

110TH CONGRESS
1ST SESSION

S. 1100

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

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

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

A BILL

To address the 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Housing Enterprise Regulatory Reform Act of
6 2007”.

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

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

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 101. Establishment of the Federal Housing Enterprise Regulatory Agency.
- Sec. 102. Duties and authorities of Director.
- Sec. 103. Federal Housing Enterprise Board.
- Sec. 104. Authority to require reports by regulated entities.
- Sec. 105. Examiners and accountants; authority to contract for reviews of regulated entities.
- Sec. 106. Assessments.
- Sec. 107. Regulations and orders.
- Sec. 108. Prudential management and operations standards.
- Sec. 109. Capital levels and holdings.
- Sec. 110. Risk-Based capital test for enterprises.
- Sec. 111. Registration of enterprise securities.
- Sec. 112. Limit on golden parachutes.
- Sec. 113. Reporting of fraudulent loans.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
- Sec. 122. Review of enterprise products.
- Sec. 123. Monitoring and enforcing compliance with housing goals.
- Sec. 124. Assumption by Director of other HUD responsibilities.
- Sec. 125. Administrative and judicial enforcement proceedings.
- Sec. 126. Conforming loan limits.
- Sec. 127. Reporting of mortgage data; housing goals.
- Sec. 128. Duty to serve underserved markets.
- Sec. 129. Home purchase goal.

Subtitle C—Prompt Corrective Action

- Sec. 141. Critical capital levels.
- Sec. 142. Capital classifications.
- Sec. 143. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 144. Supervisory actions applicable to significantly undercapitalized regulated entities.
- Sec. 145. Authority over critically undercapitalized regulated entities.

Subtitle D—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.
- Sec. 157. Notice after separation from service.
- Sec. 158. Subpoena authority.

Subtitle E—General Provisions

- Sec. 161. Conforming and technical amendments.
- Sec. 162. Presidentially appointed directors of enterprises.
- Sec. 163. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Directors.

- Sec. 202. Definitions.
- Sec. 203. Agency oversight of Federal home loan banks.
- Sec. 204. Federal Home Loan Bank Finance Facility.
- Sec. 205. Exclusion from certain securities reporting requirements.
- Sec. 206. Mergers.
- Sec. 207. Authority to reduce districts.
- Sec. 208. Management of home loan banks.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Subtitle A—OFHEO

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

Subtitle B—Federal Housing Finance Board

- Sec. 311. Abolishment of the Federal Housing Finance Board.
- Sec. 312. Continuation and coordination of certain regulations.
- Sec. 313. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 314. Transfer of property and facilities.

TITLE IV—STUDIES AND REPORTS

- Sec. 401. Study and report on Basel II and enterprise debt.
- Sec. 402. Affordable housing audits.
- Sec. 403. Report on insured depository institution holdings of regulated entity debt and mortgage-backed securities.
- Sec. 404. Report on risk-based capital levels.
- Sec. 405. Report on resources and allocations.
- Sec. 406. Study and report on guarantee fees.
- Sec. 407. Report on conforming loan limits.
- Sec. 408. Reviews and studies relating to enterprises and related foundations.
- Sec. 409. Recommendations.

1 **SEC. 2. DEFINITIONS.**

2 (a) FEDERAL SAFETY AND SOUNDNESS ACT DEFINI-
 3 TIONS.—Section 1303 of the Federal Housing Enterprises
 4 Financial Safety and Soundness Act of 1992 (12 U.S.C.
 5 4502) is amended—

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

1 (2) in paragraph (14), by striking “Office of
2 Federal Housing Enterprise Oversight of the De-
3 partment of Housing and Urban Development” and
4 inserting “Federal Housing Enterprise Regulatory
5 Agency”;

6 (3) by redesignating paragraphs (16) through
7 (19) as paragraphs (22) through (25), respectively;

8 (4) by striking paragraph (15) and inserting
9 the following:

10 “(21) REGULATED ENTITY.—The term ‘regu-
11 lated entity’ means—

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

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

16 “(C) any Federal Home Loan Bank.”;

17 (5) by striking paragraph (13);

18 (6) by redesignating paragraph (7) as para-
19 graph (13);

20 (7) by redesignating paragraphs (11), (12), and
21 (14) as paragraphs (18) through (20), respectively;

22 (8) by striking paragraphs (8) through (10)
23 and inserting the following:

24 “(15) LOW-INCOME.—The term ‘low-income’
25 means a family income that is less than 50 percent

1 of the area median income, or a family income that
 2 is less than 50 percent of the area median income.

3 “(16) MEDIAN INCOME.—The term ‘area me-
 4 dian income’ means—

5 “(A) the median family income for a met-
 6 ropolitan statistical area (as designated under
 7 13 U.S.C. 421), if the family is located in a
 8 metropolitan statistical area; or

9 “(B) the statewide nonmetropolitan me-
 10 dian family income, if the family is located out-
 11 side a metropolitan statistical area.

12 “(17) MODERATE-INCOME.—The term ‘mod-
 13 erate-income’ means an individual income that is at
 14 least 50 percent and less than 80 percent of the area
 15 median income, or a median family income that is
 16 at least 50 percent and not more than 80 percent
 17 of the area median income.”;

18 (9) in paragraph (5)—

19 (A) by striking “(5)” and inserting “(9)”;
 20 and

21 (B) by striking “Office of Federal Housing
 22 Enterprise Oversight of the Department of
 23 Housing and Urban Development” and insert-
 24 ing “Federal Housing Enterprise Regulatory
 25 Agency”;

1 (10) by redesignating paragraph (6) as para-
2 graph (10);

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

5 (12) by inserting after paragraph (7), as redes-
6 ignated, the following:

7 “(8) DEFAULT; IN DANGER OF DEFAULT.—

8 “(A) DEFAULT.—The term ‘default’
9 means, with respect to a regulated entity, any
10 adjudication or other official determination by
11 any court of competent jurisdiction, or the
12 Agency, pursuant to which a conservator, re-
13 ceiver, limited-life regulated entity, or legal cus-
14 todian is appointed for a regulated entity.

15 “(B) IN DANGER OF DEFAULT.—The term
16 ‘in danger of default’ means a regulated entity
17 with respect to which—

18 “(i) in the opinion of the Agency—

19 “(I) the regulated entity is not
20 likely to be able to pay the obligations
21 of the regulated entity in the normal
22 course of business; or

23 “(II) the regulated entity has in-
24 curred or is likely to incur losses that

1 will deplete all or substantially all of
 2 its capital; and

3 “(ii) there is no reasonable prospect
 4 that the capital of the regulated entity will
 5 be replenished.”;

6 (13) by inserting after paragraph (1) the fol-
 7 lowing:

8 “(2) AGENCY; DIRECTOR.—The term—

9 “(A) ‘Agency’ means the Federal Housing
 10 Enterprise Regulatory Agency established under
 11 section 1311; and

12 “(B) ‘Director’ means the Director of the
 13 Agency, appointed under section 1312;

14 “(3) AUTHORIZING STATUTES.—The term ‘au-
 15 thorizing statutes’ means—

16 “(A) the Federal National Mortgage Asso-
 17 ciation Charter Act;

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

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

21 “(4) BOARD.—The term ‘Board’ means the
 22 Federal Housing Enterprise Board established under
 23 section 1313A.”;

24 (14) by inserting after paragraph (10), as re-
 25 designated, the following:

1 “(11) ENTITY-AFFILIATED PARTY.—The term
2 ‘entity-affiliated party’ means—

3 “(A) any director, officer, employee, or
4 controlling stockholder of, or agent for, a regu-
5 lated entity;

6 “(B) any shareholder, affiliate, consultant,
7 or joint venture partner of a regulated entity,
8 and any other person, as determined by the Di-
9 rector (by regulation or on a case-by-case basis)
10 that participates in the conduct of the affairs of
11 a regulated entity, provided that a member of
12 a Federal Home Loan Bank shall not be
13 deemed to have participated in the affairs of
14 that Bank solely by virtue of being a share-
15 holder of, and obtaining advances from, that
16 Bank;

17 “(C) any independent contractor for a reg-
18 ulated entity (including any attorney, appraiser,
19 or accountant), if—

20 “(i) the independent contractor know-
21 ingly or recklessly participates in—

22 “(I) any violation of any law or
23 regulation;

24 “(II) any breach of fiduciary
25 duty; or

1 “(III) any unsafe or unsound
2 practice; and

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

7 “(D) any not-for-profit corporation that re-
8 ceives its principal funding, on an ongoing
9 basis, from any regulated entity; and

10 “(E) the Finance Facility.

11 “(12) FINANCE FACILITY.—The term ‘Finance
12 Facility’ means the Federal Home Loan Bank Fi-
13 nance Facility established under section 11A of the
14 Federal Home Loan Bank Act.

15 “(13) LIMITED-LIFE REGULATED ENTITY.—
16 The term ‘limited-life regulated entity’ means an en-
17 tity established by the Agency under section 1367(i)
18 with respect to a Federal Home Loan Bank in de-
19 fault or in danger of default or with respect to an
20 enterprise in default or in danger of default.”;

21 (15) in paragraph (25), as so redesignated by
22 this section, by striking “60” each place that term
23 appears and inserting “30”; and

24 (16) by adding at the end the following:

25 “(26) UPPER- AND MIDDLE-INCOME.—

1 “(A) UPPER-INCOME.—The term ‘upper-
2 income’ means a family income that is 120 per-
3 cent of the area median income or greater.

4 “(B) MIDDLE-INCOME.—The term ‘middle-
5 income’ means a family income that is not less
6 than 80 percent but less than 120 percent of
7 the area median income, or a median family in-
8 come that is at least 80 percent and not more
9 than 120 percent.

10 “(27) VIOLATION.—The term ‘violation’ in-
11 cludes any action (alone or in combination with an-
12 other or others) for or toward causing, bringing
13 about, participating in, counseling, or aiding or abet-
14 ting a violation.”.

15 (b) REFERENCES IN THIS ACT.—As used in this Act,
16 unless otherwise specified—

17 (1) the term “Agency” means the Federal
18 Housing Enterprise Regulatory Agency;

19 (2) the term “Director” means the Director of
20 the Agency; and

21 (3) the terms “enterprise”, “Finance Facility”,
22 “regulated entity”, and “authorizing statutes” have
23 the same meanings as in section 1303 of the Federal
24 Housing Enterprises Financial Safety and Sound-
25 ness Act of 1992, as amended by this Act.

1 **TITLE I—REFORM OF**
 2 **REGULATION OF ENTERPRISES**
 3 **Subtitle A—Improvement of Safety**
 4 **and Soundness Supervision**

5 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING EN-**
 6 **TERPRISE REGULATORY AGENCY.**

7 The Federal Housing Enterprises Financial Safety
 8 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
 9 amended by striking sections 1311 and 1312 and inserting
 10 the following:

11 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**
 12 **ENTERPRISE REGULATORY AGENCY.**

13 “(a) ESTABLISHMENT.—There is established the
 14 Federal Housing Enterprise Regulatory Agency, which
 15 shall be an independent agency of the Federal Govern-
 16 ment.

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

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

22 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE
 23 MAC, THE FEDERAL HOME LOAN BANKS, AND THE
 24 FINANCE FACILITY.—The Director shall have gen-
 25 eral regulatory authority over each regulated entity

1 and the Finance Facility, and shall exercise such
2 general regulatory authority, including such duties
3 and authorities set forth under section 1313, to en-
4 sure that the purposes of this Act, the authorizing
5 statutes, and any other applicable law are carried
6 out.

7 “(c) SAVINGS PROVISION.—The authority of the Di-
8 rector to take actions under subtitles B and C shall not
9 in any way limit the general supervisory and regulatory
10 authority granted to the Director under subsection (b).

11 **“SEC. 1312. DIRECTOR.**

12 “(a) ESTABLISHMENT OF POSITION.—There is estab-
13 lished the position of the Director of the Agency, who shall
14 be the head of the Agency.

15 “(b) APPOINTMENT; TERM.—

16 “(1) APPOINTMENT.—The Director shall be ap-
17 pointed by the President, by and with the advice and
18 consent of the Senate, from among individuals who
19 are citizens of the United States, have a dem-
20 onstrated understanding of financial management or
21 oversight, and have a demonstrated understanding
22 of capital markets, including the mortgage securities
23 markets and housing finance.

1 “(2) TERM.—The Director shall be appointed
2 for a term of 6 years, unless removed before the end
3 of such term for cause by the President.

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

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

15 “(5) TRANSITIONAL PROVISION.—Notwith-
16 standing paragraphs (1) and (2), during the period
17 beginning on the effective date of the Federal Hous-
18 ing Enterprise Regulatory Reform Act of 2007, and
19 ending on the date on which the Director is ap-
20 pointed and confirmed, the person serving as the Di-
21 rector of the Office of Federal Housing Enterprise
22 Oversight of the Department of Housing and Urban
23 Development on that effective date shall act for all
24 purposes as, and with the full powers of, the Direc-
25 tor.

1 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-
2 TERPRISE REGULATION.—

3 “(1) IN GENERAL.—The Agency shall have a
4 Deputy Director of the Division of Enterprise Regu-
5 lation, who shall be designated by the Director from
6 among individuals who are citizens of the United
7 States, have a demonstrated understanding of finan-
8 cial management or oversight, and have a dem-
9 onstrated understanding of mortgage securities mar-
10 kets and housing finance.

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

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

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

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

6 “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND
7 GOALS.—

8 “(1) IN GENERAL.—The Agency shall have a
9 Deputy Director for Housing Mission and Goals,
10 who shall be designated by the Director from among
11 individuals who are citizens of the United States,
12 and have a demonstrated understanding of the hous-
13 ing markets and housing finance.

14 “(2) FUNCTIONS.—The Deputy Director for
15 Housing Mission and Goals shall have such func-
16 tions, powers, and duties with respect to the over-
17 sight of the housing mission and goals of the regu-
18 lated entities as the Director shall prescribe.

19 “(f) ACTING DIRECTOR.—In the event of the death,
20 resignation, sickness, or absence of the Director, the
21 President shall designate either the Deputy Director of the
22 Division of Enterprise Regulation, the Deputy Director of
23 the Division of Federal Home Loan Bank Regulation, or
24 the Deputy Director for Housing Mission and Goals, to
25 serve as acting Director until the return of the Director,

1 or the appointment of a successor pursuant to subsection
2 (b).

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

5 “(1) have any direct or indirect financial inter-
6 est in any regulated entity or entity-affiliated party;

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

9 “(3) have served as an executive officer or di-
10 rector of any regulated entity or entity-affiliated
11 party at any time during the 3-year period preceding
12 the date of appointment of such individual as Direc-
13 tor or Deputy Director.”.

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

15 (a) IN GENERAL.—Section 1313 of the Federal
16 Housing Enterprises Financial Safety and Soundness Act
17 of 1992 (12 U.S.C. 4513) is amended to read as follows:

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

19 “(a) DUTIES.—

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

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

24 “(B) to ensure that—

1 “(i) each regulated entity operates in
2 a safe and sound manner, including main-
3 tenance of adequate capital and internal
4 controls;

5 “(ii) the operations and activities of
6 each regulated entity foster liquid, effi-
7 cient, competitive, and resilient national
8 housing finance markets (including activi-
9 ties relating to mortgages on housing for
10 low- and moderate-income families involv-
11 ing a reasonable economic return that may
12 be less than the return earned on other ac-
13 tivities);

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

18 “(iv) each regulated entity carries out
19 its statutory mission only through activi-
20 ties that are authorized under and con-
21 sistent with this title and the authorizing
22 statutes;

23 “(v) the activities of each regulated
24 entity and the manner in which such regu-

1 lated entity is operated are consistent with
2 the public interest;

3 “(vi) each regulated entity remains
4 adequately capitalized, after due consider-
5 ation of the risk to such regulated entity;
6 and

7 “(vii) in the case of the Federal Home
8 Loan Banks, they provide funds to com-
9 munity financial institutions for small
10 businesses, small farms, and small agricul-
11 tural businesses and accept as collateral
12 whole interests in such obligations.

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

15 “(A) to review and, if warranted based on
16 the principle duties described in paragraph (1),
17 reject any acquisition or transfer of a control-
18 ling interest in a regulated entity; and

19 “(B) to exercise such incidental powers as
20 may be necessary or appropriate to fulfill the
21 duties and responsibilities of the Director in the
22 supervision and regulation of each regulated en-
23 tity.

24 “(b) DELEGATION OF AUTHORITY.—The Director
25 may delegate to officers and employees of the Agency any

1 of the functions, powers, or duties of the Director, as the
2 Director considers appropriate.

3 “(c) LITIGATION AUTHORITY.—

4 “(1) IN GENERAL.—In enforcing any provision
5 of this title, any regulation or order prescribed under
6 this title, or any other provision of law, rule, regula-
7 tion, or order, or in any other action, suit, or pro-
8 ceeding to which the Director is a party or in which
9 the Director is interested, and in the administration
10 of conservatorships and receiverships, the Director
11 may act in the Director’s own name and through the
12 Director’s own attorneys.

13 “(2) SUBJECT TO SUIT.—Except as otherwise
14 provided by law, the Director shall be subject to suit
15 (other than suits on claims for money damages) by
16 a regulated entity with respect to any matter under
17 this title or any other applicable provision of law,
18 rule, order, or regulation under this title, in the
19 United States district court for the judicial district
20 in which the regulated entity has its principle place
21 of business, or in the United States District Court
22 for the District of Columbia, and the Director may
23 be served with process in the manner prescribed by
24 the Federal Rules of Civil Procedure.”.

1 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
 2 AND RECOMMENDATIONS.—Section 111 of Public Law
 3 93–495 (12 U.S.C. 250) is amended by striking “the Fed-
 4 eral Housing Finance Board” and inserting “the Director
 5 of the Federal Housing Enterprise Regulatory Agency”.

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

7 (a) IN GENERAL.—The Federal Housing Enterprises
 8 Financial Safety and Soundness Act of 1992 (12 U.S.C.
 9 4501 et seq.) is amended by inserting after section 1313
 10 the following:

11 **“SEC. 1313A. FEDERAL HOUSING ENTERPRISE BOARD.**

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

16 “(b) LIMITATIONS.—The Board may not exercise any
 17 executive authority, and the Director may not delegate to
 18 the Board any of the functions, powers, or duties of the
 19 Director.

20 “(c) COMPOSITION.—The Board shall be comprised
 21 of 4 members, of whom—

22 “(1) 1 member shall be the Secretary of the
 23 Treasury;

24 “(2) 1 member shall be the Secretary of Hous-
 25 ing and Urban Development;

1 “(3) 1 member shall be the Chairman of the
2 Securities and Exchange Commission; and

3 “(4) 1 member shall be the Director, who shall
4 serve as the Chairperson of the Board.

5 “(d) MEETINGS.—

6 “(1) IN GENERAL.—The Board shall meet upon
7 notice by the Director, but in no event shall the
8 Board meet less frequently than once every 3
9 months.

10 “(2) SPECIAL MEETINGS.—Either the Secretary
11 of the Treasury, the Secretary of Housing and
12 Urban Development, or the Chairman of the Securi-
13 ties and Exchange Commission may, upon giving
14 written notice to the Director, require a special
15 meeting of the Board.

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

18 “(1) the safety and soundness of the regulated
19 entities;

20 “(2) any material deficiencies in the conduct of
21 the operations of the regulated entities;

22 “(3) the overall operational status of the regu-
23 lated entities;

1 “(4) an evaluation of the performance of the
2 regulated entities in carrying out their respective
3 missions;

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

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

9 (b) ANNUAL REPORT OF THE DIRECTOR.—Section
10 1319B(a) of the Federal Housing Enterprises Financial
11 Safety and Soundness Act of 1992 (12 U.S.C. 4521(a))
12 is amended—

13 (1) by striking “enterprise” each place that
14 term appears and inserting “regulated entity”;

15 (2) by striking “enterprises” each place that
16 term appears and inserting “regulated entities”;

17 (3) in paragraph (3), by striking “; and” and
18 inserting a semicolon;

19 (4) in paragraph (4), by striking “1994.” and
20 inserting “1994; and”; and

21 (5) by adding at the end the following:

22 “(5) the assessment of the Board or any of its
23 members with respect to—

24 “(A) the safety and soundness of the regu-
25 lated entities;

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

3 “(C) the overall operational status of the
 4 regulated entities; and

5 “(D) an evaluation of the performance of
 6 the regulated entities in carrying out their re-
 7 spective missions;

8 “(6) operations, resources, and performance of
 9 the Agency; and

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

12 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
 13 **LATED ENTITIES.**

14 (a) IN GENERAL.—Section 1314 of the Federal
 15 Housing Enterprises Financial Safety and Soundness Act
 16 of 1992 (12 U.S.C. 4514) is amended—

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

19 (2) by striking “an enterprise” each place that
 20 term appears and inserting “a regulated entity”;

21 (3) by striking “the enterprise” and inserting
 22 “the regulated entity”;

23 (4) in subsection (a)—

1 (A) by striking the subsection heading and
 2 all that follows through “and operations” in
 3 paragraph (1) and inserting the following:

4 “(a) REGULAR AND SPECIAL REPORTS.—

5 “(1) REGULAR REPORTS.—The Director may
 6 require, by general or specific orders, a regulated en-
 7 tity to submit regular reports, including financial
 8 statements determined on a fair value basis, on the
 9 condition (including financial condition), manage-
 10 ment, activities, or operations of the regulated enti-
 11 ty, as the Director considers appropriate”; and

12 (B) in paragraph (2)—

13 (i) by inserting “, by general or spe-
 14 cific orders,” after “may also require”; and

15 (ii) by striking “whenever” and insert-
 16 ing “on any of the topics specified in para-
 17 graph (1) or any other relevant topics, if”;
 18 and

19 (5) by adding at the end the following:

20 “(c) PENALTIES FOR FAILURE TO MAKE RE-
 21 PORTS.—

22 “(1) VIOLATIONS.—It shall be a violation of
 23 this section for any regulated entity—

24 “(A) to fail to make, obtain, transmit, or
 25 publish any report or information required by

the Director under this section, section 309(k) of the Federal National Mortgage Association Charter Act, or section 307(c) of the Federal Home Loan Mortgage Corporation Act, within the period of time specified in such provision of law or otherwise by the Director; or

“(B) to submit or publish any false or misleading report or information under this section.

“(2) PENALTIES.—

“(A) TIER 1.—

“(i) IN GENERAL.—A violation described in paragraph (1) shall be subject to a penalty of not more than \$2,000 for each day during which such violation continues, in any case in which—

“(I) the subject regulated entity maintains procedures reasonably adapted to avoid any inadvertent error and the violation was unintentional and a result of such an error; or

“(II) the violation was an inadvertent transmittal or publication of any report which was minimally late.

1 “(ii) BURDEN OF PROOF.—For pur-
2 poses of this subparagraph, the regulated
3 entity shall have the burden of proving
4 that the error was inadvertent or that a re-
5 port was inadvertently transmitted or pub-
6 lished late.

7 “(B) TIER 2.—A violation described in
8 paragraph (1) shall be subject to a penalty of
9 not more than \$20,000 for each day during
10 which such violation continues or such false or
11 misleading information is not corrected, in any
12 case that is not addressed in subparagraph (A)
13 or (C).

14 “(C) TIER 3.—A violation described in
15 paragraph (1) shall be subject to a penalty of
16 not more than \$2,000,000 per day for each day
17 during which such violation continues or such
18 false or misleading information is not corrected,
19 in any case in which the subject regulated enti-
20 ty committed such violation knowingly or with
21 reckless disregard for the accuracy of any such
22 information or report.

23 “(3) ASSESSMENTS.—Any penalty imposed
24 under this subsection shall be in lieu of a penalty
25 under section 1376, but shall be assessed and col-

1 lected by the Director in the manner provided in sec-
 2 tion 1376 for penalties imposed under that section,
 3 and any such assessment (including the determina-
 4 tion of the amount of the penalty) shall be otherwise
 5 subject to the provisions of section 1376.

6 “(4) HEARING.—A regulated entity against
 7 which a penalty is assessed under this section shall
 8 be afforded an agency hearing if the regulated entity
 9 submits a request for a hearing not later than 20
 10 days after the date of the issuance of the notice of
 11 assessment. Section 1374 shall apply to any such
 12 proceedings.”.

13 (b) CONFORMING AMENDMENT.—The Federal Hous-
 14 ing Enterprises Financial Safety and Soundness Act of
 15 1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-
 16 tions 1327 and 1328.

17 **SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**
 18 **CONTRACT FOR REVIEWS OF REGULATED EN-**
 19 **TITIES.**

20 (a) IN GENERAL.—Section 1317 of the Federal
 21 Housing Enterprises Financial Safety and Soundness Act
 22 of 1992 (12 U.S.C. 4517) is amended—

23 (1) in subsection (a), by striking “enterprise”
 24 each place that term appears and inserting “regu-
 25 lated entity”;

1 (2) in subsection (b), by striking “an enter-
2 prise” and inserting “a regulated entity”;

3 (3) in subsection (c), in the second sentence, by
4 inserting before the period “to conduct examinations
5 under this section”;

6 (4) by redesignating subsections (d) through (f)
7 as subsections (e) through (g), respectively; and

8 (5) by inserting after subsection (c) the fol-
9 lowing:

10 “(d) INSPECTOR GENERAL.—There shall be within
11 the Agency an Inspector General, who shall be appointed
12 in accordance with section 3(a) of the Inspector General
13 Act of 1978.”.

14 (b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-
15 ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of
16 the Federal Housing Enterprises Financial Safety and
17 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
18 adding at the end the following:

19 “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
20 AND EXAMINERS.—

21 “(1) APPLICABILITY.—This section shall apply
22 with respect to any position of examiner, accountant,
23 economist, and specialist in financial markets and in
24 technology at the Agency, with respect to supervision

1 and regulation of the regulated entities, that is in
 2 the competitive service.

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

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

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

12 (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—
 13 Section 11 of the Inspector General Act of 1978 (5 U.S.C.
 14 11 App.) is amended—

15 (1) in paragraph (1), by inserting “, the Direc-
 16 tor of the Federal Housing Enterprises Regulatory
 17 Agency” after “Social Security Administration”; and

18 (2) in paragraph (2), by inserting “, the Fed-
 19 eral Housing Enterprises Regulatory Agency” after
 20 “Social Security Administration”.

21 (d) AUTHORITY TO CONTRACT FOR REVIEWS OF
 22 REGULATED ENTITIES.—Section 1319 of the Federal
 23 Housing Enterprises Financial Safety and Soundness Act
 24 of 1992 (12 U.S.C. 4519) is amended in the section head-
 25 ing, by striking “**BY RATING ORGANIZATION**”.

1 **SEC. 106. ASSESSMENTS.**

2 Section 1316 of the Federal Housing Enterprises Fi-
 3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 4 4516) is amended—

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

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

12 “(1) the expenses of any examinations under
 13 section 1317;

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

16 “(3) such amounts in excess of actual expenses
 17 for any given fiscal year, as deemed necessary by the
 18 Director to maintain working capital.”;

19 (2) by striking “an enterprise” each place that
 20 term appears and inserting “a regulated entity”;

21 (3) by striking “enterprises” each place that
 22 term appears and inserting “regulated entities”;

23 (4) by striking “enterprise” each place that
 24 term appears, other than in subparagraph (B) of
 25 subsection (b)(3), and inserting “regulated entity”;

26 (5) in subsection (b)—

1 (A) in paragraph (1)—

2 (i) by striking “bears to” and insert-
3 ing “bear to”; and

4 (ii) by striking “both” and inserting
5 “all”; and

6 (B) in paragraph (3)(B)—

7 (i) by inserting “with respect to an
8 enterprise,” before “the unpaid principal”;
9 and

10 (ii) by striking “by the enterprise”
11 and inserting “by an enterprise”;

12 (6) in subsection (c)—

13 (A) by striking “The semiannual” and in-
14 serting the following:

15 “(1) IN GENERAL.—The semiannual”; and

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

17 “(2) ADJUSTMENTS.—The Director may adjust
18 the amounts of any semiannual assessments for an
19 assessment under subsection (a) that are to be paid
20 pursuant to subsection (b) by a regulated entity, as
21 the Director determines necessary to ensure that the
22 costs of enforcement activities under subtitles B and
23 C for a regulated entity are borne only by that regu-
24 lated entity.

1 “(3) SPECIAL CIRCUMSTANCES.—If at any
2 time, as a result of increased costs of regulation of
3 a regulated entity that is not classified (for purposes
4 of subtitle B) as adequately capitalized, or as the re-
5 sult of supervisory or enforcement activities under
6 subtitle B or C for a regulated entity, the amount
7 available from any semiannual payment made by
8 such regulated entity pursuant to subsection (b) is
9 insufficient to cover the costs of the Agency with re-
10 spect to such entity, the Director may make and col-
11 lect from such entity an immediate assessment to
12 cover the amount of such deficiency for the semi-
13 annual period. If, at the end of any semiannual pe-
14 riod during which such an assessment is made, any
15 amount remains from such assessment, such remain-
16 ing amount shall be deducted from the assessment
17 for such regulated entity for the following semi-
18 annual period.”;

19 (7) in subsection (d), by striking “If” and in-
20 serting “Except with respect to amounts collected
21 pursuant to subsection (a)(3), if”;

22 (8) by striking subsections (e) and (f) and in-
23 serting the following:

24 “(e) REMISSION OF ASSESSMENT.—At the end of
25 each year for which an assessment under this section is

1 made, the Director shall remit to each regulated entity any
 2 amount of an assessment collected from the regulated en-
 3 tity that is attributable to subsection (a)(3), and is in ex-
 4 cess of the amount that the Director deems necessary to
 5 maintain working capital.

6 “(f) NO APPROPRIATED FUNDS.—Salaries of the Di-
 7 rector and other employees of the Agency, and all other
 8 expenses thereof, may be paid from assessments collected
 9 under this subsection or other sources, and shall not be
 10 construed to be Government funds or appropriated mon-
 11 ies, or subject to apportionment for the purposes of chap-
 12 ter 15 of title 31, United States Code, or any other au-
 13 thority.”; and

14 (9) in subsection (g)—

15 (A) by striking “the Secretary and” each
 16 place that term appears; and

17 (B) in paragraph (3)—

18 (i) by striking “(A)”; and

19 (ii) by striking “, and (B)” and all
 20 that follows through the end of the para-
 21 graph and inserting a period.

22 **SEC. 107. REGULATIONS AND ORDERS.**

23 Section 1319G of the Federal Housing Enterprises
 24 Financial Safety and Soundness Act of 1992 (12 U.S.C.
 25 4526) is amended—

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

3 “(a) **AUTHORITY.**—The Director shall issue any reg-
4 ulations, guidelines, directives, or orders necessary to
5 carry out the duties of the Director under this title or the
6 authorizing statutes, and to ensure that the purposes of
7 this title and the authorizing statutes are accomplished.”;
8 and

9 (2) by striking subsection (c).

10 **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS**
11 **STANDARDS.**

12 The Federal Housing Enterprises Financial Safety
13 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
14 amended by inserting after section 1313A, as added by
15 this Act, the following new section:

16 **“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS**
17 **STANDARDS.**

18 “The Director may establish standards, by regula-
19 tion, order, or guideline, for each regulated entity relating
20 to—

21 “(1) adequacy of internal controls and informa-
22 tion systems taking into account the nature and
23 scale of business operations;

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

1 “(3) management of interest rate risk exposure;

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

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

8 “(6) management of asset and investment port-
9 folio growth;

10 “(7) investments and acquisitions of assets by
11 a regulated entity, to ensure that they are consistent
12 with the purposes of this title and the authorizing
13 statutes;

14 “(8) overall risk management processes, includ-
15 ing adequacy of oversight by senior management and
16 the board of directors and of processes and policies
17 to identify, measure, monitor, and control material
18 risks, including reputational risks, and for adequate,
19 well-tested business resumption plans for all major
20 systems with remote site facilities to protect against
21 disruptive events; and

22 “(9) such other operational and management
23 standards as the Director determines to be appro-
24 priate.”.

1 **SEC. 109. CAPITAL LEVELS AND HOLDINGS.**

2 Subtitle B of the Federal Housing Enterprises Fi-
 3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 4 4611 et seq.) is amended—

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

7 **“Subtitle B—Required Capital Lev-**
 8 **els for Enterprises, Special En-**
 9 **forcement Powers, Limitation**
 10 **on Assets, and Securities Treat-**
 11 **ment”;**

12 and

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

14 **“SEC. 1369E. AFFORDABLE HOUSING FOCUSED PORT-**
 15 **FOLIOS.**

16 **“(a) SUPPORTING AFFORDABLE HOUSING.—**Con-
 17 gress finds that, consistent with the missions of the enter-
 18 prises, the portfolio holdings of the enterprises should be
 19 focused, to the maximum extent possible, on mortgages
 20 and mortgage-backed securities that meet the affordable
 21 housing goals established for the enterprises pursuant to
 22 this Act.

23 **“(b) AUTHORITY OF THE DIRECTOR.—**The Director
 24 shall, by regulation, provide that any mortgages or mort-
 25 gage-related securities acquired by an enterprise after the
 26 date of enactment of this Act shall—

1 “(1) meet one or more of the housing goals es-
2 tablished for the enterprise under this Act; or

3 “(2) be promptly securitized and sold to third
4 parties.

5 “(c) TEMPORARY ADJUSTMENTS.—The Director
6 may, by order, make temporary adjustments to the stand-
7 ards under subsection (b), if such action would help to
8 mitigate market disruptions in the housing finance sys-
9 tem.”.

10 **SEC. 110. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

11 (a) RISK-BASED CAPITAL LEVELS.—Section 1361 of
12 the Federal Housing Enterprises Financial Safety and
13 Soundness Act of 1992 (12 U.S.C. 4611) is amended to
14 read as follows:

15 **“SEC. 1361. RISK-BASED CAPITAL LEVELS.**

16 “(a) IN GENERAL.—The Director shall, by regulation
17 or order, establish risk-based capital requirements for each
18 of the enterprises to ensure that the enterprises operate
19 in a safe and sound manner, with sufficient capital and
20 reserves to support the risks that arise in the operations
21 and management of each enterprise.

22 “(b) NO LIMITATION.—Nothing in this section limits
23 the authority of the Director to require other reports or
24 undertakings in furtherance of the responsibilities of the
25 Director under this Act.”.

1 (b) MINIMUM CAPITAL LEVELS FOR REGULATED
2 ENTITIES.—

3 (1) ENTERPRISES.—Section 1362 of the Fed-
4 eral Housing Enterprises Financial Safety and
5 Soundness Act of 1992 (12 U.S.C. 4612) is amend-
6 ed—

7 (A) in the section heading, by inserting
8 “**FOR ENTERPRISES**” after “**LEVELS**”; and

9 (B) by striking subsection (b) and insert-
10 ing the following:

11 “(b) REGULATORY DISCRETION.—The Director may,
12 by regulation or order, establish a minimum capital level
13 that is higher than the level specified in subsection (a).”.

14 (2) FEDERAL HOME LOAN BANKS.—Section
15 6(a)(2) of the Federal Home Loan Bank Act (12
16 U.S.C. 1426(a)(2)) is amended by adding at the end
17 the following:

18 “(C) AUTHORITY TO ALTER LEVEL.—The
19 Director may, by regulation or order, establish
20 a minimum capital level that is higher than the
21 level specified in subparagraph (A).”.

22 **SEC. 111. REGISTRATION OF ENTERPRISE SECURITIES.**

23 (a) FANNIE MAE.—

24 (1) MORTGAGE-BACKED SECURITIES.—Section
25 304(d) of the Federal National Mortgage Associa-

1 tion Charter Act (12 U.S.C. 1719(d)) is amended by
 2 striking the fourth sentence and inserting the fol-
 3 lowing: “Securities issued by the corporation under
 4 this subsection shall not be exempt securities for
 5 purposes of the Securities Act of 1933.”.

6 (2) SUBORDINATE OBLIGATIONS.—Section
 7 304(e) of the Federal National Mortgage Association
 8 Charter Act (12 U.S.C. 1719(e)) is amended by
 9 striking the fourth sentence and inserting the fol-
 10 lowing: “Obligations issued by the corporation under
 11 this subsection shall not be exempt securities for
 12 purposes of the Securities Act of 1933.”.

13 (3) SECURITIES.—Section 311 of the Federal
 14 National Mortgage Association Charter Act (12
 15 U.S.C. 1723c) is amended—

16 (A) in the section heading, by striking “AS-
 17 SOCIATION”;

18 (B) by inserting “(a) IN GENERAL.—”
 19 after “SEC. 311.”;

20 (C) in the second sentence, by inserting
 21 “by the Association” after “issued”; and

22 (D) by adding at the end the following:

23 “(b) TREATMENT OF CORPORATION SECURITIES.—

24 “(1) IN GENERAL.—Any stock, obligations, se-
 25 curities, participations, or other instruments issued

1 or guaranteed by the corporation pursuant to this
 2 title shall not be exempt securities for purposes of
 3 the Securities Act of 1933.

4 “(2) EXEMPTION FOR APPROVED SELLERS.—
 5 Notwithstanding any other provision of this title or
 6 the Securities Act of 1933, transactions involving
 7 the initial disposition by an approved seller of pooled
 8 certificates that are acquired by that seller from the
 9 corporation upon the initial issuance of the pooled
 10 certificates shall be deemed to be transactions by a
 11 person other than an issuer, underwriter, or dealer
 12 for purposes of the Securities Act of 1933.

13 “(3) DEFINITIONS.—For purposes of this sub-
 14 section, the following definitions shall apply:

15 “(A) APPROVED SELLER.—The term ‘ap-
 16 proved seller’ means an institution approved by
 17 the corporation to sell mortgage loans to the
 18 corporation in exchange for pooled certificates.

19 “(B) POOLED CERTIFICATES.—The term
 20 ‘pooled certificates’ means single class mort-
 21 gage-backed securities guaranteed by the cor-
 22 poration that have been issued by the corpora-
 23 tion directly to the approved seller in exchange
 24 for the mortgage loans underlying such mort-
 25 gage-backed securities.

1 “(4) MORTGAGE RELATED SECURITIES.—A sin-
 2 gle class mortgage-backed security guaranteed by
 3 the corporation that has been issued by the corpora-
 4 tion directly to the approved seller in exchange for
 5 the mortgage loans underlying such mortgage-
 6 backed securities or directly by the corporation for
 7 cash shall be deemed to be a mortgage related secu-
 8 rity, as defined in section 3(a) of the Securities Ex-
 9 change Act of 1934.”.

10 (b) FREDDIE MAC.—Section 306(g) of the Federal
 11 Home Loan Mortgage Corporation Act (12 U.S.C.
 12 1455(g)) is amended to read as follows:

13 “(g) TREATMENT OF SECURITIES.—

14 “(1) IN GENERAL.—Any securities issued or
 15 guaranteed by the Corporation shall not be exempt
 16 securities for purposes of the Securities Act of 1933.

17 “(2) EXEMPTION FOR APPROVED SELLERS.—
 18 Notwithstanding any other provision of this title or
 19 the Securities Act of 1933, transactions involving
 20 the initial disposition by an approved seller of pooled
 21 certificates that are acquired by that seller from the
 22 Corporation upon the initial issuance of the pooled
 23 certificates shall be deemed to be transactions by a
 24 person other than an issuer, underwriter, or dealer
 25 for purposes of the Securities Act of 1933.

1 “(3) DEFINITIONS.—For purposes of this sub-
2 section, the following definitions shall apply:

3 “(A) APPROVED SELLER.—The term ‘ap-
4 proved seller’ means an institution approved by
5 the Corporation to sell mortgage loans to the
6 Corporation in exchange for pooled certificates.

7 “(B) POOLED CERTIFICATES.—The term
8 ‘pooled certificates’ means single class mort-
9 gage-backed securities guaranteed by the Cor-
10 poration that have been issued by the Corpora-
11 tion directly to the approved seller in exchange
12 for the mortgage loans underlying such mort-
13 gage-backed securities.”.

14 (c) LIMITATION ON FEES.—Section 6(b)(2) of the
15 Securities Act of 1933 (15 U.S.C. 77f(b)(2)) is amended
16 by adding at the end the following: “Notwithstanding any
17 other provision of this title, no applicant, or group of affili-
18 ated applicants that does not include any investment com-
19 pany registered under the Investment Company Act of
20 1940, filing a registration statement subject to a fee shall
21 be required in any fiscal year with respect to all registra-
22 tion statements filed by such applicant in such fiscal year
23 to pay an aggregate amount in fees to the Commission
24 pursuant to this subsection in an amount that exceeds 5
25 percent of the target offsetting collection amount for such

1 fiscal year. Fees paid in connection with registration state-
 2 ments relating to business combinations shall not be in-
 3 cluded in calculating the total fees paid by any such appli-
 4 cant.”.

5 (d) NO EFFECT ON OTHER LAW.—Nothing in this
 6 section or the amendments made by this section shall be
 7 construed to affect any exemption from the provisions of
 8 the Trust Indenture Act of 1939 provided to the Federal
 9 National Mortgage Association or the Federal Home Loan
 10 Mortgage Corporation.

11 (e) REGULATIONS.—The Securities and Exchange
 12 Commission may issue such regulations as may be nec-
 13 essary or appropriate to carry out this section and the
 14 amendments made by this section.

15 (f) EFFECTIVE DATE.—The amendments made by
 16 this section shall become effective 1 year after the date
 17 of enactment of this Act.

18 **SEC. 112. LIMIT ON GOLDEN PARACHUTES.**

19 Section 1318 of the Federal Housing Enterprises Fi-
 20 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 21 4518) is amended by adding at the end the following:

22 “(c) AUTHORITY TO REGULATE OR PROHIBIT CER-
 23 TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

24 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-
 25 TION PAYMENTS.—The Agency may prohibit or

1 limit, by regulation or order, any golden parachute
2 payment or indemnification payment.

3 “(2) FACTORS TO BE TAKEN INTO ACCOUNT.—

4 The Agency shall prescribe, by regulation, the fac-
5 tors to be considered by the Agency in taking any
6 action pursuant to paragraph (1), which may include
7 such factors as—

8 “(A) whether there is a reasonable basis to
9 believe that the affiliated party has committed
10 any fraudulent act or omission, breach of trust
11 or fiduciary duty, or insider abuse with regard
12 to the regulated entity that has had a material
13 effect on the financial condition of the regulated
14 entity;

15 “(B) whether there is a reasonable basis to
16 believe that the affiliated party is substantially
17 responsible for the insolvency of the regulated
18 entity, the appointment of a conservator or re-
19 ceiver for the regulated entity, or the troubled
20 condition of the regulated entity (as defined in
21 regulations prescribed by the Agency);

22 “(C) whether there is a reasonable basis to
23 believe that the affiliated party has materially
24 violated any applicable provision of Federal or
25 State law or regulation that has had a material

1 affect on the financial condition of the regu-
2 lated entity;

3 “(D) whether the affiliated party was in a
4 position of managerial or fiduciary responsi-
5 bility; and

6 “(E) the length of time that the party was
7 affiliated with the regulated entity, and the de-
8 gree to which—

9 “(i) the payment reasonably reflects
10 compensation earned over the period of
11 employment; and

12 “(ii) the compensation involved rep-
13 resents a reasonable payment for services
14 rendered.

15 “(3) CERTAIN PAYMENTS PROHIBITED.—No
16 regulated entity may prepay the salary or any liabil-
17 ity or legal expense of any affiliated party if such
18 payment is made—

19 “(A) in contemplation of the insolvency of
20 such regulated entity, or after the commission
21 of an act of insolvency; and

22 “(B) with a view to, or having the result
23 of—

1 “(i) preventing the proper application
 2 of the assets of the regulated entity to
 3 creditors; or

4 “(ii) preferring one creditor over an-
 5 other.

6 “(4) GOLDEN PARACHUTE PAYMENT DE-
 7 FINED.—

8 “(A) IN GENERAL.—For purposes of this
 9 subsection, the term ‘golden parachute pay-
 10 ment’ means any payment (or any agreement to
 11 make any payment) in the nature of compensa-
 12 tion by any regulated entity for the benefit of
 13 any affiliated party pursuant to an obligation of
 14 such regulated entity that—

15 “(i) is contingent on the termination
 16 of such party’s affiliation with the regu-
 17 lated entity; and

18 “(ii) is received on or after the date
 19 on which—

20 “(I) the regulated entity became
 21 insolvent;

22 “(II) any conservator or receiver
 23 is appointed for such regulated entity;
 24 or

1 “(III) the Agency determines
2 that the regulated entity is in a trou-
3 bled condition (as defined in the regu-
4 lations of the Agency).

5 “(B) CERTAIN PAYMENTS IN CONTEMPLA-
6 TION OF AN EVENT.—Any payment which
7 would be a golden parachute payment but for
8 the fact that such payment was made before the
9 date referred to in subparagraph (A)(ii) shall be
10 treated as a golden parachute payment if the
11 payment was made in contemplation of the oc-
12 currence of an event described in any subclause
13 of such subparagraph.

14 “(C) CERTAIN PAYMENTS NOT IN-
15 CLUDED.—For purposes of this subsection, the
16 term ‘golden parachute payment’ shall not in-
17 clude—

18 “(i) any payment made pursuant to a
19 retirement plan which is qualified (or is in-
20 tended to be qualified) under section 401
21 of the Internal Revenue Code of 1986, or
22 other nondiscriminatory benefit plan;

23 “(ii) any payment made pursuant to a
24 bona fide deferred compensation plan or
25 arrangement which the Board determines,

1 by regulation or order, to be permissible;
 2 or

3 “(iii) any payment made by reason of
 4 the death or disability of an affiliated
 5 party.

6 “(5) OTHER DEFINITIONS.—For purposes of
 7 this subsection, the following definitions shall apply:

8 “(A) INDEMNIFICATION PAYMENT.—Sub-
 9 ject to paragraph (6), the term ‘indemnification
 10 payment’ means any payment (or any agree-
 11 ment to make any payment) by any regulated
 12 entity for the benefit of any person who is or
 13 was an affiliated party, to pay or reimburse
 14 such person for any liability or legal expense
 15 with regard to any administrative proceeding or
 16 civil action instituted by the Agency which re-
 17 sults in a final order under which such per-
 18 son—

19 “(i) is assessed a civil money penalty;

20 “(ii) is removed or prohibited from
 21 participating in conduct of the affairs of
 22 the regulated entity; or

23 “(iii) is required to take any affirma-
 24 tive action to correct certain conditions re-

1 sulting from violations or practices, by
2 order of the Agency.

3 “(B) LIABILITY OR LEGAL EXPENSE.—The
4 term ‘liability or legal expense’ means—

5 “(i) any legal or other professional ex-
6 pense incurred in connection with any
7 claim, proceeding, or action;

8 “(ii) the amount of, and any cost in-
9 curred in connection with, any settlement
10 of any claim, proceeding, or action; and

11 “(iii) the amount of, and any cost in-
12 curred in connection with, any judgment or
13 penalty imposed with respect to any claim,
14 proceeding, or action.

15 “(C) PAYMENT.—The term ‘payment’ in-
16 cludes—

17 “(i) any direct or indirect transfer of
18 any funds or any asset; and

19 “(ii) any segregation of any funds or
20 assets for the purpose of making, or pursu-
21 ant to an agreement to make, any payment
22 after the date on which such funds or as-
23 sets are segregated, without regard to
24 whether the obligation to make such pay-
25 ment is contingent on—

1 “(I) the determination, after such
 2 date, of the liability for the payment
 3 of such amount; or

4 “(II) the liquidation, after such
 5 date, of the amount of such payment.

6 “(6) CERTAIN COMMERCIAL INSURANCE COV-
 7 ERAGE NOT TREATED AS COVERED BENEFIT PAY-
 8 MENT.—No provision of this subsection shall be con-
 9 strued as prohibiting any regulated entity from pur-
 10 chasing any commercial insurance policy or fidelity
 11 bond, except that, subject to any requirement de-
 12 scribed in paragraph (5)(A)(iii), such insurance pol-
 13 icy or bond shall not cover any legal or liability ex-
 14 pense of the regulated entity which is described in
 15 paragraph (5)(A).”.

16 **SEC. 113. REPORTING OF FRAUDULENT LOANS.**

17 Part 1 of subtitle C of the Federal Housing Enter-
 18 prises Financial Safety and Soundness Act of 1992 (12
 19 U.S.C. 4631 et seq.), as amended by this Act, is amended
 20 by adding at the end the following:

21 **“SEC. 1379E. REPORTING OF FRAUDULENT LOANS.**

22 “(a) REQUIREMENT TO REPORT.—The Director
 23 shall require a regulated entity to submit to the Director
 24 a timely report upon discovery by the regulated entity that
 25 it has purchased or sold a fraudulent loan or financial in-

1 strument, or suspects a possible fraud relating to the pur-
 2 chase or sale of any loan or financial instrument. The Di-
 3 rector shall require each regulated entity to establish and
 4 maintain procedures designed to discover any such trans-
 5 actions.

6 “(b) PROTECTION FROM LIABILITY FOR REPORTS.—
 7 Any regulated entity that makes a report pursuant to sub-
 8 section (a), and any entity-affiliated party, that makes or
 9 requires another to make any such report, shall not be
 10 liable to any person under any provision of law or regula-
 11 tion, any constitution, law, or regulation of any State or
 12 political subdivision of any State, or under any contract
 13 or other legally enforceable agreement (including any arbi-
 14 tration agreement) for such report or for any failure to
 15 provide notice of such report to the person who is the sub-
 16 ject of such report or any other persons identified in the
 17 report.”.

18 **Subtitle B—Improvement of** 19 **Mission Supervision**

20 **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-** 21 **ING GOAL OVERSIGHT.**

22 Part 2 of subtitle A of the Federal Housing Enter-
 23 prises Financial Safety and Soundness Act of 1992 (12
 24 U.S.C. 4541 et seq.) is amended—

1 (1) by striking the heading for the part and in-
 2 serting the following:

3 **“PART ‘2’—ADDITIONAL AUTHORITIES OF THE**
 4 **DIRECTOR”;**

5 and

6 (2) by striking sections 1321 and 1322.

7 **SEC. 122. REVIEW OF ENTERPRISE PRODUCTS.**

8 Part 2 of subtitle A of the Federal Housing Enter-
 9 prises Financial Safety and Soundness Act of 1992 (12
 10 U.S.C. 4501 et seq.), as amended by this Act, is amended
 11 by inserting before section 1323 the following:

12 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS.**

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

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

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

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

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

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

11 “(5) the product does not impair the stability
12 or competitiveness of the mortgage finance system.

13 “(c) PROCEDURE FOR APPROVAL.—

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

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

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

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

8 “(4) OFFERING OF PRODUCT.—

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

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

18 “(d) EXPEDITED REVIEW.—

19 “(1) DETERMINATION AND NOTICE.—If an en-
20 terprise determines that any new activity, service,
21 undertaking or offering is excluded from the defini-
22 tion of a product under subsection (f), then the en-
23 terprise shall provide written notice to the Director
24 prior to the commencement of such activity, service,
25 undertaking, or offering.

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

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

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

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

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

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

23 “(f) DEFINITION OF PRODUCT.—As used in this sec-
 24 tion, the term ‘product’—

1 “(1) all programs, products, and activities, of-
2 ferred by the enterprise in the marketplace; and

3 “(2) does not include—

4 “(A) the automated loan underwriting sys-
5 tem of an enterprise in existence as of the date
6 of enactment of the Federal Housing Enter-
7 prise Regulatory Reform Act of 2007, including
8 any upgrade to the technology, operating sys-
9 tem, or software to operate the underwriting
10 system; or

11 “(B) any modification to the mortgage
12 terms and conditions or mortgage underwriting
13 criteria relating to the mortgages that are pur-
14 chased or guaranteed by an enterprise, provided
15 that such modifications do not alter the under-
16 lying transaction so as to include services or fi-
17 nancing, other than residential mortgage fi-
18 nancing, or create significant new exposure to
19 risk for the enterprise or the holder of the
20 mortgage.

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

23 “(1) the safety and soundness authority of the
24 Director over all new and existing products or activi-
25 ties; or

1 “(2) the authority of the Director to review all
 2 new and existing products or activities to determine
 3 that such products or activities are consistent with
 4 the statutory mission of an enterprise.”.

5 **SEC. 123. MONITORING AND ENFORCING COMPLIANCE**
 6 **WITH HOUSING GOALS.**

7 Section 1336(a)(1) of the Federal Housing Enter-
 8 prises Financial Safety and Soundness Act of 1992 (12
 9 U.S.C. 4566(a)(1)) is amended by striking “established”
 10 and all that follows through “1334” and inserting “under
 11 this subpart”.

12 **SEC. 124. ASSUMPTION BY DIRECTOR OF OTHER HUD RE-**
 13 **SPONSIBILITIES.**

14 (a) IN GENERAL.—Part 2 of subtitle A of the Federal
 15 Housing Enterprises Financial Safety and Soundness Act
 16 of 1992 (12 U.S.C. 4541 et seq.) is amended—

17 (1) by striking “Secretary” each place that
 18 term appears and inserting “Director” in each of
 19 sections 1323, 1324, 1326, 1331, 1332, 1333, 1334,
 20 and 1336;

21 (2) in section 1332 (12 U.S.C. 4562), by strik-
 22 ing subsection (d);

23 (3) in section 1333 (12 U.S.C. 4563), by strik-
 24 ing subsection (d);

1 (4) in section 1334 (12 U.S.C. 4564), by strik-
 2 ing subsection (d); and

3 (5) by striking sections 1337, 1338, and 1349
 4 (12 U.S.C. 4567, 4562 note, 4589).

5 (b) RETENTION OF FAIR HOUSING RESPONSIBIL-
 6 ITIES.—Section 1325 of the Federal Housing Enterprises
 7 Financial Safety and Soundness Act of 1992 (12 U.S.C.
 8 4545) is amended in the matter preceding paragraph (1),
 9 by inserting “of Housing and Urban Development” after
 10 “The Secretary”.

11 **SEC. 125. ADMINISTRATIVE AND JUDICIAL ENFORCEMENT**
 12 **PROCEEDINGS.**

13 (a) DIRECTOR AUTHORITY.—Subpart C of part 2 of
 14 subtitle A of the Federal Housing Enterprises Financial
 15 Safety and Soundness Act of 1992 (12 U.S.C. 4581 et
 16 seq.) is amended by striking “Secretary” each place that
 17 term appears and inserting “Director” in each of—

18 (1) section 1341 (12 U.S.C. 4581);

19 (2) section 1342 (12 U.S.C. 4582);

20 (3) section 1343 (12 U.S.C. 4583);

21 (4) section 1344 (12 U.S.C. 4584);

22 (5) section 1345 (12 U.S.C. 4585);

23 (6) section 1346 (12 U.S.C. 4586);

24 (7) section 1347 (12 U.S.C. 4587); and

25 (8) section 1348 (12 U.S.C. 4588).

1 (b) SUBPOENA ENFORCEMENT BY DIRECTOR.—Sec-
 2 tion 1348(c) of the Federal Housing Enterprises Financial
 3 Safety and Soundness Act of 1992 (12 U.S.C. 4588(c))
 4 is amended by inserting “may bring an action or” before
 5 “may request”.

6 **SEC. 126. CONFORMING LOAN LIMITS.**

7 (a) FANNIE MAE.—Section 302(b)(2) of the Federal
 8 National Mortgage Association Charter Act (12 U.S.C.
 9 1717(b)(2)) is amended by striking “The Corporation
 10 shall establish” and all that follows through the end of
 11 the paragraph and inserting the following: “Such limita-
 12 tions shall not exceed \$417,000 for a mortgage secured
 13 by a single-family residence, \$533,850 for a mortgage se-
 14 cured by a 2-family residence, \$645,300 for a mortgage
 15 secured by a 3-family residence, or \$801,950 for a mort-
 16 gage secured by a 4-family residence, except that such
 17 maximum limitations shall be adjusted effective January
 18 1 of each year beginning after the effective date under
 19 section 163 of the Federal Housing Enterprise Regulatory
 20 Reform Act of 2007, subject to the limitations in this
 21 paragraph. Such limitation shall be calculated with respect
 22 to the total original principal obligation of the mortgage,
 23 and not merely with respect to the interest purchased by
 24 the enterprise. Each adjustment shall be made by adding
 25 to or subtracting from each such amount (as it may have

1 been previously adjusted) a percentage thereof equal to the
2 percentage increase or decrease, during the most recent
3 12-month or fourth quarter period ending before the time
4 of determining such annual adjustment, in the housing
5 price index maintained by the Director of the Federal
6 Housing Enterprise Regulatory Agency (pursuant to sec-
7 tion 1321 of the Federal Housing Enterprises Financial
8 Safety and Soundness Act of 1992 (12 U.S.C. 4541)).”.

9 (b) FREDDIE MAC.—Section 305(a)(2) of the Fed-
10 eral Home Loan Mortgage Corporation Act (12 U.S.C.
11 1454(a)(2)) is amended by striking “The Corporation
12 shall establish” and all that follows through the end of
13 the paragraph and inserting the following: “Such limita-
14 tions shall not exceed \$417,000 for a mortgage secured
15 by a single-family residence, \$533,850 for a mortgage se-
16 cured by a 2-family residence, \$645,300 for a mortgage
17 secured by a 3-family residence, or \$801,950 for a mort-
18 gage secured by a 4-family residence, except that such
19 maximum limitations shall be adjusted effective January
20 1 of each year beginning after the effective date under
21 section 163 of the Federal Housing Enterprise Regulatory
22 Reform Act of 2007, subject to the limitations in this
23 paragraph. Such limitation shall be calculated with respect
24 to the total original principal obligation of the mortgage
25 and not merely with respect to the interest purchased by

1 the enterprise. Each adjustment shall be made by adding
 2 to or subtracting from each such amount (as it may have
 3 been previously adjusted) a percentage thereof equal to the
 4 percentage increase or decrease, during the most recent
 5 12-month or fourth quarter period ending before the time
 6 of determining such annual adjustment, in the housing
 7 price index maintained by the Director of the Federal
 8 Housing Enterprise Regulatory Agency (pursuant to sec-
 9 tion 1321 of the Federal Housing Enterprises Financial
 10 Safety and Soundness Act of 1992 (12 U.S.C. 4541)).”.

11 (c) HOUSING PRICE INDEX.—The Federal Housing
 12 Enterprises Financial Safety and Soundness Act of 1992,
 13 as amended by this Act, is amended by inserting before
 14 section 1323 the following:

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

16 “(a) METHOD OF ASSESSMENT.—The Director shall
 17 establish, by regulation, and maintain a method of assess-
 18 ing the national average single-family housing price for
 19 use in adjusting the conforming loan limitations of the en-
 20 terprises.

21 “(b) CONSIDERATIONS.—The Director shall take into
 22 consideration the monthly survey of all major lenders con-
 23 ducted by the Agency to determine the national average
 24 single-family house price, the Housing Price Index main-
 25 tained by the Office of Federal Housing Enterprise Over-

1 sight of the Department of Housing and Urban Develop-
 2 ment before the effective date under section 163 of the
 3 Federal Housing Enterprise Regulatory Reform Act of
 4 2007, any appropriate housing price indexes of the Bureau
 5 of the Census of the Department of Commerce, and any
 6 other indexes or measure that the Director considers ap-
 7 propriate.”.

8 **SEC. 127. REPORTING OF MORTGAGE DATA; HOUSING**
 9 **GOALS.**

10 (a) REPORTING OF MORTGAGE DATA.—Section 1325
 11 of the Federal Housing Enterprises Financial Safety and
 12 Soundness Act of 1992 (12 U.S.C. 4546), as so redesign-
 13 nated by this Act, is amended—

14 (1) in subsection (a), by striking “The Direc-
 15 tor” and inserting “Subject to subsection (d), the
 16 Director”; and

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

18 “(d) MORTGAGE DATA.—The Director shall, by regu-
 19 lation or order, provide that certain information relating
 20 to single family mortgage data of the enterprises shall be
 21 disclosed to the public in order to make available to the
 22 public the same data from the enterprises that is required
 23 of insured depository institutions under the Home Mort-
 24 gage Disclosure Act.”.

1 (b) DEFINITIONS.—Section 1334 of the Federal
 2 Housing Enterprises Financial Safety and Soundness Act
 3 of 1992 (12 U.S.C. 4564), as amended by this Act, is
 4 amended by adding at the end the following:

5 “(d) DEFINITIONS.—For purposes of this section, the
 6 term ‘underserved area’ means an urban census tract that
 7 has—

8 “(1) an average median family income of less
 9 than 80 percent of the area median family income;
 10 or

11 “(2) a minority population of at least 30 per-
 12 cent and a median family income of less than 100
 13 percent of the area family median income.”.

14 **SEC. 128. DUTY TO SERVE UNDERSERVED MARKETS.**

15 (a) ESTABLISHMENT AND EVALUATION OF PER-
 16 FORMANCE.—Section 1335 of the Federal Housing Enter-
 17 prises Financial Safety and Soundness Act of 1992 (12
 18 U.S.C. 4565) is amended—

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

22 (2) by striking subsection (b);

23 (3) in subsection (a)—

1 (A) by inserting “and to carry out the duty
2 under subsection (a)” before “, each enterprise
3 shall”;

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

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

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

9 (4) by redesignating subsection (a) as sub-
10 section (b);

11 (5) by inserting before subsection (b) (as so re-
12 designated) the following:

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

14 “(1) DUTY.—In accordance with the purposes
15 of the enterprises under section 301(3) of the Fed-
16 eral National Mortgage Association Charter Act (12
17 U.S.C. 1716) and section 301(b)(3) of the Federal
18 Home Loan Mortgage Corporation Act (12 U.S.C.
19 1451 note) to undertake activities relating to mort-
20 gages on housing for very low-, low-, and moderate-
21 income families, involving a reasonable economic re-
22 turn that may be less than the return earned on
23 other activities, each enterprise shall have the duty
24 to increase the liquidity of mortgage investments
25 and improve the distribution of investment capital

1 available for mortgage financing for underserved
2 markets.

3 “(2) UNDERSERVED MARKETS.—To meet its
4 duty under paragraph (1), each enterprise shall lead
5 the industry in developing loan products and flexible
6 underwriting guidelines to facilitate a secondary
7 market—

8 “(A) for mortgages on manufactured
9 homes for very low-, low-, and moderate-income
10 families;

11 “(B) to preserve housing affordable to very
12 low-, low-, and moderate-income families, in-
13 cluding housing projects subsidized under—

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

18 “(ii) the program under section 236
19 of the National Housing Act;

20 “(iii) the below market interest rate
21 mortgage program under section 221(d)(4)
22 of the National Housing Act;

23 “(iv) the supportive housing for the
24 elderly program under section 202 of the
25 Housing Act of 1959;

1 “(v) the supportive housing program
 2 for persons with disabilities under section
 3 811 of the Cranston-Gonzalez National Af-
 4 fordable Housing Act; and

5 “(vi) the rural rental housing program
 6 under section 515 of the Housing Act of
 7 1949;

8 “(C) for mortgages on housing for very
 9 low-, low-, and moderate-income families in
 10 rural areas, and for mortgages for housing for
 11 any other underserved market for very low-,
 12 low-, and moderate-income families that the Di-
 13 rector identifies as lacking adequate credit
 14 through conventional lending sources, which un-
 15 derserved markets may be identified by bor-
 16 rower type, market segment, or geographic
 17 area; and

18 “(D) for mortgages originated through
 19 State or local affordable or subsidized housing
 20 programs.”; and

21 (6) by adding at the end the following new sub-
 22 section:

23 “(c) EVALUATION AND REPORTING OF COMPLI-
 24 ANCE.—

1 “(1) METHOD OF EVALUATION.—Not later
 2 than 6 months after the effective date of title I of
 3 the Federal Housing Enterprise Regulatory Reform
 4 Act of 2007, the Director shall establish a method
 5 for evaluating whether, and the extent to which, the
 6 enterprises have complied with the duty under sub-
 7 section (a) to serve underserved markets and for rat-
 8 ing the extent of such compliance.

9 “(2) ANNUAL EVALUATIONS.—Using the meth-
 10 od established under paragraph (1), the Director
 11 shall, for each year, evaluate such compliance and
 12 rate the performance of each enterprise as to the ex-
 13 tent of compliance. The Director shall include such
 14 evaluation and rating for each enterprise for a year
 15 in the report for that year submitted pursuant to
 16 section 1319B(a).

17 “(3) SEPARATE EVALUATIONS.—In determining
 18 whether an enterprise has complied with the duty
 19 under subsection (a), the Director shall separately
 20 evaluate whether the enterprise has complied with
 21 such duty with respect to each of the underserved
 22 markets identified in subsection (a), taking into con-
 23 sideration—

24 “(A) the development of loan products and
 25 more flexible underwriting guidelines;

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

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

6 (b) ENFORCEMENT.—Section 1336(a) of the Federal
 7 Housing Enterprises Financial Safety and Soundness Act
 8 of 1992 (12 U.S.C. 4566(a)) is amended—

9 (1) in paragraph (1), by inserting before the pe-
 10 riod “and with the duty under section 1335A of
 11 each enterprise with respect to underserved mar-
 12 kets”; and

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

14 “(4) ENFORCEMENT OF DUTY TO PROVIDE
 15 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—
 16 Compliance with the duty under section 1335(a) of
 17 each enterprise to serve underserved markets (as de-
 18 termined in accordance with section 1335(c)) shall
 19 be enforceable under this section to the same extent
 20 and under the same provisions that the housing
 21 goals established under sections 1332, 1333, and
 22 1334 are enforceable. Such duty shall not be en-
 23 forceable under any provision of this title (including
 24 subpart C), other than this section, or under any
 25 provision of the Federal National Mortgage Associa-

1 tion Charter Act or the Federal Home Loan Mort-
 2 gage Corporation Act, as applicable.”.

3 **SEC. 129. HOME PURCHASE GOAL.**

4 The Federal Housing Enterprises Financial Safety
 5 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
 6 amended—

7 (1) by inserting after section 1334 the fol-
 8 lowing:

9 **“SEC. 1334A. HOME PURCHASE GOAL.**

10 “(a) ESTABLISHMENT.—

11 “(1) IN GENERAL.—The Director shall establish
 12 an annual home purchase goal for the purchase by
 13 each enterprise of mortgage financing of owner-occu-
 14 pied single family dwelling units.

15 “(2) COMPONENTS.—The Director may, by reg-
 16 ulation, establish components for the goal estab-
 17 lished under paragraph (1) to include any or all of
 18 the following:

19 “(A) First-time home buyers.

20 “(B) Low- and moderate-income home
 21 buyers.

22 “(C) Home buyers in central cities, rural
 23 areas, and other underserved areas.

1 “(D) Home buyers who obtain financing
2 through State or local affordable or subsidized
3 housing programs.

4 “(3) OTHER AUTHORITY.—The Director may,
5 by regulation, establish the goal under paragraph
6 (1) with components as percentages of enterprise
7 business, or by such other means as necessary to in-
8 crease the secondary market financing of mortgages
9 by the enterprises for home purchases, consistent
10 with the missions of the enterprises.

11 “(4) ENFORCEABILITY.—The components of
12 the goal established by the Director under para-
13 graph (1) shall be enforceable as goals under sub-
14 part C.

15 “(b) FACTORS TO BE CONSIDERED.—In establishing
16 the home purchase goal for an enterprise under this sec-
17 tion, the Director shall consider—

18 “(1) national housing needs;

19 “(2) economic, housing, and demographic condi-
20 tions;

21 “(3) the performance and effort of the enter-
22 prises toward achieving the home purchase goal in
23 previous years;

1 “(4) the size of the conventional mortgage mar-
 2 ket serving home purchasers, relative to the size of
 3 the overall conventional mortgage market;

4 “(5) the ability of the enterprises to lead the in-
 5 dustry in making mortgage credit available for home
 6 purchasers; and

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

9 “(c) TRANSITION.—In order to permit a transition
 10 to the establishment of the goal under this section, such
 11 goal shall not be effective or enforceable during the 1-year
 12 period beginning on the date of its establishment under
 13 subsection (a).

14 “(d) IMPLEMENTATION DURING TRANSITION.—The
 15 Director shall establish, by rule, any requirements nec-
 16 essary to implement the transition provisions under sub-
 17 section (c), after providing the enterprises with an oppor-
 18 tunity to review and comment not less than 30 days before
 19 the issuance of such notice.

20 **“SEC. 1334B HOUSING GOALS, ADDITIONS, MODIFICATIONS,**
 21 **AND RESCISSIONS.**

22 “(a) IN GENERAL.—

23 “(1) AUTHORITY TO ADDRESS GOALS.—The Di-
 24 rector may, by regulation, establish additional an-
 25 nual housing goals, or modify or rescind existing

1 housing goals, to address national housing needs
2 consistent with the missions, of the enterprises and
3 the authorizing statutes, for the purchase of mort-
4 gages, if the Director determines, by regulation, that
5 the housing need is greatest.

6 “(2) METHODOLOGY.—The Director may issue
7 a regulation which establishes or modifies any goal
8 under this subsection—

9 “(A) as a percentage of the mortgage pur-
10 chases of each enterprise;

11 “(B) as a dollar amount of each enter-
12 prise’s mortgage purchases; or

13 “(C) by such other means as necessary to
14 increase the enterprises’ secondary market fi-
15 nancing of mortgages addressed by the goal.

16 “(b) FACTORS TO BE CONSIDERED.—In establishing
17 any additional goals under this section, the Director shall
18 consider—

19 “(1) national housing needs;

20 “(2) economic, housing, and demographic condi-
21 tions;

22 “(3) the performance and effort of the enter-
23 prises toward achieving the need addressed by any
24 such additional goal in previous years;

1 “(4) the size of the conventional mortgage mar-
 2 ket serving the need addressed by the goal, relative
 3 to the size of the overall conventional mortgage mar-
 4 ket;

5 “(5) the ability of the enterprises to lead the in-
 6 dustry in making mortgage credit available to meet
 7 the need addressed by the goal; and

8 “(6) the need to maintain the sound financial
 9 condition of the enterprises.

10 “(c) TRANSITION.—In order to permit a transition
 11 to the establishment of any goal under this section, such
 12 goal shall not be effective or enforceable during the 1-year
 13 period beginning on the date of its establishment under
 14 subsection (a).”;

15 (2) in section 1335 (12 U.S.C. 4565(a)), by
 16 striking “meet the low-” and all that follows through
 17 “1334” and inserting “meet the goals under this
 18 subpart”;

19 (3) in section 1336 (12 U.S.C. 4566), by strik-
 20 ing subsections (b) and (c) and inserting the fol-
 21 lowing:

22 “(b) NOTICE AND PRELIMINARY DETERMINATION OF
 23 FAILURE TO MEET GOALS.—

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

1 is a substantial probability that an enterprise will
2 fail, to meet any housing goal under this subpart,
3 the Director shall provide written notice to the en-
4 terprise of such a preliminary determination, the
5 reasons for such determination, and the information
6 on which the Director based the determination.

7 “(2) RESPONSE PERIOD.—

8 “(A) IN GENERAL.—During the 30-day pe-
9 riod beginning on the date on which an enter-
10 prise is provided notice under paragraph (1),
11 the enterprise may submit to the Director any
12 written information that the enterprise con-
13 siders appropriate for consideration by the Di-
14 rector in finally determining whether such fail-
15 ure has occurred or whether the achievement of
16 such goal was or is feasible.

17 “(B) EXTENDED PERIOD.—The Director
18 may extend the period under subparagraph (A)
19 for good cause for not more than 30 additional
20 days.

21 “(C) SHORTENED PERIOD.—The Director
22 may shorten the period under subparagraph (A)
23 for good cause.

24 “(D) FAILURE TO RESPOND.—The failure
25 of an enterprise to provide information during

1 the 30-day period under this paragraph (as ex-
 2 tended or shortened) shall waive any right of
 3 the enterprise to comment on the proposed de-
 4 termination or action of the Director.

5 “(3) CONSIDERATION OF INFORMATION AND
 6 FINAL DETERMINATION.—

7 “(A) IN GENERAL.—After the expiration of
 8 the response period under paragraph (2), or
 9 upon receipt of information provided during
 10 such period by the enterprise, whichever occurs
 11 earlier, the Director shall issue a final deter-
 12 mination on—

13 “(i) whether the enterprise has failed,
 14 or there is a substantial probability that
 15 the enterprise will fail, to meet the housing
 16 goal; and

17 “(ii) whether (taking into consider-
 18 ation market and economic conditions and
 19 the financial condition of the enterprise)
 20 the achievement of the housing goal was or
 21 is feasible.

22 “(B) CONSIDERATIONS.—In making a
 23 final determination under subparagraph (A),
 24 the Director shall take into consideration any

1 relevant information submitted by the enter-
 2 prise during the response period.

3 “(C) NOTICE.—The Director shall provide
 4 written notice, including a response to any in-
 5 formation submitted during the response period
 6 to the enterprise, the Committee on Banking,
 7 Housing, and Urban Affairs of the Senate, and
 8 the Committee on Financial Services of the
 9 House of Representatives, of—

10 “(i) each final determination under
 11 this paragraph that an enterprise has
 12 failed, or that there is a substantial prob-
 13 ability that the enterprise will fail, to meet
 14 a housing goal;

15 “(ii) each final determination that the
 16 achievement of a housing goal was or is
 17 feasible; and

18 “(iii) the reasons for each such final
 19 determination.

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

22 “(1) REQUIREMENT.—If the Director finds,
 23 pursuant to subsection (b), that there is a substan-
 24 tial probability that an enterprise will fail, or has ac-
 25 tually failed, to meet any housing goal under this

1 subpart, and that the achievement of the housing
2 goal was or is feasible, the Director may require that
3 the enterprise submit a housing plan under this sub-
4 section. If the Director makes such a finding and
5 the enterprise refuses to submit such a plan, sub-
6 mits an unacceptable plan, fails to comply with the
7 plan, or the Director finds that the enterprise has
8 failed to meet any housing goal under this subpart,
9 in addition to requiring an enterprise to submit a
10 housing plan, the Director may issue a cease and de-
11 sist order in accordance with section 1341, impose
12 civil money penalties in accordance with section
13 1345, or order other remedies as set forth in para-
14 graph (7).

15 “(2) HOUSING PLAN.—If the Director requires
16 a housing plan under this subsection, such a plan
17 shall be—

18 “(A) a feasible plan describing the specific
19 actions the enterprise will take—

20 “(i) to achieve the goal for the next
21 calendar year; and

22 “(ii) if the Director determines that
23 there is a substantial probability that the
24 enterprise will fail to meet a goal in the
25 current year, to make such improvements

1 and changes in its operations as are rea-
2 sonable in the remainder of such year; and

3 “(B) sufficiently specific to enable the Di-
4 rector to monitor compliance periodically.

5 “(3) DEADLINE FOR SUBMISSION.—The Direc-
6 tor shall, by regulation, establish a deadline for an
7 enterprise to comply with any remedial action or
8 submit a housing plan to the Director, which may
9 not be more than 45 days after the enterprise is pro-
10 vided notice. The regulations shall provide that the
11 Director may extend the deadline to the extent that
12 the Director determines necessary. Any extension of
13 the deadline shall be in writing and for a time cer-
14 tain.

15 “(4) APPROVAL.—The Director shall review
16 each submission by an enterprise, including a hous-
17 ing plan submitted under this subsection, and, not
18 later than 30 days after submission, approve or dis-
19 approve the plan or other action. The Director may
20 extend the period for approval or disapproval for a
21 single additional 30-day period if the Director deter-
22 mines it necessary. The Director shall approve any
23 plan that the Director determines is likely to suc-
24 ceed, and conforms with the Federal National Mort-
25 gage Association Charter Act or the Federal Home

1 Loan Mortgage Corporation Act (as applicable), this
2 title, and any other applicable provision of law.

3 “(5) NOTICE OF APPROVAL AND DIS-
4 APPROVAL.—The Director shall provide written no-
5 tice to any enterprise submitting a housing plan of
6 the approval or disapproval of the plan (which shall
7 include the reasons for any disapproval of the plan)
8 and of any extension of the period for approval or
9 disapproval.

10 “(6) RESUBMISSION.—If the initial housing
11 plan submitted by an enterprise under this section
12 is disapproved, the enterprise shall submit an
13 amended plan acceptable to the Director not later
14 than 30 days after such disapproval, or such longer
15 period that the Director determines is in the public
16 interest.

17 “(7) ADDITIONAL REMEDIES FOR FAILURE TO
18 MEET GOALS.—In addition to ordering a housing
19 plan under this section, issuing a cease and desist
20 order under section 1341, and ordering civil money
21 penalties under section 1345, the Director may seek
22 other actions when an enterprise fails to meet a
23 goal, including requesting that the Director exercise
24 appropriate enforcement authority available to the
25 Director under this title to prohibit the enterprise

1 from entering into new activities, to freeze any pend-
 2 ing approval of new activities, and to order the en-
 3 terprise to suspend activities pending its achieve-
 4 ment of the goal.”;

5 (4) by striking section 1338 (12 U.S.C. 4568);

6 (5) by striking from the heading of subpart C
 7 **“of Housing Goals”**;

8 (6) by striking section 1341 (12 U.S.C. 4581)
 9 and inserting the following:

10 **“SEC. 1341. CEASE-AND-DESIST PROCEEDINGS.**

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

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

18 “(2) the enterprise has failed to submit a report
 19 under section 1327, following a notice of such fail-
 20 ure, an opportunity for comment by the enterprise,
 21 and a final determination by the Director;

22 “(3) the enterprise has failed to submit the in-
 23 formation required under subsection (m) or (n) of
 24 section 309 of the Federal National Mortgage Asso-
 25 ciation Charter Act, subsection (e) or (f) of section

1 307 of the Federal Home Loan Mortgage Corpora-
2 tion Act, or section 1337 of this title;

3 “(4) the enterprise has violated any provision of
4 part 2 of this title or any order, rule, or regulation
5 under part 2;

6 “(5) the enterprise has failed to submit a hous-
7 ing plan or perform its responsibilities under a reme-
8 dial order that substantially complies with section
9 1336(c) within the applicable period; or

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

12 “(b) PROCEDURE.—

13 “(1) NOTICE OF CHARGES.—Each notice of
14 charges issued under this section shall contain a
15 statement of the facts constituting the alleged con-
16 duct and shall fix a time and place at which a hear-
17 ing will be held to determine on the record whether
18 an order to cease and desist from such conduct
19 should issue.

20 “(2) ISSUANCE OF ORDER.—If the Director
21 finds on the record made at a hearing described in
22 paragraph (1) that any conduct specified in the no-
23 tice of charges has been established (or the enter-
24 prise consents pursuant to section 1342(a)(4)), the

1 Director may issue and serve upon the enterprise an
2 order requiring the enterprise to—

3 “(A) comply with the goals;

4 “(B) submit a report under section 1327;

5 “(C) comply with any provision of part 2
6 of this title or any order, rule, or regulation
7 under part 2;

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

10 “(E) comply with the housing plan in com-
11 pliance with section 1336(c); or

12 “(F) provide the information required
13 under subsection (m) or (n) of section 309 of
14 the Federal National Mortgage Association
15 Charter Act, or subsection (e) or (f) of section
16 307 of the Federal Home Loan Mortgage Cor-
17 poration Act.

18 “(c) EFFECTIVE DATE.—An order under this section
19 shall become effective upon the expiration of the 30-day
20 period beginning on the date of service of the order upon
21 the enterprise (except in the case of an order issued upon
22 consent, which shall become effective at the time specified
23 therein), and shall remain effective and enforceable as pro-
24 vided in the order, except to the extent that the order is

1 stayed, modified, terminated, or set aside by action of the
 2 Director of or otherwise, as provided in this subpart.”; and

3 (7) by striking section 1345 and inserting the
 4 following:

5 **“SEC. 1345. CIVIL MONEY PENALTIES.**

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

9 “(1) meet any housing goal established under
 10 subpart B, following a written notice and determina-
 11 tion of such failure in accordance with section
 12 1336(b);

13 “(2) submit a report under section 1327, fol-
 14 lowing a notice of such failure, an opportunity for
 15 comment by the enterprise, and a final determina-
 16 tion by the Director;

17 “(3) submit the information required under
 18 subsection (m) or (n) of section 309 of the Federal
 19 National Mortgage Association Charter Act or sub-
 20 section (e) or (f) of section 307 of the Federal Home
 21 Loan Mortgage Corporation Act;

22 “(4) comply with any provision of part 2 of this
 23 title or any order, rule, or regulation under part 2;

1 “(5) submit a housing plan or perform its re-
 2 sponsibilities under a remedial order issued pursuant
 3 to section 1336(c) within the required period; or

4 “(6) comply with a housing plan for the enter-
 5 prise under section 1336(c).

6 “(b) AMOUNT OF PENALTY.—The amount of a pen-
 7 alty under this section, as determined by the Director,
 8 may not exceed—

9 “(1) for any failure described in paragraph (1),
 10 (5), or (6) of subsection (a), \$100,000 for each day
 11 that the failure occurs; and

12 “(2) for any failure described in paragraph (2),
 13 (3), or (4) of subsection (a), \$50,000 for each day
 14 that the failure occurs.

15 “(c) PROCEDURES.—

16 “(1) ESTABLISHMENT.—The Director shall es-
 17 tablish standards and procedures governing the im-
 18 position of civil money penalties under this section.
 19 Such standards and procedures—

20 “(A) shall provide for the Director to no-
 21 tify the enterprise in writing of the determina-
 22 tion of the Director to impose the penalty,
 23 which shall be made on the record;

24 “(B) shall provide for the imposition of a
 25 penalty only after the enterprise has been given

1 an opportunity for a hearing on the record pur-
 2 suant to section 1342; and

3 “(C) may provide for review by the Direc-
 4 tor of any determination or order, or interlocu-
 5 tory ruling, arising from a hearing.

6 “(2) FACTORS IN DETERMINING AMOUNT OF
 7 PENALTY.—In determining the amount of a penalty
 8 under this section, the Director shall give consider-
 9 ation to factors including—

10 “(A) the gravity of the offense;

11 “(B) any history of prior offenses;

12 “(C) ability to pay the penalty;

13 “(D) injury to the public;

14 “(E) benefits received;

15 “(F) deterrence of future violations;

16 “(G) the length of time that the enterprise
 17 should reasonably take to achieve the goal; and

18 “(H) such other factors as the Director
 19 may determine, by regulation, to be appro-
 20 priate.

21 “(d) ACTION TO COLLECT PENALTY.—If an enter-
 22 prise fails to comply with an order by the Director impos-
 23 ing a civil money penalty under this section, after the
 24 order is no longer subject to review, as provided in sections
 25 1342 and 1343, the Director may request the Attorney

1 General of the United States to bring an action in the
 2 United States District Court for the District of Columbia
 3 to obtain a monetary judgment against the enterprise, and
 4 such other relief as may be available. The monetary judg-
 5 ment may, in the court’s discretion, include the attorneys’
 6 fees and other expenses incurred by the United States in
 7 connection with the action. In an action under this sub-
 8 section, the validity and appropriateness of the order im-
 9 posing the penalty shall not be subject to review.

10 “(e) SETTLEMENT BY DIRECTOR.—The Director
 11 may compromise, modify, or remit any civil money penalty
 12 which may be, or has been, imposed under this section.

13 “(f) DEPOSIT OF PENALTIES.—The Director shall
 14 deposit any civil money penalties collected under this sec-
 15 tion into the General Fund of the Treasury.”.

16 **Subtitle C—Prompt Corrective** 17 **Action**

18 **SEC. 141. CRITICAL CAPITAL LEVELS.**

19 Section 1363 of the Federal Housing Enterprises Fi-
 20 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 21 4613) is amended—

22 (1) by redesignating paragraphs (1) through
 23 (3) as clauses (i) through (iii), respectively, and in-
 24 denting appropriately;

1 (2) by striking “this subtitle, the critical capital
2 level for each enterprise shall be the sum of—” and
3 inserting the following: “this subtitle, the critical
4 capital level—

5 “(1) for each enterprise shall be—

6 “(A) the sum of—”; and

7 (3) in paragraph (1)(A)(iii), as so designated by
8 this section, by striking the period at the end and
9 inserting the following: “; or

10 “(B) such other level as the Director shall
11 establish, by regulation; and

12 “(2) for each Federal Home Loan Bank, shall
13 be the level that the Director shall establish, by reg-
14 ulation.”.

15 **SEC. 142. CAPITAL CLASSIFICATIONS.**

16 Section 1364 of the Federal Housing Enterprises Fi-
17 nancial Safety and Soundness Act of 1992 (12 U.S.C.
18 4614) is amended—

19 (1) in subsection (a)—

20 (A) in paragraph (3)(A)—

21 (i) by striking clause (i); and

22 (ii) by redesignating clauses (ii) and

23 (iii) as clauses (i) and (ii), respectively;

24 and

1 (B) in paragraph (4)(A), by striking “en-
 2 terprise—” and all that follows through “(ii)
 3 does” and inserting “enterprise does”;

4 (2) by striking subsection (b) and inserting the
 5 following:

6 “(b) DISCRETIONARY CLASSIFICATION.—

7 “(1) GROUNDS FOR RECLASSIFICATION.—The
 8 Director may reclassify a regulated entity under
 9 paragraph (2) if—

10 “(A) at any time, the Director determines
 11 in writing that a regulated entity is engaging in
 12 conduct that could result in a rapid depletion of
 13 core capital, or that the value of the property
 14 subject to mortgages held or securitized by an
 15 enterprise, or the value of collateral pledged as
 16 security, has decreased significantly;

17 “(B) after notice and an opportunity for
 18 hearing, the Director determines that a regu-
 19 lated entity is in an unsafe or unsound condi-
 20 tion; or

21 “(C) pursuant to section 1371(b), the Di-
 22 rector determines that a regulated entity is en-
 23 gaging in an unsafe or unsound practice.

24 “(2) RECLASSIFICATION.—In addition to any
 25 other action authorized under this title, including

1 the reclassification of a regulated entity for any rea-
 2 son not specified in this subsection, if the Director
 3 takes any action described in paragraph (1), the Di-
 4 rector may reclassify a regulated entity—

5 “(A) as ‘undercapitalized’, if the regulated
 6 entity is otherwise classified as adequately cap-
 7 italized;

8 “(B) as ‘significantly undercapitalized’, if
 9 the regulated entity is otherwise classified as
 10 undercapitalized; and

11 “(C) as ‘critically undercapitalized’, if the
 12 regulated entity is otherwise classified as sig-
 13 nificantly undercapitalized.”; and

14 (3) by striking subsection (d) and inserting the
 15 following:

16 “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

17 “(1) IN GENERAL.—A regulated entity shall
 18 make no capital distribution if, after making the dis-
 19 tribution, the regulated entity would be under-
 20 capitalized.

21 “(2) EXCEPTION.—Notwithstanding paragraph
 22 (1), the Director may permit a regulated entity to
 23 repurchase, redeem, retire, or otherwise acquire
 24 shares or ownership interests if the repurchase, re-
 25 demption, retirement, or other acquisition—

1 “(A) is made in connection with the
2 issuance of additional shares or obligations of
3 the regulated entity in at least an equivalent
4 amount; and

5 “(B) will reduce the financial obligations of
6 the regulated entity or otherwise improve the fi-
7 nancial condition of the regulated entity.”.

8 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
9 **CAPITALIZED REGULATED ENTITIES.**

10 Section 1365 of the Federal Housing Enterprises Fi-
11 nancial Safety and Soundness Act of 1992 (12 U.S.C.
12 4615) is amended—

13 (1) by striking “the enterprise” each place that
14 term appears and inserting “the regulated entity”;

15 (2) by striking “An enterprise” each place that
16 term appears and inserting “A regulated entity”;

17 (3) by striking “an enterprise” each place that
18 term appears and inserting “a regulated entity”;

19 (4) in subsection (a)—

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

22 (B) by inserting before paragraph (2), as
23 redesignated, the following:

24 “(1) **REQUIRED MONITORING.**—The Director
25 shall—

1 “(A) closely monitor the condition of any
2 undercapitalized regulated entity;

3 “(B) closely monitor compliance with the
4 capital restoration plan, restrictions, and re-
5 quirements imposed on an undercapitalized reg-
6 ulated entity under this section; and

7 “(C) periodically review the plan, restric-
8 tions, and requirements applicable to an under-
9 capitalized regulated entity to determine wheth-
10 er the plan, restrictions, and requirements are
11 achieving the purpose of this section.”; and

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

13 “(4) RESTRICTION OF ASSET GROWTH.—An
14 undercapitalized regulated entity shall not permit its
15 average total assets during any calendar quarter to
16 exceed its average total assets during the preceding
17 calendar quarter, unless—

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

20 “(B) any increase in total assets is con-
21 sistent with the capital restoration plan; and

22 “(C) the ratio of tangible equity to assets
23 of the regulated entity increases during the cal-
24 endar quarter at a rate sufficient to enable the

1 regulated entity to become adequately capital-
 2 ized within a reasonable time.

3 “(5) PRIOR APPROVAL OF ACQUISITIONS AND
 4 NEW ACTIVITIES.—An undercapitalized regulated en-
 5 tity shall not, directly or indirectly, acquire any in-
 6 terest in any entity or engage in any new activity,
 7 unless—

8 “(A) the Director has accepted the capital
 9 restoration plan of the regulated entity, the reg-
 10 ulated entity is implementing the plan, and the
 11 Director determines that the proposed action is
 12 consistent with and will further the achievement
 13 of the plan; or

14 “(B) the Director determines that the pro-
 15 posed action will further the purpose of this
 16 subtitle.”;

17 (5) in subsection (b)—

18 (A) in the subsection heading, by striking
 19 “DISCRETIONARY”;

20 (B) in the matter preceding paragraph (1),
 21 by striking “may” and inserting “shall”; and

22 (C) in paragraph (2)—

23 (i) by striking “make, in good faith,
 24 reasonable efforts necessary to”; and

1 (ii) by striking the period at the end
 2 and inserting “in any material respect.”;
 3 and

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

6 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
 7 Director may take, with respect to an undercapitalized
 8 regulated entity, any of the actions authorized to be taken
 9 under section 1366 with respect to a significantly under-
 10 capitalized regulated entity, if the Director determines
 11 that such actions are necessary to carry out the purpose
 12 of this subtitle.”.

13 **SEC. 144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
 14 **CANTLY UNDERCAPITALIZED REGULATED**
 15 **ENTITIES.**

16 Section 1366 of the Federal Housing Enterprises Fi-
 17 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 18 4616) is amended—

19 (1) in subsection (a)(2), by striking “under-
 20 capitalized enterprise” and inserting “undercapital-
 21 ized”;

22 (2) by striking “the enterprise” each place that
 23 term appears and inserting “the regulated entity”;

24 (3) by striking “An enterprise” each place that
 25 term appears and inserting “A regulated entity”;

(4) by striking “an enterprise” each place that term appears and inserting “a regulated entity”;

(5) in subsection (b)—

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

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

(C) by striking paragraph (6);

(D) by redesignating paragraph (5) as paragraph (6);

(E) by inserting after paragraph (4) the following:

“(5) IMPROVEMENT OF MANAGEMENT.—Take 1 or more of the following actions:

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

“(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the

1 regulated entity became undercapitalized. Dis-
 2 missal under this subparagraph shall not be
 3 construed to be a removal pursuant to the en-
 4 forcement powers of the Director under section
 5 1377.

6 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
 7 FICERS.—Require the regulated entity to em-
 8 ploy qualified executive officers (who, if the Di-
 9 rector so specifies, shall be subject to approval
 10 by the Director).”; and

11 (F) by adding at the end the following:

12 “(7) OTHER ACTION.—Require the regulated
 13 entity to take any other action that the Director de-
 14 termines will better carry out the purpose of this
 15 section than any of the other actions specified in this
 16 subsection.”; and

17 (6) by striking subsection (c) and inserting the
 18 following:

19 “(c) RESTRICTION ON COMPENSATION OF EXECU-
 20 TIVE OFFICERS.—A regulated entity that is classified as
 21 significantly undercapitalized in accordance with section
 22 1364 may not, without prior written approval by the Di-
 23 rector—

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

1 “(2) provide compensation to any executive offi-
 2 cer at a rate exceeding the average rate of com-
 3 pensation of that officer (excluding bonuses, stock
 4 options, and profit sharing) during the 12 calendar
 5 months preceding the calendar month in which the
 6 regulated entity became significantly undercapital-
 7 ized.”.

8 **SEC. 145. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
 9 **IZED REGULATED ENTITIES.**

10 (a) IN GENERAL.—Section 1367 of the Federal
 11 Housing Enterprises Financial Safety and Soundness Act
 12 of 1992 (12 U.S.C. 4617) is amended to read as follows:

13 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
 14 **IZED REGULATED ENTITIES.**

15 “(a) APPOINTMENT OF THE AGENCY AS CONSER-
 16 VATOR OR RECEIVER.—

17 “(1) IN GENERAL.—Notwithstanding any other
 18 provision of Federal or State law, the Director may
 19 appoint the Agency as conservator or receiver for a
 20 regulated entity in the manner provided under para-
 21 graph (2) or (4). All references to the conservator or
 22 receiver under this section are references to the
 23 Agency acting as conservator or receiver.

24 “(2) DISCRETIONARY APPOINTMENT.—The
 25 Agency may, at the discretion of the Director, be ap-

1 pointed conservator or receiver for the purpose of re-
 2 organizing, rehabilitating, or winding up the affairs
 3 of a regulated entity.

4 “(3) GROUNDS FOR DISCRETIONARY APPOINT-
 5 MENT OF CONSERVATOR OR RECEIVER.—The
 6 grounds for appointing conservator or receiver for
 7 any regulated entity under paragraph (2) are as fol-
 8 lows:

9 “(A) SUBSTANTIAL DISSIPATION.—Sub-
 10 stantial dissipation of assets or earnings due
 11 to—

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

14 “(ii) any unsafe or unsound practice.

15 “(B) UNSAFE OR UNSOUND CONDITION.—
 16 An unsafe or unsound condition to transact
 17 business.

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

21 “(D) CONCEALMENT.—Any concealment of
 22 the books, papers, records, or assets of the reg-
 23 ulated entity, or any refusal to submit the
 24 books, papers, records, or affairs of the regu-

lated entity, for inspection to any examiner or to any lawful agent of the Director.

“(E) INABILITY TO MEET OBLIGATIONS.—

The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

“(F) LOSSES.—The regulated entity has

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

“(G) VIOLATIONS OF LAW.—Any violation

of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

“(i) cause insolvency or substantial

dissipation of assets or earnings; or

“(ii) weaken the condition of the regu-

lated entity.

“(H) CONSENT.—The regulated entity, by

resolution of its board of directors or its shareholders or members, consents to the appointment.

“(I) UNDERCAPITALIZATION.—The regu-

lated entity is undercapitalized or significantly

1 undercapitalized (as defined in section
2 1364(a)(3)), and—

3 “(i) has no reasonable prospect of be-
4 coming adequately capitalized;

5 “(ii) fails to become adequately cap-
6 italized, as required by—

7 “(I) section 1365(a)(1) with re-
8 spect to a regulated entity; or

9 “(II) section 1366(a)(1) with re-
10 spect to a significantly undercapital-
11 ized regulated entity;

12 “(iii) fails to submit a capital restora-
13 tion plan acceptable to the Agency within
14 the time prescribed under section 1369C;
15 or

16 “(iv) materially fails to implement a
17 capital restoration plan submitted and ac-
18 cepted under section 1369C.

19 “(J) CRITICAL UNDERCAPITALIZATION.—
20 The regulated entity is critically undercapital-
21 ized, as defined in section 1364(a)(4).

22 “(K) MONEY LAUNDERING.—The Attorney
23 General notifies the Director in writing that the
24 regulated entity has been found guilty of a
25 criminal offense under section 1956 or 1957 of

1 title 18, United States Code, or section 5322 or
2 5324 of title 31, United States Code.

3 “(4) MANDATORY RECEIVERSHIP.—

4 “(A) IN GENERAL.—The Director shall ap-
5 point the Agency as receiver for a regulated en-
6 tity if the Director determines, in writing,
7 that—

8 “(i) the assets of the regulated entity
9 are, and during the preceding 30 calendar
10 days have been, less than the obligations of
11 the regulated entity to its creditors and
12 others; or

13 “(ii) the regulated entity is not, and
14 during the preceding 30 calendar days has
15 not been, generally paying the debts of the
16 regulated entity (other than debts that are
17 the subject of a bona fide dispute) as such
18 debts become due.

19 “(B) PERIODIC DETERMINATION RE-
20 QUIRED FOR CRITICALLY UNDERCAPITALIZED
21 REGULATED ENTITY.—If a regulated entity is
22 critically undercapitalized, the Director shall
23 make a determination, in writing, as to whether
24 the regulated entity meets the criteria specified
25 in clause (i) or (ii) of subparagraph (A)—

1 “(i) not later than 30 calendar days
2 after the regulated entity initially becomes
3 critically undercapitalized; and

4 “(ii) at least once during each suc-
5 ceeding 30-calendar day period.

6 “(C) DETERMINATION NOT REQUIRED IF
7 RECEIVERSHIP ALREADY IN PLACE.—Subpara-
8 graph (B) does not apply with respect to a reg-
9 ulated entity in any period during which the
10 Agency serves as receiver for the regulated enti-
11 ty.

12 “(D) RECEIVERSHIP TERMINATES CON-
13 SERVATORSHIP.—The appointment of the Agen-
14 cy as receiver of a regulated entity under this
15 section shall immediately terminate any con-
16 servatorship established for the regulated entity
17 under this title.

18 “(5) JUDICIAL REVIEW.—

19 “(A) IN GENERAL.—If the Agency is ap-
20 pointed conservator or receiver under this sec-
21 tion, the regulated entity may, within 30 days
22 of such appointment, bring an action in the
23 United States district court for the judicial dis-
24 trict in which the home office of such regulated
25 entity is located, or in the United States Dis-

1 trict Court for the District of Columbia, for an
 2 order requiring the Agency to remove itself as
 3 conservator or receiver.

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

9 “(6) DIRECTORS NOT LIABLE FOR ACQUI-
 10 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
 11 CEIVER.—The members of the board of directors of
 12 a regulated entity shall not be liable to the share-
 13 holders or creditors of the regulated entity for acqui-
 14 escing in or consenting in good faith to the appoint-
 15 ment of the Agency as conservator or receiver for
 16 that regulated entity.

17 “(7) AGENCY NOT SUBJECT TO ANY OTHER
 18 FEDERAL AGENCY.—When acting as conservator or
 19 receiver, the Agency shall not be subject to the di-
 20 rection or supervision of any other agency of the
 21 United States or any State in the exercise of the
 22 rights, powers, and privileges of the Agency.

23 “(b) POWERS AND DUTIES OF THE AGENCY AS CON-
 24 SERVATOR OR RECEIVER.—

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

5 “(2) GENERAL POWERS.—

6 “(A) SUCCESSOR TO REGULATED ENTI-
 7 TY.—The Agency shall, as conservator or re-
 8 ceiver, and by operation of law, immediately
 9 succeed to—

10 “(i) all rights, titles, powers, and
 11 privileges of the regulated entity, and of
 12 any stockholder, officer, or director of such
 13 regulated entity with respect to the regu-
 14 lated entity and the assets of the regulated
 15 entity; and

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

19 “(B) OPERATE THE REGULATED ENTI-
 20 TY.—The Agency may, as conservator or re-
 21 ceiver—

22 “(i) take over the assets of and oper-
 23 ate the regulated entity with all the powers
 24 of the shareholders, the directors, and the

1 officers of the regulated entity and conduct
 2 all business of the regulated entity;

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

5 “(iii) perform all functions of the reg-
 6 ulated entity in the name of the regulated
 7 entity which are consistent with the ap-
 8 pointment as conservator or receiver;

9 “(iv) preserve and conserve the assets
 10 and property of the regulated entity; and

11 “(v) provide by contract for assistance
 12 in fulfilling any function, activity, action,
 13 or duty of the Agency as conservator or re-
 14 ceiver.

15 “(C) FUNCTIONS OF OFFICERS, DIREC-
 16 TORS, AND SHAREHOLDERS OF A REGULATED
 17 ENTITY.—The Agency may, by regulation or
 18 order, provide for the exercise of any function
 19 by any stockholder, director, or officer of any
 20 regulated entity for which the Agency has been
 21 named conservator or receiver.

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

1 “(i) necessary to put the regulated en-
2 tity in a sound and solvent condition; and

3 “(ii) appropriate to carry on the busi-
4 ness of the regulated entity and preserve
5 and conserve the assets and property of
6 the regulated entity.

7 “(E) ADDITIONAL POWERS AS RE-
8 CEIVER.—In any case in which the Agency is
9 acting as receiver, the Agency shall place the
10 regulated entity in liquidation and proceed to
11 realize upon the assets of the regulated entity
12 in such manner as the Agency deems appro-
13 priate, including through the sale of assets, the
14 transfer of assets to a limited-life regulated en-
15 tity established under subsection (i), or the ex-
16 ercise of any other rights or privileges granted
17 to the Agency under this paragraph.

18 “(F) ORGANIZATION OF NEW ENTER-
19 PRISE.—The Agency shall, as receiver for an
20 enterprise, organize a successor enterprise that
21 will operate pursuant to subsection (i).

22 “(G) TRANSFER OR SALE OF ASSETS AND
23 LIABILITIES.—The Agency may, as conservator
24 or receiver, transfer or sell any asset or liability
25 of the regulated entity in default, and may do

1 so without any approval, assignment, or consent
2 with respect to such transfer or sale.

3 “(H) PAYMENT OF VALID OBLIGATIONS.—

4 The Agency, as conservator or receiver, shall, to
5 the extent of proceeds realized from the per-
6 formance of contracts or sale of the assets of a
7 regulated entity, pay all valid obligations of the
8 regulated entity that are due and payable at the
9 time of the appointment of the Agency as con-
10 servator or receiver, in accordance with the pre-
11 scriptions and limitations of this section.

12 “(I) SUBPOENA AUTHORITY.—

13 “(i) IN GENERAL.—

14 “(I) AGENCY AUTHORITY.—The

15 Agency may, as conservator or re-
16 ceiver, and for purposes of carrying
17 out any power, authority, or duty with
18 respect to a regulated entity (includ-
19 ing determining any claim against the
20 regulated entity and determining and
21 realizing upon any asset of any person
22 in the course of collecting money due
23 the regulated entity), exercise any
24 power established under section 1348.

1 “(II) APPLICABILITY OF LAW.—

2 The provisions of section 1348 shall
 3 apply with respect to the exercise of
 4 any power under this subparagraph,
 5 in the same manner as such provi-
 6 sions apply under that section.

7 “(ii) SUBPOENA.—A subpoena or sub-
 8 poena duces tecum may be issued under
 9 clause (i) only by, or with the written ap-
 10 proval of, the Director, or the designee of
 11 the Director.

12 “(iii) RULE OF CONSTRUCTION.—This
 13 subsection shall not be construed to limit
 14 any rights that the Agency, in any capac-
 15 ity, might otherwise have under section
 16 1317 or 1379B.

17 “(J) INCIDENTAL POWERS.—The Agency
 18 may, as conservator or receiver—

19 “(i) exercise all powers and authori-
 20 ties specifically granted to conservators or
 21 receivers, respectively, under this section,
 22 and such incidental powers as shall be nec-
 23 essary to carry out such powers; and

24 “(ii) take any action authorized by
 25 this section, which the Agency determines

1 is in the best interests of the regulated en-
2 tity or the Agency.

3 “(K) OTHER PROVISIONS.—

4 “(i) SHAREHOLDERS AND CREDITORS
5 OF FAILED REGULATED ENTITY.—Not-
6 withstanding any other provision of law,
7 the appointment of the Agency as receiver
8 for a regulated entity pursuant to para-
9 graph (2) or (4) of subsection (a) and its
10 succession, by operation of law, to the
11 rights, titles, powers, and privileges de-
12 scribed in subsection (b)(2)(A) shall termi-
13 nate all rights and claims that the stock-
14 holders and creditors of the regulated enti-
15 ty may have against the assets or charter
16 of the regulated entity or the Agency aris-
17 ing as a result of their status as stock-
18 holders or creditors, except for their right
19 to payment, resolution, or other satisfac-
20 tion of their claims, as permitted under
21 subsections (b)(9), (c), and (e).

22 “(ii) ASSETS OF REGULATED ENTI-
23 TY.—Notwithstanding any other provision
24 of law, for purposes of this section, the

1 charter of a regulated entity shall not be
 2 considered an asset of the regulated entity.

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

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

9 “(B) NOTICE REQUIREMENTS.—The re-
 10 ceiver, in any case involving the liquidation or
 11 winding up of the affairs of a closed regulated
 12 entity, shall—

13 “(i) promptly publish a notice to the
 14 creditors of the regulated entity to present
 15 their claims, together with proof, to the re-
 16 ceiver by a date specified in the notice
 17 which shall be not less than 90 days after
 18 the date of publication of such notice; and

19 “(ii) republish such notice approxi-
 20 mately 1 month and 2 months, respec-
 21 tively, after the date of publication under
 22 clause (i).

23 “(C) MAILING REQUIRED.—The receiver
 24 shall mail a notice similar to the notice pub-
 25 lished under subparagraph (B)(i) at the time of

1 such publication to any creditor shown on the
2 books of the regulated entity—

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

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

10 “(4) RULEMAKING AUTHORITY RELATING TO
11 DETERMINATION OF CLAIMS.—Subject to subsection
12 (c), the Director may prescribe regulations regarding
13 the allowance or disallowance of claims by the re-
14 ceiver and providing for administrative determina-
15 tion of claims and review of such determination.

16 “(5) PROCEDURES FOR DETERMINATION OF
17 CLAIMS.—

18 “(A) DETERMINATION PERIOD.—

19 “(i) IN GENERAL.—Before the end of
20 the 180-day period beginning on the date
21 on which any claim against a regulated en-
22 tity is filed with the Agency as receiver,
23 the Agency shall determine whether to
24 allow or disallow the claim and shall notify

1 the claimant of any determination with re-
2 spect to such claim.

3 “(ii) EXTENSION OF TIME.—The pe-
4 riod described in clause (i) may be ex-
5 tended by a written agreement between the
6 claimant and the Agency.

7 “(iii) MAILING OF NOTICE SUFFI-
8 CIENT.—The requirements of clause (i)
9 shall be deemed to be satisfied if the notice
10 of any determination with respect to any
11 claim is mailed to the last address of the
12 claimant which appears—

13 “(I) on the books of the regu-
14 lated entity;

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

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

19 “(iv) CONTENTS OF NOTICE OF DIS-
20 ALLOWANCE.—If any claim filed under
21 clause (i) is disallowed, the notice to the
22 claimant shall contain—

23 “(I) a statement of each reason
24 for the disallowance; and

1 “(II) the procedures available for
2 obtaining agency review of the deter-
3 mination to disallow the claim or judi-
4 cial determination of the claim.

5 “(B) ALLOWANCE OF PROVEN CLAIM.—
6 The receiver shall allow any claim received on
7 or before the date specified in the notice pub-
8 lished under paragraph (3)(B)(i) by the receiver
9 from any claimant which is proved to the satis-
10 faction of the receiver.

11 “(C) DISALLOWANCE OF CLAIMS FILED
12 AFTER FILING PERIOD.—Claims filed after the
13 date specified in the notice published under
14 paragraph (3)(B)(i), or the date specified under
15 paragraph (3)(C), shall be disallowed and such
16 disallowance shall be final.

17 “(D) AUTHORITY TO DISALLOW CLAIMS.—

18 “(i) IN GENERAL.—The receiver may
19 disallow any portion of any claim by a
20 creditor or claim of security, preference, or
21 priority which is not proved to the satisfac-
22 tion of the receiver.

23 “(ii) PAYMENTS TO LESS THAN
24 FULLY SECURED CREDITORS.—In the case
25 of a claim of a creditor against a regulated

1 entity which is secured by any property or
2 other asset of such regulated entity, the re-
3 ceiver—

4 “(I) may treat the portion of
5 such claim which exceeds an amount
6 equal to the fair market value of such
7 property or other asset as an unse-
8 cured claim against the regulated en-
9 tity; and

10 “(II) may not make any payment
11 with respect to such unsecured por-
12 tion of the claim, other than in con-
13 nection with the disposition of all
14 claims of unsecured creditors of the
15 regulated entity.

16 “(iii) EXCEPTIONS.—No provision of
17 this paragraph shall apply with respect
18 to—

19 “(I) any extension of credit from
20 any Federal Reserve Bank or the
21 United States Treasury; or

22 “(II) any security interest in the
23 assets of the regulated entity securing
24 any such extension of credit.

1 “(E) NO JUDICIAL REVIEW OF DETER-
 2 MINATION PURSUANT TO SUBPARAGRAPH (d).—
 3 No court may review the determination of the
 4 Agency under subparagraph (D) to disallow a
 5 claim.

6 “(F) LEGAL EFFECT OF FILING.—

7 “(i) STATUTE OF LIMITATION
 8 TOLLED.—For purposes of any applicable
 9 statute of limitations, the filing of a claim
 10 with the receiver shall constitute a com-
 11 mencement of an action.

12 “(ii) NO PREJUDICE TO OTHER AC-
 13 TIONS.—Subject to paragraph (10), the fil-
 14 ing of a claim with the receiver shall not
 15 prejudice any right of the claimant to con-
 16 tinue any action which was filed before the
 17 date of the appointment of the receiver,
 18 subject to the determination of claims by
 19 the receiver.

20 “(6) PROVISION FOR JUDICIAL DETERMINATION
 21 OF CLAIMS.—

22 “(A) IN GENERAL.—The claimant may file
 23 suit on a claim (or continue an action com-
 24 menced before the appointment of the receiver)
 25 in the district or territorial court of the United

1 States for the district within which the prin-
2 cipal place of business of the regulated entity is
3 located or the United States District Court for
4 the District of Columbia (and such court shall
5 have jurisdiction to hear such claim), before the
6 end of the 60-day period beginning on the ear-
7 lier of—

8 “(i) the end of the period described in
9 paragraph (5)(A)(i) with respect to any
10 claim against a regulated entity for which
11 the Agency is receiver; or

12 “(ii) the date of any notice of dis-
13 allowance of such claim pursuant to para-
14 graph (5)(A)(i).

15 “(B) STATUTE OF LIMITATIONS.—A claim
16 shall be deemed to be disallowed (other than
17 any portion of such claim which was allowed by
18 the receiver), and such disallowance shall be
19 final, and the claimant shall have no further
20 rights or remedies with respect to such claim,
21 if the claimant fails, before the end of the 60-
22 day period described under subparagraph (A),
23 to file suit on such claim (or continue an action
24 commenced before the appointment of the re-
25 ceiver).

1 “(7) REVIEW OF CLAIMS.—

2 “(A) OTHER REVIEW PROCEDURES.—

3 “(i) IN GENERAL.—The Agency shall
4 establish such alternative dispute resolu-
5 tion processes as may be appropriate for
6 the resolution of claims filed under para-
7 graph (5)(A)(i).

8 “(ii) CRITERIA.—In establishing alter-
9 native dispute resolution processes, the
10 Agency shall strive for procedures which
11 are expeditious, fair, independent, and low
12 cost.

13 “(iii) VOLUNTARY BINDING OR NON-
14 BINDING PROCEDURES.—The Agency may
15 establish both binding and nonbinding
16 processes under this subparagraph, which
17 may be conducted by any government or
18 private party. All parties, including the
19 claimant and the Agency, must agree to
20 the use of the process in a particular case.

21 “(B) CONSIDERATION OF INCENTIVES.—

22 The Agency shall seek to develop incentives for
23 claimants to participate in the alternative dis-
24 pute resolution process.

1 “(8) EXPEDITED DETERMINATION OF
2 CLAIMS.—

3 “(A) ESTABLISHMENT REQUIRED.—The
4 Agency shall establish a procedure for expedited
5 relief outside of the routine claims process es-
6 tablished under paragraph (5) for claimants
7 who—

8 “(i) allege the existence of legally
9 valid and enforceable or perfected security
10 interests in assets of any regulated entity
11 for which the Agency has been appointed
12 receiver; and

13 “(ii) allege that irreparable injury will
14 occur if the routine claims procedure is fol-
15 lowed.

16 “(B) DETERMINATION PERIOD.—Before
17 the end of the 90-day period beginning on the
18 date on which any claim is filed in accordance
19 with the procedures established under subpara-
20 graph (A), the Director shall—

21 “(i) determine—

22 “(I) whether to allow or disallow
23 such claim; or

24 “(II) whether such claim should
25 be determined pursuant to the proce-

1 dures established under paragraph
2 (5); and

3 “(ii) notify the claimant of the deter-
4 mination, and if the claim is disallowed,
5 provide a statement of each reason for the
6 disallowance and the procedure for obtain-
7 ing agency review or judicial determina-
8 tion.

9 “(C) PERIOD FOR FILING OR RENEWING
10 SUIT.—Any claimant who files a request for ex-
11 pedited relief shall be permitted to file a suit,
12 or to continue a suit filed before the date of ap-
13 pointment of the receiver, seeking a determina-
14 tion of the rights of the claimant with respect
15 to such security interest after the earlier of—

16 “(i) the end of the 90-day period be-
17 ginning on the date of the filing of a re-
18 quest for expedited relief; or

19 “(ii) the date on which the Agency de-
20 nies the claim.

21 “(D) STATUTE OF LIMITATIONS.—If an
22 action described under subparagraph (C) is not
23 filed, or the motion to renew a previously filed
24 suit is not made, before the end of the 30-day
25 period beginning on the date on which such ac-

tion or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

“(E) LEGAL EFFECT OF FILING.—

“(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

“(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

“(9) PAYMENT OF CLAIMS.—

“(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent that funds are available from the assets of the regulated entity, pay creditor claims, in such

1 manner and amounts as are authorized under
2 this section, which are—

3 “(i) allowed by the receiver;

4 “(ii) approved by the Agency pursuant
5 to a final determination pursuant to para-
6 graph (7) or (8); or

7 “(iii) determined by the final judg-
8 ment of any court of competent jurisdic-
9 tion.

10 “(B) AGREEMENTS AGAINST THE INTER-
11 EST OF THE AGENCY.—No agreement that
12 tends to diminish or defeat the interest of the
13 Agency in any asset acquired by the Agency as
14 receiver under this section shall be valid against
15 the Agency unless such agreement is in writing
16 and executed by an authorized officer or rep-
17 resentative of the regulated entity.

18 “(C) PAYMENT OF DIVIDENDS ON
19 CLAIMS.—The receiver may, in the sole discre-
20 tion of the receiver, pay from the assets of the
21 regulated entity dividends on proved claims at
22 any time, and no liability shall attach to the
23 Agency by reason of any such payment, for fail-
24 ure to pay dividends to a claimant whose claim
25 is not proved at the time of any such payment.

1 “(D) RULEMAKING AUTHORITY OF THE
 2 DIRECTOR.—The Director may prescribe such
 3 rules, including definitions of terms, as the Di-
 4 rector deems appropriate to establish a single
 5 uniform interest rate for, or to make payments
 6 of post-insolvency interest to creditors holding
 7 proven claims against the receivership estates of
 8 regulated entity, following satisfaction by the
 9 receiver of the principal amount of all creditor
 10 claims.

11 “(10) SUSPENSION OF LEGAL ACTIONS.—

12 “(A) IN GENERAL.—After the appointment
 13 of a conservator or receiver for a regulated enti-
 14 ty, the conservator or receiver may, in any judi-
 15 cial action or proceeding to which such regu-
 16 lated entity is or becomes a party, request a
 17 stay for a period not to exceed—

18 “(i) 45 days, in the case of any con-
 19 servator; and

20 “(ii) 90 days, in the case of any re-
 21 ceiver.

22 “(B) GRANT OF STAY BY ALL COURTS RE-
 23 QUIRED.—Upon receipt of a request by the con-
 24 servator or receiver under subparagraph (A) for
 25 a stay of any judicial action or proceeding in

1 any court with jurisdiction of such action or
2 proceeding, the court shall grant such stay as
3 to all parties.

4 “(11) ADDITIONAL RIGHTS AND DUTIES.—

5 “(A) PRIOR FINAL ADJUDICATION.—The
6 Agency shall abide by any final unappealable
7 judgment of any court of competent jurisdiction
8 which was rendered before the appointment of
9 the Agency as conservator or receiver.

10 “(B) RIGHTS AND REMEDIES OF CONSER-
11 VATOR OR RECEIVER.—In the event of any ap-
12 pealable judgment, the Agency as conservator
13 or receiver—

14 “(i) shall have all of the rights and
15 remedies available to the regulated entity
16 (before the appointment of such conser-
17 vator or receiver) and the Agency, includ-
18 ing removal to Federal court and all appel-
19 late rights; and

20 “(ii) shall not be required to post any
21 bond in order to pursue such remedies.

22 “(C) NO ATTACHMENT OR EXECUTION.—
23 No attachment or execution may issue by any
24 court upon assets in the possession of the re-
25 ceiver, or upon the charter, of a regulated enti-

1 ty for which the Agency has been appointed re-
2 ceiver.

3 “(D) LIMITATION ON JUDICIAL REVIEW.—
4 Except as otherwise provided in this subsection,
5 no court shall have jurisdiction over—

6 “(i) any claim or action for payment
7 from, or any action seeking a determina-
8 tion of rights with respect to, the assets or
9 charter of any regulated entity for which
10 the Agency has been appointed receiver; or

11 “(ii) any claim relating to any act or
12 omission of such regulated entity or the
13 Agency as receiver.

14 “(E) DISPOSITION OF ASSETS.—In exer-
15 cising any right, power, privilege, or authority
16 as conservator or receiver in connection with
17 any sale or disposition of assets of a regulated
18 entity for which the Agency has been appointed
19 conservator or receiver, the Agency shall con-
20 duct its operations in a manner which—

21 “(i) maximizes the net present value
22 return from the sale or disposition of such
23 assets;

24 “(ii) minimizes the amount of any loss
25 realized in the resolution of cases; and

1 “(iii) ensures adequate competition
 2 and fair and consistent treatment of
 3 offerors.

4 “(12) STATUTE OF LIMITATIONS FOR ACTIONS
 5 BROUGHT BY CONSERVATOR OR RECEIVER.—

6 “(A) IN GENERAL.—Notwithstanding any
 7 provision of any contract, the applicable statute
 8 of limitations with regard to any action brought
 9 by the Agency as conservator or receiver shall
 10 be—

11 “(i) in the case of any contract claim,
 12 the longer of—

13 “(I) the 6-year period beginning
 14 on the date on which the claim ac-
 15 crues; or

16 “(II) the period applicable under
 17 State law; and

18 “(ii) in the case of any tort claim, the
 19 longer of—

20 “(I) the 3-year period beginning
 21 on the date on which the claim ac-
 22 crues; or

23 “(II) the period applicable under
 24 State law.

1 “(B) DETERMINATION OF THE DATE ON
 2 WHICH A CLAIM ACCRUES.—For purposes of
 3 subparagraph (A), the date on which the stat-
 4 ute of limitations begins to run on any claim
 5 described in such subparagraph shall be the
 6 later of—

7 “(i) the date of the appointment of
 8 the Agency as conservator or receiver; or

9 “(ii) the date on which the cause of
 10 action accrues.

11 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
 12 ACTION.—

13 “(A) IN GENERAL.—In the case of any tort
 14 claim described under subparagraph (B) for
 15 which the statute of limitations applicable
 16 under State law with respect to such claim has
 17 expired not more than 5 years before the ap-
 18 pointment of the Agency as conservator or re-
 19 ceiver, the Agency may bring an action as con-
 20 servator or receiver on such claim without re-
 21 gard to the expiration of the statute of limita-
 22 tions applicable under State law.

23 “(B) CLAIMS DESCRIBED.—A tort claim
 24 referred to under subparagraph (A) is a claim
 25 arising from fraud, intentional misconduct re-

1 sulting in unjust enrichment, or intentional mis-
2 conduct resulting in substantial loss to the reg-
3 ulated entity.

4 “(14) ACCOUNTING AND RECORDKEEPING RE-
5 QUIREMENTS.—

6 “(A) IN GENERAL.—The Agency as conser-
7 vator or receiver shall, consistent with the ac-
8 counting and reporting practices and proce-
9 dures established by the Agency, maintain a full
10 accounting of each conservatorship and receiv-
11 ership or other disposition of a regulated entity
12 in default.

13 “(B) ANNUAL ACCOUNTING OR REPORT.—
14 With respect to each conservatorship or receiv-
15 ership, the Agency shall make an annual ac-
16 counting or report available to the Board, the
17 Comptroller General of the United States, the
18 Committee on Banking, Housing, and Urban
19 Affairs of the Senate, and the Committee on
20 Financial Services of the House of Representa-
21 tives.

22 “(C) AVAILABILITY OF REPORTS.—Any re-
23 port prepared under subparagraph (B) shall be
24 made available by the Agency upon request to

1 any shareholder of a regulated entity or any
2 member of the public.

3 “(D) RECORDKEEPING REQUIREMENT.—

4 After the end of the 6-year period beginning on
5 the date on which the conservatorship or receiv-
6 ership is terminated by the Director, the Agen-
7 cy may destroy any records of such regulated
8 entity which the Agency, in the discretion of the
9 Agency, determines to be unnecessary, unless
10 directed not to do so by a court of competent
11 jurisdiction or governmental agency, or prohib-
12 ited by law.

13 “(15) FRAUDULENT TRANSFERS.—

14 “(A) IN GENERAL.—The Agency, as con-
15 servator or receiver, may avoid a transfer of
16 any interest of an entity-affiliated party, or any
17 person determined by the conservator or re-
18 ceiver to be a debtor of the regulated entity, in
19 property, or any obligation incurred by such
20 party or person, that was made within 5 years
21 of the date on which the Agency was appointed
22 conservator or receiver, if such party or person
23 voluntarily or involuntarily made such transfer
24 or incurred such liability with the intent to

1 hinder, delay, or defraud the regulated entity,
 2 the Agency, the conservator, or receiver.

3 “(B) RIGHT OF RECOVERY.—To the extent
 4 a transfer is avoided under subparagraph (A),
 5 the conservator or receiver may recover, for the
 6 benefit of the regulated entity, the property
 7 transferred, or, if a court so orders, the value
 8 of such property (at the time of such transfer)
 9 from—

10 “(i) the initial transferee of such
 11 transfer or the entity-affiliated party or
 12 person for whose benefit such transfer was
 13 made; or

14 “(ii) any immediate or mediate trans-
 15 feree of any such initial transferee.

16 “(C) RIGHTS OF TRANSFeree OR OBLI-
 17 GEE.—The conservator or receiver may not re-
 18 cover under subparagraph (B) from—

19 “(i) any transferee that takes for
 20 value, including satisfaction or securing of
 21 a present or antecedent debt, in good faith;
 22 or

23 “(ii) any immediate or mediate good
 24 faith transferee of such transferee.

1 “(D) RIGHTS UNDER THIS PARAGRAPH.—

2 The rights under this paragraph of the conser-
 3 vator or receiver described under subparagraph
 4 (A) shall be superior to any rights of a trustee
 5 or any other party (other than any party which
 6 is a Federal agency) under title 11, United
 7 States Code.

8 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
 9 JUNCTIVE RELIEF.—Subject to paragraph (17), any
 10 court of competent jurisdiction may, at the request
 11 of the conservator or receiver, issue an order in ac-
 12 cordance with Rule 65 of the Federal Rules of Civil
 13 Procedure, including an order placing the assets of
 14 any person designated by the conservator or receiver
 15 under the control of the court, and appointing a
 16 trustee to hold such assets.

17 “(17) STANDARDS OF PROOF.—Rule 65 of the
 18 Federal Rules of Civil Procedure shall apply with re-
 19 spect to any proceeding under paragraph (16) with-
 20 out regard to the requirement of such rule that the
 21 applicant show that the injury, loss, or damage is ir-
 22 reparable and immediate.

23 “(18) TREATMENT OF CLAIMS ARISING FROM
 24 BREACH OF CONTRACTS EXECUTED BY THE CON-
 25 SERVATOR OR RECEIVER.—

1 “(A) IN GENERAL.—Notwithstanding any
 2 other provision of this subsection, any final and
 3 unappealable judgment for monetary damages
 4 entered against the conservator or receiver for
 5 the breach of an agreement executed or ap-
 6 proved in writing by the conservator or receiver
 7 after the date of its appointment, shall be paid
 8 as an administrative expense of the conservator
 9 or receiver.

10 “(B) NO LIMITATION OF POWER.—Nothing
 11 in this paragraph shall be construed to limit the
 12 power of the conservator or receiver to exercise
 13 any rights under contract or law, including to
 14 terminate, breach, cancel, or otherwise dis-
 15 continue such agreement.

16 “(19) GENERAL EXCEPTIONS.—

17 “(A) LIMITATIONS.—The rights of the
 18 conservator or receiver appointed under this
 19 section shall be subject to the limitations on the
 20 powers of a receiver under sections 402 through
 21 407 of the Federal Deposit Insurance Corpora-
 22 tion Improvement Act of 1991 (12 U.S.C. 4402
 23 through 4407).

24 “(B) MORTGAGES HELD IN TRUST.—

1 “(i) IN GENERAL.—Any mortgage,
2 pool of mortgages, or interest in a pool of
3 mortgages held in trust, custodial, or agen-
4 cy capacity by an enterprise for the benefit
5 of any person other than the enterprise
6 shall not be available to satisfy the claims
7 of creditors generally.

8 “(ii) HOLDING OF MORTGAGES.—Any
9 mortgage, pool of mortgages, or interest in
10 a pool of mortgages described in clause (i)
11 shall be held by the conservator or receiver
12 appointed under this section for the bene-
13 ficial owners of such mortgage, pool of
14 mortgages, or interest in accordance with
15 the terms of the agreement creating such
16 trust, custodial, or other agency arrange-
17 ment.

18 “(iii) LIABILITY OF CONSERVATOR OR
19 RECEIVER.—The liability of the conser-
20 vator or receiver appointed under this sec-
21 tion for damages shall, in the case of any
22 contingent or unliquidated claim relating
23 to the mortgages held in trust, be esti-
24 mated in accordance with in the regula-
25 tions of the Director.

1 “(c) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS.—

3 “(1) IN GENERAL.—Unsecured claims against a
4 regulated entity, or the receiver therefor, that are
5 proven to the satisfaction of the receiver shall have
6 priority in the following order:

7 “(A) Administrative expenses of the re-
8 ceiver.

9 “(B) Any other general or senior liability
10 of the regulated entity (which is not a liability
11 described under subparagraph (C) or (D).

12 “(C) Any obligation subordinated to gen-
13 eral creditors (which is not an obligation de-
14 scribed under subparagraph (D)).

15 “(D) Any obligation to shareholders or
16 members arising as a result of their status as
17 shareholder or members.

18 “(2) CREDITORS SIMILARLY SITUATED.—All
19 creditors that are similarly situated under paragraph
20 (1) shall be treated in a similar manner, except that
21 the receiver may take any action (including making
22 payments) that does not comply with this subsection,
23 if—

24 “(A) the Director determines that such ac-
25 tion is necessary to maximize the value of the

1 assets of the regulated entity, to maximize the
2 present value return from the sale or other dis-
3 position of the assets of the regulated entity, or
4 to minimize the amount of any loss realized
5 upon the sale or other disposition of the assets
6 of the regulated entity assets; and

7 “(B) all creditors that are similarly situ-
8 ated under paragraph (1) receive not less than
9 the amount provided in subsection (e)(2).

10 “(3) DEFINITION.—As used in this subsection,
11 the term ‘administrative expenses of the receiver’ in-
12 cludes—

13 “(A) the actual, necessary costs and ex-
14 penses incurred by the receiver in preserving
15 the assets of a failed regulated entity or liqui-
16 dating or otherwise resolving the affairs of a
17 failed regulated entity; and

18 “(B) any obligations that the receiver de-
19 termines are necessary and appropriate to fa-
20 cilitate the smooth and orderly liquidation or
21 other resolution of the regulated entity.

22 “(d) PROVISIONS RELATING TO CONTRACTS EN-
23 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
24 OR RECEIVER.—

1 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

2 In addition to any other rights a conservator or re-
3 ceiver may have, the conservator or receiver for any
4 regulated entity may disaffirm or repudiate any con-
5 tract or lease—

6 “(A) to which such regulated entity is a
7 party;

8 “(B) the performance of which the conser-
9 vator or receiver, in its sole discretion, deter-
10 mines to be burdensome; and

11 “(C) the disaffirmance or repudiation of
12 which the conservator or receiver determines, in
13 its sole discretion, will promote the orderly ad-
14 ministration of the affairs of the regulated enti-
15 ty.

16 “(2) TIMING OF REPUDIATION.—The conser-
17 vator or receiver shall determine whether or not to
18 exercise the rights of repudiation under this sub-
19 section within a reasonable period following such ap-
20 pointment.

21 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
22 ATION.—

23 “(A) IN GENERAL.—Except as otherwise
24 provided under subparagraph (C) and para-
25 graphs (4), (5), and (6), the liability of the con-

servator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

“(i) limited to actual direct compensatory damages; and

“(ii) determined as of—

“(I) the date of the appointment of the conservator or receiver; or

“(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

“(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term ‘actual direct compensatory damages’ shall not include—

“(i) punitive or exemplary damages;

“(ii) damages for lost profits or opportunity; or

“(iii) damages for pain and suffering.

“(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement

1 to which paragraph (8) applies, compensatory
2 damages shall be—

3 “(i) deemed to include normal and
4 reasonable costs of cover or other reason-
5 able measures of damages utilized in the
6 industries for such contract and agreement
7 claims; and

8 “(ii) paid in accordance with this sub-
9 section and subsection (e), except as other-
10 wise specifically provided in this section.

11 “(4) LEASES UNDER WHICH THE REGULATED
12 ENTITY IS THE LESSEE.—

13 “(A) IN GENERAL.—If the conservator or
14 receiver disaffirms or repudiates a lease under
15 which the regulated entity was the lessee, the
16 conservator or receiver shall not be liable for
17 any damages (other than damages determined
18 under subparagraph (B)) for the disaffirmance
19 or repudiation of such lease.

20 “(B) PAYMENTS OF RENT.—Notwith-
21 standing subparagraph (A), the lessor under a
22 lease to which that subparagraph applies
23 shall—

1 “(i) be entitled to the contractual rent
 2 accruing before the later of the date on
 3 which—

4 “(I) the notice of disaffirmance
 5 or repudiation is mailed; or

6 “(II) the disaffirmance or repudi-
 7 ation becomes effective, unless the les-
 8 sor is in default or breach of the
 9 terms of the lease;

10 “(ii) have no claim for damages under
 11 any acceleration clause or other penalty
 12 provision in the lease; and

13 “(iii) have a claim for any unpaid
 14 rent, subject to all appropriate offsets and
 15 defenses, due as of the date of the appoint-
 16 ment, which shall be paid in accordance
 17 with this subsection and subsection (e).

18 “(5) LEASES UNDER WHICH THE REGULATED
 19 ENTITY IS THE LESSOR.—

20 “(A) IN GENERAL.—If the conservator or
 21 receiver repudiates an unexpired written lease
 22 of real property of the regulated entity under
 23 which the regulated entity is the lessor and the
 24 lessee is not, as of the date of such repudiation,

1 in default, the lessee under such lease may ei-
2 ther—

3 “(i) treat the lease as terminated by
4 such repudiation; or

5 “(ii) remain in possession of the lease-
6 hold interest for the balance of the term of
7 the lease, unless the lessee defaults under
8 the terms of the lease after the date of
9 such repudiation.

10 “(B) PROVISIONS APPLICABLE TO LESSEE
11 REMAINING IN POSSESSION.—If any lessee
12 under a lease described under subparagraph (A)
13 remains in possession of a leasehold interest
14 under clause (ii) of subparagraph (A)—

15 “(i) the lessee—

16 “(I) shall continue to pay the
17 contractual rent pursuant to the
18 terms of the lease after the date of
19 the repudiation of such lease; and

20 “(II) may offset against any rent
21 payment which accrues after the date
22 of the repudiation of the lease, and
23 any damages which accrue after such
24 date due to the nonperformance of

1 any obligation of the regulated entity
 2 under the lease after such date; and
 3 “(ii) the conservator or receiver shall
 4 not be liable to the lessee for any damages
 5 arising after such date as a result of the
 6 repudiation, other than the amount of any
 7 offset allowed under clause (i)(II).

8 “(6) CONTRACTS FOR THE SALE OF REAL
 9 PROPERTY.—

10 “(A) IN GENERAL.—If the conservator or
 11 receiver repudiates any contract for the sale of
 12 real property and the purchaser of such real
 13 property under such contract is in possession,
 14 and is not, as of the date of such repudiation,
 15 in default, such purchaser may either—

16 “(i) treat the contract as terminated
 17 by such repudiation; or

18 “(ii) remain in possession of such real
 19 property.

20 “(B) PROVISIONS APPLICABLE TO PUR-
 21 CHASER REMAINING IN POSSESSION.—If any
 22 purchaser of real property under any contract
 23 described under subparagraph (A) remains in
 24 possession of such property under clause (ii) of
 25 subparagraph (A)—

1 “(i) the purchaser—

2 “(I) shall continue to make all
3 payments due under the contract after
4 the date of the repudiation of the con-
5 tract; and

6 “(II) may offset against any such
7 payments any damages which accrue
8 after such date due to the non-
9 performance (after such date) of any
10 obligation of the regulated entity
11 under the contract; and

12 “(ii) the conservator or receiver
13 shall—

14 “(I) not be liable to the pur-
15 chaser for any damages arising after
16 such date as a result of the repudi-
17 ation, other than the amount of any
18 offset allowed under clause (i)(II);

19 “(II) deliver title to the pur-
20 chaser in accordance with the provi-
21 sions of the contract; and

22 “(III) have no obligation under
23 the contract other than the perform-
24 ance required under subclause (II).

25 “(C) ASSIGNMENT AND SALE ALLOWED.—

1 “(i) IN GENERAL.—No provision of
2 this paragraph shall be construed as lim-
3 iting the right of the conservator or re-
4 ceiver to assign the contract described
5 under subparagraph (A), and sell the prop-
6 erty subject to the contract and the provi-
7 sions of this paragraph.

8 “(ii) NO LIABILITY AFTER ASSIGN-
9 MENT AND SALE.—If an assignment and
10 sale described under clause (i) is con-
11 summated, the conservator or receiver
12 shall have no further liability under the
13 contract described under subparagraph
14 (A), or with respect to the real property
15 which was the subject of such contract.

16 “(7) SERVICE CONTRACTS.—

17 “(A) SERVICES PERFORMED BEFORE AP-
18 POINTMENT.—In the case of any contract for
19 services between any person and any regulated
20 entity for which the Agency has been appointed
21 conservator or receiver, any claim of such per-
22 son for services performed before the appoint-
23 ment of the conservator or receiver shall be—

24 “(i) a claim to be paid in accordance
25 with subsections (b) and (e); and

1 “(ii) deemed to have arisen as of the
2 date on which the conservator or receiver
3 was appointed.

4 “(B) SERVICES PERFORMED AFTER AP-
5 POINTMENT AND PRIOR TO REPUDIATION.—If,
6 in the case of any contract for services de-
7 scribed under subparagraph (A), the conser-
8 vator or receiver accepts performance by the
9 other person before the conservator or receiver
10 makes any determination to exercise the right
11 of repudiation of such contract under this sec-
12 tion—

13 “(i) the other party shall be paid
14 under the terms of the contract for the
15 services performed; and

16 “(ii) the amount of such payment
17 shall be treated as an administrative ex-
18 pense of the conservatorship or receiver-
19 ship.

20 “(C) ACCEPTANCE OF PERFORMANCE NO
21 BAR TO SUBSEQUENT REPUDIATION.—The ac-
22 ceptance by the conservator or receiver of serv-
23 ices referred to under subparagraph (B) in con-
24 nection with a contract described in such sub-
25 paragraph shall not affect the right of the con-

1 servator or receiver to repudiate such contract
 2 under this section at any time after such per-
 3 formance.

4 “(8) CERTAIN QUALIFIED FINANCIAL CON-
 5 TRACTS.—

6 “(A) RIGHTS OF PARTIES TO CON-
 7 TRACTS.—Subject to paragraphs (9) and (10),
 8 and notwithstanding any other provision of this
 9 title (other than subsection (b)(9)(B) of this
 10 section), any other Federal law, or the law of
 11 any State, no person shall be stayed or prohib-
 12 ited from exercising—

13 “(i) any right of that person to cause
 14 the termination, liquidation, or acceleration
 15 of any qualified financial contract with a
 16 regulated entity that arises upon the ap-
 17 pointment of the Agency as receiver for
 18 such regulated entity at any time after
 19 such appointment;

20 “(ii) any right under any security
 21 agreement or arrangement or other credit
 22 enhancement relating to one or more quali-
 23 fied financial contracts; or

24 “(iii) any right to offset or net out
 25 any termination value, payment amount, or

1 other transfer obligation arising under or
2 in connection with 1 or more contracts and
3 agreements described in clause (i), includ-
4 ing any master agreement for such con-
5 tracts or agreements.

6 “(B) APPLICABILITY OF OTHER PROVI-
7 SIONS.—Subsection (b)(10) shall apply in the
8 case of any judicial action or proceeding
9 brought against any receiver referred to under
10 subparagraph (A), or the regulated entity for
11 which such receiver was appointed, by any
12 party to a contract or agreement described
13 under subparagraph (A)(i) with such regulated
14 entity.

15 “(C) CERTAIN TRANSFERS NOT AVOID-
16 ABLE.—

17 “(i) IN GENERAL.—Notwithstanding
18 paragraph (11), or any other provision of
19 Federal or State law relating to the avoid-
20 ance of preferential or fraudulent trans-
21 fers, the Agency, whether acting as such or
22 as conservator or receiver of a regulated
23 entity, may not avoid any transfer of
24 money or other property in connection with

1 any qualified financial contract with a reg-
2 ulated entity.

3 “(ii) EXCEPTION FOR CERTAIN
4 TRANSFERS.—Clause (i) shall not apply to
5 any transfer of money or other property in
6 connection with any qualified financial con-
7 tract with a regulated entity if the Agency
8 determines that the transferee had actual
9 intent to hinder, delay, or defraud such
10 regulated entity, the creditors of such reg-
11 ulated entity, or any conservator or re-
12 ceiver appointed for such regulated entity.

13 “(D) CERTAIN CONTRACTS AND AGREE-
14 MENTS DEFINED.—In this subsection the fol-
15 lowing definitions shall apply:

16 “(i) QUALIFIED FINANCIAL CON-
17 TRACT.—The term ‘qualified financial con-
18 tract’ means any securities contract, com-
19 modity contract, forward contract, repur-
20 chase agreement, swap agreement, and any
21 similar agreement that the Agency deter-
22 mines by regulation, resolution, or order to
23 be a qualified financial contract for pur-
24 poses of this paragraph.

1 “(ii) SECURITIES CONTRACT.—The
2 term ‘securities contract’—

3 “(I) means a contract for the
4 purchase, sale, or loan of a security, a
5 certificate of deposit, a mortgage loan,
6 or any interest in a mortgage loan, a
7 group or index of securities, certifi-
8 cates of deposit, or mortgage loans or
9 interests therein (including any inter-
10 est therein or based on the value
11 thereof) or any option on any of the
12 foregoing, including any option to
13 purchase or sell any such security,
14 certificate of deposit, mortgage loan,
15 interest, group or index, or option,
16 and including any repurchase or re-
17 verse repurchase transaction on any
18 such security, certificate of deposit,
19 mortgage loan, interest, group or
20 index, or option;

21 “(II) does not include any pur-
22 chase, sale, or repurchase obligation
23 under a participation in a commercial
24 mortgage loan, unless the Agency de-
25 termines by regulation, resolution, or

1 order to include any such agreement
2 within the meaning of such term;

3 “(III) means any option entered
4 into on a national securities exchange
5 relating to foreign currencies;

6 “(IV) means the guarantee by or
7 to any securities clearing agency of
8 any settlement of cash, securities, cer-
9 tificates of deposit, mortgage loans or
10 interests therein, group or index of se-
11 curities, certificates of deposit, or
12 mortgage loans or interests therein
13 (including any interest therein or
14 based on the value thereof) or option
15 on any of the foregoing, including any
16 option to purchase or sell any such se-
17 curity, certificate of deposit, mortgage
18 loan, interest, group or index, or op-
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-
22 ment or transaction that is similar to
23 any agreement or transaction referred
24 to in this clause;

1 “(VII) means any combination of
2 the agreements or transactions re-
3 ferred to in this clause;

4 “(VIII) means any option to
5 enter into any agreement or trans-
6 action referred to in this clause;

7 “(IX) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), (IV), (V), (VI), (VII), or
11 (VIII), together with all supplements
12 to any such master agreement, with-
13 out regard to whether the master
14 agreement provides for an agreement
15 or transaction that is not a securities
16 contract under this clause, except that
17 the master agreement shall be consid-
18 ered to be a securities contract under
19 this clause only with respect to each
20 agreement or transaction under the
21 master agreement that is referred to
22 in subclause (I), (III), (IV), (V), (VI),
23 (VII), or (VIII); and

24 “(X) means any security agree-
25 ment or arrangement or other credit

1 enhancement related to any agree-
2 ment or transaction referred to in this
3 clause, including any guarantee or re-
4 imbursement obligation in connection
5 with any agreement or transaction re-
6 ferred to in this clause.

7 “(iii) COMMODITY CONTRACT.—The
8 term ‘commodity contract’ means—

9 “(I) with respect to a futures
10 commission merchant, a contract for
11 the purchase or sale of a commodity
12 for future delivery on, or subject to
13 the rules of, a contract market or
14 board of trade;

15 “(II) with respect to a foreign fu-
16 tures commission merchant, a foreign
17 future;

18 “(III) with respect to a leverage
19 transaction merchant, a leverage
20 transaction;

21 “(IV) with respect to a clearing
22 organization, a contract for the pur-
23 chase or sale of a commodity for fu-
24 ture delivery on, or subject to the
25 rules of, a contract market or board

1 of trade that is cleared by such clear-
2 ing organization, or commodity option
3 traded on, or subject to the rules of,
4 a contract market or board of trade
5 that is cleared by such clearing orga-
6 nization;

7 “(V) with respect to a commodity
8 options dealer, a commodity option;

9 “(VI) any other agreement or
10 transaction that is similar to any
11 agreement or transaction referred to
12 in this clause;

13 “(VII) any combination of the
14 agreements or transactions referred to
15 in this clause;

16 “(VIII) any option to enter into
17 any agreement or transaction referred
18 to in this clause;

19 “(IX) a master agreement that
20 provides for an agreement or trans-
21 action referred to in subclause (I),
22 (II), (III), (IV), (V), (VI), (VII), or
23 (VIII), together with all supplements
24 to any such master agreement, with-
25 out regard to whether the master

1 agreement provides for an agreement
 2 or transaction that is not a com-
 3 modity contract under this clause, ex-
 4 cept that the master agreement shall
 5 be considered to be a commodity con-
 6 tract under this clause only with re-
 7 spect to each agreement or trans-
 8 action under the master agreement
 9 that is referred to in subclause (I),
 10 (II), (III), (IV), (V), (VI), (VII), or
 11 (VIII); or

12 “(X) any security agreement or
 13 arrangement or other credit enhance-
 14 ment related to any agreement or
 15 transaction referred to in this clause,
 16 including any guarantee or reimburse-
 17 ment obligation in connection with
 18 any agreement or transaction referred
 19 to in this clause.

20 “(iv) FORWARD CONTRACT.—The
 21 term ‘forward contract’ means—

22 “(I) a contract (other than a
 23 commodity contract) for the purchase,
 24 sale, or transfer of a commodity or
 25 any similar good, article, service,

1 right, or interest which is presently or
2 in the future becomes the subject of
3 dealing in the forward contract trade,
4 or product or byproduct thereof, with
5 a maturity date more than 2 days
6 after the date on which the contract is
7 entered into, including a repurchase
8 transaction, reverse repurchase trans-
9 action, consignment, lease, swap,
10 hedge transaction, deposit, loan, op-
11 tion, allocated transaction, unallocated
12 transaction, or any other similar
13 agreement;

14 “(II) any combination of agree-
15 ments or transactions referred to in
16 subclauses (I) and (III);

17 “(III) any option to enter into
18 any agreement or transaction referred
19 to in subclause (I) or (II);

20 “(IV) a master agreement that
21 provides for an agreement or trans-
22 action referred to in subclauses (I),
23 (II), or (III), together with all supple-
24 ments to any such master agreement,
25 without regard to whether the master

1 agreement provides for an agreement
 2 or transaction that is not a forward
 3 contract under this clause, except that
 4 the master agreement shall be consid-
 5 ered to be a forward contract under
 6 this clause only with respect to each
 7 agreement or transaction under the
 8 master agreement that is referred to
 9 in subclause (I), (II), or (III); or

10 “(V) any security agreement or
 11 arrangement or other credit enhance-
 12 ment related to any agreement or
 13 transaction referred to in subclause
 14 (I), (II), (III), or (IV), including any
 15 guarantee or reimbursement obliga-
 16 tion in connection with any agreement
 17 or transaction referred to in any such
 18 subclause.

19 “(v) REPURCHASE AGREEMENT.—The
 20 term ‘repurchase agreement’ (including a
 21 reverse repurchase agreement)—

22 “(I) means an agreement, includ-
 23 ing related terms, which provides for
 24 the transfer of one or more certifi-
 25 cates of deposit, mortgage-related se-

1 securities (as such term is defined in
2 section 3 of the Securities Exchange
3 Act of 1934), mortgage loans, inter-
4 ests in mortgage-related securities or
5 mortgage loans, eligible bankers' ac-
6 ceptances, qualified foreign govern-
7 ment securities (defined for purposes
8 of this clause as a security that is a
9 direct obligation of, or that is fully
10 guaranteed by, the central government
11 of a member of the Organization for
12 Economic Cooperation and Develop-
13 ment, as determined by regulation or
14 order adopted by the appropriate Fed-
15 eral banking authority), or securities
16 that are direct obligations of, or that
17 are fully guaranteed by, the United
18 States or any agency of the United
19 States against the transfer of funds
20 by the transferee of such certificates
21 of deposit, eligible bankers' accept-
22 ances, securities, mortgage loans, or
23 interests with a simultaneous agree-
24 ment by such transferee to transfer to
25 the transferor thereof certificates of

1 deposit, eligible bankers' acceptances,
2 securities, mortgage loans, or interests
3 as described above, at a date certain
4 not later than 1 year after such trans-
5 fers or on demand, against the trans-
6 fer of funds, or any other similar
7 agreement;

8 “(II) does not include any repur-
9 chase obligation under a participation
10 in a commercial mortgage loan, unless
11 the Agency determines by regulation,
12 resolution, or order to include any
13 such participation within the meaning
14 of such term;

15 “(III) means any combination of
16 agreements or transactions referred to
17 in subclauses (I) and (IV);

18 “(IV) means any option to enter
19 into any agreement or transaction re-
20 ferred to in subclause (I) or (III);

21 “(V) means a master agreement
22 that provides for an agreement or
23 transaction referred to in subclause
24 (I), (III), or (IV), together with all
25 supplements to any such master

1 agreement, without regard to whether
2 the master agreement provides for an
3 agreement or transaction that is not a
4 repurchase agreement under this
5 clause, except that the master agree-
6 ment shall be considered to be a re-
7 purchase agreement under this sub-
8 clause only with respect to each agree-
9 ment or transaction under the master
10 agreement that is referred to in sub-
11 clause (I), (III), or (IV); and

12 “(VI) means any security agree-
13 ment or arrangement or other credit
14 enhancement related to any agree-
15 ment or transaction referred to in
16 subclause (I), (III), (IV), or (V), in-
17 cluding any guarantee or reimburse-
18 ment obligation in connection with
19 any agreement or transaction referred
20 to in any such subclause.

21 “(vi) SWAP AGREEMENT.—The term
22 ‘swap agreement’ means—

23 “(I) any agreement, including the
24 terms and conditions incorporated by
25 reference in any such agreement,

1 which is an interest rate swap, option,
2 future, or forward agreement, includ-
3 ing a rate floor, rate cap, rate collar,
4 cross-currency rate swap, and basis
5 swap; a spot, same day-tomorrow, to-
6 morrow-next, forward, or other for-
7 eign exchange or precious metals
8 agreement; a currency swap, option,
9 future, or forward agreement; an eq-
10 uity index or equity swap, option, fu-
11 ture, or forward agreement; a debt
12 index or debt swap, option, future, or
13 forward agreement; a total return,
14 credit spread or credit swap, option,
15 future, or forward agreement; a com-
16 modity index or commodity swap, op-
17 tion, future, or forward agreement; or
18 a weather swap, weather derivative, or
19 weather option;

20 “(II) any agreement or trans-
21 action that is similar to any other
22 agreement or transaction referred to
23 in this clause and that is of a type
24 that has been, is presently, or in the
25 future becomes, the subject of recur-

1 rent dealings in the swap markets (in-
2 cluding terms and conditions incor-
3 porated by reference in such agree-
4 ment) and that is a forward, swap, fu-
5 ture, or option on one or more rates,
6 currencies, commodities, equity securi-
7 ties or other equity instruments, debt
8 securities or other debt instruments,
9 quantitative measures associated with
10 an occurrence, extent of an occur-
11 rence, or contingency associated with
12 a financial, commercial, or economic
13 consequence, or economic or financial
14 indices or measures of economic or fi-
15 nancial risk or value;

16 “(III) any combination of agree-
17 ments or transactions referred to in
18 this clause;

19 “(IV) any option to enter into
20 any agreement or transaction referred
21 to in this clause;

22 “(V) a master agreement that
23 provides for an agreement or trans-
24 action referred to in subclause (I),
25 (II), (III), or (IV), together with all

1 supplements to any such master
2 agreement, without regard to whether
3 the master agreement contains an
4 agreement or transaction that is not a
5 swap agreement under this clause, ex-
6 cept that the master agreement shall
7 be considered to be a swap agreement
8 under this clause only with respect to
9 each agreement or transaction under
10 the master agreement that is referred
11 to in subclause (I), (II), (III), or (IV);
12 and

13 “(VI) any security agreement or
14 arrangement or other credit enhance-
15 ment related to any agreements or
16 transactions referred to in subclause
17 (I), (II), (III), (IV), or (V), including
18 any guarantee or reimbursement obli-
19 gation in connection with any agree-
20 ment or transaction referred to in any
21 such subclause.

22 “(vii) TREATMENT OF MASTER
23 AGREEMENT AS ONE AGREEMENT.—Any
24 master agreement for any contract or
25 agreement described in any preceding

1 clause of this subparagraph (or any master
2 agreement for such master agreement or
3 agreements), together with all supplements
4 to such master agreement, shall be treated
5 as a single agreement and a single quali-
6 fied financial contract. If a master agree-
7 ment contains provisions relating to agree-
8 ments or transactions that are not them-
9 selves qualified financial contracts, the
10 master agreement shall be deemed to be a
11 qualified financial contract only with re-
12 spect to those transactions that are them-
13 selves qualified financial contracts.

14 “(viii) TRANSFER.—The term ‘trans-
15 fer’ means every mode, direct or indirect,
16 absolute or conditional, voluntary or invol-
17 untary, of disposing of or parting with
18 property or with an interest in property,
19 including retention of title as a security in-
20 terest and foreclosure of the equity of re-
21 demption of the regulated entity.

22 “(E) CERTAIN PROTECTIONS IN EVENT OF
23 APPOINTMENT OF CONSERVATOR.—Notwith-
24 standing any other provision of this section, any
25 other Federal law, or the law of any State

1 (other than paragraph (10) of this subsection
2 and subsection (b)(9)(B)), no person shall be
3 stayed or prohibited from exercising—

4 “(i) any right such person has to
5 cause the termination, liquidation, or accel-
6 eration of any qualified financial contract
7 with a regulated entity in a conservator-
8 ship based upon a default under such fi-
9 nancial contract which is enforceable under
10 applicable noninsolvency law;

11 “(ii) any right under any security
12 agreement or arrangement or other credit
13 enhancement relating to 1 or more such
14 qualified financial contracts; or

15 “(iii) any right to offset or net out
16 any termination values, payment amounts,
17 or other transfer obligations arising under
18 or in connection with such qualified finan-
19 cial contracts.

20 “(F) CLARIFICATION.—No provision of law
21 shall be construed as limiting the right or
22 power of the Agency, or authorizing any court
23 or agency to limit or delay in any manner, the
24 right or power of the Agency to transfer any
25 qualified financial contract in accordance with

1 paragraphs (9) and (10), or to disaffirm or re-
 2 pudiate any such contract in accordance with
 3 subsection (d)(1).

4 “(G) WALKAWAY CLAUSES NOT EFFEC-
 5 TIVE.—

6 “(i) IN GENERAL.—Notwithstanding
 7 the provisions of subparagraphs (A) and
 8 (E), and sections 403 and 404 of the Fed-
 9 eral Deposit Insurance Corporation Im-
 10 provement Act of 1991, no walkaway
 11 clause shall be enforceable in a qualified fi-
 12 nancial contract of a regulated entity in
 13 default.

14 “(ii) WALKAWAY CLAUSE DEFINED.—
 15 For purposes of this subparagraph, the
 16 term ‘walkaway clause’ means a provision
 17 in a qualified financial contract that, after
 18 calculation of a value of a party’s position
 19 or an amount due to or from 1 of the par-
 20 ties in accordance with its terms upon ter-
 21 mination, liquidation, or acceleration of the
 22 qualified financial contract, either does not
 23 create a payment obligation of a party or
 24 extinguishes a payment obligation of a
 25 party in whole or in part solely because of

1 the status of such party as a nondefaulting
2 party.

3 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
4 TRACTS.—In making any transfer of assets or liabil-
5 ities of a regulated entity in default which includes
6 any qualified financial contract, the conservator or
7 receiver for such regulated entity shall either—

8 “(A) transfer to 1 person—

9 “(i) all qualified financial contracts
10 between any person (or any affiliate of
11 such person) and the regulated entity in
12 default;

13 “(ii) all claims of such person (or any
14 affiliate of such person) against such regu-
15 lated entity under any such contract (other
16 than any claim which, under the terms of
17 any such contract, is subordinated to the
18 claims of general unsecured creditors of
19 such regulated entity);

20 “(iii) all claims of such regulated enti-
21 ty against such person (or any affiliate of
22 such person) under any such contract; and

23 “(iv) all property securing, or any
24 other credit enhancement for any contract
25 described in clause (i), or any claim de-

1 scribed in clause (ii) or (iii) under any
2 such contract; or

3 “(B) transfer none of the financial con-
4 tracts, claims, or property referred to under
5 subparagraph (A) (with respect to such person
6 and any affiliate of such person).

7 “(10) NOTIFICATION OF TRANSFER.—

8 “(A) IN GENERAL.—The conservator or re-
9 ceiver shall notify any person that is a party to
10 a contract or transfer by 5:00 p.m. (Eastern
11 Standard Time) on the business day following
12 the date of the appointment of the receiver in
13 the case of a receivership, or the business day
14 following such transfer in the case of a con-
15 servatorship, if—

16 “(i) the conservator or receiver for a
17 regulated entity in default makes any
18 transfer of the assets and liabilities of such
19 regulated entity; and

20 “(ii) such transfer includes any quali-
21 fied financial contract.

22 “(B) CERTAIN RIGHTS NOT ENFORCE-
23 ABLE.—

24 “(i) RECEIVERSHIP.—A person who is
25 a party to a qualified financial contract

1 with a regulated entity may not exercise
2 any right that such person has to termi-
3 nate, liquidate, or net such contract under
4 paragraph (8)(A) of this subsection or
5 under section 403 or 404 of the Federal
6 Deposit Insurance Corporation Improve-
7 ment Act of 1991, solely by reason of or
8 incidental to the appointment of a receiver
9 for the regulated entity (or the insolvency
10 or financial condition of the regulated enti-
11 ty for which the receiver has been ap-
12 pointed)—

13 “(I) until 5:00 p.m. (Eastern
14 Standard Time) on the business day
15 following the date of the appointment
16 of the receiver; or

17 “(II) after the person has re-
18 ceived notice that the contract has
19 been transferred pursuant to para-
20 graph (9)(A).

21 “(ii) CONSERVATORSHIP.—A person
22 who is a party to a qualified financial con-
23 tract with a regulated entity may not exer-
24 cise any right that such person has to ter-
25 minate, liquidate, or net such contract

1 under paragraph (8)(E) of this subsection
2 or under section 403 or 404 of the Federal
3 Deposit Insurance Corporation Improve-
4 ment Act of 1991, solely by reason of or
5 incidental to the appointment of a conser-
6 vator for the regulated entity (or the insol-
7 vency or financial condition of the regu-
8 lated entity for which the conservator has
9 been appointed).

10 “(iii) NOTICE.—For purposes of this
11 paragraph, the conservator or receiver of a
12 regulated entity shall be deemed to have
13 notified a person who is a party to a quali-
14 fied financial contract with such regulated
15 entity, if the conservator or receiver has
16 taken steps reasonably calculated to pro-
17 vide notice to such person by the time
18 specified in subparagraph (A).

19 “(C) BUSINESS DAY DEFINED.—For pur-
20 poses of this paragraph, the term ‘business day’
21 means any day other than any Saturday, Sun-
22 day, or any day on which either the New York
23 Stock Exchange or the Federal Reserve Bank
24 of New York is closed.

1 “(11) DISAFFIRMANCE OR REPUDIATION OF
2 QUALIFIED FINANCIAL CONTRACTS.—In exercising
3 the rights of disaffirmance or repudiation of a con-
4 servator or receiver with respect to any qualified fi-
5 nancial contract to which a regulated entity is a
6 party, the conservator or receiver for such institution
7 shall either—

8 “(A) disaffirm or repudiate all qualified fi-
9 nancial contracts between—

10 “(i) any person or any affiliate of
11 such person; and

12 “(ii) the regulated entity in default; or

13 “(B) disaffirm or repudiate none of the
14 qualified financial contracts referred to in sub-
15 paragraph (A) (with respect to such person or
16 any affiliate of such person).

17 “(12) CERTAIN SECURITY INTERESTS NOT
18 AVOIDABLE.—No provision of this subsection shall
19 be construed as permitting the avoidance of any le-
20 gally enforceable or perfected security interest in any
21 of the assets of any regulated entity, except where
22 such an interest is taken in contemplation of the in-
23 solveny of the regulated entity, or with the intent
24 to hinder, delay, or defraud the regulated entity or
25 the creditors of such regulated entity.

1 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

2 “(A) IN GENERAL.—Notwithstanding any
3 provision of a contract providing for termi-
4 nation, default, acceleration, or exercise of
5 rights upon, or solely by reason of, insolvency
6 or the appointment of, or the exercise of rights
7 or powers by, a conservator or receiver, the con-
8 servator or receiver may enforce any contract,
9 other than a contract for liability insurance for
10 a director or officer, or a contract or a regu-
11 lated entity bond, entered into by the regulated
12 entity.

13 “(B) CERTAIN RIGHTS NOT AFFECTED.—
14 No provision of this paragraph may be con-
15 strued as impairing or affecting any right of the
16 conservator or receiver to enforce or recover
17 under a liability insurance contract for an offi-
18 cer or director, or regulated entity bond under
19 other applicable law.

20 “(C) CONSENT REQUIREMENT.—

21 “(i) IN GENERAL.—Except as other-
22 wise provided under this section, no person
23 may exercise any right or power to termi-
24 nate, accelerate, or declare a default under
25 any contract to which a regulated entity is

1 a party, or to obtain possession of or exer-
 2 cise control over any property of the regu-
 3 lated entity, or affect any contractual
 4 rights of the regulated entity, without the
 5 consent of the conservator or receiver, as
 6 appropriate, for a period of—

7 “(I) 45 days after the date of ap-
 8 pointment of a conservator; or

9 “(II) 90 days after the date of
 10 appointment of a receiver.

11 “(ii) EXCEPTIONS.—This subpara-
 12 graph shall not—

13 “(I) apply to a contract for liabil-
 14 ity insurance for an officer or direc-
 15 tor;

16 “(II) apply to the rights of par-
 17 ties to certain qualified financial con-
 18 tracts under subsection (d)(8); and

19 “(III) be construed as permitting
 20 the conservator or receiver to fail to
 21 comply with otherwise enforceable
 22 provisions of such contracts.

23 “(14) SAVINGS CLAUSE.—The meanings of
 24 terms used in this subsection are applicable for pur-
 25 poses of this subsection only, and shall not be con-

1 strued or applied so as to challenge or affect the
2 characterization, definition, or treatment of any
3 similar terms under any other statute, regulation, or
4 rule, including the Gramm-Leach-Bliley Act, the
5 Legal Certainty for Bank Products Act of 2000, the
6 securities laws (as that term is defined in section
7 3(a)(47) of the Securities Exchange Act of 1934),
8 and the Commodity Exchange Act.

9 “(e) VALUATION OF CLAIMS IN DEFAULT.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of Federal law or the law of any State, and
12 regardless of the method which the Agency deter-
13 mines to utilize with respect to a regulated entity in
14 default or in danger of default, including trans-
15 actions authorized under subsection (i), this sub-
16 section shall govern the rights of the creditors of
17 such regulated entity.

18 “(2) MAXIMUM LIABILITY.—The maximum li-
19 ability of the Agency, acting as receiver or in any
20 other capacity, to any person having a claim against
21 the receiver or the regulated entity for which such
22 receiver is appointed shall be not more than the
23 amount that such claimant would have received if
24 the Agency had liquidated the assets and liabilities

1 of the regulated entity without exercising the author-
 2 ity of the Agency under subsection (i).

3 “(f) LIMITATION ON COURT ACTION.—Except as
 4 provided in this section or at the request of the Director,
 5 no court may take any action to restrain or affect the exer-
 6 cise of powers or functions of the Agency as a conservator
 7 or a receiver.

8 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

9 “(1) IN GENERAL.—A director or officer of a
 10 regulated entity may be held personally liable for
 11 monetary damages in any civil action described in
 12 paragraph (2) brought by, on behalf of, or at the re-
 13 quest or direction of the Agency, and prosecuted
 14 wholly or partially for the benefit of the Agency—

15 “(A) acting as conservator or receiver of
 16 such regulated entity; or

17 “(B) acting based upon a suit, claim, or
 18 cause of action purchased from, assigned by, or
 19 otherwise conveyed by such receiver or conser-
 20 vator.

21 “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-
 22 plies in any civil action for gross negligence, includ-
 23 ing any similar conduct or conduct that dem-
 24 onstrates a greater disregard of a duty of care than
 25 gross negligence, including intentional tortious con-

1 duct, as such terms are defined and determined
2 under applicable State law.

3 “(3) NO LIMITATION.—Nothing in this sub-
4 section shall impair or affect any right of the Agency
5 under other applicable law.

6 “(h) DAMAGES.—In any proceeding related to any
7 claim against a director, officer, employee, agent, attorney,
8 accountant, appraiser, or any other party employed by or
9 providing services to a regulated entity, recoverable dam-
10 ages determined to result from the improvident or other-
11 wise improper use or investment of any assets of the regu-
12 lated entity shall include principal losses and appropriate
13 interest.

14 “(i) LIMITED-LIFE REGULATED ENTITIES.—

15 “(1) ORGANIZATION.—

16 “(A) PURPOSE.—The Agency, as receiver
17 appointed pursuant to subsection (a)—

18 “(i) may, in the case of a Federal
19 Home Loan Bank, organize a limited-life
20 regulated entity with those powers and at-
21 tributes of the Federal Home Loan Bank
22 in default or in danger of default as the
23 Director determines necessary, subject to
24 the provisions of this subsection, and the
25 Director shall grant a temporary charter to

1 that limited-life regulated entity, and that
2 limited-life regulated entity shall operate
3 subject to that charter; and

4 “(ii) shall, in the case of an enter-
5 prise, organize a limited-life regulated enti-
6 ty with respect to that enterprise in ac-
7 cordance with this subsection.

8 “(B) AUTHORITIES.—Upon the creation of
9 a limited-life regulated entity under subpara-
10 graph (A), the limited-life regulated entity
11 may—

12 “(i) assume such liabilities of the reg-
13 ulated entity that is in default or in danger
14 of default as the Agency may, in its discre-
15 tion, determine to be appropriate, except
16 that the liabilities assumed shall not exceed
17 the amount of assets purchased or trans-
18 ferred from the regulated entity to the lim-
19 ited-life regulated entity;

20 “(ii) purchase such assets of the regu-
21 lated entity that is in default, or in danger
22 of default as the Agency may, in its discre-
23 tion, determine to be appropriate; and

24 “(iii) perform any other temporary
25 function which the Agency may, in its dis-

1 cretion, prescribe in accordance with this
2 section.

3 “(2) CHARTER AND ESTABLISHMENT.—

4 “(A) TRANSFER OF CHARTER.—

5 “(i) FANNIE MAE.—If the Agency is
6 appointed as receiver for the Federal Na-
7 tional Mortgage Association, the limited-
8 life regulated entity established under this
9 subsection with respect to such enterprise
10 shall, by operation of law and immediately
11 upon its organization—

12 “(I) succeed to the charter of the
13 Federal National Mortgage Associa-
14 tion, as set forth in the Federal Na-
15 tional Mortgage Association Charter
16 Act; and

17 “(II) thereafter operate in ac-
18 cordance with, and subject to, such
19 charter, this Act, and any other provi-
20 sion of law to which the Federal Na-
21 tional Mortgage Association is subject,
22 except as otherwise provided in this
23 subsection.

24 “(ii) FREDDIE MAC.—If the Agency is
25 appointed as receiver for the Federal

1 Home Loan Mortgage Corporation, the
 2 limited-life regulated entity established
 3 under this subsection with respect to such
 4 enterprise shall, by operation of law and
 5 immediately upon its organization—

6 “(I) succeed to the charter of the
 7 Federal Home Loan Mortgage Cor-
 8 poration, as set forth in the Federal
 9 Home Loan Mortgage Corporation
 10 Charter Act; and

11 “(II) thereafter operate in ac-
 12 cordance with, and subject to, such
 13 charter, this Act, and any other provi-
 14 sion of law to which the Federal
 15 Home Loan Mortgage Corporation is
 16 subject, except as otherwise provided
 17 in this subsection.

18 “(B) INTERESTS IN AND ASSETS AND OB-
 19 LIGATIONS OF REGULATED ENTITY IN DE-
 20 FAULT.—Notwithstanding subparagraph (A) or
 21 any other provision of law—

22 “(i) a limited-life regulated entity
 23 shall assume, acquire, or succeed to the as-
 24 sets or liabilities of a regulated entity only
 25 to the extent that such assets or liabilities

1 are transferred by the Agency to the lim-
2 ited-life regulated entity in accordance
3 with, and subject to the restrictions set
4 forth in, paragraph (1)(B);

5 “(ii) a limited-life regulated entity
6 shall not assume, acquire, or succeed to
7 any obligation that a regulated entity for
8 which a receiver has been appointed may
9 have to any shareholder of the regulated
10 entity that arises as a result of the status
11 of that person as a shareholder of the reg-
12 ulated entity; and

13 “(iii) no shareholder or creditor of a
14 regulated entity shall have any right or
15 claim against the charter of the regulated
16 entity once the Agency has been appointed
17 receiver for the regulated entity and a lim-
18 ited-life regulated entity succeeds to the
19 charter pursuant to subparagraph (A).

20 “(C) LIMITED-LIFE REGULATED ENTITY
21 TREATED AS BEING IN DEFAULT FOR CERTAIN
22 PURPOSES.—A limited-life regulated entity shall
23 be treated as a regulated entity in default at
24 such times and for such purposes as the Agency
25 may, in its discretion, determine.

1 “(D) MANAGEMENT.—Upon its establish-
2 ment, a limited-life regulated entity shall be
3 under the management of a board of directors
4 consisting of not fewer than 5 nor more than
5 10 members appointed by the Agency.

6 “(E) BYLAWS.—The board of directors of
7 a limited-life regulated entity shall adopt such
8 bylaws as may be approved by the Agency.

9 “(3) CAPITAL STOCK.—

10 “(A) NO AGENCY REQUIREMENT.—
11 The Agency is not required to pay capital
12 stock into a limited-life regulated entity or
13 to issue any capital stock on behalf of a
14 limited-life regulated entity established
15 under this subsection.

16 “(B) AUTHORITY.—If the Director
17 determines that such action is advisable,
18 the Agency may cause capital stock or
19 other securities of a limited-life regulated
20 entity established with respect to an enter-
21 prise to be issued and offered for sale, in
22 such amounts and on such terms and con-
23 ditions as the Director may determine, in
24 the discretion of the Director.

1 “(4) INVESTMENTS.—Funds of a limited-life
 2 regulated entity shall be kept on hand in cash, in-
 3 vested in obligations of the United States or obliga-
 4 tions guaranteed as to principal and interest by the
 5 United States, or deposited with the Agency, or any
 6 Federal reserve bank.

7 “(5) EXEMPT TAX STATUS.—Notwithstanding
 8 any other provision of Federal or State law, a lim-
 9 ited-life regulated entity, its franchise, property, and
 10 income shall be exempt from all taxation now or
 11 hereafter imposed by the United States, by any ter-
 12 ritory, dependency, or possession thereof, or by any
 13 State, county, municipality, or local taxing authority.

14 “(6) WINDING UP.—

15 “(A) IN GENERAL.—Subject to subpara-
 16 graphs (B) and (C), not later than 2 years after
 17 the date of its organization, the Agency shall
 18 wind up the affairs of a limited-life regulated
 19 entity.

20 “(B) EXTENSION.—The Director may, in
 21 the discretion of the Director, extend the status
 22 of a limited-life regulated entity for 3 additional
 23 1-year periods.

24 “(C) TERMINATION OF STATUS AS LIM-
 25 ITED-LIFE REGULATED ENTITY.—

1 “(i) IN GENERAL.—Upon the sale by
 2 the Agency of 80 percent or more of the
 3 capital stock of a limited-life regulated en-
 4 tity, as defined in clause (iv), to 1 or more
 5 persons (other than the Agency)—

6 “(I) the status of the limited-life
 7 regulated entity as such shall termi-
 8 nate; and

9 “(II) the entity shall cease to be
 10 a limited-life regulated entity for pur-
 11 poses of this subsection.

12 “(ii) DIVESTITURE OF REMAINING
 13 STOCK, IF ANY.—

14 “(I) IN GENERAL.—Not later
 15 than 1 year after the date on which
 16 the status of a limited-life regulated
 17 entity is terminated pursuant to
 18 clause (i), the Agency shall sell to 1 or
 19 more persons (other than the Agency)
 20 any remaining capital stock of the
 21 former limited-life regulated entity.

22 “(II) EXTENSION AUTHORIZED.—The Director may extend the
 23 period referred to in subclause (I) for
 24 period referred to in subclause (I) for
 25 not longer than an additional 2 years,

1 if the Director determines that such
2 action would be in the public interest.

3 “(iii) SAVINGS CLAUSE.—Notwith-
4 standing any provision of law, other than
5 clause (ii), the Agency shall not be re-
6 quired to sell the capital stock of an enter-
7 prise or a limited-life regulated entity es-
8 tablished with respect to an enterprise.

9 “(iv) APPLICABILITY.—This subpara-
10 graph applies only with respect to a lim-
11 ited-life regulated entity that is established
12 with respect to an enterprise.

13 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

14 “(A) IN GENERAL.—

15 “(i) TRANSFER OF ASSETS AND LI-
16 ABILITIES.—The Agency, as receiver, may
17 transfer any assets and liabilities of a reg-
18 ulated entity in default, or in danger of de-
19 fault, to the limited-life regulated entity in
20 accordance with and subject to the restric-
21 tions of paragraph (1).

22 “(ii) SUBSEQUENT TRANSFERS.—At
23 any time after the establishment of a lim-
24 ited-life regulated entity, the Agency, as
25 receiver, may transfer any assets and li-

1 abilities of the regulated entity in default,
2 or in danger of default, as the Agency
3 may, in its discretion, determine to be ap-
4 propriate in accordance with and subject to
5 the restrictions of paragraph (1).

6 “(iii) EFFECTIVE WITHOUT AP-
7 PROVAL.—The transfer of any assets or li-
8 abilities of a regulated entity in default or
9 in danger of default to a limited-life regu-
10 lated entity shall be effective without any
11 further approval under Federal or State
12 law, assignment, or consent with respect
13 thereto.

14 “(iv) EQUITABLE TREATMENT OF
15 SIMILARLY SITUATED CREDITORS.—The
16 Agency shall treat all creditors of a regu-
17 lated entity in default or in danger of de-
18 fault that are similarly situated under sub-
19 section (c)(1) in a similar manner in exer-
20 cising the authority of the Agency under
21 this subsection to transfer any assets or li-
22 abilities of the regulated entity to the lim-
23 ited-life regulated entity established with
24 respect to such regulated entity, except
25 that the Agency may take actions (includ-

ing making payments) that do not comply
with this clause, if—

“(I) the Director determines that
such actions are necessary to maxi-
mize the value of the assets of the
regulated entity, to maximize the
present value return from the sale or
other disposition of the assets of the
regulated entity, or to minimize the
amount of any loss realized upon the
sale or other disposition of the assets
of the regulated entity; and

“(II) all creditors that are simi-
larly situated under subsection (c)(1)
receive not less than the amount pro-
vided in subsection (e)(2).

“(v) LIMITATION ON TRANSFER OF
LIABILITIES.—Notwithstanding any other
provision of law, the aggregate amount of
liabilities of a regulated entity that are
transferred to, or assumed by, a limited-
life regulated entity may not exceed the ag-
gregate amount of assets of the regulated
entity that are transferred to, or purchased
by, the limited-life regulated entity.

1 “(8) REGULATIONS.—The Agency may promul-
 2 gate such regulations as the Agency determines to
 3 be necessary or appropriate to implement this sub-
 4 section.

5 “(9) POWERS OF LIMITED-LIFE REGULATED
 6 ENTITIES.—

7 “(A) IN GENERAL.—Each limited-life regu-
 8 lated entity created under this subsection shall
 9 have all corporate powers of, and be subject to
 10 the same provisions of law as, the regulated en-
 11 tity in default or in danger of default to which
 12 it relates, except that—

13 “(i) the Agency may—

14 “(I) remove the directors of a
 15 limited-life regulated entity;

16 “(II) fix the compensation of
 17 members of the board of directors and
 18 senior management, as determined by
 19 the Agency in its discretion, of a lim-
 20 ited-life regulated entity; and

21 “(III) indemnify the representa-
 22 tives for purposes of paragraph
 23 (1)(B), and the directors, officers, em-
 24 ployees, and agents of a limited-life
 25 regulated entity on such terms as the

1 Agency determines to be appropriate;
2 and

3 “(ii) the board of directors of a lim-
4 ited-life regulated entity—

5 “(I) shall elect a chairperson who
6 may also serve in the position of chief
7 executive officer, except that such per-
8 son shall not serve either as chair-
9 person or as chief executive officer
10 without the prior approval of the
11 Agency; and

12 “(II) may appoint a chief execu-
13 tive officer who is not also the chair-
14 person, except that such person shall
15 not serve as chief executive officer
16 without the prior approval of the
17 Agency.

18 “(B) STAY OF JUDICIAL ACTION.—Any ju-
19 dicial action to which a limited-life regulated
20 entity becomes a party by virtue of its acquisi-
21 tion of any assets or assumption of any liabil-
22 ities of a regulated entity in default shall be
23 stayed from further proceedings for a period of
24 not longer than 45 days, at the request of the

1 limited-life regulated entity. Such period may
2 be modified upon the consent of all parties.

3 “(10) NO FEDERAL STATUS.—

4 “(A) AGENCY STATUS.—A limited-life reg-
5 ulated entity is not an agency, establishment, or
6 instrumentality of the United States.

7 “(B) EMPLOYEE STATUS.—Representa-
8 tives for purposes of paragraph (1)(B), interim
9 directors, directors, officers, employees, or
10 agents of a limited-life regulated entity are not,
11 solely by virtue of service in any such capacity,
12 officers or employees of the United States. Any
13 employee of the Agency or of any Federal in-
14 strumentality who serves at the request of the
15 Agency as a representative for purposes of
16 paragraph (1)(B), interim director, director, of-
17 ficer, employee, or agent of a limited-life regu-
18 lated entity shall not—

19 “(i) solely by virtue of service in any
20 such capacity lose any existing status as
21 an officer or employee of the United States
22 for purposes of title 5, United States Code,
23 or any other provision of law; or

24 “(ii) receive any salary or benefits for
25 service in any such capacity with respect to

1 a limited-life regulated entity in addition to
2 such salary or benefits as are obtained
3 through employment with the Agency or
4 such Federal instrumentality.

5 “(11) AUTHORITY TO OBTAIN CREDIT.—

6 “(A) IN GENERAL.—A limited-life regu-
7 lated entity may obtain unsecured credit and
8 issue unsecured debt.

9 “(B) INABILITY TO OBTAIN CREDIT.—If a
10 limited-life regulated entity is unable to obtain
11 unsecured credit or issue unsecured debt, the
12 Director may authorize the obtaining of credit
13 or the issuance of debt by the limited-life regu-
14 lated entity—

15 “(i) with priority over any or all of
16 the obligations of the limited-life regulated
17 entity;

18 “(ii) secured by a lien on property of
19 the limited-life regulated entity that is not
20 otherwise subject to a lien; or

21 “(iii) secured by a junior lien on prop-
22 erty of the limited-life regulated entity that
23 is subject to a lien.

24 “(C) LIMITATIONS.—

1 “(i) IN GENERAL.—The Director,
 2 after notice and a hearing, may authorize
 3 the obtaining of credit or the issuance of
 4 debt by a limited-life regulated entity that
 5 is secured by a senior or equal lien on
 6 property of the limited-life regulated entity
 7 that is subject to a lien (other than mort-
 8 gages that collateralize the mortgage-
 9 backed securities issued or guaranteed by
 10 an enterprise) only if—

11 “(I) the limited-life regulated en-
 12 tity is unable to otherwise obtain such
 13 credit or issue such debt; and

14 “(II) there is adequate protection
 15 of the interest of the holder of the lien
 16 on the property with respect to which
 17 such senior or equal lien is proposed
 18 to be granted.

19 “(12) BURDEN OF PROOF.—In any hearing
 20 under this subsection, the Director has the burden
 21 of proof on the issue of adequate protection.

22 “(13) AFFECT ON DEBTS AND LIENS.—The re-
 23 versal or modification on appeal of an authorization
 24 under this subsection to obtain credit or issue debt,
 25 or of a grant under this section of a priority or a

1 lien, does not affect the validity of any debt so
2 issued, or any priority or lien so granted, to an enti-
3 ty that extended such credit in good faith, whether
4 or not such entity knew of the pendency of the ap-
5 peal, unless such authorization and the issuance of
6 such debt, or the granting of such priority or lien,
7 were stayed pending appeal.

8 “(j) OTHER AGENCY EXEMPTIONS.—

9 “(1) APPLICABILITY.—The provisions of this
10 subsection shall apply with respect to the Agency in
11 any case in which the Agency is acting as a conser-
12 vator or a receiver.

13 “(2) TAXATION.—The Agency, including its
14 franchise, its capital, reserves, and surplus, and its
15 income, shall be exempt from all taxation imposed
16 by any State, county, municipality, or local taxing
17 authority, except that any real property of the Agen-
18 cy shall be subject to State, territorial, county, mu-
19 nicipal, or local taxation to the same extent accord-
20 ing to its value as other real property is taxed, ex-
21 cept that, notwithstanding the failure of any person
22 to challenge an assessment under State law of the
23 value of such property, and the tax thereon, shall be
24 determined as of the period for which such tax is im-
25 posed.

1 “(3) PROPERTY PROTECTION.—No property of
 2 the Agency shall be subject to levy, attachment, gar-
 3 nishment, foreclosure, or sale without the consent of
 4 the Agency, nor shall any involuntary lien attach to
 5 the property of the Agency.

6 “(4) PENALTIES AND FINES.—The Agency
 7 shall not be liable for any amounts in the nature of
 8 penalties or fines, including those arising from the
 9 failure of any person to pay any real property, per-
 10 sonal property, probate, or recording tax or any re-
 11 cording or filing fees when due.

12 “(k) PROHIBITION OF CHARTER REVOCATION.—In
 13 no case may the receiver appointed pursuant to this sec-
 14 tion revoke, annul, or terminate the charter of an enter-
 15 prise.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
 17 The Federal Housing Enterprises Financial Safety and
 18 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
 19 ed—

20 (1) in section 1368 (12 U.S.C. 4618)—

21 (A) by striking “an enterprise” each place
 22 that term appears and inserting “a regulated
 23 entity”; and

1 (B) by striking “the enterprise” each place
 2 that term appears and inserting “the regulated
 3 entity”;

4 (2) in section 1369C (12 U.S.C. 4622), by
 5 striking “enterprise” each place that term appears
 6 and inserting “regulated entity”;

7 (3) in section 1369D (12 U.S.C. 4623)—

8 (A) by striking “an enterprise” each place
 9 that term appears and inserting “a regulated
 10 entity”; and

11 (B) in subsection (a)(1), by striking “An
 12 enterprise” and inserting “A regulated entity”;
 13 and

14 (4) by striking sections 1369, 1369A, and
 15 1369B (12 U.S.C. 4619, 4620, and 4621).

16 **Subtitle D—Enforcement Actions**

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

18 Section 1371 of the Federal Housing Enterprises Fi-
 19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 20 4631) is amended—

21 (1) by striking subsections (a) and (b) and in-
 22 serting the following:

23 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
 24 **TICES AND VIOLATIONS.**—If, in the opinion of the Direc-

25 tor, a regulated entity or any entity-affiliated party is en-

1 gaging or has engaged, or the Director has reasonable
 2 cause to believe that the regulated entity or any entity-
 3 affiliated party is about to engage, in an unsafe or un-
 4 sound practice in conducting the business of the regulated
 5 entity or the Finance Facility, or is violating or has vio-
 6 lated, or the Director has reasonable cause to believe is
 7 about to violate, a law, rule, regulation, or order, or any
 8 condition imposed in writing by the Director in connection
 9 with the granting of any application or other request by
 10 the regulated entity or the Finance Facility or any written
 11 agreement entered into with the Director, the Director
 12 may issue and serve upon the regulated entity or entity-
 13 affiliated party a notice of charges in respect thereof.

14 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
 15 regulated entity receives, in its most recent report of ex-
 16 amination, a less-than-satisfactory rating for credit risk,
 17 market risk, operations, or corporate governance, the Di-
 18 rector may (if the deficiency is not corrected) deem the
 19 regulated entity to be engaging in an unsafe or unsound
 20 practice for purposes of subsection (a).”;

21 (2) in subsection (c)—

22 (A) in paragraph (1), by inserting before
 23 the period at the end the following: “, unless
 24 the party served with a notice of charges shall
 25 appear at the hearing personally or by a duly

1 authorized representative, the party shall be
2 deemed to have consented to the issuance of the
3 cease-and-desist order”; and

4 (B) in paragraph (2)—

5 (i) by striking “or director” and in-
6 serting “director, or entity-affiliated
7 party”; and

8 (ii) by inserting “or entity-affiliated
9 party” before “consents”;

10 (3) in each of subsections (c), (d), and (e)—

11 (A) by striking “the enterprise” each place
12 that term appears and inserting “the regulated
13 entity”;

14 (B) by striking “an enterprise” each place
15 that term appears and inserting “a regulated
16 entity”; and

17 (C) by striking “conduct” each place that
18 term appears and inserting “practice”;

19 (4) in subsection (d)—

20 (A) in the matter preceding paragraph
21 (1)—

22 (i) by striking “or director” and in-
23 serting “director, or entity-affiliated
24 party”;

1 (ii) by inserting “to require a regu-
 2 lated entity or entity-affiliated party” after
 3 “includes the authority”;

4 (B) in paragraph (1)—

5 (i) by striking “to require an executive
 6 officer or a director to”; and

7 (ii) by striking “loss” and all that fol-
 8 lows through “person” and inserting “loss,
 9 if”;

10 (iii) in subparagraph (A), by inserting
 11 “such entity or party or finance facility”
 12 before “was”; and

13 (iv) by striking subparagraph (B) and
 14 inserting the following:

15 “(B) the violation or practice involved a
 16 reckless disregard for the law or any applicable
 17 regulations or prior order of the Director;”]
 18 and

19 (C) in paragraph (4), by inserting “loan
 20 or” before “asset”;

21 (5) in subsection (e), by inserting “or entity-af-
 22 filiated party”—

23 (A) before “or any executive”; and

24 (B) before the period at the end; and

25 (6) in subsection (f)—

1 (A) by striking “enterprise” and inserting
 2 “regulated entity, finance facility,”; and
 3 (B) by striking “or director” and inserting
 4 “director, or entity-affiliated party”.

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

6 Section 1372 of the Federal Housing Enterprises Fi-
 7 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 8 4632) is amended—

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

11 “(a) **GROUNDS FOR ISSUANCE.**—

12 “(1) **IN GENERAL.**—If the Director determines
 13 that the actions specified in the notice of charges
 14 served upon a regulated entity or any entity-affili-
 15 ated party pursuant to section 1371(a), or the con-
 16 tinuation thereof, is likely to cause insolvency or sig-
 17 nificant dissipation of assets or earnings of that en-
 18 tity, or is likely to weaken the condition of that enti-
 19 ty prior to the completion of the proceedings con-
 20 ducted pursuant to sections 1371 and 1373, the Di-
 21 rector may—

22 “(A) issue a temporary order requiring
 23 that regulated entity or entity-affiliated party to
 24 cease and desist from any such violation or
 25 practice; and

1 “(B) require that regulated entity or enti-
2 ty-affiliated party to take affirmative action to
3 prevent or remedy such insolvency, dissipation,
4 condition, or prejudice pending completion of
5 such proceedings.

6 “(2) ADDITIONAL REQUIREMENTS.—An order
7 issued under paragraph (1) may include any require-
8 ment authorized under subsection 1371(d).”;

9 (2) in subsection (b)—

10 (A) by striking “or director” and inserting
11 “director, or entity-affiliated party”; and

12 (B) by striking “enterprise” each place
13 that term appears and inserting “regulated en-
14 tity”;

15 (3) in subsection (c), by striking “enterprise”
16 each place that term appears and inserting “regu-
17 lated entity”;

18 (4) in subsection (d)—

19 (A) by striking “or director” each place
20 that term appears and inserting “director, or
21 entity-affiliated party”; and

22 (B) by striking “An enterprise” and insert-
23 ing “A regulated entity”; and

24 (5) in subsection (e)—

1 (A) by striking “request the Attorney Gen-
2 eral of the United States to”; and

3 (B) by striking “or may, under the direc-
4 tion and control of the Attorney General, bring
5 such action”.

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

7 (a) IN GENERAL.—Part 1 of subtitle C of the Federal
8 Housing Enterprises Financial Safety and Soundness Act
9 of 1992 (12 U.S.C. 4631 et seq.) is amended—

10 (1) by redesignating sections 1377 through
11 1379B (12 U.S.C. 4637–4641) as sections 1379
12 through 1379D, respectively; and

13 (2) by inserting after section 1376 (12 U.S.C.
14 4636) the following:

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

16 **“(a) AUTHORITY TO ISSUE ORDER.—**

17 **“(1) IN GENERAL.—**The Director may serve
18 upon a party described in paragraph (2), or any offi-
19 cer, director, or management of the Finance Facility
20 a written notice of the intention of the Director to
21 suspend or remove such party from office, or pro-
22 hibit any further participation by such party, in any
23 manner, in the conduct of the affairs of the regu-
24 lated entity.

1 “(2) APPLICABILITY.—A party described in this
2 paragraph is an entity-affiliated party or any officer,
3 director, or management of the Finance Facility, if
4 the Director determines that—

5 “(A) that party, officer, or director has, di-
6 rectly or indirectly—

7 “(i) violated—

8 “(I) any law or regulation;

9 “(II) any cease-and-desist order
10 which has become final;

11 “(III) any condition imposed in
12 writing by the Director in connection
13 with the grant of any application or
14 other request by such regulated enti-
15 ty; or

16 “(IV) any written agreement be-
17 tween such regulated entity and the
18 Director;

19 “(ii) engaged or participated in any
20 unsafe or unsound practice in connection
21 with any regulated entity or business insti-
22 tution; or

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

1 “(B) by reason of the violation, practice, or
2 breach described in subparagraph (A)—

3 “(i) such regulated entity or business
4 institution has suffered or will probably
5 suffer financial loss or other damage; or

6 “(ii) such party has received financial
7 gain or other benefit; and

8 “(C) the violation, practice, or breach de-
9 scribed in subparagraph (A)—

10 “(i) involves personal dishonesty on
11 the part of such party; or

12 “(ii) demonstrates willful or con-
13 tinuing disregard by such party for the
14 safety or soundness of such regulated enti-
15 ty or business institution.

16 “(b) SUSPENSION ORDER.—

17 “(1) SUSPENSION OR PROHIBITION AUTHOR-
18 ITY.—If the Director serves written notice under
19 subsection (a) upon a party subject to that sub-
20 section (a), the Director may, by order, suspend or
21 remove such party from office, or prohibit such
22 party from further participation in any manner in
23 the conduct of the affairs of the regulated entity, if
24 the Director—

1 “(A) determines that such action is nec-
2 essary for the protection of the regulated entity;
3 and

4 “(B) serves such party with written notice
5 of the order.

6 “(2) EFFECTIVE PERIOD.—Any order issued
7 under this subsection—

8 “(A) shall become effective upon service;
9 and

10 “(B) unless a court issues a stay of such
11 order under subsection (g), shall remain in ef-
12 fect and enforceable until—

13 “(i) the date on which the Director
14 dismisses the charges contained in the no-
15 tice served under subsection (a) with re-
16 spect to such party; or

17 “(ii) the effective date of an order
18 issued under subsection (b).

19 “(3) COPY OF ORDER.—If the Director issues
20 an order under subsection (b) to any party, the Di-
21 rector shall serve a copy of such order on any regu-
22 lated entity with which such party is affiliated at the
23 time such order is issued.

24 “(c) NOTICE, HEARING, AND ORDER.—

1 “(1) NOTICE.—A notice under subsection (a) of
2 the intention of the Director to issue an order under
3 this section shall contain a statement of the facts
4 constituting grounds for such action, and shall fix a
5 time and place at which a hearing will be held on
6 such action.

7 “(2) TIMING OF HEARING.—A hearing shall be
8 fixed for a date not earlier than 30 days, nor later
9 than 60 days, after the date of service of notice
10 under subsection (a), unless an earlier or a later
11 date is set by the Director at the request of—

12 “(A) the party receiving such notice, and
13 good cause is shown; or

14 “(B) the Attorney General of the United
15 States.

16 “(3) CONSENT.—Unless the party that is the
17 subject of a notice delivered under subsection (a) ap-
18 pears at the hearing in person or by a duly author-
19 ized representative, such party shall be deemed to
20 have consented to the issuance of an order under
21 this section.

22 “(4) ISSUANCE OF ORDER OF SUSPENSION.—
23 The Director may issue an order under this section,
24 as the Director may deem appropriate, if—

1 “(A) a party is deemed to have consented
2 to the issuance of an order under paragraph
3 (3); or

4 “(B) upon the record made at the hearing,
5 the Director finds that any of the grounds spec-
6 ified in the notice have been established.

7 “(5) EFFECTIVENESS OF ORDER.—Any order
8 issued under paragraph (4) shall become effective at
9 the expiration of 30 days after the date of service
10 upon the relevant regulated entity and party (except
11 in the case of an order issued upon consent under
12 paragraph (3), which shall become effective at the
13 time specified therein). Such order shall remain ef-
14 fective and enforceable except to such extent as it is
15 stayed, modified, terminated, or set aside by action
16 of the Director or a reviewing court.

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

20 “(1) participate in any manner in the conduct
21 of the affairs of any regulated entity or the Finance
22 Facility;

23 “(2) solicit, procure, transfer, attempt to trans-
24 fer, vote, or attempt to vote any proxy, consent, or

1 authorization with respect to any voting rights in
2 any regulated entity;

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

5 “(4) vote for a director, or serve or act as an
6 entity-affiliated party of a regulated entity or as an
7 officer or director of the Finance Facility.

8 “(e) INDUSTRY-WIDE PROHIBITION.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), any person who, pursuant to an order
11 issued under this section, has been removed or sus-
12 pended from office in a regulated entity or the Fi-
13 nance Facility, or prohibited from participating in
14 the conduct of the affairs of a regulated entity or
15 the Finance Facility, may not, while such order is in
16 effect, continue or commence to hold any office in,
17 or participate in any manner in the conduct of the
18 affairs of, any regulated entity or the Finance Facil-
19 ity.

20 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
21 TEN CONSENT.—If, on or after the date on which an
22 order is issued under this section which removes or
23 suspends from office any party, or prohibits such
24 party from participating in the conduct of the affairs
25 of a regulated entity or the Finance Facility, such

1 party receives the written consent of the Director,
2 the order shall, to the extent of such consent, cease
3 to apply to such party with respect to the regulated
4 entity or such Finance Facility described in the writ-
5 ten consent. Any such consent shall be publicly dis-
6 closed.

7 “(3) VIOLATION OF PARAGRAPH (1) TREATED
8 AS VIOLATION OF ORDER.—Any violation of para-
9 graph (1) by any person who is subject to an order
10 issued under subsection (h) shall be treated as a vio-
11 lation of the order.

12 “(f) APPLICABILITY.—This section shall only apply
13 to a person who is an individual, unless the Director spe-
14 cifically finds that it should apply to a corporation, firm,
15 or other business entity.

16 “(g) STAY OF SUSPENSION AND PROHIBITION OF
17 ENTITY-AFFILIATED PARTY.—Not later than 10 days
18 after the date on which any entity-affiliated party has been
19 suspended from office or prohibited from participation in
20 the conduct of the affairs of a regulated entity under this
21 section, such party may apply to the United States Dis-
22 trict Court for the District of Columbia, or the United
23 States district court for the judicial district in which the
24 headquarters of the regulated entity is located, for a stay
25 of such suspension or prohibition pending the completion

1 of the administrative proceedings pursuant to subsection
2 (c). The court shall have jurisdiction to stay such suspen-
3 sion or prohibition.

4 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-
5 ATED PARTY CHARGED WITH FELONY.—

6 “(1) SUSPENSION OR PROHIBITION.—

7 “(A) IN GENERAL.—Whenever any entity-
8 affiliated party is charged in any information,
9 indictment, or complaint, with the commission
10 of or participation in a crime involving dishon-
11 esty or breach of trust which is punishable by
12 imprisonment for a term exceeding 1 year
13 under Federal or State law, the Director may,
14 if continued service or participation by such
15 party may pose a threat to the regulated entity
16 or impair public confidence in the regulated en-
17 tity, by written notice served upon such party,
18 suspend such party from office or prohibit such
19 party from further participation in any manner
20 in the conduct of the affairs of any regulated
21 entity.

22 “(B) PROVISIONS APPLICABLE TO NO-
23 TICE.—

1 “(i) COPY.—A copy of any notice
2 under subparagraph (A) shall be served
3 upon the relevant regulated entity.

4 “(ii) EFFECTIVE PERIOD.—A suspen-
5 sion or prohibition under subparagraph (A)
6 shall remain in effect until the informa-
7 tion, indictment, or complaint referred to
8 in subparagraph (A) is finally disposed of,
9 or until terminated by the Director.

10 “(2) REMOVAL OR PROHIBITION.—

11 “(A) IN GENERAL.—If a judgment of con-
12 viction or an agreement to enter a pretrial di-
13 version or other similar program is entered
14 against an entity-affiliated party in connection
15 with a crime described in paragraph (1)(A), at
16 such time as such judgment is not subject to
17 further appellate review, the Director may, if
18 continued service or participation by such party
19 may pose a threat to the regulated entity or im-
20 pair public confidence in the regulated entity,
21 issue and serve upon such party an order re-
22 moving such party from office or prohibiting
23 such party from further participation in any
24 manner in the conduct of the affairs of the reg-

1 ulated entity without the prior written consent
2 of the Director.

3 “(B) PROVISIONS APPLICABLE TO
4 ORDER.—

5 “(i) COPY.—A copy of any order
6 under subparagraph (A) shall be served
7 upon the relevant regulated entity, at
8 which time the entity-affiliated party who
9 is subject to the order (if a director or an
10 officer) shall cease to be a director or offi-
11 cer of such regulated entity.

12 “(ii) EFFECT OF ACQUITTAL.—A find-
13 ing of not guilty or other disposition of the
14 charge shall not preclude the Director from
15 instituting proceedings after such finding
16 or disposition to remove a party from of-
17 fice or to prohibit further participation in
18 the affairs of a regulated entity pursuant
19 to subsection (a) or (b).

20 “(iii) EFFECTIVE PERIOD.—Unless
21 terminated by the Director, any notice of
22 suspension or order of removal issued
23 under this subsection shall remain effective
24 and outstanding until the completion of

1 any hearing or appeal authorized under
2 paragraph (4).

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

5 “(A) IN GENERAL.—If at any time, be-
6 cause of the suspension of 1 or more directors
7 pursuant to this section, there shall be on the
8 board of directors of a regulated entity less
9 than a quorum of directors not so suspended,
10 all powers and functions vested in or exercisable
11 by such board shall vest in and be exercisable
12 by the director or directors on the board not so
13 suspended, until such time as there shall be a
14 quorum of the board of directors.

15 “(B) APPOINTMENT OF TEMPORARY DI-
16 RECTORS.—If all of the directors of a regulated
17 entity are suspended pursuant to this section,
18 the Director shall appoint persons to serve tem-
19 porarily as directors pending the termination of
20 such suspensions, or until such time as those
21 who have been suspended cease to be directors
22 of the regulated entity and their respective suc-
23 cessors take office.

24 “(4) HEARING REGARDING CONTINUED PAR-
25 TICIPATION.—

1 “(A) IN GENERAL.—Not later than 30
2 days after the date of service of any notice of
3 suspension or order of removal issued pursuant
4 to paragraph (1) or (2), the entity-affiliated
5 party may request in writing an opportunity to
6 appear before the Director to show that the
7 continued service or participation in the con-
8 duct of the affairs of the regulated entity by
9 such party does not, or is not likely to, pose a
10 threat to the interests of the regulated entity,
11 or threaten to impair public confidence in the
12 regulated entity.

13 “(B) TIMING AND FORM OF HEARING.—
14 Upon receipt of a request for a hearing under
15 subparagraph (A), the Director shall fix a time
16 (not later than 30 days after the date of receipt
17 of such request, unless extended at the request
18 of such party) and place at which the entity-af-
19 filiated party may appear, personally or through
20 counsel, before the Director or 1 or more des-
21 ignated employees of the Director to submit
22 written materials (or, at the discretion of the
23 Director, oral testimony) and oral argument.

24 “(C) DETERMINATION.—Not later than 60
25 days after the date of a hearing under subpara-

graph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

“(5) RULES.—The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.”.

(b) CONFORMING AMENDMENTS.—

(1) SAFETY AND SOUNDNESS ACT.—Subtitle C of title XIII of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (42 U.S.C. 4501 et seq.) is amended—

(A) in section 1317(f), by striking “section 1379B” and inserting “section 1379D”;

(B) in section 1373(a)—

1 (i) in paragraph (1), by striking “or
2 1376(c)” and inserting “, 1376(c), or
3 1377”;

4 (ii) in paragraph (2), by inserting “or
5 1377” after “1371”; and

6 (iii) in paragraph (4), by inserting “or
7 removal or prohibition” after “cease and
8 desist”; and

9 (C) in section 1374(a)—

10 (i) by striking “or 1376” and insert-
11 ing “, 1376, or 1377”; and

12 (ii) by striking “such section” and in-
13 serting “this title”.

14 (2) FANNIE MAE CHARTER ACT.—Section
15 308(b) of the Federal National Mortgage Associa-
16 tion Charter Act (12 U.S.C. 1723(b)) is amended in
17 the second sentence, by striking “The” and inserting
18 “Except to the extent that action under section
19 1377 of the Federal Housing Enterprises Financial
20 Safety and Soundness Act of 1992 temporarily re-
21 sults in a lesser number, the”.

22 (3) FREDDIE MAC CHARTER ACT.—Section
23 303(a)(2)(A) of the Federal Home Loan Mortgage
24 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is
25 amended, in the second sentence, by striking “The”

1 and inserting “Except to the extent action under
2 section 1377 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 tempo-
4 rarily results in a lesser number, the”.

5 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

6 (a) IN GENERAL.—Section 1375 of the Federal
7 Housing Enterprises Financial Safety and Soundness Act
8 of 1992 (12 U.S.C. 4635) is amended—

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

11 “(a) ENFORCEMENT.—The Director may, in the dis-
12 cretion of the Director, apply to the United States District
13 Court for the District of Columbia, or the United States
14 district court within the jurisdiction of which the head-
15 quarters of the regulated entity is located, for the enforce-
16 ment of any effective and outstanding notice, order, or
17 subpoena issued under this title, or request that the Attor-
18 ney General of the United States bring such an action.
19 Such court shall have jurisdiction and power to order and
20 require compliance with such notice, order, or subpoena.”;
21 and

22 (2) in subsection (b)—

23 (A) by striking “section 1371, 1372, or
24 1376 or”;

1 (B) by inserting “subtitle C, or section
2 1313A” after “subtitle B,”; and

3 (C) by inserting “, standard,” after “no-
4 tice” each place that term appears.

5 (b) CONFORMING AMENDMENT.—Section 1379B of
6 the Federal Housing Enterprises Financial Safety and
7 Soundness Act of 1992 (12 U.S.C. 4641) is amended by
8 striking subsection (c) and redesignating subsection (d) as
9 subsection (c).

10 **SEC. 155. CIVIL MONEY PENALTIES.**

11 Section 1376 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4636) is amended—

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

16 “(a) IN GENERAL.—The Director may impose a civil
17 money penalty in accordance with this section on any reg-
18 ulated entity, or any executive offices of a regulated entity
19 or any entity-affiliated party.”;

20 (2) by striking subsection (b) and inserting the
21 following:

22 “(b) AMOUNT OF PENALTY.—

23 “(1) FIRST TIER.—A regulated entity or entity-
24 affiliated party shall forfeit and pay a civil penalty
25 of not more than \$10,000 for each day during which

1 a violation continues, if such regulated entity or
2 party—

3 “(A) violates any provision of this title, the
4 authorizing statutes, or any order, condition,
5 rule, or regulation under this title or any au-
6 thorizing statute;

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

9 “(C) violates any condition imposed in
10 writing by the Director in connection with the
11 grant of any application or other request by
12 such regulated entity;

13 “(D) violates any written agreement be-
14 tween the regulated entity and the Director; or

15 “(E) engages in any conduct that the Di-
16 rector determines to be an unsafe or unsound
17 practice.

18 “(2) SECOND TIER.—Notwithstanding para-
19 graph (1), a regulated entity or entity-affiliated
20 party shall forfeit and pay a civil penalty of not
21 more than \$50,000 for each day during which a vio-
22 lation, practice, or breach continues, if—

23 “(A) the regulated entity or entity-affili-
24 ated party, respectively—

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

3 “(ii) recklessly engages in an unsafe
4 or unsound practice in conducting the af-
5 fairs of the regulated entity; or

6 “(iii) breaches any fiduciary duty; and

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

8 “(i) is part of a pattern of mis-
9 conduct;

10 “(ii) causes or is likely to cause more
11 than a minimal loss to the regulated entity;

12 or

13 “(iii) results in pecuniary gain or
14 other benefit to such party.

15 “(3) THIRD TIER.—Notwithstanding para-
16 graphs (1) and (2), any regulated entity or entity-
17 affiliated party shall forfeit and pay a civil penalty
18 in an amount not to exceed the applicable maximum
19 amount determined under paragraph (4) for each
20 day during which such violation, practice, or breach
21 continues, if such regulated entity or entity-affiliated
22 party—

23 “(A) knowingly—

24 “(i) commits any violation described
25 in any subparagraph of paragraph (1);

1 “(ii) engages in any unsafe or un-
2 sound practice in conducting the affairs of
3 the regulated entity; or

4 “(iii) breaches any fiduciary duty; and

5 “(B) knowingly or recklessly causes a sub-
6 stantial loss to the regulated entity or a sub-
7 stantial pecuniary gain or other benefit to such
8 party by reason of such violation, practice, or
9 breach.

10 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
11 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—
12 The maximum daily amount of any civil penalty
13 which may be assessed pursuant to paragraph (3)
14 for any violation, practice, or breach described in
15 paragraph (3) is—

16 “(A) in the case of any entity-affiliated
17 party, an amount not to exceed \$2,000,000;
18 and

19 “(B) in the case of any regulated entity,
20 \$2,000,000.”;
21 (3) in subsection (c)—

22 (A) by striking “enterprise” each place
23 that term appears and inserting “regulated en-
24 tity”;

1 (B) by inserting “or entity-affiliated
2 party” before “in writing”; and

3 (C) by inserting “or entity-affiliated party”
4 before “has been given”;
5 (4) in subsection (d)—

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

9 (B) by striking “an enterprise” and insert-
10 ing “a regulated entity”;

11 (C) by striking “the enterprise” and in-
12 serting “the regulated entity”;

13 (D) by striking “request the Attorney Gen-
14 eral of the United States to”;

15 (E) by inserting “, or the United States
16 district court within the jurisdiction of which
17 the headquarters of the regulated entity is lo-
18 cated,” after “District of Columbia”;

19 (F) by striking “, or may, under the direc-
20 tion and control of the Attorney General of the
21 United States, bring such an action”; and

22 (G) by striking “and section 1374”; and

23 (5) in subsection (g), by striking “An enter-
24 prise” and inserting “A regulated entity”.

1 **SEC. 156. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Subtitle C of the Federal Housing
3 Enterprises Financial Safety and Soundness Act of 1992
4 (12 U.S.C. 4631 et seq.), as amended by this Act, is
5 amended by adding at the end the following:

6 **“SEC. 1378. CRIMINAL PENALTY.**

7 “Whoever, being subject to an order in effect under
8 section 1377, without the prior written approval of the Di-
9 rector, knowingly participates, directly or indirectly, in any
10 manner (including by engaging in an activity specifically
11 prohibited in such an order) in the conduct of the affairs
12 of any regulated entity shall, notwithstanding section
13 3571 of title 18, be fined not more than \$1,000,000, im-
14 prisoned for not more than 5 years, or both.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
16 The Federal Housing Enterprises Financial Safety and
17 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
18 ed—

19 (1) in section 1379 (as so designated by this
20 Act)—

21 (A) by striking “an enterprise” and insert-
22 ing “a regulated entity”; and

23 (B) by striking “the enterprise” and in-
24 serting “the regulated entity”;

1 (2) in section 1379A (as so designated by this
2 Act), by striking “an enterprise” and inserting “a
3 regulated entity”;

4 (3) in section 1379B(c) (as so designated by
5 this Act), by striking “enterprise” and inserting
6 “regulated entity”; and

7 (4) in section 1379D (as so designated by this
8 Act), by striking “enterprise” and inserting “regu-
9 lated entity”.

10 **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

11 Section 1379 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4637), as so designated by this Act, is amended—

14 (1) by striking “2-year” and inserting “6-year”;
15 and

16 (2) by inserting “or an entity-affiliated party”
17 after “enterprise” each place that term appears.

18 **SEC. 158. SUBPOENA AUTHORITY.**

19 Section 1379B of the Federal Housing Enterprises
20 Financial Safety and Soundness Act of 1992 (12 U.S.C.
21 4641) is amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph

24 (1)—

25 (i) by striking “administrative”;

1 (ii) by inserting “, examination, or in-
2 vestigation” after “proceeding”;

3 (iii) by striking “subchapter” and in-
4 serting “title”; and

5 (iv) by inserting “or any designated
6 representative thereof, including any per-
7 son designated to conduct any hearing
8 under this subtitle” after “Director”; and

9 (B) in paragraph (4), by striking “issued
10 by the Director”;

11 (2) in subsection (b), by inserting “or in any
12 territory or other place subject to the jurisdiction of
13 the United States” after “State”;

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

16 “(c) ENFORCEMENT.—

17 “(1) IN GENERAL.—The Director, or any party
18 to proceedings under this subtitle, may apply to the
19 United States District Court for the District of Co-
20 lumbia, or the United States district court for the
21 judicial district of the United States in any territory
22 in which such proceeding is being conducted, or
23 where the witness resides or carries on business, for
24 enforcement of any subpoena or subpoena duces
25 tecum issued pursuant to this section.

1 “(2) POWER OF COURT.—The courts described
2 under paragraph (1) shall have the jurisdiction and
3 power to order and require compliance with any sub-
4 poena issued under paragraph (1)”;

5 (4) in subsection (d), by inserting “enterprise-
6 affiliated party” before “may allow”; and

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

8 “(e) PENALTIES.—A person shall be guilty of a mis-
9 demeanor, and upon conviction, shall be subject to a fine
10 of not more than \$1,000 or to imprisonment for a term
11 of not more than 1 year, or both, if that person willfully
12 fails or refuses, in disobedience of a subpoena issued under
13 subsection (c), to—

14 “(1) attend court;

15 “(2) testify in court;

16 “(3) answer any lawful inquiry; or

17 “(4) produce books, papers, correspondence,
18 contracts, agreements, or such other records as re-
19 quested in the subpoena.”.

20 **Subtitle E—General Provisions**

21 **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

22 (a) AMENDMENTS TO 1992 ACT.—The Federal
23 Housing Enterprises Financial Safety and Soundness Act
24 of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,
25 is amended—

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

2 (A) in subsection (a)—

3 (i) by striking “(a) **OFFICE PER-**
 4 **SONNEL.—The**” and inserting “(a) **IN**
 5 **GENERAL.—**Subject to title III of the
 6 Federal Housing Enterprise Regulatory
 7 Reform Act of 2007, the”; and

8 (ii) by striking “the Office” each place
 9 that term appears and inserting “the
 10 Agency”;

11 (B) in subsection (c), by striking “the Of-
 12 fice” and inserting “the Agency”;

13 (C) in subsection (e), by striking “the Of-
 14 fice” and inserting “the Agency”;

15 (D) by striking subsections (d) and (f);
 16 and

17 (E) by redesignating subsection (e) as sub-
 18 section (d);

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

20 (A) by striking “(a) **IN GENERAL.—**”;
 21 and

22 (B) by striking subsection (b);

23 (3) in section 1364(c) (12 U.S.C. 4614(c)), by
 24 striking the last sentence;

1 (4) by striking section 1383 (12 U.S.C. 1451
2 note);

3 (5) in each of sections 1319D, 1319E, and
4 1319F (12 U.S.C. 4523, 4524, 4525) by striking
5 “the Office” each place that term appears and in-
6 serting “the Agency”; and

7 (6) in each of sections 1319B and 1369(a)(3)
8 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-
9 mittee on Banking, Finance and Urban Affairs”
10 each place that term appears and inserting “Com-
11 mittee on Financial Services”.

12 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
13 The Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1716 et seq.) is amended—

15 (1) in each of sections 303(c)(2) (12 U.S.C.
16 1718(c)(2)), 309(d)(3)(B) (12 U.S.C.
17 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.
18 1723a(k)(1)), by striking “Director of the Office of
19 Federal Housing Enterprise Oversight of the De-
20 partment of Housing and Urban Development” each
21 place that term appears, and inserting “Director of
22 the Federal Housing Enterprise Regulatory Agen-
23 cy”;

24 (2) in section 309—

1 (A) in subsection (m) (12 U.S.C.
2 1723a(m))—

3 (i) in paragraph (1), by striking “to
4 the Secretary, in a form determined by the
5 Secretary” and inserting “to the Director
6 of the Federal Housing Enterprise Regu-
7 latory Agency, in a form determined by the
8 Director”; and

9 (ii) in paragraph (2), by striking “to
10 the Secretary, in a form determined by the
11 Secretary” and inserting “to the Director
12 of the Federal Housing Enterprise Regu-
13 latory Agency, in a form determined by the
14 Director”;

15 (B) in subsection (n) (12 U.S.C.
16 1723a(n))—

17 (i) in paragraph (1), by striking “and
18 the Secretary” and inserting “and the Di-
19 rector of the Federal Housing Enterprise
20 Regulatory Agency”; and

21 (ii) in paragraph (2), by striking
22 “Secretary” each place that term appears
23 and inserting “Director of the Federal
24 Housing Enterprise Regulatory Agency”;
25 and

1 (C) in paragraph (3)(B), by striking “Sec-
 2 retary” and inserting “Director of the Federal
 3 Housing Enterprise Regulatory Agency”.

4 (c) AMENDMENTS TO FREDDIE MAC CHARTER
 5 ACT.—The Federal Home Loan Mortgage Corporation
 6 Act (12 U.S.C. 1451 et seq.) is amended—

7 (1) in each of sections 303(b)(2) (12 U.S.C.
 8 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and
 9 section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-
 10 ing “Director of the Office of Federal Housing En-
 11 terprise Oversight of the Department of Housing
 12 and Urban Development” each place that term ap-
 13 pears, and inserting “Director of the Federal Hous-
 14 ing Enterprise Regulatory Agency”;

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

16 (A) in subsection (c)(2), by inserting “the”
 17 after “Secretary of”;

18 (B) in subsection (i)—

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

21 (ii) by striking “section 106” and in-
 22 serting “section 1316”; and

23 (C) in subsection (j), by striking “of sub-
 24 stantially” and inserting “or substantially”; and

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

1 (A) in subsection (e)—

2 (i) in paragraph (1), by striking “to
3 the Secretary, in a form determined by the
4 Secretary” and inserting “to the Director
5 of the Federal Housing Enterprise Regu-
6 latory Agency, in a form determined by the
7 Director”; and

8 (ii) in paragraph (2), by striking “to
9 the Secretary, in a form determined by the
10 Secretary” and inserting “to the Director
11 of the Federal Housing Enterprise Regu-
12 latory Agency, in a form determined by the
13 Director”; and

14 (B) in subsection (f)—

15 (i) in paragraph (1), by striking “and
16 the Secretary” and inserting “and the Di-
17 rector of the Federal Housing Enterprise
18 Regulatory Agency”;

19 (ii) in paragraph (2), by striking “the
20 Secretary” each place that term appears
21 and inserting “the Director of the Federal
22 Housing Enterprise Regulatory Agency”;
23 and

24 (iii) in paragraph (3)(B), by striking
25 “Secretary” and inserting “Director of the

1 Federal Housing Enterprise Regulatory
2 Agency”.

3 (d) AMENDMENT TO TITLE 18, UNITED STATES
4 CODE.—Section 1905 of title 18, United States Code, is
5 amended by striking “Office of Federal Housing Enter-
6 prise Oversight” and inserting “Federal Housing Enter-
7 prise Regulatory Agency”.

8 (e) AMENDMENT TO FLOOD DISASTER PROTECTION
9 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-
10 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))
11 is amended by striking “Director of the Office of Federal
12 Housing Enterprise Oversight of the Department of Hous-
13 ing and Urban Development” and inserting “Director of
14 the Federal Housing Enterprise Regulatory Agency”.

15 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND
16 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-
17 ment of Housing and Urban Development Act (42 U.S.C.
18 3534) is amended by striking subsection (d).

19 (g) AMENDMENT TO TITLE 5, UNITED STATES
20 CODE.—Section 5313 of title 5, United States Code, is
21 amended by striking the item relating to the Director of
22 the Office of Federal Housing Enterprise Oversight, De-
23 partment of Housing and Urban Development and insert-
24 ing the following new item:

1 “Director of the Federal Housing Enterprise
2 Regulatory Agency.”.

3 (h) AMENDMENT TO SARBANES-OXLEY ACT.—Sec-
4 tion 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of
5 2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by in-
6 serting “and the Director of the Federal Housing Enter-
7 prise Regulatory Agency,” after “Commission,”.

8 (i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE
9 ACT.—Section 11(t)(2)(A) of the Federal Deposit Insur-
10 ance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding
11 at the end the following:

12 “(vii) The Federal Housing Enter-
13 prise Regulatory Agency.”.

14 **SEC. 162. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-**
15 **TERPRISES.**

16 (a) FANNIE MAE.—

17 (1) IN GENERAL.—Section 308(b) of the Fed-
18 eral National Mortgage Association Charter Act (12
19 U.S.C. 1723(b)) is amended—

20 (A) in the first sentence, by striking
21 “eighteen persons, five of whom shall be ap-
22 pointed annually by the President of the United
23 States, and the remainder of whom” and insert-
24 ing “13 persons, or such other number that the
25 Director determines appropriate, who”;

1 (B) in the second sentence, by striking
2 “appointed by the President”;

3 (C) in the third sentence—

4 (i) by striking “appointed or”; and

5 (ii) by striking “, except that any
6 such appointed member may be removed
7 from office by the President for good
8 cause”;

9 (D) in the fourth sentence, by striking
10 “elective”; and

11 (E) by striking the fifth sentence.

12 (2) TRANSITIONAL PROVISION.—The amend-
13 ments made by paragraph (1) shall not apply to any
14 appointed position of the board of directors of the
15 Federal National Mortgage Association until the ex-
16 piration of the annual term for such position during
17 which the effective date under section 163 occurs.

18 (b) FREDDIE MAC.—

19 (1) IN GENERAL.—Section 303(a)(2) of the
20 Federal Home Loan Mortgage Corporation Act (12
21 U.S.C. 1452(a)(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) in the first sentence, by striking
24 “13 persons, 5 of whom shall be appointed
25 annually by the President of the United

States and the remainder of whom” and
 inserting “13 persons, or such other num-
 ber as the Director determines appropriate,
 who”; and

(ii) in the second sentence, by striking
 “appointed by the President of the United
 States”;

(B) in subparagraph (B)—

(i) by striking “such or”; and

(ii) by striking “, except that any ap-
 pointed member may be removed from of-
 fice by the President for good cause”; and

(C) in subparagraph (C)—

(i) by striking the first sentence; and

(ii) by striking “elective”.

(2) TRANSITIONAL PROVISION.—The amend-
 ments made by paragraph (1) shall not apply to any
 appointed position of the board of directors of the
 Federal Home Loan Mortgage Corporation until the
 expiration of the annual term for such position dur-
 ing which the effective date under section 163 oc-
 curs.

SEC. 163. EFFECTIVE DATE.

Except as otherwise specifically provided in this title,
 this title and the amendments made by this title shall take

1 effect on, and shall apply beginning on, the date of enact-
2 ment of this Act.

3 **TITLE II—FEDERAL HOME LOAN**
4 **BANKS**

5 **SEC. 201. DIRECTORS.**

6 Section 7 of the Federal Home Loan Bank Act (12
7 U.S.C. 1427) is amended—

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

10 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
11 Flicts OF INTEREST.—

12 “(1) IN GENERAL.—Subject to paragraphs (2)
13 through (4), the management of each Federal Home
14 Loan Bank shall be vested in a board of 13 direc-
15 tors, or such other number as the Director deter-
16 mines appropriate.

17 “(2) BOARD MAKEUP.—The board of directors
18 of each Bank shall be comprised of—

19 “(A) member directors, who shall comprise
20 at least the majority of the members of the
21 board of directors; and

22 “(B) independent directors, who shall com-
23 prise not fewer than $\frac{1}{3}$ of the members of the
24 board of directors.

25 “(3) SELECTION CRITERIA.—

1 “(A) IN GENERAL.—Each member of the
2 board of directors shall be—

3 “(i) elected by plurality vote of the
4 members, in accordance with procedures
5 established under this section; and

6 “(ii) a citizen of the United States.

7 “(B) INDEPENDENT DIRECTOR CRI-
8 TERIA.—

9 “(i) PUBLIC INTEREST.—Not fewer
10 than 2 of the independent directors shall
11 be selected from among representatives of
12 organizations having more than a 2-year
13 history of representing consumer or com-
14 munity interests on banking services, cred-
15 it needs, housing, or financial consumer
16 protections.

17 “(ii) CONFLICTS OF INTEREST.—No
18 independent director may, during the term
19 of service on the board of directors, serve
20 as an officer of any Federal Home Loan
21 Bank or as a director or officer of any
22 member Bank.

23 “(4) DEFINITIONS.—For purposes of this sec-
24 tion, the following definitions shall apply:

1 “(A) INDEPENDENT DIRECTOR.—The
 2 terms ‘independent director’ and ‘independent
 3 directorship’ mean a member of the board of di-
 4 rectors of a Federal Home Loan Bank who is
 5 a bona fide resident of the district in which the
 6 Federal Home Loan Bank is located, or the di-
 7 rectorship held by such a person, respectively.

8 “(B) MEMBER DIRECTOR.—The terms
 9 ‘member director’ and ‘member directorship’
 10 mean a member of the board of directors of a
 11 Federal Home Loan Bank who is an officer or
 12 director of a member institution that is located
 13 in the district in which the Federal Home Loan
 14 Bank is located, or the directorship held by
 15 such a person, respectively.”;

16 (2) by striking “elective” each place that term
 17 appears, other than in subsections (d), (e), and (f),
 18 and inserting “member”;

19 (3) in subsection (b)—

20 (A) by striking the subsection heading and
 21 all that follows through “Each elective director-
 22 ship” and inserting the following:

23 “(b) DIRECTORSHIPS.—

24 “(1) MEMBER DIRECTORSHIPS.—Each member
 25 directorship”; and

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

2 “(2) INDEPENDENT DIRECTORSHIPS.—

3 “(A) ELECTIONS.—Each independent di-
4 rector—

5 “(i) shall be elected by the members
6 entitled to vote, from among eligible per-
7 sons nominated by the board of directors
8 of the Bank; and

9 “(ii) shall be filled by a plurality of
10 the votes of the members of the Bank at
11 large, with each member having the num-
12 ber of votes for each such directorship as
13 it has under subsection (b)(1) in an elec-
14 tion to fill member directorships.

15 “(B) CRITERIA.—Nominees shall meet all
16 applicable requirements prescribed in this sec-
17 tion.

18 “(C) NOMINATION AND ELECTION PROCE-
19 DURES.—Procedures for nomination and elec-
20 tion of independent directors shall be prescribed
21 by the bylaws of each Federal Home Loan
22 Bank, in a manner consistent with the rules
23 and regulations of the Agency.”;

24 (4) in subsection (c), by striking the second,
25 third, and fifth sentences;

1 (5) in subsection (d)—

2 (A) in the first sentence—

3 (i) by striking “, whether elected or
4 appointed,”; and

5 (ii) by striking “3 years” and insert-
6 ing “4 years”;

7 (B) in the second sentence—

8 (i) by striking “Federal Home Loan
9 Bank System Modernization Act of 1999”
10 and inserting “Federal Housing Enterprise
11 Regulatory Reform Act of 2007”;

12 (ii) by striking “ $\frac{1}{3}$ ” and inserting
13 “ $\frac{1}{4}$ ”; and

14 (iii) by striking “or appointed”; and

15 (C) in the third sentence—

16 (i) by striking “an elective” each place
17 that term appears and inserting “a”; and

18 (ii) by striking “in any elective direc-
19 torship or elective directorships”;

20 (6) in subsection (f)—

21 (A) by striking paragraph (2);

22 (B) by striking “appointed or” each place
23 that term appears; and

24 (C) in paragraph (3)—

1 (i) by striking “(3) **ELECTED BANK**
 2 **DIRECTORS.**—” and inserting “(2)
 3 **ELECTION PROCESS.**—”; and

4 (ii) by striking “elective” each place
 5 that term appears;

6 (7) in subsection (i)—

7 (A) in paragraph (1), by striking “(1) **IN**
 8 **GENERAL.**—Subject to paragraph (2), each”
 9 and inserting “Each”; and

10 (B) by striking paragraph (2); and

11 (8) by adding at the end the following:

12 “(l) **TRANSITION RULE.**—Any member of the board
 13 of directors of a Bank elected or appointed in accordance
 14 with this section prior to the date of enactment of this
 15 subsection may continue to serve as a member of that
 16 board of directors for the remainder of the existing term
 17 of service.”.

18 **SEC. 202. DEFINITIONS.**

19 Section 2 of the Federal Home Loan Bank Act (12
 20 U.S.C. 1422) is amended—

21 (1) by striking paragraphs (1), (10), and (11);

22 (2) by redesignating paragraphs (2) through
 23 (9) as paragraphs (1) through (8), respectively;

24 (3) by redesignating paragraphs (12) and (13)
 25 as paragraphs (9) and (10), respectively; and

1 (4) by adding at the end the following:

2 “(11) DIRECTOR.—The term ‘Director’ means
3 the Director of the Federal Housing Enterprise Reg-
4 ulatory Agency.

5 “(12) AGENCY.—The term ‘Agency’ means the
6 Federal Housing Enterprise Regulatory Agency, es-
7 tablished under section 1311 of the Federal Housing
8 Enterprises Financial Safety and Soundness Act of
9 1992.

10 “(13) FINANCE FACILITY.—The term ‘Finance
11 Facility’ means the Federal Home Loan Bank Fi-
12 nance Facility established under section 11A.”.

13 **SEC. 203. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**
14 **BANKS.**

15 The Federal Home Loan Bank Act (12 U.S.C. 1421
16 et seq.), other than in provisions of that Act added or
17 amended otherwise by this Act, is amended—

18 (1) by striking sections 2A, 2B, and 20 (12
19 U.S.C. 1422a, 1422b, 1440);

20 (2) in section 18 (12 U.S.C. 1438), by striking
21 subsection (b);

22 (3) in section 11 (12 U.S.C. 1431)—

23 (A) by striking subsections (b) and (c);

1 (B) by redesignating subsections (d)
 2 through (k) as subsections (c) through (j), re-
 3 spectively;

4 (C) in subsection (a)—

5 (i) by striking “Board” each place
 6 that term appears and inserting “Direc-
 7 tor”; and

8 (ii) by striking “upon such terms and
 9 conditions as the Board may approve”;
 10 and

11 (D) by inserting after subsection (a) the
 12 following:

13 “(b) ISSUANCE OF FEDERAL HOME LOAN BANK
 14 BONDS.—The Finance Facility may issue consolidated
 15 Federal Home Loan Bank debt, which shall be the joint
 16 and several obligations of all of the Federal Home Loan
 17 Banks, and shall be issued upon such terms and condi-
 18 tions as set by the Finance Facility for the Federal Home
 19 Loan Banks.”;

20 (4) in section 6 (12 U.S.C. 1426)—

21 (A) in subsection (b)(1), in the matter pre-
 22 ceding subparagraph (A), by striking “Finance
 23 Board approval” and inserting “approval by the
 24 Director”; and

1 (B) in each of subsections (c)(4)(B) and
2 (d)(2), by striking “Finance Board regulations”
3 each place that term appears and inserting
4 “regulations of the Director”;
5 (5) in section 10(b) (12 U.S.C. 1430(b))—

6 (A) in the subsection heading, by striking
7 “FORMAL BOARD RESOLUTION” and inserting
8 “APPROVAL OF DIRECTOR”; and

9 (B) by striking “by formal resolution”;
10 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),
11 by striking “Chairperson of the Federal Housing Fi-
12 nance Board” and inserting “Director”;

13 (7) in section 15 (12 U.S.C. 1435), by striking
14 “issued with the approval of the Board” and insert-
15 ing “issued under section 11(b)”;

16 (8) by striking “the Board” each place that
17 term appears and inserting “the Director”;

18 (9) by striking “The Board” each place that
19 term appears and inserting “The Director”;

20 (10) by striking “the Finance Board” each
21 place that term appears and inserting “the Direc-
22 tor”;

23 (11) by striking “The Finance Board” each
24 place that term appears and inserting “The Direc-
25 tor”; and

1 (12) by striking “Federal Housing Finance
2 Board” each place that term appears and inserting
3 “Director”.

4 **SEC. 204. FEDERAL HOME LOAN BANK FINANCE FACILITY.**

5 The Federal Home Loan Bank Act (12 U.S.C. 1421
6 et seq.) is amended by inserting after section 11 the fol-
7 lowing:

8 **“SEC. 11A. FEDERAL HOME LOAN BANK FINANCE FACILITY.**

9 “(a) ESTABLISHMENT.—

10 “(1) IN GENERAL.—The Federal Home Loan
11 Banks shall establish a Federal Home Loan Bank
12 Finance Facility.

13 “(2) PURPOSES.—The purposes of the Finance
14 Facility are—

15 “(A) to issue and service the consolidated
16 obligations of the Federal Home Loan Banks in
17 accordance with this Act; and

18 “(B) to perform all other necessary and
19 proper functions in relation to the issuance and
20 service of such obligations, as fiscal agent on
21 behalf of the Federal Home Loan Banks, and
22 any other functions performed by the Office of
23 Finance on behalf of the Financing Corporation
24 (established under section 21) and the Resolu-

tion Funding Corporation (established under section 21B).

“(3) TRANSFER OF FUNCTIONS.—

“(A) IN GENERAL.—The functions of the Office of Finance of the Federal Home Loan Banks shall be transferred to the Finance Facility on the effective time.

“(B) ORGANIZATIONAL MEETING.—The organizational meeting of the management board of the Finance Facility shall occur as soon as practicable after the date of enactment of the Federal Housing Enterprise Regulatory Reform Act of 2007.

“(C) INTERIM PROCEDURES.—Until the effective time, the predecessor office shall continue to operate as if this section had not been enacted.

“(D) REFERENCES.—After the effective time, any reference under any provision of Federal law to the Office of Finance and the Managing Director of the Office of Finance shall be deemed to be references to the Finance Facility and the chief executive officer of the Finance Facility, respectively.

“(4) SUCCESSION.—

1 “(A) ASSETS AND LIABILITIES.—On
2 and after the effective time, the Finance
3 Facility shall, by operation of law and
4 without any further action by the Federal
5 Housing Finance Board, the Director, the
6 predecessor office, or any court, succeed to
7 the assets of, and assume all debts, obliga-
8 tions, contracts, and other liabilities of the
9 predecessor office, matured or unmatured,
10 accrued or absolute, contingent or other-
11 wise, and whether or not reflected or re-
12 served against on balance sheets, books of
13 account, or records of the predecessor of-
14 fice.

15 “(B) CONTRACTS.—On and after the
16 effective time, the existing contractual obli-
17 gations of the Federal Housing Finance
18 Board, solely in its capacity as issuer of
19 consolidated obligations of the Federal
20 Home Loan Banks and the predecessor of-
21 fice shall, by operation of law and without
22 any further action by the Federal Housing
23 Finance Board, the Director, the prede-
24 cessor office, or any court, become obliga-

1 tions, entitlements, and instruments of the
2 Finance Facility.

3 “(C) TAXATION.—The succession to
4 assets, assumption of liabilities, conversion
5 of obligations and instruments, and effec-
6 tuation of any other transaction by the Fi-
7 nance Facility to carry out this subsection
8 shall not be treated as a taxable event
9 under the laws of any State, or any polit-
10 ical subdivision thereof.

11 “(b) POWERS.—Subject to the provisions of this Act,
12 and such regulations as the Director may prescribe, the
13 Finance Facility shall have the power—

14 “(1) to issue and service Federal Home Loan
15 Bank consolidated notes, consolidated bonds, con-
16 solidated debentures, and other consolidated obliga-
17 tions authorized under section 11, as agent for the
18 Federal Home Loan Banks;

19 “(2) to determine the amount, maturities, rate
20 of interest, terms, and other conditions of Federal
21 Home Loan Bank consolidated obligations;

22 “(3) to make contracts;

23 “(4) to determine the terms and conditions
24 under which the Finance Facility may indemnify the

1 members of the management board, as well as offi-
2 cers, employees, and agents of the Finance Facility;

3 “(5) to determine and implement the method-
4 ology for assessments of the Federal Home Loan
5 Banks to fund all of the expenses of the Finance
6 Facility; and

7 “(6) to exercise such incidental powers not in-
8 consistent with the provisions of this Act as are nec-
9 essary or advisable to carry out the purposes of the
10 Finance Facility.

11 “(c) MANAGEMENT OF THE FINANCE FACILITY.—

12 “(1) ESTABLISHMENT.—The management of
13 the Finance Facility shall be vested in a manage-
14 ment board composed of the president of each of the
15 Federal Home Loan Banks, ex officio.

16 “(2) DUTIES.—The management board of the
17 Finance Facility shall administer the affairs of the
18 Finance Facility in accordance with the provisions of
19 this section.

20 “(3) INTERIM APPOINTMENTS.—If the office of
21 the president of any Federal Home Loan Bank is
22 vacant, the person serving in such capacity on an
23 acting basis shall serve on the management board of
24 the Finance Facility until replaced by the next per-

1 son to fill the office of the president of that Federal
2 Home Loan Bank.

3 “(4) POWERS.—The management board of the
4 Finance Facility shall exercise such powers as may
5 be necessary or advisable to carry out this section,
6 including the power to—

7 “(A) set policies for the management and
8 operation of the Finance Facility;

9 “(B) approve a strategic business plan for
10 the Finance Facility;

11 “(C) review, adopt, and monitor annual
12 operation and capital budgets of the Finance
13 Facility;

14 “(D) constitute and perform the duties of
15 an audit committee, which to the extent pos-
16 sible shall operate consistent with—

17 “(i) the requirements established for
18 the Federal Home Loan Banks; and

19 “(ii) the requirements pertaining to
20 audit committee reports set forth in the
21 rules of the Securities and Exchange Com-
22 mission;

23 “(E) select, employ, determine the com-
24 pensation for, and assign the duties and func-

1 tions of the President of the Finance Facility,
2 who shall—

3 “(i) be the chief executive officer for
4 the Finance Facility and shall direct the
5 implementation of the policies adopted by
6 the management board of the Finance Fa-
7 cility;

8 “(ii) serve as a member of the Direc-
9 torate of the Financing Corporation, under
10 section 21(b)(1)(A); and

11 “(iii) serve as a member of the Direc-
12 torate of the Resolution Funding Corpora-
13 tion under section 21B(c)(1)(A);

14 “(F) provide for the review and approval
15 of all contracts of the Finance Facility;

16 “(G) have the exclusive authority to em-
17 ploy and contract for the services of an inde-
18 pendent, external auditor for the annual and
19 quarterly combined financial statements of the
20 Federal Home Loan Banks; and

21 “(H) select, evaluate, determine the com-
22 pensation of, and, as appropriate, replace the
23 internal auditor of the Finance Facility, who
24 may be removed only by vote of the manage-
25 ment board of the Finance Facility.

1 “(5) PAY.—The members of the management
2 board of the Finance Facility shall not receive com-
3 pensation for their services as members of the man-
4 agement board.

5 “(6) QUORUM REQUIREMENT.—

6 “(A) IN GENERAL.—No business of the Fi-
7 nance Facility may be conducted by the man-
8 agement board unless a quorum of the members
9 of the management board is present in person
10 or by telephone, or through action taken by
11 written consent executed by all of the members
12 of the management board.

13 “(B) NUMBER.—A quorum shall be a ma-
14 jority of the members of the management
15 board.

16 “(C) VOTE REQUIRED.—Action taken by
17 the management board shall be approved by a
18 majority of the members in attendance at any
19 meeting at which a quorum is present, unless
20 the management board adopts procedures re-
21 quiring a greater voting requirement.

22 “(7) APPOINTMENT OF OFFICERS AND ADOP-
23 TION OF RULES OF PROCEDURE.—The management
24 board of the Finance Facility shall—

1 “(A) select, from among the members of
 2 such board, a Chairperson and a Vice Chair-
 3 person; and

4 “(B) adopt bylaws and other rules of pro-
 5 cedure for actions before the management
 6 board, including—

7 “(i) the establishment of 1 or more
 8 committees to take action on behalf of the
 9 management board; and

10 “(ii) the delegation of powers of the
 11 management board to any committee or of-
 12 ficer of the Finance Facility.

13 “(d) STATUS.—Except to the extent expressly pro-
 14 vided in this Act, or in rules or regulations promulgated
 15 by the Director, or unless the context clearly indicates oth-
 16 erwise, the Finance Facility shall be accorded the same
 17 status as a Federal Home Loan Bank for purposes of any
 18 other provision of law (including section 13), other than
 19 section 1369F of the Federal Housing Enterprises Finan-
 20 cial Safety and Soundness Act of 1992.

21 “(e) DEFINITIONS.—As used in this section—

22 “(1) the term ‘effective time’ means the conclu-
 23 sion of the organizational meeting of the manage-
 24 ment board of the Finance Facility;

1 “(2) the term ‘Finance Facility’ includes a cor-
 2 poration, partnership, limited liability company, or
 3 joint venture that is jointly owned by the Federal
 4 Home Loan Banks;

5 “(3) the term ‘management board’ means the
 6 management board of the Finance Facility estab-
 7 lished in accordance with subsection (c); and

8 “(4) the term ‘predecessor office’ means the Of-
 9 fice of Finance established as a joint office of the
 10 Federal Home Loan Banks.”.

11 **SEC. 205. EXCLUSION FROM CERTAIN SECURITIES REPORT-**
 12 **ING REQUIREMENTS.**

13 (a) IN GENERAL.—The Federal Home Loan Banks
 14 shall be exempt from compliance with—

15 (1) sections 13(e), 14(a), 14(c), and 17A of the
 16 Securities Exchange Act of 1934, and related Com-
 17 mission regulations; and

18 (2) section 15 of the Securities Exchange Act
 19 of 1934, and related Commission regulations, with
 20 respect to transactions in the capital stock of a Fed-
 21 eral Home Loan Bank.

22 (b) MEMBER EXEMPTION.—The members of the
 23 Federal Home Loan Bank System shall be exempt from
 24 compliance with sections 13(d), 13(f), 13(g), 14(d), and
 25 16 of the Securities Exchange Act of 1934, and related

1 Commission regulations, with respect to ownership of or
2 transactions in the capital stock of the Federal Home
3 Loan Banks by such members.

4 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

5 (1) CAPITAL STOCK.—The capital stock issued
6 by each of the Federal Home Loan Banks under
7 section 6 of the Federal Home Loan Bank Act are—

8 (A) exempted securities, within the mean-
9 ing of section 3(a)(2) of the Securities Act of
10 1933; and

11 (B) exempted securities, within the mean-
12 ing of section 3(a)(12)(A) of the Securities Ex-
13 change Act of 1934.

14 (2) OTHER OBLIGATIONS.—The debentures,
15 bonds, and other obligations issued under section 11
16 of the Federal Home Loan Bank Act (12 U.S.C.
17 1431) are—

18 (A) exempted securities, within the mean-
19 ing of section 3(a)(2) of the Securities Act of
20 1933;

21 (B) government securities, within the
22 meaning of section 3(a)(42) of the Securities
23 Exchange Act of 1934; and

1 (C) government securities, within the
 2 meaning of section 2(a)(16) of the Investment
 3 Company Act of 1940.

4 (3) BROKERS AND DEALERS.—A person that
 5 effects transactions in the capital stock or other obli-
 6 gations of a Federal Home Loan Bank, for the ac-
 7 count of others or for his own account, as applicable,
 8 is excluded from the definition of—

9 (A) the term “government securities
 10 broker” under section 3(a)(43) of the Securities
 11 Exchange Act of 1934; and

12 (B) the term “government securities deal-
 13 er” under section 3(a)(44) of the Securities Ex-
 14 change Act of 1934.

15 (d) EXEMPTION FROM REPORTING REQUIRE-
 16 MENTS.—The Federal Home Loan Banks shall be exempt
 17 from periodic reporting requirements under the securities
 18 laws pertaining to the disclosure of—

19 (1) related party transactions that occur in the
 20 ordinary course of the business of the Banks with
 21 members; and

22 (2) the unregistered sales of equity securities.

23 (e) TENDER OFFERS.—Commission rules relating to
 24 tender offers shall not apply in connection with trans-

1 actions in the capital stock of the Federal Home Loan
2 Banks.

3 (f) REGULATIONS.—

4 (1) FINAL RULES.—Not later than 1 year after
5 the date of enactment of this Act, the Commission
6 shall issue final rules to implement this section and
7 the exemptions provided in this section.

8 (2) CONSIDERATIONS.—In issuing final regula-
9 tions under this section, the Commission shall con-
10 sider the distinctive characteristics of the Federal
11 Home Loan Banks when evaluating—

12 (A) the accounting treatment with respect
13 to the payment to the Resolution Funding Cor-
14 poration;

15 (B) the role of the combined financial
16 statements of the Federal Home Loan Banks;

17 (C) the accounting classification of redeem-
18 able capital stock; and

19 (D) the accounting treatment related to
20 the joint and several nature of the obligations
21 of the Banks.

22 (g) DEFINITIONS.—As used in this section—

23 (1) the terms “Bank”, “Federal Home Loan
24 Bank”, “member”, and “Federal Home Loan Bank
25 System” have the same meanings as in section 2 of

1 the Federal Home Loan Bank Act (12 U.S.C.
2 1422);

3 (2) the term “Commission” means the Securi-
4 ties and Exchange Commission; and

5 (3) the term “securities laws” has the same
6 meaning as in section 3(a)(47) of the Securities Ex-
7 change Act of 1934 (15 U.S.C. 78c(a)(47)).

8 **SEC. 206. MERGERS.**

9 Section 26 of the Federal Home Loan Bank Act (12
10 U.S.C. 1446) is amended—

11 (1) by striking “Whenever” and inserting “(a)
12 **IN GENERAL.**—Whenever”; and

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

14 “(b) **MERGERS AUTHORIZED.**—

15 “(1) **IN GENERAL.**—Any Federal Home Loan
16 Bank may, with the approval of the Director and of
17 the boards of directors of the Banks involved, merge
18 with another Bank.

19 “(2) **REGULATIONS REQUIRED.**—The Director
20 shall promulgate regulations establishing the condi-
21 tions and procedures for the consideration and ap-
22 proval of any voluntary merger described in para-
23 graph (1).”.

1 **SEC. 207. AUTHORITY TO REDUCE DISTRICTS.**

2 Section 3 of the Federal Home Loan Bank Act (12
3 U.S.C. 1423) is amended—

4 (1) by striking “As soon” and inserting “(a) **IN**
5 **GENERAL.**—As soon”; and

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

7 “(b) **AUTHORITY TO REDUCE DISTRICTS.**—Notwith-
8 standing subsection (a), the number of districts may be
9 reduced to a number less than 8—

10 “(1) pursuant to a voluntary merger between
11 Banks, as approved pursuant to section 26(b); or

12 “(2) pursuant to a decision by the Director to
13 liquidate a bank pursuant to section 1367 of the
14 Federal Housing Enterprises Financial Safety and
15 Soundness Act of 1992.”.

16 **SEC. 208. MANAGEMENT OF HOME LOAN BANKS.**

17 (a) **BOARD OF DIRECTORS.**—Section 7(a)(1) of the
18 Federal Home Loan Bank Act (12 U.S.C. 1427(a)(1)) is
19 amended to read as follows:

20 “(1) **IN GENERAL.**—Subject to paragraphs (2)
21 through (4), and except to the extent that action
22 under section 1377 of the Federal Housing Enter-
23 prises Financial Safety and Soundness Act of 1992
24 results in a lesser number, the management of each
25 Federal home loan bank shall be vested in a board
26 of 13 directors, or such other number as the board

1 of directors of each Federal home loan bank deter-
2 mines appropriate.”.

3 (b) APPORTIONMENT AMONG STATES; DESIGNATION
4 OF STATE LOCATION.—Section 7(c) of the Federal Home
5 Loan Bank Act (12 U.S.C. 1427(c)) is amended to read
6 s follows:

7 “(c) APPORTIONMENT AMONG STATES; DESIGNA-
8 TION OF STATE LOCATION.—The number of elective direc-
9 torships designated as representing the members located
10 in each separate State in a bank district shall be deter-
11 mined by the Director, in the approximate ratio of the per-
12 centage of the required stock, as determined pursuant to
13 regulation of the Director, of the members located in the
14 State at the end of the calendar year next preceding the
15 date of the election to the total required stock, as so deter-
16 mined, of all members of such bank at the end of such
17 year, except that in the case of each State, such number
18 shall not be less than 1 or 2, as determined by the board
19 of directors of each Federal home loan bank, and shall
20 be not more than 6.”.

1 **TITLE III—TRANSFER OF FUNC-**
2 **TIONS, PERSONNEL, AND**
3 **PROPERTY OF OFHEO AND**
4 **THE FEDERAL HOUSING FI-**
5 **NANCE BOARD**

6 **Subtitle A—OFHEO**

7 **SEC. 301. ABOLISHMENT OF OFHEO.**

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

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

19 (1) shall manage the employees of such Office
20 and provide for the payment of the compensation
21 and benefits of any such employee which accrue be-
22 fore the effective date of the transfer of such em-
23 ployee under section 303; and

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

1 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

2 The amendments made by title I and the abolishment of
3 the Office of Federal Housing Enterprise Oversight under
4 subsection (a) of this section may not be construed to af-
5 fect the status of any employee of such Office as an em-
6 ployee of an agency of the United States for purposes of
7 any other provision of law before the effective date of the
8 transfer of any such employee under section 303.

9 (d) USE OF PROPERTY AND SERVICES.—

10 (1) PROPERTY.—The Director may use the
11 property of the Office of Federal Housing Enter-
12 prise Oversight to perform functions which have
13 been transferred to the Director for such time as is
14 reasonable to facilitate the orderly transfer of func-
15 tions transferred under any other provision of this
16 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 shall—

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

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

7 (e) SAVINGS PROVISIONS.—

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

14 (A) arises under—

15 (i) the Federal Housing Enterprises
 16 Financial Safety and Soundness Act of
 17 1992;

18 (ii) the Federal National Mortgage
 19 Association Charter Act;

20 (iii) the Federal Home Loan Mort-
 21 gage Corporation Act;

22 (iv) or any other provision of law ap-
 23 plicable with respect to such Office; and

24 (B) existed on the day before the date of
 25 abolishment under subsection (a).

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 in connection with functions that are
5 transferred to the Director of the Federal Housing
6 Enterprise Regulatory Agency shall abate by reason
7 of the enactment of this Act, except that the Direc-
8 tor of the Federal Housing Enterprise Regulatory
9 Agency shall be substituted for the Director of the
10 Office of Federal Housing Enterprise Oversight as a
11 party to any such action or proceeding.

12 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
13 **REGULATIONS.**

14 (a) IN GENERAL.—All regulations, orders, and deter-
15 minations described in subsection (b) shall remain in ef-
16 fect according to the terms of such regulations, orders,
17 and determinations, and shall be enforceable by or against
18 the Director or the Secretary of Housing and Urban De-
19 velopment, as the case may be, until modified, terminated,
20 set aside, or superseded in accordance with applicable law
21 by the Director or the Secretary, as the case may be, any
22 court of competent jurisdiction, or operation of law.

23 (b) APPLICABILITY.—A regulation, order, or deter-
24 mination is described in this subsection if it—

1 (1) was issued, made, prescribed, or allowed to
2 become effective by—

3 (A) the Office of Federal Housing Enter-
4 prise Oversight;

5 (B) the Secretary of Housing and Urban
6 Development, and relates to the authority of
7 the Secretary under—

8 (i) the Federal Housing Enterprises
9 Financial Safety and Soundness Act of
10 1992;

11 (ii) the Federal National Mortgage
12 Association Charter Act, with respect to
13 the Federal National Mortgage Associa-
14 tion; or

15 (iii) the Federal Home Loan Mort-
16 gage Corporation Act, with respect to the
17 Federal Home Loan Mortgage Corpora-
18 tion; or

19 (C) a court of competent jurisdiction, and
20 relates to functions transferred by this Act; and

21 (2) is in effect on the effective date of the abol-
22 ishment under section 301(a).

1 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
2 **OFHEO.**

3 (a) TRANSFER.—Each employee of the Office of Fed-
4 eral Housing Enterprise Oversight shall be transferred to
5 the Agency for employment, not later than the effective
6 date of the abolishment under section 301(a), and such
7 transfer shall be deemed a transfer of function for pur-
8 poses of section 3503 of title 5, United States Code.

9 (b) GUARANTEED POSITIONS.—

10 (1) IN GENERAL.—Each employee transferred
11 under subsection (a) shall be guaranteed a position
12 with the same status, tenure, grade, and pay as that
13 held on the day immediately preceding the transfer.

14 (2) NO INVOLUNTARY SEPARATION OR REDUC-
15 TION.—An employee transferred under subsection
16 (a) holding a permanent position on the day imme-
17 diately preceding the transfer may not be involun-
18 tarily separated or reduced in grade or compensation
19 during the 12-month period beginning on the date of
20 transfer, except for cause, or, in the case of a tem-
21 porary employee, separated in accordance with the
22 terms of the appointment of the employee.

23 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
24 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

25 (1) IN GENERAL.—In the case of an employee
26 occupying a position in the excepted service or the

1 Senior Executive Service, any appointment authority
2 established under law or by regulations of the Office
3 of Personnel Management for filling such position
4 shall be transferred, subject to paragraph (2).

5 (2) DECLINE OF TRANSFER.—The Director
6 may decline a transfer of authority under paragraph
7 (1) to the extent that such authority relates to—

8 (A) a position excepted from the competi-
9 tive service because of its confidential, policy-
10 making, policy-determining, or policy-advocating
11 character; or

12 (B) a noncareer position in the Senior Ex-
13 ecutive Service (within the meaning of section
14 3132(a)(7) of title 5, United States Code).

15 (d) REORGANIZATION.—If the Director determines,
16 after the end of the 1-year period beginning on the effec-
17 tive date of the abolishment under section 301(a), that
18 a reorganization of the combined workforce is required,
19 that reorganization shall be deemed a major reorganiza-
20 tion for purposes of affording affected employee retire-
21 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
22 5, United States Code.

23 (e) EMPLOYEE BENEFIT PROGRAMS.—

24 (1) IN GENERAL.—Any employee of the Office
25 of Federal Housing Enterprise Oversight accepting

1 employment with the Agency as a result of a trans-
2 fer under subsection (a) may retain for 12 months
3 after the date on which such transfer occurs mem-
4 bership in any employee benefit program of the
5 Agency or the Office of Federal Housing Enterprise
6 Oversight of the Department of Housing and Urban
7 Development, as applicable, including insurance, to
8 which such employee belongs on the date of the abol-
9 ishment under section 301(a), if—

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

12 (B) the benefit or program is continued by
13 the Director of the Federal Housing Enterprise
14 Regulatory Agency.

15 (2) COST DIFFERENTIAL.—

16 (A) IN GENERAL.—The difference in the
17 costs between the benefits which would have
18 been provided by the Office of Federal Housing
19 Enterprise Oversight and those provided by this
20 section shall be paid by the Director.

21 (B) HEALTH INSURANCE.—If any em-
22 ployee elects to give up membership in a health
23 insurance program or the health insurance pro-
24 gram is not continued by the Director, the em-
25 ployee shall be permitted to select an alternate

1 Federal health insurance program not later
 2 than 30 days after the date of such election or
 3 notice, without regard to any other regularly
 4 scheduled open season.

5 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

6 Upon the effective date of its abolishment under sec-
 7 tion 301(a), all property of the Office of Federal Housing
 8 Enterprise Oversight shall transfer to the Agency.

9 **Subtitle B—Federal Housing**
 10 **Finance Board**

11 **SEC. 311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
 12 **NANCE BOARD.**

13 (a) IN GENERAL.—Effective at the end of the 1-year
 14 period beginning on the date of enactment of this Act, the
 15 Federal Housing Finance Board (in this subtitle referred
 16 to as the “Board”) is abolished.

17 (b) DISPOSITION OF AFFAIRS.—During the 1-year
 18 period beginning on the date of enactment of this Act, the
 19 Board, solely for the purpose of winding up the affairs
 20 of the Board—

21 (1) shall manage the employees of the Board
 22 and provide for the payment of the compensation
 23 and benefits of any such employee which accrue be-
 24 fore the effective date of the transfer of such em-
 25 ployee under section 313; and

1 (2) may take any other action necessary for the
2 purpose of winding up the affairs of the Board.

3 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

4 The amendments made by titles I and II and the abolish-
5 ment of the Board under subsection (a) may not be con-
6 strued to affect the status of any employee of the Board
7 as an employee of an agency of the United States for pur-
8 poses of any other provision of law before the effective
9 date of the transfer of any such employee under section
10 313.

11 (d) USE OF PROPERTY AND SERVICES.—

12 (1) PROPERTY.—The Director may use the
13 property of the Board to perform functions which
14 have been transferred to the Director, for such time
15 as is reasonable to facilitate the orderly transfer of
16 functions transferred under any other provision of
17 this Act or any amendment made by this Act to any
18 other provision of law.

19 (2) AGENCY SERVICES.—Any agency, depart-
20 ment, or other instrumentality of the United States,
21 and any successor to any such agency, department,
22 or instrumentality, which was providing supporting
23 services to the Board before the expiration of the 1-
24 year period under subsection (a) in connection with

1 functions that are transferred to the Director
2 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, a member of the Board, or any
14 other person, which—

15 (A) arises under the Federal Home Loan
16 Bank Act, or any other provision of law applica-
17 ble with respect to the Board; and

18 (B) existed on the day before the effective
19 date of the abolishment under subsection (a).

20 (2) CONTINUATION OF SUITS.—No action or
21 other proceeding commenced by or against the
22 Board in connection with functions that are trans-
23 ferred under this Act to the Director shall abate by
24 reason of the enactment of this Act, except that the
25 Director shall be substituted for the Board or any

1 member thereof as a party to any such action or
2 proceeding.

3 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**
4 **REGULATIONS.**

5 (a) IN GENERAL.—All regulations, orders, and deter-
6 minations described under subsection (b) shall remain in
7 effect according to the terms of such regulations, orders,
8 and determinations, and shall be enforceable by or against
9 the Director until modified, terminated, set aside, or su-
10 perseded in accordance with applicable law by the Direc-
11 tor, any court of competent jurisdiction, or operation of
12 law.

13 (b) APPLICABILITY.—A regulation, order, or deter-
14 mination is described under this subsection if it—

15 (1) was issued, made, prescribed, or allowed to
16 become effective by—

17 (A) the Board; or

18 (B) a court of competent jurisdiction, and
19 relates to functions transferred by this Act; and

20 (2) is in effect on the effective date of the abol-
21 ishment under section 311(a).

22 **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
23 **FEDERAL HOUSING FINANCE BOARD.**

24 (a) TRANSFER.—Each employee of the Board shall
25 be transferred to the Agency for employment, not later

1 than the effective date of the abolishment under section
2 311(a), and such transfer shall be deemed a transfer of
3 function for purposes of section 3503 of title 5, United
4 States Code.

5 (b) GUARANTEED POSITIONS.—

6 (1) IN GENERAL.—Each employee transferred
7 under subsection (a) shall be guaranteed a position
8 with the same status, tenure, grade, and pay as that
9 held on the day immediately preceding the transfer.

10 (2) NO INVOLUNTARY SEPARATION OR REDUC-
11 TION.—An employee holding a permanent position
12 on the day immediately preceding the transfer may
13 not be involuntarily separated or reduced in grade or
14 compensation during the 12-month period beginning
15 on the date of transfer, except for cause, or, if the
16 employee is a temporary employee, separated in ac-
17 cordance with the terms of the appointment of the
18 employee.

19 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
20 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

21 (1) IN GENERAL.—In the case of an employee
22 occupying a position in the excepted service or the
23 Senior Executive Service, any appointment authority
24 established under law or by regulations of the Office

1 of Personnel Management for filling such position
 2 shall be transferred, subject to paragraph (2).

3 (2) DECLINE OF TRANSFER.—The Director
 4 may decline a transfer of authority under paragraph
 5 (1) to the extent that such authority relates to—

6 (A) a position excepted from the competi-
 7 tive service because of its confidential, policy-
 8 making, policy-determining, or policy-advocating
 9 character; or

10 (B) a noncareer position in the Senior Ex-
 11 ecutive Service (within the meaning of section
 12 3132(a)(7) of title 5, United States Code).

13 (d) REORGANIZATION.—If the Director determines,
 14 after the end of the 1-year period beginning on the effec-
 15 tive date of the abolishment under section 311(a), that
 16 a reorganization of the combined workforce is required,
 17 that reorganization shall be deemed a major reorganiza-
 18 tion for purposes of affording affected employee retire-
 19 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
 20 5, United States Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee of the Board
 23 accepting employment with the Agency as a result of
 24 a transfer under subsection (a) may retain for 12
 25 months after the date on which such transfer occurs

1 membership in any employee benefit program of the
2 Agency or the Board, as applicable, including insur-
3 ance, to which such employee belongs on the effec-
4 tive date of the abolishment under section 311(a)
5 if—

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

8 (B) the benefit or program is continued by
9 the Director.

10 (2) COST DIFFERENTIAL.—

11 (A) IN GENERAL.—The difference in the
12 costs between the benefits which would have
13 been provided by the Board and those provided
14 by this section shall be paid by the Director.

15 (B) HEALTH INSURANCE.—If any em-
16 ployee elects to give up membership in a health
17 insurance program or the health insurance pro-
18 gram is not continued by the Director, the em-
19 ployee shall be permitted to select an alternate
20 Federal health insurance program not later
21 than 30 days after the date of such election or
22 notice, without regard to any other regularly
23 scheduled open season.

1 **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

2 Upon the effective date of the abolishment under sec-
3 tion 311(a), all property of the Board shall transfer to
4 the Agency.

5 **TITLE IV—STUDIES AND**
6 **REPORTS**

7 **SEC. 401. STUDY AND REPORT ON BASEL II AND ENTER-**
8 **PRISE DEBT.**

9 (a) STUDY.—The Board of Governors of the Federal
10 Reserve System shall conduct a study on the effects on
11 the regulated entities of the new Basel Capital Accord
12 (Basel II), as endorsed by the Group of Ten countries in
13 “The International Convergence of Capital Measurement
14 and Capital Standards: a Revised Framework”. The study
15 shall examine the debt of the regulated entities and the
16 capital classification on financial institutions that hold
17 such debt.

18 (b) REPORT.—The Chairman of the Board of Gov-
19 ernors of the Federal Reserve System shall submit a re-
20 port to Congress on the results of the study required by
21 this section not later than 2 years after the date of enact-
22 ment of this Act.

23 **SEC. 402. AFFORDABLE HOUSING AUDITS.**

24 The Inspector General of the Agency shall conduct
25 an annual audit of the affordable housing activities, pro-
26 grams, and partnerships of the Federal National Mort-

1 gage Association and the Federal Home Loan Mortgage
2 Corporation, to ensure that such activities, programs, and
3 partnerships support the affordable housing missions of
4 those enterprises.

5 **SEC. 403. REPORT ON INSURED DEPOSITORY INSTITUTION**
6 **HOLDINGS OF REGULATED ENTITY DEBT AND**
7 **MORTGAGE-BACKED SECURITIES.**

8 Not later than 2 years after the date of enactment
9 of this Act, the Director, the Secretary of the Treasury,
10 the Board of Governors of the Federal Reserve System,
11 the Board of Directors of the Federal Deposit Insurance
12 Corporation, and the National Credit Union Administra-
13 tion Board shall jointly submit a report to Congress re-
14 garding—

15 (1) the extent to which obligations issued or
16 guaranteed by the regulated entities (including mort-
17 gage-backed securities) are held by federally insured
18 depository institutions, including such extent by type
19 of institution and such extent relative to the capital
20 of the institution;

21 (2) the extent to which the unlimited holdings
22 by federally insured depository institutions of the ob-
23 ligations of the regulated entities could produce sys-
24 temic risk issues, particularly for the safety and
25 soundness of the banking system in the United

1 States, in the event of default or failure by a regu-
2 lated entity;

3 (3) the effects on the regulated entities, the
4 banking industry, and mortgage markets, if prudent
5 limits on the holdings of the obligations of a regu-
6 lated entity were placed on federally insured deposi-
7 tory institutions; and

8 (4) the extent to which alternative investments
9 are available to community depository institutions,
10 and the impact that such alternative investments
11 would have on the safety and soundness and capital
12 levels of such community depository institutions.

13 **SEC. 404. REPORT ON RISK-BASED CAPITAL LEVELS.**

14 (a) IN GENERAL.—The Director shall submit a re-
15 port to Congress at the end of each fiscal quarter regard-
16 ing—

17 (1) the risk-based capital levels for the regu-
18 lated entities under section 1361 of the Federal
19 Housing Enterprises Financial Safety and Sound-
20 ness Act of 1992, as amended by this Act, including
21 a description of the risk-based capital test under
22 that section 1361 and any assumptions of the Direc-
23 tor and factors used by the Director in establishing
24 the test; and

1 (2) the minimum and critical capital levels for
2 the regulated entities pursuant to sections 1362 and
3 1363, respectively, of that Act, as so amended.

4 (b) TIMING.—Each report under this section shall be
5 submitted not later than 60 days after the end of each
6 fiscal quarter.

7 **SEC. 405. REPORT ON RESOURCES AND ALLOCATIONS.**

8 The Comptroller General of the United States shall
9 submit a report to Congress annually, on a fiscal year
10 basis, regarding—

11 (1) the allocation of resources of the Agency by
12 the Director; and

13 (2) the level of assessments collected by the Di-
14 rector for the operation of the Agency.

15 **SEC. 406. STUDY AND REPORT ON GUARANTEE FEES.**

16 (a) ONGOING STUDY OF FEES.—The Director shall
17 conduct an ongoing study of fees charged by enterprises
18 for guaranteeing a mortgage.

19 (b) COLLECTION OF DATA.—The Director shall, by
20 regulation or order, establish procedures for the collection
21 of data from enterprises for purposes of this subsection,
22 including the format and the process for collection of such
23 data.

24 (c) REPORT TO CONGRESS.—The Director shall an-
25 nually submit a report to Congress on the results of the

1 study conducted under subsection (a), based on the aggre-
2 gated data collected under subsection (a) for the subject
3 year, regarding the amount of such fees and the criteria
4 used by the enterprises to determine such fees.

5 (d) CONTENTS OF REPORTS.—The reports required
6 under subsection (c) shall identify and analyze—

7 (1) the factors considered in determining the
8 amount of the guarantee fees charged;

9 (2) the total revenue earned by the enterprises
10 from guarantee fees;

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

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

15 (5) an analysis of any increase or decrease in
16 guarantee fees from the preceding year;

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

20 (7) a breakdown of guarantee fees charged
21 based on asset size of the originator and the number
22 of loans sold or transferred to an enterprise.

23 (e) PROTECTION OF INFORMATION.—Nothing in this
24 section may be construed to require or authorize the Di-

1 rector to publicly disclose information that is confidential
2 or proprietary.

3 **SEC. 407. REPORT ON CONFORMING LOAN LIMITS.**

4 The Comptroller General of the United States shall
5 submit a report to Congress on whether raising the loan
6 limits under section 302(b) of the Federal National Mort-
7 gage Association Act (12 U.S.C. 1717(b)) and section
8 305(a) of the Federal Home Loan Mortgage Corporation
9 Act (12 U.S.C. 1454(a)) would promote the availability
10 of affordable housing.

11 **SEC. 408. REVIEWS AND STUDIES RELATING TO ENTER-**
12 **PRISES AND RELATED FOUNDATIONS.**

13 (a) ANNUAL REVIEWS.—The Director shall annually
14 conduct a review of the Freddie Mac Foundation and the
15 Office of Corporate Giving of the Federal National Mort-
16 gage Corporation (formerly known as the “Fannie Mae
17 Foundation”), or any successors thereto, to ensure that
18 such entities are not engaged in impermissible lobbying
19 activities.

20 (b) STUDY ON LOBBYING ACTIVITIES TO OBSTRUCT
21 SPECIAL EXAMINATION.—The Director shall conduct a
22 study to determine whether any actions or inactions by
23 an OFHEO-designated executive officer of a Government-
24 Sponsored Enterprise, that was an employee of the Gov-
25 ernment-Sponsored-Enterprise during the period of review

1 of the OFHEO Special Examination of Accounting Poli-
2 cies and Practices of Fannie Mae for the years 1998
3 through mid-2004 and remains an employee of such Gov-
4 ernment-Sponsored Enterprise as of the date of enactment
5 of this Act, were intended to obstruct the Special Exam-
6 ination by OFHEO.

7 (c) REPORT.—The Director shall submit a report to
8 Congress on the results of the reviews and study required
9 under subsections (a) and (b), not later than 60 days after
10 the date of enactment of this Act, and annually thereafter
11 with respect to the reviews conducted under subsection
12 (a).

13 **SEC. 409. RECOMMENDATIONS.**

14 Each report submitted pursuant to this title shall in-
15 clude specific recommendations, if any, of appropriate
16 policies, limitations, regulations, legislation, or other ac-
17 tions to deal appropriately and effectively with the issues
18 addressed by such report.

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