitle C of title XIII of the
14 Housing and Community Development Act of 1992 is
15 amended—

16 (1) by redesignating sections 1377, 1378, 1379,
17 1379A, and 1379B (12 U.S.C. 4637–41) as sections
18 1379, 1379A, 1379B, 1379C, and 1379D, respec-
19 tively; and

20 (2) by inserting after section 1376 (12 U.S.C.
21 4636) the following new section:

22 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

23 “(a) AUTHORITY TO ISSUE ORDER.—Whenever the
24 Director determines that—

1 “(1) any regulated entity-affiliated party has,
2 directly or indirectly—

3 “(A) violated—

4 “(i) any law or regulation;

5 “(ii) any cease-and-desist order which
6 has become final;

7 “(iii) any condition imposed in writing
8 by the Director in connection with the
9 grant of any application or other request
10 by such regulated entity; or

11 “(iv) any written agreement between
12 such regulated entity and the Director;

13 “(B) engaged or participated in any unsafe
14 or unsound practice in connection with any reg-
15 ulated entity; or

16 “(C) committed or engaged in any act,
17 omission, or practice which constitutes a breach
18 of such party’s fiduciary duty;

19 “(2) by reason of the violation, practice, or
20 breach described in any subparagraph of paragraph
21 (1)—

22 “(A) such regulated entity has suffered or
23 will probably suffer financial loss or other dam-
24 age; or

1 “(B) such party has received financial gain
2 or other benefit by reason of such violation,
3 practice, or breach; and

4 “(3) such violation, practice, or breach—

5 “(A) involves personal dishonesty on the
6 part of such party; or

7 “(B) demonstrates willful or continuing
8 disregard by such party for the safety or sound-
9 ness of such regulated entity, the Director may
10 serve upon such party a written notice of the
11 Director’s intention to remove such party from
12 office or to prohibit any further participation by
13 such party, in any manner, in the conduct of
14 the affairs of any regulated entity.

15 “(b) SUSPENSION ORDER.—

16 “(1) SUSPENSION OR PROHIBITION AUTHOR-
17 ITY.—If the Director serves written notice under
18 subsection (a) to any regulated entity-affiliated party
19 of the Director’s intention to issue an order under
20 such subsection, the Director may—

21 “(A) suspend such party from office or
22 prohibit such party from further participation
23 in any manner in the conduct of the affairs of
24 the regulated entity, if the Director—

1 “(i) determines that such action is
2 necessary for the protection of the regu-
3 lated entity; and

4 “(ii) serves such party with written
5 notice of the suspension order; and

6 “(B) prohibit the regulated entity from re-
7 leasing to or on behalf of the regulated entity-
8 affiliated party any compensation or other pay-
9 ment of money or other thing of current or po-
10 tential value in connection with any resignation,
11 removal, retirement, or other termination of
12 employment or office of the party.

13 “(2) EFFECTIVE PERIOD.—Any suspension
14 order issued under this subsection—

15 “(A) shall become effective upon service;
16 and

17 “(B) unless a court issues a stay of such
18 order under subsection (g) of this section, shall
19 remain in effect and enforceable until—

20 “(i) the date the Director dismisses
21 the charges contained in the notice served
22 under subsection (a) with respect to such
23 party; or

1 “(ii) the effective date of an order
2 issued by the Director to such party under
3 subsection (a).

4 “(3) COPY OF ORDER.—If the Director issues a
5 suspension order under this subsection to any regu-
6 lated entity-affiliated party, the Director shall serve
7 a copy of such order on any regulated entity with
8 which such party is affiliated at the time such order
9 is issued.

10 “(c) NOTICE, HEARING, AND ORDER.—A notice of
11 intention to remove a regulated entity-affiliated party
12 from office or to prohibit such party from participating
13 in the conduct of the affairs of a regulated entity shall
14 contain a statement of the facts constituting grounds for
15 such action, and shall fix a time and place at which a hear-
16 ing will be held on such action. Such hearing shall be fixed
17 for a date not earlier than 30 days nor later than 60 days
18 after the date of service of such notice, unless an earlier
19 or a later date is set by the Director at the request of
20 (1) such party, and for good cause shown, or (2) the At-
21 torney General of the United States. Unless such party
22 shall appear at the hearing in person or by a duly author-
23 ized representative, such party shall be deemed to have
24 consented to the issuance of an order of such removal or
25 prohibition. In the event of such consent, or if upon the

1 record made at any such hearing the Director shall find
2 that any of the grounds specified in such notice have been
3 established, the Director may issue such orders of suspen-
4 sion or removal from office, or prohibition from participa-
5 tion in the conduct of the affairs of the regulated entity,
6 as it may deem appropriate, together with an order pro-
7 hibiting compensation described in subsection (b)(1)(B).
8 Any such order shall become effective at the expiration
9 of 30 days after service upon such regulated entity and
10 such party (except in the case of an order issued upon
11 consent, which shall become effective at the time specified
12 therein). Such order shall remain effective and enforceable
13 except to such extent as it is stayed, modified, terminated,
14 or set aside by action of the Director or a reviewing court.

15 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-
16 TIES.—Any person subject to an order issued under this
17 section shall not—

18 “(1) participate in any manner in the conduct
19 of the affairs of any regulated entity;

20 “(2) solicit, procure, transfer, attempt to trans-
21 fer, vote, or attempt to vote any proxy, consent, or
22 authorization with respect to any voting rights in
23 any regulated entity;

24 “(3) violate any voting agreement previously
25 approved by the Director; or

1 “(4) vote for a director, or serve or act as a
2 regulated entity-affiliated party.

3 “(e) INDUSTRY-WIDE PROHIBITION.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), any person who, pursuant to an order
6 issued under this section, has been removed or sus-
7 pended from office in a regulated entity or prohib-
8 ited from participating in the conduct of the affairs
9 of a regulated entity may not, while such order is in
10 effect, continue or commence to hold any office in,
11 or participate in any manner in the conduct of the
12 affairs of, any regulated entity.

13 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
14 TEN CONSENT.—If, on or after the date an order is
15 issued under this section which removes or suspends
16 from office any regulated entity-affiliated party or
17 prohibits such party from participating in the con-
18 duct of the affairs of a regulated entity, such party
19 receives the written consent of the Director, the
20 order shall, to the extent of such consent, cease to
21 apply to such party with respect to the regulated en-
22 tity described in the written consent. If the Director
23 grants such a written consent, it shall publicly dis-
24 close such consent.

1 “(3) VIOLATION OF PARAGRAPH (1) TREATED
2 AS VIOLATION OF ORDER.—Any violation of para-
3 graph (1) by any person who is subject to an order
4 described in such subsection shall be treated as a
5 violation of the order.

6 “(f) APPLICABILITY.—This section shall only apply
7 to a person who is an individual, unless the Director spe-
8 cifically finds that it should apply to a corporation, firm,
9 or other business enterprise.

10 “(g) STAY OF SUSPENSION AND PROHIBITION OF
11 REGULATED ENTITY-AFFILIATED PARTY.—Within 10
12 days after any regulated entity-affiliated party has been
13 suspended from office and/or prohibited from participation
14 in the conduct of the affairs of a regulated entity under
15 this section, such party may apply to the United States
16 District Court for the District of Columbia, or the United
17 States district court for the judicial district in which the
18 headquarters of the regulated entity is located, for a stay
19 of such suspension and/or prohibition and any prohibition
20 under subsection (b)(1)(B) pending the completion of the
21 administrative proceedings pursuant to the notice served
22 upon such party under this section, and such court shall
23 have jurisdiction to stay such suspension and/or prohibi-
24 tion.

1 “(h) SUSPENSION OR REMOVAL OF REGULATED EN-
2 TITY-AFFILIATED PARTY CHARGED WITH FELONY.—

3 “(1) SUSPENSION OR PROHIBITION.—

4 “(A) IN GENERAL.—Whenever any regu-
5 lated entity-affiliated party is charged in any
6 information, indictment, or complaint, with the
7 commission of or participation in a crime in-
8 volving dishonesty or breach of trust which is
9 punishable by imprisonment for a term exceed-
10 ing one year under State or Federal law, the
11 Director may, if continued service or participa-
12 tion by such party may pose a threat to the
13 regulated entity or impair public confidence in
14 the regulated entity, by written notice served
15 upon such party—

16 “(i) suspend such party from office or
17 prohibit such party from further participa-
18 tion in any manner in the conduct of the
19 affairs of any regulated entity; and

20 “(ii) prohibit the regulated entity
21 from releasing to or on behalf of the regu-
22 lated entity-affiliated party any compensa-
23 tion or other payment of money or other
24 thing of current or potential value in con-
25 nection with the period of any such sus-

1 pension or with any resignation, removal,
2 retirement, or other termination of employ-
3 ment or office of the party.

4 “(B) PROVISIONS APPLICABLE TO NO-
5 TICE.—

6 “(i) COPY.—A copy of any notice
7 under paragraph (1)(A) shall also be
8 served upon the regulated entity.

9 “(ii) EFFECTIVE PERIOD.—A suspen-
10 sion or prohibition under subparagraph (A)
11 shall remain in effect until the informa-
12 tion, indictment, or complaint referred to
13 in such subparagraph is finally disposed of
14 or until terminated by the Director.

15 “(2) REMOVAL OR PROHIBITION.—

16 “(A) IN GENERAL.—If a judgment of con-
17 viction or an agreement to enter a pretrial di-
18 version or other similar program is entered
19 against a regulated entity-affiliated party in
20 connection with a crime described in paragraph
21 (1)(A), at such time as such judgment is not
22 subject to further appellate review, the Director
23 may, if continued service or participation by
24 such party may pose a threat to the regulated
25 entity or impair public confidence in the regu-

1 lated entity, issue and serve upon such party an
2 order that—

3 “(i) removes such party from office or
4 prohibits such party from further partici-
5 pation in any manner in the conduct of the
6 affairs of the regulated entity without the
7 prior written consent of the Director; and

8 “(ii) prohibits the regulated entity
9 from releasing to or on behalf of the regu-
10 lated entity-affiliated party any compensa-
11 tion or other payment of money or other
12 thing of current or potential value in con-
13 nection with the termination of employ-
14 ment or office of the party.

15 “(B) PROVISIONS APPLICABLE TO
16 ORDER.—

17 “(i) COPY.—A copy of any order
18 under paragraph (2)(A) shall also be
19 served upon the regulated entity, where-
20 upon the regulated entity-affiliated party
21 who is subject to the order (if a director or
22 an officer) shall cease to be a director or
23 officer of such regulated entity.

24 “(ii) EFFECT OF ACQUITTAL.—A find-
25 ing of not guilty or other disposition of the

1 charge shall not preclude the Director from
2 instituting proceedings after such finding
3 or disposition to remove such party from
4 office or to prohibit further participation in
5 regulated entity affairs, and to prohibit
6 compensation or other payment of money
7 or other thing of current or potential value
8 in connection with any resignation, re-
9 moval, retirement, or other termination of
10 employment or office of the party, pursu-
11 ant to subsections (a), (d), or (e) of this
12 section.

13 “(iii) EFFECTIVE PERIOD.—Any no-
14 tice of suspension or order of removal
15 issued under this subsection shall remain
16 effective and outstanding until the comple-
17 tion of any hearing or appeal authorized
18 under paragraph (4) unless terminated by
19 the Director.

20 “(3) AUTHORITY OF REMAINING BOARD MEM-
21 BERS.—If at any time, because of the suspension of
22 one or more directors pursuant to this section, there
23 shall be on the board of directors of a regulated enti-
24 ty less than a quorum of directors not so suspended,
25 all powers and functions vested in or exercisable by

1 such board shall vest in and be exercisable by the di-
2 rector or directors on the board not so suspended,
3 until such time as there shall be a quorum of the
4 board of directors. In the event all of the directors
5 of a regulated entity are suspended pursuant to this
6 section, the Director shall appoint persons to serve
7 temporarily as directors in their place and stead
8 pending the termination of such suspensions, or
9 until such time as those who have been suspended
10 cease to be directors of the regulated entity and
11 their respective successors take office.

12 “(4) HEARING REGARDING CONTINUED PAR-
13 TICIPATION.—Within 30 days from service of any
14 notice of suspension or order of removal issued pur-
15 suant to paragraph (1) or (2) of this subsection, the
16 regulated entity-affiliated party concerned may re-
17 quest in writing an opportunity to appear before the
18 Director to show that the continued service to or
19 participation in the conduct of the affairs of the reg-
20 ulated entity by such party does not, or is not likely
21 to, pose a threat to the interests of the regulated en-
22 tity or threaten to impair public confidence in the
23 regulated entity. Upon receipt of any such request,
24 the Director shall fix a time (not more than 30 days
25 after receipt of such request, unless extended at the

1 request of such party) and place at which such party
2 may appear, personally or through counsel, before
3 one or more members of the Director or designated
4 employees of the Director to submit written mate-
5 rials (or, at the discretion of the Director, oral testi-
6 mony) and oral argument. Within 60 days of such
7 hearing, the Director shall notify such party whether
8 the suspension or prohibition from participation in
9 any manner in the conduct of the affairs of the reg-
10 ulated entity will be continued, terminated, or other-
11 wise modified, or whether the order removing such
12 party from office or prohibiting such party from fur-
13 ther participation in any manner in the conduct of
14 the affairs of the regulated entity, and prohibiting
15 compensation in connection with termination will be
16 rescinded or otherwise modified. Such notification
17 shall contain a statement of the basis for the Direc-
18 tor's decision, if adverse to such party. The Director
19 is authorized to prescribe such rules as may be nec-
20 essary to effectuate the purposes of this subsection.

21 “(i) HEARINGS AND JUDICIAL REVIEW.—

22 “(1) VENUE AND PROCEDURE.—Any hearing
23 provided for in this section shall be held in the Dis-
24 trict of Columbia or in the Federal judicial district
25 in which the headquarters of the regulated entity is

1 located, unless the party afforded the hearing con-
2 sents to another place, and shall be conducted in ac-
3 cordance with the provisions of chapter 5 of title 5,
4 United States Code. After such hearing, and within
5 90 days after the Director has notified the parties
6 that the case has been submitted to it for final deci-
7 sion, it shall render its decision (which shall include
8 findings of fact upon which its decision is predi-
9 cated) and shall issue and serve upon each party to
10 the proceeding an order or orders consistent with
11 the provisions of this section. Judicial review of any
12 such order shall be exclusively as provided in this
13 subsection. Unless a petition for review is timely
14 filed in a court of appeals of the United States, as
15 provided in paragraph (2), and thereafter until the
16 record in the proceeding has been filed as so pro-
17 vided, the Director may at any time, upon such no-
18 tice and in such manner as it shall deem proper,
19 modify, terminate, or set aside any such order. Upon
20 such filing of the record, the Director may modify,
21 terminate, or set aside any such order with permis-
22 sion of the court.

23 “(2) REVIEW OF ORDER.—Any party to any
24 proceeding under paragraph (1) may obtain a review
25 of any order served pursuant to paragraph (1)

1 (other than an order issued with the consent of the
2 regulated entity or the regulated entity-affiliated
3 party concerned, or an order issued under subsection
4 (h) of this section) by the filing in the United States
5 Court of Appeals for the District of Columbia Cir-
6 cuit or court of appeals of the United States for the
7 circuit in which the headquarters of the regulated
8 entity is located, within 30 days after the date of
9 service of such order, a written petition praying that
10 the order of the Director be modified, terminated, or
11 set aside. A copy of such petition shall be forthwith
12 transmitted by the clerk of the court to the Director,
13 and thereupon the Director shall file in the court the
14 record in the proceeding, as provided in section 2112
15 of title 28, United States Code. Upon the filing of
16 such petition, such court shall have jurisdiction,
17 which upon the filing of the record shall (except as
18 provided in the last sentence of paragraph (1)) be
19 exclusive, to affirm, modify, terminate, or set aside,
20 in whole or in part, the order of the Director. Re-
21 view of such proceedings shall be had as provided in
22 chapter 7 of title 5, United States Code. The judg-
23 ment and decree of the court shall be final, except
24 that the same shall be subject to review by the Su-

1 preme Court upon certiorari, as provided in section
2 1254 of title 28, United States Code.

3 “(3) PROCEEDINGS NOT TREATED AS STAY.—
4 The commencement of proceedings for judicial re-
5 view under paragraph (2) shall not, unless specifi-
6 cally ordered by the court, operate as a stay of any
7 order issued by the Director.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) 1992 ACT.—Section 1317(f) of the Housing
10 and Community Development Act of 1992 (12
11 U.S.C. 4517(f)) is amended by striking “section
12 1379B” and inserting “section 1379D”.

13 (2) FANNIE MAE CHARTER ACT.—The second
14 sentence of subsection (b) of section 308 of the Fed-
15 eral National Mortgage Association Charter Act (12
16 U.S.C. 1723(b)) is amended by striking “The” and
17 inserting “Except to the extent that action under
18 section 1377 of the Housing and Community Devel-
19 opment Act of 1992 temporarily results in a lesser
20 number, the”.

21 (3) FREDDIE MAC ACT.—The second sentence
22 of subparagraph (A) of section 303(a)(2) of the
23 Federal Home Loan Mortgage Corporation Act (12
24 U.S.C. 1452(a)(2)(A)) is amended by striking
25 “The” and inserting “Except to the extent that ac-

1 tion under section 1377 of the Housing and Commu-
2 nity Development Act of 1992 temporarily results in
3 a lesser number, the”.

4 **SEC. 167. CRIMINAL PENALTY.**

5 Subtitle C of title XIII of the Housing and Commu-
6 nity Development Act of 1992 (12 U.S.C. 4631 et seq.)
7 is amended by inserting after section 1377 (as added by
8 the preceding provisions of this Act) the following new sec-
9 tion:

10 **“SEC. 1378. CRIMINAL PENALTY.**

11 “Whoever, being subject to an order in effect under
12 section 1377, without the prior written approval of the Di-
13 rector, knowingly participates, directly or indirectly, in any
14 manner (including by engaging in an activity specifically
15 prohibited in such an order) in the conduct of the affairs
16 of any regulated entity shall, notwithstanding section
17 3571 of title 18, be fined not more than \$1,000,000, im-
18 prisoned for not more than 5 years, or both.”.

19 **SEC. 168. SUBPOENA AUTHORITY.**

20 Section 1379D(e) of the Housing and Community
21 Development Act of 1992 (12 U.S.C. 4641(e)), as so re-
22 designated by section 166(a)(1) of this Act, is further
23 amended—

1 (1) by striking “request the Attorney General
2 of the United States to” and inserting “, in the dis-
3 cretion of the Director,”;

4 (2) by inserting “or request that the Attorney
5 General of the United States bring such an action,”
6 after “District of Columbia,”; and

7 (3) by striking “or may, under the direction
8 and control of the Attorney General, bring such an
9 action”.

10 **SEC. 169. CONFORMING AMENDMENTS.**

11 Subtitle C of title XIII of the Housing and Commu-
12 nity Development Act of 1992 (12 U.S.C. 4631 et seq.),
13 as amended by the preceding provisions of this Act, is
14 amended—

15 (1) in section 1372(c)(1) (12 U.S.C. 4632(c)),
16 by striking “that enterprise” and inserting “that
17 regulated entity”;

18 (2) in section 1379 (12 U.S.C. 4637), as so re-
19 designated by section 166(a)(1) of this Act—

20 (A) by inserting “, or of a regulated entity-
21 affiliated party,” before “shall not affect”; and

22 (B) by striking “such director or executive
23 officer” each place such term appears and in-
24 serting “such director, executive officer, or reg-
25 ulated entity-affiliated party”;

1 (3) in section 1379A (12 U.S.C. 4638), as so
2 redesignated by section 166(a)(1) of this Act, by in-
3 sserting “or against a regulated entity-affiliated
4 party,” before “or impair”;

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

8 (5) by striking “an enterprise” each place such
9 term appears in such subtitle and inserting “a regu-
10 lated entity”;

11 (6) by striking “the enterprise” each place such
12 term appears in such subtitle and inserting “the reg-
13 ulated entity”; and

14 (7) by striking “any enterprise” each place such
15 term appears in such subtitle and inserting “any
16 regulated entity”.

17 **Subtitle E—General Provisions**

18 **SEC. 181. BOARDS OF ENTERPRISES.**

19 (a) FANNIE MAE.—

20 (1) IN GENERAL.—Section 308(b) of the Fed-
21 eral National Mortgage Association Charter Act (12
22 U.S.C. 1723(b)) is amended—

23 (A) in the first sentence, by striking
24 “eighteen persons, five of whom shall be ap-
25 pointed annually by the President of the United

1 States, and the remainder of whom” and insert-
2 ing “13 persons, or such other number that the
3 Director determines appropriate, who”;

4 (B) in the second sentence, by striking
5 “appointed by the President”;

6 (C) in the third sentence—

7 (i) by striking “appointed or”; and

8 (ii) by striking “, except that any
9 such appointed member may be removed
10 from office by the President for good
11 cause”;

12 (D) in the fourth sentence, by striking
13 “elective”; and

14 (E) by striking the fifth sentence.

15 (2) TRANSITIONAL PROVISION.—The amend-
16 ments made by paragraph (1) shall not apply to any
17 appointed position of the board of directors of the
18 Federal National Mortgage Association until the ex-
19 piration of the annual term for such position during
20 which the effective date under Section 185 occurs.

21 (b) FREDDIE MAC.—

22 (1) IN GENERAL.—Section 303(a)(2) of the
23 Federal Home Loan Mortgage Corporation Act (12
24 U.S.C. 1452(a)(2)) is amended—

25 (A) in subparagraph (A)—

1 (i) in the first sentence, by striking
2 “18 persons, 5 of whom shall be appointed
3 annually by the President of the United
4 States and the remainder of whom” and
5 inserting “13 persons, or such other num-
6 ber as the Director determines appropriate,
7 who”; and

8 (ii) in the second sentence, by striking
9 “appointed by the President of the United
10 States”;

11 (B) in subparagraph (B)—

12 (i) by striking “such or”; and

13 (ii) by striking “, except that any ap-
14 pointed member may be removed from of-
15 fice by the President for good cause”; and

16 (C) in subparagraph (C)—

17 (i) by striking the first sentence; and

18 (ii) by striking “elective”.

19 (2) TRANSITIONAL PROVISION.—The amend-
20 ments made by paragraph (1) shall not apply to any
21 appointed position of the board of directors of the
22 Federal Home Loan Mortgage Corporation until the
23 expiration of the annual term for such position dur-
24 ing which the effective date under Section 185 oc-
25 curs.

1 **SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY**
2 **AND SOUNDNESS, AND MISSION OF ENTER-**
3 **PRISES.**

4 Not later than the expiration of the 12-month period
5 beginning on the effective date under section 185, the Di-
6 rector of the Federal Housing Finance Agency shall sub-
7 mit a report to the Congress which shall include—

8 (1) a description of the portfolio holdings of the
9 enterprises (as such term is defined in section 1303
10 of the Housing and Community Development Act of
11 1992 (12 U.S.C. 4502) in mortgages (including
12 whole loans and mortgage-backed securities), non-
13 mortgages, and other assets;

14 (2) a description of the risk implications for the
15 enterprises of such holdings and the consequent risk
16 management undertaken by the enterprises (includ-
17 ing the use of derivatives for hedging purposes),
18 compared with off-balance sheet liabilities of the en-
19 terprises (including mortgage-backed securities guar-
20 anteed by the enterprises);

21 (3) an analysis of portfolio holdings for safety
22 and soundness purposes;

23 (4) an assessment of whether portfolio holdings
24 fulfill the mission purposes of the enterprises under
25 the Federal National Mortgage Association Charter

1 Act and the Federal Home Loan Mortgage Corpora-
2 tion Act; and

3 (5) an analysis of the potential systemic risk
4 implications for the enterprises, the housing and
5 capital markets, and the financial system of portfolio
6 holdings, and whether such holdings should be lim-
7 ited or reduced over time.

8 **SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.**

9 (a) 1992 ACT.—Title XIII of the Housing and Com-
10 munity Development Act of 1992 is amended by striking
11 section 1383 (12 U.S.C. 1451 note).

12 (b) TITLE 18, UNITED STATES CODE.—Section 1905
13 of title 18, United States Code, is amended by striking
14 “Office of Federal Housing Enterprise Oversight” and in-
15 serting “Federal Housing Finance Agency”.

16 (c) FLOOD DISASTER PROTECTION ACT OF 1973.—
17 Section 102(f)(3)(A) of the Flood Disaster Protection Act
18 of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by strik-
19 ing “Director of the Office of Federal Housing Enterprise
20 Oversight of the Department of Housing and Urban De-
21 velopment” and inserting “Director of the Federal Hous-
22 ing Finance Agency”.

23 (d) DEPARTMENT OF HOUSING AND URBAN DEVEL-
24 OPMENT ACT.—Section 5 of the Department of Housing

1 and Urban Development Act (42 U.S.C. 3534) is amended
2 by striking subsection (d).

3 (e) TITLE 5, UNITED STATES CODE.—

4 (1) DIRECTOR'S PAY RATE.—Section 5313 of
5 title 5, United States Code, is amended by striking
6 the item relating to the Director of the Office of
7 Federal Housing Enterprise Oversight, Department
8 of Housing and Urban Development and inserting
9 the following new item:

10 “Director of the Federal Housing Finance
11 Agency.”.

12 (2) EXCLUSION FROM SENIOR EXECUTIVE
13 SERVICE.—Section 3132(a)(1)(D) of title 5, United
14 States Code, is amended—

15 (A) by striking “the Federal Housing Fi-
16 nance Board,”; and

17 (B) by striking “the Office of Federal
18 Housing Enterprise Oversight of the Depart-
19 ment of Housing and Urban Development” and
20 inserting “the Federal Housing Finance Agen-
21 cy”.

22 (f) INSPECTOR GENERAL ACT OF 1978.—Section
23 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.
24 App.) is amended by striking “Federal Housing Finance
25 Board” and inserting “Federal Housing Finance Agency”.

1 (g) FEDERAL DEPOSIT INSURANCE ACT.—Section
2 11(t)(2)(A) of the Federal Deposit Insurance Act (12
3 U.S.C.1821(t)(2)(A)) is amended by adding at the end the
4 following new clause:

5 “(vii) The Federal Housing Finance
6 Agency.”.

7 (h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIA-
8 TIONS ACT.—Section 10001 of the 1997 Emergency Sup-
9 plemental Appropriations Act for Recovery From Natural
10 Disasters, and for Overseas Peacekeeping Efforts, Includ-
11 ing Those In Bosnia (42 U.S.C. 3548) is amended—

12 (1) by striking “the Government National Mort-
13 gage Association, and the Office of Federal Housing
14 Enterprise Oversight” and inserting “and the Gov-
15 ernment National Mortgage Association”; and

16 (2) by striking “, the Government National
17 Mortgage Association, or the Office of Federal
18 Housing Enterprise Oversight” and inserting “or
19 the Government National Mortgage Association”.

20 (i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Sec-
21 tion 302(b)(4) of the Cranston-Gonzalez National Afford-
22 able Housing Act (42 U.S.C. 12851(b)(4)) is amended by
23 striking “the chairperson of the Federal Housing Finance
24 Board” and inserting “the Director of the Federal Hous-
25 ing Finance Agency”.

1 **SEC. 184. STUDY OF ALTERNATIVE SECONDARY MARKET**
2 **SYSTEMS.**

3 (a) IN GENERAL.—The Director of the Federal
4 Housing Finance Agency, in consultation with the Board
5 of Governors of the Federal Reserve System, the Secretary
6 of the Treasury, and the Secretary of Housing and Urban
7 Development, shall conduct a comprehensive study of the
8 effects on financial and housing finance markets of alter-
9 natives to the current secondary market system for hous-
10 ing finance, taking into consideration changes in the struc-
11 ture of financial and housing finance markets and institu-
12 tions since the creation of the Federal National Mortgage
13 Association and the Federal Home Loan Mortgage Cor-
14 poration.

15 (b) CONTENTS.—The study under this section
16 shall—

17 (1) include, among the alternatives to the cur-
18 rent secondary market system analyzed—

19 (A) repeal of the chartering Acts for the
20 Federal National Mortgage Association and the
21 Federal Home Loan Mortgage Corporation;

22 (B) establishing bank-like mechanisms for
23 granting new charters for limited purposed
24 mortgage securitization entities;

25 (C) permitting the Director of the Federal
26 Housing Finance Agency to grant new charters

1 for limited purpose mortgage securitization en-
2 tities, which shall include analyzing the terms
3 on which such charters should be granted, in-
4 cluding whether such charters should be sold,
5 or whether such charters and the charters for
6 the Federal National Mortgage Association and
7 the Federal Home Loan Mortgage Corporation
8 should be taxed or otherwise assessed a mone-
9 tary price; and

10 (D) such other alternatives as the Director
11 considers appropriate;

12 (2) examine all of the issues involved in making
13 the transition to a completely private secondary
14 mortgage market system;

15 (3) examine the technological advancements the
16 private sector has made in providing liquidity in the
17 secondary mortgage market and how such advance-
18 ments have affected liquidity in the secondary mort-
19 gage market; and

20 (4) examine how taxpayers would be impacted
21 by each alternative system, including the complete
22 privatization of the Federal National Mortgage As-
23 sociation and the Federal Home Loan Mortgage
24 Corporation.

1 (c) REPORT.—The Director of the Federal Housing
2 Finance Agency shall submit a report to the Congress on
3 the study not later than the expiration of the 24-month
4 period beginning on the effective date under section 185.

5 **SEC. 185. EFFECTIVE DATE.**

6 Except as specifically provided otherwise in this title,
7 this title shall take effect on and the amendments made
8 by this title shall take effect on, and shall apply beginning
9 on, the expiration of the 6-month period beginning on the
10 date of the enactment of this Act.

11 **TITLE II—FEDERAL HOME LOAN**
12 **BANKS**

13 **SEC. 201. DEFINITIONS.**

14 Section 2 of the Federal Home Loan Bank Act (12
15 U.S.C. 1422) is amended—

16 (1) by striking paragraphs (1), (10), and (11);

17 (2) by redesignating paragraphs (2) through
18 (9) as paragraphs (1) through (8), respectively;

19 (3) by redesignating paragraphs (12) and (13)
20 as paragraphs (9) and (10), respectively; and

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

22 “(11) DIRECTOR.—The term ‘Director’ means
23 the Director of the Federal Housing Finance Agen-
24 cy.

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

3 **SEC. 202. DIRECTORS.**

4 (a) ELECTION.—Section 7 of the Federal Home Loan
5 Bank Act (12 U.S.C. 1427) is amended—

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

8 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
9 FLICTS OF INTEREST.—

10 “(1) IN GENERAL.—The management of each
11 Federal Home Loan Bank shall be vested in a board
12 of 13 directors, or such other number as the Direc-
13 tor determines appropriate, each of whom shall be a
14 citizen of the United States. All directors of a Bank
15 who are not independent directors pursuant to para-
16 graph (3) shall be elected by the members.

17 “(2) MEMBER DIRECTORS.—A majority of the
18 directors of each Bank shall be officers or directors
19 of a member of such Bank that is located in the dis-
20 trict in which such Bank is located.

21 “(3) INDEPENDENT DIRECTORS.—At least two-
22 fifths of the directors of each Bank shall be inde-
23 pendent directors, who shall be appointed by the Di-
24 rector of the Federal Housing Finance Agency from
25 a list of individuals recommended by the Federal

1 Housing Enterprise Board. The Federal Housing
2 Enterprise Board may recommend individuals who
3 are identified by the Board’s own independent proc-
4 ess or included on a list of individuals recommended
5 by the board of directors of the Bank involved,
6 which shall be submitted to the Federal Housing
7 Enterprise Board by such board of directors. The
8 number of individuals on any such list submitted by
9 a Bank’s board of directors shall be equal to at least
10 two times the number of independent directorships
11 to be filled. All independent directors appointed shall
12 meet the following criteria:

13 “(A) IN GENERAL.—Each independent di-
14 rector shall be a bona fide resident of the dis-
15 trict in which such Bank is located.

16 “(B) PUBLIC INTEREST DIRECTORS.—At
17 least 2 of the independent directors under this
18 paragraph of each Bank shall be representatives
19 chosen from organizations with more than a 2-
20 year history of representing consumer or com-
21 munity interests on banking services, credit
22 needs, housing, community development, eco-
23 nomic development, or financial consumer pro-
24 tections.

25 “(C) OTHER DIRECTORS.—

1 “(i) QUALIFICATIONS.—Each inde-
2 pendent director that is not a public inter-
3 est director under subparagraph (B) shall
4 have demonstrated knowledge of, or experi-
5 ence in, financial management, auditing
6 and accounting, risk management prac-
7 tices, derivatives, project development, or
8 organizational management, or such other
9 knowledge or expertise as the Director may
10 provide by regulation.

11 “(ii) CONSULTATION WITH BANKS.—
12 In appointing other directors to serve on
13 the board of a Federal home loan bank,
14 the Director of the Federal Housing Fi-
15 nance Agency may consult with each Fed-
16 eral home loan bank about the knowledge,
17 skills, and expertise needed to assist the
18 board in better fulfilling its responsibilities.

19 “(D) CONFLICTS OF INTEREST.—Notwith-
20 standing subsection (f)(2), an independent di-
21 rector under this paragraph of a Bank may not,
22 during such director’s term of office, serve as
23 an officer of any Federal Home Loan Bank or
24 as a director or officer of any member of a
25 Bank.

1 “(E) COMMUNITY DEMOGRAPHICS.—In ap-
2 pointing independent directors of a Bank pur-
3 suant to this paragraph, the Director shall take
4 into consideration the demographic makeup of
5 the community most served by the Affordable
6 Housing Program of the Bank pursuant to sec-
7 tion 10(j).”;

8 (2) in the first sentence of subsection (b), by
9 striking “elective directorship” and inserting “mem-
10 ber directorship established pursuant to subsection
11 (a)(2)”;

12 (3) in subsection (c)—

13 (A) by striking “elective” each place such
14 term appears and inserting “member”, ex-
15 cept—

16 (i) in the second sentence, the second
17 place such term appears; and

18 (ii) each place such term appears in
19 the fifth sentence;

20 (B) in the first sentence, by inserting after
21 “less than one” the following: “or two, as deter-
22 mined by the board of directors of the appro-
23 priate Federal home loan bank,”; and

24 (C) in the second sentence—

1 (i) by inserting “(A) except as pro-
2 vided in clause (B) of this sentence,” be-
3 fore “if at any time”; and

4 (ii) by inserting before the period at
5 the end the following: “, and (B) clause
6 (A) of this sentence shall not apply to the
7 directorships of any Federal home loan
8 bank resulting from the merger of any two
9 or more such banks”; and

10 (4) by striking “elective” each place such term
11 appears (except in subsections (c), (e), and (f)).

12 (b) TERMS.—

13 (1) IN GENERAL.—Section 7(d) of the Federal
14 Home Loan Bank Act (12 U.S.C. 1427(d)) is
15 amended—

16 (A) in the first sentence, by striking “3
17 years” and inserting “4 years”; and

18 (B) in the second sentence—

19 (i) by striking “Federal Home Loan
20 Bank System Modernization Act of 1999”
21 and inserting “Federal Housing Finance
22 Reform Act of 2007”; and

23 (ii) by striking “1/3” and inserting
24 “1/4”.

1 (2) SAVINGS PROVISION.—The amendments
2 made by paragraph (1) shall not apply to the term
3 of office of any director of a Federal home loan bank
4 who is serving as of the effective date of this title
5 under section 211, including any director elected to
6 fill a vacancy in any such office.

7 (c) CONTINUED SERVICE OF INDEPENDENT DIREC-
8 TORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of
9 the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2))
10 is amended—

11 (1) in the second sentence, by striking “or the
12 term of such office expires, whichever occurs first”;

13 (2) by adding at the end the following new sen-
14 tence: “An independent Bank director may continue
15 to serve as a director after the expiration of the
16 term of such director until a successor is ap-
17 pointed.”;

18 (3) in the paragraph heading, by striking “AP-
19 POINTED” and inserting “INDEPENDENT”; and

20 (4) by striking “appointive” each place such
21 term appears and inserting “independent”.

22 (d) CONFORMING AMENDMENTS.—Section 7(f)(3) of
23 the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(3))
24 is amended—

1 (1) in the paragraph heading, by striking
2 “ELECTED” and inserting “MEMBER”; and

3 (2) by striking “elective” each place such term
4 appears in the first and third sentences and insert-
5 ing “member”.

6 (e) COMPENSATION.—Subsection (i) of section 7 of
7 the Federal Home Loan Bank Act (12 U.S.C. 1427(i))
8 is amended to read as follows:

9 “(i) DIRECTORS’ COMPENSATION.—

10 “(1) IN GENERAL.—Each Federal home loan
11 bank may pay the directors on the board of directors
12 for the bank reasonable and appropriate compensa-
13 tion for the time required of such directors, and rea-
14 sonable and appropriate expenses incurred by such
15 directors, in connection with service on the board of
16 directors, in accordance with resolutions adopted by
17 the board of directors and subject to the approval of
18 the Director.

19 “(2) ANNUAL REPORT BY THE BOARD.—The
20 Director shall include, in the annual report sub-
21 mitted to the Congress pursuant to section 1319B of
22 the Federal Housing Enterprises Financial Safety
23 and Soundness Act of 1992, information regarding
24 the compensation and expenses paid by the Federal

1 home loan banks to the directors on the boards of
2 directors of the banks.”.

3 (f) **TRANSITION RULE.**—Any member of the board
4 of directors of a Federal Home Loan Bank serving as of
5 the effective date under section 211 may continue to serve
6 as a member of such board of directors for the remainder
7 of the term of such office as provided in section 7 of the
8 Federal Home Loan Bank Act, as in effect before such
9 effective date.

10 **SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVER-**
11 **SIGHT OF FEDERAL HOME LOAN BANKS.**

12 The Federal Home Loan Bank Act (12 U.S.C. 1421
13 et seq.), other than in provisions of that Act added or
14 amended otherwise by this Act, is amended—

15 (1) by striking sections 2A and 2B (12 U.S.C.
16 1422a, 1422b);

17 (2) in section 6 (12 U.S.C. 1426(b)(1))—

18 (A) in subsection (b)(1), in the matter pre-
19 ceding subparagraph (A), by striking “Finance
20 Board approval” and inserting “approval by the
21 Director”; and

22 (B) in each of subsections (c)(4)(B) and
23 (d)(2), by striking “Finance Board regulations”
24 each place that term appears and inserting
25 “regulations of the Director”;

1 (3) in section 8 (12 U.S.C. 1428), in the sec-
2 tion heading, by striking “BY THE BOARD”;

3 (4) in section 10(b) (12 U.S.C. 1430(b)), by
4 striking “by formal resolution”;

5 (5) in section 10 (12 U.S.C. 1430), by adding
6 at the end the following new subsection:

7 “(k) MONITORING AND ENFORCING COMPLIANCE
8 WITH AFFORDABLE HOUSING AND COMMUNITY INVEST-
9 MENT PROGRAM REQUIREMENTS.—The requirements
10 under subsection (i) and (j) that the Banks establish Com-
11 munity Investment and Affordable Housing Programs, re-
12 spectively, and contribute to the Affordable Housing Pro-
13 gram, shall be enforceable by the Director with respect
14 to the Banks in the same manner and to the same extent
15 as the housing goals under subpart B of part 2 of subtitle
16 A of title XIII of the Housing and Community Develop-
17 ment Act of 1992 (12 U.S.C. 4561 et seq.) are enforceable
18 under section 1336 of such Act with respect to the Federal
19 National Mortgage Association and the Federal Home
20 Loan Mortgage Corporation.”;

21 (6) in section 11 (12 U.S.C. 1431)—

22 (A) in subsection (b)—

23 (i) in the first sentence—

1 (I) by striking “The Board” and
2 inserting “The Office of Finance, as
3 agent for the Banks,”; and

4 (II) by striking “the Board” and
5 inserting “such Office”; and

6 (ii) in the second and fourth sen-
7 tences, by striking “the Board” each place
8 such term appears and inserting “the Of-
9 fice of Finance”;

10 (B) in subsection (c)—

11 (i) by striking “the Board” the first
12 place such term appears and inserting “the
13 Office of Finance, as agent for the
14 Banks,”; and

15 (ii) by striking “the Board” the sec-
16 ond place such term appears and inserting
17 “such Office”; and

18 (C) in subsection (f)—

19 (i) by striking the two commas after
20 “permit” and inserting “or”; and

21 (ii) by striking the comma after “re-
22 quire”;

23 (7) in section 15 (12 U.S.C. 1435), by inserting
24 “or the Director” after “the Board”;

1 (8) in section 18 (12 U.S.C. 1438), by striking
2 subsection (b);

3 (9) in section 21 (12 U.S.C. 1441)—

4 (A) in subsection (b)—

5 (i) in paragraph (5), by striking
6 “Chairperson of the Federal Housing Fi-
7 nance Board” and inserting “Director”;
8 and

9 (ii) in the heading for paragraph (8),
10 by striking “FEDERAL HOUSING FINANCE
11 BOARD” and inserting “DIRECTOR”; and

12 (B) in subsection (i), in the heading for
13 paragraph (2), by striking “FEDERAL HOUSING
14 FINANCE BOARD” and inserting “DIRECTOR”;

15 (10) in section 23 (12 U.S.C. 1443), by striking
16 “Board of Directors of the Federal Housing Finance
17 Board” and inserting “Director”;

18 (11) by striking “the Board” each place such
19 term appears in such Act (except in section 15 (12
20 U.S.C. 1435), section 21(f)(2) (12 U.S.C.
21 1441(f)(2)), subsections (a), (k)(2)(B)(i), and
22 (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), sub-
23 sections (f)(2)(C), and (k)(7)(B)(ii) of section 21B
24 (12 U.S.C. 1441b), and the first two places such

1 term appears in section 22 (12 U.S.C. 1442)) and
2 inserting “the Director”;

3 (12) by striking “The Board” each place such
4 term appears in such Act (except in sections 7(e)
5 (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b))
6 and inserting “The Director”;

7 (13) by striking “the Board’s” each place such
8 term appears in such Act and inserting “the Direc-
9 tor’s”;

10 (14) by striking “The Board’s” each place such
11 term appears in such Act and inserting “The Direc-
12 tor’s”;

13 (15) by striking “the Finance Board” each
14 place such term appears in such Act and inserting
15 “the Director”;

16 (16) by striking “Federal Housing Finance
17 Board” each place such term appears and inserting
18 “Director”;

19 (17) in section 11(i) (12 U.S.C. 1431(i), by
20 striking “the Chairperson of”; and

21 (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),
22 by striking “Chairperson of the”.

1 **SEC. 204. JOINT ACTIVITIES OF BANKS.**

2 Section 11 of the Federal Home Loan Bank Act (12
3 U.S.C. 1431) is amended by adding at the end the fol-
4 lowing new subsection:

5 “(1) **JOINT ACTIVITIES.**—Subject to the regulation of
6 the Director, any two or more Federal Home Loan Banks
7 may establish a joint office for the purpose of performing
8 functions for, or providing services to, the Banks on a
9 common or collective basis, or may require that the Office
10 of Finance perform such functions or services, but only
11 if the Banks are otherwise authorized to perform such
12 functions or services individually.”.

13 **SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL**
14 **HOME LOAN BANKS.**

15 (a) **IN GENERAL.**—The Federal Home Loan Bank
16 Act is amended by inserting after section 20 (12 U.S.C.
17 1440) the following new section:

18 **“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL**
19 **HOME LOAN BANKS.**

20 “(a) **REGULATORY AUTHORITY.**—The Director shall
21 prescribe such regulations as may be necessary to ensure
22 that each Federal Home Loan Bank has access to infor-
23 mation that the Bank needs to determine the nature and
24 extent of its joint and several liability.

25 “(b) **NO WAIVER OF PRIVILEGE.**—The Director shall
26 not be deemed to have waived any privilege applicable to

1 any information concerning a Federal Home Loan Bank
2 by transferring, or permitting the transfer of, that infor-
3 mation to any other Federal Home Loan Bank for the
4 purpose of enabling the recipient to evaluate the nature
5 and extent of its joint and several liability.”.

6 (b) REGULATIONS.—The regulations required under
7 the amendment made by subsection (a) shall be issued in
8 final form not later than 6 months after the effective date
9 under section 211 of this Act.

10 **SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY**
11 **MERGER.**

12 Section 26 of the Federal Home Loan Bank Act (12
13 U.S.C. 1446) is amended—

14 (1) by inserting “(a) REORGANIZATION.—” be-
15 fore “Whenever”; and

16 (2) by striking “liquidated or” each place such
17 phrase appears;

18 (3) by striking “liquidation or”; and

19 (4) by adding at the end the following new sub-
20 section:

21 “(b) VOLUNTARY MERGERS.—Any two or more
22 Banks may, with the approval of the Director, and the
23 approval of the boards of directors of the Banks involved,
24 merge. The Director shall promulgate regulations estab-
25 lishing the conditions and procedures for the consideration

1 and approval of any such voluntary merger, including the
2 procedures for Bank member approval.”.

3 **SEC. 207. SECURITIES AND EXCHANGE COMMISSION DIS-**
4 **CLOSURE.**

5 (a) IN GENERAL.—The Federal Home Loan Banks
6 shall be exempt from compliance with—

7 (1) sections 13(e), 14(a), 14(c), and 17A of the
8 Securities Exchange Act of 1934 and related Com-
9 mission regulations; and

10 (2) section 15 of that Act and related Securities
11 and Exchange Commission regulations with respect
12 to transactions in capital stock of the Banks.

13 (b) MEMBER EXEMPTION.—The members of the
14 Federal Home Loan Banks shall be exempt from compli-
15 ance with sections 13(d), 13(f), 13(g), 14(d), and 16 of
16 the Securities Exchange Act of 1934 and related Securi-
17 ties and Exchange Commission regulations with respect
18 to their ownership of, or transactions in, capital stock of
19 the Federal Home Loan Banks.

20 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

21 (1) CAPITAL STOCK.—The capital stock issued
22 by each of the Federal Home Loan Banks under
23 section 6 of the Federal Home Loan Bank Act are—

1 (A) exempted securities within the mean-
2 ing of section 3(a)(2) of the Securities Act of
3 1933; and

4 (B) “exempted securities” within the
5 meaning of section 3(a)(12)(A) of the Securities
6 Exchange Act of 1934.

7 (2) OTHER OBLIGATIONS.—The debentures,
8 bonds, and other obligations issued under section 11
9 of the Federal Home Loan Bank Act are—

10 (A) exempted securities within the mean-
11 ing of section 3(a)(2) of the Securities Act of
12 1933;

13 (B) “government securities” within the
14 meaning of section 3(a)(42) of the Securities
15 Exchange Act of 1934;

16 (C) excluded from the definition of “gov-
17 ernment securities broker” within section
18 3(a)(43) of the Securities Exchange Act of
19 1934;

20 (D) excluded from the definition of “gov-
21 ernment securities dealer” within section
22 3(a)(44) of the Securities Exchange Act of
23 1934; and

1 (E) “government securities” within the
2 meaning of section 2(a)(16) of the Investment
3 Company Act of 1940.

4 (d) EXEMPTION FROM REPORTING REQUIRE-
5 MENTS.—The Federal Home Loan Banks shall be exempt
6 from periodic reporting requirements pertaining to—

7 (1) the disclosure of related party transactions
8 that occur in the ordinary course of business of the
9 Banks with their members; and

10 (2) the disclosure of unregistered sales of equity
11 securities.

12 (e) TENDER OFFERS.—The Securities and Exchange
13 Commission’s rules relating to tender offers shall not
14 apply in connection with transactions in capital stock of
15 the Federal Home Loan Banks.

16 (f) REGULATIONS.—In issuing any final regulations
17 to implement provisions of this section, the Securities and
18 Exchange Commission shall consider the distinctive char-
19 acteristics of the Federal Home Loan Banks when evalu-
20 ating the accounting treatment with respect to the pay-
21 ment to Resolution Funding Corporation, the role of the
22 combined financial statements of the twelve Banks, the ac-
23 counting classification of redeemable capital stock, and the
24 accounting treatment related to the joint and several na-
25 ture of the obligations of the Banks.

1 **SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

2 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)
3 of section 2 of the Federal Home Loan Bank Act (12
4 U.S.C. 1422(10)), as so redesignated by section 201(3)
5 of this Act, is amended by striking “\$500,000,000” each
6 place such term appears and inserting “\$1,000,000,000”.

7 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
8 MENT ACTIVITIES.—Section 10(a) of the Federal Home
9 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

10 (1) in paragraph (2)(B)—

11 (A) by striking “and”; and

12 (B) by inserting “, and community devel-
13 opment activities” before the period at the end;

14 (2) in paragraph (3)(E), by inserting “or com-
15 munity development activities” after “agriculture,”;
16 and

17 (3) in paragraph (6)—

18 (A) by striking “and”; and

19 (B) by inserting “, and ‘community devel-
20 opment activities’ ” before “shall”.

21 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

22 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—
23 Section 1113(o) of the Right to Financial Privacy Act of
24 1978 (12 U.S.C. 3413(o)) is amended—

1 (1) by striking “Federal Housing Finance
2 Board” and inserting “Federal Housing Finance
3 Agency”; and

4 (2) by striking “Federal Housing Finance
5 Board’s” and inserting “Federal Housing Finance
6 Agency’s”.

7 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
8 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of
9 the Riegle Community Development and Regulatory Im-
10 provement Act of 1994 (12 U.S.C. 4716(e)) is amended
11 by striking “Federal Housing Finance Board” and insert-
12 ing “Federal Housing Finance Agency”.

13 (c) TITLE 18, UNITED STATES CODE.—Title 18,
14 United States Code, is amended by striking “Federal
15 Housing Finance Board” each place such term appears
16 in each of sections 212, 657, 1006, 1014, and inserting
17 “Federal Housing Finance Agency”.

18 (d) MARA ACT OF 1997.—Section 517(b)(4) of the
19 Multifamily Assisted Housing Reform and Affordability
20 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
21 ing “Federal Housing Finance Board” and inserting
22 “Federal Housing Finance Agency”.

23 (e) TITLE 44, UNITED STATES CODE.—Section
24 3502(5) of title 44, United States Code, is amended by

1 striking “Federal Housing Finance Board” and inserting
2 “Federal Housing Finance Agency”.

3 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
4 1004(d)(2)(D)(iii) of the Launching Our Communities’
5 Access to Local Television Act of 2000 (47 U.S.C.
6 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
7 eral Housing Enterprise Oversight, the Federal Housing
8 Finance Board” and inserting “Federal Housing Finance
9 Agency”.

10 (g) SARBANES-OXLEY ACT OF 2002.—Section
11 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002
12 (15 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting
13 “and the Director of the Federal Housing Finance Agen-
14 cy” after “Commission,”.

15 **SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE**
16 **FOR LONG-TERM CARE FACILITIES.**

17 The Comptroller General shall conduct a study of the
18 use of affordable housing programs of the Federal home
19 loan banks under section 10(j) of the Federal Home Loan
20 Bank Act to determine how and the extent to which such
21 programs are used to assist long-term care facilities for
22 low- and moderate-income individuals, and the effective-
23 ness and adequacy of such assistance in meeting the needs
24 of affected communities. The study shall examine the ap-
25 plicability of such use to the affordable housing programs

1 required to be established by the enterprises pursuant to
2 the amendment made by section 139 of this Act. The
3 Comptroller General shall submit a report to the Director
4 of the Federal Housing Finance Agency and the Congress
5 regarding the results of the study not later than the expi-
6 ration of the 1-year period beginning on the date of the
7 enactment of this Act. This section shall take effect on
8 the date of the enactment of this Act.

9 **SEC. 211. EFFECTIVE DATE.**

10 Except as specifically provided otherwise in this title,
11 this title shall take effect on and the amendments made
12 by this title shall take effect on, and shall apply beginning
13 on, the expiration of the 6-month period beginning on the
14 date of the enactment of this Act.

1 **TITLE III—TRANSFER OF FUNC-**
2 **TIONS, PERSONNEL, AND**
3 **PROPERTY OF OFFICE OF**
4 **FEDERAL HOUSING ENTER-**
5 **PRISE OVERSIGHT, FEDERAL**
6 **HOUSING FINANCE BOARD,**
7 **AND DEPARTMENT OF HOUS-**
8 **ING AND URBAN DEVELOP-**
9 **MENT**

10 **Subtitle A—Office of Federal**
11 **Housing Enterprise Oversight**

12 **SEC. 301. ABOLISHMENT OF OFHEO.**

13 (a) **IN GENERAL.**—Effective at the end of the 6-
14 month period beginning on the date of the enactment of
15 this Act, the Office of Federal Housing Enterprise Over-
16 sight of the Department of Housing and Urban Develop-
17 ment and the positions of the Director and Deputy Direc-
18 tor of such Office are abolished.

19 (b) **DISPOSITION OF AFFAIRS.**—During the 6-month
20 period beginning on the date of the enactment of this Act,
21 the Director of the Office of Federal Housing Enterprise
22 Oversight shall, for the purpose of winding up the affairs
23 of the Office of Federal Housing Enterprise Oversight and
24 in addition to carrying out its other responsibilities under
25 law—

1 (1) manage the employees of such Office and
2 provide for the payment of the compensation and
3 benefits of any such employee which accrue before
4 the effective date of the transfer of such employee
5 pursuant to section 303; and

6 (2) may take any other action necessary for the
7 purpose of winding up the affairs of the Office.

8 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

9 The amendments made by title I and the abolishment of
10 the Office of Federal Housing Enterprise Oversight under
11 subsection (a) of this section may not be construed to af-
12 fect the status of any employee of such Office as employ-
13 ees of an agency of the United States for purposes of any
14 other provision of law before the effective date of the
15 transfer of any such employee pursuant to section 303.

16 (d) USE OF PROPERTY AND SERVICES.—

17 (1) PROPERTY.—The Director of the Federal
18 Housing Finance Agency may use the property of
19 the Office of Federal Housing Enterprise Oversight
20 to perform functions which have been transferred to
21 the Director of the Federal Housing Finance Agency
22 for such time as is reasonable to facilitate the or-
23 derly transfer of functions transferred pursuant to
24 any other provision of this Act or any amendment
25 made by this Act to any other provision of law.

1 (2) AGENCY SERVICES.—Any agency, depart-
2 ment, or other instrumentality of the United States,
3 and any successor to any such agency, department,
4 or instrumentality, which was providing supporting
5 services to the Office of Federal Housing Enterprise
6 Oversight before the expiration of the period under
7 subsection (a) in connection with functions that are
8 transferred to the Director of the Federal Housing
9 Finance Agency shall—

10 (A) continue to provide such services, on a
11 reimbursable basis, until the transfer of such
12 functions is complete; and

13 (B) consult with any such agency to co-
14 ordinate and facilitate a prompt and reasonable
15 transition.

16 (e) SAVINGS PROVISIONS.—

17 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
18 TIONS NOT AFFECTED.—Subsection (a) shall not af-
19 fect the validity of any right, duty, or obligation of
20 the United States, the Director of the Office of Fed-
21 eral Housing Enterprise Oversight, or any other per-
22 son, which—

23 (A) arises under or pursuant to the title
24 XIII of the Housing and Community Develop-
25 ment Act of 1992, the Federal National Mort-

1 gage Association Charter Act, the Federal
2 Home Loan Mortgage Corporation Act, or any
3 other provision of law applicable with respect to
4 such Office; and

5 (B) existed on the day before the abolish-
6 ment under subsection (a) of this section.

7 (2) CONTINUATION OF SUITS.—No action or
8 other proceeding commenced by or against the Di-
9 rector of the Office of Federal Housing Enterprise
10 Oversight in connection with functions that are
11 transferred to the Director of the Federal Housing
12 Finance Agency shall abate by reason of the enact-
13 ment of this Act, except that the Director of the
14 Federal Housing Finance Agency shall be sub-
15 stituted for the Director of the Office of Federal
16 Housing Enterprise Oversight as a party to any
17 such action or proceeding.

18 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
19 **REGULATIONS.**

20 All regulations, orders, determinations, and resolu-
21 tions that—

22 (1) were issued, made, prescribed, or allowed to
23 become effective by—

24 (A) the Office of Federal Housing Enter-
25 prise Oversight; or

1 (B) a court of competent jurisdiction and
2 that relate to functions transferred by this sub-
3 title; and

4 (2) are in effect on the date of the abolishment
5 under section 301(a) of this Act, shall remain in ef-
6 fect according to the terms of such regulations, or-
7 ders, determinations, and resolutions, and shall be
8 enforceable by or against the Director of the Federal
9 Housing Finance Agency until modified, terminated,
10 set aside, or superseded in accordance with applica-
11 ble law by such Director, as the case may be, any
12 court of competent jurisdiction, or operation of law.

13 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
14 **OFHEO.**

15 (a) TRANSFER.—Each employee of the Office of Fed-
16 eral Housing Enterprise Oversight shall be transferred to
17 the Federal Housing Finance Agency for employment no
18 later than the date of the abolishment under section
19 301(a) of this Act and such transfer shall be deemed a
20 transfer of function for purposes of section 3503 of title
21 5, United States Code.

22 (b) GUARANTEED POSITIONS.—Each employee trans-
23 ferred under subsection (a) shall be guaranteed a position
24 with the same status, tenure, grade, and pay as that held
25 on the day immediately preceding the transfer. Each such

1 employee holding a permanent position shall not be invol-
2 untarily separated or reduced in grade or compensation
3 for 12 months after the date of transfer, except for cause
4 or, if the employee is a temporary employee, separated in
5 accordance with the terms of the appointment.

6 (c) APPOINTMENT AUTHORITY FOR EXCEPTED
7 SERVICE EMPLOYEES.—

8 (1) IN GENERAL.—In the case of employees oc-
9 cupying positions in the excepted service, any ap-
10 pointment authority established pursuant to law or
11 regulations of the Office of Personnel Management
12 for filling such positions shall be transferred, subject
13 to paragraph (2).

14 (2) DECLINE OF TRANSFER.—The Director of
15 the Federal Housing Finance Agency may decline a
16 transfer of authority under paragraph (1) (and the
17 employees appointed pursuant thereto) to the extent
18 that such authority relates to positions excepted
19 from the competitive service because of their con-
20 fidential, policy-making, policy-determining, or pol-
21 icy-advocating character.

22 (d) REORGANIZATION.—If the Director of the Fed-
23 eral Housing Finance Agency determines, after the end
24 of the 1-year period beginning on the date of the abolish-
25 ment under section 301(a), that a reorganization of the

1 combined work force is required, that reorganization shall
2 be deemed a major reorganization for purposes of afford-
3 ing affected employees retirement under section
4 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
5 Code.

6 (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee
7 of the Office of Federal Housing Enterprise Oversight ac-
8 cepting employment with the Director of the Federal
9 Housing Finance Agency as a result of a transfer under
10 subsection (a) may retain for 12 months after the date
11 such transfer occurs membership in any employee benefit
12 program of the Federal Housing Finance Agency or the
13 Office of Federal Housing Enterprise Oversight, as appli-
14 cable, including insurance, to which such employee belongs
15 on the date of the abolishment under section 301(a) if—

16 (1) the employee does not elect to give up the
17 benefit or membership in the program; and

18 (2) the benefit or program is continued by the
19 Director of the Federal Housing Finance Agency,

20 The difference in the costs between the benefits which
21 would have been provided by such agency and those pro-
22 vided by this section shall be paid by the Director of the
23 Federal Housing Finance Agency. If any employee elects
24 to give up membership in a health insurance program or
25 the health insurance program is not continued by such Di-

1 rector, the employee shall be permitted to select an alter-
2 nate Federal health insurance program within 30 days of
3 such election or notice, without regard to any other regu-
4 larly scheduled open season.

5 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

6 Upon the abolishment under section 301(a), all prop-
7 erty of the Office of Federal Housing Enterprise Oversight
8 shall transfer to the Director of the Federal Housing Fi-
9 nance Agency.

10 **Subtitle B—Federal Housing**
11 **Finance Board**

12 **SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
13 **NANCE BOARD.**

14 (a) **IN GENERAL.**—Effective at the end of the 6-
15 month period beginning on the date of enactment of this
16 Act, the Federal Housing Finance Board (in this title re-
17 ferred to as the “Board”) is abolished.

18 (b) **DISPOSITION OF AFFAIRS.**—During the 6-month
19 period beginning on the date of enactment of this Act, the
20 Board, for the purpose of winding up the affairs of the
21 Board and in addition to carrying out its other responsibil-
22 ities under law—

23 (1) shall manage the employees of such Board
24 and provide for the payment of the compensation
25 and benefits of any such employee which accrue be-

1 fore the effective date of the transfer of such em-
2 ployee under section 323; and

3 (2) may take any other action necessary for the
4 purpose of winding up the affairs of the Board.

5 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

6 The amendments made by titles I and II and the abolish-
7 ment of the Board under subsection (a) may not be con-
8 strued to affect the status of any employee of such Board
9 as employees of an agency of the United States for pur-
10 poses of any other provision of law before the effective
11 date of the transfer of any such employee under section
12 323.

13 (d) USE OF PROPERTY AND SERVICES.—

14 (1) PROPERTY.—The Director of the Federal
15 Housing Finance Agency may use the property of
16 the Board to perform functions which have been
17 transferred to the Director of the Federal Housing
18 Finance Agency for such time as is reasonable to fa-
19 cilitate the orderly transfer of functions transferred
20 under any other provision of this Act or any amend-
21 ment made by this Act to any other provision of law.

22 (2) AGENCY SERVICES.—Any agency, depart-
23 ment, or other instrumentality of the United States,
24 and any successor to any such agency, department,
25 or instrumentality, which was providing supporting

1 services to the Board before the expiration of the pe-
2 riod under subsection (a) in connection with func-
3 tions that are transferred to the Director of the
4 Federal Housing Finance Agency shall—

5 (A) continue to provide such services, on a
6 reimbursable basis, until the transfer of such
7 functions is complete; and

8 (B) consult with any such agency to co-
9 ordinate and facilitate a prompt and reasonable
10 transition.

11 (e) SAVINGS PROVISIONS.—

12 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
13 TIONS NOT AFFECTED.—Subsection (a) shall not af-
14 fect the validity of any right, duty, or obligation of
15 the United States, a member of the Board, or any
16 other person, which—

17 (A) arises under the Federal Home Loan
18 Bank Act or any other provision of law applica-
19 ble with respect to such Board; and

20 (B) existed on the day before the effective
21 date of the abolishment under subsection (a).

22 (2) CONTINUATION OF SUITS.—No action or
23 other proceeding commenced by or against the
24 Board in connection with functions that are trans-
25 ferred to the Director of the Federal Housing Fi-

1 nance Agency shall abate by reason of the enactment
2 of this Act, except that the Director of the Federal
3 Housing Finance Agency shall be substituted for the
4 Board or any member thereof as a party to any such
5 action or proceeding.

6 **SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN**
7 **REGULATIONS.**

8 (a) IN GENERAL.—All regulations, orders, deter-
9 minations, and resolutions described under subsection (b)
10 shall remain in effect according to the terms of such regu-
11 lations, orders, determinations, and resolutions, and shall
12 be enforceable by or against the Director of the Federal
13 Housing Finance Agency until modified, terminated, set
14 aside, or superseded in accordance with applicable law by
15 such Director, any court of competent jurisdiction, or op-
16 eration of law.

17 (b) APPLICABILITY.—A regulation, order, determina-
18 tion, or resolution is described under this subsection if it—

19 (1) was issued, made, prescribed, or allowed to
20 become effective by—

21 (A) the Board; or

22 (B) a court of competent jurisdiction and
23 relates to functions transferred by this subtitle;
24 and

1 (2) is in effect on the effective date of the abol-
2 ishment under section 321(a).

3 **SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
4 **FEDERAL HOUSING FINANCE BOARD.**

5 (a) TRANSFER.—Each employee of the Board shall
6 be transferred to the Federal Housing Finance Agency for
7 employment not later than the effective date of the abol-
8 ishment under section 321(a), and such transfer shall be
9 deemed a transfer of function for purposes of section 3503
10 of title 5, United States Code.

11 (b) GUARANTEED POSITIONS.—Each employee trans-
12 ferred under subsection (a) shall be guaranteed a position
13 with the same status, tenure, grade, and pay as that held
14 on the day immediately preceding the transfer. Each such
15 employee holding a permanent position shall not be invol-
16 untarily separated or reduced in grade or compensation
17 for 12 months after the date of transfer, except for cause
18 or, if the employee is a temporary employee, separated in
19 accordance with the terms of the appointment.

20 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
21 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

22 (1) IN GENERAL.—In the case of employees oc-
23 cupying positions in the excepted service or the Sen-
24 ior Executive Service, any appointment authority es-
25 tablished under law or by regulations of the Office

1 of Personnel Management for filling such positions
2 shall be transferred, subject to paragraph (2).

3 (2) DECLINE OF TRANSFER.—The Director of
4 the Federal Housing Finance Agency may decline a
5 transfer of authority under paragraph (1) to the ex-
6 tent that such authority relates to positions excepted
7 from the competitive service because of their con-
8 fidential, policymaking, policy-determining, or policy-
9 advocating character, and noncareer positions in the
10 Senior Executive Service (within the meaning of sec-
11 tion 3132(a)(7) of title 5, United States Code).

12 (d) REORGANIZATION.—If the Director of the Fed-
13 eral Housing Finance Agency determines, after the end
14 of the 1-year period beginning on the effective date of the
15 abolishment under section 321(a), that a reorganization
16 of the combined workforce is required, that reorganization
17 shall be deemed a major reorganization for purposes of
18 affording affected employees retirement under section
19 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
20 Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee of the Board
23 accepting employment with the Federal Housing Fi-
24 nance Agency as a result of a transfer under sub-
25 section (a) may retain for 12 months after the date

1 on which such transfer occurs membership in any
2 employee benefit program of the Federal Housing
3 Finance Agency or the Board, as applicable, includ-
4 ing insurance, to which such employee belongs on
5 the effective date of the abolishment under section
6 321(a) if—

7 (A) the employee does not elect to give up
8 the benefit or membership in the program; and

9 (B) the benefit or program is continued by
10 the Director of the Federal Housing Finance
11 Agency.

12 (2) COST DIFFERENTIAL.—The difference in
13 the costs between the benefits which would have
14 been provided by the Board and those provided by
15 this section shall be paid by the Director of the Fed-
16 eral Housing Finance Agency. If any employee elects
17 to give up membership in a health insurance pro-
18 gram or the health insurance program is not contin-
19 ued by such Director, the employee shall be per-
20 mitted to select an alternate Federal health insur-
21 ance program within 30 days after such election or
22 notice, without regard to any other regularly sched-
23 uled open season.

1 **SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.**

2 Upon the effective date of the abolishment under sec-
3 tion 321(a), all property of the Board shall transfer to
4 the Director of the Federal Housing Finance Agency.

5 **Subtitle C—Department of Housing**
6 **and Urban Development**

7 **SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNC-**
8 **TIONS.**

9 (a) **TERMINATION DATE.**—For purposes of this sub-
10 title, the term “termination date” means the date that oc-
11 curs 6 months after the date of the enactment of this Act.

12 (b) **DETERMINATION OF TRANSFERRED FUNCTIONS**
13 **AND EMPLOYEES.**—

14 (1) **IN GENERAL.**—Not later than the expira-
15 tion of the 3-month period beginning on the date of
16 the enactment of this Act, the Secretary, in con-
17 sultation with the Director of the Office of Federal
18 Housing Enterprise Oversight, shall determine—

19 (A) the functions, duties, and activities of
20 the Secretary of Housing and Urban Develop-
21 ment regarding oversight or regulation of the
22 enterprises under or pursuant to the author-
23 izing statutes, title XIII of the Housing and
24 Community Development Act of 1992, and any
25 other provisions of law, as in effect before the
26 date of the enactment of this Act, but not in-

1 including any such functions, duties, and activi-
2 ties of the Director of the Office of Federal
3 Housing Enterprise Oversight of the Depart-
4 ment of Housing and Urban Development and
5 such Office; and

6 (B) the employees of the Department of
7 Housing and Urban Development necessary to
8 perform such functions, duties, and activities.

9 (2) ENTERPRISE-RELATED FUNCTIONS.—For
10 purposes of this subtitle, the term “enterprise-re-
11 lated functions of the Department” means the func-
12 tions, duties, and activities of the Department of
13 Housing and Urban Development determined under
14 paragraph (1)(A).

15 (3) ENTERPRISE-RELATED EMPLOYEES.—For
16 purposes of this subtitle, the term “enterprise-re-
17 lated employees of the Department” means the em-
18 ployees of the Department of Housing and Urban
19 Development determined under paragraph (1)(B).

20 (c) DISPOSITION OF AFFAIRS.—During the 6-month
21 period beginning on the date of enactment of this Act, the
22 Secretary of Housing and Urban Development (in this
23 title referred to as the “Secretary”), for the purpose of
24 winding up the affairs of the Secretary regarding the en-
25 terprise-related functions of the Department of Housing

1 and Urban Development (in this title referred to as the
2 “Department”) and in addition to carrying out the Sec-
3 retary’s other responsibilities under law regarding such
4 functions—

5 (1) shall manage the enterprise-related employ-
6 ees of the Department and provide for the payment
7 of the compensation and benefits of any such em-
8 ployee which accrue before the effective date of the
9 transfer of any such employee under section 343;
10 and

11 (2) may take any other action necessary for the
12 purpose of winding up the enterprise-related func-
13 tions of the Department.

14 (d) STATUS OF EMPLOYEES BEFORE TRANSFER.—
15 The amendments made by titles I and II and the termi-
16 nation of the enterprise-related functions of the Depart-
17 ment under subsection (b) may not be construed to affect
18 the status of any employee of the Department as employ-
19 ees of an agency of the United States for purposes of any
20 other provision of law before the effective date of the
21 transfer of any such employee under section 343.

22 (e) USE OF PROPERTY AND SERVICES.—

23 (1) PROPERTY.—The Director of the Federal
24 Housing Finance Agency may use the property of
25 the Secretary to perform functions which have been

1 transferred to the Director of the Federal Housing
2 Finance Agency for such time as is reasonable to fa-
3 cilitate the orderly transfer of functions transferred
4 under any other provision of this Act or any amend-
5 ment made by this Act to any other provision of law.

6 (2) AGENCY SERVICES.—Any agency, depart-
7 ment, or other instrumentality of the United States,
8 and any successor to any such agency, department,
9 or instrumentality, which was providing supporting
10 services to the Secretary regarding enterprise-related
11 functions of the Department before the termination
12 date under subsection (a) in connection with such
13 functions that are transferred to the Director of the
14 Federal Housing Finance Agency shall—

15 (A) continue to provide such services, on a
16 reimbursable basis, until the transfer of such
17 functions is complete; and

18 (B) consult with any such agency to co-
19 ordinate and facilitate a prompt and reasonable
20 transition.

21 (f) SAVINGS PROVISIONS.—

22 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
23 TIONS NOT AFFECTED.—Subsection (a) shall not af-
24 fect the validity of any right, duty, or obligation of

1 the United States, the Secretary, or any other per-
2 son, which—

3 (A) arises under the authorizing statutes,
4 title XIII of the Housing and Community De-
5 velopment Act of 1992, or any other provision
6 of law applicable with respect to the Secretary,
7 in connection with the enterprise-related func-
8 tions of the Department; and

9 (B) existed on the day before the termi-
10 nation date under subsection (a).

11 (2) CONTINUATION OF SUITS.—No action or
12 other proceeding commenced by or against the Sec-
13 retary in connection with the enterprise-related func-
14 tions of the Department shall abate by reason of the
15 enactment of this Act, except that the Director of
16 the Federal Housing Finance Agency shall be sub-
17 stituted for the Secretary or any member thereof as
18 a party to any such action or proceeding.

19 **SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN**
20 **REGULATIONS.**

21 (a) IN GENERAL.—All regulations, orders, and deter-
22 minations described in subsection (b) shall remain in ef-
23 fect according to the terms of such regulations, orders,
24 determinations, and resolutions, and shall be enforceable
25 by or against the Director of the Federal Housing Finance

1 Agency until modified, terminated, set aside, or super-
2 seded in accordance with applicable law by such Director,
3 any court of competent jurisdiction, or operation of law.

4 (b) APPLICABILITY.—A regulation, order, or deter-
5 mination is described under this subsection if it—

6 (1) was issued, made, prescribed, or allowed to
7 become effective by—

8 (A) the Secretary; or

9 (B) a court of competent jurisdiction and
10 that relate to the enterprise-related functions of
11 the Department; and

12 (2) is in effect on the termination date under
13 section 341(a).

14 **SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES OF DE-**
15 **PARTMENT OF HOUSING AND URBAN DEVEL-**
16 **OPMENT.**

17 (a) TRANSFER.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), each enterprise-related employee of the
20 Department shall be transferred to the Federal
21 Housing Finance Agency for employment not later
22 than the termination date under section 341(a) and
23 such transfer shall be deemed a transfer of function
24 for purposes of section 3503 of title 5, United States
25 Code.

1 (2) **AUTHORITY TO DECLINE.**—An enterprise-
2 related employee of the Department may, in the dis-
3 cretion of the employee, decline transfer under para-
4 graph (1) to a position in the Federal Housing Fi-
5 nance Agency and shall be guaranteed a position in
6 the Department with the same status, tenure, grade,
7 and pay as that held on the day immediately pre-
8 ceding the date that such declination was made.
9 Each such employee holding a permanent position
10 shall not be involuntarily separated or reduced in
11 grade or compensation for 12 months after the date
12 that the transfer would otherwise have occurred, ex-
13 cept for cause or, if the employee is a temporary em-
14 ployee, separated in accordance with the terms of
15 the appointment.

16 (b) **GUARANTEED POSITIONS.**—Each enterprise-re-
17 lated employee of the Department transferred under sub-
18 section (a) shall be guaranteed a position with the same
19 status, tenure, grade, and pay as that held on the day
20 immediately preceding the transfer. Each such employee
21 holding a permanent position shall not be involuntarily
22 separated or reduced in grade or compensation for 12
23 months after the date of transfer, except for cause or, if
24 the employee is a temporary employee, separated in ac-
25 cordance with the terms of the appointment.

1 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
2 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

3 (1) IN GENERAL.—In the case of employees oc-
4 cupying positions in the excepted service or the Sen-
5 ior Executive Service, any appointment authority es-
6 tablished under law or by regulations of the Office
7 of Personnel Management for filling such positions
8 shall be transferred, subject to paragraph (2).

9 (2) DECLINE OF TRANSFER.—The Director of
10 the Federal Housing Finance Agency may decline a
11 transfer of authority under paragraph (1) (and the
12 employees appointed pursuant thereto) to the extent
13 that such authority relates to positions excepted
14 from the competitive service because of their con-
15 fidential, policymaking, policy-determining, or policy-
16 advocating character, and noncareer positions in the
17 Senior Executive Service (within the meaning of sec-
18 tion 3132(a)(7) of title 5, United States Code).

19 (d) REORGANIZATION.—If the Director of the Fed-
20 eral Housing Finance Agency determines, after the end
21 of the 1-year period beginning on the termination date
22 under section 341(a), that a reorganization of the com-
23 bined workforce is required, that reorganization shall be
24 deemed a major reorganization for purposes of affording

1 affected employees retirement under section 8336(d)(2) or
2 8414(b)(1)(B) of title 5, United States Code.

3 (e) EMPLOYEE BENEFIT PROGRAMS.—

4 (1) IN GENERAL.—Any enterprise-related em-
5 ployee of the Department accepting employment
6 with the Federal Housing Finance Agency as a re-
7 sult of a transfer under subsection (a) may retain
8 for 12 months after the date on which such transfer
9 occurs membership in any employee benefit program
10 of the Federal Housing Finance Agency or the De-
11 partment, as applicable, including insurance, to
12 which such employee belongs on the termination
13 date under section 341(a) if—

14 (A) the employee does not elect to give up
15 the benefit or membership in the program; and

16 (B) the benefit or program is continued by
17 the Director of the Federal Housing Finance
18 Agency.

19 (2) COST DIFFERENTIAL.—The difference in
20 the costs between the benefits which would have
21 been provided by the Department and those provided
22 by this section shall be paid by the Director of the
23 Federal Housing Finance Agency. If any employee
24 elects to give up membership in a health insurance
25 program or the health insurance program is not con-

110TH CONGRESS
1ST SESSION

H. R. 1427

AN ACT

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