

# COMMITTEE PRINT

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Federal Housing Finance Regulatory Reform Act of  
4 2008”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for  
6 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 Finance Agency.

Sec. 102. Duties and authorities of Director.

Sec. 103. Federal Housing Finance Oversight 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. Review of and authority over enterprise assets and liabilities.

Sec. 110. Risk-based capital requirements.

Sec. 111. Minimum capital levels.

Sec. 112. Registration under the securities laws.

Sec. 113. Prohibition and withholding of executive compensation.

Sec. 114. Limit on golden parachutes.

Sec. 115. Reporting of fraudulent loans.

### Subtitle B—Improvement of Mission Supervision

Sec. 121. Transfer of program approval and housing goal oversight.

Sec. 122. Assumption by Director of certain other HUD responsibilities.

Sec. 123. Review of enterprise products.

Sec. 124. Conforming loan limits.

Sec. 125. Annual housing report.

Sec. 126. Public use database.

Sec. 127. Reporting of mortgage data.

Sec. 128. Revision of housing goals.

- Sec. 129. Duty to serve underserved markets.
- Sec. 130. Monitoring and enforcing compliance with housing goals.
- Sec. 131. Affordable housing programs.
- Sec. 132. Transfer and rights of certain HUD employees.

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.

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- Sec. 151. Cease and desist proceedings.
- Sec. 152. Temporary cease and desist proceedings.
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- Sec. 154. Enforcement and jurisdiction.
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- 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. Recognition of distinctions between the enterprises and the Federal Home Loan Banks.
- Sec. 202. Directors.
- Sec. 203. Definitions.
- Sec. 204. Agency oversight of Federal Home Loan Banks.
- Sec. 205. Housing goals.
- Sec. 206. Community development financial institutions.
- Sec. 207. Sharing of information among Federal Home Loan Banks.
- Sec. 208. Exclusion from certain securities reporting requirements.
- Sec. 209. Mergers.
- Sec. 210. Authority to reduce districts.
- Sec. 211. Community financial institution members.
- Sec. 212. Public use data base; reports to Congress.
- Sec. 213. Semiannual reports.
- Sec. 214. Liquidation or reorganization of a Federal Home Loan Bank.
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- Sec. 216. Technical and conforming amendments.

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

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- 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—HOPE FOR HOMEOWNERS

- Sec. 401. Short title.
- Sec. 402. Establishment of HOPE for Homeowners Program.
- Sec. 403. Fiduciary duty of servicers of pooled residential mortgage loans.

TITLE V—STUDY AND REPORTS

- Sec. 501. Study and report on guarantee fees.

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”;

9 (2) in paragraph (14), by striking “Office of  
10 Federal Housing Enterprise Oversight of the De-  
11 partment of Housing and Urban Development” and  
12 inserting “Federal Housing Finance Agency”;

13 (3) by redesignating paragraphs (16) through  
14 (19) as paragraphs (22) through (25), respectively;

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

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

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

5                   “(B) the Federal Home Loan Mortgage  
6                   Corporation and any affiliate thereof; and

7                   “(C) any Federal Home Loan Bank.”;

8           (5) by striking paragraph (13);

9           (6) by redesignating paragraph (7) as para-  
10          graph (13);

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

13          (8) by redesignating paragraphs (8) through  
14          (10) as paragraphs (15) through (17), respectively;

15          (9) in paragraph (5)—

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

17          and

18                   (B) by striking “Office of Federal Housing  
19                   Enterprise Oversight of the Department of  
20                   Housing and Urban Development” and insert-  
21                   ing “Federal Housing Finance Agency”;

22          (10) by redesignating paragraph (6) as para-  
23          graph (10);

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

1           (12) by inserting after paragraph (7), as redese-  
2           ignated, the following:

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

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

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

14                           “(i) in the opinion of the Agency—

15                                   “(I) the regulated entity is not  
16                                   likely to be able to pay the obligations  
17                                   of the regulated entity in the normal  
18                                   course of business; or

19                                   “(II) the regulated entity has in-  
20                                   curred or is likely to incur losses that  
21                                   will deplete all or substantially all of  
22                                   its capital; and

23                                   “(ii) there is no reasonable prospect  
24                                   that the capital of the regulated entity will  
25                                   be replenished.”;

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

3           “(2) AGENCY; DIRECTOR.—The term—

4                   “(A) ‘Agency’ means the Federal Housing  
5           Finance Agency established under section 1311;  
6           and

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

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

11                   “(A) the Federal National Mortgage Asso-  
12          ciation Charter Act;

13                   “(B) the Federal Home Loan Mortgage  
14          Corporation Act; and

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

16           “(4) BOARD.—The term ‘Board’ means the  
17          Federal Housing Finance Oversight Board estab-  
18          lished under section 1313A.”;

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

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

23                   “(A) any director, officer, employee, or  
24          controlling stockholder of, or agent for, a regu-  
25          lated entity;

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

12           “(C) any independent contractor for a reg-  
13          ulated entity (including any attorney, appraiser,  
14          or accountant), if—

15                   “(i) the independent contractor know-  
16                   ingly or recklessly participates in—

17                           “(I) any violation of any law or  
18                           regulation;

19                           “(II) any breach of fiduciary  
20                           duty; or

21                           “(III) any unsafe or unsound  
22                           practice; and

23                   “(ii) such violation, breach, or prac-  
24                   tice caused, or is likely to cause, more than

1 a minimal financial loss to, or a significant  
2 adverse effect on, the regulated entity;

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

6 “(E) the Office of Finance.

7 “(12) OFFICE OF FINANCE.—The term ‘Office  
8 of Finance’ means the Office of Finance of the Fed-  
9 eral Home Loan Bank System (or any successor  
10 thereto).

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

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

18 “(26) VIOLATION.—The term ‘violation’ in-  
19 cludes any action (alone or in combination with an-  
20 other or others) for or toward causing, bringing  
21 about, participating in, counseling, or aiding or abet-  
22 ting a violation.”.

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



1 (1) the term “Agency” means the Federal  
2 Housing Finance Agency;

3 (2) the term “Director” means the Director of  
4 the Agency; and

5 (3) the terms “enterprise”, “regulated entity”,  
6 and “authorizing statutes” have the same meanings  
7 as in section 1303 of the Federal Housing Enter-  
8 prises Financial Safety and Soundness Act of 1992,  
9 as amended by this Act.

10 **TITLE I—REFORM OF**  
11 **REGULATION OF ENTERPRISES**  
12 **Subtitle A—Improvement of Safety**  
13 **and Soundness Supervision**

14 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**  
15 **NANCE AGENCY.**

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

20 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**  
21 **FINANCE AGENCY.**

22 “(a) ESTABLISHMENT.—There is established the  
23 Federal Housing Finance Agency, which shall be an inde-  
24 pendent agency of the Federal Government.

1           “(b) GENERAL SUPERVISORY AND REGULATORY AU-  
2 THORITY.—

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

6           “(2) AUTHORITY OVER FANNIE MAE, FREDDIE  
7 MAC, THE FEDERAL HOME LOAN BANKS, AND THE  
8 OFFICE OF FINANCE.—The Director shall have gen-  
9 eral regulatory authority over each regulated entity  
10 and the Office of Finance, and shall exercise such  
11 general regulatory authority, including such duties  
12 and authorities set forth under section 1313, to en-  
13 sure that the purposes of this Act, the authorizing  
14 statutes, and any other applicable law are carried  
15 out.

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

20 **“SEC. 1312. DIRECTOR.**

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

24           “(b) APPOINTMENT; TERM.—

1           “(1) APPOINTMENT.—The Director shall be ap-  
2           pointed by the President, by and with the advice and  
3           consent of the Senate, from among individuals who  
4           are citizens of the United States, have a dem-  
5           onstrated understanding of financial management or  
6           oversight, and have a demonstrated understanding  
7           of capital markets, including the mortgage securities  
8           markets and housing finance.

9           “(2) TERM.—The Director shall be appointed  
10          for a term of 5 years, unless removed before the end  
11          of such term for cause by the President.

12          “(3) VACANCY.—A vacancy in the position of  
13          Director that occurs before the expiration of the  
14          term for which a Director was appointed shall be  
15          filled in the manner established under paragraph  
16          (1), and the Director appointed to fill such vacancy  
17          shall be appointed only for the remainder of such  
18          term.

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

23          “(5) TRANSITIONAL PROVISION.—Notwith-  
24          standing paragraphs (1) and (2), during the period  
25          beginning on the effective date of the Federal Hous-

1       ing Finance Regulatory Reform Act of 2008, and  
2       ending on the date on which the Director is ap-  
3       pointed and confirmed, the person serving as the Di-  
4       rector of the Office of Federal Housing Enterprise  
5       Oversight of the Department of Housing and Urban  
6       Development on that effective date shall act for all  
7       purposes as, and with the full powers of, the Direc-  
8       tor.

9       “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-  
10      TERPRISE REGULATION.—

11             “(1) IN GENERAL.—The Agency shall have a  
12      Deputy Director of the Division of Enterprise Regu-  
13      lation, who shall be designated by the Director from  
14      among individuals who are citizens of the United  
15      States, have a demonstrated understanding of finan-  
16      cial management or oversight, and have a dem-  
17      onstrated understanding of mortgage securities mar-  
18      kets and housing finance.

19             “(2) FUNCTIONS.—The Deputy Director of the  
20      Division of Enterprise Regulation shall have such  
21      functions, powers, and duties with respect to the  
22      oversight of the enterprises as the Director shall pre-  
23      scribe.

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

1           “(1) IN GENERAL.—The Agency shall have a  
2 Deputy Director of the Division of Federal Home  
3 Loan Bank Regulation, who shall be designated by  
4 the Director from among individuals who are citi-  
5 zens of the United States, have a demonstrated un-  
6 derstanding of financial management or oversight,  
7 and have a demonstrated understanding of the Fed-  
8 eral Home Loan Bank System and housing finance.

9           “(2) FUNCTIONS.—The Deputy Director of the  
10 Division of Federal Home Loan Bank Regulation  
11 shall have such functions, powers, and duties with  
12 respect to the oversight of the Federal Home Loan  
13 Banks as the Director shall prescribe.

14           “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND  
15 GOALS.—

16           “(1) IN GENERAL.—The Agency shall have a  
17 Deputy Director for Housing Mission and Goals,  
18 who shall be designated by the Director from among  
19 individuals who are citizens of the United States,  
20 and have a demonstrated understanding of the hous-  
21 ing markets and housing finance.

22           “(2) FUNCTIONS.—The Deputy Director for  
23 Housing Mission and Goals shall have such func-  
24 tions, powers, and duties with respect to the over-  
25 sight of the housing mission and goals of the enter-

1       prises, and with respect to oversight of the housing  
2       finance and community and economic development  
3       mission of the Federal Home Loan Banks, as the  
4       Director shall prescribe.

5           “(3) CONSIDERATIONS.—In exercising such  
6       functions, powers, and duties, the Deputy Director  
7       for Housing Mission and Goals shall consider the  
8       differences between the enterprises and the Federal  
9       Home Loan Banks, including those described in sec-  
10      tion 1313(f).

11          “(f) ACTING DIRECTOR.—In the event of the death,  
12      resignation, sickness, or absence of the Director, the  
13      President shall designate either the Deputy Director of the  
14      Division of Enterprise Regulation, the Deputy Director of  
15      the Division of Federal Home Loan Bank Regulation, or  
16      the Deputy Director for Housing Mission and Goals, to  
17      serve as acting Director until the return of the Director,  
18      or the appointment of a successor pursuant to subsection  
19      (b).

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

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

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

1           “(3) have served as an executive officer or di-  
2           rector of any regulated entity or entity-affiliated  
3           party at any time during the 3-year period preceding  
4           the date of appointment or designation of such indi-  
5           vidual as Director or Deputy Director, as applica-  
6           ble.”.

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

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

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

12           “(a) DUTIES.—

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

15                           “(A) to oversee the prudential operations  
16 of each regulated entity; and

17                           “(B) to ensure that—

18                                   “(i) each regulated entity operates in  
19 a safe and sound manner, including main-  
20 tenance of adequate capital and internal  
21 controls;

22                                   “(ii) the operations and activities of  
23 each regulated entity foster liquid, effi-  
24 cient, competitive, and resilient national  
25 housing finance markets (including activi-

1 ties relating to mortgages on housing for  
2 low- and moderate-income families involv-  
3 ing a reasonable economic return that may  
4 be less than the return earned on other ac-  
5 tivities);

6 “(iii) each regulated entity complies  
7 with this title and the rules, regulations,  
8 guidelines, and orders issued under this  
9 title and the authorizing statutes;

10 “(iv) each regulated entity carries out  
11 its statutory mission only through activi-  
12 ties that are authorized under and con-  
13 sistent with this title and the authorizing  
14 statutes; and

15 “(v) the activities of each regulated  
16 entity and the manner in which such regu-  
17 lated entity is operated are consistent with  
18 the public interest.

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

21 “(A) to review and, if warranted based on  
22 the principal duties described in paragraph (1),  
23 reject any acquisition or transfer of a control-  
24 ling interest in a regulated entity; and



1           “(B) to exercise such incidental powers as  
2           may be necessary or appropriate to fulfill the  
3           duties and responsibilities of the Director in the  
4           supervision and regulation of each regulated en-  
5           tity.

6           “(b) DELEGATION OF AUTHORITY.—The Director  
7           may delegate to officers and employees of the Agency any  
8           of the functions, powers, or duties of the Director, as the  
9           Director considers appropriate.

10          “(c) LITIGATION AUTHORITY.—

11           “(1) IN GENERAL.—In enforcing any provision  
12           of this title, any regulation or order prescribed under  
13           this title, or any other provision of law, rule, regula-  
14           tion, or order, or in any other action, suit, or pro-  
15           ceeding to which the Director is a party or in which  
16           the Director is interested, and in the administration  
17           of conservatorships and receiverships, the Director  
18           may act in the Director’s own name and through the  
19           Director’s own attorneys.

20           “(2) SUBJECT TO SUIT.—Except as otherwise  
21           provided by law, the Director shall be subject to suit  
22           (other than suits on claims for money damages) by  
23           a regulated entity with respect to any matter under  
24           this title or any other applicable provision of law,  
25           rule, order, or regulation under this title, in the

1 United States district court for the judicial district  
2 in which the regulated entity has its principal place  
3 of business, or in the United States District Court  
4 for the District of Columbia, and the Director may  
5 be served with process in the manner prescribed by  
6 the Federal Rules of Civil Procedure.”.

7 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY  
8 AND RECOMMENDATIONS.—Section 111 of Public Law  
9 93–495 (12 U.S.C. 250) is amended by striking “the Fed-  
10 eral Housing Finance Board” and inserting “the Director  
11 of the Federal Housing Finance Agency”.

12 **SEC. 103. FEDERAL HOUSING FINANCE OVERSIGHT BOARD.**

13 (a) IN GENERAL.—The Federal Housing Enterprises  
14 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
15 4501 et seq.) is amended by inserting after section 1313  
16 the following:

17 **“SEC. 1313A. FEDERAL HOUSING FINANCE OVERSIGHT**  
18 **BOARD.**

19 “(a) IN GENERAL.—There is established the Federal  
20 Housing Finance Oversight Board, which shall advise the  
21 Director with respect to overall strategies and policies in  
22 carrying out the duties of the Director under this title.

23 “(b) LIMITATIONS.—The Board may not exercise any  
24 executive authority, and the Director may not delegate to

1 the Board any of the functions, powers, or duties of the  
2 Director.

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

5 “(1) 1 member shall be the Secretary of the  
6 Treasury;

7 “(2) 1 member shall be the Secretary of Hous-  
8 ing and Urban Development;

9 “(3) 1 member shall be the Chairman of the  
10 Securities and Exchange Commission; and

11 “(4) 1 member shall be the Director, who shall  
12 serve as the Chairperson of the Board.

13 “(d) MEETINGS.—

14 “(1) IN GENERAL.—The Board shall meet upon  
15 notice by the Director, but in no event shall the  
16 Board meet less frequently than once every 3  
17 months.

18 “(2) SPECIAL MEETINGS.—Either the Secretary  
19 of the Treasury, the Secretary of Housing and  
20 Urban Development, or the Chairman of the Securi-  
21 ties and Exchange Commission may, upon giving  
22 written notice to the Director, require a special  
23 meeting of the Board.

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

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

3           “(2) any material deficiencies in the conduct of  
4 the operations of the regulated entities;

5           “(3) the overall operational status of the regu-  
6 lated entities;

7           “(4) an evaluation of the performance of the  
8 regulated entities in carrying out their respective  
9 missions;

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

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

15       (b) ANNUAL REPORT OF THE DIRECTOR.—Section  
16 1319B(a) of the Federal Housing Enterprises Financial  
17 Safety and Soundness Act of 1992 (12 U.S.C. 4521(a))  
18 is amended—

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

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

23           (3) in paragraph (3), by striking “; and” and  
24 inserting a semicolon;

1 (4) in paragraph (4), by striking “1994.” and  
2 inserting “1994; and”; and

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

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

6 “(A) the safety and soundness of the regu-  
7 lated entities;

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

10 “(C) the overall operational status of the  
11 regulated entities; and

12 “(D) an evaluation of the performance of  
13 the regulated entities in carrying out their re-  
14 spective missions;

15 “(6) operations, resources, and performance of  
16 the Agency; and

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

19 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
20 **LATED ENTITIES.**

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

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

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

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

5           (4) in subsection (a)—

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

9           “(a) REGULAR AND SPECIAL REPORTS.—

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

17           (B) in paragraph (2)—

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

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

23           and

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

1           “(c) PENALTIES FOR FAILURE TO MAKE RE-  
2 PORTS.—

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

5                   “(A) to fail to make, transmit, or publish  
6 any report or obtain any information required  
7 by the Director under this section, section  
8 309(k) of the Federal National Mortgage Asso-  
9 ciation Charter Act, or section 307(c) of the  
10 Federal Home Loan Mortgage Corporation Act,  
11 within the period of time specified in such pro-  
12 vision of law or otherwise by the Director; or

13                   “(B) to submit or publish any false or mis-  
14 leading report or information under this sec-  
15 tion.

16           “(2) PENALTIES.—

17                   “(A) TIER 1.—

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

23                                   “(I) the subject regulated entity  
24 maintains procedures reasonably  
25 adapted to avoid any inadvertent error

1 and the violation was unintentional  
2 and a result of such an error; or

3 “(II) the violation was an inad-  
4 vertent transmittal or publication of  
5 any report which was minimally late.

6 “(ii) BURDEN OF PROOF.—For pur-  
7 poses of this subparagraph, the regulated  
8 entity shall have the burden of proving  
9 that the error was inadvertent or that a re-  
10 port was inadvertently transmitted or pub-  
11 lished late.

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

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



1           reckless disregard for the accuracy of any such  
2           information or report.

3           “(3) ASSESSMENTS.—Any penalty imposed  
4           under this subsection shall be in lieu of a penalty  
5           under section 1376, but shall be assessed and col-  
6           lected by the Director in the manner provided in sec-  
7           tion 1376 for penalties imposed under that section,  
8           and any such assessment (including the determina-  
9           tion of the amount of the penalty) shall be otherwise  
10          subject to the provisions of section 1376.

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

18          (b) CONFORMING AMENDMENT.—The Federal Hous-  
19          ing Enterprises Financial Safety and Soundness Act of  
20          1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-  
21          tions 1327 and 1328.

1 **SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**  
2 **CONTRACT FOR REVIEWS OF REGULATED EN-**  
3 **TITIES.**

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

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

10 (2) in subsection (b)—

11 (A) by inserting “of a regulated entity”  
12 after “under this section”; and

13 (B) by striking “to determine the condition  
14 of an enterprise for the purpose of ensuring its  
15 financial safety and soundness” and inserting  
16 “or appropriate”;

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

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

22 (5) by inserting after subsection (c) the fol-  
23 lowing:

24 “(d) INSPECTOR GENERAL.—There shall be within  
25 the Agency an Inspector General, who shall be appointed

1 in accordance with section 3(a) of the Inspector General  
2 Act of 1978.”.

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

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

10 “(1) APPLICABILITY.—This section shall apply  
11 with respect to any position of examiner, accountant,  
12 economist, and specialist in financial markets and in  
13 technology at the Agency, with respect to supervision  
14 and regulation of the regulated entities, that is in  
15 the competitive service.

16 “(2) APPOINTMENT AUTHORITY.—The Director  
17 may appoint candidates to any position described in  
18 paragraph (1)—

19 “(A) in accordance with the statutes, rules,  
20 and regulations governing appointments in the  
21 excepted service; and

22 “(B) notwithstanding any statutes, rules,  
23 and regulations governing appointments in the  
24 competitive service.”.

1 (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—  
2 Section 11 of the Inspector General Act of 1978 (5 U.S.C.  
3 11 App.) is amended—

4 (1) in paragraph (1), by inserting “, the Direc-  
5 tor of the Federal Housing Finance Agency” after  
6 “Social Security Administration”; and

7 (2) in paragraph (2), by inserting “, the Fed-  
8 eral Housing Finance Agency” after “Social Secu-  
9 rity Administration”.

10 (d) AUTHORITY TO CONTRACT FOR REVIEWS OF  
11 REGULATED ENTITIES.—Section 1319 of the Federal  
12 Housing Enterprises Financial Safety and Soundness Act  
13 of 1992 (12 U.S.C. 4519) is amended—

14 (1) in the section heading, by striking “**ENTER-**  
15 **PRISES BY RATING ORGANIZATION**” and insert-  
16 ing “**REGULATED ENTITIES**”; and

17 (2) by striking “enterprises” and inserting  
18 “regulated entities”.

19 **SEC. 106. ASSESSMENTS.**

20 Section 1316 of the Federal Housing Enterprises Fi-  
21 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
22 4516) is amended—

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

1           “(a) ANNUAL ASSESSMENTS.—The Director shall es-  
2     tablish and collect from the regulated entities annual as-  
3     sessments in an amount not exceeding the amount suffi-  
4     cient to provide for reasonable costs (including administra-  
5     tive costs) and expenses of the Agency, including—

6           “(1) the expenses of any examinations under  
7     section 1317 of this Act and under section 20 of the  
8     Federal Home Loan Bank Act;

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

11          “(3) such amounts in excess of actual expenses  
12    for any given year as deemed necessary by the Di-  
13    rector to maintain a working capital fund in accord-  
14    ance with subsection (e); and

15          “(4) the windup of the affairs of the Office of  
16    Federal Housing Enterprise Oversight and the Fed-  
17    eral Housing Finance Board under title III of the  
18    Federal Housing Finance Regulatory Reform Act of  
19    2008.”.

20           (2) in subsection (b)—

21           (A) in the subsection heading, by striking  
22           “ENTERPRISES” and inserting “REGULATED  
23           ENTITIES”;

24           (B) by realigning paragraph (2) two ems  
25           from the left margin, so as to align the left

1 margin of such paragraph with the left margins  
2 of paragraph (1);

3 (C) in paragraph (1)—

4 (i) by striking “Each enterprise” and  
5 inserting “Each regulated entity”;

6 (ii) by striking “each enterprise” and  
7 inserting “each regulated entity”; and

8 (iii) by striking “both enterprises”  
9 and inserting “all of the regulated enti-  
10 ties”;

11 (D) in paragraph (3)—

12 (i) in subparagraph (B), by striking  
13 “subparagraph (A)” and inserting “clause  
14 (i)”;

15 (ii) by redesignating subparagraphs  
16 (A), (B), and (C) as clauses (i), (ii), and  
17 (iii), respectively, and realigning such  
18 clauses, as so redesignated, so as to be in-  
19 dented 6 ems from the left margin;

20 (iii) by striking the matter that pre-  
21 cedes clause (i), as so redesignated, and in-  
22 serting the following:

23 “(3) DEFINITION OF TOTAL ASSETS.—For pur-  
24 poses of this section, the term ‘total assets’ means  
25 as follows:

1           “(A) ENTERPRISES.—With respect to an  
2           enterprise, the sum of—”; and

3                   (iv) by adding at the end the following  
4           new subparagraph:

5           “(B) FEDERAL HOME LOAN BANKS.—With  
6           respect to a Federal Home Loan Bank, the  
7           total assets of the Bank, as determined by the  
8           Director in accordance with generally accepted  
9           accounting principles.”;

10           (E) by redesignating paragraphs (2) and  
11           (3) as paragraphs (3) and (4), respectively; and

12           (F) by inserting after paragraph (1) the  
13           following:

14           “(2) SEPARATE TREATMENT OF FEDERAL  
15           HOME LOAN BANK AND ENTERPRISE ASSESS-  
16           MENTS.—Assessments collected from the enterprises  
17           shall not exceed the amounts sufficient to provide  
18           for the costs and expenses described in subsection  
19           (a) relating to the enterprises. Assessments collected  
20           from the Federal Home Loan Banks shall not ex-  
21           ceed the amounts sufficient to provide for the costs  
22           and expenses described in subsection (a) relating to  
23           the Federal Home Loan Banks.”;

24           (3) by striking subsection (c) and inserting the  
25           following:

1 “(c) INCREASED COSTS OF REGULATION.—

2 “(1) INCREASE FOR INADEQUATE CAPITALIZA-  
3 TION.—The semiannual payments made pursuant to  
4 subsection (b) by any regulated entity that is not  
5 classified (for purposes of subtitle B) as adequately  
6 capitalized may be increased, as necessary, in the  
7 discretion of the Director to pay additional esti-  
8 mated costs of regulation of the regulated entity.

9 “(2) ADJUSTMENT FOR ENFORCEMENT ACTIVI-  
10 TIES.—The Director may adjust the amounts of any  
11 semiannual payments for an assessment under sub-  
12 section (a) that are to be paid pursuant to sub-  
13 section (b) by a regulated entity, as necessary in the  
14 discretion of the Director, to ensure that the costs  
15 of enforcement activities under this Act for a regu-  
16 lated entity are borne only by such regulated entity.

17 “(3) ADDITIONAL ASSESSMENT FOR DEFICI-  
18 CIENCIES.—If at any time, as a result of increased  
19 costs of regulation of a regulated entity that is not  
20 classified (for purposes of subtitle B) as adequately  
21 capitalized or as the result of supervisory or enforce-  
22 ment activities under this Act for a regulated entity,  
23 the amount available from any semiannual payment  
24 made by such regulated entity pursuant to sub-  
25 section (b) is insufficient to cover the costs of the



1 Agency with respect to such entity, the Director may  
2 make and collect from such regulated entity an im-  
3 mediate assessment to cover the amount of such de-  
4 ficiency for the semiannual period. If, at the end of  
5 any semiannual period during which such an assess-  
6 ment is made, any amount remains from such as-  
7 sessment, such remaining amount shall be deducted  
8 from the assessment for such regulated entity for  
9 the following semiannual period.”;

10 (4) in subsection (d), by striking “If” and in-  
11 sserting “Except with respect to amounts collected  
12 pursuant to subsection (a)(3), if”; and

13 (5) by striking subsections (e) through (g) and  
14 inserting the following:

15 “(e) WORKING CAPITAL FUND.—At the end of each  
16 year for which an assessment under this section is made,  
17 the Director shall remit to each regulated entity any  
18 amount of assessment collected from such regulated entity  
19 that is attributable to subsection (a)(3) and is in excess  
20 of the amount the Director deems necessary to maintain  
21 a working capital fund.

22 “(f) TREATMENT OF ASSESSMENTS.—

23 “(1) DEPOSIT.—Amounts received by the Di-  
24 rector from assessments under this section may be  
25 deposited by the Director in the manner provided in

1 section 5234 of the Revised Statutes of the United  
2 States (12 U.S.C. 192) for monies deposited by the  
3 Comptroller of the Currency.

4 “(2) NOT GOVERNMENT FUNDS.—The amounts  
5 received by the Director from any assessment under  
6 this section shall not be construed to be Government  
7 or public funds or appropriated money.

8 “(3) NO APPORTIONMENT OF FUNDS.—Not-  
9 withstanding any other provision of law, the  
10 amounts received by the Director from any assess-  
11 ment under this section shall not be subject to ap-  
12 portionment for the purpose of chapter 15 of title  
13 31, United States Code, or under any other author-  
14 ity.

15 “(4) USE OF FUNDS.—The Director may use  
16 any amounts received by the Director from assess-  
17 ments under this section for compensation of the Di-  
18 rector and other employees of the Agency and for all  
19 other expenses of the Director and the Agency.

20 “(5) AVAILABILITY OF OVERSIGHT FUND  
21 AMOUNTS.—Notwithstanding any other provision of  
22 law, any amounts remaining in the Federal Housing  
23 Enterprises Oversight Fund established under this  
24 section (as in effect before the effective date of the  
25 Federal Housing Finance Regulatory Reform Act of

1       2008, and any amounts remaining from assessments  
2       on the Federal Home Loan Banks pursuant to sec-  
3       tion 18(b) of the Federal Home Loan Bank Act (12  
4       U.S.C. 1438(b)), shall, upon such effective date, be  
5       treated for purposes of this subsection as amounts  
6       received from assessments under this section.

7               “(6) TREASURY INVESTMENTS.—

8               “(A) AUTHORITY.—The Director may re-  
9       quest the Secretary of the Treasury to invest  
10       such portions of amounts received by the Direc-  
11       tor from assessments paid under this section  
12       that, in the Director’s discretion, are not re-  
13       quired to meet the current working needs of the  
14       Agency.

15              “(B) GOVERNMENT OBLIGATIONS.—Pursu-  
16       ant to a request under subparagraph (A), the  
17       Secretary of the Treasury shall invest such  
18       amounts in Government obligations guaranteed  
19       as to principal and interest by the United  
20       States with maturities suitable to the needs of  
21       Agency and bearing interest at a rate deter-  
22       mined by the Secretary of the Treasury taking  
23       into consideration current market yields on out-  
24       standing marketable obligations of the United  
25       States of comparable maturity.

1 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

2 “(1) FINANCIAL OPERATING PLANS AND FORE-  
3 CASTS.—The Director shall provide to the Director  
4 of the Office of Management and Budget copies of  
5 the Director’s financial operating plans and fore-  
6 casts, as prepared by the Director in the ordinary  
7 course of the Agency’s operations, and copies of the  
8 quarterly reports of the Agency’s financial condition  
9 and results of operations, as prepared by the Direc-  
10 tor in the ordinary course of the Agency’s oper-  
11 ations.

12 “(2) FINANCIAL STATEMENTS.—The Agency  
13 shall prepare annually a statement of—

14 “(A) assets and liabilities and surplus or  
15 deficit;

16 “(B) income and expenses; and

17 “(C) sources and application of funds.

18 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The  
19 Agency shall implement and maintain financial man-  
20 agement systems that—

21 “(A) comply substantially with Federal fi-  
22 nancial management systems requirements and  
23 applicable Federal accounting standards; and

24 “(B) use a general ledger system that ac-  
25 counts for activity at the transaction level.

1           “(4) ASSERTION OF INTERNAL CONTROLS.—

2           The Director shall provide to the Comptroller Gen-  
3           eral of the United States an assertion as to the ef-  
4           fectiveness of the internal controls that apply to fi-  
5           nancial reporting by the Agency, using the standards  
6           established in section 3512(c) of title 31, United  
7           States Code.

8           “(5) RULE OF CONSTRUCTION.—This sub-

9           section may not be construed as implying any obliga-  
10          tion on the part of the Director to consult with or  
11          obtain the consent or approval of the Director of the  
12          Office of Management and Budget with respect to  
13          any report, plan, forecast, or other information re-  
14          ferred to in paragraph (1) or any jurisdiction or  
15          oversight over the affairs or operations of the Agen-  
16          cy.

17          “(h) AUDIT OF AGENCY.—

18          “(1) IN GENERAL.—The Comptroller General  
19          shall annually audit the financial transactions of the  
20          Agency in accordance with the United States gen-  
21          erally accepted government auditing standards as  
22          may be prescribed by the Comptroller General of the  
23          United States. The audit shall be conducted at the  
24          place or places where accounts of the Agency are  
25          normally kept. The representatives of the Govern-

1       ment Accountability Office shall have access to the  
2       personnel and to all books, accounts, documents, pa-  
3       pers, records (including electronic records), reports,  
4       files, and all other papers, automated data, things,  
5       or property belonging to or under the control of or  
6       used or employed by the Agency pertaining to its fi-  
7       nancial transactions and necessary to facilitate the  
8       audit, and such representatives shall be afforded full  
9       facilities for verifying transactions with the balances  
10      or securities held by depositories, fiscal agents, and  
11      custodians. All such books, accounts, documents,  
12      records, reports, files, papers, and property of the  
13      Agency shall remain in possession and custody of  
14      the Agency. The Comptroller General may obtain  
15      and duplicate any such books, accounts, documents,  
16      records, working papers, automated data and files,  
17      or other information relevant to such audit without  
18      cost to the Comptroller General and the Comptroller  
19      General's right of access to such information shall  
20      be enforceable pursuant to section 716(c) of title 31,  
21      United States Code.

22           “(2) REPORT.—The Comptroller General shall  
23      submit to the Congress a report of each annual  
24      audit conducted under this subsection. The report to  
25      the Congress shall set forth the scope of the audit

1 and shall include the statement of assets and liabil-  
2 ities and surplus or deficit, the statement of income  
3 and expenses, the statement of sources and applica-  
4 tion of funds, and such comments and information  
5 as may be deemed necessary to inform Congress of  
6 the financial operations and condition of the Agency,  
7 together with such recommendations with respect  
8 thereto as the Comptroller General may deem advis-  
9 able. A copy of each report shall be furnished to the  
10 President and to the Agency at the time submitted  
11 to the Congress.

12 “(3) ASSISTANCE AND COSTS.—For the purpose  
13 of conducting an audit under this subsection, the  
14 Comptroller General may, in the discretion of the  
15 Comptroller General, employ by contract, without re-  
16 gard to section 5 of title 41, United States Code,  
17 professional services of firms and organizations of  
18 certified public accountants for temporary periods or  
19 for special purposes. Upon the request of the Comp-  
20 troller General, the Director of the Agency shall  
21 transfer to the Government Accountability Office  
22 from funds available, the amount requested by the  
23 Comptroller General to cover the full costs of any  
24 audit and report conducted by the Comptroller Gen-  
25 eral. The Comptroller General shall credit funds

1 transferred to the account established for salaries  
2 and expenses of the Government Accountability Of-  
3 fice, and such amount shall be available upon receipt  
4 and without fiscal year limitation to cover the full  
5 costs of the audit and report.”.

6 **SEC. 107. REGULATIONS AND ORDERS.**

7 Section 1319G of the Federal Housing Enterprises  
8 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
9 4526) is amended—

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

12 “(a) **AUTHORITY.**—The Director shall issue any reg-  
13 ulations, guidelines, or orders necessary to carry out the  
14 duties of the Director under this title or the authorizing  
15 statutes, and to ensure that the purposes of this title and  
16 the authorizing statutes are accomplished.”; and

17 (2) by striking subsection (c).

18 **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS**

19 **STANDARDS.**

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



1 **“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS**  
2 **STANDARDS.**

3 “(a) STANDARDS.—The Director shall establish  
4 standards, by regulation or guideline, for each regulated  
5 entity relating to—

6 “(1) adequacy of internal controls and informa-  
7 tion systems taking into account the nature and  
8 scale of business operations;

9 “(2) independence and adequacy of internal  
10 audit systems;

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

12 “(4) management of market risk, including  
13 standards that provide for systems that accurately  
14 measure, monitor, and control market risks and, as  
15 warranted, that establish limitations on market risk;

16 “(5) adequacy and maintenance of liquidity and  
17 reserves;

18 “(6) management of asset and investment port-  
19 folio growth;

20 “(7) investments and acquisitions of assets by  
21 a regulated entity, to ensure that they are consistent  
22 with the purposes of this title and the authorizing  
23 statutes;

24 “(8) overall risk management processes, includ-  
25 ing adequacy of oversight by senior management and  
26 the board of directors and of processes and policies

1 to identify, measure, monitor, and control material  
2 risks, including reputational risks, and for adequate,  
3 well-tested business resumption plans for all major  
4 systems with remote site facilities to protect against  
5 disruptive events;

6 “(9) management of credit and counterparty  
7 risk, including systems to identify concentrations of  
8 credit risk and prudential limits to restrict exposure  
9 of the regulated entity to a single counterparty or  
10 groups of related counterparties;

11 “(10) maintenance of adequate records, in ac-  
12 cordance with consistent accounting policies and  
13 practices that enable the Director to evaluate the fi-  
14 nancial condition of the regulated entity; and

15 “(11) such other operational and management  
16 standards as the Director determines to be appro-  
17 priate.

18 “(b) FAILURE TO MEET STANDARDS.—

19 “(1) PLAN REQUIREMENT.—

20 “(A) IN GENERAL.—If the Director deter-  
21 mines that a regulated entity fails to meet any  
22 standard established under subsection (a)—

23 “(i) if such standard is established by  
24 regulation, the Director shall require the  
25 regulated entity to submit an acceptable

1 plan to the Director within the time al-  
2 lowed under subparagraph (C); and

3 “(ii) if such standard is established by  
4 guideline, the Director may require the  
5 regulated entity to submit a plan described  
6 in clause (i).

7 “(B) CONTENTS.—Any plan required  
8 under subparagraph (A) shall specify the ac-  
9 tions that the regulated entity will take to cor-  
10 rect the deficiency. If the regulated entity is  
11 undercapitalized, the plan may be a part of the  
12 capital restoration plan for the regulated entity  
13 under section 1369C.

14 “(C) DEADLINES FOR SUBMISSION AND  
15 REVIEW.—The Director shall by regulation es-  
16 tablish deadlines that—

17 “(i) provide the regulated entities with  
18 reasonable time to submit plans required  
19 under subparagraph (A), and generally re-  
20 quire a regulated entity to submit a plan  
21 not later than 30 days after the Director  
22 determines that the entity fails to meet  
23 any standard established under subsection  
24 (a); and

1                   “(ii) require the Director to act on  
2                   plans expeditiously, and generally not later  
3                   than 30 days after the plan is submitted.

4                   “(2) REQUIRED ORDER UPON FAILURE TO SUB-  
5                   MIT OR IMPLEMENT PLAN.—If a regulated entity  
6                   fails to submit an acceptable plan within the time al-  
7                   lowed under paragraph (1)(C), or fails in any mate-  
8                   rial respect to implement a plan accepted by the Di-  
9                   rector, the following shall apply:

10                   “(A) REQUIRED CORRECTION OF DEFICI-  
11                   CIENCY.—The Director shall, by order, require  
12                   the regulated entity to correct the deficiency.

13                   “(B) OTHER AUTHORITY.—The Director  
14                   may, by order, take one or more of the fol-  
15                   lowing actions until the deficiency is corrected:

16                   “(i) Prohibit the regulated entity from  
17                   permitting its average total assets (as such  
18                   term is defined in section 1316(b)) during  
19                   any calendar quarter to exceed its average  
20                   total assets during the preceding calendar  
21                   quarter, or restrict the rate at which the  
22                   average total assets of the entity may in-  
23                   crease from one calendar quarter to an-  
24                   other.

25                   “(ii) Require the regulated entity—

1                   “(I) in the case of an enterprise,  
2                   to increase its ratio of core capital to  
3                   assets.

4                   “(II) in the case of a Federal  
5                   Home Loan Bank, to increase its  
6                   ratio of total capital (as such term is  
7                   defined in section 6(a)(5) of the Fed-  
8                   eral Home Loan Bank Act (12 U.S.C.  
9                   1426(a)(5)) to assets.

10                  “(iii) Require the regulated entity to  
11                  take any other action that the Director de-  
12                  termines will better carry out the purposes  
13                  of this section than any of the actions de-  
14                  scribed in this subparagraph.

15                  “(3) MANDATORY RESTRICTIONS.—In com-  
16                  plying with paragraph (2), the Director shall take  
17                  one or more of the actions described in clauses (i)  
18                  through (iii) of paragraph (2)(B) if—

19                         “(A) the Director determines that the reg-  
20                         ulated entity fails to meet any standard pre-  
21                         scribed under subsection (a);

22                         “(B) the regulated entity has not corrected  
23                         the deficiency; and

24                         “(C) during the 18-month period before  
25                         the date on which the regulated entity first

1 failed to meet the standard, the entity under-  
2 went extraordinary growth, as defined by the  
3 Director.

4 “(c) OTHER ENFORCEMENT AUTHORITY NOT AF-  
5 FECTED.—The authority of the Director under this sec-  
6 tion is in addition to any other authority of the Director.”.

7 **SEC. 109. REVIEW OF AND AUTHORITY OVER ENTERPRISE**  
8 **ASSETS AND LIABILITIES.**

9 (a) IN GENERAL.—Subtitle B of the Federal Housing  
10 Enterprises Financial Safety and Soundness Act of 1992  
11 (12 U.S.C. 4611 et seq.) is amended—

12 (1) by striking the subtitle designation and  
13 heading and inserting the following:

14 **“Subtitle B—Required Capital Lev-**  
15 **els for Regulated Entities, Spe-**  
16 **cial Enforcement Powers, and**  
17 **Reviews of Assets and Liabil-**  
18 **ities”;**

19 and

20 (2) by adding at the end the following new sec-  
21 tion:

22 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**  
23 **ITIES.**

24 “(a) IN GENERAL.—The Director shall, by regula-  
25 tion, establish standards by which the portfolio holdings,

1 or rate of growth of the portfolio holdings, of the enter-  
2 prises will be deemed to be consistent with the mission  
3 and the safe and sound operations of the enterprises. In  
4 developing such standards, the Director shall consider—

5 “(1) the size or growth of the mortgage market;

6 “(2) the need for the portfolio in maintaining li-  
7 quidity or stability of the secondary mortgage mar-  
8 ket (including the market for the mortgage-backed  
9 securities the enterprises issue);

10 “(3) the need for an inventory of mortgages in  
11 connection with securitizations;

12 “(4) the need for the portfolio to directly sup-  
13 port the affordable housing mission of the enter-  
14 prises;

15 “(5) the liquidity needs of the enterprises;

16 “(6) any potential risks posed to the enterprises  
17 by the nature of the portfolio holdings; and

18 “(7) any additional factors that the Director  
19 determines to be necessary to carry out the purpose  
20 under the first sentence of this subsection to estab-  
21 lish standards for assessing whether the portfolio  
22 holdings are consistent with the mission and safe  
23 and sound operations of the enterprises.

24 “(b) TEMPORARY ADJUSTMENTS.—The Director  
25 may, by order, make temporary adjustments to the estab-

1 lished standards for an enterprise or both enterprises,  
2 such as during times of economic distress or market dis-  
3 ruption.

4       “(c) **AUTHORITY TO REQUIRE DISPOSITION OR AC-**  
5 **QUISITION.**—The Director shall monitor the portfolio of  
6 each enterprise. Pursuant to subsection (a) and notwith-  
7 standing the capital classifications of the enterprises, the  
8 Director may, by order, require an enterprise, under such  
9 terms and conditions as the Director determines to be ap-  
10 propriate, to dispose of or acquire any asset, if the Direc-  
11 tor determines that such action is consistent with the pur-  
12 poses of this Act or any of the authorizing statutes.”.

13       (b) **REGULATIONS.**—Not later than the expiration of  
14 the 180-day period beginning on the effective date of this  
15 Act, the Director shall issue regulations pursuant to sec-  
16 tion 1369E(a) of the Federal Housing Enterprises Finan-  
17 cial Safety and Soundness Act of 1992 (as added by sub-  
18 section (a) of this section) establishing the portfolio hold-  
19 ings standards under such section.

20 **SEC. 110. RISK-BASED CAPITAL REQUIREMENTS.**

21       (a) **IN GENERAL.**—Section 1361 of the Federal  
22 Housing Enterprises Financial Safety and Soundness Act  
23 of 1992 (12 U.S.C. 4611) is amended to read as follows:



1 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**  
2 **ENTITIES.**

3 “(a) IN GENERAL.—

4 “(1) ENTERPRISES.—The Director shall, by  
5 regulation, establish risk-based capital requirements  
6 for the enterprises to ensure that the enterprises op-  
7 erate in a safe and sound manner, maintaining suffi-  
8 cient capital and reserves to support the risks that  
9 arise in the operations and management of the en-  
10 terprises.

11 “(2) FEDERAL HOME LOAN BANKS.—The Di-  
12 rector shall establish risk-based capital standards  
13 under section 6 of the Federal Home Loan Bank  
14 Act for the Federal Home Loan Banks.

15 “(b) NO LIMITATION.—Nothing in this section shall  
16 limit the authority of the Director to require other reports  
17 or undertakings, or take other action, in furtherance of  
18 the responsibilities of the Director under this Act.”

19 (b) FEDERAL HOME LOAN BANKS RISK-BASED CAP-  
20 ITAL.—Section 6(a)(3) of the Federal Home Loan Bank  
21 Act (12 U.S.C. 1426(a)(3)) is amended—

22 (1) by striking subparagraph (A) and inserting  
23 the following:

24 “(A) RISK-BASED CAPITAL STANDARDS.—  
25 The Director shall, by regulation, establish risk-  
26 based capital standards for the Federal Home

1           Loan Banks to ensure that the Federal Home  
2           Loan Banks operate in a safe and sound man-  
3           ner, with sufficient permanent capital and re-  
4           serves to support the risks that arise in the op-  
5           erations and management of the Federal Home  
6           Loans Banks.”; and

7           (2) in subparagraph (B), by striking “(A)(ii)”  
8           and inserting “(A)”.

9   **SEC. 111. MINIMUM CAPITAL LEVELS.**

10          Section 1362 of the Federal Housing Enterprises Fi-  
11          nancial Safety and Soundness Act of 1992 (12 U.S.C.  
12          4612) is amended—

13           (1) in subsection (a), by striking “IN GEN-  
14           ERAL” and inserting “ENTERPRISES”; and

15           (2) by striking subsection (b) and inserting the  
16           following:

17           “(b) FEDERAL HOME LOAN BANKS.—For purposes  
18           of this subtitle, the minimum capital level for each Federal  
19           Home Loan Bank shall be the minimum capital required  
20           to be maintained to comply with the leverage requirement  
21           for the bank established under section 6(a)(2) of the Fed-  
22           eral Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

23           “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-  
24           ITAL LEVELS.—Notwithstanding subsections (a) and (b)  
25           and notwithstanding the capital classifications of the regu-

1 lated entities, the Director may, by regulations issued  
2 under section 1319G, establish a minimum capital level  
3 for the enterprises, for the Federal Home Loan Banks,  
4 or for both the enterprises and the banks, that is higher  
5 than the level specified in subsection (a) for the enter-  
6 prises or the level specified in subsection (b) for the Fed-  
7 eral Home Loan Banks, to the extent needed to ensure  
8 that the regulated entities operate in a safe and sound  
9 manner.

10 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-  
11 CREASE.—

12 “(1) IN GENERAL.—Notwithstanding sub-  
13 sections (a) and (b) and any minimum capital level  
14 established pursuant to subsection (c), the Director  
15 may, by order, increase the minimum capital level  
16 for a regulated entity on a temporary basis when the  
17 Director determines that such an increase is nec-  
18 essary for the safe and sound operations of a regu-  
19 lated entity.

20 “(2) REVIEW AND RESCISSION.—

21 “(A) IN GENERAL.—Not less frequently  
22 than once every 6 months, the Director shall re-  
23 view any temporary minimum capital level es-  
24 tablished under paragraph (1).

1           “(B) RESCISSION.—If the Director deter-  
2           mines that the circumstances or facts no longer  
3           justify any temporary minimum capital level es-  
4           tablished under paragraph (1), the Director  
5           shall rescind such temporary increase.

6           “(3) REGULATIONS REQUIRED.—The Director  
7           shall issue regulations establishing—

8           “(A) standards for the imposition of a  
9           temporary increase in minimum capital under  
10          paragraph (1); and

11          “(B) the standards and procedures that  
12          the Director will use to make the determination  
13          referred to in paragraph (2).

14          “(e) AUTHORITY TO ESTABLISH ADDITIONAL CAP-  
15          ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR  
16          PURPOSES.—The Director may, at any time by order or  
17          regulation, establish such capital or reserve requirements  
18          with respect to any product or activity of a regulated enti-  
19          ty, as the Director considers appropriate to ensure that  
20          the regulated entity operates in a safe and sound manner,  
21          with sufficient capital and reserves to support the risks  
22          that arise in the operations and management of the regu-  
23          lated entity.

24          “(f) PERIODIC REVIEW.—The Director shall periodi-  
25          cally review the amount of core capital maintained by the

1 enterprises, the amount of capital retained by the Federal  
2 Home Loan Banks, and the minimum capital levels estab-  
3 lished for such regulated entities pursuant to this sec-  
4 tion.”.

5 **SEC. 112. REGISTRATION UNDER THE SECURITIES LAWS.**

6 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
7 et seq.) is amended by adding at the end the following:

8 **“SEC. 38. FEDERAL NATIONAL MORTGAGE ASSOCIATION,**  
9 **FEDERAL HOME LOAN MORTGAGE CORPORA-**  
10 **TION, FEDERAL HOME LOAN BANKS.**

11 “(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION  
12 AND FEDERAL HOME LOAN MORTGAGE CORPORATION.—  
13 No class of equity securities of the Federal National Mort-  
14 gage Association or the Federal Home Loan Mortgage  
15 Corporation shall be treated as an exempted security for  
16 purposes of section 12, 13, 14, or 16.

17 “(b) FEDERAL HOME LOAN BANKS.—

18 “(1) REGISTRATION.—Each Federal Home  
19 Loan Bank shall register a class of its common  
20 stock under section 12(g), not later than 120 days  
21 after the date of enactment of the Federal Housing  
22 Finance Regulatory Reform Act of 2008, and shall  
23 thereafter maintain such registration and be treated  
24 for purposes of this title as an ‘issuer’, the securities  
25 of which are required to be registered under section

1 12, regardless of the number of members holding  
2 such stock at any given time.

3 “(2) STANDARDS RELATING TO AUDIT COMMIT-  
4 TEES.—For purposes of section 10A(m), each Fed-  
5 eral Home Loan Bank shall be treated as if each  
6 class of its common stock were listed on the national  
7 securities exchange on which the common stock of  
8 the Federal National Mortgage Association and the  
9 common stock of the Federal Home Loan Mortgage  
10 Association, respectively, is listed, and shall comply  
11 with the rules issued at the direction of the Commis-  
12 sion by such national securities exchange under sec-  
13 tion 10A(m).

14 “(c) DEFINITIONS.—For purposes of this section, the  
15 following definitions shall apply:

16 “(1) FEDERAL HOME LOAN BANK; MEMBER.—  
17 The terms ‘Federal Home Loan Bank’ and ‘mem-  
18 ber’, have the same meanings as in section 2 of the  
19 Federal Home Loan Bank Act.

20 “(2) FEDERAL NATIONAL MORTGAGE ASSOCIA-  
21 TION.—The term ‘Federal National Mortgage Asso-  
22 ciation’ means the corporation created by the Fed-  
23 eral National Mortgage Association Charter Act.

24 “(3) FEDERAL HOME LOAN MORTGAGE COR-  
25 PORATION.—The term ‘Federal Home Loan Mort-

1 gage Corporation’ means the corporation created by  
2 the Federal Home Loan Mortgage Corporation  
3 Act.”.

4 **SEC. 113. PROHIBITION AND WITHHOLDING OF EXECUTIVE**  
5 **COMPENSATION.**

6 (a) IN GENERAL.—Section 1318 of the Federal  
7 Housing Enterprises Financial Safety and Soundness Act  
8 of 1992 (12 U.S.C. 4518) is amended—

9 (1) in the section heading, by striking “**OF EX-**  
10 **CESSIVE**” and inserting “**AND WITHHOLDING OF**  
11 **EXECUTIVE**”;

12 (2) by redesignating subsection (b) as sub-  
13 section (d); and

14 (3) by inserting after subsection (a) the fol-  
15 lowing:

16 “(b) FACTORS.—In making any determination under  
17 subsection (a), the Director may take into consideration  
18 any factors the Director considers relevant, including any  
19 wrongdoing on the part of the executive officer, and such  
20 wrongdoing shall include any fraudulent act or omission,  
21 breach of trust or fiduciary duty, violation of law, rule,  
22 regulation, order, or written agreement, and insider abuse  
23 with respect to the regulated entity. The approval of an  
24 agreement or contract pursuant to section 309(d)(3)(B)  
25 of the Federal National Mortgage Association Charter Act

1 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the  
2 Federal Home Loan Mortgage Corporation Act (12 U.S.C.  
3 1452(h)(2)) shall not preclude the Director from making  
4 any subsequent determination under subsection (a).

5 “(c) WITHHOLDING OF COMPENSATION.—In car-  
6 rying out subsection (a), the Director may require a regu-  
7 lated entity to withhold any payment, transfer, or dis-  
8 bursement of compensation to an executive officer, or to  
9 place such compensation in an escrow account, during the  
10 review of the reasonableness and comparability of com-  
11 pensation.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) FANNIE MAE.—Section 309(d) of the Fed-  
14 eral National Mortgage Association Charter Act (12  
15 U.S.C. 1723a(d)) is amended by adding at the end  
16 the following new paragraph:

17 “(4) Notwithstanding any other provision of this sec-  
18 tion, the corporation shall not transfer, disburse, or pay  
19 compensation to any executive officer, or enter into an  
20 agreement with such executive officer, without the ap-  
21 proval of the Director, for matters being reviewed under  
22 section 1318 of the Federal Housing Enterprises Finan-  
23 cial Safety and Soundness Act of 1992 (12 U.S.C.  
24 4518).”.



1           (2) FREDDIE MAC.—Section 303(h) of the Fed-  
2           eral Home Loan Mortgage Corporation Act (12  
3           U.S.C. 1452(h)) is amended by adding at the end  
4           the following new paragraph:

5           “(4) Notwithstanding any other provision of this sec-  
6           tion, the Corporation shall not transfer, disburse, or pay  
7           compensation to any executive officer, or enter into an  
8           agreement with such executive officer, without the ap-  
9           proval of the Director, for matters being reviewed under  
10          section 1318 of the Federal Housing Enterprises Finan-  
11          cial Safety and Soundness Act of 1992 (12 U.S.C.  
12          4518).”.

13          (3) FEDERAL HOME LOAN BANKS.—Section 7  
14          of the Federal Home Loan Bank Act (12 U.S.C.  
15          1427) is amended by adding at the end the following  
16          new subsection:

17          “(1) WITHHOLDING OF COMPENSATION.—Notwith-  
18          standing any other provision of this section, a Federal  
19          Home Loan Bank shall not transfer, disburse, or pay com-  
20          pensation to any executive officer, or enter into an agree-  
21          ment with such executive officer, without the approval of  
22          the Director, for matters being reviewed under section  
23          1318 of the Federal Housing Enterprises Financial Safety  
24          and Soundness Act of 1992 (12 U.S.C. 4518).”.

1 **SEC. 114. LIMIT ON GOLDEN PARACHUTES.**

2 Section 1318 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
4 4518) is amended by adding at the end the following:

5 “(e) **AUTHORITY TO REGULATE OR PROHIBIT CER-**  
6 **TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—**

7 “(1) **GOLDEN PARACHUTES AND INDEMNIFICA-**  
8 **TION PAYMENTS.—**The Director may prohibit or  
9 limit, by regulation or order, any golden parachute  
10 payment or indemnification payment.

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

12 The Director shall prescribe, by regulation, the fac-  
13 tors to be considered by the Director in taking any  
14 action pursuant to paragraph (1), which may include  
15 such factors as—

16 “(A) whether there is a reasonable basis to  
17 believe that the affiliated party has committed  
18 any fraudulent act or omission, breach of trust  
19 or fiduciary duty, or insider abuse with regard  
20 to the regulated entity that has had a material  
21 effect on the financial condition of the regulated  
22 entity;

23 “(B) whether there is a reasonable basis to  
24 believe that the affiliated party is substantially  
25 responsible for the insolvency of the regulated  
26 entity, the appointment of a conservator or re-

1 ceiver for the regulated entity, or the troubled  
2 condition of the regulated entity (as defined in  
3 regulations prescribed by the Director);

4 “(C) whether there is a reasonable basis to  
5 believe that the affiliated party has materially  
6 violated any applicable provision of Federal or  
7 State law or regulation that has had a material  
8 effect on the financial condition of the regulated  
9 entity;

10 “(D) whether the affiliated party was in a  
11 position of managerial or fiduciary responsi-  
12 bility; and

13 “(E) the length of time that the party was  
14 affiliated with the regulated entity, and the de-  
15 gree to which—

16 “(i) the payment reasonably reflects  
17 compensation earned over the period of  
18 employment; and

19 “(ii) the compensation involved rep-  
20 resents a reasonable payment for services  
21 rendered.

22 “(3) CERTAIN PAYMENTS PROHIBITED.—No  
23 regulated entity may prepay the salary or any liabil-  
24 ity or legal expense of any affiliated party if such  
25 payment is made—

1           “(A) in contemplation of the insolvency of  
2 such regulated entity, or after the commission  
3 of an act of insolvency; and

4           “(B) with a view to, or having the result  
5 of—

6           “(i) preventing the proper application  
7 of the assets of the regulated entity to  
8 creditors; or

9           “(ii) preferring one creditor over an-  
10 other.

11           “(4) GOLDEN PARACHUTE PAYMENT DE-  
12 FINED.—

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

20           “(i) is contingent on the termination  
21 of such party’s affiliation with the regu-  
22 lated entity; and

23           “(ii) is received on or after the date  
24 on which—

1                   “(I) the regulated entity became  
2 insolvent;

3                   “(II) any conservator or receiver  
4 is appointed for such regulated entity;  
5 or

6                   “(III) the Director determines  
7 that the regulated entity is in a trou-  
8 bled condition (as defined in the regu-  
9 lations of the Director).

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

19                   “(C) CERTAIN PAYMENTS NOT IN-  
20 CLUDED.—For purposes of this subsection, the  
21 term ‘golden parachute payment’ shall not in-  
22 clude—

23                   “(i) any payment made pursuant to a  
24 retirement plan which is qualified (or is in-  
25 tended to be qualified) under section 401

1 of the Internal Revenue Code of 1986, or  
2 other nondiscriminatory benefit plan;

3 “(ii) any payment made pursuant to a  
4 bona fide deferred compensation plan or  
5 arrangement which the Director deter-  
6 mines, by regulation or order, to be per-  
7 missible; or

8 “(iii) any payment made by reason of  
9 the death or disability of an affiliated  
10 party.

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

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

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

1           “(ii) is removed or prohibited from  
2 participating in conduct of the affairs of  
3 the regulated entity; or

4           “(iii) is required to take any affirma-  
5 tive action to correct certain conditions re-  
6 sulting from violations or practices, by  
7 order of the Director.

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

10           “(i) any legal or other professional ex-  
11 pense incurred in connection with any  
12 claim, proceeding, or action;

13           “(ii) the amount of, and any cost in-  
14 curred in connection with, any settlement  
15 of any claim, proceeding, or action; and

16           “(iii) the amount of, and any cost in-  
17 curred in connection with, any judgment or  
18 penalty imposed with respect to any claim,  
19 proceeding, or action.

20           “(C) PAYMENT.—The term ‘payment’ in-  
21 cludes—

22           “(i) any direct or indirect transfer of  
23 any funds or any asset; and

24           “(ii) any segregation of any funds or  
25 assets for the purpose of making, or pursu-

1 ant to an agreement to make, any payment  
2 after the date on which such funds or as-  
3 sets are segregated, without regard to  
4 whether the obligation to make such pay-  
5 ment is contingent on—

6 “(I) the determination, after such  
7 date, of the liability for the payment  
8 of such amount; or

9 “(II) the liquidation, after such  
10 date, of the amount of such payment.

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

21 **SEC. 115. REPORTING OF FRAUDULENT LOANS.**

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



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

2       “(a) REQUIREMENT TO REPORT.—The Director shall  
3 require a regulated entity to submit to the Director a time-  
4 ly report upon discovery by the regulated entity that it  
5 has purchased or sold a fraudulent loan or financial in-  
6 strument, or suspects a possible fraud relating to the pur-  
7 chase or sale of any loan or financial instrument. The Di-  
8 rector shall require each regulated entity to establish and  
9 maintain procedures designed to discover any such trans-  
10 actions.

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

1                   **Subtitle B—Improvement of**  
2                   **Mission Supervision**

3   **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**  
4                   **ING GOAL OVERSIGHT.**

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

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

10           **“PART 2—ADDITIONAL AUTHORITIES OF THE**  
11                   **DIRECTOR”;**

12                   and

13                   (2) by striking sections 1321 and 1322.

14   **SEC. 122. ASSUMPTION BY DIRECTOR OF CERTAIN OTHER**  
15                   **HUD RESPONSIBILITIES.**

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

19                   (1) by striking “Secretary” each place that  
20                   term appears and inserting “Director” in each of  
21                   sections 1323, 1326, 1327, 1328, and 1336; and

22                   (2) by striking sections 1338 and 1349 (12  
23                   U.S.C. 4568 and 4589).

24           (b) RETENTION OF FAIR HOUSING RESPONSIBIL-  
25   ITIES.—Section 1325 of the Federal Housing Enterprises

1 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
2 4545) is amended in the matter preceding paragraph (1),  
3 by inserting “of Housing and Urban Development” after  
4 “The Secretary”.

5 **SEC. 123. REVIEW OF ENTERPRISE PRODUCTS.**

6 Part 2 of subtitle A of the Federal Housing Enter-  
7 prises Financial Safety and Soundness Act of 1992 (12  
8 U.S.C. 4541 et seq.) is amended by inserting before sec-  
9 tion 1323 the following:

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

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

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

18 “(1) in the case of a product of the Federal Na-  
19 tional Mortgage Association, the product is author-  
20 ized under paragraph (2), (3), (4), or (5) of section  
21 302(b) or section 304 of the Federal National Mort-  
22 gage Association Charter Act (12 U.S.C. 1717(b),  
23 1719);

24 “(2) in the case of a product of the Federal  
25 Home Loan Mortgage Corporation, the product is

1 authorized under paragraph (1), (4), or (5) of sec-  
2 tion 305(a) of the Federal Home Loan Mortgage  
3 Corporation Act (12 U.S.C. 1454(a));

4 “(3) the product is in the public interest; and

5 “(4) the product is consistent with the safety  
6 and soundness of the enterprise or the mortgage fi-  
7 nance system.

8 “(c) PROCEDURE FOR APPROVAL.—

9 “(1) SUBMISSION OF REQUEST.—An enterprise  
10 shall submit to the Director a written request for  
11 approval of a product that describes the product in  
12 such form as prescribed by order or regulation of the  
13 Director.

14 “(2) REQUEST FOR PUBLIC COMMENT.—Imme-  
15 diately upon receipt of a request for approval of a  
16 product, as required under paragraph (1), the Direc-  
17 tor shall publish notice of such request and of the  
18 period for public comment pursuant to paragraph  
19 (3) regarding the product, and a description of the  
20 product proposed by the request. The Director shall  
21 give interested parties the opportunity to respond in  
22 writing to the proposed product.

23 “(3) PUBLIC COMMENT PERIOD.—During the  
24 30-day period beginning on the date of publication  
25 pursuant to paragraph (2) of a request for approval

1 of a product, the Director shall receive public com-  
2 ments regarding the proposed product.

3 “(4) OFFERING OF PRODUCT.—

4 “(A) IN GENERAL.—Not later than 30  
5 days after the close of the public comment pe-  
6 riod described in paragraph (3), the Director  
7 shall approve or deny the product, specifying  
8 the grounds for such decision in writing.

9 “(B) FAILURE TO ACT.—If the Director  
10 fails to act within the 30-day period described  
11 in subparagraph (A), then the enterprise may  
12 offer the product.

13 “(C) TEMPORARY APPROVAL.—The Direc-  
14 tor may, subject to the rules of the Director,  
15 provide for temporary approval of the offering  
16 of a product without a public comment period,  
17 if the Director finds that the existence of exi-  
18 gent circumstances makes such delay contrary  
19 to the public interest.

20 “(d) CONDITIONAL APPROVAL.—If the Director ap-  
21 proves the offering of any product by an enterprise, the  
22 Director may establish terms, conditions, or limitations  
23 with respect to such product with which the enterprise  
24 must comply in order to offer such product.

25 “(e) EXCLUSIONS.—

1           “(1) IN GENERAL.—The requirements of sub-  
2           sections (a) through (d) do not apply with respect  
3           to—

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 Finance  
7                   Regulatory Reform Act of 2008, including any  
8                   upgrade to the technology, operating system, or  
9                   software to operate the underwriting system;

10                   “(B) any modification to the mortgage  
11                   terms and conditions or mortgage underwriting  
12                   criteria relating to the mortgages that are pur-  
13                   chased or guaranteed by an enterprise, provided  
14                   that such modifications do not alter the under-  
15                   lying transaction so as to include services or fi-  
16                   nancing, other than residential mortgage fi-  
17                   nancing; or

18                   “(C) any other activity that is substantially  
19                   similar, as determined by rule of the Director  
20                   to—

21                           “(i) the activities described in sub-  
22                           paragraphs (A) and (B); and

23                           “(ii) other activities that have been  
24                           approved by the Director in accordance  
25                           with this section.

1           “(2) EXPEDITED REVIEW.—

2                   “(A) ENTERPRISE NOTICE.—For any new  
3 activity that an enterprise considers not to be  
4 a product, the enterprise shall provide written  
5 notice to the Director of such activity, and may  
6 not commence such activity until the date of re-  
7 ceipt of a notice under subparagraph (B) or the  
8 expiration of the period described in subpara-  
9 graph (C). The Director shall establish, by reg-  
10 ulation, the form and content of such written  
11 notice.

12                   “(B) DIRECTOR DETERMINATION.—Not  
13 later than 15 days after the date of receipt of  
14 a notice under subparagraph (A), the Director  
15 shall determine whether such activity is a prod-  
16 uct subject to approval under this section. The  
17 Director shall, immediately upon so deter-  
18 mining, notify the enterprise.

19                   “(C) FAILURE TO ACT.—If the Director  
20 fails to determine whether such activity is a  
21 product within the 15-day period described in  
22 subparagraph (B), the enterprise may com-  
23 mence the new activity in accordance with sub-  
24 paragraph (A).

1       “(f) NO LIMITATION.—Nothing in this section may  
2 be construed to restrict—

3               “(1) the safety and soundness authority of the  
4 Director over all new and existing products or activi-  
5 ties; or

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

10 **SEC. 124. CONFORMING LOAN LIMITS.**

11       (a) FANNIE MAE.—

12               (1) GENERAL LIMIT.—Section 302(b)(2) of the  
13 Federal National Mortgage Association Charter Act  
14 (12 U.S.C. 1717(b)(2)) is amended by striking the  
15 7th and 8th sentences and inserting the following  
16 new sentences: “Such limitations shall not exceed  
17 \$417,000 for a mortgage secured by a single-family  
18 residence, \$533,850 for a mortgage secured by a 2-  
19 family residence, \$645,300 for a mortgage secured  
20 by a 3-family residence, and \$801,950 for a mort-  
21 gage secured by a 4-family residence, except that  
22 such maximum limitations shall be adjusted effective  
23 January 1 of each year beginning after the effective  
24 date of Federal Housing Finance Regulatory Reform  
25 Act of 2008, subject to the limitations in this para-



1 graph. Each adjustment shall be made by adding to  
2 each such amount (as it may have been previously  
3 adjusted) a percentage thereof equal to the percent-  
4 age increase, during the most recent 12-month or  
5 4th-quarter period ending before the time of deter-  
6 mining such annual adjustment, in the housing price  
7 index maintained by the Director of the Federal  
8 Housing Finance Agency (pursuant to section 1322  
9 of the Federal Housing Enterprises Financial Safety  
10 and Soundness Act of 1992 (12 U.S.C. 4541)). If  
11 the change in such house price index during the  
12 most recent 12-month or 4th-quarter period ending  
13 before the time of determining such annual adjust-  
14 ment is a decrease, then no adjustment shall be  
15 made for the next year, and the next adjustment  
16 shall take into account prior declines in the house  
17 price index, so that any adjustment shall reflect the  
18 net change in the house price index since the last  
19 adjustment. Declines in the house price index shall  
20 be accumulated and then reduce increases until sub-  
21 sequent increases exceed prior declines.”.

22 (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)  
23 of the Federal National Mortgage Association Char-  
24 ter Act (12 U.S.C. 1717(b)(2)) is amended by add-  
25 ing after the period at the end the following: “Such

1       foregoing limitations shall also be increased with re-  
2       spect to properties of a particular size located in any  
3       area for which the median price for such size resi-  
4       dence exceeds the foregoing limitation for such size  
5       residence, to the lesser of 150 percent of such fore-  
6       going limitation for such size residence or the  
7       amount that is equal to the median price in such  
8       area for such size residence.”.

9       (b) FREDDIE MAC.—

10           (1) GENERAL LIMIT.—Section 305(a)(2) of the  
11       Federal Home Loan Mortgage Corporation Act (12  
12       U.S.C. 1454(a)(2)) is amended by striking the 6th  
13       and 7th sentences and inserting the following new  
14       sentences: “Such limitations shall not exceed  
15       \$417,000 for a mortgage secured by a single-family  
16       residence, \$533,850 for a mortgage secured by a 2-  
17       family residence, \$645,300 for a mortgage secured  
18       by a 3-family residence, and \$801,950 for a mort-  
19       gage secured by a 4-family residence, except that  
20       such maximum limitations shall be adjusted effective  
21       January 1 of each year beginning after the effective  
22       date of the Federal Housing Finance Regulatory Re-  
23       form Act of 2008, subject to the limitations in this  
24       paragraph. Each adjustment shall be made by add-  
25       ing to each such amount (as it may have been pre-

1 viously adjusted) a percentage thereof equal to the  
2 percentage increase, during the most recent 12-  
3 month or fourth-quarter period ending before the  
4 time of determining such annual adjustment, in the  
5 housing price index maintained by the Director of  
6 the Federal Housing Finance Agency (pursuant to  
7 section 1322 of the Federal Housing Enterprises Fi-  
8 nancial Safety and Soundness Act of 1992 (12  
9 U.S.C. 4541)). If the change in such house price  
10 index during the most recent 12-month or 4th-quar-  
11 ter period ending before the time of determining  
12 such annual adjustment is a decrease, then no ad-  
13 justment shall be made for the next year, and the  
14 next adjustment shall take into account prior de-  
15 clines in the house price index, so that any adjust-  
16 ment shall reflect the net change in the house price  
17 index since the last adjustment. Declines in the  
18 house price index shall be accumulated and then re-  
19 duce increases until subsequent increases exceed  
20 prior declines.”.

21 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)  
22 of the Federal Home Loan Mortgage Corporation  
23 Act is amended by adding after the period at the  
24 end the following: “Such foregoing limitations shall  
25 also be increased with respect to properties of a par-

1            ticular size located in any area for which the median  
2            price for such size residence exceeds the foregoing  
3            limitation for such size residence, to the lesser of  
4            150 percent of such foregoing limitation for such  
5            size residence or the amount that is equal to the me-  
6            dian price in such area for such size residence.”.

7            (c) HOUSING PRICE INDEX.—Part 2 of subtitle A of  
8            the Federal Housing Enterprises Financial Safety and  
9            Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amend-  
10           ed by inserting after section 1321 (as added by section  
11           123 of this Act) the following new section:

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

13           “The Director shall establish and maintain a method  
14           of assessing the national average 1-family house price for  
15           use for adjusting the conforming loan limitations of the  
16           enterprises. In establishing such method, the Director  
17           shall take into consideration the monthly survey of all  
18           major lenders conducted by the Federal Housing Finance  
19           Agency to determine the national average 1-family house  
20           price, the House Price Index maintained by the Office of  
21           Federal Housing Enterprise Oversight of the Department  
22           of Housing and Urban Development before the effective  
23           date under section 184 of the Federal Housing Finance  
24           Regulatory Reform Act of 2008, any appropriate house  
25           price indexes of the Bureau of the Census of the Depart-

1 ment of Commerce, and any other indexes or measures  
2 that the Director considers appropriate.”.

3 **SEC. 125. ANNUAL HOUSING REPORT.**

4 (a) REPEAL.—Section 1324 of the Federal Housing  
5 Enterprises Financial Safety and Soundness Act of 1992  
6 (12 U.S.C. 4544) is hereby repealed.

7 (b) ANNUAL HOUSING REPORT.—The Federal Hous-  
8 ing Enterprises Financial Safety and Soundness Act of  
9 1992 is amended by inserting after section 1323 the fol-  
10 lowing:

11 **“SEC. 1324. ANNUAL HOUSING REPORT.**

12 “(a) IN GENERAL.—After reviewing and analyzing  
13 the reports submitted under section 309(n) of the Federal  
14 National Mortgage Association Charter Act and section  
15 307(f) of the Federal Home Loan Mortgage Corporation  
16 Act, the Director shall submit a report, not later than Oc-  
17 tober 30 of each year, to the Committee on Banking,  
18 Housing, and Urban Affairs of the Senate and the Com-  
19 mittee on Financial Services of the House of Representa-  
20 tives, on the activities of each enterprise.

21 “(b) CONTENTS.—The report required under sub-  
22 section (a) shall—

23 “(1) discuss—

24 “(A) the extent to and manner in which—

1                   “(i) each enterprise is achieving the  
2                   annual housing goals established under  
3                   subpart B;

4                   “(ii) each enterprise is complying with  
5                   its duty to serve underserved markets, as  
6                   established under section 1335;

7                   “(iii) each enterprise is complying  
8                   with section 1337;

9                   “(iv) each enterprise received credit  
10                  towards achieving each of its goals result-  
11                  ing from a transaction or activity pursuant  
12                  to section 1331 (b)(2); and

13                  “(v) each enterprise is achieving the  
14                  purposes of the enterprise established by  
15                  law; and

16                  “(B) the actions that each enterprise could  
17                  undertake to promote and expand the purposes  
18                  of the enterprise;

19                  “(2) aggregate and analyze relevant data on in-  
20                  come to assess the compliance of each enterprise  
21                  with the housing goals established under subpart B;

22                  “(3) aggregate and analyze data on income,  
23                  race, and gender by census tract and other relevant  
24                  classifications, and compare such data with larger  
25                  demographic, housing, and economic trends;

1           “(4) identify the extent to which each enter-  
2           prise is involved in mortgage purchases and sec-  
3           ondary market activities involving subprime and  
4           nontraditional loans; and

5           “(5) compare the characteristics of subprime  
6           and nontraditional loans both purchased and  
7           securitized by each enterprise to other loans pur-  
8           chased and securitized by each enterprise.

9           “(c) DATA COLLECTION AND REPORTING.—

10           “(1) IN GENERAL.—To assist the Director in  
11           analyzing the matters described in subsection (b),  
12           the Director shall conduct, on a monthly basis, a  
13           survey of mortgage markets in accordance with this  
14           subsection.

15           “(2) DATA POINTS.—Each monthly survey con-  
16           ducted by the Director under paragraph (1) shall  
17           collect data on—

18           “(A) the characteristics of individual mort-  
19           gages that are eligible for purchase by the en-  
20           terprises and the characteristics of individual  
21           mortgages that are not eligible for purchase by  
22           the enterprises including, in both cases, infor-  
23           mation concerning—

24           “(i) the price of the house that se-  
25           cures the mortgage;

1                   “(ii) the loan-to-value ratio of the  
2 mortgage, which shall reflect any sec-  
3 ondary liens on the relevant property;

4                   “(iii) the terms of the mortgage;

5                   “(iv) the creditworthiness of the bor-  
6 rower or borrowers; and

7                   “(v) whether the mortgage, in the  
8 case of a conforming mortgage, was pur-  
9 chased by an enterprise;

10                  “(B) the characteristics of individual  
11 subprime and nontraditional mortgages that are  
12 eligible for purchase by the enterprises and the  
13 characteristics of borrowers under such mort-  
14 gages, including the creditworthiness of such  
15 borrowers and determination whether such bor-  
16 rowers would qualify for prime lending; and

17                  “(C) such other matters as the Director  
18 determines to be appropriate.

19                  “(3) PUBLIC AVAILABILITY.—The Director  
20 shall make any data collected by the Director in con-  
21 nection with the conduct of a monthly survey avail-  
22 able to the public in a timely manner, provided that  
23 the Director may modify the data released to the  
24 public to ensure that the data—





1           (2) in subsection (b)(2), by inserting before the  
2           period at the end the following: “or with subsection  
3           (a)(2)”;

4           (3) by adding at the end the following new sub-  
5           section:

6           “(d) **TIMING.**—Data submitted under this section by  
7           an enterprise in connection with a provision referred to  
8           in subsection (a) shall be made publicly available in ac-  
9           cordance with this section not later than September 30  
10          of the year following the year to which the data relates.”.

11          **SEC. 127. REPORTING OF MORTGAGE DATA.**

12          Section 1326 of the Federal Housing Enterprises Fi-  
13          nancial Safety and Soundness Act of 1992 (12 U.S.C.  
14          4546) is amended—

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

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

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

1 **SEC. 128. REVISION OF HOUSING GOALS.**

2 (a) REPEAL.—Sections 1331 through 1334 of the  
3 Federal Housing Enterprises Financial Safety and Sound-  
4 ness Act of 1992 (12 U.S.C. 4561 through 4564) are here-  
5 by repealed.

6 (b) HOUSING GOAL.—The Federal Housing Enter-  
7 prises Financial Safety and Soundness Act of 1992 is  
8 amended by inserting before section 1335 the following:

9 **“SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.**

10 “(a) IN GENERAL.—The Director shall, by regula-  
11 tion, establish effective for the first calendar year that be-  
12 gins after the date of enactment of the Federal Housing  
13 Finance Regulatory Reform Act of 2008, and each year  
14 thereafter, annual housing goals, as described under this  
15 subpart, with respect to the mortgage purchases by the  
16 enterprises.

17 “(b) SPECIAL COUNTING REQUIREMENTS.—

18 “(1) IN GENERAL.—The Director shall deter-  
19 mine whether an enterprise shall receive full, partial,  
20 or no credit for a transaction toward achievement of  
21 any of the housing goals established pursuant to this  
22 section or sections 1332 through 1334.

23 “(2) CONSIDERATIONS.—In making any deter-  
24 mination under paragraph (1), the Director shall  
25 consider whether a transaction or activity of an en-  
26 terprise is substantially equivalent to a mortgage

1 purchase and either (A) creates a new market, or  
2 (B) adds liquidity to an existing market, provided  
3 however that the terms and conditions of such mort-  
4 gage purchase is neither determined to be unaccept-  
5 able, nor contrary to good lending practices, and  
6 otherwise promotes sustainable homeownership and  
7 further, that such mortgage purchase actually fulfills  
8 the purposes of the enterprise and is in accordance  
9 with the chartering Act of such enterprise.

10 “(c) ELIMINATING INTEREST RATE DISPARITIES.—

11 “(1) IN GENERAL.—In establishing and imple-  
12 menting the housing goals under this subpart, the  
13 Director shall require the enterprises to disclose ap-  
14 propriate information to allow the Director to assess  
15 if there are any disparities in interest rates charged  
16 on mortgages to borrowers who are minorities, as  
17 compared with borrowers of similar creditworthiness  
18 who are not minorities, as evidenced in reports pur-  
19 suant to the Home Mortgage Disclosure Act of  
20 1975.

21 “(2) REPORT TO CONGRESS ON DISPARITIES.—

22 Upon a finding by the Director that a pattern of dis-  
23 parities in interest rates exists pursuant to the infor-  
24 mation provided by an enterprise under paragraph  
25 (1), the Director shall—



1       this subpart at least once during each year to assure  
2       that given current market conditions that each such  
3       goal is feasible.

4           “(2) PETITION TO REDUCE.—An enterprise  
5       may petition the Director in writing at any time  
6       during a year to reduce the level of any goal for  
7       such year established pursuant to this subpart.

8           “(b) STANDARD FOR REDUCTION.—The Director  
9       may reduce the level for a goal pursuant to such a petition  
10      only if—

11           “(1) market and economic conditions or the fi-  
12      nancial condition of the enterprise require such ac-  
13      tion; or

14           “(2) efforts to meet the goal would result in the  
15      constraint of liquidity, over-investment in certain  
16      market segments, or other consequences contrary to  
17      the intent of this subpart, section 301(3) of the Fed-  
18      eral National Mortgage Association Charter Act (12  
19      U.S.C. 1716(3)), or section 301(b)(3) of the Federal  
20      Home Loan Mortgage Corporation Act (12 U.S.C.  
21      1451 note), as applicable.

22           “(c) DETERMINATION.—

23           “(1) 30-DAY PERIOD.—If an enterprise submits  
24      a petition for reduction to the Director under sub-  
25      section (a)(2), the Director shall make a determina-

1       tion regarding any proposed reduction within 30  
2       days of receipt of the petition.

3           “(2) EXTENSION.—The Director may extend  
4       the period described in paragraph (1) for a single  
5       additional 15-day period, but only if the Director re-  
6       quests additional information from the enterprise.

7       **“SEC. 1332. SINGLE-FAMILY HOUSING GOALS.**

8           “(a) ESTABLISHMENT OF GOALS.—

9           “(1) IN GENERAL.—The Director shall establish  
10       annual goals for the purchase by each enterprise of  
11       conventional, conforming, single-family, owner-occu-  
12       pied, purchase money mortgages financing housing  
13       for each of the following:

14           “(A) Low-income families.

15           “(B) Families that reside in low-income  
16       areas.

17           “(C) Very low-income families.

18           “(2) GOALS AS PERCENTAGE OF TOTAL PUR-  
19       CHASE MONEY MORTGAGE PURCHASES.—The goals  
20       established under paragraph (1) shall be established  
21       as a percentage of the total number of single-family  
22       dwelling units financed by single-family purchase  
23       money mortgage purchases of the enterprise.

24           “(b) DETERMINATION OF COMPLIANCE.—

1           “(1) IN GENERAL.—The Director shall deter-  
2           mine, for each year that the housing goals under  
3           this section are in effect pursuant to section  
4           1331(a), whether each enterprise has complied with  
5           the single-family housing goals established under  
6           this section for such year.

7           “(2) COMPLIANCE REQUIREMENTS.—An enter-  
8           prise shall be considered to be in compliance with a  
9           goal described under subsection (a) for a year, only  
10          if, for each of the types of families described in sub-  
11          section (a), the percentage of the number of conven-  
12          tional, conforming, single-family, owner-occupied,  
13          purchase money mortgages purchased by the enter-  
14          prise in such year that serve such families, meets or  
15          exceeds the target established under subsection (c)  
16          for the year for such type of family.

17          “(c) ANNUAL TARGETS.—

18                 “(1) IN GENERAL.—The Director shall establish  
19                 annual targets for each goal described in subsection  
20                 (a).

21                 “(2) CONSIDERATIONS.—In establishing annual  
22                 targets under paragraph (1), the Director shall con-  
23                 sider—

24                         “(A) national housing needs;



1           “(B) economic, housing, and demographic  
2 conditions;

3           “(C) the performance and effort of the en-  
4 terprises toward achieving the housing goals  
5 under this section in previous years;

6           “(D) the ability of the enterprise to lead  
7 the industry in making credit available;

8           “(E) recent information submitted in com-  
9 pliance with the Home Mortgage Disclosure Act  
10 of 1975 and such other reliable mortgage data  
11 as may be available;

12           “(F) the size of the purchase money con-  
13 ventional mortgage market serving each of the  
14 types of families described in subsection (a),  
15 relative to the size of the overall purchase  
16 money mortgage market; and

17           “(G) the need to maintain the sound finan-  
18 cial condition of the enterprises.

19           “(3) HIGH-COST LOANS AND INAPPROPRIATE  
20 LENDING PRACTICES.—In establishing annual tar-  
21 gets under paragraph (1), the Director shall not  
22 consider segments of the market determined to be  
23 unacceptable or contrary to good lending practices  
24 pursuant to section 1331(b)(2).

1           “(d) NOTICE OF DETERMINATION AND ENTERPRISE  
2 COMMENT.—

3           “(1) NOTICE.—Within 30 days of making a de-  
4 termination under subsection (b) regarding compli-  
5 ance of an enterprise for a year with the housing  
6 goals established under this section and before any  
7 public disclosure thereof, the Director shall provide  
8 notice of the determination to the enterprise, which  
9 shall include an analysis and comparison, by the Di-  
10 rector, of the performance of the enterprise for the  
11 year and the targets for the year under subsection  
12 (c).

13           “(2) COMMENT PERIOD.—The Director shall  
14 provide each enterprise and the public an oppor-  
15 tunity to comment on the determination during the  
16 30-day period beginning upon receipt by the enter-  
17 prise of the notice.

18           “(e) USE OF BORROWER INCOME.—In monitoring  
19 the performance of each enterprise pursuant to the hous-  
20 ing goals under this section and evaluating such perform-  
21 ance (for purposes of section 1336), the Director shall  
22 consider a mortgagor’s income to be the income of the  
23 mortgagor at the time of origination of the mortgage.

24           “(f) CONSIDERATION OF PROPERTIES WITH RENTAL  
25 UNITS.—Mortgages financing 1-to-4 unit owner-occupied

1 properties shall count toward the achievement of the sin-  
2 gle-family housing goal under this section, if such prop-  
3 erties otherwise meet the requirements under this section  
4 notwithstanding the use of 1 or more units for rental pur-  
5 poses.

6 **“SEC. 1333. SINGLE-FAMILY HOUSING REFINANCE GOALS.**

7 “(a) PREPAYMENT OF EXISTING LOANS.—

8 “(1) IN GENERAL.—The Director shall establish  
9 annual goals for the purchase by each enterprise of  
10 mortgages on conventional, conforming, single-fam-  
11 ily, owner-occupied housing given to pay off or pre-  
12 pay an existing loan served by the same property for  
13 each of the following:

14 “(A) Low-income families.

15 “(B) Families that reside in low-income  
16 areas.

17 “(C) Very low-income families.

18 “(2) GOALS AS PERCENTAGE OF TOTAL REFI-  
19 NANCING MORTGAGE PURCHASES.—The goals de-  
20 scribed under paragraph (1) shall be established as  
21 a percentage of the total number of single-family  
22 dwelling units refinanced by mortgage purchases of  
23 each enterprise.

24 “(b) DETERMINATION OF COMPLIANCE.—

1           “(1) IN GENERAL.—The Director shall deter-  
2           mine, for each year that the housing goals under  
3           this section are in effect pursuant to section  
4           1331(a), whether each enterprise has complied with  
5           the single-family housing refinance goals established  
6           under this section for such year.

7           “(2) COMPLIANCE.—An enterprise shall be con-  
8           sidered to be in compliance with the goals of this  
9           section for a year, only if, for each of the types of  
10          families described in subsection (a), the percentage  
11          of the number of conventional, conforming, single-  
12          family, owner-occupied refinancing mortgages pur-  
13          chased by each enterprise in such year that serve  
14          such families, meets or exceeds the target for the  
15          year for such type of family that is established under  
16          subsection (c).

17          “(c) ANNUAL TARGETS.—

18                 “(1) IN GENERAL.—The Director shall establish  
19                 annual targets for each goal described in subsection  
20                 (a).

21                 “(2) CONSIDERATIONS.—In establishing annual  
22                 targets under paragraph (1), the Director shall con-  
23                 sider—

24                         “(A) national housing needs;

1           “(B) economic, housing, and demographic  
2 conditions;

3           “(C) the performance and effort of the en-  
4 terprises toward achieving the housing goals  
5 under this section in previous years;

6           “(D) the ability of the enterprise to lead  
7 the industry in making credit available;

8           “(E) recent information submitted in com-  
9 pliance with the Home Mortgage Disclosure Act  
10 of 1975 and such other reliable mortgage data  
11 as may be available;

12           “(F) the size of the purchase money con-  
13 ventional mortgage market serving each of the  
14 types of families described in subsection (a),  
15 relative to the size of the overall purchase  
16 money mortgage market; and

17           “(G) the need to maintain the sound finan-  
18 cial condition of the enterprises.

19       “(d) NOTICE OF DETERMINATION AND ENTERPRISE  
20 COMMENT.—

21           “(1) NOTICE.—Within 30 days of making a de-  
22 termination under subsection (b) regarding compli-  
23 ance of an enterprise for a year with the housing  
24 goals established under this section and before any  
25 public disclosure thereof, the Director shall provide

1 notice of the determination to the enterprise, which  
2 shall include an analysis and comparison, by the Di-  
3 rector, of the performance of the enterprise for the  
4 year and the targets for the year under subsection  
5 (e).

6 “(2) COMMENT PERIOD.—The Director shall  
7 provide each enterprise and the public an oppor-  
8 tunity to comment on the determination during the  
9 30-day period beginning upon receipt by the enter-  
10 prise of the notice.

11 “(e) USE OF BORROWER INCOME.—In monitoring  
12 the performance of each enterprise pursuant to the hous-  
13 ing goals under this section and evaluating such perform-  
14 ance (for purposes of section 1336), the Director shall  
15 consider a mortgagor’s income to be the income of the  
16 mortgagor at the time of origination of the mortgage.

17 **“SEC. 1334. MULTIFAMILY SPECIAL AFFORDABLE HOUSING**  
18 **GOAL.**

19 “(a) ESTABLISHMENT.—

20 “(1) IN GENERAL.—The Director shall estab-  
21 lish, by regulation, by unit, dollar volume, or per-  
22 centage of multifamily activity, as determined by the  
23 Director, an annual goal for the purchase by each  
24 enterprise of—

1           “(A) mortgages that finance dwelling units  
2           affordable to very low-income families; and

3           “(B) mortgages that finance dwelling units  
4           assisted by the low-income housing tax credit  
5           under section 42 of the Internal Revenue Code  
6           of 1986.

7           “(2) ADDITIONAL REQUIREMENTS FOR SMALL-  
8           ER PROJECTS.—The Director shall establish addi-  
9           tional requirements for the purchase by each enter-  
10          prise of mortgages described in paragraph (1) for  
11          multifamily housing projects of a smaller or limited  
12          size, which may be based on the number of dwelling  
13          units in the project or the amount of the mortgage,  
14          or both, and shall include multifamily housing  
15          projects of 5 to 50 units (as adjusted by the Direc-  
16          tor), or with mortgages of up to \$5,000,000 (as ad-  
17          justed by the Director).

18          “(3) FACTORS.—The Director shall establish  
19          the goal and additional requirements under this sec-  
20          tion taking into consideration—

21                 “(A) national multifamily mortgage credit  
22                 needs;

23                 “(B) the performance and effort of the en-  
24                 terprise in making mortgage credit available for  
25                 multifamily housing in previous years;

1           “(C) the size of the multifamily mortgage  
2 market, including the size of the small multi-  
3 family mortgage market;

4           “(D) the most recent information available  
5 for the Residential Survey published by the  
6 Census Bureau, and such other reliable data as  
7 may be available regarding multifamily mort-  
8 gages;

9           “(E) the ability of the enterprise to lead  
10 the industry in expanding mortgage credit  
11 availability at favorable terms, especially for un-  
12 derserved markets, such as for—

13                   “(i) small multifamily projects;

14                   “(ii) multifamily properties in need of  
15 preservation and rehabilitation; and

16                   “(iii) multifamily properties located in  
17 rural areas; and

18           “(F) the need to maintain the sound finan-  
19 cial condition of the enterprise.

20           “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-  
21 CY BONDS.—The Director may give credit toward the  
22 achievement of the multifamily special affordable housing  
23 goal under this section (for purposes of section 1336) to  
24 dwelling units in multifamily housing that otherwise qual-  
25 ify under such goal and that is financed by tax-exempt



1 or taxable bonds issued by a State or local housing finance  
2 agency, but only if—

3 “(1) such bonds are secured by a guarantee of  
4 the enterprise; or

5 “(2) are not investment grade and are pur-  
6 chased by the enterprise.

7 “(c) USE OF TENANT RENT LEVEL.—

8 “(1) IN GENERAL.—The Director shall monitor  
9 the performance of each enterprise in meeting the  
10 goal established under this section and shall evaluate  
11 such performance (for purposes of section 1336)  
12 based on whether the rent levels are affordable to  
13 low-income and very low-income families.

14 “(2) RENT LEVEL.—A rent level shall be con-  
15 sidered to be affordable for purposes of this sub-  
16 section for an income category referred to in this  
17 subsection if it does not exceed 30 percent of the  
18 maximum income level of such income category, with  
19 appropriate adjustments for unit size as measured  
20 by the number of bedrooms.

21 “(d) DETERMINATION OF COMPLIANCE.—

22 “(1) IN GENERAL.—The Director shall, for  
23 each year that the housing goal under this section  
24 is in effect pursuant to section 1331(a), determine  
25 whether each enterprise has complied with such goal

1 and the additional requirements under subsection  
2 (a)(2).

3 “(2) COMPLIANCE.—An enterprise shall be con-  
4 sidered to be in compliance with the goal described  
5 under subsection (a) for a year only if the multi-  
6 family mortgage purchases of the enterprise meet or  
7 exceed the goal for the year established under sub-  
8 section (a).

9 “(e) CONSIDERATION OF UNITS IN SINGLE-FAMILY  
10 RENTAL HOUSING.—In establishing the goal under this  
11 section, the Director may take into consideration the num-  
12 ber of housing units financed by any mortgage purchased  
13 by an enterprise on single-family rental housing that is  
14 not owner-occupied.

15 “(f) REMOVING CREDIT.—The Director shall sub-  
16 tract from the units or mortgages counted toward the goal  
17 established under this section in a current year any units  
18 or mortgages credited toward such goal in a prior year  
19 if an enterprise requires a lender to repurchase, or reim-  
20 burse for losses, or indemnify the enterprise against poten-  
21 tial losses on such units or mortgages.

22 “(g) NOTICE OF DETERMINATION AND ENTERPRISE  
23 COMMENT.—

24 “(1) NOTICE.—Within 30 days of making a de-  
25 termination under subsection (d) regarding compli-

1           ance of an enterprise for a year with the housing  
2           goal established under this section and before any  
3           public disclosure thereof, the Director shall provide  
4           notice of the determination to the enterprise, which  
5           shall include an analysis and comparison, by the Di-  
6           rector, of the performance of the enterprise for the  
7           year and the goal for the year under subsection (a).

8           “(2) COMMENT PERIOD.—The Director shall  
9           provide each enterprise and the public an oppor-  
10          tunity to comment on the determination during the  
11          30-day period beginning upon receipt by the enter-  
12          prise of the notice.”.

13          (c) CONFORMING AMENDMENTS.—The Federal  
14          Housing Enterprises Financial Safety and Soundness Act  
15          of 1992 is amended—

16                (1) in section 1335(a) (12 U.S.C. 4565(a)), in  
17                the matter preceding paragraph (1), by striking  
18                “low- and moderate-income housing goal” and all  
19                that follows through “section 1334” and inserting  
20                “housing goals established under this subpart”;

21                (2) in section 1336(a)(1) (12 U.S.C.  
22                4566(a)(1)) , by striking “sections 1332, 1333, and  
23                1334,” and inserting “this subpart”.

1 (d) DEFINITIONS.—Section 1303 of the Federal  
2 Housing Enterprises Financial Safety and Soundness Act  
3 of 1992 (12 U.S.C. 4502) is amended—

4 (1) by amending paragraph (19) to read as fol-  
5 lows:

6 “(19) VERY LOW-INCOME.—

7 “(A) IN GENERAL.—The term ‘very low-in-  
8 come’ means—

9 “(i) in the case of owner-occupied  
10 units, families having incomes not greater  
11 than 50 percent of the area median in-  
12 come;

13 “(ii) in the case of rental units, fami-  
14 lies having incomes not greater than 50  
15 percent of the area median income, with  
16 adjustments for smaller and larger fami-  
17 lies, as determined by the Director.

18 “(B) RULE OF CONSTRUCTION.—For pur-  
19 poses of section 1338 and 1339, the term ‘very  
20 low-income’ means—

21 “(i) in the case of owner-occupied  
22 units, income in excess of 30 percent but  
23 not greater than 50 percent of the area  
24 median income; and

1                   “(ii) in the case of rental units, in-  
2                   come in excess of 30 percent but not great-  
3                   er than 50 percent of the area median in-  
4                   come, with adjustments for smaller and  
5                   larger families, as determined by the Di-  
6                   rector.”.

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

8                   “(27) CONFORMING MORTGAGE.—The term  
9                   ‘conforming mortgage’ means, with respect to an en-  
10                  terprise, a conventional mortgage having an original  
11                  principal obligation that does not exceed the applica-  
12                  ble dollar limitation, in effect at the time of such  
13                  origination, under—

14                         “(A) section 302(b)(2) of the Federal Na-  
15                         tional Mortgage Association Charter Act; or

16                         “(B) section 305(a)(2) of the Federal  
17                         Home Loan Mortgage Corporation Act.

18                   “(28) EXTREMELY LOW-INCOME.—The term  
19                   ‘extremely low-income’ means—

20                         “(A) in the case of owner-occupied units,  
21                         income not in excess of 30 percent of the area  
22                         median income; and

23                         “(B) in the case of rental units, income  
24                         not in excess of 30 percent of the area median

1 income, with adjustments for smaller and larger  
2 families, as determined by the Director.

3 “(29) LOW-INCOME AREA.—The term ‘low-in-  
4 come area’ means a census tract or block numbering  
5 area in which the median income does not exceed 80  
6 percent of the median income for the area in which  
7 such census tract or block numbering area is lo-  
8 cated, and, for the purposes of section 1332(a)(2),  
9 shall include families having incomes not greater  
10 than 100 percent of the area median income who re-  
11 side in minority census tracts.

12 “(30) MINORITY CENSUS TRACT.—The term  
13 ‘minority census tract’ means a census tract that  
14 has a minority population of at least 30 percent and  
15 a median family income of less than 100 percent of  
16 the area family median income.

17 “(31) SHORTAGE OF STANDARD RENTAL UNITS  
18 BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY  
19 LOW-INCOME RENTER HOUSEHOLDS.—

20 “(A) IN GENERAL.—The term ‘shortage of  
21 standard rental units both affordable and avail-  
22 able to extremely low-income renter households’  
23 means the gap between—

24 “(i) the number of units with com-  
25 plete plumbing and kitchen facilities with a

1                   rent that is 30 percent or less of 30 per-  
2                   cent of the adjusted area median income as  
3                   determined by the Director that are occu-  
4                   pied by extremely low-income renter house-  
5                   holds or are vacant for rent; and

6                   “ (ii) the number of extremely low-in-  
7                   come renter households.

8                   “(B) RULE OF CONSTRUCTION.—If the  
9                   number of units described in subparagraph  
10                  (A)(i) exceeds the number of extremely low-in-  
11                  come households as described in subparagraph  
12                  (A)(ii), there is no shortage.

13                  “(32) SHORTAGE OF STANDARD RENTAL UNITS  
14                  BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-  
15                  INCOME RENTER HOUSEHOLDS.—

16                  “(A) IN GENERAL.—The term ‘shortage of  
17                  standard rental units both affordable and avail-  
18                  able to very low-income renter households’  
19                  means the gap between—

20                  “(i) the number of units with com-  
21                  plete plumbing and kitchen facilities with a  
22                  rent that is 30 percent or less of 50 per-  
23                  cent of the adjusted area median income as  
24                  determined by the Director that are occu-  
25                  pied by either extremely low- or very low-

1 income renter households or are vacant for  
2 rent; and

3 “(ii) the number of extremely low-  
4 and very low-income renter households.

5 “(B) RULE OF CONSTRUCTION.—If the  
6 number of units described in subparagraph  
7 (A)(i) exceeds the number of extremely low- and  
8 very low-income households as described in sub-  
9 paragraph (A)(ii), there is no shortage.”.

10 **SEC. 129. DUTY TO SERVE UNDERSERVED MARKETS.**

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

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

18 (2) by striking subsection (b);

19 (3) in subsection (a)—

20 (A) in the matter preceding paragraph (1),  
21 by inserting “and to carry out the duty under  
22 subsection (a) of this section,” before “, each  
23 enterprise shall”;

24 (B) in paragraph (3), by inserting “and”  
25 after the semicolon at the end;



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

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

4 (E) by redesignating such subsection as  
5 subsection (b);

6 (4) by inserting before subsection (b) (as reded-  
7 igned by paragraph (3)(E) of this subsection) the  
8 following new subsection:

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

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

1           “(2) UNDERSERVED MARKETS.—To meet its  
2           duty under paragraph (1), each enterprise shall com-  
3           ply with the following requirements with respect to  
4           the following underserved markets:

5                   “(A) MANUFACTURED HOUSING.—The en-  
6                   terprise shall develop loan products and flexible  
7                   underwriting guidelines to facilitate a secondary  
8                   market for mortgages on manufactured homes  
9                   for very low-, low-, and moderate-income fami-  
10                  lies.

11                  “(B) AFFORDABLE HOUSING PRESERVA-  
12                  TION.—The enterprise shall develop loan prod-  
13                  ucts and flexible underwriting guidelines to fa-  
14                  cilitate a secondary market to preserve housing  
15                  affordable to extremely low-, very low-, and low-  
16                  income families, including housing projects sub-  
17                  sidized under—

18                          “(i) the project-based and tenant-  
19                          based rental assistance programs under  
20                          section 8 of the United States Housing Act  
21                          of 1937;

22                          “(ii) the program under section 236  
23                          of the National Housing Act;

1 “(iii) the below-market interest rate  
2 mortgage program under section 221(d)(4)  
3 of the National Housing Act;

4 “(iv) the supportive housing for the  
5 elderly program under section 202 of the  
6 Housing Act of 1959;

7 “(v) the supportive housing program  
8 for persons with disabilities under section  
9 811 of the Cranston-Gonzalez National Af-  
10 fordable Housing Act;

11 “(vi) the rural rental housing program  
12 under section 515 of the Housing Act of  
13 1949; and

14 “(vii) the low-income housing tax  
15 credit under section 42 of the Internal  
16 Revenue Code of 1986.

17 “(C) SUBPRIME BORROWERS.—The enter-  
18 prises shall make mortgage credit available to  
19 low- and moderate-income families with credit  
20 impairment, by developing underwriting guide-  
21 lines that promote good lending practices and  
22 sustainable homeownership.

23 “(D) COMMUNITY DEVELOPMENT FINAN-  
24 CIAL INSTITUTIONS.—The enterprises shall—

1           “(i) develop loan products and flexible  
2           underwriting guidelines to facilitate a sec-  
3           ondary market for affordable mortgages on  
4           unconventional affordable housing loans  
5           made or purchased by Treasury certified  
6           community development financial institu-  
7           tions, nonprofit affordable housing lenders,  
8           and nonprofit affordable housing devel-  
9           opers; and

10           “(ii) take other affirmative steps to  
11           assist Treasury certified community devel-  
12           opment financial institutions, nonprofit af-  
13           fordable housing lenders, and nonprofit af-  
14           fordable housing developers in providing  
15           credit and capital to underserved popu-  
16           lations and communities, including through  
17           the use of credit facilities, capital and loss  
18           reserves,           credit           enhancements,  
19           securitization, equity investments, and  
20           other methods to facilitate a secondary  
21           market for mortgages on unconventional  
22           affordable housing loans made or pur-  
23           chased by community development finan-  
24           cial institutions certified by the Secretary  
25           of the Treasury, as determined by the Di-

1           rector and consistent with the Federal Na-  
2           tional Mortgage Association Charter Act,  
3           the Federal Home Loan Mortgage Cor-  
4           poration Act, and the provisions of this  
5           Act.

6           “(E) COMMUNITY REINVESTMENT ACT  
7           CONSIDERATIONS.—The enterprise shall take  
8           affirmative steps to assist depository institu-  
9           tions to meet their obligations under the Com-  
10          munity Reinvestment Act.

11          “(F) RURAL MARKETS.—

12                 “(i) IN GENERAL.—The enterprises  
13                 shall develop loan products and flexible un-  
14                 derwriting guidelines to facilitate a sec-  
15                 ondary market for mortgages on housing  
16                 for very low-, low-, and moderate-income  
17                 families in rural areas.

18                 “(ii) IDENTIFICATION OF UNDER-  
19                 SERVED MARKETS.—Underserved markets  
20                 may be identified for purposes of this para-  
21                 graph by borrower type, market segment,  
22                 or geographic area.

23                 “(G) OTHER UNDERSERVED MARKETS.—  
24                 The Director may, by rule, determine other un-  
25                 derserved markets that the enterprises shall be

1 required to facilitate the availability of invest-  
2 ment capital for mortgage financing for such  
3 markets.”; and

4 (5) by adding at the end the following new sub-  
5 sections:

6 “(c) EVALUATION AND REPORTING OF COMPLI-  
7 ANCE.—

8 “(1) EVALUATING COMPLIANCE.—

9 “(A) IN GENERAL.—Not later than 6  
10 months after the date of enactment of the Fed-  
11 eral Housing Finance Regulatory Reform Act  
12 of 2008, the Director shall establish through  
13 notice and comment rulemaking, a manner for  
14 evaluating whether, and the extent to which,  
15 the enterprises have complied with the duty  
16 under subsection (a) to serve underserved mar-  
17 kets, and for rating the extent of such compli-  
18 ance. In evaluating whether an enterprise has  
19 complied with its duty under subsection (a), the  
20 Director shall exclude from such evaluation the  
21 activities, services, and products offered by the  
22 Federal Housing Administration under title II  
23 of the National Housing Act (12 U.S.C. 1707  
24 et seq.) and any other activities, services, and

1 products offered by any other Federal Govern-  
2 ment agency as the Director may determine.

3 “(B) RATING COMPLIANCE.—Using the  
4 evaluation method established under subpara-  
5 graph (A), the Director shall, for each year,  
6 evaluate such compliance and rate the perform-  
7 ance of each enterprise as to the extent of com-  
8 pliance.

9 “(C) EVALUATIONS AND RATINGS IN-  
10 CLUDED IN ANNUAL REPORT OF THE DIREC-  
11 TOR.—The Director shall include such evalua-  
12 tion and rating for each enterprise for a year  
13 in the report for that year submitted pursuant  
14 to section 1319B(a).

15 “(2) SEPARATE EVALUATIONS.—In determining  
16 whether an enterprise has complied with the duty re-  
17 ferred to in paragraph (1), the Director shall sepa-  
18 rately evaluate whether the enterprise has complied  
19 with such duty with respect to each of the under-  
20 served markets identified in subsection (a), taking  
21 into consideration each of the following factors:

22 “(A) The development of loan products,  
23 more flexible underwriting guidelines, and other  
24 innovative approaches to providing financing to  
25 each of such underserved markets.

1           “(B) The volume of loans purchased in  
2           each of such underserved markets.

3           “(C) The extent of outreach to qualified  
4           loan sellers in each of such underserved mar-  
5           kets.

6           “(D) The amount of investments, grants,  
7           and other services provided in each of such un-  
8           derserved markets.

9           “(E) Such other factors as the Director  
10          may determine.

11          “(d) NOTICE OF DETERMINATION AND ENTERPRISE  
12          COMMENT.—

13               “(1) NOTICE.—Within 30 days of making an  
14               evaluation under subsection (c) regarding compliance  
15               of an enterprise for a year with the duty under sub-  
16               section (a) to serve underserved markets and before  
17               any public disclosure thereof, the Director shall pro-  
18               vide notice of the evaluation to the enterprise, which  
19               shall include an analysis and comparison, by the Di-  
20               rector, of the performance of the enterprise for the  
21               year and the requirements under this section.

22               “(2) COMMENT PERIOD.—The Director shall  
23               provide each enterprise and the public an oppor-  
24               tunity to comment on the evaluation during the 30-



1 day period beginning upon receipt by the enterprise  
2 of the notice.”.

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

6 (1) in paragraph (1), by inserting “and with  
7 the duty under section 1335(a) of each enterprise  
8 with respect to underserved markets” before “, as  
9 provided in this section,”; and

10 (2) by adding at the end the following new  
11 paragraph:

12 “(4) ENFORCEMENT OF DUTY TO PROVIDE  
13 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—

14 “(A) IN GENERAL.—The duty under sec-  
15 tion 1335(a) of each enterprise to serve under-  
16 served markets (as determined in accordance  
17 with section 1335(c)) shall be enforceable under  
18 this section to the same extent and under the  
19 same provisions that the housing goals estab-  
20 lished under this subpart are enforceable.

21 “(B) LIMITATION.—The duty under sec-  
22 tion 1335(a) shall not be enforceable under any  
23 other provision of this title (including subpart C  
24 of this part) other than this section or under  
25 any provision of the Federal National Mortgage

1 Association Charter Act or the Federal Home  
2 Loan Mortgage Corporation Act.”.

3 **SEC. 130. MONITORING AND ENFORCING COMPLIANCE**  
4 **WITH HOUSING GOALS.**

5 (a) IN GENERAL.—Section 1336 of the Federal  
6 Housing Enterprises Financial Safety and Soundness Act  
7 of 1992 (12 U.S.C. 4566) is amended by striking sub-  
8 sections (b) and (c) and inserting the following:

9 “(b) NOTICE AND PRELIMINARY DETERMINATION OF  
10 FAILURE TO MEET GOALS.—

11 “(1) NOTICE.—If the Director preliminarily de-  
12 termines that an enterprise has failed, or that there  
13 is a substantial probability that an enterprise will  
14 fail, to meet any housing goal under this subpart,  
15 the Director shall provide written notice to the en-  
16 terprise of such a preliminary determination, the  
17 reasons for such determination, and the information  
18 on which the Director based the determination.

19 “(2) RESPONSE PERIOD.—

20 “(A) IN GENERAL.—During the 30-day pe-  
21 riod beginning on the date on which an enter-  
22 prise is provided notice under paragraph (1),  
23 the enterprise may submit to the Director any  
24 written information that the enterprise con-  
25 siders appropriate for consideration by the Di-

1           rector in finally determining whether such fail-  
2           ure has occurred or whether the achievement of  
3           such goal was or is feasible.

4           “(B) EXTENDED PERIOD.—The Director  
5           may extend the period under subparagraph (A)  
6           for good cause for not more than 30 additional  
7           days.

8           “(C) SHORTENED PERIOD.—The Director  
9           may shorten the period under subparagraph (A)  
10          for good cause.

11          “(D) FAILURE TO RESPOND.—The failure  
12          of an enterprise to provide information during  
13          the 30-day period under this paragraph (as ex-  
14          tended or shortened) shall waive any right of  
15          the enterprise to comment on the proposed de-  
16          termination or action of the Director.

17          “(3) CONSIDERATION OF INFORMATION AND  
18          FINAL DETERMINATION.—

19                 “(A) IN GENERAL.—After the expiration of  
20                 the response period under paragraph (2), or  
21                 upon receipt of information provided during  
22                 such period by the enterprise, whichever occurs  
23                 earlier, the Director shall issue a final deter-  
24                 mination on—

1           “(i) whether the enterprise has failed,  
2           or there is a substantial probability that  
3           the enterprise will fail, to meet the housing  
4           goal; and

5           “(ii) whether (taking into consider-  
6           ation market and economic conditions and  
7           the financial condition of the enterprise)  
8           the achievement of the housing goal was or  
9           is feasible.

10          “(B) CONSIDERATIONS.—In making a  
11          final determination under subparagraph (A),  
12          the Director shall take into consideration any  
13          relevant information submitted by the enter-  
14          prise during the response period.

15          “(C) NOTICE.—The Director shall provide  
16          written notice, including a response to any in-  
17          formation submitted during the response pe-  
18          riod, to the enterprise, the Committee on Bank-  
19          ing, Housing, and Urban Affairs of the Senate,  
20          and the Committee on Financial Services of the  
21          House of Representatives, of—

22                 “(i) each final determination under  
23                 this paragraph that an enterprise has  
24                 failed, or that there is a substantial prob-

1 ability that the enterprise will fail, to meet  
2 a housing goal;

3 “(ii) each final determination that the  
4 achievement of a housing goal was or is  
5 feasible; and

6 “(iii) the reasons for each such final  
7 determination.

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

10 “(1) REQUIREMENT.—If the Director finds,  
11 pursuant to subsection (b), that there is a substan-  
12 tial probability that an enterprise will fail, or has ac-  
13 tually failed, to meet any housing goal under this  
14 subpart, and that the achievement of the housing  
15 goal was or is feasible, the Director may require that  
16 the enterprise submit a housing plan under this sub-  
17 section. If the Director makes such a finding and  
18 the enterprise refuses to submit such a plan, sub-  
19 mits an unacceptable plan, fails to comply with the  
20 plan, or the Director finds that the enterprise has  
21 failed to meet any housing goal under this subpart,  
22 in addition to requiring an enterprise to submit a  
23 housing plan, the Director may issue a cease and de-  
24 sist order in accordance with section 1341, impose  
25 civil money penalties in accordance with section

1 1345, or order other remedies as set forth in para-  
2 graph (7).

3 “(2) HOUSING PLAN.—If the Director requires  
4 a housing plan under this subsection, such a plan  
5 shall be—

6 “(A) a feasible plan describing the specific  
7 actions the enterprise will take—

8 “(i) to achieve the goal for the next  
9 calendar year; and

10 “(ii) if the Director determines that  
11 there is a substantial probability that the  
12 enterprise will fail to meet a goal in the  
13 current year, to make such improvements  
14 and changes in its operations as are rea-  
15 sonable in the remainder of such year; and

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

18 “(3) DEADLINE FOR SUBMISSION.—The Direc-  
19 tor shall, by regulation, establish a deadline for an  
20 enterprise to comply with any remedial action or  
21 submit a housing plan to the Director, which may  
22 not be more than 45 days after the enterprise is pro-  
23 vided notice. The regulations shall provide that the  
24 Director may extend the deadline to the extent that  
25 the Director determines necessary. Any extension of

1 the deadline shall be in writing and for a time cer-  
2 tain.

3 “(4) APPROVAL.—The Director shall review  
4 each submission by an enterprise, including a hous-  
5 ing plan submitted under this subsection, and, not  
6 later than 30 days after submission, approve or dis-  
7 approve the plan or other action. The Director may  
8 extend the period for approval or disapproval for a  
9 single additional 30-day period if the Director deter-  
10 mines it necessary. The Director shall approve any  
11 plan that the Director determines is likely to suc-  
12 ceed, and conforms with the Federal National Mort-  
13 gage Association Charter Act or the Federal Home  
14 Loan Mortgage Corporation Act (as applicable), this  
15 title, and any other applicable provision of law.

16 “(5) NOTICE OF APPROVAL AND DIS-  
17 APPROVAL.—The Director shall provide written no-  
18 tice to any enterprise submitting a housing plan of  
19 the approval or disapproval of the plan (which shall  
20 include the reasons for any disapproval of the plan)  
21 and of any extension of the period for approval or  
22 disapproval.

23 “(6) RESUBMISSION.—If the initial housing  
24 plan submitted by an enterprise under this section  
25 is disapproved, the enterprise shall submit an

1 amended plan acceptable to the Director not later  
2 than 15 days after such disapproval, or such longer  
3 period that the Director determines is in the public  
4 interest.

5 “(7) ADDITIONAL REMEDIES FOR FAILURE TO  
6 MEET GOALS.—In addition to ordering a housing  
7 plan under this section, issuing cease-and-desist or-  
8 ders under section 1341, and ordering civil money  
9 penalties under section 1345, the Director may—

10 “(A) seek other actions when an enterprise  
11 fails to meet a goal; and

12 “(B) exercise appropriate enforcement au-  
13 thority available to the Director under this  
14 Act.”.

15 (b) CONFORMING AMENDMENT.—The heading for  
16 subpart C of part 2 of subtitle A of the Federal Housing  
17 Enterprises Financial Safety and Soundness Act of 1992  
18 is amended to read as follows:

19 **“Subpart C—Enforcement”.**

20 (c) CEASE AND DESIST PROCEEDINGS .—

21 (1) REPEAL.—Section 1341 of the Federal  
22 Housing Enterprises Financial Safety and Sound-  
23 ness Act of 1992 (12 U.S.C. 4581) is hereby re-  
24 pealed.



1           (2) CEASE AND DESIST PROCEEDINGS.—The  
2           Federal Housing Enterprises Financial Safety and  
3           Soundness Act of 1992 is amended by inserting be-  
4           fore section 1342 the following:

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

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

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

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

17                   “(3) the enterprise has failed to submit the in-  
18           formation required under subsection (m) or (n) of  
19           section 309 of the Federal National Mortgage Asso-  
20           ciation Charter Act, subsection (e) or (f) of section  
21           307 of the Federal Home Loan Mortgage Corpora-  
22           tion Act, or section 1337 of this title;

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



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

4           “(D) submit a housing plan in compliance  
5 with section 1336(c);

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

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

14       “(c) EFFECTIVE DATE.—An order under this section  
15 shall become effective upon the expiration of the 30-day  
16 period beginning on the date of service of the order upon  
17 the enterprise (except in the case of an order issued upon  
18 consent, which shall become effective at the time specified  
19 therein), and shall remain effective and enforceable as pro-  
20 vided in the order, except to the extent that the order is  
21 stayed, modified, terminated, or set aside by action of the  
22 Director of or otherwise, as provided in this subpart.”.

23       (d) CIVIL MONEY PENALTIES.—

24           (1) REPEAL.—Section 1345 of the Federal  
25 Housing Enterprises Financial Safety and Sound-

1       ness Act of 1992 (12 U.S.C. 4585) is hereby re-  
2       pealed.

3               (2) CIVIL MONEY PENALTIES.—The Federal  
4       Housing Enterprises Financial Safety and Sound-  
5       ness Act of 1992 is amended by inserting after sec-  
6       tion 1344 the following:

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

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

11              “(1) meet any housing goal established under  
12      subpart B, following a written notice and determina-  
13      tion of such failure in accordance with section  
14      1336(b);

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

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

24              “(4) comply with any provision of part 2 of this  
25      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 bring an action in the

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

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

12       “(f) DEPOSIT OF PENALTIES.—The Director shall  
13 use any civil money penalties collected under this section  
14 to help fund the affordable housing block grant program  
15 established under section 1338.”.

16       (e) DIRECTOR AUTHORITY.—

17           (1) AUTHORITY TO BRING A CIVIL ACTION.—  
18 Section 1344(a) of the Federal Housing Enterprises  
19 Financial Safety and Soundness Act of 1992 (12  
20 U.S.C. 4584)) is amended by striking “The Sec-  
21 retary may request the Attorney General of the  
22 United States to bring a civil action” and inserting  
23 “The Director may bring a civil action”.

24           (2) SUBPOENA ENFORCEMENT.—Section  
25 1348(e) of the Federal Housing Enterprises Finan-

1        cial Safety and Soundness Act of 1992 (12 U.S.C.  
2        4588(e)) is amended by inserting “may bring an ac-  
3        tion or” before “may request”.

4            (3) CONFORMING AMENDMENTS.—Subpart C of  
5        part 2 of subtitle A of the Federal Housing Enter-  
6        prises Financial Safety and Soundness Act of 1992  
7        (12 U.S.C. 4581 et seq.) is amended by striking  
8        “Secretary” each place that term appears and in-  
9        serting “Director” in each of—

10            (A) section 1342 (12 U.S.C. 4582);

11            (B) section 1343 (12 U.S.C. 4583);

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

13            (D) section 1347 (12 U.S.C. 4587); and

14            (E) section 1348 (12 U.S.C. 4588).

15        **SEC. 131. AFFORDABLE HOUSING PROGRAMS.**

16            (a) REPEAL.—Section 1337 of the Federal Housing  
17        Enterprises Financial Safety and Soundness Act of 1992  
18        (12 U.S.C. 4567) is hereby repealed.

19            (b) ANNUAL HOUSING REPORT.—The Federal Hous-  
20        ing Enterprises Financial Safety and Soundness Act of  
21        1992 (12 U.S.C. 1301 et seq.) is amended by inserting  
22        after section 1336 the following:



1 **“SEC. 1337. AFFORDABLE HOUSING ALLOCATIONS.**

2 “(a) SET ASIDE AND ALLOCATION OF AMOUNTS BY  
3 ENTERPRISES.—Subject to subsection (b), in each fiscal  
4 year—

5 “(1) the Federal Home Loan Mortgage Cor-  
6 poration shall—

7 “(A) set aside an amount equal to 4.2  
8 basis points for each dollar of unpaid principal  
9 balance of its total new business purchases; and

10 “(B) allocate or otherwise transfer—

11 “(i) 65 percent of such amounts to  
12 the Secretary of Housing and Urban De-  
13 velopment to fund the affordable housing  
14 block grant program established under sec-  
15 tion 1338; and

16 “(ii) 35 percent of such amounts to  
17 fund the Capital Magnet Fund established  
18 pursuant to section 1339; and

19 “(2) the Federal National Mortgage Association  
20 shall—

21 “(A) set aside an amount equal to 4.2  
22 basis points for each dollar of unpaid principal  
23 balance of its total new business purchases; and

24 “(B) allocate or otherwise transfer—

25 “(i) 65 percent of such amounts to  
26 the Secretary of Housing and Urban De-

1                   velopment to fund the affordable housing  
2                   block grant program established under sec-  
3                   tion 1338; and

4                   “ (ii) 35 percent of such amounts to  
5                   fund the Capital Magnet Fund established  
6                   pursuant to section 1339.

7           “(b) SUSPENSION OF CONTRIBUTIONS.—The Direc-  
8   tor shall temporarily suspend allocations under subsection  
9   (a) by an enterprise upon a finding by the Director that  
10 such allocations—

11           “(1) are contributing, or would contribute, to  
12   the financial instability of the enterprise;

13           “(2) are causing, or would cause, the enterprise  
14   to be classified as undercapitalized; or

15           “(3) are preventing, or would prevent, the en-  
16   terprise from successfully completing a capital res-  
17   toration plan under section 1369C.

18           “(c) PROHIBITION OF PASS-THROUGH OF COST OF  
19   ALLOCATIONS.—The Director shall, by regulation, pro-  
20   hibit each enterprise from redirecting the costs of any allo-  
21   cation required under this section, through increased  
22   charges or fees, or decreased premiums, or in any other  
23   manner, to the originators of mortgages purchased or  
24   securitized by the enterprise.

1           “(d) ENFORCEMENT OF REQUIREMENTS ON ENTER-  
2 PRISE.—Compliance by the enterprises with the require-  
3 ments under this section shall be enforceable under sub-  
4 part C. Any reference in such subpart to this part or to  
5 an order, rule, or regulation under this part specifically  
6 includes this section and any order, rule, or regulation  
7 under this section.

8           “(e) REQUIRED AMOUNT FOR RESOLUTION FUNDING  
9 CORPORATION.—Of the aggregate amount allocated under  
10 subsection (a) not more than 25 percent shall be used as  
11 provided in section 21B(f)(2)(E) of the Federal Home  
12 Loan Bank Act (12 U.S.C. 1441b(f)(2)(E)).

13           “(f) LIMITATION.—No funds under this title may be  
14 used in conjunction with property taken by eminent do-  
15 main, unless eminent domain is employed only for a public  
16 use, except that, for purposes of this section, public use  
17 shall not be construed to include economic development  
18 that primarily benefits any private entity.

19 **“SEC. 1338. AFFORDABLE HOUSING BLOCK GRANT PRO-**  
20 **GRAM.**

21           “(a) ESTABLISHMENT AND PURPOSE.—The Sec-  
22 retary of Housing and Urban Development (in this section  
23 referred to as the ‘Secretary’) shall establish and manage  
24 an affordable housing block grant program, which shall  
25 be funded with amounts allocated by the enterprises under

1 section 1337. The purpose of the block grant program  
2 under this section is to provide grants to States for use—

3 “(1) to increase and preserve the supply of  
4 rental housing for extremely low- and very low-in-  
5 come families, including homeless families; and

6 “(2) to increase homeownership for extremely  
7 low- and very low-income families.

8 “(b) AFFORDABLE HOUSING BLOCK GRANT ALLOCA-  
9 TIONS FOR HOMEOWNERSHIP PRESERVATION IN CAL-  
10 ENDAR YEAR 2009.—

11 “(1) ASSISTANCE FOR HOMEOWNERS FACING  
12 FORECLOSURE.—

13 “(A) IN GENERAL.—To help address the  
14 subprime mortgage crisis, in calendar year  
15 2009, 100 percent of the amounts allocated for  
16 grants under this section shall be used to make  
17 grants to States to facilitate loan modification  
18 and refinance options for low- and moderate-in-  
19 come borrowers facing foreclosure.

20 “(B) DISTRIBUTION.—The amounts allo-  
21 cated to help address the subprime mortgage  
22 crisis under subparagraph (A) shall be distrib-  
23 uted according to a formula established by the  
24 Secretary.

1           “(2) PERMISSIBLE DESIGNEES.—A State re-  
2           ceiving grant amounts under this subsection may  
3           designate a State housing finance agency, housing  
4           and community development entity, tribally des-  
5           ignated housing entity (as such term is defined in  
6           section 4 of the Native American Housing Assist-  
7           ance and Self-Determination Act of 1997 (25 U.S.C.  
8           4103)), or any other qualified instrumentality of the  
9           State to receive such grant amounts.

10           “(3) DEVELOPMENT OF DISTRIBUTION FOR-  
11           MULA.—Not later than 2 months after the date of  
12           enactment of the Federal Housing Finance Regu-  
13           latory Reform Act of 2008, the Secretary shall de-  
14           velop the distribution formula required under para-  
15           graph (1)(B). Such formula shall be based on the  
16           following factors:

17                   “(A) The population of the State based on  
18                   the most recent estimate of the resident popu-  
19                   lation of such State as determined by the Bu-  
20                   reau of the Census.

21                   “(B) The 90-day delinquency rate of the  
22                   State.

23                   “(C) The ratio of foreclosures to owner-oc-  
24                   cupied households within the State.

25           “(4) ELIGIBLE USES.—

1           “(A) IN GENERAL.—A State or State des-  
2           gnated entity shall use any grant amounts  
3           made available under this subsection—

4                   “(i) to support the refinancing of  
5                   loans of eligible homeowners, only if such  
6                   loans have a loan-to-value ratio of not  
7                   greater than 90 percent of the current ap-  
8                   praised value of the home on which such  
9                   loan was taken;

10                   “(ii) to reduce the outstanding loan  
11                   balances of eligible homeowners so that the  
12                   maximum combined loan-to-value ratio is  
13                   not greater than 90 percent of the ap-  
14                   praised value of the home, but only if the  
15                   lender, servicer, investor, or other appro-  
16                   priate entity reduces such balance by the  
17                   amount necessary to bring the combined  
18                   loan value (including first and second  
19                   mortgages) at or below 100 percent of the  
20                   appraised value of the home; and

21                   “(iii) to pay off any outstanding  
22                   amounts owed by eligible homeowners for  
23                   insurance or to bring the homeowner cur-  
24                   rent on mortgage payments, in order to

1 allow for the activities described under  
2 clauses (i) and (ii).

3 “(B) PROGRAM REQUIREMENTS FOR ELI-  
4 GIBLE HOMEOWNERS.—

5 “(i) DEVELOPMENT BY STATES.—  
6 Each State or State designated entity that  
7 is a recipient of a grant amount under this  
8 subsection shall develop program require-  
9 ments for eligible homeowners seeking a  
10 loan or grant under this paragraph.

11 “(ii) REQUIRED CONTENT.—The pro-  
12 gram requirements required to be devel-  
13 oped under this subparagraph shall, at a  
14 minimum, include the following:

15 “(I) The annual income of the  
16 homeowner is no greater than the an-  
17 nual income established by the Sec-  
18 retary as being of low- or moderate-  
19 income.

20 “(II) That any loan or grant  
21 under this paragraph may be provided  
22 for up to a 4-family owner-occupied  
23 residence, including 1-family units in  
24 a condominium project or a member-  
25 ship interest and occupancy agree-

1                   ment in a cooperative housing project,  
2                   that is used, or is to be used, as the  
3                   principal residence of the applicant  
4                   seeking such grant or loan.

5                   “(III) The homeowner has a loan  
6                   with unsustainable loan terms, as de-  
7                   termined by a State housing finance  
8                   agency or other designated State  
9                   agency. For purposes of this sub-  
10                  clause, the term ‘unsustainable loan  
11                  terms’ includes such activities as the  
12                  lack of escrow of taxes and insurance,  
13                  the inclusion of prepayment penalties,  
14                  and the lack of the ability of the  
15                  homeowner to pay at the fully indexed  
16                  interest rate because the homeowner’s  
17                  mortgage debt-to-income ratio is  
18                  greater than 35 percent.

19                  “(C) LOAN REQUIREMENTS.—If a State or  
20                  State designated entity uses the amounts made  
21                  available under this subsection to make a loan  
22                  to an eligible homeowner, such loan—

23                         “(i) shall—

24                                 “(I)(aa) have a fixed interest  
25                                 rate;



1 “(bb) bear no interest rate;

2 “(II) be affordable, so that the  
3 maximum total debt-to-income ratio of  
4 such loan conforms to the standards  
5 established by the Federal Housing  
6 Administration pursuant to section  
7 203(b)(4) of the National Housing  
8 Act;

9 “(III) require mandatory escrow  
10 of taxes and insurance;

11 “(IV) have no prepayment pen-  
12 alties; and

13 “(V) have no mandatory arbitra-  
14 tion clauses;

15 “(ii) shall not be due and payable un-  
16 less—

17 “(I) the real property securing  
18 such loan is sold, transferred, or refi-  
19 nanced; or

20 “(II) the last surviving home-  
21 owner of such real property dies;

22 “(iii) shall not exceed 10 percent of  
23 the principal balance; and

24 “(iv) may be subordinated.

1           “(D) EXISTING LOAN FUNDS.—Any State  
2           or State designated entity with a previously ex-  
3           isting fund established to make loans to assist  
4           homeowners in satisfying any amounts past due  
5           on their home loan may use funds appropriated  
6           for purposes of this paragraph for that existing  
7           loan fund, even if the eligibility, application,  
8           program, or use requirements for that loan pro-  
9           gram differ from the eligibility, application, pro-  
10          gram, and use requirements of this paragraph,  
11          unless such use is expressly determined by the  
12          Secretary to be inappropriate.

13          “(c) ALLOCATION FOR AFFORDABLE HOUSING  
14          BLOCK GRANTS IN 2010 AND SUBSEQUENT YEARS.—

15                 “(1) IN GENERAL.—Except as provided in sub-  
16                 section (b), the Secretary shall distribute the  
17                 amounts allocated for the affordable housing block  
18                 grant program under this section to provide afford-  
19                 able housing as described in this subsection.

20                 “(2) PERMISSIBLE DESIGNEES.—A State re-  
21                 ceiving grant amounts under this subsection may  
22                 designate a State housing finance agency, housing  
23                 and community development entity, tribally des-  
24                 ignated housing entity (as such term is defined in  
25                 section 4 of the Native American Housing Assist-

1           ance and Self-Determination Act of 1997 (25 U.S.C.  
2           4103)), or any other qualified instrumentality of the  
3           State to receive such grant amounts.

4           “(3) DISTRIBUTION TO STATES BY NEEDS-  
5           BASED FORMULA.—

6                   “(A) IN GENERAL.—The Secretary shall,  
7                   by regulation, establish a formula within 12  
8                   months of the date of enactment of the Federal  
9                   Housing Finance Regulatory Reform Act of  
10                  2008, to distribute amounts made available  
11                  under this subsection to each State to provide  
12                  affordable housing to extremely low- and very  
13                  low-income households.

14                  “(B) BASIS FOR FORMULA.—The formula  
15                  required under subparagraph (A) shall include  
16                  the following:

17                          “(i) The ratio of the shortage of  
18                          standard rental units both affordable and  
19                          available to extremely low-income renter  
20                          households in the State to the aggregate  
21                          shortage of standard rental units both af-  
22                          fordable and available to extremely low-in-  
23                          come renter households in all the States.

24                          “(ii) The ratio of the shortage of  
25                          standard rental units both affordable and

1 available to very low-income renter house-  
2 holds in the State to the aggregate short-  
3 age of standard rental units both afford-  
4 able and available to very low-income  
5 renter households in all the States.

6 “(iii) The ratio of extremely-low in-  
7 come renter households in the State living  
8 with either (I) incomplete kitchen or  
9 plumbing facilities, (II) more than 1 per-  
10 son per room, or (III) paying more than  
11 50 percent of income for housing costs, to  
12 the aggregate number of extremely low-in-  
13 come renter households living with either  
14 (IV) incomplete kitchen or plumbing facili-  
15 ties, (V) more than 1 person per room, or  
16 (VI) paying more than 50 percent of in-  
17 come for housing costs in all the States.

18 “(iv) The ratio of very low-income  
19 renter households in the State paying more  
20 than 50 percent of income on rent relative  
21 to the aggregate number of very low-in-  
22 come renter households paying more than  
23 50 percent of income on rent in all the  
24 States.

1           “(v) The resulting sum calculated  
2           from the factors described in clauses (i)  
3           through (iv) shall be multiplied by the rel-  
4           ative cost of construction in the State. For  
5           purposes of this subclause, the term ‘cost  
6           of construction’—

7                       “(I) means the cost of construc-  
8                       tion or building rehabilitation in the  
9                       State relative to the national cost of  
10                      construction or building rehabilitation;  
11                      and

12                     “(II) shall be calculated such  
13                     that values higher than 1.0 indicate  
14                     that the State’s construction costs are  
15                     higher than the national average, a  
16                     value of 1.0 indicates that the State’s  
17                     construction costs are exactly the  
18                     same as the national average, and val-  
19                     ues lower than 1.0 indicate that the  
20                     State’s cost of construction are lower  
21                     than the national average.

22                     “(C) PRIORITY.—The formula required  
23                     under subparagraph (A) shall give priority em-  
24                     phasis and consideration to the factor described  
25                     in subparagraph (B)(i).

1 “(4) ALLOCATION OF GRANT AMOUNTS.—

2 “(A) NOTICE.—Not later than 60 days  
3 after the date that the Secretary determines the  
4 formula amounts described in paragraph (3),  
5 the Secretary shall caused to be published in  
6 the Federal Register a notice that such  
7 amounts shall be so available.

8 “(B) GRANT AMOUNT.—In each calendar  
9 year other than calendar year 2009, the Sec-  
10 retary of Housing and Urban Development  
11 shall make a block grant to each State in an  
12 amount that is equal to the formula amount de-  
13 termined under paragraph (3) for that State.

14 “(C) MINIMUM STATE ALLOCATIONS.—If  
15 the formula amount determined under para-  
16 graph (3) for a calendar year would allocate  
17 less than \$3,000,000 to any State, the alloca-  
18 tion for such State shall be \$3,000,000, and the  
19 increase shall be deducted pro rata from the al-  
20 locations made to all other States.

21 “(5) ALLOCATION PLANS REQUIRED.—

22 “(A) IN GENERAL.—For each year that a  
23 State or State designated entity receives an af-  
24 fordable housing block grant under this sub-  
25 section, the State or State designated entity

1 shall establish an allocation plan. Such plan  
2 shall—

3 “(i) set forth a plan for the distribu-  
4 tion of grant amounts received by the  
5 State or State designated entity for such  
6 year;

7 “(ii) be based on priority housing  
8 needs, as determined by the State or State  
9 designated entity in accordance with the  
10 regulations established under subsection  
11 (g)(2)(C);

12 “(iii) comply with paragraph (6); and

13 “(iv) include performance goals that  
14 comply with the requirements established  
15 by the Secretary pursuant to subsection  
16 (g)(2).

17 “(B) ESTABLISHMENT.—In establishing  
18 an allocation plan under this paragraph, a  
19 State or State designated entity shall—

20 “(i) notify the public of the establish-  
21 ment of the plan;

22 “(ii) provide an opportunity for public  
23 comments regarding the plan;

24 “(iii) consider any public comments  
25 received regarding the plan; and

1                   “(iv) make the completed plan avail-  
2                   able to the public.

3                   “(C) CONTENTS.—An allocation plan of a  
4                   State or State designated entity under this  
5                   paragraph shall set forth the requirements for  
6                   eligible recipients under paragraph (8) to apply  
7                   for such grant amounts, including a require-  
8                   ment that each such application include—

9                   “(i) a description of the eligible activi-  
10                  ties to be conducted using such assistance;  
11                  and

12                  “(ii) a certification by the eligible re-  
13                  cipient applying for such assistance that  
14                  any housing units assisted with such as-  
15                  sistance will comply with the requirements  
16                  under this section.

17                  “(6) SELECTION OF ACTIVITIES FUNDED USING  
18                  AFFORDABLE HOUSING FUND GRANT AMOUNTS.—  
19                  Grant amounts received by a State or State des-  
20                  ignated entity under this subsection may be used, or  
21                  committed for use, only for activities that—

22                  “(A) are eligible under paragraph (7) for  
23                  such use;



1           “(B) comply with the applicable allocation  
2           plan of the State or State designated entity  
3           under paragraph (5); and

4           “(C) are selected for funding by the State  
5           or State designated entity in accordance with  
6           the process and criteria for such selection estab-  
7           lished pursuant to subsection (g)(2)(C).

8           “(7) ELIGIBLE ACTIVITIES.—Grant amounts al-  
9           located to a State or State designated entity under  
10          this subsection shall be eligible for use, or for com-  
11          mitment for use, only for assistance for—

12           “(A) the production, preservation, and re-  
13           habilitation of rental housing, including housing  
14           under the programs identified in section  
15           1335(a)(2)(B) and for operating costs, except  
16           that such grant amounts may be used for the  
17           benefit only of extremely low- and very low-in-  
18           come families; and

19           “(B) the production, preservation, and re-  
20           habilitation of housing for homeownership, in-  
21           cluding such forms as downpayment assistance,  
22           closing cost assistance, and assistance for inter-  
23           est rate buy-downs, that—

1           “(i) is available for purchase only for  
2 use as a principal residence by families  
3 that qualify both as—

4                   “(I) extremely low- and very low-  
5 income families at the times described  
6 in subparagraphs (A) through (C) of  
7 section 215(b)(2) of the Cranston-  
8 Gonzalez National Affordable Housing  
9 Act (42 U.S.C. 12745(b)(2)); and

10                   “(II) first-time homebuyers, as  
11 such term is defined in section 104 of  
12 the Cranston-Gonzalez National Af-  
13 fordable Housing Act (42 U.S.C.  
14 12704), except that any reference in  
15 such section to assistance under title  
16 II of such Act shall for purposes of  
17 this subsection be considered to refer  
18 to assistance from affordable housing  
19 fund grant amounts;

20                   “(ii) has an initial purchase price that  
21 meets the requirements of section  
22 215(b)(1) of the Cranston-Gonzalez Na-  
23 tional Affordable Housing Act;

24                   “(iii) is subject to the same resale re-  
25 strictions established under section



1                   “(ii) design, construct or rehabilitate,  
2                   and market affordable housing for home-  
3                   ownership; or

4                   “(iii) provide forms of assistance, such  
5                   as downpayments, closing costs, or interest  
6                   rate buy-downs for purchasers;

7                   “(B) demonstrates the ability and financial  
8                   capacity to undertake, comply, and manage the  
9                   eligible activity;

10                  “(C) demonstrates its familiarity with the  
11                  requirements of any other Federal, State, or  
12                  local housing program that will be used in con-  
13                  junction with such grant amounts to ensure  
14                  compliance with all applicable requirements and  
15                  regulations of such programs; and

16                  “(D) makes such assurances to the State  
17                  or State designated entity as the Secretary  
18                  shall, by regulation, require to ensure that the  
19                  recipient will comply with the requirements of  
20                  this subsection during the entire period that be-  
21                  gins upon selection of the recipient to receive  
22                  such grant amounts and ending upon the con-  
23                  clusion of all activities under paragraph (8)  
24                  that are engaged in by the recipient and funded  
25                  with such grant amounts.

1           “(9) LIMITATIONS ON USE.—

2                   “(A) REQUIRED AMOUNT FOR HOME-  
3           OWNERSHIP ACTIVITIES.—Of the aggregate  
4           amount allocated to a State or State designated  
5           entity under this subsection not more than 10  
6           percent shall be used for activities under sub-  
7           paragraph (B) of paragraph (7).

8                   “(B) DEADLINE FOR COMMITMENT OR  
9           USE.—Grant amounts allocated to a State or  
10          State designated entity under this subsection  
11          shall be used or committed for use within 2  
12          years of the date that such grant amounts are  
13          made available to the State or State designated  
14          entity. The Secretary shall recapture any such  
15          amounts not so used or committed for use and  
16          reallocate such amounts under this subsection  
17          in the first year after such recapture.

18                  “(C) USE OF RETURNS.—The Secretary  
19          shall, by regulation, provide that any return on  
20          a loan or other investment of any grant amount  
21          used by a State or State designated entity to  
22          provide a loan under this subsection shall be  
23          treated, for purposes of availability to and use  
24          by the State or State designated entity, as a

1 block grant amount authorized under this sub-  
2 section.

3 “(D) PROHIBITED USES.—The Secretary  
4 shall, by regulation—

5 “(i) set forth prohibited uses of grant  
6 amounts allocated under this subsection,  
7 which shall include use for—

8 “(I) political activities;

9 “(II) advocacy;

10 “(III) lobbying, whether directly  
11 or through other parties;

12 “(IV) counseling services;

13 “(V) travel expenses; and

14 “(VI) preparing or providing ad-  
15 vice on tax returns;

16 “(ii) provide that, except as provided  
17 in clause (iii), affordable housing block  
18 grant amounts of a State or State des-  
19 ignated entity may not be used for admin-  
20 istrative, outreach, or other costs of—

21 “(I) the State or State des-  
22 ignated entity; or

23 “(II) any other recipient of such  
24 grant amounts; and

1           “(iii) limit the amount of any afford-  
2           able housing block grant amounts for a  
3           year that may be used by the State or  
4           State designated entity for administrative  
5           costs of carrying out the program required  
6           under this subsection to a percentage of  
7           such grant amounts of the State or State  
8           designated entity for such year, which may  
9           not exceed 10 percent.

10           “(E) PROHIBITION OF CONSIDERATION OF  
11           USE FOR MEETING HOUSING GOALS OR DUTY  
12           TO SERVE.—In determining compliance with  
13           the housing goals under this subpart and the  
14           duty to serve underserved markets under sec-  
15           tion 1335, the Secretary may not consider any  
16           affordable housing block grant amounts used  
17           under this section for eligible activities under  
18           paragraph (7). The Secretary shall give credit  
19           toward the achievement of such housing goals  
20           and such duty to serve underserved markets to  
21           purchases by the enterprises of mortgages for  
22           housing that receives funding from such block  
23           grant amounts, but only to the extent that such  
24           purchases by the enterprises are funded other  
25           than with such grant amounts.

1           “(d) REDUCTION FOR FAILURE TO OBTAIN RETURN  
2 OF MISUSED FUNDS.—If in any year a State or State des-  
3 ignated entity fails to obtain reimbursement or return of  
4 the full amount required under subsection (e)(1)(B) to be  
5 reimbursed or returned to the State or State designated  
6 entity during such year—

7           “(1) except as provided in paragraph (2)—

8           “(A) the amount of the grant for the State  
9 or State designated entity for the succeeding  
10 year, as determined pursuant to this section,  
11 shall be reduced by the amount by which such  
12 amounts required to be reimbursed or returned  
13 exceed the amount actually reimbursed or re-  
14 turned; and

15           “(B) the amount of the grant for the suc-  
16 ceeding year for each other State or State des-  
17 ignated entity whose grant is not reduced pur-  
18 suant to subparagraph (A) shall be increased by  
19 the amount determined by applying the formula  
20 established pursuant to this section to the total  
21 amount of all reductions for all State or State  
22 designated entities for such year pursuant to  
23 subparagraph (A); or

24           “(2) in any case in which such failure to obtain  
25 reimbursement or return occurs during a year imme-



1 diately preceding a year in which grants under this  
2 section will not be made, the State or State des-  
3 igned entity shall pay to the Secretary for realloca-  
4 tion among the other grantees an amount equal to  
5 the amount of the reduction for the entity that  
6 would otherwise apply under paragraph (1)(A).

7 “(e) ACCOUNTABILITY OF RECIPIENTS AND GRANT-  
8 EES.—

9 “(1) RECIPIENTS.—

10 “(A) TRACKING OF FUNDS.—The Sec-  
11 retary shall—

12 “(i) require each State or State des-  
13 igned entity to develop and maintain a  
14 system to ensure that each recipient of as-  
15 sistance under this section uses such  
16 amounts in accordance with this section,  
17 the regulations issued under this section,  
18 and any requirements or conditions under  
19 which such amounts were provided; and

20 “(ii) establish minimum requirements  
21 for agreements, between the State or State  
22 designated entity and recipients, regarding  
23 assistance under this section, which shall  
24 include—

1                   “(I) appropriate periodic finan-  
2                   cial and project reporting, record re-  
3                   tention, and audit requirements for  
4                   the duration of the assistance to the  
5                   recipient to ensure compliance with  
6                   the limitations and requirements of  
7                   this section and the regulations under  
8                   this section; and

9                   “(II) any other requirements that  
10                  the Secretary determines are nec-  
11                  essary to ensure appropriate adminis-  
12                  tration and compliance.

13                  “(B) MISUSE OF FUNDS.—

14                  “(i) REIMBURSEMENT REQUIRE-  
15                  MENT.—If any recipient of assistance  
16                  under this section is determined, in accord-  
17                  ance with clause (ii), to have used any  
18                  such amounts in a manner that is materi-  
19                  ally in violation of this section, the regula-  
20                  tions issued under this section, or any re-  
21                  quirements or conditions under which such  
22                  amounts were provided, the State or State  
23                  designated entity shall require that, within  
24                  12 months after the determination of such  
25                  misuse, the recipient shall reimburse the

1 State or State designated entity for such  
2 misused amounts and return to the State  
3 or State designated entity any such  
4 amounts that remain unused or uncommit-  
5 ted for use. The remedies under this clause  
6 are in addition to any other remedies that  
7 may be available under law.

8 “(ii) DETERMINATION.—A determina-  
9 tion is made in accordance with this clause  
10 if the determination is made by the Sec-  
11 retary or made by the State or State des-  
12 ignated entity, provided that—

13 “(I) the State or State des-  
14 ignated entity provides notification of  
15 the determination to the Secretary for  
16 review, in the discretion of the Sec-  
17 retary, of the determination; and

18 “(II) the Secretary does not sub-  
19 sequently reverse the determination.

20 “(2) GRANTEES.—

21 “(A) REPORT.—

22 “(i) IN GENERAL.—The Secretary  
23 shall require each State or State des-  
24 ignated entity receiving grant amounts in  
25 any given year under this section to submit

1 a report, for such year, to the Secretary  
2 that—

3 “(I) describes the activities fund-  
4 ed under this section during such year  
5 with such grant amounts; and

6 “(II) the manner in which the  
7 State or State designated entity com-  
8 plied during such year with any allo-  
9 cation plan established pursuant to  
10 subsection (c).

11 “(ii) PUBLIC AVAILABILITY.—The  
12 Secretary shall make such reports pursu-  
13 ant to this subparagraph publicly available.

14 “(B) MISUSE OF FUNDS.—If the Secretary  
15 determines, after reasonable notice and oppor-  
16 tunity for hearing, that a State or State des-  
17 ignated entity has failed to comply substantially  
18 with any provision of this section, and until the  
19 Secretary is satisfied that there is no longer  
20 any such failure to comply, the Secretary  
21 shall—

22 “(i) reduce the amount of assistance  
23 under this section to the State or State  
24 designated entity by an amount equal to  
25 the amount of block grant amounts which

1                   were not used in accordance with this sec-  
2                   tion;

3                   “(ii) require the State or State des-  
4                   ignated entity to repay the Secretary any  
5                   amount of the block grant which was not  
6                   used in accordance with this section;

7                   “(iii) limit the availability of assist-  
8                   ance under this section to the State or  
9                   State designated entity to activities or re-  
10                  cipients not affected by such failure to  
11                  comply; or

12                  “(iv) terminate any assistance under  
13                  this section to the State or State des-  
14                  ignated entity.

15                  “(f) DEFINITIONS.—For purposes of this section, the  
16                  following definitions shall apply:

17                  “(1) EXTREMELY LOW-INCOME RENTER  
18                  HOUSEHOLD.—The term ‘extremely low-income  
19                  renter household’ means a household whose income  
20                  is not in excess of 30 percent of the area median in-  
21                  come, with adjustments for smaller and larger fami-  
22                  lies, as determined by the Secretary.

23                  “(2) RECIPIENT.—The term ‘recipient’ means  
24                  an individual or entity that receives assistance from  
25                  a State or State designated entity from amounts

1       made available to the State or State designated enti-  
2       ty under this section.

3               “(3) SHORTAGE OF STANDARD RENTAL UNITS  
4       BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY  
5       LOW-INCOME RENTER HOUSEHOLDS.—

6               “(A) IN GENERAL.—The term ‘shortage of  
7       standard rental units both affordable and avail-  
8       able to extremely low-income renter households’  
9       means for any State or other geographical area  
10      the gap between—

11              “(i) the number of units with com-  
12              plete plumbing and kitchen facilities with a  
13              rent that is 30 percent or less of 30 per-  
14              cent of the adjusted area median income as  
15              determined by the Secretary that are occu-  
16              pied by extremely low-income renter house-  
17              holds or are vacant for rent; and

18              “(ii) the number of extremely low-in-  
19              come renter households.

20              “(B) RULE OF CONSTRUCTION.—If the  
21              number of units described in subparagraph  
22              (A)(i) exceeds the number of extremely low-in-  
23              come households as described in subparagraph  
24              (A)(ii), there is no shortage.

1           “(4) SHORTAGE OF STANDARD RENTAL UNITS  
2           BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-  
3           INCOME RENTER HOUSEHOLDS.—

4           “(A) IN GENERAL.—The term ‘shortage of  
5           standard rental units both affordable and avail-  
6           able to very low-income renter households’  
7           means for any State or other geographical area  
8           the gap between—

9           “(i) the number of units with com-  
10           plete plumbing and kitchen facilities with a  
11           rent that is 30 percent or less of 50 per-  
12           cent of the adjusted area median income as  
13           determined by the Secretary that are occu-  
14           pied by very low-income renter households  
15           or are vacant for rent; and

16           “(ii) the number of very low-income  
17           renter households.

18           “(B) RULE OF CONSTRUCTION.—If the  
19           number of units described in subparagraph  
20           (A)(i) exceeds the number of very low-income  
21           households as described in subparagraph  
22           (A)(ii), there is no shortage.

23           “(5) VERY LOW-INCOME FAMILY.—The term  
24           ‘very low-income family’ has the meaning given such  
25           term in section 1303, except that such term includes

1 any family that resides in a rural area that has an  
2 income that does not exceed the poverty line (as  
3 such term is defined in section 673(2) of the Omni-  
4 bus Budget Reconciliation Act of 1981 (42 U.S.C.  
5 9902(2)), including any revision required by such  
6 section) applicable to a family of the size involved.

7 “(6) VERY LOW-INCOME RENTER HOUSE-  
8 HOLDS.—The term ‘very low-income renter house-  
9 holds’ means a household whose income is in excess  
10 of 30 percent but not greater than 50 percent of the  
11 area median income, with adjustments for smaller  
12 and larger families, as determined by the Secretary.

13 “(g) REGULATIONS.—

14 “(1) IN GENERAL.—The Secretary shall issue  
15 regulations to carry out this section.

16 “(2) REQUIRED CONTENTS.—The regulations  
17 issued under this subsection shall include—

18 “(A) a requirement that the Secretary en-  
19 sure that the use of block grant amounts under  
20 this section by States or State designated enti-  
21 ties is audited not less than annually to ensure  
22 compliance with this section;

23 “(B) authority for the Secretary to audit,  
24 provide for an audit, or otherwise verify a State



1 or State designated entity’s activities to ensure  
2 compliance with this section;

3 “(C) requirements for a process for appli-  
4 cation to, and selection by, each State or State  
5 designated entity for activities meeting the  
6 State or State designated entity’s priority hous-  
7 ing needs to be funded with block grant  
8 amounts under this section, which shall provide  
9 for priority in funding to be based upon—

10 “(i) geographic diversity;

11 “(ii) ability to obligate amounts and  
12 undertake activities so funded in a timely  
13 manner;

14 “(iii) in the case of rental housing  
15 projects under subsection (c)(7)(A), the ex-  
16 tent to which rents for units in the project  
17 funded are affordable, especially for ex-  
18 tremely low-income families;

19 “(iv) in the case of rental housing  
20 projects under subsection (c)(7)(A), the ex-  
21 tent of the duration for which such rents  
22 will remain affordable;

23 “(v) the extent to which the applica-  
24 tion makes use of other funding sources;  
25 and

1                   “(vi) the merits of an applicant’s pro-  
2                   posed eligible activity;

3                   “(D) requirements to ensure that block  
4                   grant amounts provided to a State or State des-  
5                   ignated entity under this section that are used  
6                   for rental housing under subsection (c)(7)(A)  
7                   are used only for the benefit of extremely low-  
8                   and very low-income families; and

9                   “(E) requirements and standards for es-  
10                  tablishment, by a State or State designated en-  
11                  tity, for use of block grant amounts in 2009  
12                  and subsequent years of performance goals,  
13                  benchmarks, and timetables for the production,  
14                  preservation, and rehabilitation of affordable  
15                  rental and homeownership housing with such  
16                  grant amounts.

17               “(h) AFFORDABLE HOUSING TRUST FUND.—If,  
18               after the date of enactment of the Federal Housing Fi-  
19               nance Regulatory Reform Act of 2008, in any year, there  
20               is enacted any provision of Federal law establishing an  
21               affordable housing trust fund other than under this title  
22               for use only for grants to provide affordable rental housing  
23               and affordable homeownership opportunities, and the sub-  
24               sequent year is a year referred to in subsection (c), the  
25               Secretary shall in such subsequent year and any remaining

1 years referred to in subsection (c) transfer to such afford-  
2 able housing trust fund the aggregate amount allocated  
3 pursuant to subsection (c) in such year. Notwithstanding  
4 any other provision of law, assistance provided using  
5 amounts transferred to such affordable housing trust fund  
6 pursuant to this subsection may not be used for any of  
7 the activities specified in clauses (i) through (vi) of sub-  
8 section (c)(9)(D).

9 “(i) FUNDING ACCOUNTABILITY AND TRANS-  
10 PARENCY.—Any grant under this section to a grantee by  
11 a State or State designated entity, any assistance provided  
12 to a recipient by a State or State designated entity, and  
13 any grant, award, or other assistance from an affordable  
14 housing trust fund referred to in subsection (h) shall be  
15 considered a Federal award for purposes of the Federal  
16 Funding Accountability and Transparency Act of 2006  
17 (31 U.S.C. 6101 note). Upon the request of the Director  
18 of the Office of Management and Budget, the Secretary  
19 shall obtain and provide such information regarding any  
20 such grants, assistance, and awards as the Director of the  
21 Office of Management and Budget considers necessary to  
22 comply with the requirements of such Act, as applicable,  
23 pursuant to the preceding sentence.

1 **“SEC. 1339. CAPITAL MAGNET FUND.**

2 “(a) ESTABLISHMENT.—There is established in the  
3 Treasury of the United States a trust fund to be known  
4 as the Capital Magnet Fund, which shall be a special ac-  
5 count within the Community Development Financial Insti-  
6 tutions Fund.

7 “(b) DEPOSITS TO TRUST FUND.—The Capital Mag-  
8 net Fund shall consist of—

9 “(1) any amounts transferred to the Fund pur-  
10 suant to section 1337; and

11 “(2) any amounts as are or may be appro-  
12 priated, transferred, or credited to such Fund under  
13 any other provisions of law.

14 “(c) EXPENDITURES FROM TRUST FUND.—Amounts  
15 in the Capital Magnet Fund shall be available to the Sec-  
16 retary of the Treasury to carry out a competitive grant  
17 program to attract private capital for and increase invest-  
18 ment in—

19 “(1) the development, preservation, rehabilita-  
20 tion, or purchase of affordable housing for primarily  
21 extremely low-, very low-, and low-income families;  
22 and

23 “(2) economic development activities or commu-  
24 nity service facilities, such as day care centers, work-  
25 force development centers, and health care clinics,  
26 which in conjunction with affordable housing activi-

1       ties implement a concerted strategy to stabilize or  
2       revitalize a low-income area or underserved rural  
3       area.

4       “(d) FEDERAL ASSISTANCE.—All assistance provided  
5       using amounts in the Capital Magnet Fund shall be con-  
6       sidered to be Federal financial assistance.

7       “(e) ELIGIBLE GRANTEES.—A grant under this sec-  
8       tion may be made, pursuant to such requirements as the  
9       Secretary of the Treasury shall establish for experience  
10      and success in attracting private financing and carrying  
11      out the types of activities proposed under the application  
12      of the grantee, only to—

13           “(1) a Treasury certified community develop-  
14           ment financial institution; or

15           “(2) a nonprofit organization having as 1 of its  
16           principal purposes the development or management  
17           of affordable housing.

18      “(f) ELIGIBLE USES.—Grant amounts awarded from  
19      the Capital Magnet Fund pursuant to this section may  
20      be used for the purposes described in paragraphs (1) and  
21      (2) of subsection (e), including for the following uses:

22           “(1) To provide loan loss reserves.

23           “(2) To capitalize a revolving loan fund.

24           “(3) To capitalize an affordable housing fund.

1           “(4) To capitalize a fund to support activities  
2 described in subsection (e)(2).

3           “(5) For risk-sharing loans.

4           “(g) APPLICATIONS.—

5           “(1) IN GENERAL.—The Secretary of the  
6 Treasury shall provide, in a competitive application  
7 process established by regulation, for eligible grant-  
8 ees under subsection (e) to submit applications for  
9 Capital Magnet Fund grants to the Secretary at  
10 such time and in such manner as the Secretary shall  
11 determine.

12           “(2) CONTENT OF APPLICATION.—The applica-  
13 tion required under paragraph (1) shall include a de-  
14 tailed description of—

15           “(A) the types of affordable housing, eco-  
16 nomic, and community revitalization projects  
17 that support or sustain residents of an afford-  
18 able housing project funded by a grant under  
19 this section for which such grant amounts  
20 would be used, including the proposed use of el-  
21 igible grants as authorized under this section;

22           “(B) the types, sources, and amounts of  
23 other funding for such projects; and

24           “(C) the expected timeframe of any grant  
25 used for such project.

1 “(h) GRANT LIMITATION.—

2 “(1) IN GENERAL.—Any 1 eligible grantee and  
3 its subsidiaries and affiliates may not be awarded  
4 more than 15 percent of the aggregate funds avail-  
5 able for grants during any year from the Capital  
6 Magnet Fund.

7 “(2) GEOGRAPHIC DIVERSITY.—

8 “(A) GOAL.—The Secretary of the Treas-  
9 ury shall seek to fund activities in geographi-  
10 cally diverse areas of economic distress, includ-  
11 ing metropolitan and underserved rural areas in  
12 every State.

13 “(B) DIVERSITY DEFINED.—For purposes  
14 of this paragraph, geographic diversity includes  
15 those areas that meet objective criteria of eco-  
16 nomic distress developed by the Secretary of the  
17 Treasury, which may include—

18 “(i) the percentage of low-income  
19 families or the extent of poverty;

20 “(ii) the rate of unemployment or  
21 underemployment;

22 “(iii) extent of blight and disinvest-  
23 ment;

24 “(iv) projects that target extremely  
25 low-, very low-, and low-income families in

1 or outside a designated economic distress  
2 area; or

3 “(v) any other criteria designated by  
4 the Secretary of the Treasury.

5 “(3) LEVERAGE OF FUNDS.—Each grant from  
6 the Capital Magnet Fund awarded under this section  
7 shall be reasonably expected to result in eligible  
8 housing, or economic and community development  
9 projects that support or sustain an affordable hous-  
10 ing project funded by a grant under this section  
11 whose aggregate costs total at least 10 times the  
12 grant amount.

13 “(4) COMMITMENT FOR USE DEADLINE.—  
14 Amounts made available for grants under this sec-  
15 tion shall be committed for use within 2 years of the  
16 date of such allocation. The Secretary of the Treas-  
17 ury shall recapture into the Capital Magnet Fund  
18 any amounts not so used or committed for use and  
19 allocate such amounts in the first year after such re-  
20 capture.

21 “(5) LOBBYING RESTRICTIONS.—No assistance  
22 or amounts made available under this section may  
23 be expended by an eligible grantee to pay any person  
24 to influence or attempt to influence any agency,  
25 elected official, officer or employee of a State or



1 local government in connection with the making,  
2 award, extension, continuation, renewal, amendment,  
3 or modification of any State or local government  
4 contract, grant, loan, or cooperative agreement as  
5 such terms are defined in section 1352 of title 31,  
6 United States Code.

7 “(6) PROHIBITION OF CONSIDERATION OF USE  
8 FOR MEETING HOUSING GOALS OR DUTY TO  
9 SERVE.—In determining the compliance of the enter-  
10 prises with the housing goals under this section and  
11 the duty to serve underserved markets under section  
12 1335, the Director of the Federal Housing Finance  
13 Agency may not consider any Capital Magnet Fund  
14 amounts used under this section for eligible activities  
15 under subsection (f). The Director of the Federal  
16 Housing Finance Agency shall give credit toward the  
17 achievement of such housing goals and such duty to  
18 serve underserved markets to purchases by the en-  
19 terprises of mortgages for housing that receives  
20 funding from Capital Magnet Fund grant amounts,  
21 but only to the extent that such purchases by the  
22 enterprises are funded other than with such grant  
23 amounts.

24 “(7) ACCOUNTABILITY OF RECIPIENTS AND  
25 GRANTEES.—

1                   “(A) TRACKING OF FUNDS.—The Sec-  
2                   retary of the Treasury shall—

3                   “ (i) require each grantee to develop  
4                   and maintain a system to ensure that each  
5                   recipient of assistance from the Capital  
6                   Magnet Fund uses such amounts in ac-  
7                   cordance with this section, the regulations  
8                   issued under this section, and any require-  
9                   ments or conditions under which such  
10                  amounts were provided; and

11                  “ (ii) establish minimum requirements  
12                  for agreements, between the grantee and  
13                  the Capital Magnet Fund, regarding as-  
14                  sistance from the Capital Magnet Fund,  
15                  which shall include—

16                  “ (I) appropriate periodic finan-  
17                  cial and project reporting, record re-  
18                  tention, and audit requirements for  
19                  the duration of the grant to the re-  
20                  cipient to ensure compliance with the  
21                  limitations and requirements of this  
22                  section and the regulations under this  
23                  section; and

24                  “ (II) any other requirements that  
25                  the Secretary determines are nec-

1                    necessary to ensure appropriate grant ad-  
2                    ministration and compliance.

3                    “(B) MISUSE OF FUNDS.—If the Secretary  
4                    of the Treasury determines, after reasonable  
5                    notice and opportunity for hearing, that a  
6                    grantee has failed to comply substantially with  
7                    any provision of this section and until the Sec-  
8                    retary is satisfied that there is no longer any  
9                    such failure to comply, the Secretary shall—

10                    “(i) reduce the amount of assistance  
11                    under this section to the grantee by an  
12                    amount equal to the amount of Capital  
13                    Magnet Fund grant amounts which were  
14                    not used in accordance with this section;

15                    “(ii) require the grantee to repay the  
16                    Secretary any amount of the Capital Mag-  
17                    net Fund grant amounts which were not  
18                    used in accordance with this section;

19                    “(iii) limit the availability of assist-  
20                    ance under this section to the grantee to  
21                    activities or recipients not affected by such  
22                    failure to comply; or

23                    “(iv) terminate any assistance under  
24                    this section to the grantee.

25                    “(i) PERIODIC REPORTS.—

1           “(1) IN GENERAL.—The Secretary of the  
2 Treasury shall submit a report, on a periodic basis,  
3 to the Committee on Banking, Housing, and Urban  
4 Affairs of the Senate and the Committee on Finan-  
5 cial Services of the House of Representatives de-  
6 scribing the activities to be funded under this sec-  
7 tion.

8           “(2) REPORTS AVAILABLE TO PUBLIC.—The  
9 Secretary of the Treasury shall make the reports re-  
10 quired under paragraph (1) publicly available.

11       “(j) REGULATIONS.—

12           “(1) IN GENERAL.—The Secretary of the  
13 Treasury shall issue regulations to carry out this  
14 section.

15           “(2) REQUIRED CONTENTS.—The regulations  
16 issued under this subsection shall include—

17           “(A) authority for the Secretary to audit,  
18 provide for an audit, or otherwise verify an en-  
19 terprise’s activities, to ensure compliance with  
20 this section;

21           “(B) a requirement that the Secretary en-  
22 sure that the allocation of each enterprise is au-  
23 dited not less than annually to ensure compli-  
24 ance with this section; and

1           “(C) requirements for a process for appli-  
2 cation to, and selection by, the Secretary for ac-  
3 tivities to be funded with amounts from the  
4 Capital Magnet Fund, which shall provide  
5 that—

6                   “(i) funds be fairly distributed to  
7 urban, suburban, and rural areas;

8                   “(ii) selection shall be based upon spe-  
9 cific criteria, including a prioritization of  
10 funding based upon—

11                           “(I) the ability to use such funds  
12 to generate additional investments;

13                           “(II) affordable housing need  
14 (taking into account the distinct needs  
15 of different regions of the country);  
16 and

17                           “(III) ability to obligate amounts  
18 and undertake activities so funded in  
19 a timely manner.”.

20           (c) REFCORP PAYMENTS.—Section 21B(f)(2) of  
21 the Federal Home Loan Bank Act (12 U.S.C.  
22 1441b(f)(2)) is amended—

23                   (1) in subparagraph (E), by striking “and (D)”  
24 and inserting “(D), and (E)”;



1 nance Agency for employment, not later than the effective  
2 date of the Federal Housing Finance Regulatory Reform  
3 Act of 2008, and such transfer shall be deemed a transfer  
4 of function for purposes of section 3503 of title 5, United  
5 States Code.

6 (b) GUARANTEED POSITIONS.—

7 (1) IN GENERAL.—Each employee transferred  
8 under subsection (a) shall be guaranteed a position  
9 with the same status, tenure, grade, and pay as that  
10 held on the day immediately preceding the transfer.

11 (2) NO INVOLUNTARY SEPARATION OR REDUC-  
12 TION.—An employee transferred under subsection  
13 (a) holding a permanent position on the day imme-  
14 diately preceding the transfer may not be involun-  
15 tarily separated or reduced in grade or compensation  
16 during the 12-month period beginning on the date of  
17 transfer, except for cause, or, in the case of a tem-  
18 porary employee, separated in accordance with the  
19 terms of the appointment of the employee.

20 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
21 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

22 (1) IN GENERAL.—In the case of an employee  
23 occupying a position in the excepted service or the  
24 Senior Executive Service, any appointment authority  
25 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 Federal Housing Finance Regulatory Re-  
16 form Act of 2008, that a reorganization of the combined  
17 workforce is required, that reorganization shall be deemed  
18 a major reorganization for purposes of affording affected  
19 employee retirement under section 8336(d)(2) or  
20 8414(b)(1)(B) of title 5, United States Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee described  
23 under subsection (a) accepting employment with the  
24 Agency as a result of a transfer under subsection (a)  
25 may retain for 12 months after the date on which



1       such transfer occurs membership in any employee  
2       benefit program of the Agency or the Department of  
3       Housing and Urban Development, as applicable, in-  
4       cluding insurance, to which such employee belongs  
5       on such effective date, 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 of the Federal Housing Finance  
10      Agency.

11      (2) COST DIFFERENTIAL.—

12              (A) IN GENERAL.—The difference in the  
13      costs between the benefits which would have  
14      been provided by the Department of Housing  
15      and Development and those provided by this  
16      section shall be paid by the Director.

17              (B) HEALTH INSURANCE.—If any em-  
18      ployee elects to give up membership in a health  
19      insurance program or the health insurance pro-  
20      gram is not continued by the Director, the em-  
21      ployee shall be permitted to select an alternate  
22      Federal health insurance program not later  
23      than 30 days after the date of such election or  
24      notice, without regard to any other regularly  
25      scheduled open season.



1 (b) REGULATIONS.—Not later than the expiration of  
2 the 180-day period beginning on the effective date of this  
3 Act, the Director of the Federal Housing Finance Agency  
4 shall issue regulations pursuant to section 1363(b) of the  
5 Federal Housing Enterprises Financial Safety and Sound-  
6 ness Act of 1992 (as added by this section) establishing  
7 the critical capital level under such section.

8 **SEC. 142. CAPITAL CLASSIFICATIONS.**

9 (a) IN GENERAL.—Section 1364 of the Federal  
10 Housing Enterprises Financial Safety and Soundness Act  
11 of 1992 (12 U.S.C. 4614) is amended—

12 (1) in the heading for subsection (a) by striking  
13 “In General” and inserting “Enterprises”;

14 (2) in subsection (c)—

15 (A) by striking “subsection (b)” and in-  
16 serting “subsection (e)”;

17 (B) by striking “enterprises” and inserting  
18 “regulated entities”; and

19 (C) by striking the last sentence;

20 (3) by redesignating subsections (c) (as so  
21 amended by paragraph (2) of this subsection) and  
22 (d) as subsections (d) and (f), respectively;

23 (4) by striking subsection (b) and inserting the  
24 following:

25 “(b) FEDERAL HOME LOAN BANKS.—

1           “(1) ESTABLISHMENT AND CRITERIA.—For  
2 purposes of this subtitle, the Director shall, by regu-  
3 lation—

4           “(A) establish the capital classifications  
5 specified under paragraph (2) for the Federal  
6 Home Loan Banks;

7           “(B) establish criteria for each such cap-  
8 ital classification based on the amount and  
9 types of capital held by a bank and the risk-  
10 based, minimum, and critical capital levels for  
11 the banks and taking due consideration of the  
12 capital classifications established under sub-  
13 section (a) for the enterprises, with such modi-  
14 fications as the Director determines to be ap-  
15 propriate to reflect the difference in operations  
16 between the banks and the enterprises; and

17           “(C) shall classify the Federal Home Loan  
18 Banks according to such capital classifications.

19           “(2) CLASSIFICATIONS.—The capital classifica-  
20 tions specified under this paragraph are—

21           “(A) adequately capitalized;

22           “(B) undercapitalized;

23           “(C) significantly undercapitalized; and

24           “(D) critically undercapitalized.

25           “(c) DISCRETIONARY CLASSIFICATION.—

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

4           “(A) at any time, the Director determines  
5 in writing that the regulated entity is engaging  
6 in conduct that could result in a rapid depletion  
7 of core or total capital or the value of collateral  
8 has decreased significantly or that the value of  
9 the property subject to any mortgage held by  
10 the regulated entity (or securitized in the case  
11 of an enterprise) has decreased significantly;

12           “(B) after notice and an opportunity for  
13 hearing, the Director determines that the regu-  
14 lated entity is in an unsafe or unsound condi-  
15 tion; or

16           “(C) pursuant to section 1371(b), the Di-  
17 rector deems the regulated entity to be engag-  
18 ing in an unsafe or unsound practice.

19           “(2) RECLASSIFICATION.—In addition to any  
20 other action authorized under this title, including  
21 the reclassification of a regulated entity for any rea-  
22 son not specified in this subsection, if the Director  
23 takes any action described in paragraph (1) the Di-  
24 rector may classify a regulated entity—

1           “(A) as undercapitalized, if the regulated  
2           entity is otherwise classified as adequately cap-  
3           italized;

4           “(B) as significantly undercapitalized, if  
5           the regulated entity is otherwise classified as  
6           undercapitalized; and

7           “(C) as critically undercapitalized, if the  
8           regulated entity is otherwise classified as sig-  
9           nificantly undercapitalized.”; and

10          (5) by inserting after subsection (d) (as so re-  
11          designated by paragraph (3) of this subsection), the  
12          following new subsection:

13          “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

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

18                 “(2) EXCEPTION.—Notwithstanding paragraph  
19                 (1), the Director may permit a regulated entity, to  
20                 the extent appropriate or applicable, to repurchase,  
21                 redeem, retire, or otherwise acquire shares or owner-  
22                 ship interests if the repurchase, redemption, retire-  
23                 ment, or other acquisition—

24                         “(A) is made in connection with the  
25                         issuance of additional shares or obligations of

1 the regulated entity in at least an equivalent  
2 amount; and

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

6 (b) REGULATIONS.—Not later than the expiration of  
7 the 180-day period beginning on the effective date of this  
8 Act, the Director of the Federal Housing Finance Agency  
9 shall issue regulations to carry out section 1364(b) of the  
10 Federal Housing Enterprises Financial Safety and Sound-  
11 ness Act of 1992 (as added by f this section), relating to  
12 capital classifications for the Federal Home Loan Banks.

13 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
14 **CAPITALIZED REGULATED ENTITIES.**

15 Section 1365 of the Federal Housing Enterprises Fi-  
16 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
17 4615) is amended—

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

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

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

24 (4) in subsection (a)—

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

3 (B) by inserting before paragraph (2), as  
4 redesignated, the following:

5 “(1) REQUIRED MONITORING.—The Director  
6 shall—

7 “(A) closely monitor the condition of any  
8 undercapitalized regulated entity;

9 “(B) closely monitor compliance with the  
10 capital restoration plan, restrictions, and re-  
11 quirements imposed on an undercapitalized reg-  
12 ulated entity under this section; and

13 “(C) periodically review the plan, restric-  
14 tions, and requirements applicable to an under-  
15 capitalized regulated entity to determine wheth-  
16 er the plan, restrictions, and requirements are  
17 achieving the purpose of this section.”; and

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

19 “(4) RESTRICTION OF ASSET GROWTH.—An  
20 undercapitalized regulated entity shall not permit its  
21 average total assets during any calendar quarter to  
22 exceed its average total assets during the preceding  
23 calendar quarter, unless—

24 “(A) the Director has accepted the capital  
25 restoration plan of the regulated entity;



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

3           “(C) the ratio of tangible equity to assets  
4           of the regulated entity increases during the cal-  
5           endar quarter at a rate sufficient to enable the  
6           regulated entity to become adequately capital-  
7           ized within a reasonable time.

8           “(5) PRIOR APPROVAL OF ACQUISITIONS AND  
9           NEW ACTIVITIES.—An undercapitalized regulated en-  
10          tity shall not, directly or indirectly, acquire any in-  
11          terest in any entity or engage in any new activity,  
12          unless—

13                 “(A) the Director has accepted the capital  
14                 restoration plan of the regulated entity, the reg-  
15                 ulated entity is implementing the plan, and the  
16                 Director determines that the proposed action is  
17                 consistent with and will further the achievement  
18                 of the plan; or

19                 “(B) the Director determines that the pro-  
20                 posed action will further the purpose of this  
21                 subtitle.”;

22           (5) in subsection (b)—

23                 (A) in the subsection heading, by striking  
24                 “DISCRETIONARY”;

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

3 (C) in paragraph (2)—

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

6 (ii) by striking the period at the end  
7 and inserting “in any material respect.”;

8 and

9 (6) by striking subsection (c) and inserting the  
10 following:

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

18 **SEC. 144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
19 **CANTLY UNDERCAPITALIZED REGULATED**  
20 **ENTITIES.**

21 Section 1366 of the Federal Housing Enterprises Fi-  
22 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
23 4616) is amended—

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

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

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

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

10 (5) in subsection (b)—

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

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

18 (C) by striking paragraph (6);

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

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

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

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

4           “(B) DISMISSAL OF DIRECTORS OR EXECU-  
5 TIVE OFFICERS.—Require the regulated entity  
6 to dismiss from office any director or executive  
7 officer who had held office for more than 180  
8 days immediately before the date on which the  
9 regulated entity became undercapitalized. Dis-  
10 missal under this subparagraph shall not be  
11 construed to be a removal pursuant to the en-  
12 forcement powers of the Director under section  
13 1377.

14           “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
15 FICERS.—Require the regulated entity to em-  
16 ploy qualified executive officers (who, if the Di-  
17 rector so specifies, shall be subject to approval  
18 by the Director).”; and

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

20           “(7) OTHER ACTION.—Require the regulated  
21 entity to take any other action that the Director de-  
22 termines will better carry out the purpose of this  
23 section than any of the other actions specified in this  
24 subsection.”; and

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

3           “(c) RESTRICTION ON COMPENSATION OF EXECU-  
4 TIVE OFFICERS.—A regulated entity that is classified as  
5 significantly undercapitalized in accordance with section  
6 1364 may not, without prior written approval by the Di-  
7 rector—

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

9           “(2) provide compensation to any executive offi-  
10 cer at a rate exceeding the average rate of com-  
11 pensation of that officer (excluding bonuses, stock  
12 options, and profit sharing) during the 12 calendar  
13 months preceding the calendar month in which the  
14 regulated entity became significantly undercapital-  
15 ized.”.

16 **SEC. 145. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
17 **IZED REGULATED ENTITIES.**

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

21 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
22 **IZED REGULATED ENTITIES.**

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



1           “(B) UNSAFE OR UNSOUND CONDITION.—  
2           An unsafe or unsound condition to transact  
3           business.

4           “(C) CEASE AND DESIST ORDERS.—Any  
5           willful violation of a cease and desist order that  
6           has become final.

7           “(D) CONCEALMENT.—Any concealment of  
8           the books, papers, records, or assets of the reg-  
9           ulated entity, or any refusal to submit the  
10          books, papers, records, or affairs of the regu-  
11          lated entity, for inspection to any examiner or  
12          to any lawful agent of the Director.

13          “(E) INABILITY TO MEET OBLIGATIONS.—  
14          The regulated entity is likely to be unable to  
15          pay its obligations or meet the demands of its  
16          creditors in the normal course of business.

17          “(F) LOSSES.—The regulated entity has  
18          incurred or is likely to incur losses that will de-  
19          plete all or substantially all of its capital, and  
20          there is no reasonable prospect for the regu-  
21          lated entity to become adequately capitalized  
22          (as defined in section 1364(a)(1)).

23          “(G) VIOLATIONS OF LAW.—Any violation  
24          of any law or regulation, or any unsafe or un-  
25          sound practice or condition that is likely to—

1                   “(i) cause insolvency or substantial  
2                   dissipation of assets or earnings; or

3                   “(ii) weaken the condition of the regu-  
4                   lated entity.

5                   “(H) CONSENT.—The regulated entity, by  
6                   resolution of its board of directors or its share-  
7                   holders or members, consents to the appoint-  
8                   ment.

9                   “(I) UNDERCAPITALIZATION.—The regu-  
10                  lated entity is undercapitalized or significantly  
11                  undercapitalized (as defined in section  
12                  1364(a)(3)), and—

13                  “(i) has no reasonable prospect of be-  
14                  coming adequately capitalized;

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

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

19                         “(II) section 1366(a)(1) with re-  
20                         spect to a significantly undercapital-  
21                         ized regulated entity;

22                         “(iii) fails to submit a capital restora-  
23                         tion plan acceptable to the Agency within  
24                         the time prescribed under section 1369C;  
25                         or



1           “(iv) materially fails to implement a  
2           capital restoration plan submitted and ac-  
3           cepted under section 1369C.

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

7           “(K) MONEY LAUNDERING.—The Attorney  
8           General notifies the Director in writing that the  
9           regulated entity has been found guilty of a  
10          criminal offense under section 1956 or 1957 of  
11          title 18, United States Code, or section 5322 or  
12          5324 of title 31, United States Code.

13          “(4) MANDATORY RECEIVERSHIP.—

14           “(A) IN GENERAL.—The Director shall ap-  
15          point the Agency as receiver for a regulated en-  
16          tity if the Director determines, in writing,  
17          that—

18           “(i) the assets of the regulated entity  
19           are, and during the preceding 60 calendar  
20           days have been, less than the obligations of  
21           the regulated entity to its creditors and  
22           others; or

23           “(ii) the regulated entity is not, and  
24           during the preceding 60 calendar days has  
25           not been, generally paying the debts of the

1 regulated entity (other than debts that are  
2 the subject of a bona fide dispute) as such  
3 debts become due.

4 “(B) PERIODIC DETERMINATION RE-  
5 QUIRED FOR CRITICALLY UNDERCAPITALIZED  
6 REGULATED ENTITY.—If a regulated entity is  
7 critically undercapitalized, the Director shall  
8 make a determination, in writing, as to whether  
9 the regulated entity meets the criteria specified  
10 in clause (i) or (ii) of subparagraph (A)—

11 “(i) not later than 30 calendar days  
12 after the regulated entity initially becomes  
13 critically undercapitalized; and

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

16 “(C) DETERMINATION NOT REQUIRED IF  
17 RECEIVERSHIP ALREADY IN PLACE.—Subpara-  
18 graph (B) does not apply with respect to a reg-  
19 ulated entity in any period during which the  
20 Agency serves as receiver for the regulated enti-  
21 ty.

22 “(D) RECEIVERSHIP TERMINATES CON-  
23 SERVATORSHIP.—The appointment of the Agen-  
24 cy as receiver of a regulated entity under this  
25 section shall immediately terminate any con-

1 servatorship established for the regulated entity  
2 under this title.

3 “(5) JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—If the Agency is ap-  
5 pointed conservator or receiver under this sec-  
6 tion, the regulated entity may, within 30 days  
7 of such appointment, bring an action in the  
8 United States district court for the judicial dis-  
9 trict in which the home office of such regulated  
10 entity is located, or in the United States Dis-  
11 trict Court for the District of Columbia, for an  
12 order requiring the Agency to remove itself as  
13 conservator or receiver.

14 “(B) REVIEW.—Upon the filing of an ac-  
15 tion under subparagraph (A), the court shall,  
16 upon the merits, dismiss such action or direct  
17 the Agency to remove itself as such conservator  
18 or receiver.

19 “(6) DIRECTORS NOT LIABLE FOR ACQUI-  
20 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-  
21 CEIVER.—The members of the board of directors of  
22 a regulated entity shall not be liable to the share-  
23 holders or creditors of the regulated entity for acqui-  
24 escing in or consenting in good faith to the appoint-

1       ment of the Agency as conservator or receiver for  
2       that regulated entity.

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

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

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

15           “(2) GENERAL POWERS.—

16           “(A) SUCCESSOR TO REGULATED ENTI-  
17      TY.—The Agency shall, as conservator or re-  
18      ceiver, and by operation of law, immediately  
19      succeed to—

20           “(i) all rights, titles, powers, and  
21           privileges of the regulated entity, and of  
22           any stockholder, officer, or director of such  
23           regulated entity with respect to the regu-  
24           lated entity and the assets of the regulated  
25           entity; and

1                   “(ii) title to the books, records, and  
2                   assets of any other legal custodian of such  
3                   regulated entity.

4                   “(B) OPERATE THE REGULATED ENTI-  
5                   TY.—The Agency may, as conservator or re-  
6                   ceiver—

7                   “(i) take over the assets of and oper-  
8                   ate the regulated entity with all the powers  
9                   of the shareholders, the directors, and the  
10                  officers of the regulated entity and conduct  
11                  all business of the regulated entity;

12                  “(ii) collect all obligations and money  
13                  due the regulated entity;

14                  “(iii) perform all functions of the reg-  
15                  ulated entity in the name of the regulated  
16                  entity which are consistent with the ap-  
17                  pointment as conservator or receiver;

18                  “(iv) preserve and conserve the assets  
19                  and property of the regulated entity; and

20                  “(v) provide by contract for assistance  
21                  in fulfilling any function, activity, action,  
22                  or duty of the Agency as conservator or re-  
23                  ceiver.

24                  “(C) FUNCTIONS OF OFFICERS, DIREC-  
25                  TORS, AND SHAREHOLDERS OF A REGULATED

1           ENTITY.—The Agency may, by regulation or  
2           order, provide for the exercise of any function  
3           by any stockholder, director, or officer of any  
4           regulated entity for which the Agency has been  
5           named conservator or receiver.

6           “(D) POWERS AS CONSERVATOR.—The  
7           Agency may, as conservator, take such action  
8           as may be—

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

11                   “(ii) appropriate to carry on the busi-  
12                  ness of the regulated entity and preserve  
13                  and conserve the assets and property of  
14                  the regulated entity.

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



1           respect to a regulated entity (includ-  
2           ing determining any claim against the  
3           regulated entity and determining and  
4           realizing upon any asset of any person  
5           in the course of collecting money due  
6           the regulated entity), exercise any  
7           power established under section 1348.

8                   “(II) APPLICABILITY OF LAW.—  
9           The provisions of section 1348 shall  
10          apply with respect to the exercise of  
11          any power under this subparagraph,  
12          in the same manner as such provi-  
13          sions apply under that section.

14                   “(ii) SUBPOENA.—A subpoena or sub-  
15          poena duces tecum may be issued under  
16          clause (i) only by, or with the written ap-  
17          proval of, the Director, or the designee of  
18          the Director.

19                   “(iii) RULE OF CONSTRUCTION.—This  
20          subsection shall not be construed to limit  
21          any rights that the Agency, in any capac-  
22          ity, might otherwise have under section  
23          1317 or 1379B.

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



1           “(i) exercise all powers and authori-  
2 ties specifically granted to conservators or  
3 receivers, respectively, under this section,  
4 and such incidental powers as shall be nec-  
5 essary to carry out such powers; and

6           “(ii) take any action authorized by  
7 this section, which the Agency determines  
8 is in the best interests of the regulated en-  
9 tity or the Agency.

10           “(K) OTHER PROVISIONS.—

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

1 to payment, resolution, or other satisfac-  
2 tion of their claims, as permitted under  
3 subsections (b)(9), (c), and (e).

4 “(ii) ASSETS OF REGULATED ENTI-  
5 TY.—Notwithstanding any other provision  
6 of law, for purposes of this section, the  
7 charter of a regulated entity shall not be  
8 considered an asset of the regulated entity.

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

11 “(A) IN GENERAL.—The Agency may, as  
12 receiver, determine claims in accordance with  
13 the requirements of this subsection and any  
14 regulations prescribed under paragraph (4).

15 “(B) NOTICE REQUIREMENTS.—The re-  
16 ceiver, in any case involving the liquidation or  
17 winding up of the affairs of a closed regulated  
18 entity, shall—

19 “(i) promptly publish a notice to the  
20 creditors of the regulated entity to present  
21 their claims, together with proof, to the re-  
22 ceiver by a date specified in the notice  
23 which shall be not less than 90 days after  
24 the date of publication of such notice; and

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

5                   “(C) MAILING REQUIRED.—The receiver  
6                   shall mail a notice similar to the notice pub-  
7                   lished under subparagraph (B)(i) at the time of  
8                   such publication to any creditor shown on the  
9                   books of the regulated entity—

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

12                   “(ii) upon discovery of the name and  
13                   address of a claimant not appearing on the  
14                   books of the regulated entity, within 30  
15                   days after the discovery of such name and  
16                   address.

17                   “(4) RULEMAKING AUTHORITY RELATING TO  
18                   DETERMINATION OF CLAIMS.—Subject to subsection  
19                   (c), the Director may prescribe regulations regarding  
20                   the allowance or disallowance of claims by the re-  
21                   ceiver and providing for administrative determina-  
22                   tion of claims and review of such determination.

23                   “(5) PROCEDURES FOR DETERMINATION OF  
24                   CLAIMS.—

25                   “(A) DETERMINATION PERIOD.—

1           “(i) IN GENERAL.—Before the end of  
2           the 180-day period beginning on the date  
3           on which any claim against a regulated en-  
4           tity is filed with the Agency as receiver,  
5           the Agency shall determine whether to  
6           allow or disallow the claim and shall notify  
7           the claimant of any determination with re-  
8           spect to such claim.

9           “(ii) EXTENSION OF TIME.—The pe-  
10          riod described in clause (i) may be ex-  
11          tended by a written agreement between the  
12          claimant and the Agency.

13          “(iii) MAILING OF NOTICE SUFFI-  
14          CIENT.—The requirements of clause (i)  
15          shall be deemed to be satisfied if the notice  
16          of any determination with respect to any  
17          claim is mailed to the last address of the  
18          claimant which appears—

19                 “(I) on the books of the regu-  
20                 lated entity;

21                 “(II) in the claim filed by the  
22                 claimant; or

23                 “(III) in documents submitted in  
24                 proof of the claim.



1 creditor or claim of security, preference, or  
2 priority which is not proved to the satisfac-  
3 tion of the receiver.

4 “(ii) PAYMENTS TO LESS THAN  
5 FULLY SECURED CREDITORS.—In the case  
6 of a claim of a creditor against a regulated  
7 entity which is secured by any property or  
8 other asset of such regulated entity, the re-  
9 ceiver—

10 “(I) may treat the portion of  
11 such claim which exceeds an amount  
12 equal to the fair market value of such  
13 property or other asset as an unse-  
14 cured claim against the regulated en-  
15 tity; and

16 “(II) may not make any payment  
17 with respect to such unsecured por-  
18 tion of the claim, other than in con-  
19 nection with the disposition of all  
20 claims of unsecured creditors of the  
21 regulated entity.

22 “(iii) EXCEPTIONS.—No provision of  
23 this paragraph shall apply with respect  
24 to—

1                   “(I) any extension of credit from  
2                   any Federal Reserve Bank or the  
3                   United States Treasury; or

4                   “(II) any security interest in the  
5                   assets of the regulated entity securing  
6                   any such extension of credit.

7                   “(E) NO JUDICIAL REVIEW OF DETER-  
8                   MINATION PURSUANT TO SUBPARAGRAPH (D).—  
9                   No court may review the determination of the  
10                  Agency under subparagraph (D) to disallow a  
11                  claim.

12                  “(F) LEGAL EFFECT OF FILING.—

13                  “(i) STATUTE OF LIMITATION  
14                  TOLLED.—For purposes of any applicable  
15                  statute of limitations, the filing of a claim  
16                  with the receiver shall constitute a com-  
17                  mencement of an action.

18                  “(ii) NO PREJUDICE TO OTHER AC-  
19                  TIONS.—Subject to paragraph (10), the fil-  
20                  ing of a claim with the receiver shall not  
21                  prejudice any right of the claimant to con-  
22                  tinue any action which was filed before the  
23                  date of the appointment of the receiver,  
24                  subject to the determination of claims by  
25                  the receiver.

1           “(6) PROVISION FOR JUDICIAL DETERMINATION  
2           OF CLAIMS.—

3           “(A) IN GENERAL.—The claimant may file  
4           suit on a claim (or continue an action com-  
5           menced before the appointment of the receiver)  
6           in the district or territorial court of the United  
7           States for the district within which the prin-  
8           cipal place of business of the regulated entity is  
9           located or the United States District Court for  
10          the District of Columbia (and such court shall  
11          have jurisdiction to hear such claim), before the  
12          end of the 60-day period beginning on the ear-  
13          lier of—

14                   “(i) the end of the period described in  
15                   paragraph (5)(A)(i) with respect to any  
16                   claim against a regulated entity for which  
17                   the Agency is receiver; or

18                   “(ii) the date of any notice of dis-  
19                   allowance of such claim pursuant to para-  
20                   graph (5)(A)(i).

21          “(B) STATUTE OF LIMITATIONS.—A claim  
22          shall be deemed to be disallowed (other than  
23          any portion of such claim which was allowed by  
24          the receiver), and such disallowance shall be  
25          final, and the claimant shall have no further



1 rights or remedies with respect to such claim,  
2 if the claimant fails, before the end of the 60-  
3 day period described under subparagraph (A),  
4 to file suit on such claim (or continue an action  
5 commenced before the appointment of the re-  
6 ceiver).

7 “(7) REVIEW OF CLAIMS.—

8 “(A) OTHER REVIEW PROCEDURES.—

9 “(i) IN GENERAL.—The Agency shall  
10 establish such alternative dispute resolu-  
11 tion processes as may be appropriate for  
12 the resolution of claims filed under para-  
13 graph (5)(A)(i).

14 “(ii) CRITERIA.—In establishing alter-  
15 native dispute resolution processes, the  
16 Agency shall strive for procedures which  
17 are expeditious, fair, independent, and low  
18 cost.

19 “(iii) VOLUNTARY BINDING OR NON-  
20 BINDING PROCEDURES.—The Agency may  
21 establish both binding and nonbinding  
22 processes under this subparagraph, which  
23 may be conducted by any government or  
24 private party. All parties, including the

1 claimant and the Agency, must agree to  
2 the use of the process in a particular case.

3 “(B) CONSIDERATION OF INCENTIVES.—

4 The Agency shall seek to develop incentives for  
5 claimants to participate in the alternative dis-  
6 pute resolution process.

7 “(8) EXPEDITED DETERMINATION OF  
8 CLAIMS.—

9 “(A) ESTABLISHMENT REQUIRED.—The  
10 Agency shall establish a procedure for expedited  
11 relief outside of the routine claims process es-  
12 tablished under paragraph (5) for claimants  
13 who—

14 “(i) allege the existence of legally  
15 valid and enforceable or perfected security  
16 interests in assets of any regulated entity  
17 for which the Agency has been appointed  
18 receiver; and

19 “(ii) allege that irreparable injury will  
20 occur if the routine claims procedure is fol-  
21 lowed.

22 “(B) DETERMINATION PERIOD.—Before  
23 the end of the 90-day period beginning on the  
24 date on which any claim is filed in accordance

1 with the procedures established under subpara-  
2 graph (A), the Director shall—

3 “(i) determine—

4 “(I) whether to allow or disallow  
5 such claim; or

6 “(II) whether such claim should  
7 be determined pursuant to the proce-  
8 dures established under paragraph  
9 (5); and

10 “(ii) notify the claimant of the deter-  
11 mination, and if the claim is disallowed,  
12 provide a statement of each reason for the  
13 disallowance and the procedure for obtain-  
14 ing agency review or judicial determina-  
15 tion.

16 “(C) PERIOD FOR FILING OR RENEWING  
17 SUIT.—Any claimant who files a request for ex-  
18 pedited relief shall be permitted to file a suit,  
19 or to continue a suit filed before the date of ap-  
20 pointment of the receiver, seeking a determina-  
21 tion of the rights of the claimant with respect  
22 to such security interest after the earlier of—

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

1                   “(ii) the date on which the Agency de-  
2                   nies the claim.

3                   “(D) STATUTE OF LIMITATIONS.—If an  
4                   action described under subparagraph (C) is not  
5                   filed, or the motion to renew a previously filed  
6                   suit is not made, before the end of the 30-day  
7                   period beginning on the date on which such ac-  
8                   tion or motion may be filed under subparagraph  
9                   (B), the claim shall be deemed to be disallowed  
10                  as of the end of such period (other than any  
11                  portion of such claim which was allowed by the  
12                  receiver), such disallowance shall be final, and  
13                  the claimant shall have no further rights or  
14                  remedies with respect to such claim.

15                  “(E) LEGAL EFFECT OF FILING.—

16                  “(i) STATUTE OF LIMITATION  
17                  TOLLED.—For purposes of any applicable  
18                  statute of limitations, the filing of a claim  
19                  with the receiver shall constitute a com-  
20                  mencement of an action.

21                  “(ii) NO PREJUDICE TO OTHER AC-  
22                  TIONS.—Subject to paragraph (10), the fil-  
23                  ing of a claim with the receiver shall not  
24                  prejudice any right of the claimant to con-  
25                  tinue any action that was filed before the

1                   appointment of the receiver, subject to the  
2                   determination of claims by the receiver.

3                   “(9) PAYMENT OF CLAIMS.—

4                   “(A) IN GENERAL.—The receiver may, in  
5                   the discretion of the receiver, and to the extent  
6                   that funds are available from the assets of the  
7                   regulated entity, pay creditor claims, in such  
8                   manner and amounts as are authorized under  
9                   this section, which are—

10                   “(i) allowed by the receiver;

11                   “(ii) approved by the Agency pursuant  
12                   to a final determination pursuant to para-  
13                   graph (7) or (8); or

14                   “(iii) determined by the final judg-  
15                   ment of any court of competent jurisdic-  
16                   tion.

17                   “(B) AGREEMENTS AGAINST THE INTER-  
18                   EST OF THE AGENCY.—No agreement that  
19                   tends to diminish or defeat the interest of the  
20                   Agency in any asset acquired by the Agency as  
21                   receiver under this section shall be valid against  
22                   the Agency unless such agreement is in writing  
23                   and executed by an authorized officer or rep-  
24                   resentative of the regulated entity.

1           “(C) PAYMENT OF DIVIDENDS ON  
2 CLAIMS.—The receiver may, in the sole discre-  
3 tion of the receiver, pay from the assets of the  
4 regulated entity dividends on proved claims at  
5 any time, and no liability shall attach to the  
6 Agency by reason of any such payment, for fail-  
7 ure to pay dividends to a claimant whose claim  
8 is not proved at the time of any such payment.

9           “(D) RULEMAKING AUTHORITY OF THE  
10 DIRECTOR.—The Director may prescribe such  
11 rules, including definitions of terms, as the Di-  
12 rector deems appropriate to establish a single  
13 uniform interest rate for, or to make payments  
14 of post-insolvency interest to creditors holding  
15 proven claims against the receivership estates of  
16 regulated entity, following satisfaction by the  
17 receiver of the principal amount of all creditor  
18 claims.

19           “(10) SUSPENSION OF LEGAL ACTIONS.—

20           “(A) IN GENERAL.—After the appointment  
21 of a conservator or receiver for a regulated enti-  
22 ty, the conservator or receiver may, in any judi-  
23 cial action or proceeding to which such regu-  
24 lated entity is or becomes a party, request a  
25 stay for a period not to exceed—

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

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

5                   “(B) GRANT OF STAY BY ALL COURTS RE-  
6                   QUIRED.—Upon receipt of a request by the con-  
7                   servator or receiver under subparagraph (A) for  
8                   a stay of any judicial action or proceeding in  
9                   any court with jurisdiction of such action or  
10                  proceeding, the court shall grant such stay as  
11                  to all parties.

12                  “(11) ADDITIONAL RIGHTS AND DUTIES.—

13                  “(A) PRIOR FINAL ADJUDICATION.—The  
14                  Agency shall abide by any final unappealable  
15                  judgment of any court of competent jurisdiction  
16                  which was rendered before the appointment of  
17                  the Agency as conservator or receiver.

18                  “(B) RIGHTS AND REMEDIES OF CONSER-  
19                  VATOR OR RECEIVER.—In the event of any ap-  
20                  pealable judgment, the Agency as conservator  
21                  or receiver—

22                  “(i) shall have all of the rights and  
23                  remedies available to the regulated entity  
24                  (before the appointment of such conser-  
25                  vator or receiver) and the Agency, includ-

1                   ing removal to Federal court and all appel-  
2                   late rights; and

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

5                   “(C) NO ATTACHMENT OR EXECUTION.—  
6                   No attachment or execution may issue by any  
7                   court upon assets in the possession of the re-  
8                   ceiver, or upon the charter, of a regulated enti-  
9                   ty for which the Agency has been appointed re-  
10                  ceiver.

11                  “(D) LIMITATION ON JUDICIAL REVIEW.—  
12                  Except as otherwise provided in this subsection,  
13                  no court shall have jurisdiction over—

14                  “(i) any claim or action for payment  
15                  from, or any action seeking a determina-  
16                  tion of rights with respect to, the assets or  
17                  charter of any regulated entity for which  
18                  the Agency has been appointed receiver; or

19                  “(ii) any claim relating to any act or  
20                  omission of such regulated entity or the  
21                  Agency as receiver.

22                  “(E) DISPOSITION OF ASSETS.—In exer-  
23                  cising any right, power, privilege, or authority  
24                  as conservator or receiver in connection with  
25                  any sale or disposition of assets of a regulated



1           entity for which the Agency has been appointed  
2           conservator or receiver, the Agency shall con-  
3           duct its operations in a manner which—

4                   “(i) maximizes the net present value  
5                   return from the sale or disposition of such  
6                   assets;

7                   “(ii) minimizes the amount of any loss  
8                   realized in the resolution of cases; and

9                   “(iii) ensures adequate competition  
10                  and fair and consistent treatment of  
11                  offerors.

12           “(12) STATUTE OF LIMITATIONS FOR ACTIONS  
13           BROUGHT BY CONSERVATOR OR RECEIVER.—

14                   “(A) IN GENERAL.—Notwithstanding any  
15                   provision of any contract, the applicable statute  
16                   of limitations with regard to any action brought  
17                   by the Agency as conservator or receiver shall  
18                   be—

19                   “(i) in the case of any contract claim,  
20                   the longer of—

21                           “(I) the 6-year period beginning  
22                           on the date on which the claim ac-  
23                           crues; or

24                           “(II) the period applicable under  
25                           State law; and

1                   “(ii) in the case of any tort claim, the  
2                   longer of—

3                                 “(I) the 3-year period beginning  
4                                 on the date on which the claim ac-  
5                                 crues; or

6                                 “(II) the period applicable under  
7                                 State law.

8                   “(B) DETERMINATION OF THE DATE ON  
9                   WHICH A CLAIM ACCRUES.—For purposes of  
10                   subparagraph (A), the date on which the stat-  
11                   ute of limitations begins to run on any claim  
12                   described in such subparagraph shall be the  
13                   later of—

14                                 “(i) the date of the appointment of  
15                                 the Agency as conservator or receiver; or

16                                 “(ii) the date on which the cause of  
17                                 action accrues.

18                   “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
19                   ACTION.—

20                                 “(A) IN GENERAL.—In the case of any tort  
21                                 claim described under clause (ii) for which the  
22                                 statute of limitations applicable under State law  
23                                 with respect to such claim has expired not more  
24                                 than 5 years before the appointment of the  
25                                 Agency as conservator or receiver, the Agency

1           may bring an action as conservator or receiver  
2           on such claim without regard to the expiration  
3           of the statute of limitations applicable under  
4           State law.

5           “(B) CLAIMS DESCRIBED.—A tort claim  
6           referred to under clause (i) is a claim arising  
7           from fraud, intentional misconduct resulting in  
8           unjust enrichment, or intentional misconduct  
9           resulting in substantial loss to the regulated en-  
10          tity.

11          “(14) ACCOUNTING AND RECORDKEEPING RE-  
12          QUIREMENTS.—

13           “(A) IN GENERAL.—The Agency as conser-  
14           vator or receiver shall, consistent with the ac-  
15           counting and reporting practices and proce-  
16           dures established by the Agency, maintain a full  
17           accounting of each conservatorship and receiv-  
18           ership or other disposition of a regulated entity  
19           in default.

20           “(B) ANNUAL ACCOUNTING OR REPORT.—  
21           With respect to each conservatorship or receiv-  
22           ership, the Agency shall make an annual ac-  
23           counting or report available to the Board, the  
24           Comptroller General of the United States, the  
25           Committee on Banking, Housing, and Urban

1 Affairs of the Senate, and the Committee on  
2 Financial Services of the House of Representa-  
3 tives.

4 “(C) AVAILABILITY OF REPORTS.—Any re-  
5 port prepared under subparagraph (B) shall be  
6 made available by the Agency upon request to  
7 any shareholder of a regulated entity or any  
8 member of the public.

9 “(D) RECORDKEEPING REQUIREMENT.—  
10 After the end of the 6-year period beginning on  
11 the date on which the conservatorship or receiv-  
12 ership is terminated by the Director, the Agen-  
13 cy may destroy any records of such regulated  
14 entity which the Agency, in the discretion of the  
15 Agency, determines to be unnecessary, unless  
16 directed not to do so by a court of competent  
17 jurisdiction or governmental agency, or prohib-  
18 ited by law.

19 “(15) FRAUDULENT TRANSFERS.—

20 “(A) IN GENERAL.—The Agency, as con-  
21 servator or receiver, may avoid a transfer of  
22 any interest of an entity-affiliated party, or any  
23 person determined by the conservator or re-  
24 ceiver to be a debtor of the regulated entity, in  
25 property, or any obligation incurred by such

1 party or person, that was made within 5 years  
2 of the date on which the Agency was appointed  
3 conservator or receiver, if such party or person  
4 voluntarily or involuntarily made such transfer  
5 or incurred such liability with the intent to  
6 hinder, delay, or defraud the regulated entity,  
7 the Agency, the conservator, or receiver.

8 “(B) RIGHT OF RECOVERY.—To the extent  
9 a transfer is avoided under subparagraph (A),  
10 the conservator or receiver may recover, for the  
11 benefit of the regulated entity, the property  
12 transferred, or, if a court so orders, the value  
13 of such property (at the time of such transfer)  
14 from—

15 “(i) the initial transferee of such  
16 transfer or the entity-affiliated party or  
17 person for whose benefit such transfer was  
18 made; or

19 “(ii) any immediate or mediate trans-  
20 feree of any such initial transferee.

21 “(C) RIGHTS OF TRANSFEREE OR OBLI-  
22 GEE.—The conservator or receiver may not re-  
23 cover under subparagraph (B) from—

24 “(i) any transferee that takes for  
25 value, including satisfaction or securing of

1 a present or antecedent debt, in good faith;

2 or

3 “(ii) any immediate or mediate good  
4 faith transferee of such transferee.

5 “(D) RIGHTS UNDER THIS PARAGRAPH.—

6 The rights under this paragraph of the conser-  
7 vator or receiver described under subparagraph  
8 (A) shall be superior to any rights of a trustee  
9 or any other party (other than any party which  
10 is a Federal agency) under title 11, United  
11 States Code.

12 “(16) ATTACHMENT OF ASSETS AND OTHER IN-  
13 JUNCTIVE RELIEF.—Subject to paragraph (17), any  
14 court of competent jurisdiction may, at the request  
15 of the conservator or receiver, issue an order in ac-  
16 cordance with rule 65 of the Federal Rules of Civil  
17 Procedure, including an order placing the assets of  
18 any person designated by the conservator or receiver  
19 under the control of the court, and appointing a  
20 trustee to hold such assets.

21 “(17) STANDARDS OF PROOF.—Rule 65 of the  
22 Federal Rules of Civil Procedure shall apply with re-  
23 spect to any proceeding under paragraph (16) with-  
24 out regard to the requirement of such rule that the

1 applicant show that the injury, loss, or damage is ir-  
2 reparable and immediate.

3 “(18) TREATMENT OF CLAIMS ARISING FROM  
4 BREACH OF CONTRACTS EXECUTED BY THE CON-  
5 SERVATOR OR RECEIVER.—

6 “(A) IN GENERAL.—Notwithstanding any  
7 other provision of this subsection, any final and  
8 unappealable judgment for monetary damages  
9 entered against the conservator or receiver for  
10 the breach of an agreement executed or ap-  
11 proved in writing by the conservator or receiver  
12 after the date of its appointment, shall be paid  
13 as an administrative expense of the conservator  
14 or receiver.

15 “(B) NO LIMITATION OF POWER.—Nothing  
16 in this paragraph shall be construed to limit the  
17 power of the conservator or receiver to exercise  
18 any rights under contract or law, including to  
19 terminate, breach, cancel, or otherwise dis-  
20 continue such agreement.

21 “(19) GENERAL EXCEPTIONS.—

22 “(A) LIMITATIONS.—The rights of the  
23 conservator or receiver appointed under this  
24 section shall be subject to the limitations on the  
25 powers of a receiver under sections 402 through

1           407 of the Federal Deposit Insurance Corpora-  
2           tion Improvement Act of 1991 (12 U.S.C. 4402  
3           through 4407).

4           “(B) MORTGAGES HELD IN TRUST.—

5                   “(i) IN GENERAL.—Any mortgage,  
6                   pool of mortgages, or interest in a pool of  
7                   mortgages held in trust, custodial, or agen-  
8                   cy capacity by an enterprise for the benefit  
9                   of any person other than the enterprise  
10                  shall not be available to satisfy the claims  
11                  of creditors generally.

12                  “(ii) HOLDING OF MORTGAGES.—Any  
13                  mortgage, pool of mortgages, or interest in  
14                  a pool of mortgages described in clause (i)  
15                  shall be held by the conservator or receiver  
16                  appointed under this section for the bene-  
17                  ficial owners of such mortgage, pool of  
18                  mortgages, or interest in accordance with  
19                  the terms of the agreement creating such  
20                  trust, custodial, or other agency arrange-  
21                  ment.

22                  “(iii) LIABILITY OF CONSERVATOR OR  
23                  RECEIVER.—The liability of the conser-  
24                  vator or receiver appointed under this sec-  
25                  tion for damages shall, in the case of any



1                   contingent or unliquidated claim relating  
2                   to the mortgages held in trust, be esti-  
3                   mated in accordance with in the regula-  
4                   tions of the Director.

5           “(c) PRIORITY OF EXPENSES AND UNSECURED  
6 CLAIMS.—

7                   “(1) IN GENERAL.—Unsecured claims against a  
8                   regulated entity, or the receiver therefor, that are  
9                   proven to the satisfaction of the receiver shall have  
10                  priority in the following order:

11                   “(A) Administrative expenses of the re-  
12                   ceiver.

13                   “(B) Any other general or senior liability  
14                   of the regulated entity (which is not a liability  
15                   described under subparagraph (C) or (D)).

16                   “(C) Any obligation subordinated to gen-  
17                   eral creditors (which is not an obligation de-  
18                   scribed under subparagraph (D)).

19                   “(D) Any obligation to shareholders or  
20                   members arising as a result of their status as  
21                   shareholder or members.

22                   “(2) CREDITORS SIMILARLY SITUATED.—All  
23                   creditors that are similarly situated under paragraph  
24                   (1) shall be treated in a similar manner, except that  
25                   the receiver may take any action (including making

1       payments) that does not comply with this subsection,  
2       if—

3               “(A) the Director determines that such ac-  
4               tion is necessary to maximize the value of the  
5               assets of the regulated entity, to maximize the  
6               present value return from the sale or other dis-  
7               position of the assets of the regulated entity, or  
8               to minimize the amount of any loss realized  
9               upon the sale or other disposition of the assets  
10              of the regulated entity assets; and

11              “(B) all creditors that are similarly situ-  
12              ated under paragraph (1) receive not less than  
13              the amount provided in subsection (e)(2).

14              “(3) DEFINITION.—As used in this subsection,  
15              the term ‘administrative expenses of the receiver’ in-  
16              cludes—

17              “(A) the actual, necessary costs and ex-  
18              penses incurred by the receiver in preserving  
19              the assets of a failed regulated entity or liqui-  
20              dating or otherwise resolving the affairs of a  
21              failed regulated entity; and

22              “(B) any obligations that the receiver de-  
23              termines are necessary and appropriate to fa-  
24              cilitate the smooth and orderly liquidation or  
25              other resolution of the regulated entity.

1           “(d) PROVISIONS RELATING TO CONTRACTS EN-  
2   TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
3   OR RECEIVER.—

4           “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

5           In addition to any other rights a conservator or re-  
6           ceiver may have, the conservator or receiver for any  
7           regulated entity may disaffirm or repudiate any con-  
8           tract or lease—

9                   “(A) to which such regulated entity is a  
10                  party;

11                   “(B) the performance of which the conser-  
12                  vator or receiver, in its sole discretion, deter-  
13                  mines to be burdensome; and

14                   “(C) the disaffirmance or repudiation of  
15                  which the conservator or receiver determines, in  
16                  its sole discretion, will promote the orderly ad-  
17                  ministration of the affairs of the regulated enti-  
18                  ty.

19           “(2) TIMING OF REPUDIATION.—The conser-  
20           vator or receiver shall determine whether or not to  
21           exercise the rights of repudiation under this sub-  
22           section within a reasonable period following such ap-  
23           pointment.

24           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
25           ATION.—

1           “(A) IN GENERAL.—Except as otherwise  
2           provided under subparagraph (C) and para-  
3           graphs (4), (5), and (6), the liability of the con-  
4           servator or receiver for the disaffirmance or re-  
5           pudiation of any contract pursuant to para-  
6           graph (1) shall be—

7                   “(i) limited to actual direct compen-  
8                   satory damages; and

9                   “(ii) determined as of—

10                           “(I) the date of the appointment  
11                           of the conservator or receiver; or

12                           “(II) in the case of any contract  
13                           or agreement referred to in paragraph  
14                           (8), the date of the disaffirmance or  
15                           repudiation of such contract or agree-  
16                           ment.

17           “(B) NO LIABILITY FOR OTHER DAM-  
18           AGES.—For purposes of subparagraph (A), the  
19           term ‘actual direct compensatory damages’ shall  
20           not include—

21                   “(i) punitive or exemplary damages;

22                   “(ii) damages for lost profits or op-  
23                   portunity; or

24                   “(iii) damages for pain and suffering.

1                   “(C) MEASURE OF DAMAGES FOR REPUDI-  
2                   ATION OF FINANCIAL CONTRACTS.—In the case  
3                   of any qualified financial contract or agreement  
4                   to which paragraph (8) applies, compensatory  
5                   damages shall be—

6                   “(i) deemed to include normal and  
7                   reasonable costs of cover or other reason-  
8                   able measures of damages utilized in the  
9                   industries for such contract and agreement  
10                  claims; and

11                  “(ii) paid in accordance with this sub-  
12                  section and subsection (e), except as other-  
13                  wise specifically provided in this section.

14                  “(4) LEASES UNDER WHICH THE REGULATED  
15                  ENTITY IS THE LESSEE.—

16                  “(A) IN GENERAL.—If the conservator or  
17                  receiver disaffirms or repudiates a lease under  
18                  which the regulated entity was the lessee, the  
19                  conservator or receiver shall not be liable for  
20                  any damages (other than damages determined  
21                  under subparagraph (B)) for the disaffirmance  
22                  or repudiation of such lease.

23                  “(B) PAYMENTS OF RENT.—Notwith-  
24                  standing subparagraph (A), the lessor under a

1 lease to which that subparagraph applies  
2 shall—

3 “(i) be entitled to the contractual rent  
4 accruing before the later of the date on  
5 which—

6 “(I) the notice of disaffirmance  
7 or repudiation is mailed; or

8 “(II) the disaffirmance or repudi-  
9 ation becomes effective, unless the les-  
10 sor is in default or breach of the  
11 terms of the lease;

12 “(ii) have no claim for damages under  
13 any acceleration clause or other penalty  
14 provision in the lease; and

15 “(iii) have a claim for any unpaid  
16 rent, subject to all appropriate offsets and  
17 defenses, due as of the date of the appoint-  
18 ment, which shall be paid in accordance  
19 with this subsection and subsection (e).

20 “(5) LEASES UNDER WHICH THE REGULATED  
21 ENTITY IS THE LESSOR.—

22 “(A) IN GENERAL.—If the conservator or  
23 receiver repudiates an unexpired written lease  
24 of real property of the regulated entity under  
25 which the regulated entity is the lessor and the

1 lessee is not, as of the date of such repudiation,  
2 in default, the lessee under such lease may ei-  
3 ther—

4 “(i) treat the lease as terminated by  
5 such repudiation; or

6 “(ii) remain in possession of the lease-  
7 hold interest for the balance of the term of  
8 the lease, unless the lessee defaults under  
9 the terms of the lease after the date of  
10 such repudiation.

11 “(B) PROVISIONS APPLICABLE TO LESSEE  
12 REMAINING IN POSSESSION.—If any lessee  
13 under a lease described under subparagraph (A)  
14 remains in possession of a leasehold interest  
15 under clause (ii) of subparagraph (A)—

16 “(i) the lessee—

17 “(I) shall continue to pay the  
18 contractual rent pursuant to the  
19 terms of the lease after the date of  
20 the repudiation of such lease; and

21 “(II) may offset against any rent  
22 payment which accrues after the date  
23 of the repudiation of the lease, and  
24 any damages which accrue after such  
25 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                   “(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 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-  
25minate, 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 tortuous 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 AUTHOR-  
23                   IZED.—The Director may extend the  
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-

1 ing making payments) that do not comply  
2 with this clause, if—

3 “(I) the Director determines that  
4 such actions are necessary to maxi-  
5 mize the value of the assets of the  
6 regulated entity, to maximize the  
7 present value return from the sale or  
8 other disposition of the assets of the  
9 regulated entity, or to minimize the  
10 amount of any loss realized upon the  
11 sale or other disposition of the assets  
12 of the regulated entity; and

13 “(II) all creditors that are simi-  
14 larly situated under subsection (e)(1)  
15 receive not less than the amount pro-  
16 vided in subsection (e)(2).

17 “(v) LIMITATION ON TRANSFER OF  
18 LIABILITIES.—Notwithstanding any other  
19 provision of law, the aggregate amount of  
20 liabilities of a regulated entity that are  
21 transferred to, or assumed by, a limited-  
22 life regulated entity may not exceed the ag-  
23 gregate amount of assets of the regulated  
24 entity that are transferred to, or purchased  
25 by, the limited-life regulated entity.



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                  “(D) BURDEN OF PROOF.—In any hearing  
20                  under this subsection, the Director has the bur-  
21                  den of proof on the issue of adequate protec-  
22                  tion.

23                  “(12) AFFECT ON DEBTS AND LIENS.—The re-  
24                  versal or modification on appeal of an authorization  
25                  under this subsection to obtain credit or issue debt,



1 or of a grant under this section of a priority or a  
2 lien, does not affect the validity of any debt so  
3 issued, or any priority or lien so granted, to an enti-  
4 ty that extended such credit in good faith, whether  
5 or not such entity knew of the pendency of the ap-  
6 peal, unless such authorization and the issuance of  
7 such debt, or the granting of such priority or lien,  
8 were stayed pending appeal.

9 “(j) OTHER AGENCY EXEMPTIONS.—

10 “(1) APPLICABILITY.—The provisions of this  
11 subsection shall apply with respect to the Agency in  
12 any case in which the Agency is acting as a conser-  
13 vator or a receiver.

14 “(2) TAXATION.—The Agency, including its  
15 franchise, its capital, reserves, and surplus, and its  
16 income, shall be exempt from all taxation imposed  
17 by any State, county, municipality, or local taxing  
18 authority, except that any real property of the Agen-  
19 cy shall be subject to State, territorial, county, mu-  
20 nicipal, or local taxation to the same extent accord-  
21 ing to its value as other real property is taxed, ex-  
22 cept that, notwithstanding the failure of any person  
23 to challenge an assessment under State law of the  
24 value of such property, and the tax thereon, shall be

1       determined as of the period for which such tax is im-  
2       posed.

3           “(3) PROPERTY PROTECTION.—No property of  
4       the Agency shall be subject to levy, attachment, gar-  
5       nishment, foreclosure, or sale without the consent of  
6       the Agency, nor shall any involuntary lien attach to  
7       the property of the Agency.

8           “(4) PENALTIES AND FINES.—The Agency  
9       shall not be liable for any amounts in the nature of  
10      penalties or fines, including those arising from the  
11      failure of any person to pay any real property, per-  
12      sonal property, probate, or recording tax or any re-  
13      cording or filing fees when due.

14          “(k) PROHIBITION OF CHARTER REVOCATION.—In  
15      no case may the receiver appointed pursuant to this sec-  
16      tion revoke, annul, or terminate the charter of an enter-  
17      prise.”.

18          (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
19      The Federal Housing Enterprises Financial Safety and  
20      Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-  
21      ed—

22           (1) in section 1368 (12 U.S.C. 4618)—

23           (A) by striking “an enterprise” each place  
24           that term appears and inserting “a regulated  
25           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.—**

1           “(1) AUTHORITY OF DIRECTOR.—If, in the  
2           opinion of the Director, a regulated entity or any en-  
3           tity-affiliated party is engaging or has engaged, or  
4           the Director has reasonable cause to believe that the  
5           regulated entity or any entity-affiliated party is  
6           about to engage, in an unsafe or unsound practice  
7           in conducting the business of the regulated entity or  
8           the Office of Finance, or is violating or has violated,  
9           or the Director has reasonable cause to believe is  
10          about to violate, a law, rule, regulation, or order, or  
11          any condition imposed in writing by the Director in  
12          connection with the granting of any application or  
13          other request by the regulated entity or the Office  
14          of Finance or any written agreement entered into  
15          with the Director, the Director may issue and serve  
16          upon the regulated entity or entity-affiliated party a  
17          notice of charges in respect thereof.

18          “(2) LIMITATION.—The Director may not, pur-  
19          suant to this section, enforce compliance with any  
20          housing goal established under subpart B of part 2  
21          of subtitle A of this title, with section 1336 or 1337  
22          of this title, with subsection (m) or (n) of section  
23          309 of the Federal National Mortgage Association  
24          Charter Act (12 U.S.C. 1723a(m), (n)), with sub-  
25          section (e) or (f) of section 307 of the Federal Home

1        Loan Mortgage Corporation Act (12 U.S.C. 1456(e),  
2        (f)), or with paragraph (5) of section 10(j) of the  
3        Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

4        “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a  
5        regulated entity receives, in its most recent report of ex-  
6        amination, a less-than-satisfactory rating for asset quality,  
7        management, earnings, or liquidity, the Director may (if  
8        the deficiency is not corrected) deem the regulated entity  
9        to be engaging in an unsafe or unsound practice for pur-  
10       poses of subsection (a).”;

11                (2) in subsection (c)—

12                        (A) in paragraph (1), by inserting before  
13                        the period at the end the following: “, unless  
14                        the party served with a notice of charges shall  
15                        appear at the hearing personally or by a duly  
16                        authorized representative, the party shall be  
17                        deemed to have consented to the issuance of the  
18                        cease and desist order”; and

19                        (B) in paragraph (2)—

20                                (i) by striking “or director” and in-  
21                                serting “director, or entity-affiliated  
22                                party”; and

23                                (ii) by inserting “or entity-affiliated  
24                                party” before “consents”;

25                (3) in each of subsections (c), (d), and (e)—

1 (A) by striking “the enterprise” each place  
2 that term appears and inserting “the regulated  
3 entity”;

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

7 (C) by striking “conduct” each place that  
8 term appears and inserting “practice”;

9 (4) in subsection (d)—

10 (A) in the matter preceding paragraph  
11 (1)—

12 (i) by striking “or director” and in-  
13 serting “director, or entity-affiliated  
14 party”; and

15 (ii) by inserting “to require a regu-  
16 lated entity or entity-affiliated party” after  
17 “includes the authority”;

18 (B) in paragraph (1)—

19 (i) by striking “to require an executive  
20 officer or a director to”; and

21 **[(ii) by striking “loss” and all that**  
22 **follows through “person” and inserting**  
23 **“loss, if”;**]

1 (iii) in subparagraph (A), by inserting  
2 “such entity or party or finance facility”  
3 before “was”; and

4 (iv) by striking subparagraph (B) and  
5 inserting the following:

6 “(B) the violation or practice involved a  
7 reckless disregard for the law or any applicable  
8 regulations or prior order of the Director;” and

9 (C) in paragraph (4), by inserting “loan  
10 or” before “asset”;

11 (5) in subsection (e), by inserting “or entity-af-  
12 filiated party”—

13 (A) before “or any executive”; and

14 (B) before the period at the end; and

15 (6) in subsection (f)—

16 (A) by striking “enterprise” and inserting  
17 “regulated entity, finance facility;” and

18 (B) by striking “or director” and inserting  
19 “director, or entity-affiliated party”.

20 **SEC. 152. TEMPORARY CEASE AND DESIST PROCEEDINGS.**

21 Section 1372 of the Federal Housing Enterprises Fi-  
22 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
23 4632) is amended—

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

1 “(a) GROUNDS FOR ISSUANCE.—

2 “(1) IN GENERAL.—If the Director determines  
3 that the actions specified in the notice of charges  
4 served upon a regulated entity or any entity-affili-  
5 ated party pursuant to section 1371(a), or the con-  
6 tinuation thereof, is likely to cause insolvency or sig-  
7 nificant dissipation of assets or earnings of that en-  
8 tity, or is likely to weaken the condition of that enti-  
9 ty prior to the completion of the proceedings con-  
10 ducted pursuant to sections 1371 and 1373, the Di-  
11 rector may—

12 “(A) issue a temporary order requiring  
13 that regulated entity or entity-affiliated party to  
14 cease and desist from any such violation or  
15 practice; and

16 “(B) require that regulated entity or enti-  
17 ty-affiliated party to take affirmative action to  
18 prevent or remedy such insolvency, dissipation,  
19 condition, or prejudice pending completion of  
20 such proceedings.

21 “(2) ADDITIONAL REQUIREMENTS.—An order  
22 issued under paragraph (1) may include any require-  
23 ment authorized under subsection 1371(d).”;

24 (2) in subsection (b)—



1 (A) by striking “or director” and inserting  
2 “director, or entity-affiliated party”; and

3 (B) by striking “enterprise” each place  
4 that term appears and inserting “regulated en-  
5 tity”;

6 (3) in subsection (c), by striking “enterprise”  
7 each place that term appears and inserting “regu-  
8 lated entity”;

9 (4) in subsection (d)—

10 (A) by striking “or director” each place  
11 that term appears and inserting “director, or  
12 entity-affiliated party”; and

13 (B) by striking “An enterprise” and insert-  
14 ing “A regulated entity”; and

15 (5) in subsection (e)—

16 (A) by striking “request the Attorney Gen-  
17 eral of the United States to”; and

18 (B) by striking “or may, under the direc-  
19 tion and control of the Attorney General, bring  
20 such action”.

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

22 (a) IN GENERAL.—Part 1 of subtitle C of the Federal  
23 Housing Enterprises Financial Safety and Soundness Act  
24 of 1992 (12 U.S.C. 4631 et seq.) is amended—

1           (1) by redesignating sections 1377 through  
2           1379B (12 U.S.C. 4637–4641) as sections 1379  
3           through 1379D, respectively; and

4           (2) by inserting after section 1376 (12 U.S.C.  
5           4636) the following:

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

7           “(a) AUTHORITY TO ISSUE ORDER.—

8           “(1) IN GENERAL.—The Director may serve  
9           upon a party described in paragraph (2), or any offi-  
10          cer, director, or management of the Office of Fi-  
11          nance a written notice of the intention of the Direc-  
12          tor to suspend or remove such party from office, or  
13          prohibit any further participation by such party, in  
14          any manner, in the conduct of the affairs of the reg-  
15          ulated entity.

16          “(2) APPLICABILITY.—A party described in this  
17          paragraph is an entity-affiliated party or any officer,  
18          director, or management of the Office of Finance, if  
19          the Director determines that—

20                  “(A) that party, officer, or director has, di-  
21                  rectly or indirectly—

22                          “(i) violated—

23                                  “(I) any law or regulation;

24                                  “(II) any cease and desist order  
25                                  which has become final;

1                   “(III) any condition imposed in  
2                   writing by the Director in connection  
3                   with the grant of any application or  
4                   other request by such regulated enti-  
5                   ty; or

6                   “(IV) any written agreement be-  
7                   tween such regulated entity and the  
8                   Director;

9                   “(ii) engaged or participated in any  
10                  unsafe or unsound practice in connection  
11                  with any regulated entity or business insti-  
12                  tution; or

13                  “(iii) committed or engaged in any  
14                  act, omission, or practice which constitutes  
15                  a breach of such party’s fiduciary duty;

16                  “(B) by reason of the violation, practice, or  
17                  breach described in subparagraph (A)—

18                         “(i) such regulated entity or business  
19                         institution has suffered or will probably  
20                         suffer financial loss or other damage; or

21                         “(ii) such party has received financial  
22                         gain or other benefit; and

23                  “(C) the violation, practice, or breach de-  
24                  scribed in subparagraph (A)—

1                   “(i) involves personal dishonesty on  
2                   the part of such party; or

3                   “(ii) demonstrates willful or con-  
4                   tinuing disregard by such party for the  
5                   safety or soundness of such regulated enti-  
6                   ty or business institution.

7                   “(b) SUSPENSION ORDER.—

8                   “(1) SUSPENSION OR PROHIBITION AUTHOR-  
9                   ITY.—If the Director serves written notice under  
10                  subsection (a) upon a party subject to that sub-  
11                  section (a), the Director may, by order, suspend or  
12                  remove such party from office, or prohibit such  
13                  party from further participation in any manner in  
14                  the conduct of the affairs of the regulated entity, if  
15                  the Director—

16                  “(A) determines that such action is nec-  
17                  essary for the protection of the regulated entity;  
18                  and

19                  “(B) serves such party with written notice  
20                  of the order.

21                  “(2) EFFECTIVE PERIOD.—Any order issued  
22                  under this subsection—

23                  “(A) shall become effective upon service;  
24                  and

1           “(B) unless a court issues a stay of such  
2           order under subsection (g), shall remain in ef-  
3           fect and enforceable until—

4                   “(i) the date on which the Director  
5                   dismisses the charges contained in the no-  
6                   tice served under subsection (a) with re-  
7                   spect to such party; or

8                   “(ii) the effective date of an order  
9                   issued under subsection (b).

10           “(3) COPY OF ORDER.—If the Director issues  
11           an order under subsection (b) to any party, the Di-  
12           rector shall serve a copy of such order on any regu-  
13           lated entity with which such party is affiliated at the  
14           time such order is issued.

15           “(c) NOTICE, HEARING, AND ORDER.—

16                   “(1) NOTICE.—A notice under subsection (a) of  
17                   the intention of the Director to issue an order under  
18                   this section shall contain a statement of the facts  
19                   constituting grounds for such action, and shall fix a  
20                   time and place at which a hearing will be held on  
21                   such action.

22                   “(2) TIMING OF HEARING.—A hearing shall be  
23                   fixed for a date not earlier than 30 days, nor later  
24                   than 60 days, after the date of service of notice

1 under subsection (a), unless an earlier or a later  
2 date is set by the Director at the request of—

3 “(A) the party receiving such notice, and  
4 good cause is shown; or

5 “(B) the Attorney General of the United  
6 States.

7 “(3) CONSENT.—Unless the party that is the  
8 subject of a notice delivered under subsection (a) ap-  
9 pears at the hearing in person or by a duly author-  
10 ized representative, such party shall be deemed to  
11 have consented to the issuance of an order under  
12 this section.

13 “(4) ISSUANCE OF ORDER OF SUSPENSION.—  
14 The Director may issue an order under this section,  
15 as the Director may deem appropriate, if—

16 “(A) a party is deemed to have consented  
17 to the issuance of an order under paragraph  
18 (3); or

19 “(B) upon the record made at the hearing,  
20 the Director finds that any of the grounds spec-  
21 ified in the notice have been established.

22 “(5) EFFECTIVENESS OF ORDER.—Any order  
23 issued under paragraph (4) shall become effective at  
24 the expiration of 30 days after the date of service  
25 upon the relevant regulated entity and party (except

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

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

10 “(1) participate in any manner in the conduct  
11 of the affairs of any regulated entity or the Office  
12 of Finance;

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

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

19 “(4) vote for a director, or serve or act as an  
20 entity-affiliated party of a regulated entity or as an  
21 officer or director of the Office of Finance.

22 “(e) INDUSTRY-WIDE PROHIBITION.—

23 “(1) IN GENERAL.—Except as provided in para-  
24 graph (2), any person who, pursuant to an order  
25 issued under this section, has been removed or sus-

1       pended from office in a regulated entity or the Of-  
2       fice of Finance, or prohibited from participating in  
3       the conduct of the affairs of a regulated entity or  
4       the Office of Finance, may not, while such order is  
5       in effect, continue or commence to hold any office in,  
6       or participate in any manner in the conduct of the  
7       affairs of, any regulated entity or the Office of Fi-  
8       nance.

9               “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-  
10       TEN CONSENT.—If, on or after the date on which an  
11       order is issued under this section which removes or  
12       suspends from office any party, or prohibits such  
13       party from participating in the conduct of the affairs  
14       of a regulated entity or the Office of Finance, such  
15       party receives the written consent of the Director,  
16       the order shall, to the extent of such consent, cease  
17       to apply to such party with respect to the regulated  
18       entity or such Office of Finance described in the  
19       written consent. Any such consent shall be publicly  
20       disclosed.

21               “(3) VIOLATION OF PARAGRAPH (1) TREATED  
22       AS VIOLATION OF ORDER.—Any violation of para-  
23       graph (1) by any person who is subject to an order  
24       issued under subsection (h) shall be treated as a vio-  
25       lation of the order.



1           “(f) APPLICABILITY.—This section shall only apply  
2 to a person who is an individual, unless the Director spe-  
3 cifically finds that it should apply to a corporation, firm,  
4 or other business entity.

5           “(g) STAY OF SUSPENSION AND PROHIBITION OF  
6 ENTITY-AFFILIATED PARTY.—Not later than 10 days  
7 after the date on which any entity-affiliated party has been  
8 suspended from office or prohibited from participation in  
9 the conduct of the affairs of a regulated entity under this  
10 section, such party may apply to the United States Dis-  
11 trict Court for the District of Columbia, or the United  
12 States district court for the judicial district in which the  
13 headquarters of the regulated entity is located, for a stay  
14 of such suspension or prohibition pending the completion  
15 of the administrative proceedings pursuant to subsection  
16 (c). The court shall have jurisdiction to stay such suspen-  
17 sion or prohibition.

18           “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-  
19 ATED PARTY CHARGED WITH FELONY.—

20                   “(1) SUSPENSION OR PROHIBITION.—

21                           “(A) IN GENERAL.—Whenever any entity-  
22 affiliated party is charged in any information,  
23 indictment, or complaint, with the commission  
24 of or participation in a crime involving dishon-  
25 esty or breach of trust which is punishable by

1           imprisonment for a term exceeding 1 year  
2           under Federal or State law, the Director may,  
3           if continued service or participation by such  
4           party may pose a threat to the regulated entity  
5           or impair public confidence in the regulated en-  
6           tity, by written notice served upon such party,  
7           suspend such party from office or prohibit such  
8           party from further participation in any manner  
9           in the conduct of the affairs of any regulated  
10          entity.

11           “(B) PROVISIONS APPLICABLE TO NO-  
12          TICE.—

13           “(i) COPY.—A copy of any notice  
14           under subparagraph (A) shall be served  
15           upon the relevant regulated entity.

16           “(ii) EFFECTIVE PERIOD.—A suspen-  
17           sion or prohibition under subparagraph (A)  
18           shall remain in effect until the informa-  
19           tion, indictment, or complaint referred to  
20           in subparagraph (A) is finally disposed of,  
21           or until terminated by the Director.

22           “(2) REMOVAL OR PROHIBITION.—

23           “(A) IN GENERAL.—If a judgment of con-  
24           viction or an agreement to enter a pretrial di-  
25           version or other similar program is entered

1           against an entity-affiliated party in connection  
2           with a crime described in paragraph (1)(A), at  
3           such time as such judgment is not subject to  
4           further appellate review, the Director may, if  
5           continued service or participation by such party  
6           may pose a threat to the regulated entity or im-  
7           pair public confidence in the regulated entity,  
8           issue and serve upon such party an order re-  
9           moving such party from office or prohibiting  
10          such party from further participation in any  
11          manner in the conduct of the affairs of the reg-  
12          ulated entity without the prior written consent  
13          of the Director.

14                 “(B)   PROVISIONS   APPLICABLE   TO  
15                 ORDER.—

16                         “(i) COPY.—A copy of any order  
17                         under subparagraph (A) shall be served  
18                         upon the relevant regulated entity, at  
19                         which time the entity-affiliated party who  
20                         is subject to the order (if a director or an  
21                         officer) shall cease to be a director or offi-  
22                         cer of such regulated entity.

23                         “(ii) EFFECT OF ACQUITTAL.—A find-  
24                         ing of not guilty or other disposition of the  
25                         charge shall not preclude the Director from

1 instituting proceedings after such finding  
2 or disposition to remove a party from of-  
3 fice or to prohibit further participation in  
4 the affairs of a regulated entity pursuant  
5 to subsection (a) or (b).

6 “(iii) EFFECTIVE PERIOD.—Unless  
7 terminated by the Director, any notice of  
8 suspension or order of removal issued  
9 under this subsection shall remain effective  
10 and outstanding until the completion of  
11 any hearing or appeal authorized under  
12 paragraph (4).

13 “(3) AUTHORITY OF REMAINING BOARD MEM-  
14 BERS.—

15 “(A) IN GENERAL.—If at any time, be-  
16 cause of the suspension of 1 or more directors  
17 pursuant to this section, there shall be on the  
18 board of directors of a regulated entity less  
19 than a quorum of directors not so suspended,  
20 all powers and functions vested in or exercisable  
21 by such board shall vest in and be exercisable  
22 by the director or directors on the board not so  
23 suspended, until such time as there shall be a  
24 quorum of the board of directors.

1           “(B) APPOINTMENT OF TEMPORARY DI-  
2           RECTORS.—If all of the directors of a regulated  
3           entity are suspended pursuant to this section,  
4           the Director shall appoint persons to serve tem-  
5           porarily as directors pending the termination of  
6           such suspensions, or until such time as those  
7           who have been suspended cease to be directors  
8           of the regulated entity and their respective suc-  
9           cessors take office.

10           “(4) HEARING REGARDING CONTINUED PAR-  
11           TICIPATION.—

12           “(A) IN GENERAL.—Not later than 30  
13           days after the date of service of any notice of  
14           suspension or order of removal issued pursuant  
15           to paragraph (1) or (2), the entity-affiliated  
16           party may request in writing an opportunity to  
17           appear before the Director to show that the  
18           continued service or participation in the con-  
19           duct of the affairs of the regulated entity by  
20           such party does not, or is not likely to, pose a  
21           threat to the interests of the regulated entity,  
22           or threaten to impair public confidence in the  
23           regulated entity.

24           “(B) TIMING AND FORM OF HEARING.—  
25           Upon receipt of a request for a hearing under

1           subparagraph (A), the Director shall fix a time  
2           (not later than 30 days after the date of receipt  
3           of such request, unless extended at the request  
4           of such party) and place at which the entity-af-  
5           filiated party may appear, personally or through  
6           counsel, before the Director or 1 or more des-  
7           ignated employees of the Director to submit  
8           written materials (or, at the discretion of the  
9           Director, oral testimony) and oral argument.

10           “(C) DETERMINATION.—Not later than 60  
11           days after the date of a hearing under subpara-  
12           graph (B), the Director shall notify the entity-  
13           affiliated party whether the suspension or pro-  
14           hibition from participation in any manner in  
15           the conduct of the affairs of the regulated enti-  
16           ty will be continued, terminated, or otherwise  
17           modified, or whether the order removing such  
18           party from office or prohibiting such party from  
19           further participation in any manner in the con-  
20           duct of the affairs of the regulated entity will  
21           be rescinded or otherwise modified. Such notifi-  
22           cation shall contain a statement of the basis for  
23           any adverse decision of the Director.

1           “(5) RULES.—The Director is authorized to  
2       prescribe such rules as may be necessary to carry  
3       out this subsection.”.

4       (b) CONFORMING AMENDMENTS.—

5           (1) SAFETY AND SOUNDNESS ACT.—Subtitle C  
6       of title XIII of the Federal Housing Enterprises Fi-  
7       nancial Safety and Soundness Act of 1992 (12  
8       U.S.C. 4501 et seq.) is amended—

9           (A) in section 1317(f), by striking “section  
10       1379B” and inserting “section 1379D”;

11          (B) in section 1373(a)—

12           (i) in paragraph (1), by striking “or  
13       1376(c)” and inserting “, 1376(c), or  
14       1377”;

15           (ii) in paragraph (2), by inserting “or  
16       1377” after “1371”; and

17           (iii) in paragraph (4), by inserting “or  
18       removal or prohibition” after “cease and  
19       desist”; and

20          (C) in section 1374(a)—

21           (i) by striking “or 1376” and insert-  
22       ing “1313B , 1376, or 1377”; and

23           (ii) by striking “such section” and in-  
24       serting “this title”.

1           (2) FANNIE MAE CHARTER ACT.—Section  
2           308(b) of the Federal National Mortgage Associa-  
3           tion Charter Act (12 U.S.C. 1723(b)) is amended in  
4           the second sentence, by striking “The” and inserting  
5           “Except to the extent that action under section  
6           1377 of the Federal Housing Enterprises Financial  
7           Safety and Soundness Act of 1992 temporarily re-  
8           sults in a lesser number, the”.

9           (3) FREDDIE MAC CHARTER ACT.—Section  
10          303(a)(2)(A) of the Federal Home Loan Mortgage  
11          Corporation Act (12 U.S.C. 1452(a)(2)(A)) is  
12          amended, in the second sentence, by striking “The”  
13          and inserting “Except to the extent action under  
14          section 1377 of the Federal Housing Enterprises Fi-  
15          nancial Safety and Soundness Act of 1992 tempo-  
16          rarily results in a lesser number, the”.

17 **【SEC. 154. ENFORCEMENT AND JURISDICTION.**

18          Section 1375 of the Federal Housing Enterprises Fi-  
19          nancial Safety and Soundness Act of 1992 (12 U.S.C.  
20          4635) is amended—】

21                 【(1) by striking subsection (a) and inserting  
22                 the following new subsection:】

23                 【“(a) ENFORCEMENT.—The Director may, in the  
24                 discretion of the Director, apply to the United States Dis-  
25                 trict Court for the District of Columbia, or the United



1 States district court within the jurisdiction of which the  
2 headquarters of the regulated entity is located, for the en-  
3 forcement of any effective and outstanding notice or order  
4 issued under this subtitle or subtitle B, or request that  
5 the Attorney General of the United States bring such an  
6 action. Such court shall have jurisdiction and power to  
7 order and require compliance with such notice or order.”;  
8 and】

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

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

12       Section 1376 of the Federal Housing Enterprises Fi-  
13 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
14 4636) is amended—

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

17       “(a) IN GENERAL.—The Director may impose a civil  
18 money penalty in accordance with this section on any reg-  
19 ulated entity, or any executive offices of a regulated entity  
20 or any entity-affiliated party.”;

21           (2) by striking subsection (b) and inserting the  
22       following:

23       “(b) AMOUNT OF PENALTY.—

24           “(1) FIRST TIER.—A regulated entity or entity-  
25 affiliated party shall forfeit and pay a civil penalty

1 of not more than \$10,000 for each day during which  
2 a violation continues, if such regulated entity or  
3 party—

4 “(A) violates any provision of this title, the  
5 authorizing statutes, or any order, condition,  
6 rule, or regulation under this title or any au-  
7 thorizing statute;

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

10 “(C) violates any condition imposed in  
11 writing by the Director in connection with the  
12 grant of any application or other request by  
13 such regulated entity;

14 “(D) violates any written agreement be-  
15 tween the regulated entity and the Director; or

16 “(E) engages in any conduct that the Di-  
17 rector determines to be an unsafe or unsound  
18 practice.

19 “(2) SECOND TIER.—Notwithstanding para-  
20 graph (1), a regulated entity or entity-affiliated  
21 party shall forfeit and pay a civil penalty of not  
22 more than \$50,000 for each day during which a vio-  
23 lation, practice, or breach continues, if—

24 “(A) the regulated entity or entity-affili-  
25 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           (2) by striking “a director or executive officer  
16 of an enterprise” and inserting “an entity-affiliated  
17 party”;

18           (3) by striking “director or officer” each place  
19 that term appears and inserting “entity-affiliated  
20 party”; and

21           (4) by striking “enterprise.” and inserting “reg-  
22 ulated entity.”.

1 **SEC. 158. SUBPOENA AUTHORITY.**

2 (a) IN GENERAL.—Section 1379B of the Federal  
3 Housing Enterprises Financial Safety and Soundness Act  
4 of 1992 (12 U.S.C. 4641) is amended—

5 (1) in subsection (a)—

6 (A) in the matter preceding paragraph

7 (1)—

8 (i) by striking “administrative”;

9 (ii) by inserting “, examination, or in-  
10 vestigation” after “proceeding”;

11 (iii) by striking “subtitle” and insert-  
12 ing “title”; and

13 (iv) by inserting “or any designated  
14 representative thereof, including any per-  
15 son designated to conduct any hearing  
16 under this subtitle” after “Director”; and

17 (B) in paragraph (4), by striking “issued  
18 by the Director”;

19 (2) in subsection (b), by inserting “or in any  
20 territory or other place subject to the jurisdiction of  
21 the United States” after “State”;

22 (3) by striking subsection (c) and inserting the  
23 following:

24 “(c) ENFORCEMENT.—

25 “(1) IN GENERAL.—The Director, or any party  
26 to proceedings under this subtitle, may apply to the



1 United States District Court for the District of Co-  
2 lumbia, or the United States district court for the  
3 judicial district of the United States in any territory  
4 in which such proceeding is being conducted, or  
5 where the witness resides or carries on business, for  
6 enforcement of any subpoena or subpoena duces  
7 tecum issued pursuant to this section.

8 “(2) POWER OF COURT.—The courts described  
9 under paragraph (1) shall have the jurisdiction and  
10 power to order and require compliance with any sub-  
11 poena issued under paragraph (1).”;

12 (4) in subsection (d), by inserting “enterprise-  
13 affiliated party” before “may allow”; and

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

15 “(e) PENALTIES.—A person shall be guilty of a mis-  
16 demeanor, and upon conviction, shall be subject to a fine  
17 of not more than \$1,000 or to imprisonment for a term  
18 of not more than 1 year, or both, if that person willfully  
19 fails or refuses, in disobedience of a subpoena issued under  
20 subsection (e), to—

21 “(1) attend court;

22 “(2) testify in court;

23 “(3) answer any lawful inquiry; or

1           “(4) produce books, papers, correspondence,  
2           contracts, agreements, or such other records as re-  
3           quested in the subpoena.”.

## 4           **Subtitle E—General Provisions**

### 5           **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

6           (a) AMENDMENTS TO 1992 ACT.—The Federal  
7           Housing Enterprises Financial Safety and Soundness Act  
8           of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,  
9           is amended—

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

11           (A) in subsection (a)—

12           (i) by striking “(a) OFFICE PER-  
13           SONNEL.—The” and inserting “(a) IN  
14           GENERAL.—Subject to title III of the Fed-  
15           eral Housing Finance Regulatory Reform  
16           Act of 2008, the”; and

17           (ii) by striking “the Office” each place  
18           that term appears and inserting “the  
19           Agency”;

20           (B) in subsection (c), by striking “the Of-  
21           fice” and inserting “the Agency”;

22           (C) in subsection (e), by striking “the Of-  
23           fice” and inserting “the Agency”;

24           (D) by striking subsection (d) and redesign-  
25           nating subsection (e) as subsection (d); and

1 (E) by striking subsection (f);

2 (2) in section 1319A (12 U.S.C. 4520)—

3 (A) by striking “(a) IN GENERAL.—”; and

4 (B) by striking subsection (b);

5 (3) in section 1364(e) (12 U.S.C. 4614(e)), by  
6 striking the last sentence;

7 (4) by striking section 1383 (12 U.S.C. 1451  
8 note);

9 (5) in each of sections 1319D, 1319E, and  
10 1319F (12 U.S.C. 4523, 4524, 4525) by striking  
11 “the Office” each place that term appears and in-  
12 serting “the Agency”; and

13 (6) in each of sections 1319B and 1369(a)(3)  
14 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-  
15 mittee on Banking, Finance and Urban Affairs”  
16 each place such term appears and inserting “Com-  
17 mittee on Financial Services”.

18 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—  
19 The Federal National Mortgage Association Charter Act  
20 (12 U.S.C. 1716 et seq.) is amended—

21 (1) in each of sections 303(c)(2) (12 U.S.C.  
22 1718(e)(2)), 309(d)(3)(B) (12 U.S.C.  
23 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.  
24 1723a(k)(1)), by striking “Director of the Office of  
25 Federal Housing Enterprise Oversight of the De-





1 (C) in subsection (j), by striking “of sub-  
2 stantially” and inserting “or substantially”; and  
3 (3) in section 307 (12 U.S.C. 1456)—

4 (A) in subsection (e)—

5 (i) in paragraph (1), by striking “to  
6 the Secretary, in a form determined by the  
7 Secretary” and inserting “to the Director  
8 of the Federal Housing Finance Agency, in  
9 a form determined by the Director”; and

10 (ii) in paragraph (2), by striking “to  
11 the Secretary, in a form determined by the  
12 Secretary” and inserting “to the Director  
13 of the Federal Housing Finance Agency, in  
14 a form determined by the Director”; and

15 (B) in subsection (f)—

16 (i) in paragraph (1), by striking “and  
17 the Secretary” and inserting “and the Di-  
18 rector of the Federal Housing Finance  
19 Agency”;

20 (ii) in paragraph (2), by striking “the  
21 Secretary” each place that term appears  
22 and inserting “the Director of the Federal  
23 Housing Finance Agency”; and

1 (iii) in paragraph (3)(B), by striking  
2 “Secretary” and inserting “Director of the  
3 Federal Housing Finance Agency”.

4 (d) AMENDMENT TO TITLE 18, UNITED STATES  
5 CODE.—Section 1905 of title 18, United States Code, is  
6 amended by striking “Office of Federal Housing Enter-  
7 prise Oversight” and inserting “Federal Housing Finance  
8 Agency”.

9 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION  
10 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
11 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
12 is amended by striking “Director of the Office of Federal  
13 Housing Enterprise Oversight of the Department of Hous-  
14 ing and Urban Development” and inserting “Director of  
15 the Federal Housing Finance Agency”.

16 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND  
17 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
18 ment of Housing and Urban Development Act (42 U.S.C.  
19 3534) is amended by striking subsection (d).

20 (g) AMENDMENT TO TITLE 5, UNITED STATES  
21 CODE.—Section 5313 of title 5, United States Code, is  
22 amended by striking the item relating to the Director of  
23 the Office of Federal Housing Enterprise Oversight, De-  
24 partment of Housing and Urban Development and insert-  
25 ing the following new item:





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

1 States and the remainder of whom” and  
2 inserting “13 persons, or such other num-  
3 ber as the Director determines appropriate,  
4 who”; and

5 (ii) in the second sentence, by striking  
6 “appointed by the President of the United  
7 States”;

8 (B) in subparagraph (B)—

9 (i) by striking “such or”; and

10 (ii) by striking “, except that any ap-  
11 pointed member may be removed from of-  
12 fice by the President for good cause”; and

13 (C) in subparagraph (C)—

14 (i) by striking the first sentence; and

15 (ii) by striking “elective”.

16 (2) TRANSITIONAL PROVISION.—The amend-  
17 ments made by paragraph (1) shall not apply to any  
18 appointed position of the board of directors of the  
19 Federal Home Loan Mortgage Corporation until the  
20 expiration of the annual term for such position dur-  
21 ing which the effective date under section 163 oc-  
22 curs.

23 **SEC. 163. EFFECTIVE DATE.**

24 Except as otherwise specifically provided in this title,  
25 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. RECOGNITION OF DISTINCTIONS BETWEEN THE**  
6 **ENTERPRISES AND THE FEDERAL HOME**  
7 **LOAN BANKS.**

8 Section 1313 of the Federal Housing Enterprises Fi-  
9 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
10 4513) is amended by adding at the end the following:

11 “(f) RECOGNITION OF DISTINCTIONS BETWEEN THE  
12 ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—  
13 Prior to taking any formal or informal supervisory, regu-  
14 latory, or enforcement action relating to the Federal Home  
15 Loan Banks, including the issuance of examination guid-  
16 ance, the Director shall consider the differences between  
17 the Federal Home Loan Banks and the enterprises, in-  
18 cluding the Banks’—

19 “(1) cooperative ownership structure;

20 “(2) affordable housing and community devel-  
21 opment mission;

22 “(3) capital structure; and

23 “(4) joint and several liability.”.

1 **SEC. 202. DIRECTORS.**

2 Section 7 of the Federal Home Loan Bank Act (12  
3 U.S.C. 1427) is amended—

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

6 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-  
7 Flicts OF INTEREST.—

8 “(1) IN GENERAL.—Subject to paragraphs (2)  
9 through (4), the management of each Federal Home  
10 Loan Bank shall be vested in a board of 13 direc-  
11 tors, or such other number as the Director deter-  
12 mines appropriate.

13 “(2) BOARD MAKEUP.—The board of directors  
14 of each Bank shall be comprised of—

15 “(A) member directors, who shall comprise  
16 at least the majority of the members of the  
17 board of directors; and

18 “(B) independent directors, who shall com-  
19 prise not fewer than  $\frac{2}{5}$  of the members of the  
20 board of directors.

21 “(3) SELECTION CRITERIA.—

22 “(A) IN GENERAL.—Each member of the  
23 board of directors shall be—

24 “(i) elected by plurality vote of the  
25 members, in accordance with procedures  
26 established under this section; and

1 “(ii) a citizen of the United States.

2 “(B) INDEPENDENT DIRECTOR CRI-  
3 TERIA.—

4 “(i) IN GENERAL.—Each independent  
5 director that is not a public interest direc-  
6 tor under clause (ii) shall have dem-  
7 onstrated knowledge of, or experience in,  
8 financial management, auditing and ac-  
9 counting, risk management practices, de-  
10 rivatives, project development, or organiza-  
11 tional management, or such other knowl-  
12 edge or expertise as the Director may pro-  
13 vide by regulation.

14 “(ii) PUBLIC INTEREST.—Not fewer  
15 than 2 of the independent directors shall  
16 have more than 4 years of experience in  
17 representing consumer or community inter-  
18 ests on banking services, credit needs,  
19 housing, or financial consumer protections.

20 “(iii) CONFLICTS OF INTEREST.—No  
21 independent director may, during the term  
22 of service on the board of directors, serve  
23 as an officer of any Federal Home Loan  
24 Bank or as a director, officer, or employee

1 of any member of a Bank, or of any person  
2 that receives advances from a Bank.

3 “(4) DEFINITIONS.—For purposes of this sec-  
4 tion, the following definitions shall apply:

5 “(A) INDEPENDENT DIRECTOR.—The  
6 terms ‘independent director’ and ‘independent  
7 directorship’ mean a member of the board of di-  
8 rectors of a Federal Home Loan Bank who is  
9 a bona fide resident of the district in which the  
10 Federal Home Loan Bank is located, or the di-  
11 rectorship held by such a person, respectively.

12 “(B) MEMBER DIRECTOR.—The terms  
13 ‘member director’ and ‘member directorship’  
14 mean a member of the board of directors of a  
15 Federal Home Loan Bank who is an officer or  
16 director of a member institution that is located  
17 in the district in which the Federal Home Loan  
18 Bank is located, or the directorship held by  
19 such a person, respectively.”;

20 (2) by striking “elective” each place that term  
21 appears, other than in subsections (d), (e), and (f),  
22 and inserting “member”;

23 (3) in subsection (b)—

1 (A) by striking the subsection heading and  
2 all that follows through “Each elective director-  
3 ship” and inserting the following:

4 “(b) DIRECTORSHIPS.—

5 “(1) MEMBER DIRECTORSHIPS.—Each member  
6 directorship”; and

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

8 “(2) INDEPENDENT DIRECTORSHIPS.—

9 “(A) ELECTIONS.—Each independent di-  
10 rector—

11 “(i) shall be elected by the members  
12 entitled to vote, from among eligible per-  
13 sons nominated, after consultation with the  
14 Advisory Council of the Bank, by the  
15 board of directors of the Bank; and

16 “(ii) shall be filled by a plurality of  
17 the votes of the members of the Bank at  
18 large, with each member having the num-  
19 ber of votes for each such directorship as  
20 it has under paragraph (1) in an election  
21 to fill member directorships.

22 “(B) CRITERIA.—Nominees shall meet all  
23 applicable requirements prescribed in this sec-  
24 tion.





1 (ii) by striking “in any elective direc-  
2 torship or elective directorships”;

3 (6) in subsection (f)—

4 (A) by striking paragraph (2);

5 (B) by striking “appointed or” each place  
6 that term appears; and

7 (C) in paragraph (3)—

8 (i) by striking “(3) ELECTED BANK  
9 DIRECTORS.—” and inserting “(2) ELEC-  
10 TION PROCESS.—”; and

11 (ii) by striking “elective” each place  
12 that term appears;

13 (7) in subsection (i)—

14 (A) in paragraph (1), by striking “Subject  
15 to paragraph (2), each” and inserting “Each”;  
16 and

17 (B) by striking paragraph (2) and insert-  
18 ing the following:

19 “(2) ANNUAL REPORT.—The Director shall in-  
20 clude, in the annual report submitted to the Con-  
21 gress pursuant to section 1319B of the Federal  
22 Housing Enterprises Financial Safety and Sound-  
23 ness Act of 1992, information regarding the com-  
24 pensation and expenses paid by the Federal Home

1        Loan Banks to the directors on the boards of direc-  
2        tors of the Banks.”; and

3            (8) by adding at the end the following:

4        “(1) **TRANSITION RULE.**—Any member of the board  
5 of directors of a Bank elected or appointed in accordance  
6 with this section prior to the date of enactment of this  
7 subsection may continue to serve as a member of that  
8 board of directors for the remainder of the existing term  
9 of service.”.

10 **SEC. 203. DEFINITIONS.**

11        Section 2 of the Federal Home Loan Bank Act (12  
12 U.S.C. 1422) is amended—

13            (1) by striking paragraphs (1), (10), and (11);

14            (2) by redesignating paragraphs (2) through  
15            (9) as paragraphs (1) through (8), respectively;

16            (3) by redesignating paragraphs (12) and (13)  
17            as paragraphs (9) and (10), respectively; and

18            (4) by adding at the end the following:

19            “(11) **DIRECTOR.**—The term ‘Director’ means  
20            the Director of the Federal Housing Finance Agen-  
21            cy.

22            “(12) **AGENCY.**—The term ‘Agency’ means the  
23            Federal Housing Finance Agency, established under  
24            section 1311 of the Federal Housing Enterprises Fi-  
25            nancial Safety and Soundness Act of 1992.”.

1 **SEC. 204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**  
2 **BANKS.**

3 The Federal Home Loan Bank Act (12 U.S.C. 1421  
4 et seq.), other than in provisions of that Act added or  
5 amended otherwise by this Act, is amended—

6 (1) by striking sections 2A and 2B (12 U.S.C.  
7 1422a, 1422b);

8 (2) in section 18 (12 U.S.C. 1438), by striking  
9 subsection (b);

10 (3) in section 11 (12 U.S.C. 1431)—

11 (A) in subsection (b)—

12 (i) in the first sentence—

13 (I) by striking “The Board” and  
14 inserting “The Office of Finance, as  
15 agent for the Banks,”; and

16 (II) by striking “the Board” and  
17 inserting “such Office”; and

18 (ii) in the second and fourth sen-  
19 tences, by striking “the Board” each place  
20 such term appears and inserting “the Of-  
21 fice of Finance”;

22 (B) in subsection (c)—

23 (i) by striking “the Board” the first  
24 place such term appears and inserting “the  
25 Office of Finance, as agent for the  
26 Banks,”; and

1 (ii) by striking “the Board” the sec-  
2 ond place such term appears and inserting  
3 “such Office”; and

4 (C) in subsection (f)—

5 (i) by striking the two commas after  
6 “permit” and inserting “or”; and

7 (ii) by striking the comma after “re-  
8 quire”;

9 (4) in section 6 (12 U.S.C. 1426)—

10 (A) in subsection (b)(1), in the matter pre-  
11 ceding subparagraph (A), by striking “Finance  
12 Board approval” and inserting “approval by the  
13 Director”; and

14 (B) in each of subsections (c)(4)(B) and  
15 (d)(2), by striking “Finance Board regulations”  
16 each place that term appears and inserting  
17 “regulations of the Director”;

18 (5) in section 10(b) (12 U.S.C. 1430(b))—

19 (A) in the subsection heading, by striking  
20 “FORMAL BOARD RESOLUTION” and inserting  
21 “APPROVAL OF DIRECTOR”; and

22 (B) by striking “by formal resolution”;

23 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),  
24 by striking “Chairperson of the Federal Housing Fi-  
25 nance Board” and inserting “Director”;

1 (7) in section 15 (12 U.S.C. 1435), by inserting  
2 “or the Director” after “the Board”;

3 (8) by striking “the Board” each place that  
4 term appears and inserting “the Director”;

5 (9) by striking “The Board” each place that  
6 term appears and inserting “The Director”;

7 (10) by striking “the Finance Board” each  
8 place that term appears and inserting “the Direc-  
9 tor”;

10 (11) by striking “The Finance Board” each  
11 place that term appears and inserting “The Direc-  
12 tor”; and

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

16 **SEC. 205. HOUSING GOALS.**

17 The Federal Home Loan Bank Act (12 U.S.C. 1421  
18 et seq.) is amended by inserting after section 10b the fol-  
19 lowing new section:

20 **“SEC. 10c. HOUSING GOALS.**

21 “(a) IN GENERAL.—The Director shall establish  
22 housing goals with respect to the purchase of mortgages  
23 by the Federal Home Loan Banks. Such goals shall be  
24 consistent with the goals established under sections 1331

1 through 1334 of the Federal Housing Enterprises Finan-  
2 cial Safety and Soundness Act of 1992.

3 “(b) CONSIDERATIONS.—In establishing the goals re-  
4 quired by subsection (a), the Director shall consider the  
5 unique mission and ownership structure of the Federal  
6 Home Loan Banks.

7 “(c) TRANSITION PERIOD.—To facilitate an orderly  
8 transition, the Director shall establish interim target goals  
9 for each of the next 2 calendar years following the date  
10 of enactment of this section.

11 “(d) MONITORING AND ENFORCEMENT OF GOALS.—  
12 The requirements of section 1336 of the Federal Housing  
13 Enterprises Safety and Soundness Act of 1992, shall  
14 apply to this section, in the same manner and to the same  
15 extent as that section applies to the Federal housing enter-  
16 prises.

17 “(e) ANNUAL REPORT.—The Director shall annually  
18 report to Congress on the performance of the Banks in  
19 meeting the goals established under this section.”.

20 **SEC. 206. COMMUNITY DEVELOPMENT FINANCIAL INSTITU-**  
21 **TIONS.**

22 Section 4(a)(1) of the Federal Home Loan Bank Act  
23 (12 U.S.C. 1424(a)(1)) is amended—

1           (1) by inserting after “savings bank,” the fol-  
2           lowing: “community development financial institu-  
3           tion,”; and

4           (2) in subparagraph (B), by inserting after  
5           “United States,” the following: “or, in the case of a  
6           community development financial institution, is cer-  
7           tified as a community development financial institu-  
8           tion under the Community Development Banking  
9           and Financial Institutions Act of 1994.”.

10 **SEC. 207. SHARING OF INFORMATION AMONG FEDERAL**  
11 **HOME LOAN BANKS.**

12           The Federal Home Loan Bank Act is amended by  
13 inserting after section 20 (12 U.S.C. 1440) the following  
14 new section:

15 **“SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL**  
16 **HOME LOAN BANKS.**

17           “(a) INFORMATION ON FINANCIAL CONDITION.—In  
18 order to enable each Federal Home Loan Bank to evaluate  
19 the financial condition of one or more of the other Federal  
20 Home Loan Banks individually and the Federal Home  
21 Loan Bank System (including any risks associated with  
22 the issuance or repayment of consolidated Federal Home  
23 Loan Bank bonds and debentures or other borrowings and  
24 the joint and several liabilities of the Banks incurred due  
25 to such borrowings), as well as to comply with any of its

1 obligations under the Securities Exchange Act of 1934 (15  
2 U.S.C. 78a et seq.), the Director shall make available to  
3 the Banks such reports, records, or other information as  
4 may be available, relating to the condition of any Federal  
5 Home Loan Bank.

6 “(b) SHARING OF INFORMATION.—

7 “(1) IN GENERAL.—The Director shall facili-  
8 tate the sharing of information made available under  
9 subsection (a) directly among the Federal Home  
10 Loan Banks and members of the Banks.

11 “(2) LIMITATION.—Notwithstanding paragraph  
12 (1), a Federal Home Loan Bank responding to a re-  
13 quest from another Bank or from the Director for  
14 information pursuant to this section may request  
15 that the Director determine that such information is  
16 proprietary and that the public interest requires that  
17 such information not be shared with members of a  
18 Bank.

19 “(c) LIMITATION.—Nothing in this section shall af-  
20 fect the obligations of any Federal Home Loan Bank  
21 under the Securities Exchange Act of 1934 (15 U.S.C.  
22 78a et seq.) or the regulations issued by the Securities  
23 and Exchange Commission thereunder.”.



1 **SEC. 208. EXCLUSION FROM CERTAIN SECURITIES REPORT-**  
2 **ING REQUIREMENTS.**

3 (a) IN GENERAL.—The Federal Home Loan Banks  
4 shall be exempt from compliance with—

5 (1) sections 13(e), 14(a), 14(c), and 17A of the  
6 Securities Exchange Act of 1934, and related Com-  
7 mission regulations; and

8 (2) section 15 of the Securities Exchange Act  
9 of 1934, and related Commission regulations, with  
10 respect to transactions in the capital stock of a Fed-  
11 eral Home Loan Bank.

12 (b) MEMBER EXEMPTION.—The members of the  
13 Federal Home Loan Bank System shall be exempt from  
14 compliance with sections 13(d), 13(f), 13(g), 14(d), and  
15 16 of the Securities Exchange Act of 1934, and related  
16 Commission regulations, with respect to ownership of or  
17 transactions in the capital stock of the Federal Home  
18 Loan Banks by such members.

19 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

20 (1) CAPITAL STOCK.—The capital stock issued  
21 by each of the Federal Home Loan Banks under  
22 section 6 of the Federal Home Loan Bank Act are—

23 (A) exempted securities, within the mean-  
24 ing of section 3(a)(2) of the Securities Act of  
25 1933; and

1 (B) exempted securities, within the mean-  
2 ing of section 3(a)(12)(A) of the Securities Ex-  
3 change Act of 1934, except to the extent pro-  
4 vided in section 38 of that Act.

5 (2) OTHER OBLIGATIONS.—The debentures,  
6 bonds, and other obligations issued under section 11  
7 of the Federal Home Loan Bank Act (12 U.S.C.  
8 1431) are—

9 (A) exempted securities, within the mean-  
10 ing of section 3(a)(2) of the Securities Act of  
11 1933;

12 (B) government securities, within the  
13 meaning of section 3(a)(42) of the Securities  
14 Exchange Act of 1934; and

15 (C) government securities, within the  
16 meaning of section 2(a)(16) of the Investment  
17 Company Act of 1940.

18 (3) BROKERS AND DEALERS.—A person that  
19 effects transactions in the capital stock or other obli-  
20 gations of a Federal Home Loan Bank, for the ac-  
21 count of others or for his own account, as applicable,  
22 is excluded from the definition of—

23 (A) the term “government securities  
24 broker” under section 3(a)(43) of the Securities  
25 Exchange Act of 1934; and

1 (B) the term “government securities deal-  
2 er” under section 3(a)(44) of the Securities Ex-  
3 change Act of 1934.

4 (d) EXEMPTION FROM REPORTING REQUIRE-  
5 MENTS.—The Federal Home Loan Banks shall be exempt  
6 from periodic reporting requirements under the securities  
7 laws pertaining to the disclosure of—

8 (1) related party transactions that occur in the  
9 ordinary course of the business of the Banks with  
10 members; and

11 (2) the unregistered sales of equity securities.

12 (e) TENDER OFFERS.—Commission rules relating to  
13 tender offers shall not apply in connection with trans-  
14 actions in the capital stock of the Federal Home Loan  
15 Banks.

16 (f) REGULATIONS.—

17 (1) FINAL RULES.—Not later than 1 year after  
18 the date of enactment of this Act, the Commission  
19 shall issue final rules to implement this section and  
20 the exemptions provided in this section.

21 (2) CONSIDERATIONS.—In issuing final regula-  
22 tions under this section, the Commission shall con-  
23 sider the distinctive characteristics of the Federal  
24 Home Loan Banks when evaluating—

1 (A) the accounting treatment with respect  
2 to the payment to the Resolution Funding Cor-  
3 poration;

4 (B) the role of the combined financial  
5 statements of the Federal Home Loan Banks;

6 (C) the accounting classification of redeem-  
7 able capital stock; and

8 (D) the accounting treatment related to  
9 the joint and several nature of the obligations  
10 of the Banks.

11 (g) DEFINITIONS.—As used in this section—

12 (1) the terms “Bank”, “Federal Home Loan  
13 Bank”, “member”, and “Federal Home Loan Bank  
14 System” have the same meanings as in section 2 of  
15 the Federal Home Loan Bank Act (12 U.S.C.  
16 1422);

17 (2) the term “Commission” means the Securi-  
18 ties and Exchange Commission; and

19 (3) the term “securities laws” has the same  
20 meaning as in section 3(a)(47) of the Securities Ex-  
21 change Act of 1934 (15 U.S.C. 78c(a)(47)).

22 **SEC. 209. MERGERS.**

23 Section 26 of the Federal Home Loan Bank Act (12  
24 U.S.C. 1446) is amended—

1           (1) by striking “Whenever” and inserting “(a)  
2       IN GENERAL.—Whenever”; and

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

4       “(b) MERGERS AUTHORIZED.—

5           “(1) IN GENERAL.—Any Federal Home Loan  
6       Bank may, with the approval of the Director and of  
7       the boards of directors of the Banks involved, merge  
8       with another Bank.

9           “(2) REGULATIONS REQUIRED.—The Director  
10       shall promulgate regulations establishing the condi-  
11       tions and procedures for the consideration and ap-  
12       proval of any voluntary merger described in para-  
13       graph (1), including the procedures for Bank mem-  
14       ber approval.”.

15   **SEC. 210. AUTHORITY TO REDUCE DISTRICTS.**

16       Section 3 of the Federal Home Loan Bank Act (12  
17   U.S.C. 1423) is amended—

18           (1) by striking “As soon” and inserting “(a) IN  
19       GENERAL.—As soon”; and

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

21       “(b) AUTHORITY TO REDUCE DISTRICTS.—Notwith-  
22       standing subsection (a), the number of districts may be  
23       reduced to a number less than 8—

24           “(1) pursuant to a voluntary merger between  
25       Banks, as approved pursuant to section 26(b); or



1 **SEC. 212. PUBLIC USE DATA BASE; REPORTS TO CONGRESS.**

2 Section 10 of the Federal Home Loan Bank Act (12  
3 U.S.C. 1430) is amended—

4 (1) in subsection (j)(12)—

5 (A) by striking subparagraph (C) and in-  
6 serting the following:

7 “(C) REPORTS.—The Director shall annu-  
8 ally report to the Committee on Banking, Hous-  
9 ing, and Urban Affairs of the Senate and the  
10 Committee on Financial Services of the House  
11 of Representatives on the collateral pledged to  
12 the Banks, including an analysis of collateral by  
13 type and by Bank district.”; and

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

15 “(D) SUBMISSION TO CONGRESS.—The Di-  
16 rector shall submit the reports under subpara-  
17 graphs (A) and (C) to the Committee on Bank-  
18 ing, Housing, and Urban Affairs of the Senate  
19 and the Committee on Financial Services of the  
20 House of Representatives, not later than 180  
21 days after the date of enactment of the Federal  
22 Housing Finance Regulatory Reform Act of  
23 2008.”; and

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

25 “(k) PUBLIC USE DATABASE.—

1           “(1) DATA.—Each Federal Home Loan Bank  
2 shall provide to the Director, in a form determined  
3 by the Director, census tract level data relating to  
4 mortgages purchased, if any, including—

5           “(A) data consistent with that reported by  
6 the Federal mortgage enterprises and made  
7 available to the public under section 1323 of  
8 the Federal Housing Enterprises Financial  
9 Safety and Soundness Act of 1992;

10           “(B) data elements required to be reported  
11 under the Home Mortgage Disclosure Act of  
12 1975; and

13           “(C) any other data elements that the Di-  
14 rector considers appropriate.

15           “(2) PUBLIC USE DATABASE.—

16           “(A) IN GENERAL.—The Director shall  
17 make available to the public, in a form that is  
18 useful to the public (including forms accessible  
19 electronically), and to the extent practicable,  
20 the data provided to the Director under para-  
21 graph (1).

22           “(B) PROPRIETARY INFORMATION.—Not  
23 withstanding subparagraph (A), the Director  
24 may not provide public access to, or disclose to  
25 the public, any information required to be sub-



1           mitted under this subsection that the Director  
2           determines is proprietary or that would provide  
3           personally identifiable information and that is  
4           not otherwise publicly accessible through other  
5           forms, unless the Director determines that it is  
6           in the public interest to provide such informa-  
7           tion.”.

8   **SEC. 213. SEMIANNUAL REPORTS.**

9           Section 21B of the Federal Home Loan Bank Act  
10          is amended in subsection (f)(2)(C), by adding at the end  
11          the following:

12                           “(v) SEMIANNUAL REPORTS.—The  
13                           Director shall report semiannually to the  
14                           Committee on Banking, Housing, and  
15                           Urban Affairs of the Senate and the Com-  
16                           mittee on Financial Services of the House  
17                           of Representatives on the projected date  
18                           for the completion of contributions re-  
19                           quired by this section.”.

20   **SEC. 214. LIQUIDATION OR REORGANIZATION OF A FED-**  
21                           **ERAL HOME LOAN BANK.**

22          Section 26 of the Federal Home Loan Bank Act (12  
23          U.S.C. 1446) is amended by adding at the end the fol-  
24          lowing: “At least 30 days prior to liquidating or reorga-  
25          nizing any Bank under this section, the Director shall no-

1 tify the Bank of its determination and the facts and cir-  
2 cumstances upon which such determination is based. The  
3 Bank may contest that determination in a hearing before  
4 the Director, in which all issues shall be determined on  
5 the record pursuant to section 554 of title 5, United  
6 States Code.”.

7 **SEC. 215. STUDY AND REPORT TO CONGRESS ON**  
8 **SECURITIZATION OF ACQUIRED MEMBER AS-**  
9 **SETS.**

10 (a) **STUDY.**—The Director shall conduct a study on  
11 securitization of home mortgage loans purchased or to be  
12 purchased from member financial institutions under the  
13 Acquired Member Assets programs. In conducting the  
14 study, the Director shall establish a process for the formal  
15 submission of comments.

16 (b) **ELEMENTS.**—The study shall encompass—

17 (1) the benefits and risks associated with  
18 securitization of Acquired Member Assets;

19 (2) the potential impact of securitization upon  
20 liquidity in the mortgage and broader credit mar-  
21 kets;

22 (3) the ability of the Bank or Banks in question  
23 to manage the risks associated with such a program;

1           (4) the impact of such a program on the exist-  
2           ing activities of the Banks, including their mortgage  
3           portfolios and advances; and

4           (5) the joint and several liability of the Banks  
5           and the System's cooperative structure.

6           (c) CONSULTATIONS.—In conducting the study under  
7 this section, the Director shall consult with the Federal  
8 Home Loan Banks, the Banks' fiscal agent, representa-  
9 tives of the mortgage lending industry, practitioners in the  
10 structured finance field, and other experts as needed.

11          (d) REPORT.—Not later than 1 year after the date  
12 of enactment of this Act, the Director shall submit a re-  
13 port to Congress on the results of the study conducted  
14 under subsection (a), including policy recommendations  
15 based upon the Director's analysis of the feasibility of  
16 mortgage-backed securities issuance by a Federal Home  
17 Loan Bank or Banks and the risks and benefits associated  
18 with such program or programs.

19 **SEC. 216. TECHNICAL AND CONFORMING AMENDMENTS.**

20          (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—  
21 Section 1113(o) of the Right to Financial Privacy Act of  
22 1978 (12 U.S.C. 3413(o)) is amended—

23           (1) by striking “Federal Housing Finance  
24           Board” and inserting “Federal Housing Finance  
25           Agency”; and

1           (2) by striking “Federal Housing Finance  
2       Board’s” and inserting “Federal Housing Finance  
3       Agency’s”.

4       (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-  
5       LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of  
6       the Riegle Community Development and Regulatory Im-  
7       provement Act of 1994 (12 U.S.C. 4716(e)) is amended  
8       by striking “Federal Housing Finance Board” and insert-  
9       ing “Federal Housing Finance Agency”.

10       (c) TITLE 18, UNITED STATES CODE.—Title 18,  
11       United States Code, is amended by striking “Federal  
12       Housing Finance Board” each place such term appears  
13       in each of sections 212, 657, 1006, 1014, and inserting  
14       “Federal Housing Finance Agency”.

15       (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the  
16       Multifamily Assisted Housing Reform and Affordability  
17       Act of 1997 (42 U.S.C. 1437f note) is amended by strik-  
18       ing “Federal Housing Finance Board” and inserting  
19       “Federal Housing Finance Agency”.

20       (e) TITLE 44, UNITED STATES CODE.—Section  
21       3502(5) of title 44, United States Code, is amended by  
22       striking “Federal Housing Finance Board” and inserting  
23       “Federal Housing Finance Agency”.

24       (f) ACCESS TO LOCAL TV ACT OF 2000.—Section  
25       1004(d)(2)(D)(iii) of the Launching Our Communities’

1 Access to Local Television Act of 2000 (47 U.S.C.  
2 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-  
3 eral Housing Enterprise Oversight, the Federal Housing  
4 Finance Board” and inserting “Federal Housing Finance  
5 Agency”.

6 (g) FIRREA.—Section 1216 of the Financial Institu-  
7 tions Reform, Recovery, and Enhancement Act of 1989  
8 (12 U.S.C. 1833e) is amended—

9 (1) in subsection (a), by striking paragraph (3)  
10 and inserting the following:

11 “(3) the Federal Housing Finance Agency;”;

12 (2) in subsection (b), by striking “Federal Na-  
13 tional Mortgage Association” and inserting “Federal  
14 Home Loan Banks, the Federal National Mortgage  
15 Association,”; and

16 (3) in subsection (c), by striking “Finance  
17 Board” and inserting “Finance Agency”.

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           Finance Agency shall abate by reason of the enact-  
7           ment of this Act, except that the Director of the  
8           Federal Housing Finance Agency shall be sub-  
9           stituted for the Director of the Office of Federal  
10          Housing Enterprise Oversight as a party to any  
11          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 Finance  
14 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—HOPE FOR**  
6 **HOMEOWNERS**

7 **SEC. 401. SHORT TITLE.**

8 This title may be cited as the “HOPE for Home-  
9 owners Act of 2008”.

10 **SEC. 402. ESTABLISHMENT OF HOPE FOR HOMEOWNERS**  
11 **PROGRAM.**

12 (a) ESTABLISHMENT.—Title II of the National Hous-  
13 ing Act (12 U.S.C. 1707 et seq.) is amended by adding  
14 at the end the following:

15 **“SEC. 257. HOPE FOR HOMEOWNERS PROGRAM.**

16 “(a) ESTABLISHMENT.—There is established in the  
17 Federal Housing Administration a HOPE for Home-  
18 owners Program.

19 “(b) PURPOSE.—The purpose of the HOPE for  
20 Homeowners Program is—

21 “(1) to create an FHA program, participation  
22 in which is voluntary on the part of homeowners and  
23 existing loan holders to insure refinanced loans for  
24 distressed borrowers to support long-term, sustain-  
25 able homeownership;

1           “(2) to allow homeowners to avoid foreclosure  
2           by reducing the principle balance outstanding, and  
3           interest rate charged, on their mortgages;

4           “(3) to help stabilize and provide confidence in  
5           mortgage markets by bringing transparency to the  
6           value of assets based on mortgage assets;

7           “(4) to target mortgage assistance under this  
8           section to homeowners for their principal residence;

9           “(5) to enhance the administrative capacity of  
10          the FHA to carry out its expanded role under the  
11          HOPE for Homeowners Program;

12          “(6) to ensure the HOPE for Homeowners Pro-  
13          gram remains in effect only for as long as is nec-  
14          essary to provide stability to the housing market;  
15          and

16          “(7) to provide servicers of delinquent mort-  
17          gages with additional methods and approaches to  
18          avoid foreclosure.

19          “(c) ESTABLISHMENT AND IMPLEMENTATION OF  
20          PROGRAM REQUIREMENTS.—

21                 “(1) DUTIES OF THE BOARD.—In order to  
22                 carry out the purposes of the HOPE for Home-  
23                 owners Program, the Board shall—

24                         “(A) establish requirements and standards  
25                         for the program; and

1           “(B) prescribe such regulations and pro-  
2           vide such guidance as may be necessary or ap-  
3           propriate to implement such requirements and  
4           standards.

5           “(2) DUTIES OF THE SECRETARY.—In carrying  
6           out any of the program requirements or standards  
7           established under paragraph (1), the Secretary may  
8           issue such interim guidance and mortgagee letters as  
9           the Secretary determines necessary or appropriate.

10          “(d) INSURANCE OF MORTGAGES.—The Secretary is  
11          authorized upon application of a mortgagee to make com-  
12          mitments to insure or to insure any eligible mortgage that  
13          has been refinanced in a manner meeting the requirements  
14          under subsection (e).

15          “(e) REQUIREMENTS OF INSURED MORTGAGES.—To  
16          be eligible for insurance under this section, a refinanced  
17          eligible mortgage shall comply with all of the following re-  
18          quirements:

19                 “(1) LACK OF CAPACITY TO PAY EXISTING  
20                 MORTGAGE.—

21                 “(A) BORROWER CERTIFICATION.—

22                         “(i) IN GENERAL.—The mortgagor  
23                         shall provide a certification to the Sec-  
24                         retary that the mortgagor has not inten-  
25                         tionally defaulted on the eligible mortgage.

1                   “(ii) PENALTY.—Any certification  
2                   filed pursuant to clause (i) shall contain an  
3                   acknowledgment that any willful false  
4                   statement made in such certification is  
5                   punishable under section 1001 of title 18,  
6                   United States Code, by fine or imprison-  
7                   ment of not more than 5 years, or both.

8                   “(B) CURRENT BORROWER DEBT-TO-IN-  
9                   COME RATIO.—As of March 1, 2008, the mort-  
10                  gagor shall have had a ratio of mortgage debt  
11                  to income, taking into consideration all existing  
12                  mortgages of that mortgagor at such time,  
13                  greater than 31 percent (or such higher amount  
14                  as the Board determines appropriate).

15                  “(2) DETERMINATION OF PRINCIPAL OBLIGA-  
16                  TION AMOUNT.—The principal obligation amount of  
17                  the refinanced eligible mortgage to be insured  
18                  shall—

19                         “(A) be determined by the lesser of—

20                                 “(i) the reasonable ability of the mort-  
21                                 gagor to make his or her mortgage pay-  
22                                 ments, as such ability is determined by the  
23                                 Secretary pursuant to section 203(b)(4) or  
24                                 by any other underwriting standards estab-  
25                                 lished by the Board; or



1                   “(ii) if the Board establishes a proce-  
2                   dure for auction pursuant to subsection  
3                   (f), the amount established at auction for  
4                   such mortgage; and

5                   “(B) not exceed 90 percent of the ap-  
6                   praised value of the property to which such  
7                   mortgage relates.

8                   “(3) REQUIRED WAIVER OF PREPAYMENT PEN-  
9                   ALTIES AND FEES.—All penalties for prepayment or  
10                  refinancing of the eligible mortgage, and all fees and  
11                  penalties related to default or delinquency on the eli-  
12                  gible mortgage, shall be waived or forgiven.

13                  “(4) EXTINGUISHMENT OF SUBORDINATE  
14                  LIENS.—

15                  “(A) REQUIRED AGREEMENT.—All holders  
16                  of outstanding mortgage liens on the property  
17                  to which the eligible mortgage relates shall  
18                  agree to accept the proceeds of the insured loan  
19                  as payment in full of all indebtedness under the  
20                  eligible mortgage, and all encumbrances related  
21                  to such eligible mortgage shall be removed. The  
22                  Secretary may take such actions, subject to  
23                  standards established by the Board under sub-  
24                  paragraph (B), as may be necessary and appro-  
25                  priate to facilitate coordination and agreement



1                   erty securing a subordinate mortgage  
2                   is less than the outstanding principal  
3                   balance and accrued interest on any  
4                   other liens that are senior to such  
5                   subordinate mortgage; and

6                               “(IV) such other factors as the  
7                   Board determines to be appropriate.

8                               “(C) VOLUNTARY PROGRAM.—This para-  
9                   graph may not be construed to require any  
10                  holder of any existing mortgage to participate  
11                  in the program under this section generally, or  
12                  with respect to any particular loan.

13                              “(5) TERM OF MORTGAGE.—The refinanced eli-  
14                  gible mortgage to be insured shall—

15                                   “(A) bear interest at a single rate that is  
16                  fixed for the entire term of the mortgage; and

17                                   “(B) have a maturity of not less than 30  
18                  years from the date of the beginning of amorti-  
19                  zation of such refinanced eligible mortgage.

20                              “(6) MAXIMUM LOAN AMOUNT.—The principal  
21                  obligation amount of the eligible mortgage to be in-  
22                  sured shall not exceed 132 percent of the dollar  
23                  amount limitation in effect for 2007 under section  
24                  305(a)(2) of the Federal Home Loan Mortgage Cor-

1           poration Act (12 U.S.C. 1454(a)(2)) for a property  
2           of the applicable size.

3           “(7) PROHIBITION ON SECOND LIENS.—A  
4           mortgagor may not grant a new second lien on the  
5           mortgaged property during the first 5 years of the  
6           term of the mortgage insured under this section.

7           “(8) APPRAISALS.—Any appraisal conducted in  
8           connection with a mortgage insured under this sec-  
9           tion shall—

10                   “(A) be based on the current value of the  
11                   property;

12                   “(B) be conducted in accordance with title  
13                   XI of the Financial Institutions Reform, Recov-  
14                   ery, and Enforcement Act of 1989 (12 U.S.C.  
15                   3331 et seq.);

16                   “(C) be completed by an appraiser who  
17                   meets the competency requirements of the Uni-  
18                   form Standards of Professional Appraisal Prac-  
19                   tice;

20                   “(D) be wholly consistent with the ap-  
21                   praisal standards, practices, and procedures  
22                   under section 202(e) of this Act that apply to  
23                   all loans insured under this Act; and

1                   “(E) comply with the requirements of sub-  
2                   section (g) of this section (relating to appraisal  
3                   independence).

4                   “(f) AUCTION.—

5                   “(1) IN GENERAL.—The Board shall, if fea-  
6                   sible, establish a structure and organize procedures  
7                   for an auction to refinance eligible mortgages on a  
8                   wholesale or bulk basis.

9                   “(2) NO STAY OR SUSPENSION OF PROGRAM.—

10                  The ability of the Secretary to insure mortgages  
11                  under this section shall not be stayed or suspended  
12                  during the period of time needed to establish the  
13                  structure and procedures required under paragraph  
14                  (1).

15                  “(g) APPRAISAL INDEPENDENCE.—

16                  “(1) PROHIBITIONS ON INTERESTED PARTIES  
17                  IN A REAL ESTATE TRANSACTION.—No mortgage  
18                  lender, mortgage broker, mortgage banker, real es-  
19                  tate broker, appraisal management company, em-  
20                  ployee of an appraisal management company, nor  
21                  any other person with an interest in a real estate  
22                  transaction involving an appraisal in connection with  
23                  a mortgage insured under this section shall improper-  
24                  ly influence, or attempt to improperly influence,  
25                  through coercion, extortion, collusion, compensation,

1 instruction, inducement, intimidation, non-payment  
2 for services rendered, or bribery, the development,  
3 reporting, result, or review of a real estate appraisal  
4 sought in connection with the mortgage.

5 “(2) CIVIL MONETARY PENALTIES.—The Sec-  
6 retary may impose a civil money penalty for any  
7 knowing and material violation of paragraph (1)  
8 under the same terms and conditions as are author-  
9 ized in section 536(a) of this Act.

10 “(h) STANDARDS TO PROTECT AGAINST ADVERSE  
11 SELECTION.—The Board shall, by rule or order, establish  
12 standards and policies to require the underwriter of the  
13 insured loan to provide such representations and warran-  
14 ties as the Board considers necessary or appropriate to  
15 enforce compliance with all underwriting and appraisal  
16 standards of the HOPE for Homeowners Program.

17 “(i) PREMIUMS.—For each refinanced eligible mort-  
18 gage insured under this section, the Secretary shall estab-  
19 lish and collect—

20 “(1) at the time of insurance, a single premium  
21 payment in an amount equal to 3 percent of the  
22 amount of the original insured principal obligation of  
23 the refinanced eligible mortgage, which shall be paid  
24 from the proceeds of the mortgage being insured  
25 under this section, through the reduction of the

1 amount of indebtedness that existed on the eligible  
2 mortgage prior to refinancing; and

3 “(2) in addition to the premium required under  
4 paragraph (1), an annual premium in an amount  
5 equal to 1.5 percent of the amount of the remaining  
6 insured principal balance of the mortgage.

7 “(j) ORIGINATION FEES AND INTEREST RATE.—The  
8 Board shall establish—

9 “(1) a reasonable limitation on origination fees  
10 for refinanced eligible mortgages insured under this  
11 section; and

12 “(2) procedures to ensure that interest rates on  
13 such mortgages shall be commensurate with market  
14 rate interest rates on such types of loans.

15 “(k) EQUITY AND APPRECIATION.—

16 “(1) 5-YEAR PHASE-IN FOR EQUITY AS A RE-  
17 SULT OF SALE OR REFINANCING.—For each eligible  
18 mortgage insured under this section, the Secretary  
19 and the mortgagor of such mortgage shall, upon any  
20 sale or disposition of the property to which such  
21 mortgage relates, or upon the subsequent refi-  
22 nancing of such mortgage, be entitled to the fol-  
23 lowing with respect to any equity created as a direct  
24 result of such sale or refinancing:

1           “(A) If such sale or refinancing occurs  
2 during the period that begins on the date that  
3 such mortgage is insured and ends 1 year after  
4 such date of insurance, the Secretary shall be  
5 entitled to 100 percent of such equity.

6           “(B) If such sale or refinancing occurs  
7 during the period that begins 1 year after such  
8 date of insurance and ends 2 years after such  
9 date of insurance, the Secretary shall be enti-  
10 tled to 90 percent of such equity and the mort-  
11 gator shall be entitled to 10 percent of such eq-  
12 uity.

13           “(C) If such sale or refinancing occurs  
14 during the period that begins 2 years after such  
15 date of insurance and ends 3 years after such  
16 date of insurance, the Secretary shall be enti-  
17 tled to 80 percent of such equity and the mort-  
18 gator shall be entitled to 20 percent of such eq-  
19 uity.

20           “(D) If such sale or refinancing occurs  
21 during the period that begins 3 years after such  
22 date of insurance and ends 4 years after such  
23 date of insurance, the Secretary shall be enti-  
24 tled to 70 percent of such equity and the mort-



1           gagor shall be entitled to 30 percent of such eq-  
2           uity.

3           “(E) If such sale or refinancing occurs  
4           during the period that begins 4 years after such  
5           date of insurance and ends 5 years after such  
6           date of insurance, the Secretary shall be enti-  
7           tled to 60 percent of such equity and the mort-  
8           gagor shall be entitled to 40 percent of such eq-  
9           uity.

10          “(F) If such sale or refinancing occurs  
11          during any period that begins 5 years after  
12          such date of insurance, the Secretary shall be  
13          entitled to 50 percent of such equity and the  
14          mortgagor shall be entitled to 50 percent of  
15          such equity.

16          “(2) APPRECIATION IN VALUE.—For each eligi-  
17          ble mortgage insured under this section, the Sec-  
18          retary and the mortgagor of such mortgage shall,  
19          upon any sale or disposition of the property to which  
20          such mortgage relates, each be entitled to 50 percent  
21          of any appreciation in value of the appraised value  
22          of such property that has occurred since the date  
23          that such mortgage was insured under this section.

24          “(1) ESTABLISHMENT OF HOPE FUND.—

1           “(1) IN GENERAL.—There is established in the  
2           Federal Housing Administration a revolving fund to  
3           be known as the Home Ownership Preservation En-  
4           tity Fund, which shall be used by the Board for car-  
5           rying out the mortgage insurance obligations under  
6           this section.

7           “(2) MANAGEMENT OF FUND.—The HOPE  
8           Fund shall be administered and managed by the  
9           Secretary, who shall establish reasonable and pru-  
10          dent criteria for the management and operation of  
11          any amounts in the HOPE Fund.

12          “(m) LIMITATION ON AGGREGATE INSURANCE AU-  
13          THORITY.—The aggregate original principal obligation of  
14          all mortgages insured under this section may not exceed  
15          \$300,000,000,000.

16          “(n) REPORTS BY THE BOARD.—The Board shall  
17          submit monthly reports to the Congress identifying the  
18          progress of the HOPE for Homeowners Program, which  
19          shall contain the following information for each month:

20                 “(1) The number of new mortgages insured  
21                 under this section, including the location of the  
22                 properties subject to such mortgages by census  
23                 tract.

24                 “(2) The aggregate principal obligation of new  
25                 mortgages insured under this section.

1           “(3) The average amount by which the principle  
2           balance outstanding on mortgages insured this sec-  
3           tion was reduced.

4           “(4) The amount of premiums collected for in-  
5           surance of mortgages under this section.

6           “(5) The claim and loss rates for mortgages in-  
7           sured under this section.

8           “(6) Any other information that the Board con-  
9           siders appropriate.

10          “(o) REQUIRED OUTREACH EFFORTS.—The Sec-  
11          retary shall carry out outreach efforts to ensure that  
12          homeowners, lenders, and the general public are aware of  
13          the opportunities for assistance available under this sec-  
14          tion.

15          “(p) ENHANCEMENT OF FHA CAPACITY.—Under  
16          the direction of the Board, the Secretary shall take such  
17          actions as may be necessary to—

18                 “(1) contract for the establishment of under-  
19                 writing criteria, automated underwriting systems,  
20                 pricing standards, and other factors relating to eligi-  
21                 bility for mortgages insured under this section;

22                 “(2) contract for independent quality reviews of  
23                 underwriting, including appraisal reviews and fraud  
24                 detection, of mortgages insured under this section or  
25                 pools of such mortgages; and

1           “(3) increase personnel of the Department as  
2           necessary to process or monitor the processing of  
3           mortgages insured under this section.

4           “(q) GNMA COMMITMENT AUTHORITY.—

5           “(1) GUARANTEES.—The Secretary shall take  
6           such actions as may be necessary to ensure that se-  
7           curities based on and backed by a trust or pool com-  
8           posed of mortgages insured under this section are  
9           available to be guaranteed by the Government Na-  
10          tional Mortgage Association as to the timely pay-  
11          ment of principal and interest.

12          “(2) GUARANTEE AUTHORITY.—To carry out  
13          the purposes of section 306 of the National Housing  
14          Act (12 U.S.C. 1721), the Government National  
15          Mortgage Association may enter into new commit-  
16          ments to issue guarantees of securities based on or  
17          backed by mortgages insured under this section, not  
18          exceeding \$300,000,000,000. The amount of author-  
19          ity provided under the preceding sentence to enter  
20          into new commitments to issue guarantees is in ad-  
21          dition to any amount of authority to make new com-  
22          mitments to issue guarantees that is provided to the  
23          Association under any other provision of law.

24          “(r) SUNSET.—

1           “(1) IN GENERAL.—The Secretary may not  
2 enter into any new commitment to insure any refi-  
3 nanced eligible mortgage, or newly insure any refi-  
4 nanced eligible mortgage, pursuant to this section  
5 after December 31, 2012.

6           “(2) AMOUNTS RECEIVED AFTER SUNSET.—  
7 After the date described in paragraph (1), any  
8 amounts remaining in the HOPE Fund and any  
9 amounts owed to the Secretary pursuant to sub-  
10 sections (f) and (i) shall be deposited with the  
11 United States Government.

12          “(s) DEFINITIONS.—For purposes of this section, the  
13 following definitions shall apply:

14           “(1) APPROVED FINANCIAL INSTITUTION OR  
15 MORTGAGEE.—The term ‘approved financial institu-  
16 tion or mortgagee’ means a financial institution or  
17 mortgagee approved by the Secretary under section  
18 203 as responsible and able to service mortgages re-  
19 sponsibly.

20           “(2) BOARD.—The term ‘Board’ means the  
21 Board of Directors of the HOPE for Homeowners  
22 Program. The Board shall be composed of the Sec-  
23 retary, the Secretary of the Treasury, and the Chair  
24 of the Federal Deposit Insurance Corporation.

1           “(3) ELIGIBLE MORTGAGE.—The term ‘eligible  
2 mortgage’ means a mortgage—

3           “(A) the mortgagor of which—

4           “(i) occupies such property as his or  
5 her principal residence; and

6           “(ii) cannot, subject to subsection  
7 (e)(1)(B) and such other standards estab-  
8 lished by the Board, afford his or her  
9 mortgage payments; and

10           “(B) originated on or before January 1,  
11 2008.

12           “(4) EXISTING SENIOR MORTGAGE.—The term  
13 ‘existing senior mortgage’ means, with respect to a  
14 mortgage insured under this section, the existing  
15 mortgage that has superior priority.

16           “(5) EXISTING SUBORDINATE MORTGAGE.—The  
17 term ‘existing subordinate mortgage’ means, with re-  
18 spect to a mortgage insured under this section, an  
19 existing mortgage that has subordinate priority to  
20 the existing senior mortgage.

21           “(6) HOPE FOR HOMEOWNERS PROGRAM.—  
22 The term ‘HOPE for Homeowners Program’ means  
23 the program established under this section.

1           “(7) SECRETARY.—The term ‘Secretary’ means  
2           the Secretary of Housing and Urban Development,  
3           except where specifically provided otherwise.

4           “(t) REQUIREMENTS RELATED TO THE BOARD.—

5           “(1) COMPENSATION, ACTUAL, NECESSARY,  
6           AND TRANSPORTATION EXPENSES.—

7           “(A) FEDERAL EMPLOYEES.—A member  
8           of the Board who is an officer or employee of  
9           the Federal Government shall serve without ad-  
10          ditional pay (or benefits in the nature of com-  
11          pensation) for service as a member of the  
12          Board.

13          “(B) TRAVEL EXPENSES.—Members of the  
14          Board shall be entitled to receive travel ex-  
15          penses, including per diem in lieu of subsist-  
16          ence, equivalent to those set forth in subchapter  
17          I of chapter 57 of title 5, United States Code.

18          “(2) BYLAWS.—The Board may prescribe,  
19          amend, and repeal such bylaws as may be necessary  
20          for carrying out the functions of the Board.

21          “(3) QUORUM.—A majority of the Board shall  
22          constitute a quorum.

23          “(4) STAFF; EXPERTS AND CONSULTANTS.—

24          “(A) DETAIL OF GOVERNMENT EMPLOY-  
25          EES.—Upon request of the Board, any Federal

1 Government employee may be detailed to the  
2 Board without reimbursement, and such detail  
3 shall be without interruption or loss of civil  
4 service status or privilege.

5 “(B) EXPERTS AND CONSULTANTS.—The  
6 Board shall procure the services of experts and  
7 consultants as the Board considers appropriate.

8 “(u) RULE OF CONSTRUCTION RELATED TO VOL-  
9 UNTARY NATURE OF THE PROGRAM.—This section shall  
10 not be construed to require that any approved financial  
11 institution or mortgagee participate in any activity author-  
12 ized under this section, including any activity related to  
13 the refinancing of an eligible mortgage.

14 “(v) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to carry out the activi-  
16 ties under subsection (p) such sums as are necessary for  
17 each of fiscal years 2009 through 2012.”.

18 **SEC. 403. FIDUCIARY DUTY OF SERVICERS OF POOLED RES-**  
19 **IDENTIAL MORTGAGE LOANS.**

20 The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
21 is amended by inserting after section 129 the following  
22 new section:



1 **“SEC. 129A. FIDUCIARY DUTY OF SERVICERS OF POOLED**  
2 **RESIDENTIAL MORTGAGES.**

3 “(a) IN GENERAL.—Except as may be established in  
4 any investment contract between a servicer of pooled resi-  
5 dential mortgages and an investor, a servicer of pooled res-  
6 idential mortgages—

7 “(1) owes any duty to maximize the net present  
8 value of the pooled mortgages in an investment to all  
9 investors and parties having a direct or indirect in-  
10 terest in such investment, not to any individual  
11 party or group of parties; and

12 “(2) shall be deemed to act in the best interests  
13 of all such investors and parties if the servicer  
14 agrees to or implements a modification or workout  
15 plan, including any modification or refinancing un-  
16 dertaken pursuant to the HOPE for Homeowners  
17 Act of 2008, for a residential mortgage or a class of  
18 residential mortgages that constitute a part or all of  
19 the pooled mortgages in such investment, provided  
20 that any mortgage so modified meets the following  
21 criteria:

22 “(A) Default on the payment of such mort-  
23 gage has occurred or is reasonably foreseeable.

24 “(B) The property securing such mortgage  
25 is occupied by the mortgagor of such mortgage.

1           “(C) The anticipated recovery on the prin-  
2           cipal outstanding obligation of the mortgage  
3           under the modification or workout plan exceeds,  
4           on a net present value basis, the anticipated re-  
5           covery on the principal outstanding obligation  
6           of the mortgage through foreclosure.

7           “(b) DEFINITION.—As used in this section, the term  
8           ‘servicer’ has the same meaning as in section 6(i)(2) of  
9           the Real Estate Settlement Procedures Act (12 U.S.C.  
10          2605(i)(2)).”.

## 11   **TITLE V—STUDY AND REPORTS**

### 12   **SEC. 501. STUDY AND REPORTS ON GUARANTEE FEES.**

13          (a) ONGOING STUDY OF FEES.—The Director shall  
14          conduct an ongoing study of fees charged by enterprises  
15          for guaranteeing a mortgage.

16          (b) COLLECTION OF DATA.—The Director shall, by  
17          regulation or order, establish procedures for the collection  
18          of data from enterprises for purposes of this subsection,  
19          including the format and the process for collection of such  
20          data.

21          (c) REPORTS TO CONGRESS.—The Director shall an-  
22          nually submit a report to Congress on the results of the  
23          study conducted under subsection (a), based on the aggre-  
24          gated data collected under subsection (a) for the subject

1 year, regarding the amount of such fees and the criteria  
2 used by the enterprises to determine such fees.

3 (d) CONTENTS OF REPORTS.—The reports required  
4 under subsection (c) shall identify and analyze—

5 (1) the factors considered in determining the  
6 amount of the guarantee fees charged;

7 (2) the total revenue earned by the enterprises  
8 from guarantee fees;

9 (3) the total costs incurred by the enterprises  
10 for providing guarantees;

11 (4) the average guarantee fee charged by the  
12 enterprises;

13 (5) an analysis of any increase or decrease in  
14 guarantee fees from the preceding year;

15 (6) a breakdown of the revenue and costs asso-  
16 ciated with providing guarantees, based on product  
17 type and risk classifications; and

18 (7) a breakdown of guarantee fees charged  
19 based on asset size of the originator and the number  
20 of loans sold or transferred to an enterprise.

21 (e) PROTECTION OF INFORMATION.—Nothing in this  
22 section may be construed to require or authorize the Di-  
23 rector to publicly disclose information that is confidential  
24 or proprietary.