

108TH CONGRESS
1ST SESSION

S. 1508

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

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

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

A BILL

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

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Federal Enterprise Regulatory Reform Act of 2003”.

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

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF REGULATION OF FANNIE MAE AND
FREDDIE MAC

Subtitle A—Improvement of Supervision

- Sec. 101. Establishment of Office of Federal Enterprise Supervision in the Department of the Treasury.
- Sec. 102. Duties and authorities of Director and HUD.
- Sec. 103. Examiners and accountants.
- Sec. 104. Regulations.
- Sec. 105. Assessments.
- Sec. 106. Independence of Director in congressional testimony and recommendations.
- Sec. 107. Limitation on nonmission-related assets.
- Sec. 108. Reports.
- Sec. 109. Risk-based capital test for enterprises.
- Sec. 110. Minimum and critical capital levels.
- Sec. 111. Definitions.

Subtitle B—Prompt Corrective Action

- Sec. 131. Capital classifications.
- Sec. 132. Supervisory actions applicable to undercapitalized enterprises.
- Sec. 133. Supervisory actions applicable to significantly undercapitalized enterprises.

Subtitle C—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.
- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.

Subtitle D—Reports to Congress

- Sec. 161. Studies and reports.

Subtitle E—General Provisions

- Sec. 171. Conforming and technical amendments.
- Sec. 172. Effective date.

TITLE II—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

- Sec. 201. Abolishment of OFHEO.
- Sec. 202. Continuation and coordination of certain regulations.
- Sec. 203. Transfer and rights of employees of OFHEO.
- Sec. 204. Transfer of property and facilities.

1 **TITLE I—REFORM OF REGULA-**
2 **TION OF FANNIE MAE AND**
3 **FREDDIE MAC**

4 **Subtitle A—Improvement of**
5 **Supervision**

6 **SEC. 101. ESTABLISHMENT OF OFFICE OF FEDERAL ENTER-**
7 **PRISE SUPERVISION IN THE DEPARTMENT**
8 **OF THE TREASURY.**

9 (a) IN GENERAL.—Part 1 of Subtitle A of title XIII
10 of the Housing and Community Development Act of 1992
11 is amended by striking sections 1311 and 1312 (12 U.S.C.
12 4511, 4512) and inserting the following:

13 **“SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL EN-**
14 **TERPRISE SUPERVISION.**

15 “(a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—There is established the
17 Office of Federal Enterprise Supervision, which shall
18 be an office in the Department of the Treasury.

19 “(2) AUTHORITY.—The Office shall succeed to
20 the authority of the Director of the Office of Federal
21 Housing Enterprise Oversight of the Department of
22 Housing and Urban Development and the general
23 regulatory and any other authority of the Secretary
24 of Housing and Urban Development with respect to
25 the enterprises (except as specifically provided other-

1 wise in this Act, the Federal National Mortgage As-
2 sociation Charter Act (12 U.S.C. 1716 et seq.), the
3 Federal Home Loan Mortgage Corporation Act (12
4 U.S.C. 1451 et seq.), and any other provision of
5 Federal law).

6 “(b) PROHIBITION OF MERGER OF OFFICE.—Not-
7 withstanding any other provision of this law, the Secretary
8 of the Treasury may not merge or consolidate the Office,
9 or any of the functions or responsibilities of the Office,
10 with any function or program administered by the Sec-
11 retary.

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

16 **“SEC. 1312. DIRECTOR.**

17 “(a) ESTABLISHMENT OF POSITION.—There is estab-
18 lished the position of the Director of the Office of Federal
19 Enterprise Supervision, who shall be the head of the Of-
20 fice.

21 “(b) APPOINTMENT; TERM.—

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

1 “(2) TERM.—The Director shall be appointed
2 for a term of 5 years.

3 “(3) VACANCY.—

4 “(A) IN GENERAL.—A vacancy in the posi-
5 tion of Director that occurs before the expira-
6 tion of the term for which a Director was ap-
7 pointed shall be filled in the manner established
8 under paragraph (1).

9 “(B) TERM.—The Director appointed to
10 fill a vacancy under subparagraph (A) shall be
11 appointed only for the remainder of such term.

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

16 “(5) TRANSITIONAL PROVISION.—Notwith-
17 standing paragraphs (1) and (2), the Director of the
18 Office of Federal Housing Enterprise Oversight of
19 the Department of Housing and Urban Development
20 on the date of enactment of the Federal Enterprise
21 Regulatory Reform Act of 2003, shall be the Direc-
22 tor until the date on which that individual’s term as
23 Director of the Office of Federal Housing Enterprise
24 Oversight would have expired.

1 “(c) PROHIBITION ON FINANCIAL INTERESTS.—The
2 Director shall not have a direct or indirect financial inter-
3 est in any enterprise, nor hold any office, position, or em-
4 ployment in any enterprise.”.

5 (b) APPOINTMENT OF DIRECTOR.—Notwithstanding
6 the effective date under section 172 or any other provision
7 of law, the President may, at any time after the date of
8 enactment of this Act, appoint an individual to serve as
9 the Director in accordance with the provisions of the
10 amendment made by subsection (a) of this section.

11 **SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR AND**
12 **HUD.**

13 (a) IN GENERAL.—Section 1313 of the Housing and
14 Community Development Act of 1992 (12 U.S.C. 4513)
15 is amended to read as follows:

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

17 “(a) DUTIES.—

18 “(1) PRINCIPAL DUTIES.—The principal duties
19 of the Director shall be to ensure that the enter-
20 prises—

21 “(A) operate in a financially safe and
22 sound manner;

23 “(B) carry out their missions in a finan-
24 cially safe and sound manner and only through
25 activities that have been authorized under, and

1 are consistent with the purposes of, the provi-
2 sions of Federal law that charter the enter-
3 prises; and

4 “(C) remain adequately capitalized.

5 “(2) OTHER DUTIES.—To the extent consistent
6 with paragraph (1), the duty of the Director shall be
7 to exercise general supervisory and regulatory au-
8 thority over the enterprises, in accordance with this
9 title, the Federal National Mortgage Association
10 Charter Act (12 U.S.C. 1716 et seq.), the Federal
11 Home Loan Mortgage Corporation Act (12 U.S.C.
12 1451 et seq.), and any other provisions of law.

13 “(b) AUTHORITY EXCLUSIVE OF SECRETARY.—Ex-
14 cept as specifically provided under this Act, the Federal
15 National Mortgage Association Charter Act, the Federal
16 Home Loan Mortgage Corporation Act, or any other pro-
17 vision of Federal law, the authority of the Director with
18 respect to the enterprises shall not be subject to the re-
19 view, approval, or intervention of the Secretary of the
20 Treasury.

21 “(c) DELEGATION OF AUTHORITY.—The Director
22 may delegate to officers and employees of the Director any
23 of the functions, powers, and duties of the Director, with
24 respect to supervision and regulation of the enterprises,
25 as the Director considers appropriate.”.

1 (b) PRIOR APPROVAL AUTHORITY FOR NEW PRO-
2 GRAMS.—Part 1 of Subtitle A of title XIII of the Housing
3 and Community Development Act of 1992 (12 U.S.C.
4 4501 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 1319H. PRIOR APPROVAL AUTHORITY FOR NEW PRO-**
7 **GRAMS.**

8 “(a) IN GENERAL.—The Director shall require each
9 enterprise to obtain the approval of the Director for any
10 new program of the enterprise before implementing the
11 program.

12 “(b) STANDARD FOR APPROVAL.—The Director shall
13 approve any new program of an enterprise for purposes
14 of subsection (a) unless—

15 “(1) in the case of a new program of the Fed-
16 eral National Mortgage Association, the Director de-
17 termines that the program is not authorized under
18 section 304 or paragraph (2), (3), (4), or (5) of sec-
19 tion 302(b) of the Federal National Mortgage Asso-
20 ciation Charter Act (12 U.S.C. 1717(b));

21 “(2) in the case of a new program of the Fed-
22 eral Home Loan Mortgage Corporation, the Director
23 determines that the program is not authorized under
24 paragraph (1), (4), or (5) of section 305(a) of the

1 Federal Home Loan Mortgage Corporation Act (12
2 U.S.C. 1451 et seq.); or

3 “(3) the Director determines that the new pro-
4 gram is not in the public interest.

5 “(c) PROCEDURE FOR APPROVAL.—

6 “(1) SUBMISSION OF REQUEST.—An enterprise
7 shall submit to the Director a written request for
8 approval of a new program under subparagraph (A)
9 that describes the program in such form as pre-
10 scribed by order or regulation of the Director.

11 “(2) RESPONSE.—

12 “(A) IN GENERAL.—Not later than 45
13 days after the date of submission of a request
14 for approval under paragraph (1), the Director
15 shall—

16 “(i) approve the request; or

17 “(ii) deny the request and submit a
18 report explaining the reasons for the denial
19 to the Committee on Financial Services of
20 the House of Representatives and the
21 Committee on Banking, Housing and
22 Urban Affairs of the Senate.

23 “(B) EXTENSION.—The Director may ex-
24 tend the time period under subparagraph (A)
25 for a single additional 15 day period only if the

1 Director requests additional information from
2 the enterprise.

3 “(3) FAILURE TO RESPOND.—If the Director
4 fails to approve the request or fails to submit a re-
5 port under paragraph (2)(A)(ii) during the period
6 provided, the request shall be considered to have
7 been approved by the Director.

8 “(4) REVIEW OF DISAPPROVAL.—

9 “(A) SUBMISSION OF NEW INFORMA-
10 TION.—If the Director submits a report under
11 paragraph (2)(A)(ii) denying a request for rea-
12 sons listed under paragraph (1) or (2) of sub-
13 section (b), the Director shall allow the enter-
14 prise to submit new information in support of
15 the request for approval.

16 “(B) NEW PROGRAMS NOT IN THE PUBLIC
17 INTEREST.—If the Director submits a report
18 under paragraph (2)(A)(ii) denying a request
19 after finding that the program is not in the
20 public interest under subsection (b)(3), the Di-
21 rector shall provide the enterprise with notice
22 and opportunity for a hearing on the record re-
23 garding such denial.”.

24 (c) REPEAL OF HUD AUTHORITY.—Part 2 of Sub-
25 title A of title XIII of the Housing and Community Devel-

1 opment Act of 1992 (12 U.S.C. 4501 et seq.) is amended
2 by striking sections 1321 and 1322.

3 (d) AUTHORITY OF HUD FOR HOUSING GOALS.—

4 (1) IN GENERAL.—Section 1331 of the Housing
5 and Community Development Act of 1992 (12
6 U.S.C. 4561) is amended—

7 (A) in the first sentence of subsection (a),
8 by inserting “of Housing and Urban Develop-
9 ment” after “The Secretary”; and

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

11 “(d) DEFINITION.—For purposes of this part, the
12 term ‘Secretary’ means the Secretary of Housing and
13 Urban Development.”.

14 (2) ANNUAL REPORT ON HOUSING GOALS.—

15 Section 1324 of the Housing and Community Devel-
16 opment Act of 1992 (12 U.S.C. 4544) is amended
17 by inserting “of Housing and Urban Development”
18 after “Secretary” each place such term appears.

19 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) FANNIE MAE.—Section 302(b)(6) of the
21 Federal National Mortgage Association Charter Act
22 (12 U.S.C. 1716(b)(6)) is amended by striking “Sec-
23 retary under section 1322” and inserting “Director
24 under section 1319H”.

1 (2) FREDDIE MAC.—Section 305(c) of the Fed-
2 eral Home Loan Mortgage Corporation Act (12
3 U.S.C. 1454(c)) is amended by striking “Secretary
4 under section 1322” and inserting “Director under
5 section 1319H”.

6 (3) FINANCIAL INSTITUTIONS EXAMINATION
7 COUNCIL.—Section 1004(a) of the Federal Financial
8 Institutions Examination Council Act of 1978 (12
9 U.S.C. 3303(a)) is amended—

10 (A) in paragraph (5), by striking the pe-
11 riod; and

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

13 “(6) the Director of the Office of Federal En-
14 terprise Supervision.”.

15 **SEC. 103. EXAMINERS AND ACCOUNTANTS.**

16 (a) EXAMINATIONS.—Section 1317 of the Housing
17 and Community Development Act of 1992 (12 U.S.C.
18 4517) is amended—

19 (1) in the second sentence of subsection (c), by
20 striking “The” and inserting “During the 3-year pe-
21 riod that begins upon the date of enactment of the
22 Federal Enterprise Regulatory Reform Act of 2003,
23 the”; and

1 (2) in subsection (d), by striking “Federal Re-
2 serve banks” and inserting “Director of the Office
3 of Thrift Supervision”.

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

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

10 “(1) APPLICABILITY.—This section applies with
11 respect to any position of examiner, accountant, and
12 economist at the Office, with respect to supervision
13 and regulation of the enterprises, that is in the com-
14 petitive service.

15 “(2) APPOINTMENT AUTHORITY.—

16 “(A) IN GENERAL.—The Director may ap-
17 point candidates to any position described in
18 paragraph (1)—

19 “(i) in accordance with the statutes,
20 rules, and regulations governing appoint-
21 ments in the excepted service; and

22 “(ii) notwithstanding any statutes,
23 rules, and regulations governing appoint-
24 ments in the competitive service.

1 “(B) RULE OF CONSTRUCTION.—The ap-
2 pointment of a candidate to a position under
3 this paragraph shall not be considered to cause
4 such position to be converted from the competi-
5 tive service to the excepted service.

6 “(3) REPORTS.—

7 “(A) IN GENERAL.—Not later than 90
8 days after the end of fiscal year 2003 (for fiscal
9 year 2003) and 90 days after the end of fiscal
10 year 2005 (for fiscal years 2004 and 2005), the
11 Director shall submit a report with respect to
12 its exercise of the authority granted by para-
13 graph (2) during such fiscal years to the—

14 “(i) Committee on Government Re-
15 form and the Committee on Financial
16 Services of the House of Representatives;
17 and

18 “(ii) Committee on Governmental Af-
19 fairs and the Committee on Banking,
20 Housing, and Urban Affairs of the Senate.

21 “(B) CONTENTS.—The reports submitted
22 under subparagraph (A) shall describe the
23 changes in the hiring process authorized by
24 paragraph (2), including relevant information
25 related to—

1 “(i) the quality of candidates;

2 “(ii) the procedures used by the Di-
3 rector to select candidates through the
4 streamlined hiring process;

5 “(iii) the numbers, types, and grades
6 of employees hired under the authority;

7 “(iv) any benefits or shortcomings as-
8 sociated with the use of the authority;

9 “(v) the effect of the exercise of the
10 authority on the hiring of veterans and
11 other demographic groups; and

12 “(vi) the way in which managers were
13 trained in the administration of the
14 streamlined hiring system.”.

15 **SEC. 104. REGULATIONS.**

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

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

20 “(a) **AUTHORITY.**—The Director shall issue any reg-
21 ulations and orders necessary to carry out the duties of
22 the Director, with respect to supervision and regulation
23 of the enterprises, under this title, the Federal National
24 Mortgage Association Charter Act (12 U.S.C. 1716 et
25 seq.), and the Federal Home Loan Mortgage Corporation

1 Act (12 U.S.C. 1451 et seq.), and to ensure that the pur-
2 poses of this title and such Acts are accomplished.”; and

3 (2) in subsection (c), by striking “Committee on
4 Banking, Finance and Urban Affairs” and inserting
5 “Committee on Financial Services”.

6 **SEC. 105. ASSESSMENTS.**

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

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

11 “(a) ANNUAL ASSESSMENTS.—The Director shall es-
12 tablish and collect from the enterprises annual assess-
13 ments in an amount not exceeding the amount sufficient
14 to provide for all reasonable costs and expenses of the Of-
15 fice, including—

16 “(1) the expenses of any examinations under
17 section 1317; and

18 “(2) the expenses of obtaining any reviews and
19 credit assessments under subsection section 1319.”;

20 (2) in subsection (b), in paragraph (2), by mov-
21 ing the margin 2 ems to the right;

22 (3) in subsection (c), by adding at the end the
23 following: “The Director may adjust the amounts of
24 any semiannual assessments for an assessment
25 under subsection (a) that are to be paid pursuant to

1 subsection (b) by an enterprise, as necessary in the
2 discretion of the Director, to ensure that the costs
3 of enforcement activities under subtitles B and C for
4 an enterprise are borne only by that enterprise.”;

5 (4) in subsection (f), by striking “Any assess-
6 ments collected” and all that follows and inserting
7 the following: “Notwithstanding any other provision
8 of law, any assessments collected by the Director
9 pursuant to this section shall be deposited in the
10 Fund in an account for the Director. Any amounts
11 in the Fund are hereby made available, without fis-
12 cal year limitation, to the Director (to the extent of
13 amounts in the Director’s account) for carrying out
14 the supervisory and regulatory responsibilities of the
15 Director, with respect to the enterprises, including
16 any necessary administrative and nonadministrative
17 expenses of the Director in carrying out the pur-
18 poses of this title, the Federal National Mortgage
19 Association Charter Act (12 U.S.C. 1716 et seq.),
20 and the Federal Home Loan Mortgage Corporation
21 Act (12 U.S.C. 1451 et seq.)”; and

22 (5) in subsection (g), by striking paragraphs
23 (1) and (2) and inserting the following:

24 “(1) FINANCIAL OPERATING PLANS AND FORE-
25 CASTS.—Before the beginning of each fiscal year,

1 the Director shall submit a copy of the financial op-
 2 erating plans and forecasts for the Office to the Di-
 3 rector of the Office of Management and Budget.

4 “(2) REPORTS OF OPERATIONS.—As soon as
 5 practicable after the end of each fiscal year and each
 6 quarter thereof, the Director shall submit a copy of
 7 the report of the results of the operations of the Of-
 8 fice during such period to the Director of the Office
 9 of Management and Budget.”.

10 **SEC. 106. INDEPENDENCE OF DIRECTOR IN CONGRES-**
 11 **SIONAL TESTIMONY AND RECOMMENDA-**
 12 **TIONS.**

13 Section 111 of Public Law 93–495 (12 U.S.C. 250)
 14 is amended by inserting “the Director of the Office of
 15 Federal Enterprise Supervision of the Department of the
 16 Treasury,” after “the Federal Housing Finance Board,”.

17 **SEC. 107. LIMITATION ON NONMISSION-RELATED ASSETS.**

18 Subtitle B of title XIII of the Housing and Commu-
 19 nity Development Act of 1992 (12 U.S.C. 4611 et seq.)
 20 is amended—

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

1 **“Subtitle B—Required Capital Lev-**
 2 **els for Enterprises, Special En-**
 3 **forcement Powers, and Limita-**
 4 **tion on Nonmission-Related As-**
 5 **sets”;**

6 and

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

8 **“SEC. 1369E. LIMITATION ON NONMISSION-RELATED AS-**
 9 **SETS.**

10 “(a) IN GENERAL.—The Director may, by regulation,
 11 determine the type and amount of nonmission-related as-
 12 sets that an enterprise may hold at any time. The Director
 13 shall, in any such regulation, define the term ‘nonmission-
 14 related asset’ for purposes of this section.

15 “(b) RULE OF CONSTRUCTION.—Subsection (a) may
 16 not be construed to authorize an enterprise to engage in
 17 any new program relating to any nonmission-related asset
 18 without obtaining the prior approval of the Director in ac-
 19 cordance with section 1319H.”.

20 **SEC. 108. REPORTS.**

21 Sections 1327 and 1328 of the Housing and Commu-
 22 nity Development Act of 1992 (12 U.S.C. 4547, 4548)
 23 are amended by striking “Secretary” each place it appears
 24 and inserting “Director”.

1 **SEC. 109. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

2 Section 1361 of the Housing and Community Devel-
3 opment Act of 1992 (12 U.S.C. 4611) is amended—

4 (1) in subsection (a)(2)(A), by inserting “, or
5 change in such other manner as the Director con-
6 siders appropriate,” after “subparagraph (C),”;

7 (2) in subsection (b)(1), by adding at the end
8 the following: “Notwithstanding subsection (a), the
9 Director may, in the sole discretion of the Director,
10 make any assumptions that the Director considers
11 appropriate regarding interest rates, home prices,
12 and new business. Such assessment shall ensure that
13 enterprise risk-based capital standards are, to the
14 greatest extent feasible, comparable to those imposed
15 by the appropriate Federal banking agency (as de-
16 fined in section 3 of the Federal Deposit Insurance
17 Act (12 U.S.C. 1813)) for comparable risk. The
18 risk-based assessment relating to new business
19 under this paragraph shall ensure that the enter-
20 prise is able to remain a viable enterprise in full
21 compliance with all applicable risk-based capital and
22 minimum capital standards, and that it can fulfill its
23 role of ensuring appropriate secondary market li-
24 quidity throughout the stress test.”; and

1 (3) in subsection (c)(2), by inserting “, or such
2 other percentage as the Director considers appro-
3 priate” before the period at the end.

4 **SEC. 110. MINIMUM AND CRITICAL CAPITAL LEVELS.**

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

8 (1) by striking subsection (b);

9 (2) by striking “(a) **IN GENERAL.**—”; and

10 (3) in the matter preceding paragraph (1), by
11 inserting before “the sum of” the following: “the
12 amount established by the Director, by regulation or
13 order, as such amount may be adjusted from time-
14 to-time by the Director to achieve the purposes of
15 this title, that is not less than”.

16 (b) **CRITICAL CAPITAL LEVEL.**—Section 1363 of the
17 Housing and Community Development Act of 1992 (12
18 U.S.C. 4613) is amended, in the matter preceding para-
19 graph (1), by inserting before “the sum of” the following:
20 “the amount established by the Director, by regulation or
21 order, as such amount may be adjusted from time-to-time
22 by the Director to achieve the purposes of this title, that
23 is not less than”.

1 **SEC. 111. 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 (5), by striking “Federal
5 Housing Enterprise Oversight of the Department of
6 Housing and Urban Development” and inserting
7 “Federal Enterprise Supervision of the Department
8 of the Treasury”;

9 (2) in paragraphs (8), (9), (10), and (19), by
10 inserting “of Housing and Urban Development”
11 after “Secretary” each place such term appears;

12 (3) in paragraph (14), by striking “Federal
13 Housing Enterprise Oversight of the Department of
14 Housing and Urban Development” and inserting
15 “Federal Enterprise Supervision of the Department
16 of the Treasury”;

17 (4) by striking paragraph (15);

18 (5) by redesignating paragraphs (7) through
19 (14) (as amended by the preceding provisions of this
20 Act) as paragraphs (8) through (15), respectively;
21 and

22 (6) by inserting after paragraph (6) the fol-
23 lowing:

24 “(7) ENTERPRISE-AFFILIATED PARTY.—The
25 term ‘enterprise-affiliated party’ means—

1 “(A) any director, officer, employee, or
2 controlling stockholder of, or agent for, an en-
3 terprise;

4 “(B) any shareholder, consultant, joint
5 venture partner, and any other person as deter-
6 mined by the Director (by regulation or case-
7 by-case) who participates in the conduct of the
8 affairs of an enterprise; and

9 “(C) any independent contractor (including
10 any attorney, appraiser, or accountant) who
11 knowingly or recklessly participates in—

12 “(i) any violation of any law or regu-
13 lation;

14 “(ii) any breach of fiduciary duty; or

15 “(iii) any unsafe or unsound practice,
16 which caused or is likely to cause more than a
17 minimal financial loss to, or a significant ad-
18 verse effect on, the enterprise.”.

19 **Subtitle B—Prompt Corrective**
20 **Action**

21 **SEC. 131. CAPITAL CLASSIFICATIONS.**

22 Section 1364 of the Housing and Community Devel-
23 opment Act of 1992 (12 U.S.C. 4614) is amended—

24 (1) by striking subsection (b) and inserting the
25 following:

1 “(b) DISCRETIONARY CLASSIFICATION.—

2 “(1) GROUNDS FOR RECLASSIFICATION.—The
3 Director may reclassify an enterprise under para-
4 graph (2) if—

5 “(A) at any time, the Director determines
6 in writing that an enterprise is engaging in con-
7 duct that could result in a rapid depletion of
8 core capital or that the value of the property
9 subject to mortgages held or securitized by the
10 enterprise has decreased significantly;

11 “(B) after notice and an opportunity for
12 hearing, the Director determines that an enter-
13 prise is in an unsafe or unsound condition; or

14 “(C) pursuant to section 1371(b), the Di-
15 rector deems an enterprise to be engaging in an
16 unsafe or unsound practice.

17 “(2) RECLASSIFICATION.—In addition to any
18 other action authorized under this title, including
19 the reclassification of an enterprise for any reason
20 not specified in this subsection, if the Director takes
21 any action described in paragraph (1) the Director
22 may classify an enterprise—

23 “(A) as undercapitalized, if the enterprise
24 is otherwise classified as adequately capitalized;

1 “(B) as significantly undercapitalized, if
2 the enterprise is otherwise classified as under-
3 capitalized; and

4 “(C) as critically undercapitalized, if the
5 enterprise is otherwise classified as significantly
6 undercapitalized.”;

7 (2) by redesignating subsection (d) as sub-
8 section (e); and

9 (3) by inserting after subsection (c) the fol-
10 lowing:

11 “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

12 “(1) IN GENERAL.—An enterprise shall make
13 no capital distribution if, after making the distribu-
14 tion, the enterprise would be undercapitalized.

15 “(2) EXCEPTION.—Notwithstanding paragraph
16 (1), the Director may permit an enterprise to repur-
17 chase, redeem, retire, or otherwise acquire shares or
18 ownership interests if the repurchase, redemption,
19 retirement, or other acquisition—

20 “(A) is made in connection with the
21 issuance of additional shares or obligations of
22 the enterprise in at least an equivalent amount;
23 and

1 “(B) will reduce the financial obligations of
2 the enterprise or otherwise improve the finan-
3 cial condition of the enterprise.”.

4 **SEC. 132. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
5 **CAPITALIZED ENTERPRISES.**

6 (a) **EFFECTIVE DATE FOR SUPERVISORY ACTIONS.**—
7 Section 1365(c) of the Housing and Community Develop-
8 ment Act of 1992 (12 U.S.C. 4615(c)) is amended by
9 striking “1-year” and inserting “6-month”.

10 (b) **SUPERVISORY ACTIONS.**—Section 1365 of the
11 Housing and Community Development Act of 1992 (12
12 U.S.C. 4615) is amended—

13 (1) in subsection (a)—

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

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

18 “(1) **REQUIRED MONITORING.**—The Director
19 shall—

20 “(A) closely monitor the condition of any
21 undercapitalized enterprise;

22 “(B) closely monitor compliance with the
23 capital restoration plan, restrictions, and re-
24 quirements imposed under this section; and

1 “(C) periodically review the plan, restric-
2 tions, and requirements applicable to the under-
3 capitalized enterprise to determine whether the
4 plan, restrictions, and requirements are achiev-
5 ing the purpose of this section.”; and

6 (C) by inserting at the end the following:

7 “(4) RESTRICTION OF ASSET GROWTH.—An
8 undercapitalized enterprise shall not permit its aver-
9 age total assets during any calendar quarter to ex-
10 ceed its average total assets during the preceding
11 calendar quarter unless—

12 “(A) the Board has accepted the enter-
13 prise’s capital restoration plan;

14 “(B) any increase in total assets is con-
15 sistent with the plan; and

16 “(C) the ratio of tangible equity to assets
17 of the enterprise increases during the calendar
18 quarter at a rate sufficient to enable the enter-
19 prise to become adequately capitalized within a
20 reasonable time.

21 “(5) PRIOR APPROVAL OF ACQUISITIONS AND
22 ISSUANCE OF NEW PRODUCTS.—An undercapitalized
23 enterprise shall not, directly or indirectly, acquire
24 any interest in any entity or issue a new product un-
25 less—

1 “(A) the Director has accepted the capital
2 restoration plan of the enterprise, the enterprise
3 is implementing the plan, and the Director de-
4 termines that the proposed action is consistent
5 with and will further the achievement of the
6 plan; or

7 “(B) the Director determines that the pro-
8 posed action will further the purpose of this
9 section.”; and

10 (2) in the subsection heading for subsection (b),
11 by striking “FROM UNDERCAPITALIZED TO SIGNIFI-
12 CANTLY UNDERCAPITALIZED”;

13 (3) by redesignating subsection (c) (as amended
14 by subsection (a)) as subsection (d); and

15 (4) by inserting after subsection (b) the fol-
16 lowing:

17 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
18 Director may take, with respect to an undercapitalized en-
19 terprise, any of the actions authorized to be taken under
20 section 1366 with respect to a significantly undercapital-
21 ized enterprise, if the Director determines that such ac-
22 tions are necessary to carry out the purpose of this sub-
23 title.”.

1 **SEC. 133. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
 2 **CANTLY UNDERCAPITALIZED ENTERPRISES.**

3 Section 1366 of the Housing and Community Devel-
 4 opment Act of 1992 (12 U.S.C. 4616) is amended—

5 (1) in subsection (b)—

6 (A) in the subsection heading, by striking
 7 “DISCRETIONARY SUPERVISORY ACTIONS” and
 8 inserting “SPECIFIC ACTIONS”;

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

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

15 (D) by inserting after paragraph (4) the
 16 following:

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

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

22 “(B) DISMISSAL OF DIRECTORS OR EXECU-
 23 TIVE OFFICERS.—Require the enterprise to dis-
 24 miss from office any director or executive offi-
 25 cer who had held office for more than 180 days
 26 immediately before the enterprise became

1 undercapitalized. Dismissal under this subpara-
2 graph shall not be construed to be a removal
3 pursuant to the Director’s enforcement powers
4 under section 1377.

5 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
6 FICERS.—Require the enterprise to employ
7 qualified executive officers (who, if the Director
8 so specifies, shall be subject to approval by the
9 Director).”; and

10 (E) by inserting at the end the following:

11 “(8) OTHER ACTION.—Require the enterprise
12 to take any other action that the Director deter-
13 mines will better carry out the purpose of this sec-
14 tion than any of the actions specified in this para-
15 graph.”;

16 (2) by redesignating subsection (c) as sub-
17 section (d); and

18 (3) by inserting after subsection (b) the fol-
19 lowing:

20 “(c) RESTRICTION ON COMPENSATION OF EXECU-
21 TIVE OFFICERS.—An enterprise that is classified as sig-
22 nificantly undercapitalized may not, without prior written
23 approval by the Director—

24 “(A) pay any bonus to any executive offi-
25 cer; or

1 “(B) provide compensation to any execu-
 2 tive officer at a rate exceeding that officer’s av-
 3 erage rate of compensation (excluding bonuses,
 4 stock options, and profit sharing) during the 12
 5 calendar months preceding the calendar month
 6 in which the enterprise became undercapital-
 7 ized.”.

8 **Subtitle C—Enforcement Actions**

9 **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

10 Section 1371 of the Housing and Community Devel-
 11 opment Act of 1992 (12 U.S.C. 4631) is amended—

12 (1) by striking subsections (a) and (b) and in-
 13 serting the following:

14 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
 15 **TICES AND VIOLATIONS OF RULES OR LAWS.—**

16 “(1) **IN GENERAL.—**If, in the opinion of the Di-
 17 rector, an enterprise or any enterprise-affiliated
 18 party is engaging or has engaged, or the Director
 19 has reasonable cause to believe that the enterprise or
 20 any enterprise-affiliated party is about to engage, in
 21 an unsafe or unsound practice in conducting the
 22 business of the enterprise or is violating or has vio-
 23 lated, or the Director has reasonable cause to believe
 24 that the enterprise or any enterprise-affiliated party
 25 is about to violate, a law, rule, or regulation, or any

1 condition imposed in writing by the Director in con-
2 nection with the granting of any application or other
3 request by the enterprise or any written agreement
4 entered into with the Director, the Director may
5 issue and serve upon the enterprise or such party
6 a notice of charges in respect thereof.

7 “(2) LIMITATIONS.—The Director may not en-
8 force compliance with—

9 “(A) any housing goal established under
10 subpart B of part 2 of subtitle A of this title;

11 “(B) section 1336 or 1337 of this title;

12 “(C) subsection (m) or (n) of section 309
13 of the Federal National Mortgage Association
14 Charter Act (12 U.S.C. 1723a(m), (n)); or

15 “(D) subsection (e) or (f) of section 307 of
16 the Federal Home Loan Mortgage Corporation
17 Act (12 U.S.C. 1456(e), (f)).

18 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If
19 an enterprise receives, in its most recent report of exam-
20 ination, a less-than-satisfactory rating for asset quality,
21 management, earnings, or liquidity, the Director may (if
22 the deficiency is not corrected) deem the enterprise to be
23 engaging in an unsafe or unsound practice for purposes
24 of this subsection.”; and

1 (2) in subsection (c)(2), by striking “or direc-
2 tor” and inserting “director, or enterprise-affiliated
3 party”.

4 **SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

5 Section 1372 of the Housing and Community Devel-
6 opment Act of 1992 (12 U.S.C. 4632) is amended—

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

9 “(a) **GROUND FOR ISSUANCE.**—Whenever the Direc-
10 tor determines that the violation or threatened violation
11 or the unsafe or unsound practice or practices specified
12 in the notice of charges served upon the enterprise or any
13 enterprise-affiliated party under section 1371(a), or the
14 continuation thereof, is likely to cause insolvency or sig-
15 nificant dissipation of assets or earnings of the enterprise,
16 or is likely to weaken the condition of the enterprise prior
17 to the completion of the proceedings conducted pursuant
18 to sections 1371 and 1373, the Director may issue a tem-
19 porary order requiring the enterprise or such party to
20 cease and desist from any such violation or practice and
21 to take affirmative action to prevent or remedy such insol-
22 vency, dissipation, condition, or prejudice pending comple-
23 tion of such proceedings. Such order may include any re-
24 quirement authorized under subsection 1371(d).”;

1 (2) in subsection (b), by striking “or director”
2 and inserting “director, or enterprise-affiliated
3 party”;

4 (3) in subsection (d), by striking “or director”
5 and inserting “director, or enterprise-affiliated
6 party”; and

7 (4) by striking subsection (e) and inserting the
8 following:

9 “(e) ENFORCEMENT.—In the case of violation or
10 threatened violation of, or failure to obey, a temporary
11 cease-and-desist order issued under this section, the Direc-
12 tor may apply to the United States District Court for the
13 District of Columbia or the United States district court
14 within the jurisdiction of which the headquarters of the
15 enterprise is located, for an injunction to enforce such
16 order, and, if the court determines that there has been
17 such violation or threatened violation or failure to obey,
18 it shall be the duty of the court to issue such injunction.”.

19 **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

20 (a) IN GENERAL.—Subtitle C of title XIII of the
21 Housing and Community Development Act of 1992 is
22 amended—

23 (1) by redesignating sections 1377 through
24 1379B (12 U.S.C. 4637–41) as sections 1379
25 through 1379D, respectively; and

1 (2) by inserting after section 1376 (12 U.S.C.
2 4636) the following:

3 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

4 “(a) AUTHORITY TO ISSUE ORDER.—Whenever the
5 Director determines that—

6 “(1) any enterprise-affiliated party has, directly
7 or indirectly—

8 “(A) violated—

9 “(i) any law or regulation;

10 “(ii) any cease-and-desist order which
11 has become final;

12 “(iii) any condition imposed in writing
13 by the Director in connection with the
14 grant of any application or other request
15 by such enterprise; or

16 “(iv) any written agreement between
17 such enterprise and the Director;

18 “(B) engaged or participated in any unsafe
19 or unsound practice in connection with any en-
20 terprise; or

21 “(C) committed or engaged in any act,
22 omission, or practice which constitutes a breach
23 of such party’s fiduciary duty;

1 “(2) by reason of the violation, practice, or
2 breach described in any subparagraph of paragraph
3 (1)—

4 “(A) such enterprise has suffered or will
5 probably suffer financial loss or other damage;
6 or

7 “(B) such party has received financial gain
8 or other benefit by reason of such violation,
9 practice, or breach; and

10 “(3) such violation, practice, or breach—

11 “(A) involves personal dishonesty on the
12 part of such party; or

13 “(B) demonstrates willful or continuing
14 disregard by such party for the safety or sound-
15 ness of such enterprise,

16 the Director may serve upon such party a written notice
17 of the Director’s intention to remove such party from of-
18 fice or to prohibit any further participation by such party,
19 in any manner, in the conduct of the affairs of any enter-
20 prise.

21 “(b) SUSPENSION ORDER.—

22 “(1) SUSPENSION OR PROHIBITION AUTHOR-
23 ITY.—If the Director serves written notice under
24 subsection (a) to any enterprise-affiliated party of
25 the Director’s intention to issue an order under, the

1 Director may suspend such party from office or pro-
2 hibit such party from further participation in any
3 manner in the conduct of the affairs of the enter-
4 prise, if the Director—

5 “(A) determines that such action is nec-
6 essary for the protection of the enterprise; and

7 “(B) serves such party with written notice
8 of the suspension order.

9 “(2) EFFECTIVE PERIOD.—Any suspension
10 order issued under subsection (a)—

11 “(A) shall become effective upon service;
12 and

13 “(B) unless a court issues a stay of such
14 order under subsection (g) of this section, shall
15 remain in effect and enforceable until—

16 “(i) the date the Director dismisses
17 the charges contained in the notice served
18 under subsection (a) with respect to such
19 party; or

20 “(ii) the effective date of an order
21 issued by the Director to such party under
22 subsection (a).

23 “(3) COPY OF ORDER.—If the Director issues a
24 suspension order under subsection (a) to any enter-
25 prise-affiliated party, the Director shall serve a copy

1 of such order on any enterprise with which such
2 party is affiliated at the time such order is issued.

3 “(c) NOTICE, HEARING, AND ORDER.—A notice of
4 intention to remove an enterprise-affiliated party from of-
5 fice or to prohibit such party from participating in the
6 conduct of the affairs of an enterprise shall contain a
7 statement of the facts constituting grounds for such ac-
8 tion, and shall fix a time and place at which a hearing
9 will be held on such action. Such hearing shall be fixed
10 for a date not earlier than 30 days nor later than 60 days
11 after the date of service of such notice, unless an earlier
12 or a later date is set by the Director at the request of
13 (1) such party, and for good cause shown, or (2) the At-
14 torney General of the United States. Unless such party
15 shall appear at the hearing in person or by a duly author-
16 ized representative, such party shall be deemed to have
17 consented to the issuance of an order of such removal or
18 prohibition. In the event of such consent, or if upon the
19 record made at any such hearing the Director shall find
20 that any of the grounds specified in such notice have been
21 established, the Director may issue such orders of suspen-
22 sion or removal from office, or prohibition from participa-
23 tion in the conduct of the affairs of the enterprise, as it
24 may deem appropriate. Any such order shall become effec-
25 tive at the expiration of 30 days after service upon such

1 enterprise and such party (except in the case of an order
2 issued upon consent, which shall become effective at the
3 time specified therein). Such order shall remain effective
4 and enforceable except to such extent as it is stayed, modi-
5 fied, terminated, or set aside by action of the Director or
6 a reviewing court.

7 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-
8 TIES.—Any person subject to an order issued under this
9 section shall not—

10 “(1) participate in any manner in the conduct
11 of the affairs of any enterprise;

12 “(2) solicit, procure, transfer, attempt to trans-
13 fer, vote, or attempt to vote any proxy, consent, or
14 authorization with respect to any voting rights in
15 any enterprise;

16 “(3) violate any voting agreement previously
17 approved by the Director; or

18 “(4) vote for a director, or serve or act as an
19 enterprise-affiliated party.

20 “(e) INDUSTRY-WIDE PROHIBITION.—

21 “(1) IN GENERAL.—Except as provided in sub-
22 paragraph (2), any person who, pursuant to an
23 order issued under subsection (h), has been removed
24 or suspended from office in an enterprise or prohib-
25 ited from participating in the conduct of the affairs

1 of an enterprise may not, while such order is in ef-
2 fect, continue or commence to hold any office in, or
3 participate in any manner in the conduct of the af-
4 fairs of any enterprise.

5 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
6 TEN CONSENT.—If, on or after the date an order is
7 issued under this section which removes or suspends
8 from office any enterprise-affiliated party or pro-
9 hibits such party from participating in the conduct
10 of the affairs of an enterprise, such party receives
11 the written consent of the Director, the order shall,
12 to the extent of such consent, cease to apply to such
13 party with respect to the enterprise described in the
14 written consent. If the Director grants such a writ-
15 ten consent, it shall publicly disclose such consent.

16 “(3) VIOLATION OF PARAGRAPH (1) TREATED
17 AS VIOLATION OF ORDER.—Any violation of para-
18 graph (1) by any person who is subject to an order
19 described in such subsection shall be treated as a
20 violation of the order.

21 “(f) APPLICABILITY.—This section shall only apply
22 to a person who is an individual, unless the Director spe-
23 cifically finds that it should apply to a corporation, firm,
24 or other business enterprise.

1 “(g) STAY OF SUSPENSION AND PROHIBITION OF
2 ENTERPRISE-AFFILIATED PARTY.—Within 10 days after
3 any enterprise-affiliated party has been suspended from
4 office or prohibited from participation in the conduct of
5 the affairs of an enterprise under this section, such party
6 may apply to the United States District Court for the Dis-
7 trict of Columbia, or the United States district court for
8 the judicial district in which the headquarters of the enter-
9 prise is located, for a stay of such suspension or prohibi-
10 tion pending the completion of the administrative pro-
11 ceedings pursuant to the notice served upon such party
12 under this section, and such court shall have jurisdiction
13 to stay such suspension or prohibition.

14 “(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AF-
15 FILIATED PARTY CHARGED WITH FELONY.—

16 “(1) SUSPENSION OR PROHIBITION.—

17 “(A) IN GENERAL.—Whenever any enter-
18 prise-affiliated party is charged in any informa-
19 tion, indictment, or complaint, with the commis-
20 sion of or participation in a crime involving dis-
21 honesty or breach of trust which is punishable
22 by imprisonment for a term exceeding one year
23 under State or Federal law, the Director may,
24 if continued service or participation by such
25 party may pose a threat to the enterprise or im-

1 pair public confidence in the enterprise, by writ-
2 ten notice served upon such party, suspend
3 such party from office or prohibit such party
4 from further participation in any manner in the
5 conduct of the affairs of any enterprise.

6 “(B) PROVISIONS APPLICABLE TO NO-
7 TICE.—

8 “(i) COPY.—A copy of any notice
9 under paragraph (1)(A) shall also be
10 served upon the enterprise.

11 “(ii) EFFECTIVE PERIOD.—A suspen-
12 sion or prohibition under subparagraph (A)
13 shall remain in effect until the informa-
14 tion, indictment, or complaint referred to
15 in such subparagraph is finally disposed of
16 or until terminated by the Director.

17 “(2) REMOVAL OR PROHIBITION.—

18 “(A) IN GENERAL.—If a judgment of con-
19 viction or an agreement to enter a pretrial di-
20 version or other similar program is entered
21 against an enterprise-affiliated party in connec-
22 tion with a crime described in paragraph
23 (1)(A), at such time as such judgment is not
24 subject to further appellate review, the Director
25 may, if continued service or participation by

1 such party may pose a threat to the enterprise
2 or impair public confidence in the enterprise,
3 issue and serve upon such party an order re-
4 moving such party from office or prohibiting
5 such party from further participation in any
6 manner in the conduct of the affairs of the en-
7 terprise without the prior written consent of the
8 Director.

9 “(B) PROVISIONS APPLICABLE TO
10 ORDER.—

11 “(i) COPY.—A copy of any order
12 under paragraph (2)(A) shall also be
13 served upon the enterprise, whereupon the
14 enterprise-affiliated party who is subject to
15 the order (if a director or an officer) shall
16 cease to be a director or officer of such en-
17 terprise.

18 “(ii) EFFECT OF ACQUITTAL.—A find-
19 ing of not guilty or other disposition of the
20 charge shall not preclude the Director from
21 instituting proceedings after such finding
22 or disposition to remove such party from
23 office or to prohibit further participation in
24 enterprise affairs under subsection (a), (d),
25 or (e).

1 “(iii) EFFECTIVE PERIOD.—Any no-
2 tice of suspension or order of removal
3 issued under this subsection shall remain
4 effective and outstanding until the comple-
5 tion of any hearing or appeal authorized
6 under paragraph (4) unless terminated by
7 the Director.

8 “(3) AUTHORITY OF REMAINING BOARD MEM-
9 BERS.—

10 “(A) IN GENERAL.—If at any time, be-
11 cause of the suspension of one or more directors
12 pursuant to this section, there shall be on the
13 board of directors of an enterprise less than a
14 quorum of directors not so suspended, all pow-
15 ers and functions vested in or exercisable by
16 such board shall vest in and be exercisable by
17 the director or directors on the board not so
18 suspended, until such time as there shall be a
19 quorum of the board of directors.

20 “(B) SUSPENSION OF ALL DIRECTORS.—In
21 the event all of the directors of an enterprise
22 are suspended pursuant to this section, the Di-
23 rector shall appoint persons to serve tempo-
24 rarily as directors in their place and stead
25 pending the termination of such suspensions, or

1 until such time as those who have been sus-
2 pended, cease to be directors of the enterprise
3 and their respective successors take office.

4 “(4) HEARING REGARDING CONTINUED PAR-
5 TICIPATION.—Within 30 days from service of any
6 notice of suspension or order of removal issued pur-
7 suant to paragraph (1) or (2) of this subsection, the
8 enterprise-affiliated party concerned may request in
9 writing an opportunity to appear before the Director
10 to show that the continued service to or participation
11 in the conduct of the affairs of the enterprise by
12 such party does not, or is not likely to, pose a threat
13 to the interests of the enterprise or threaten to im-
14 pair public confidence in the enterprise. Upon re-
15 ceipt of any such request, the Director shall fix a
16 time (not more than 30 days after receipt of such
17 request, unless extended at the request of such
18 party) and place at which such party may appear,
19 personally or through counsel, before one or more
20 members of the Director or designated employees of
21 the Director to submit written materials (or, at the
22 discretion of the Director, oral testimony) and oral
23 argument. Within 60 days of such hearing, the Di-
24 rector shall notify such party whether the suspension
25 or prohibition from participation in any manner in

1 the conduct of the affairs of the enterprise will be
2 continued, terminated, or otherwise modified, or
3 whether the order removing such party from office
4 or prohibiting such party from further participation
5 in any manner in the conduct of the affairs of the
6 enterprise will be rescinded or otherwise modified.
7 Such notification shall contain a statement of the
8 basis for the Director's decision, if adverse to such
9 party. The Director is authorized to prescribe such
10 rules as may be necessary to effectuate the purposes
11 of this subsection.

12 “(i) HEARINGS AND JUDICIAL REVIEW.—

13 “(1) VENUE AND PROCEDURE.—Any hearing
14 provided for in this section shall be held in the Dis-
15 trict of Columbia or in the Federal judicial district
16 in which the headquarters of the enterprise is lo-
17 cated, unless the party afforded the hearing consents
18 to another place, and shall be conducted in accord-
19 ance with the provisions of chapter 5 of title 5,
20 United States Code. After such hearing, and within
21 90 days after the Director has notified the parties
22 that the case has been submitted to the court for
23 final decision, the court shall render its decision
24 (which shall include findings of fact upon which its
25 decision is predicated) and shall issue and serve

1 upon each party to the proceeding an order or or-
2 ders consistent with the provisions of this section.
3 Judicial review of any such order shall be exclusively
4 as provided in this subsection. Unless a petition for
5 review is timely filed in a court of appeals of the
6 United States, as provided in paragraph (2), and
7 thereafter until the record in the proceeding has
8 been filed as so provided, the Director may at any
9 time, upon such notice and in such manner as it
10 shall deem proper, modify, terminate, or set aside
11 any such order. Upon such filing of the record, the
12 Director may modify, terminate, or set aside any
13 such order with permission of the court.

14 “(2) REVIEW OF ORDER.—Any party to any
15 proceeding under paragraph (1) may obtain a review
16 of any order served pursuant to paragraph (1)
17 (other than an order issued with the consent of the
18 enterprise or the enterprise-affiliated party con-
19 cerned, or an order issued under subsection (h) of
20 this section) by the filing in the United States Court
21 of Appeals for the District of Columbia Circuit or
22 court of appeals of the United States for the circuit
23 in which the headquarters of the enterprise is lo-
24 cated, within 30 days after the date of service of
25 such order, a written petition praying that the order

1 of the Director be modified, terminated, or set aside.
2 A copy of such petition shall be transmitted by the
3 clerk of the court to the Director, and thereupon the
4 Director shall file in the court the record in the pro-
5 ceeding, as provided in section 2112 of title 28,
6 United States Code. Upon the filing of such petition,
7 such court shall have jurisdiction, which upon the
8 filing of the record shall (except as provided in the
9 last sentence of paragraph (1)) be exclusive, to af-
10 firm, modify, terminate, or set aside, in whole or in
11 part, the order of the Director. Review of such pro-
12 ceedings shall be had as provided in chapter 7 of
13 title 5, United States Code. The judgment and de-
14 cree of the court shall be final, except that the same
15 shall be subject to review by the Supreme Court
16 upon certiorari, as provided in section 1254 of title
17 28, United States Code.

18 “(3) PROCEEDINGS NOT TREATED AS STAY.—
19 The commencement of proceedings for judicial re-
20 view under paragraph (2) shall not, unless specifi-
21 cally ordered by the court, operate as a stay of any
22 order issued by the Director.”

23 (b) CONFORMING AMENDMENTS.—

24 (1) 1992 ACT.—Section 1317(f) of the Housing
25 and Community Development Act of 1992 (12

1 U.S.C. 4517(f)) is amended by striking “section
2 1379B” and inserting “section 1379D”.

3 (2) FANNIE MAE CHARTER ACT.—The second
4 sentence of subsection (b) of section 308 of the Fed-
5 eral National Mortgage Association Charter Act (12
6 U.S.C. 1723(b)) is amended by striking “The” and
7 inserting “Except to the extent that action under
8 section 1377 of the Housing and Community Devel-
9 opment Act of 1992 temporarily results in a lesser
10 number, the”.

11 (3) FREDDIE MAC ACT.—The second sentence
12 of subparagraph (A) of section 303(a)(2) of the
13 Federal Home Loan Mortgage Corporation Act (12
14 U.S.C. 1452(a)(2)(A)) is amended by striking
15 “The” and inserting “Except to the extent action
16 under section 1377 of the Housing and Community
17 Development Act of 1992 temporarily results in a
18 lesser number, the”.

19 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

20 Section 1375 of the Housing and Community Devel-
21 opment Act of 1992 (12 U.S.C. 4635) is amended—

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

24 “(a) ENFORCEMENT.—The Director may, in the dis-
25 cretion of the Director, apply to the United States District

1 Court for the District of Columbia, or the United States
2 district court within the jurisdiction of which the head-
3 quarters of the enterprise is located, for the enforcement
4 of any effective and outstanding notice or order issued
5 under this subtitle or subtitle B, or request that the Attor-
6 ney General of the United States bring such an action.
7 Such court shall have jurisdiction and power to order and
8 require compliance with such notice or order.”; and

9 (2) in subsection (b), by striking “or 1376” and
10 inserting “1376, or 1377”.

11 **SEC. 155. CIVIL MONEY PENALTIES.**

12 Section 1376 of the Housing and Community Devel-
13 opment Act of 1992 (12 U.S.C. 4636) is amended—

14 (1) in subsection (a), in the matter preceding
15 paragraph (1), by striking “or any executive officer
16 or” and inserting “any executive officer of an enter-
17 prise, any enterprise-affiliated party, or any”;

18 (2) by striking subsection (b) and inserting the
19 following:

20 “(b) AMOUNT OF PENALTY.—

21 “(1) FIRST TIER.—Any enterprise which, or
22 any enterprise-affiliated party who—

23 “(A) violates any provision of this title, the
24 Federal National Mortgage Association Charter
25 Act (12 U.S.C. 1716 et seq.), the Federal

1 Home Loan Mortgage Corporation Act (12
2 U.S.C. 1451 et seq.), or any order, condition,
3 rule, or regulation under any such title or Act,
4 except that the Director may not enforce com-
5 pliance with any housing goal established under
6 subpart B of part 2 of subtitle A of this title,
7 with section 1336 or 1337 of this title, with
8 subsection (m) or (n) of section 309 of the Fed-
9 eral National Mortgage Association Charter Act
10 (12 U.S.C. 1723a(m), (n)), or with subsection
11 (e) or (f) of section 307 of the Federal Home
12 Loan Mortgage Corporation Act (12 U.S.C.
13 1456(e), (f));

14 “(B) violates any final or temporary order
15 or notice issued pursuant to this title;

16 “(C) violates any condition imposed in
17 writing by the Director in connection with the
18 grant of any application or other request by
19 such enterprise;

20 “(D) violates any written agreement be-
21 tween the enterprise and the Director; or

22 “(E) engages in any conduct the Director
23 determines to be an unsafe or unsound practice,

1 shall forfeit and pay a civil penalty of not more than
2 \$10,000 for each day during which such violation
3 continues.

4 “(2) SECOND TIER.—Notwithstanding para-
5 graph (1)—

6 “(A) if an enterprise, or an enterprise-af-
7 filiated party—

8 “(i) commits any violation described
9 in any subparagraph of paragraph (1);

10 “(ii) recklessly engages in an unsafe
11 or unsound practice in conducting the af-
12 fairs of such enterprise; or

13 “(iii) breaches any fiduciary duty; and

14 “(B) the violation, practice, or breach—

15 “(i) is part of a pattern of mis-
16 conduct;

17 “(ii) causes or is likely to cause more
18 than a minimal loss to such enterprise; or

19 “(iii) results in pecuniary gain or
20 other benefit to such party,

21 the enterprise or enterprise-affiliated party shall for-
22 feit and pay a civil penalty of not more than
23 \$50,000 for each day during which such violation,
24 practice, or breach continues.

1 “(3) THIRD TIER.—Notwithstanding para-
2 graphs (1) and (2), any enterprise which, or any en-
3 terprise-affiliated party who—

4 “(A) knowingly—

5 “(i) commits any violation described
6 in any subparagraph of paragraph (1);

7 “(ii) engages in any unsafe or un-
8 sound practice in conducting the affairs of
9 such enterprise; or

10 “(iii) breaches any fiduciary duty; and

11 “(B) knowingly or recklessly causes a sub-
12 stantial loss to such enterprise or a substantial
13 pecuniary gain or other benefit to such party by
14 reason of such violation, practice, or breach,

15 shall forfeit and pay a civil penalty in an amount not
16 to exceed the applicable maximum amount deter-
17 mined under paragraph (4) for each day during
18 which such violation, practice, or breach continues.

19 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
20 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—

21 The maximum daily amount of any civil penalty
22 which may be assessed pursuant to paragraph (3)
23 for any violation, practice, or breach described in
24 such paragraph is—

1 “(A) in the case of any person other than
2 an enterprise, an amount not to exceed
3 \$2,000,000; and

4 “(B) in the case of any enterprise,
5 \$2,000,000.”; and

6 (3) in subsection (d)—

7 (A) by striking “or director” each place
8 such term appears and inserting “director, or
9 enterprise-affiliated party”;

10 (B) by striking “request the Attorney Gen-
11 eral of the United States to”;

12 (C) by inserting “, or the United States
13 district court within the jurisdiction of which
14 the headquarters of the enterprise is located,”
15 after “District of Columbia”; and

16 (D) by striking “, or may, under the direc-
17 tion and control of the Attorney General, bring
18 such an action”.

19 **SEC. 156. CRIMINAL PENALTY.**

20 Subtitle C of title XIII of the Housing and Commu-
21 nity Development Act of 1992 (12 U.S.C. 4631 et seq.)
22 is amended by inserting after section 1377 (as added by
23 this Act) the following:

1 **“SEC. 1378. CRIMINAL PENALTY.**

2 “Whoever, being subject to an order in effect under
3 section 1377, without the prior written approval of the Di-
4 rector, knowingly participates, directly or indirectly, in any
5 manner (including by engaging in an activity specifically
6 prohibited in such an order) in the conduct of the affairs
7 of any enterprise shall, notwithstanding section 3571 of
8 title 18, be fined not more than \$1,000,000, imprisoned
9 for not more than 5 years, or both.”.

10 **Subtitle D—Reports to Congress**

11 **SEC. 161. STUDIES AND REPORTS.**

12 (a) INSURED DEPOSITORY INSTITUTION HOLDINGS
13 OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURI-
14 TIES.—Not later than 180 days after the date of enact-
15 ment of the Federal Enterprise Regulatory Reform Act
16 of 2003, the Secretary of the Treasury, the Board of Gov-
17 ernors of the Federal Reserve System, the Board of Direc-
18 tors of the Federal Deposit Insurance Corporation, and
19 the National Credit Union Administration Board shall
20 jointly submit a report to Congress regarding—

21 (1) the extent to which obligations issued or
22 guaranteed by the enterprises (including mortgage-
23 backed securities) are held by federally insured de-
24 pository institutions, including such extent by type
25 of institution and such extent relative to the capital
26 of the institution;

1 (2) the extent to which the unlimited holdings
2 by federally insured depository institutions of the ob-
3 ligations of the enterprises could produce systemic
4 risk issues, particularly for the safety and soundness
5 of the banking system in the United States, in the
6 event of default or failure by an enterprise; and

7 (3) the effects on the enterprises, the banking
8 industry, and mortgage markets, if prudent limits on
9 the holdings of enterprise obligations were placed on
10 federally insured depository institutions.

11 (b) PORTFOLIO OPERATIONS, RISK MANAGEMENT,
12 AND MISSION.—

13 (1) IN GENERAL.—Not later than one year
14 after the date of enactment of the Federal Enter-
15 prise Regulatory Reform Act of 2003, the Director
16 shall submit a report to Congress—

17 (A) describing the holdings of the enter-
18 prises in retained mortgages and repurchased
19 mortgage-backed securities and the use of de-
20 rivatives for hedging purposes;

21 (B) describing the extent of such holdings
22 relative to other assets and the risk implications
23 of such holdings;

1 (C) containing an analysis of such holdings
2 for safety and soundness or mission compliance
3 purposes; and

4 (D) containing an assessment of whether
5 such holdings and other assets of the enter-
6 prises fulfill the mission purposes of the enter-
7 prises under the Federal National Mortgage As-
8 sociation Charter Act (12 U.S.C. 1716 et seq.)
9 and the Federal Home Loan Mortgage Cor-
10 poration Act (12 U.S.C. 1451 et seq.).

11 (2) CONSULTATION.—The Director shall con-
12 sult with the Comptroller General of the United
13 States in preparing the report under this subsection
14 and in conducting any research, analyses, and as-
15 sessments for the report.

16 (c) STUDY OF MERGER OF FHFBS WITH OFES.—

17 (1) IN GENERAL.—The Secretary of the Treas-
18 ury, after consultation with the Secretary of Hous-
19 ing and Urban Development and the Board of Gov-
20 ernors of the Federal Reserve System, shall study
21 the feasibility and advisability of merging the Fed-
22 eral Housing Finance Board and the Office of Fed-
23 eral Enterprise Supervision of the Department of
24 the Treasury.

1 (2) REPORT.—Not later than 1 year after the
2 date of enactment of this Act, the Secretary of the
3 Treasury shall submit a report to Congress on the
4 results of the study conducted under paragraph (1).

5 (d) STUDY OF CONSOLIDATION OF OTS WITH
6 OFES.—

7 (1) STUDY.—The Secretary of the Treasury
8 shall study the feasibility and efficacy of consoli-
9 dating the Office of Thrift Supervision with the Of-
10 fice of Federal Enterprise Supervision of the De-
11 partment of the Treasury.

12 (2) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary of the
14 Treasury shall submit a report to Congress on the
15 results of the study conducted under paragraph (1).

16 (e) RECOMMENDATIONS.—Each report submitted
17 pursuant to this section shall include specific recommenda-
18 tions of appropriate policies, limitations, regulations, legis-
19 lation, or other actions to deal appropriately and effec-
20 tively with the issues addressed by such report.

21 (f) DEFINITIONS.—As used in this section, the terms
22 “Director” and “enterprise” have the meanings given
23 those terms under section 1303 of the Housing and Com-
24 munity Development Act of 1992 (42 U.S.C. 4502).

1 (g) CLERICAL AMENDMENTS.—Part 3 of subtitle A
 2 of title XIII the Housing and Community Development
 3 Act of 1992 (106 Stat. 3969) is amended—

4 (1) by striking sections 1351, 1352, and 1353
 5 (Public Law 102–550; 106 Stat. 3969), except that
 6 the provisions of law amended by such sections re-
 7 pealed shall not be affected by such repeal; and

8 (2) by striking sections 1354, 1355, and 1356
 9 (12 U.S.C. 4601–3).

10 **Subtitle E—General Provisions**

11 **SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.**

12 (a) AMENDMENTS TO 1992 ACT.—Title XIII of the
 13 Housing and Community Development Act of 1992 (12
 14 U.S.C. 4501 et seq.), as amended this Act, is further
 15 amended—

16 (1) in section 1315 (12 U.S.C. 4515)—

17 (A) in subsection (a)—

18 (i) in the subsection heading, by strik-
 19 ing “OFFICE PERSONNEL” and inserting
 20 “IN GENERAL”; and

21 (ii) by striking “The” and inserting
 22 “Subject to title II of the Federal Enter-
 23 prise Regulatory Reform Act of 2003,
 24 the”;

25 (B) in subsection (d)—

- 1 (i) in the subsection heading, by strik-
2 ing “HUD” and inserting “DEPARTMENT
3 OF THE TREASURY”; and
- 4 (ii) by striking “Housing and Urban
5 Development” and inserting “the Depart-
6 ment of the Treasury”; and
- 7 (C) by striking subsection (f);
- 8 (2) in section 1319A (12 U.S.C. 4520)—
- 9 (A) by striking “(a) IN GENERAL.—”; and
10 (B) by striking subsection (b);
- 11 (3) in section 1319F (12 U.S.C. 4525), by
12 striking paragraph (2);
- 13 (4) in the section heading for section 1328, by
14 striking “**SECRETARY**” and inserting “**DIREC-**
15 **TOR**”;
- 16 (5) in section 1361 (12 U.S.C. 4611)—
- 17 (A) in subsection (e)(1), by striking the
18 first sentence and inserting the following: “The
19 Director shall establish the risk-based capital
20 test under this section by regulation.”; and
- 21 (B) in subsection (f), by striking “the Sec-
22 retary,”;
- 23 (6) in section 1364(e) (12 U.S.C. 4614(e)), by
24 striking the last sentence;

1 (7) in section 1367(a)(2) (12 U.S.C.
2 4617(a)(2)), by striking “with the written concu-
3 rence of the Secretary of the Treasury,”;

4 (8) by striking section 1383;

5 (9) by striking “Committee on Banking, Fi-
6 nance and Urban Affairs” and inserting “Committee
7 on Financial Services” each place such term appears
8 in sections 1319B, 1319G(c), 1328(a),
9 1336(b)(3)(C), 1337, and 1369(a)(3); and

10 (10) by striking “Secretary” and inserting “Di-
11 rector” each place such term appears in—

12 (A) subpart A of part 2 of subtitle A (ex-
13 cept in sections 1322, 1324, and 1325); and

14 (B) subtitle B (except in section
15 1361(d)(1) and 1369E); and

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

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

7 (A) in paragraph (1), by inserting “the Di-
8 rector of the Office of Federal Enterprise Su-
9 pervision of the Department of the Treasury,”
10 after “Senate,”; and

11 (B) in paragraph (3)(B), by striking “Sec-
12 retary” and inserting “Director of the Office of
13 Federal Enterprise Supervision of the Depart-
14 ment of the Treasury”.

15 (c) AMENDMENTS TO FREDDIE MAC ACT.—The Fed-
16 eral Home Loan Mortgage Corporation Act (12 U.S.C.
17 1451 et seq.) is amended—

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

24 (A) section 303(b)(2) (12 U.S.C.
25 1452(b)(2));

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

3 (C) section 307(c)(1) (12 U.S.C.
4 1456(c)(1));

5 (2) in section 306(i) (12 U.S.C. 1455(i))—

6 (A) by striking “section 1316(c)” and in-
7 serting “section 306(c)”; and

8 (B) by striking “section 106” and insert-
9 ing “section 1316”; and

10 (3) in section 307 (12 U.S.C. 1456)—

11 (A) in subsection (f)—

12 (i) in paragraph (1), by inserting “the
13 Director of the Office of Federal Enter-
14 prise Supervision of the Department of the
15 Treasury,” after “Senate,”; and

16 (ii) in paragraph (3)(B), by striking
17 “Secretary” and inserting “Director of the
18 Office of Federal Enterprise Supervision of
19 the Department of the Treasury”.

20 (d) AMENDMENT TO TITLE 18, UNITED STATES
21 CODE.—Section 1905 of title 18, United States Code, is
22 amended by striking “Office of Federal Housing Enter-
23 prise Oversight” and inserting “Office of Federal Enter-
24 prise Supervision of the Department of the Treasury”.

1 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION
2 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-
3 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))
4 is amended by striking “Director of the Office of Federal
5 Housing Enterprise Oversight of the Department of Hous-
6 ing and Urban Development” and inserting “Director of
7 the Office of Federal Enterprise Supervision of the De-
8 partment of the Treasury”.

9 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND
10 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-
11 ment of Housing and Urban Development Act (42 U.S.C.
12 3534) is amended by striking subsection (d).

13 (g) AMENDMENT TO TITLE 5, UNITED STATES
14 CODE.—Section 5315 of title 5, United States Code, is
15 amended by striking the item relating to the Director of
16 the Office of Federal Housing Enterprise Oversight, De-
17 partment of Housing and Urban Development and insert-
18 ing the following new item:

19 “Director of the Office of Federal Enterprise
20 Oversight, Department of the Treasury.”.

21 **SEC. 172. EFFECTIVE DATE.**

22 Except as specifically provided otherwise in this title,
23 the amendments made by this title shall take effect on,
24 and shall apply beginning on, the expiration of the 1-year
25 period beginning on the date of enactment of this Act.

1 **TITLE II—TRANSFER OF FUNC-**
2 **TIONS, PERSONNEL, AND**
3 **PROPERTY**

4 **SEC. 201. ABOLISHMENT OF OFHEO.**

5 (a) IN GENERAL.—Effective at the end of the 1-year
6 period beginning on the date of enactment of this Act, the
7 Office of Federal Housing Enterprise Oversight of the De-
8 partment of Housing and Urban Development and the po-
9 sitions of the Director and Deputy Director of such Office
10 are abolished.

11 (b) DISPOSITION OF AFFAIRS.—During the 1-year
12 period beginning on the date of enactment of this Act, the
13 Director of the Office of Federal Housing Enterprise
14 Oversight shall, solely for the purpose of winding up the
15 affairs of the Office of Federal Housing Enterprise Over-
16 sight—

17 (1) manage the employees of such Office and
18 provide for the payment of the compensation and
19 benefits of any such employee which accrue before
20 the effective date of any transfer of such employee
21 pursuant to section 203; and

22 (2) may take any other action necessary for the
23 purpose of winding up the affairs of the Office.

24 (c) STATUS OF EMPLOYEES AS FEDERAL AGENCY
25 EMPLOYEES.—The amendments made by title I and the

1 abolitionment of the Office of Federal Housing Enterprise
2 Oversight under subsection (a) of this section may not be
3 construed to affect the status of any employee of such Of-
4 fice as employees of an agency of the United States for
5 purposes of any other provision of law during any time
6 such employee is so employed.

7 (d) USE OF PROPERTY AND SERVICES.—

8 (1) PROPERTY.—The Director of the Office of
9 Federal Enterprise Supervision of the Department
10 of the Treasury may use the property of the Office
11 of Federal Housing Enterprise Oversight to perform
12 functions that have been transferred to the Director
13 of the Office of Federal Enterprise Supervision for
14 such time as is reasonable to facilitate the orderly
15 transfer of functions under any other provision of
16 this Act, or any amendment made by this Act to any
17 other provision of law.

18 (2) AGENCY SERVICES.—Any agency, depart-
19 ment, or other instrumentality of the United States,
20 and any successor to any such agency, department,
21 or instrumentality, which was providing supporting
22 services to the Office of Federal Housing Enterprise
23 Oversight before the expiration of the period under
24 subsection (a) in connection with functions that are
25 transferred to the Director of the Office of Federal

1 Enterprise Supervision of the Department of the
2 Treasury shall—

3 (A) continue to provide such services, on a
4 reimbursable basis, until the transfer of such
5 functions is complete; and

6 (B) consult with any such agency to co-
7 ordinate and facilitate a prompt and reasonable
8 transition.

9 (e) SAVINGS PROVISIONS.—

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Subsection (a) shall not af-
12 fect the validity of any right, duty, or obligation of
13 the United States, the Director of the Office of Fed-
14 eral Housing Enterprise Oversight, or any other per-
15 son, which—

16 (A) arises under or pursuant to the title
17 XIII of the Housing and Community Develop-
18 ment Act of 1992 (12 U.S.C. 4501 et seq.), the
19 Federal National Mortgage Association Charter
20 Act (12 U.S.C. 1716 et seq.), the Federal
21 Home Loan Mortgage Corporation Act (12
22 U.S.C. 1451 et seq.), or any other provision of
23 law applicable with respect to such Office; and

24 (B) existed on the day before the abolish-
25 ment under subsection (a) of this section.

1 (2) CONTINUATION OF SUITS.—No action or
2 other proceeding commenced by or against the Di-
3 rector of the Office of Federal Housing Enterprise
4 Oversight shall abate by reason of the enactment of
5 this Act, except that the Director of the Office of
6 Federal Enterprise Supervision of the Department
7 of the Treasury shall be substituted for the Director
8 of the Office of Federal Housing Enterprise Over-
9 sight as a party to any such action or proceeding.

10 **SEC. 202. CONTINUATION AND COORDINATION OF CERTAIN**
11 **REGULATIONS.**

12 All regulations, orders, determinations, and resolu-
13 tions that—

14 (1) were issued, made, prescribed, or allowed to
15 become effective by—

16 (A) the Office of Federal Housing Enter-
17 prise Oversight;

18 (B) the Secretary of Housing and Urban
19 Development and that relate to the Secretary's
20 authority under—

21 (i) title XIII of the Housing and Com-
22 munity Development Act of 1992 (12
23 U.S.C. 4501 et seq.);

24 (ii) under the Federal National Mort-
25 gage Association Charter Act (12 U.S.C.

1 1716 et seq.), with respect to the Federal
2 National Mortgage Association; or

3 (iii) the Federal Home Loan Mort-
4 gage Corporation Act (12 U.S.C. 1451 et
5 seq.); or

6 (C) a court of competent jurisdiction and
7 that relate to functions transferred by this Act;
8 and

9 (2) are in effect on the date of the abolishment
10 under section 201(a) of this Act,

11 shall remain in effect according to the terms of such regu-
12 lations, orders, determinations, and resolutions, and shall
13 be enforceable by or against the Director of the Office of
14 Federal Enterprise Supervision of the Department of the
15 Treasury until modified, terminated, set aside, or super-
16 seded in accordance with applicable law by such Board,
17 any court of competent jurisdiction, or operation of law.

18 **SEC. 203. TRANSFER AND RIGHTS OF EMPLOYEES OF**
19 **OFHEO.**

20 (a) **AUTHORITY TO TRANSFER.**—The Director of the
21 Office of Federal Enterprise Supervision of the Depart-
22 ment of the Treasury may transfer employees of the Office
23 of Federal Housing Enterprise Oversight to the Office of
24 Federal Enterprise Supervision for employment no later
25 than the date of the abolishment under section 201(a) of

1 this Act, as the Director considers appropriate. This Act
2 and the amendments made by this Act shall not be consid-
3 ered to result in the transfer of any function from one
4 agency to another or the replacement of one agency by
5 another, for purposes of section 3505 of title 5, United
6 States Code, except to the extent that the Director of the
7 Office of Federal Enterprise Supervision specifically pro-
8 vides so.

9 (b) APPOINTMENT AUTHORITY FOR EXCEPTED AND
10 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

11 (1) IN GENERAL.—Subject to paragraph (2), in
12 the case of employees occupying positions in the ex-
13 cepted service or the Senior Executive Service, any
14 appointment authority established pursuant to law
15 or regulations of the Office of Personnel Manage-
16 ment for filling such positions shall be transferred.

17 (2) DECLINE OF TRANSFER.—The Director of
18 the Office of Federal Enterprise Supervision of the
19 Department of the Treasury may decline a transfer
20 of authority under paragraph (1) (and the employees
21 appointed pursuant thereto) to the extent that such
22 authority relates to positions excepted from the com-
23 petitive service because of their confidential, policy-
24 making, policy-determining, or policy-advocating
25 character, and noncareer positions in the Senior Ex-

1 ecutive Service (within the meaning of section
2 3132(a)(7) of title 5, United States Code).

3 (c) REORGANIZATION.—If the Director of the Office
4 of Federal Enterprise Supervision of the Department of
5 the Treasury determines, after the end of the 1-year pe-
6 riod beginning on the date of the abolishment under sec-
7 tion 201(a), that a reorganization of the combined work
8 force is required, that reorganization shall be deemed a
9 major reorganization for purposes of affording affected
10 employees retirement under section 8336(d)(2) or
11 8414(b)(1)(B) of title 5, United States Code.

12 (d) EMPLOYEE BENEFIT PROGRAMS.—

13 (1) IN GENERAL.—Any employee of the Office
14 of Federal Housing Enterprise Oversight accepting
15 employment with the Director of the Office of Fed-
16 eral Enterprise Supervision of the Department of
17 the Treasury as a result of a transfer under sub-
18 section (a) may retain for 18 months after the date
19 such transfer occurs membership in any employee
20 benefit program of the Director of the Office of Fed-
21 eral Enterprise Supervision of the Department of
22 the Treasury or the Office of Federal Housing En-
23 terprise Oversight, as applicable, including insur-
24 ance, to which such employee belongs on the date of
25 the abolishment under section 201(a) if—

1 (A) the employee does not elect to give up
2 the benefit or membership in the program; and

3 (B) the benefit or program is continued by
4 the Director of the Office of Federal Enterprise
5 Supervision.

6 (2) PAYMENT OF DIFFERENTIAL.—The dif-
7 ference in the costs between the benefits which
8 would have been provided by such agency and those
9 provided by this section shall be paid by the Director
10 of the Office of Federal Enterprise Supervision. If
11 any employee elects to give up membership in a
12 health insurance program or the health insurance
13 program is not continued by such Director, the em-
14 ployee shall be permitted to select an alternate Fed-
15 eral health insurance program within 30 days of
16 such election or notice, without regard to any other
17 regularly scheduled open season.

18 **SEC. 204. TRANSFER OF PROPERTY AND FACILITIES.**

19 Upon the abolishment under section 201(a), all prop-
20 erty of the Office of Federal Housing Enterprise Oversight
21 shall transfer to the Director of the Office of Federal En-
22 terprise Supervision of the Department of the Treasury.

○