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114TH CONGRESS
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# H. R. 4913

To ensure the sufficient capitalization of Fannie Mae and Freddie Mac and prevent any further bailout of such enterprises by the Federal Government, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2016

Mr. MULVANEY introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To ensure the sufficient capitalization of Fannie Mae and Freddie Mac and prevent any further bailout of such enterprises by the Federal Government, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Housing Finance Restructuring Act of 2016''.

**SEC. 2. REPAYMENT OF LIQUIDATION PREFERENCE.**

(a) REPAYMENT AND REDEMPTION.—Not later than the expiration of the 60-day period beginning on the date

of the enactment of this Act, the Secretary of the Treasury shall modify the Senior Preferred Stock Purchase Agreement for each enterprise to provide as follows:

(1) DEEMED REPAYMENT IN FULL.—Effective on the date of the date of the enactment of this Act, the liquidation preference on the Variable Liquidation Preference Senior Preferred Stocks of each enterprise is reduced to zero.

(2) REDEMPTION OF VARIABLE LIQUIDATION PREFERENCE SENIOR PREFERRED STOCK.—Pursuant to paragraph (1), the Variable Liquidation Preference Senior Preferred Stock of each enterprise shall be redeemed upon the date of the modification of the Senior Preferred Stock Purchase Agreement required under this subsection and, upon and after such redemption—

(A) shares of such Variable Liquidation Preference Senior Preferred Stock of each enterprise shall no longer be deemed to be outstanding and all rights of the holders thereof, as such holders, shall cease;

(B) shares of redeemed Variable Liquidation Preference Senior Preferred Stock of each enterprise shall no longer have the status of authorized, issued, or outstanding shares;

(C) the Senior Preferred Stock Purchase Agreement for each enterprise shall be terminated, except that sections 2.1 and 2.2 of such Agreement, as modified by the Second Amendment to the Senior Preferred Stock Purchase Agreement for the enterprise (dated December 24, 2009), shall remain in force and effect; and

(D) the Department of the Treasury shall retain any dividend payments made by an enterprise to the Department of the Treasury before the date of the enactment of this Act.

(b) NO RESUMPTION OF PERIODIC COMMITMENT FEE.—The Department of the Treasury shall not require the enterprises to pay a periodic commitment fee, as described in section 3.2 of the Senior Preferred Stock Purchase Agreements.

(c) EXERCISE OF WARRANTS FOR COMMON STOCK.—Notwithstanding subsection (a)(2)(C) of this section, upon the enactment of this Act, the Department of the Treasury shall exercise the warrants for the purchase of common stock of the enterprises provided to the Department under the Senior Preferred Stock Purchase Agreements.

**SEC. 3. REBUILDING OF ENTERPRISE RETAINED CAPITAL.**

(a) APPLICABILITY.—Notwithstanding any other provision of law or any provision of the Senior Preferred Stock Purchase Agreement for an enterprise, the provisions of this section shall apply to each enterprise, including during the term of any conservatorship of an enterprise pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617).

(b) USE OF NET INCOME FOR CAPITAL RESERVES.—At any time that an enterprise is not fully capitalized (as such term is defined in subsection (c)(3))—

(1) section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (42 U.S.C. 4567) shall not apply to the enterprise; and

(2) the Director shall require that, in each fiscal year, the net income of each enterprise, as determined by the Director, for such fiscal year shall be retained and maintained by the enterprise as retained capital reserves.

(c) FULL CAPITALIZATION.—

(1) ALLOCATION TO HOUSING TRUST FUND AND CAPITAL MAGNET FUND.—At any time that an enterprise is fully capitalized, as determined by the Director, subsection (b) shall not apply to the enter-

prise and section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 shall apply to the enterprise.

(2) DIVIDENDS.—An enterprise may not, unless the enterprise is fully capitalized, declare or pay any dividend (whether common or preferred) with respect to any equity interests of the enterprise.

(3) DEFINITION.—For purposes of this subsection, the term ''fully capitalized'' means, with respect to an enterprise, that the enterprise maintains an amount of total capital, as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502), that is equal to or exceeds 10 percent of the risk-weighted assets of the enterprise.

(d) CAPITAL RESTORATION PLAN.—

(1) REQUIREMENT.—Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, the Director shall prepare and submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a capital restoration plan for each enterprise that complies with section 1369C(a) of the Federal

Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4622(a)).

(2) ANNUAL UPDATES.—After submission of a capital restoration plan for an enterprise pursuant to paragraph (1), during any period that an enterprise remains not fully capitalized (as such term is defined in subsection (c)(3)), the Director shall update the plan for such enterprise on an annual basis and submit such updated plan to the Committees referred to in paragraph (1), together with a report describing any progress made toward restoring the capital of the enterprise during the preceding 1-year period.

(3) PUBLIC AVAILABILITY.—The Director shall make publicly available each capital restoration plan prepared pursuant to paragraph (1) and each updated plan prepared pursuant to paragraph (2).

(e) TERMINATION OF CONSERVATORSHIPS.—The Director shall terminate the conservatorship of an enterprise under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) at such time that the enterprise attains, as determined by the Director, an amount of capital that is equal to or exceeds 5 percent of the risk-weighted assets of the enterprise.

(f) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act, the Director shall issue regulations necessary to carry out this section and the amendments made by this section.

**SEC. 4. PRIVATE RIGHT OF ACTION.**

(a) IN GENERAL.—Any individual or entity adversely affected or aggrieved by action or inaction on the part of the Director or the Secretary of the Treasury in violation of this Act or title XIII of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) may commence a civil action for prospective injunctive relief against the Director or the Secretary, as appropriate.

(b) EQUITABLE RELIEF.—In any action under this section, the court may award appropriate equitable relief, including temporary, preliminary, or permanent injunctive relief.

(c) COSTS.—In any action under this section, the court shall award the costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing plaintiff.

(d) JURISDICTION.—The district courts of the United States shall have jurisdiction over proceedings commenced pursuant to this section and shall exercise the same with-

out regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided for by law.

**SEC. 5. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the Federal Housing Finance Agency, in the capacity of such Director and in the capacity as conservator of an enterprise pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), as the case may be.

(2) ENTERPRISE.—The term ''enterprise'' has the meaning given such term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

(3) NET INCOME.—The term ''net income'' means, with respect to an enterprise, income after deduction of all associated expenses, as calculated in accordance with generally accepted accounting principles.

(4) RISK-WEIGHTED.—The term ''risk-weighted'' means, with respect to the assets of an enterprise, that the amount of any such assets that are

single family housing mortgages meeting the requirements of section 618(a)(1)(B) of the Resolution Trust Corporation, Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. 1831n note) are calculated using a risk-weighting of 50 percent, in the same manner required under subsection (a)(1)(A) of such section 618 with respect to single family housing loans.

(5) SENIOR PREFERRED STOCK PURCHASE AGREEMENT.—The term ''Senior Preferred Stock Purchase Agreement'' means, with respect to an enterprise, the Amended and Restated Senior Preferred Stock Purchase Agreements, dated September 26, 2008, amended May 6, 2009, further amended December 24, 2009, and further amended August 17, 2012, between the Department of the Treasury and such enterprise.

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