

105TH CONGRESS
2D SESSION

S. 1986

To restructure the regulation of the Federal Home Loan Bank System.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 1998

Mr. D'AMATO (for himself and Mr. SHELBY) introduced the following bill;
which was read twice and referred to the Committee on Banking, Housing,
and Urban Affairs

A BILL

To restructure the regulation of the Federal Home Loan
Bank System.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Home Loan
5 Bank System Regulatory Restructuring Act of 1998”.

6 **SEC. 2. RESTRUCTURING OF FEDERAL HOME LOAN BANK**
7 **REGULATOR.**

8 (a) IN GENERAL.—The Federal Home Loan Bank
9 Act (12 U.S.C. 1421 et seq.) is amended by striking sec-
10 tions 2A and 2B and inserting the following:

1 **“SEC. 2A. DUTIES AND POWERS OF THE DIRECTOR.**

2 “(a) DUTIES.—The Director shall—

3 “(1) as a primary duty, ensure that the Federal
4 Home Loan Banks operate in a financially safe and
5 sound manner; and

6 “(2) to the extent consistent with paragraph
7 (1), supervise the Federal Home Loan Banks and
8 ensure that the Federal Home Loan Banks remain
9 adequately capitalized and able to—

10 “(A) raise funds in the capital markets;

11 “(B) satisfy their obligations to support af-
12 fordable housing as required by section 10(j);

13 “(C) make payments to the Resolution
14 Funding Corporation as required by section
15 21B(f)(2)(C); and

16 “(D) pay dividends on bank stock suffi-
17 cient for such stock to remain a competitive in-
18 vestment for the holders of the stock.

19 “(b) GENERAL POWERS.—The Director may—

20 “(1) supervise the Federal Home Loan Banks
21 and promulgate and enforce such regulations and or-
22 ders as are necessary to carry out this Act;

23 “(2) suspend or remove for cause a director, of-
24 ficer, employee, or agent of any Federal Home Loan
25 Bank or joint office, except that—

1 “(A) the cause of such suspension or re-
2 moval shall be communicated in writing to such
3 director, officer, employee, or agent and to such
4 Bank or joint office; and

5 “(B) notwithstanding any other provision
6 of this Act, no officer, employee, or agent of a
7 Bank or joint office shall be a Federal officer
8 or employee under any definition of either term
9 in title 5, United States Code;

10 “(3) determine necessary expenditures of the
11 Director under this Act and the manner in which
12 such expenditures shall be incurred, allowed, and
13 paid;

14 “(4) use the United States mails in the same
15 manner and under the same conditions as a depart-
16 ment or agency of the United States;

17 “(5) issue such notice and orders, and, subject
18 to the same terms and conditions, exercise the same
19 powers, rights, and duties to enforce this Act with
20 respect to the Federal Home Loan Banks and their
21 officers and directors, as may be issued or exercised
22 by the OFHEO with respect to Federal housing en-
23 terprises under—

1 “(A) subtitle C of title XIII of the Federal
2 Housing Enterprises Financial Safety and
3 Soundness Act of 1992;

4 “(B) the Federal National Mortgage Asso-
5 ciation Charter Act; or

6 “(C) the Federal Home Loan Mortgage
7 Corporation Act.

8 “(c) STAFF.—

9 “(1) IN GENERAL.—Subject to title IV of the
10 Financial Institutions Reform, Recovery, and En-
11 forcement Act of 1989, the OFHEO may employ, di-
12 rect, and fix the compensation and number of em-
13 ployees, attorneys, and agents of the OFHEO nec-
14 essary to carry out its duties under this Act, except
15 that in no event shall the Director delegate any
16 function to any employee or administrative unit of
17 any bank, or joint office of the Federal Home Loan
18 Bank System.

19 “(2) COMPENSATION.—In directing and fixing
20 such compensation, the Director shall consult with
21 and maintain comparability with the compensation
22 at the Federal bank regulatory agencies. Such com-
23 pensation shall be paid without regard to the provi-
24 sion of other laws applicable to officers or employees
25 of the United States, except that the Director shall

1 receive no additional compensation above that speci-
2 fied by section 5313 of title 5, United States Code.”.

3 “(d) RECEIPTS OF THE BOARD.—

4 “(1) RECEIPTS.—Receipts of the Board derived
5 from assessments levied upon the Federal Home
6 Loan Banks and from other sources (other than re-
7 ceipts from the sale of consolidated Federal Home
8 Loan Bank bonds and debentures issued under sec-
9 tion 11 of this Act) shall be deposited in the Treas-
10 ury of the United States.

11 “(2) SALARIES.—Salaries of the directors and
12 other employees of the OFHEO, and all other ex-
13 penses necessary for the Director to carry out the
14 duties of the Director under this Act—

15 “(A) may be paid from assessments de-
16 scribed in paragraph (1), or from other sources;
17 and

18 “(B) shall not be construed to be Govern-
19 ment Funds or appropriated monies, or subject
20 to apportionment for the purposes of chapter
21 15 of title 31, United States Code, or any other
22 authority.

23 “(e) ANNUAL REPORT.—The Director shall submit to
24 Congress an annual report.”.

1 (b) ASSESSMENTS.—Section 18(b) of the Federal
 2 Home Loan Bank Act (12 U.S.C. 1438(b)) is amended
 3 by striking paragraph (1) and inserting the following:

4 “(1) IN GENERAL.—To the extent provided in
 5 advance in appropriations Acts, the Director may
 6 impose a semiannual assessment on the Federal
 7 Home Loan Banks, the aggregate amount of which
 8 shall be sufficient to provide for the payment of the
 9 expenses of the Director estimated to be incurred
 10 under this Act for the period for which the assess-
 11 ment is made.”.

12 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) DEFINITIONS.—Section 2 of the Federal
 14 Home Loan Bank Act (12 U.S.C. 1422) is amend-
 15 ed—

16 (A) by striking paragraph (1) and insert-
 17 ing the following:

18 “(1) OFHEO.—The term ‘OFHEO’ means the
 19 Office of Federal Housing Enterprise Oversight, es-
 20 tablished under section 1311 of the Federal Housing
 21 Enterprises Financial Safety and Soundness Act of
 22 1992.”;

23 (B) in paragraph (2)(B), by striking
 24 “Board” and inserting “OFHEO”;

1 (C) in paragraph (6), by striking “Board”,
 2 and inserting “Secretary”; and

3 (D) by striking paragraph (10) and insert-
 4 ing the following:

5 “(10) DIRECTOR.—The term ‘Director’ means
 6 the Director of the OFHEO, appointed under sec-
 7 tion 1312 of the Federal Housing Enterprises Fi-
 8 nancial Safety and Soundness Act of 1992.”.

9 (2) ELIGIBILITY.—Section 4(a) of the Federal
 10 Home Loan Bank Act (12 U.S.C. 1424(a)) is
 11 amended in the last sentence, by striking “Board”
 12 and inserting “Secretary”.

13 (3) MANAGEMENT OF BANKS.—Section 7 of the
 14 Federal Home Loan Bank Act (12 U.S.C. 1427) is
 15 amended by striking “Board” each place it appears
 16 and inserting “Secretary”.

17 (4) ADVANCES TO MEMBERS.—Section 10 of
 18 the Federal Home Loan Bank Act (12 U.S.C. 1430)
 19 is amended—

20 (A) in each of subsections (a) through (d),
 21 by striking “Board” each place it appears, and
 22 inserting “Director”; and

23 (B) in each of subsections (e), (g), and (j),
 24 by striking “Board” each place it appears, and
 25 inserting “Secretary”.

1 (5) GENERAL POWERS AND DUTIES OF
2 BANKS.—Section 11(i) of the Federal Home Loan
3 Bank Act (12 U.S.C. 1431(i)) is amended by strik-
4 ing “Chairperson of the Board” and inserting “Di-
5 rector”.

6 (6) FINANCING CORPORATION.—Section 21 of
7 the Federal Home Loan Bank Act (12 U.S.C. 1441)
8 is amended—

9 (A) in each of subsections (b)(5) and
10 (e)(9), by striking “Chairperson of the Federal
11 Housing Finance Board” and inserting “Direc-
12 tor”; and

13 (B) by striking “Federal Housing Finance
14 Board” each place it appears and inserting
15 “Director”.

16 (7) RESOLUTION TRUST CORPORATION.—Sec-
17 tion 21B of the Federal Home Loan Bank Act (12
18 U.S.C. 1442) is amended by striking “Federal
19 Housing Finance Board” each place it appears and
20 inserting “Director”.

21 (8) MEMBER FINANCIAL INFORMATION.—Sec-
22 tion 22 of the Federal Home Loan Bank Act (12
23 U.S.C. 1442) is amended—

1 (A) in subsection (a), in the last sentence,
 2 by striking “Board or” each place it appears
 3 and inserting “Director or”; and

4 (B) in subsection (b), by striking “Board”
 5 each place that term appears and inserting “Di-
 6 rector”.

7 (9) FORMS OF BANK STOCK AND OBLIGA-
 8 TIONS.—Section 23 of the Federal Home Loan
 9 Bank Act (12 U.S.C. 1443) is amended by striking
 10 “Board of Directors of the Federal Housing Finance
 11 Board” and inserting “Director”.

12 (10) HOUSING OPPORTUNITY HOTLINE PRO-
 13 GRAM.—Section 27(a) of the Federal Home Loan
 14 Bank Act (12 U.S.C. 1447) is amended—

15 (A) by striking “Federal Housing Finance
 16 Board” and inserting “Secretary”; and

17 (B) by striking “Board” and inserting
 18 “Secretary”.

19 (11) FEDERAL HOUSING ENTERPRISE FINAN-
 20 CIAL SAFETY AND SOUNDNESS ACT OF 1992.—Sec-
 21 tion 1313 of the Federal Housing Enterprise Finan-
 22 cial Safety and Soundness Act of 1992 (12 U.S.C.
 23 4513) is amended—

24 (A) in subsection (a), by inserting before
 25 the period at the end the following: “, and that

the Federal Home Loan Banks are adequately capitalized and operating safely in accordance with the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.)”; and

(B) in subsection (b)—

(i) in paragraph (10), by striking “and” at the end;

(ii) in paragraph (11), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

“(12) the performance of any function or the exercise of any authority assigned to the Director pursuant to the Federal Home Loan Bank Act.”.

(12) OTHER REFERENCES.—Except as otherwise provided in the amendments made by this subsection, any reference in the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), or any other provision of Federal law, to the Federal Housing Finance Board, shall be construed to refer to the Director of the Office of Federal Housing Enterprise Oversight.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

1 **SEC. 3. TRANSITION PROVISIONS.**

2 (a) DEFINITIONS.—In this section:

3 (1) APPROPRIATE AGENCY.—The term “appro-
4 priate agency” means—

5 (A) with respect to the functions trans-
6 ferred under subsection (b)(1), the Department
7 of Housing and Urban Development; and

8 (B) with respect to the functions trans-
9 ferred under subsection (b)(2), the Office.

10 (2) BOARD.—The term “Board” means the
11 Federal Housing Finance Board established under
12 section 22A of the Federal Home Loan Bank Act
13 (as in effect on the day before the effective date of
14 the amendments made by section 2 of this Act).

15 (3) DIRECTOR.—The term “Director” means
16 the Director of the Office.

17 (4) FUNCTION.—The term “function” means
18 any duty, obligation, power, authority, responsibility,
19 right, privilege, activity, or program.

20 (5) HEAD OF THE APPROPRIATE AGENCY.—The
21 term “head of the appropriate agency” means—

22 (A) with respect to the functions trans-
23 ferred under subsection (b)(1), the Secretary;
24 and

25 (B) with respect to the functions trans-
26 ferred under subsection (b)(2), the Director.

1 (6) OFFICE.—The term “Office” means the
 2 Federal Housing Enterprise Oversight established
 3 under section 1311 of the Federal Housing Enter-
 4 prises Financial Safety and Soundness Act of 1992.

5 (7) SECRETARY.—The term “Secretary” means
 6 the Secretary of Housing and Urban Development.

7 (b) TRANSFER OF FUNCTIONS.—

8 (1) TRANSFER TO DEPARTMENT OF HOUSING
 9 AND URBAN DEVELOPMENT.—Effective 60 days
 10 after the date of enactment of this Act there are
 11 transferred to the Department of Housing and
 12 Urban Development all functions that the Board ex-
 13 ercised before the date of enactment of this Act (in-
 14 cluding all related functions of any officer or em-
 15 ployee of the Board) relating to the functions of the
 16 Board under the following provisions of the Federal
 17 Home Loan Bank Act (12 U.S.C. 1421 et seq.) (as
 18 in effect on the day before the effective date of the
 19 amendments made by section 2 of this Act):

20 (A) The last sentence of section 4(a).

21 (B) Section 7.

22 (C) Subsections (e), (g), and (j) of section
 23 10.

24 (D) Section 27(a).

1 (2) TRANSFER TO OFFICE.—Effective 60 days
2 after the date of enactment of this Act there are
3 transferred to the Office all functions, other than
4 the functions transferred under paragraph (1), that
5 the Board exercised before the date of enactment of
6 this Act (including all related functions of any offi-
7 cer or employee of the Board) under the Federal
8 Home Loan Bank Act (12 U.S.C. 1421 et seq.).

9 (b) DISPOSITION OF AFFAIRS.—During the 60-day
10 period beginning on the date of enactment of this Act, the
11 Chairperson of the Board—

12 (1) shall, solely for the purpose of facilitating
13 the orderly implementation of this section—

14 (A) manage the employees of the Board
15 and provide for the payment of the compensa-
16 tion and benefits of any such employee that ac-
17 crue before the effective date of the transfer of
18 such employee pursuant to subsection (g); and

19 (B) manage any property of the Board and
20 arrange for the transfer thereof to the Office as
21 promptly as practicable; and

22 (2) may take any other action necessary for the
23 purpose of facilitating the orderly implementation of
24 this section.

1 (c) TREATMENT OF REFERENCES IN ADJUSTABLE
2 RATE MORTGAGE INSTRUMENTS.—

3 (1) IN GENERAL.—For purposes of adjustable
4 rate mortgage instruments that are in effect on the
5 day before the effective date of the amendments
6 made by section 2, any reference in the instrument
7 to the Board shall be construed to be a reference to
8 the Secretary, unless the context of the reference re-
9 quires otherwise.

10 (2) SUBSTITUTION FOR INDEXES.—If any index
11 used to calculate the applicable interest rate on any
12 adjustable rate mortgage instrument is no longer
13 calculated and made available as a direct or indirect
14 result of the enactment of this Act, any index—

15 (A) made available by the Secretary, pur-
16 suant to paragraph (3); or

17 (B) determined by the Secretary, pursuant
18 to paragraph (4), to be substantially similar to
19 the index that is no longer calculated or made
20 available, may be substituted by the holder of
21 any such adjustable rate mortgage instrument
22 upon notice to the borrower.

23 (3) AGENCY ACTION REQUIRED TO PROVIDE
24 CONTINUED AVAILABILITY OF INDEXES.—As soon as
25 practicable after the effective date of the amend-

ments made by section 2, the Secretary shall take such actions as may be necessary to assure that the indexes prepared by the Board and the Federal Home Loan Banks immediately before the effective date of the amendments made by section 2 and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

(4) REQUIREMENTS RELATING TO SUBSTITUTE INDEXES.—If any index can no longer be made available pursuant to paragraph (3), an index that is substantially similar to such index may be substituted for such index for purposes of paragraph (2) if the Secretary determines, after notice and opportunity for comment, that—

(A) the new index is based upon data substantially similar to that of the original index; and

(B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

(d) CONTINUATION OF SERVICES.—

(1) IN GENERAL.—The head of the appropriate agency may use the services of employees and other personnel and the property of the Board, on a reim-

1 bursable basis, to perform functions transferred by
 2 this section to the appropriate agency, for such time
 3 as is reasonable to facilitate the orderly transfer of
 4 functions so transferred.

5 (2) AGENCY SERVICES.—Any agency, depart-
 6 ment, or other instrumentality of the United States,
 7 and any successor to any such agency, department,
 8 or instrumentality, that is providing supporting serv-
 9 ices to the Board before the effective date of the
 10 amendments made by section 2 in connection with
 11 functions that are transferred to the head of the ap-
 12 propriate agency under this section, shall—

13 (A) continue to provide such services, on a
 14 reimbursable basis, until the transfer of such
 15 functions is complete; and

16 (B) consult with the Director to coordinate
 17 and facilitate a prompt and reasonable transi-
 18 tion.

19 (e) SAVINGS PROVISIONS.—

20 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
 21 TIONS NOT AFFECTED.—This section shall not affect
 22 the validity of any right, duty, or obligation of the
 23 United States, the Board, or any other person,
 24 that—

1 (A) arises under or pursuant to the Fed-
 2 eral Home Loan Bank Act (12 U.S.C. 1421 et
 3 seq.) or any other provision of law applicable
 4 with respect to such Board; and

5 (B) exists on the day before the effective
 6 date of the amendments made by section 2.

7 (2) CONTINUATION OF SUITS.—No action or
 8 other proceeding commenced by or against the
 9 Board, or any person or entity with respect to any
 10 function of the Board that was delegated to such
 11 person or entity, shall abate by reason of the enact-
 12 ment of this Act, except that the head of the appro-
 13 priate agency shall be substituted for the Board or
 14 a party to any such action or proceeding.

15 (f) CONTINUATION OF ORDERS, RESOLUTIONS, DE-
 16 TERMINATIONS, AND REGULATIONS.—

17 (1) IN GENERAL.—Except as provided in para-
 18 graph (2), all orders, resolutions, determinations,
 19 and regulations, shall continue in effect according to
 20 the terms of such orders, resolutions, determina-
 21 tions, and regulations and shall be enforceable by or
 22 against the head of the appropriate agency until
 23 modified, terminated, set aside, or superseded in ac-
 24 cordance with applicable law by the head of the ap-
 25 propriate agency by any court of competent jurisdic-

1 tion, or by operation of law, if such orders, resolu-
 2 tions, determination, and regulations—

3 (A) have been issued, made, prescribed, or
 4 allowed to become effective by the Board in the
 5 performance of functions that are transferred
 6 by this section; and

7 (B) are in effect on the effective date of
 8 the amendments made by section 2.

9 (2) EXCEPTION.—Paragraph (1) does not apply
 10 to any order, resolution, determination, or regulation
 11 of the Board the authority of which is terminated
 12 under this Act or the amendments made by this Act.

13 (g) TRANSFER OF EMPLOYEES.—

14 (1) IN GENERAL.—Not later than 60 days after
 15 the date of enactment of this Act, each employee of
 16 the Board shall be transferred to the appropriate
 17 agency and each such transfer shall be construed to
 18 be a transfer of function for the purpose of section
 19 3503 of title 5, United States Code.

20 (2) RETENTION OF STATUS, TENURE, PAY.—
 21 Each employee transferred under this subsection
 22 shall be guaranteed a position with the same status,
 23 tenure, and pay as that held on the day immediately
 24 preceding the transfer. Each such employee holding
 25 a permanent position shall not be involuntarily sepa-

1 rated or reduced in grade or compensation during
 2 the 6-month period beginning on the date of the
 3 transfer, except for cause.

4 (3) APPOINTMENT AUTHORITY.—

5 (A) IN GENERAL.—Subject to subpara-
 6 graph (B), in the case of any employee trans-
 7 ferred under this subsection who occupies a po-
 8 sition in the excepted service or the Senior Ex-
 9 ecutive Service, any appointment authority es-
 10 tablished pursuant to law or regulations of the
 11 Office of Personnel Management for filling such
 12 a position shall be transferred.

13 (B) DECLINE.—The head of the appro-
 14 priate agency may decline a transfer of an em-
 15 ployee described in subparagraph (A) to the ex-
 16 tent that the authority transferred to the ap-
 17 propriate agency relates to positions excepted
 18 from the competitive service because of their
 19 confidential, policy-making, policy-determining,
 20 or policy-advocating character, and noncareer
 21 positions in the Senior Executive Service (with-
 22 in the meaning of section 3132(a)(7) of title 5,
 23 United States Code).

24 (4) REORGANIZATION.—If the head of the ap-
 25 propriate agency determines, after the end of the 1-

1 year period beginning on the date on which the
 2 transfer of functions to the appropriate agency
 3 under this section is completed, that a reorganiza-
 4 tion of the combined work-force is required, that re-
 5 organization shall be deemed a “major reorganiza-
 6 tion” for purposes of affording affected employees
 7 retirement under section 8336(d)(2) or
 8 8414(b)(1)(B) of title 5, United States Code.

9 (5) EMPLOYEE BENEFIT PROGRAMS.—

10 (A) IN GENERAL.—Any employee accepting
 11 employment as a result of a transfer under this
 12 subsection may retain, during the 1-year period
 13 beginning on the date on which that transfer
 14 occurs, membership in any employee benefit
 15 program of the Board, including insurance, to
 16 which such employee belongs on the effective
 17 date of the amendments made by section 2 if—

18 (i) the employee does not elect to give
 19 up the benefit or membership in the pro-
 20 gram; and

21 (ii) the benefit or program is contin-
 22 ued by the head of the appropriate agency,
 23 as applicable.

24 (B) COSTS.—The difference in the costs
 25 between the benefits that would have been pro-

1 vided by such agency or entity and those pro-
2 vided by this section shall be paid by the head
3 of the appropriate agency, as applicable. If any
4 employee elects to give up membership in a
5 health insurance program or the health insur-
6 ance program is not continued by the head of
7 the appropriate agency the employee shall be
8 permitted to select an alternate Federal health
9 insurance program within 30 days of such elec-
10 tion or notice, without regard to any other reg-
11 ularly scheduled open season.

12 (6) INSURANCE.—Any employee employed by
13 the head of the appropriate agency as a result of a
14 transfer under this subsection may retain member-
15 ship in any employee benefit program of the Board,
16 including insurance, that such employee has on the
17 day before the effective date of the amendments
18 made by section 2, if the employee does not elect to
19 give up such membership and the benefit or program
20 is continued by the head of the appropriate agency,
21 as applicable.

22 (7) NOTICE.—Each employee transferred under
23 this subsection shall receive notice of the position as-

- 1 signment of that employee not later than 60 days
- 2 after the effective date of that transfer.

