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109TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 109–254

PROVIDING FOR CONSIDERATION OF H.R. 1461, FEDERAL HOUSING FINANCE REFORM ACT OF 2005

OCTOBER 25, 2005.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 509]

The Committee on Rules, having had under consideration House Resolution 509, by a record vote of 7 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 1461, the Federal Housing Finance Reform Act of 2005, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the committee amendment in the nature of a substitute.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against the bill is necessary because the bill, as reported by the Committee in Financial Services, is in violation of section 302 of the Congressional Budget Act, because the Financial Services Committee does not have any remaining allocation of direct spending. The proposed manager's amendment modifies the bill such that its revenue increases match or exceed its spending increases, thereby remedying the violation of the Budget Act.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 134

Date: October 25, 2005.
Measure: H.R. 1461, Federal Housing Finance Reform Act of 2005.
Motion by: Mr. McGovern.
Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Rep. Frank which permits non-profits that have affordable housing as among their primary purposes, rather than as their sole purpose, to qualify for funding from the Affordable Housing Funds. Allows a non-profit applicant to the Affordable Housing Fund or its affiliates to engage in non-partisan voter registration, voter identification, and get-out-the-vote activities using their own funds.
Results: Defeated 3 to 7.
Vote by Members: Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Dreier—Nay.

Rules Committee record vote No. 135

Date: October 25, 2005.
Measure: H.R. 1461, Federal Housing Finance Reform Act of 2005.
Motion by: Mr. Hastings of Washington.
Summary of motion: To report the rule.
Results: Agreed to 7 to 3.
Vote by Members: Hastings (WA)—Yea; Sessions—Yea; Putnam—Yea; Capito—Yea; Cole—Yea; Bishop—Yea; McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Dreier—Yea.

SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by the sponsors.)
1. Oxley: Manager's Amendment. Expands the affordable housing role of Fannie Mae and Freddie Mac. Includes new sections on new single-family and multi-family housing goals, duty to serve lower-income markets, and a new affordable housing fund with contributions from the enterprises. The amendment moves the effective

date of the entire bill up from one year to six months following enactment, including the affordable housing fund. For the first two years, Fannie Mae and Freddie Mac will contribute 3.5% of after-tax earnings, and subsequently 5% of such earnings. 25% of the GSEs' contributions will go annually to the Treasury Department to help payoff REFCorp (S&L) bonds, with the remainder going to the fund. The amendment sunsets the fund in five years, when its extension will be considered. During the first two years, priority consideration will be given to areas impacted by Hurricanes Katrina and Rita, thereafter priority in funding will be based on greatest impact, geographic diversity, timely action, as well as other disaster area needs. Eligible recipients—for-profit builders, state housing agencies, and non-profit organizations—must have a demonstrated capacity for affordable housing activities and make assurances that they will comply with limits on the use of funds. Funds may not be used for political activities, advocacy, lobbying, counseling services, travel expenses, and tax return advice. Non-profit recipients must have affordable housing as their primary purpose and, beginning one-year before applying, non-profits and their affiliates cannot have engaged in federal election activity, electioneering communication, or lobbying. Recipient use of funds will be closely tracked. Those misusing funds will be permanently barred from participation and must make reimbursement. The amendment also clarifies that federally recognized tribes and Alaskan Native villages qualify for funding under the Affordable Housing Fund established by the bill. In addition, the amendment includes a request from the Judiciary Committee to require consultation with the Attorney General by the GSE regulator when exercising new litigation authority, and from the Government Reform Committee to remove a FOIA exemption for the proceedings of the new agency's oversight board. The Federal Housing Finance Agency will establish an ombudsman to hear complaints and appeals from the GSEs and those having business relationships with the GSEs. H.R. 1461 consolidates current GSE regulation by two agencies and HUD into one agency. The manager's amendment clarifies that existing rules and regulations will remain in force during the six-month transition period and until changed by the new Federal Housing Finance Agency. (20 minutes)

2. Carson: Permits personal property loans secured by manufactured housing to be considered in determining whether a GSE has met its duty to serve underserved markets. Permits manufactured homes that have not been attached to ground owned by a manufactured home owner to count towards this goal. (10 minutes).

3. Davis, Artur (AL): Clarifies the definition of "rural" to make it consistent with the same definition in the Housing Act of 1949. Retains "micro-politan area" and "tribal trust lands" as part of the definition. (10 minutes).

4. Leach: Gives the newly created regulator (FHFA) greater authority to impose capital strictures on GSEs. (10 minutes).

5. Royce: Authorizes the regulator to require one or both of the enterprises to dispose or acquire assets or liabilities if the regulator deems those assets or liabilities to be a potential systemic risk to the housing market, the capital markets, or the financial system. (10 minutes).

6. Paul: Eliminates the ability of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank Board to borrow from the Treasury. (10 minutes).

7. Garrett: Strikes the language in the bill that raises the Conforming Loan Limit. (10 minutes).

8. Sanchez, Loretta: Adds "alternative credit scoring" as an additional element to the Annual Housing Report Regarding Regulated Entities (Section 1324). (10 minutes).

9. Kanjorski: Restores Presidential appointees on the boards of Fannie Mae and Freddie Mac by retaining the regulatory appointees on the boards of the Federal Home Loan Banks. Makes modifications to the boards of the Federal Home Loan Banks related to the number of regulatory appointees, the expertise of appointees in community and economic development, and the allowable continued service of appointees after the expiration of their terms. (10 minutes).

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE OXLEY OF OHIO, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

Page 6, strike lines 3 through 5 and insert the following new subparagraph:

"(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

"(i) the independent contractor knowingly or recklessly participates in—

"(I) any violation of any law or regulation;

"(II) any breach of fiduciary duty; or

"(III) any unsafe or unsound practice; and

"(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; and".

Page 12, line 8, strike the quotations marks and the last period.

Page 12, after line 8, insert the following new subsection:

"(g) OMBUDSMAN.—The Director shall establish, by regulation, an Office of the Ombudsman in the Agency. Such regulations shall provide that the Ombudsman will consider complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity and shall specify the duties and authority of the Ombudsman.".

Page 15, line 2, before the period insert ", or request that the Attorney General of the United States act on behalf of the Director".

Page 15, after line 2, insert the following new paragraph:

"(2) CONSULTATION WITH ATTORNEY GENERAL.—The Director shall provide notice to, and consult with, the Attorney General of the United States before taking an action under paragraph (1) of this subsection or under section 1344(a), 1345(d), 1348(c), 1372(e), 1375(a), 1376(d), or 1379D(c), except that, if the Director determines that any delay caused by such prior notice and consultation may adversely affect the safety and soundness responsibilities of the Director under this title, the Director shall notify the Attorney General as soon as reasonably possible after taking such action.".

Page 15, line 3, strike "(2)" and insert "(3)".

Page 25, line 13, after the period insert quotation marks and a period.

Page 25, strike lines 14 through 16.

Page 66, after line 12 add the following new subsection:

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

Page 102, after line 19, insert the following new subparagraph:

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

Page 102, line 20, strike "(A)" and insert "(B)".

Page 102, line 22, strike "(B)" and insert "(C)".

Strike line 17 on page 119 and all that follows through line 9 on page 138 and insert the following:

SEC. 128. AFFORDABLE HOUSING FUND.

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

"SEC. 1337. AFFORDABLE HOUSING FUND.

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

"(1) to increase homeownership for extremely low-and very low-income families;

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

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

"(4) to increase investment in public infrastructure development in connection with housing assisted under this section; and

"(5) to leverage investments from other sources in affordable housing and in public infrastructure development in connection with housing assisted under this section

"(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

"(1) IN GENERAL.—In accordance with regulations issued by the Director under subsection (k) and subject to paragraphs (2) and (3) of this subsection and subsection (f)(5), each enterprise shall allocate to the affordable housing fund established under subsection (a) by the enterprise—

"(A) in the year in which the effective date under section 185 of the Federal Housing Finance Reform Act of 2005 occurs, 3.5 percent of the after-tax income of the enterprise for the preceding year;

"(B) in the year after the year referred to in subparagraph (A), 3.5 percent of the after-tax income of the enterprise for the preceding year; and

"(C) in each of the first three years after the year referred to in subparagraph (B), 5 percent of the after-tax income of the enterprise for the preceding year.

"(2) LIMITATION.—An enterprise shall not be required to make an allocation for a year to the affordable housing fund of the enterprise established under subsection (a) unless the enterprise generated after-tax income for the preceding year.

"(3) SUSPENSION OF CONTRIBUTIONS.—The Director shall temporarily suspend the allocation under paragraph (1) by an enterprise to the affordable housing fund of the enterprise upon a finding by the Director that such allocations—

"(A) are contributing, or would contribute, to the financial instability of the enterprise;

"(B) are causing, or would cause, the enterprise to be classified as undercapitalized; or

"(C) are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan under section 1369C.

"(4) 5-YEAR SUNSET AND REPORT.—

"(A) SUNSET.—The enterprises shall not be required to make allocations to the affordable housing funds in the 5th year after the year in which the effective date under section 185 of the Federal Housing Finance Reform Act of 2005 occurs or in any year thereafter.

"(B) REPORT ON PROGRAM CONTINUANCE.—Not later 6 months before the end of the last year in which the allocations are required under paragraph (1), the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report making recommendations on whether the program under this section, including the requirement for the enterprises to make allocations to the affordable housing funds, should be extended and on any modifications for the program.

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

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

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

"(2) are selected for funding by the enterprise in accordance with the process and criteria for such selection established pursuant to subsection (k)(2)(C).

"(d) ELIGIBLE ACTIVITIES.—Amounts from the affordable housing fund of an enterprise shall be eligible for use, or for commitment for use, only for assistance for—

"(1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B), except that amounts provided from the

Fund may be used for the benefit only of extremely low- and very low-income families;

"(2) the production, preservation, and rehabilitation of housing for homeownership, including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs, that—

"(A) is available for purchase only for use as a principal residence by families that qualify both as—

"(i) extremely low- and very-low income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

"(ii) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this section be considered to refer to assistance from the affordable housing fund of the enterprise;

"(B) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act; and

"(C) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

"(3) public infrastructure development activities in connection with housing activities funded under paragraph (1) or (2).

"(e) ELIGIBLE RECIPIENTS.—

"(1) IN GENERAL.—Amounts from the affordable housing fund of an enterprise may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, a federally recognized tribe, an Alaskan Native village, and a faith-based organization) that—

"(A) has a demonstrated capacity for carrying out activities of the type that are to be funded with such affordable housing fund amounts; and

"(B) makes such assurances to the enterprise as the Director shall, by regulation, require to ensure that the recipient will comply with the requirements of this section (including, in the case of any organization, agency, or entity subject to paragraph (2), all of the requirements specified under such paragraph) during the entire period that begins upon selection of the recipient to receive amounts from the affordable housing fund of the enterprise and ending upon the conclusion of all activities under subsection (d) that are engaged in by the recipient and funded with such affordable housing fund amounts; and

"(C) in the case of any recipient who is not a for-profit entity or a government agency or authority, complies with all of the requirements under paragraph (2).

"(2) ADDITIONAL REQUIREMENTS FOR RECIPIENTS OTHER THAN FOR-PROFIT ENTITIES.—The requirements under this paragraph with respect to any organization, agency, or entity that is not

a for-profit entity or a government agency or authority are that the organization, agency, or entity—

"(A) shall have as its primary purpose the provision of affordable housing, as defined by the Director;

"(B) shall make such assurances to the enterprise as the Director shall, by regulation, require to ensure that such affordable housing fund amounts—

"(i) are used only to supplement, and to the extent practical, to increase the level of funds that would, in the absence of amounts made available from the affordable housing fund, be made available from other sources for the recipient to carry out activities of the type that are eligible under subsection (d) for funding with affordable housing fund amounts; and

"(ii) are not in any case used so as to supplant any funds from other sources that are made available for such activities of the recipient; and

"(C) does not, at the time during the period that begins 12 months before submission of an application for funding from the affordable housing fund of the enterprise and ending upon the expiration of the period referred to in paragraph (1)(B)—

"(i) engage in any Federal election activity, as such term is defined in paragraph (20) of section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(20)), except that, notwithstanding the 120-day limitation in subparagraph (A)(i) of such paragraph, such term shall include voter registration activity during any period;

"(ii) make any expenditure for any electioneering communication (as such term is defined in section 304(f)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3));

"(iii) make any lobbying expenditure, (as such term is defined in such section 501(h)(2)), except that this clause shall not apply to any such expenditure by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under subsection (a) of such section 501, to the extent that such expenditure does not exceed the amount under such Code for which such exemption may be denied; or

"(iv) maintain any affiliation with any organization, agency, or other entity that does not comply with clauses (i), (ii), and (iii) of this subparagraph.

"(3) AFFILIATION.—

"(A) IN GENERAL.—A recipient organization, agency, or entity shall be considered to be affiliated with another entity, for purposes of paragraph (2), if such recipient entity controls, is controlled by, or is under common control with such other entity.

"(B) CONTROL.—The existence of any of the following relationships between a recipient entity and another entity shall indicate that control exists for purposes of subparagraph (A):

"(i) OVERLAPPING BOARD MEMBERSHIP.—Individuals serve in a similar capacity as officers, executives, or staff of both the recipient entity and the other entity.

"(ii) SHARED RESOURCES.—The recipient entity and the other entity share office space, staff members, supplies, resources, or marketing materials, including Internet and other forms of public communication.

"(iii) FUNDING.—The recipient entity receives more than 20 percent of its total funding from such other entity or provides more than 20 percent of the total funding of such other entity.

"(iv) OTHER.—The recipient entity or such other entity exhibits any other indicia of substantial overlap or common control as may be set forth in regulation by the Director.

"(4) FOR PROFIT.—For purposes of this subsection, the term 'for-profit entity' means any entity any part of the net earnings of which inure to the benefit of any private shareholder, member, founder, contributor, or individual.

"(f) LIMITATIONS ON USE.—

"(1) REQUIRED AMOUNT FOR REFCORP.—Of any amounts allocated pursuant to subsection (b) in each year to the affordable housing fund of an enterprise, 25 percent shall be used as provided in section 21B(f)(2)(E) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(E)).

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

"(3) MAXIMUM AMOUNT FOR PUBLIC INFRASTRUCTURE DEVELOPMENT ACTIVITIES IN CONNECTION WITH AFFORDABLE HOUSING ACTIVITIES.—Of any amounts allocated pursuant to subsection (b) in each year to the affordable housing fund of an enterprise, not more than 12.5 percent may be used for activities under paragraph (3) of subsection (d).

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

"(5) USE OF RETURNS.—The Director shall, by regulation—

"(A) provide that any return on a loan or other investment of any amounts allocated pursuant to subsection (b) to the affordable housing fund of an enterprise shall count against the allocation required under subsection (b) to be made by the enterprise for the year following such return; and

"(B) establish such limitations as may be necessary to ensure that the amount or likelihood of return is not the primary consideration of awarding of allocated amounts to recipients.

"(6) PROHIBITED USES.—The Director shall—

"(A) by regulation, set forth prohibited uses of amounts from the affordable housing funds of the enterprises, which shall include use for—

"(i) political activities;
"(ii) advocacy;
"(iii) lobbying, whether directly or through other parties;
"(iv) counseling services;
"(v) travel expenses; and
"(vi) preparing or providing advice on tax returns;

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

"(i) the enterprise; or
"(ii) any recipient of amounts from the affordable housing fund; and

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

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

"(8) PROHIBITION ON CERTAIN REDISTRIBUTION OF AMOUNTS.—The Director shall, by regulation, ensure that amounts from the affordable housing fund of an enterprise awarded under this section to a national nonprofit housing intermediary are not redistributed to other nonprofit entities.

"(g) ACCOUNTABILITY OF RECIPIENTS AND ENTERPRISES.—

"(1) RECIPIENTS.—

"(A) TRACKING OF FUNDS.—The Director shall—

"(i) require each enterprise to develop and maintain a system to ensure that each recipient of amounts from the affordable housing fund of the enterprise uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

"(ii) establish minimum requirements for agreements, between the enterprises and recipients, regarding grants from the affordable housing funds of the enterprises, which shall include—

"(I) appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to ensure compliance with the limitations and requirements of this section and the regulation under this section; and

"(II) any other requirements that the Director determines are necessary to ensure appropriate grant administration and compliance.

"(B) MISUSE OF FUNDS.—If an enterprise determines that any recipient of amounts from the affordable housing fund of the enterprise has used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided—

"(i) the enterprise shall notify the Director of such misuse of amounts and the actions taken under this subparagraph with respect to the recipient;

"(ii) such recipient shall be ineligible in perpetuity to receive of any further amounts from the affordable housing fund of such enterprise; and

"(iii) the enterprise shall require the recipient to reimburse the enterprise for such misused amounts and return to the enterprise any amounts from the affordable housing fund of the enterprise that remain unused or uncommitted for use.

The remedies under this subparagraph are in addition to any other remedies that may be available under law.

"(2) ENTERPRISES.—

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

"(B) REPLENISHMENT.—If the Director determines that an activity funded by an enterprise with amounts from the affordable housing fund of the enterprise is not consistent with the criteria established pursuant to subsection (k)(2)(C), the Director shall require the enterprise to allocate to such affordable housing fund (in addition to amounts allocated in compliance with subsection (b)) an amount equal to the sum of the amounts from the affordable housing fund used and further committed for use for such activity.

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

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

"(j) AFFORDABLE HOUSING BOARD.—

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

"(A) the Director, or the Director's designee;

"(B) the Secretary of Housing and Urban Development, or the Secretary's designee;

"(C) the Secretary of Agriculture, or the Secretary's designee;

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

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

"(2) TERMS.—

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

"(B) INITIAL APPOINTEES.—The Director shall appoint the initial members of the affordable housing board not later than the expiration of the 60-day period beginning on the effective date under section 185 of the Federal Housing Finance Reform Act of 2005. As designated by the Director at the time of appointment, of the members of the affordable housing board first appointed pursuant to paragraph (1) (but not including members appointed pursuant to subparagraphs (A), (B), and (C))—

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

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

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

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

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

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

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

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

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

"(3) DUTIES.—The duties of the affordable housing board shall be—

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

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

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

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

"(C) to review the reports submitted by the enterprises pursuant to subsection (g)(1) to determine whether the ac-

tivities funded using amounts from the affordable housing funds of the enterprises comply with the regulations issued pursuant to subsection (k)(2)(C) and inform the Director of such determinations, for purposes of subsection (g)(2).

"(4) MEETINGS.—The board shall meet not less than quarterly, except that during the 2-year period referred to in paragraph (7), the board shall meet only as the Director determines necessary.

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

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

"(7) TERMINATION.— The board shall terminate upon the expiration of the 2-year period that begins upon the conclusion of the last year referred to in subsection (b)(1)(C).

"(k) REGULATIONS.—

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

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

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

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

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

"(i) selection shall be based upon specific criteria, which shall provide that—

"(I) in any selection of activities occurring during the 2-year period beginning on the effective date under section 185 of the Federal Housing Finance Reform Act of 2005, additional weight shall be given to applications for eligible activities under subsection (d) that—

"(aa) are to be carried out in any area that was declared by the President as a major disaster area pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act as result of Hurricane Katrina or Hurricane Rita in 2005; or

"(bb) the enterprise determines, in accordance with regulations issued by the Director, serve persons significantly affected by the occurrence of Hurricane Katrina or Hurricane Rita in 2005 (including persons displaced as a result of such hurricanes and persons whose affordable housing opportunities are signifi-

cantly affected by the presence of persons displaced as a result of such hurricanes); and

"(II) taking into consideration any additional weight afforded applications pursuant to subclause (I), priority in funding shall be based upon—

"(aa) whether activities are to be carried out in any area that, not more than 2 years before such selection, was declared by the President as a major disaster area pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

"(bb) greatest impact;

"(cc) geographic diversity;

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

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

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

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

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

"(E) limitations on public infrastructure development activities that are eligible pursuant to subsection (d)(3) for funding with amounts from the affordable housing funds of the enterprises and requirements for the connection between such activities and housing activities funded under paragraph (1) or (2) of subsection (d).

"(l) ENFORCEMENT.—Compliance by the enterprises with the requirements under this section shall be enforceable under subpart C. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.".

(b) CONTRIBUTIONS FOR TRANSITION PERIOD.—

(1) RESERVATION AND CONTRIBUTION; PROHIBITION OF DOUBLE CONTRIBUTIONS.—If the date of the enactment of this Act does not occur in the same calendar year as the effective date under section 185 of this Act, each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992) shall, in the year that such date of enactment occurs, reserve for contribution to the affordable housing fund to be established by the enterprise pursuant to section 1337 of

such Act (as amended by subsection (a) of this section) an amount equal to 3.5 percent of the after-tax income of the enterprise for the preceding year. Upon the establishment of such affordable housing fund, each enterprise shall allocate to such fund the amounts reserved under this paragraph by the enterprise.

(2) EXCEPTION TO DEADLINE FOR COMMITMENT.—Section 1337(f)(4) of the Housing and Community Development Act of 1992 (as amended by subsection (a) of this section) shall not apply to any amounts allocated to the affordable housing fund of an enterprise pursuant to paragraph (1) of this subsection.

(3) AFTER-TAX INCOME.—For purposes of this subsection, the term "after-tax income" has the meaning provided in subsection (b)(5) of the new section 1337 to be inserted by the amendment made by subsection (a) of this section.

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

(c) REFCORP PAYMENTS.—Section 21B(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)) is amended—

(1) in subparagraph (E), by striking "and (D)" and inserting "(D), and (E)";

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) PAYMENTS BY FANNIE MAE AND FREDDIE MAC.—To the extent that the amounts available pursuant to subparagraphs (A), (B), (C), and (D) are insufficient to cover the amount of interest payments, each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (42 U.S.C. 4502)) shall transfer to the Funding Corporation in each calendar year the amounts allocated for use under this subparagraph pursuant to section 1337(f)(1) of such Act.".

Page 238, strike line 6 and insert the following:

(b) CONFORMING AMENDMENTS.—

(1) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Subtitle B of title

Page 238, after line 10, insert the following new paragraph:

(2) FEDERAL HOME LOAN BANKS.—Section 25 of the Federal Home Loan Bank Act (12 U.S.C. 1445) is amended by striking "Board under this Act" and inserting "Director under section 1367 of the Housing and Community Development Act of 1992".

Page 248, line 4, after the semicolon insert "or".

Page 248, strike lines 5 through 11 and insert the following:

"(D) violates any written agreement between the regulated entity and the Director;

shall forfeit and pay a civil money penalty of not more than $10,000 for each day during which such violation continues.".

Page 249, strike lines 4 through 10 and insert the following:

"(iii) results in pecuniary gain or other benefit to such party,

the regulated entity or regulated entity-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for

each day during which such violation, practice, or breach continues.".

Strike line 22 on page 249 and all that follows through line 5 on page 250, and insert the following:

> "(B) knowingly or recklessly causes a substantial loss to such regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,
>
> shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.".

Page 278, line 21, after the comma insert "this title shall take effect on and".

Page 278, line 23, strike "1-year" and insert "6-month".

Page 296, line 19, after the period insert the following: "This section shall take effect on the date of the enactment of this Act."

Page 296, line 21, after the comma insert "this title shall take effect on and".

Page 296, line 23, strike "1-year" and insert "6-month".

Page 297, line 13, strike "1-year" and insert "6-month"

Page 297, line 19, strike "1-year" and insert "6-month".

Page 297, line 22, strike "solely".

Page 297, line 24, after "sight" insert "and in addition to carrying out its other responsibilities under law".

Page 302, line 25, strike "201(a)" and insert "301(a)".

Page 303, line 14, strike "201(a)" and insert "301(a)".

Page 304, line 13, strike "1-year" and insert "6-month".

Page 304, line 17, strike "1-year" and insert "6-month".

Page 304, line 19, strike "solely".

Page 304, line 20, after "Board" insert "and in addition to carrying out its other responsibilities under law".

Page 305, lines 23 and 24, strike "1-year".

Page 311, line 7, strike "one year" and insert "6 months".

Page 311, line 11, strike "6-month" and insert "3-month".

Page 312, line 17, strike "1-year" and insert "6-month".

Page 312, line 20, strike "solely".

Page 312, line 24, strike "ment)'" and insert "ment') and in addition to carrying out the Secretary's other responsibilities under law regarding such functions".

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARSON OF INDIANA, OR HER DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Page 114, line 6, strike the quotation marks and the last period.

Page 114, after line 6, insert the following new paragraph:

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

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DAVIS OF ALABAMA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Page 107, strike lines 20 through 24 and insert the following new paragraph:

"(26) RURAL AREA.—The term 'rural area' has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490), except that such term includes micropolitan areas and tribal trust lands.".

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LEACH OF IOWA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Strike line 21 on page 49 and all that follows through line 4 on page 51 and insert the following new subsections:

"(c) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 1319G(b) or by order—

"(1) establish a minimum capital level, for any particular enterprise, that is higher than the level specified in subsection (a) or, for any particular Federal home loan bank, that is higher than the level specified in subsection (b), as the Director deems necessary or appropriate taking into consideration the particular circumstances of the particular regulated entity, which may include any prudential standards necessary to ensure long-term institutional viability and competitive equity in the market; or

"(2) establish a minimum capital level for the enterprises, for the Federal home loans banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal home loan banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

"(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section may be construed to limit the authority of the Director to require a regulated entity to raise or maintain capital under other provisions of law, or pursuant to prompt corrective action or administrative enforcement actions, or in connection with conservatorship or receivership powers.".

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROYCE OF CALIFORNIA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Page 53, line 20, after "enterprise" insert the following: ", with mitigating systemic risk to the housing or capital markets or the financial system,".

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PAUL OF TEXAS, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Page 64, after line 12, insert the following new section:

SEC. 117. ELIMINATION OF AUTHORITY TO BORROW FROM TREASURY OF THE UNITED STATES.

(a) FANNIE MAE.—Section 304 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719) is amended by striking subsection (c).

(b) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (c).

(c) FEDERAL HOME LOAN BANKS.—Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended by striking subsection (i).

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GARRETT OF NEW JERSEY, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Strike line 21 on page 81 and all that follows through line 4 on page 91.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LORETTA SANCHEZ OF CALIFORNIA, OR HER DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Page 93, line 17, before the semicolon insert ", including the use of alternative credit scoring".

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KANJORSKI OF PENNSYLVANIA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES

Strike line 8 on page 270 and all that follows through line 3 on page 271 and insert the following:

SEC. 181. BOARDS OF ENTERPRISES.

(a) FANNIE MAE.—

(1) IN GENERAL.—Subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended in the first sentence by striking "eighteen persons," and inserting "not less than 7 and not more than 15 persons,".

Strike line 10 on page 271 and all that follows through line 6 on page 272 and insert the following:

(b) FREDDIE MAC.—

(1) IN GENERAL.—Paragraph (2) of section 303(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)) is amended in subparagraph (A) by striking "eighteen persons," and inserting "not less than 7 and not more than 15 persons,".

Page 280, lines 1 and 2, strike "shall be elected by the members and".

Page 280, line 3, after the period insert "All directors of a Bank who are not independent members pursuant to paragraph (3) shall be elected by the members.".

Page 280, lines 8 and 9, strike "one-third" and insert "two-fifths".

Page 280, line 10, strike "as follows" and insert ", who shall be appointed by the Director of the Federal Housing Finance Agency

from a list of individuals recommended made by the Housing Finance Oversight Board, and shall meet the following criteria".

Page 280, line 20, after "housing," insert "community development, economic development,".

Page 281, line 5, strike "An" and insert "Notwithstanding subsection (f)(2), an".

Page 281, strike lines 11 through 14, and insert the following new paragraph:

(2) in the first sentence of subsection (b), by striking "directorship" and inserting "member directorship pursuant to subsection (a)(2)";

Page 281, strike lines 15 through 23.

Page 281, line 25, after the semicolon insert "and".

Page 282, strike lines 1 through 8.

Page 282, line 9, strike "(5)" and insert "(4)".

Page 282, line 10, strike "subsection (e)" and insert "subsections (e) and (f)".

Page 283, strike lines 5 through 19 and insert the following:

(c) CONTINUED SERVICE OF INDEPENDENT DIRECTORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2)) is amended—

(1) in the second sentence, by striking "or the term of such office expires, whichever comes first"; and

(2) by adding at the end the following new sentence: "An appointive Bank director may continue to serve as a director after the expiration of the term of such director until a successor is appointed.".

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