

1       **REVISED COMMITTEE PRINT**

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

3           (a) **SHORT TITLE.**—This Act may be cited as the  
4 “Federal Housing Enterprise Regulatory Reform Act of  
5 2004”.

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

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

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 101. Establishment of the Federal Housing Enterprise Supervisory Agency.
- Sec. 102. Duties and authorities of Director.
- Sec. 103. Federal Housing Enterprises Board.
- Sec. 104. Authority to require reports by regulated entities.
- Sec. 105. Examiners and accountants.
- Sec. 106. Assessments.
- Sec. 107. Regulations and orders.
- Sec. 108. Risk-based capital test for enterprises and requirements to enhance capital strength, disclosure, and market discipline.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
- Sec. 122. Review of enterprise programs.
- Sec. 123. Authority to require reports by enterprises.
- Sec. 124. Monitoring and enforcing compliance with housing goals.
- Sec. 125. Assumption by director of other HUD responsibilities.
- Sec. 126. Administrative and judicial enforcement proceedings.

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.

- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.

Subtitle E—Other Reporting Regarding Regulated Entities

- Sec. 161. Reporting regarding regulated entities.

Subtitle F—General Provisions

- Sec. 171. Conforming and technical amendments.
- Sec. 172. Presidentially appointed directors of enterprises.
- Sec. 173. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS.

- Sec. 201. Directors.
- Sec. 202. Definitions.
- Sec. 203. Federal Housing Enterprise Supervisory Agency oversight of Federal home loan banks.
- Sec. 204. Debt issuing facility.
- Sec. 205. Securities and Exchange Commission disclosure.

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

Subtitle A—OFHEO

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

Subtitle B—Federal Housing Finance Board

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

1 **SEC. 2. DEFINITIONS.**

2 Section 1303 of the Federal Housing Enterprises Fi-  
 3 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
 4 4502) is amended—

5 (1) in paragraph (5), by striking “Office of  
 6 Federal Housing Enterprise Oversight of the De-  
 7 partment of Housing and Urban Development” and

1 inserting “Federal Housing Enterprise Supervisory  
2 Agency”;

3 (2) in each of paragraphs (8), (9), (10), and  
4 (19), by striking “Secretary” each place that term  
5 appears and inserting “Director”;

6 (3) in paragraph (14), by striking “Office of  
7 Federal Housing Enterprise Oversight of the De-  
8 partment of Housing and Urban Development” and  
9 inserting “Federal Housing Enterprise Supervisory  
10 Agency”;

11 (4) by redesignating paragraphs (16) through  
12 (19) as paragraphs (22) through (25), respectively;

13 (5) by striking paragraph (15) and inserting  
14 the following:

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

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

19 “(B) the Federal Home Loan Mortgage  
20 Corporation and any affiliate thereof; and

21 “(C) any Federal home loan bank.”;

22 (6) by redesignating paragraphs (7) through  
23 (14) as paragraphs (13) through (20), respectively;

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

1 (8) by inserting after paragraph (7), as redesignated,  
2 nated, the following:

3 “(8) DEFAULT; DANGER OF DEFAULT.—

4 “(A) DEFAULT.—The term ‘default’  
5 means, with respect to an enterprise, any adjudication or other official determination by any  
6 court of competent jurisdiction, or the Agency, pursuant to which a conservator, receiver, limited-life enterprise, or legal custodian is appointed for an enterprise.

7  
8  
9  
10  
11 “(B) IN DANGER OF DEFAULT.—The term  
12 ‘in danger of default’ means an enterprise with  
13 respect to which—

14 “(i) in the opinion of the Agency—

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

19 “(II) the enterprise has incurred  
20 or is likely to incur losses that will deplete all or substantially all of its capital; and

21  
22  
23 “(ii) there is no reasonable prospect  
24 that the capital of the enterprise will be replenished.”  
25

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

3           (10) by inserting after paragraph (2), as redesi-  
4           gnated the following:

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

7                   “(A) the Federal National Mortgage Asso-  
8                   ciation Charter Act;

9                   “(B) the Federal Home Loan Mortgage  
10                  Corporation Act; and

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

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

15           (11) by redesignated paragraph (6) as para-  
16           graph (10), and by inserting after paragraph (10),  
17           as redesignated, the following:

18           “(11) ENTERPRISE-AFFILIATED PARTY.—The  
19           term ‘enterprise-affiliated party’ means—

20                   “(A) any director, officer, employee, or  
21                   controlling stockholder of, or agent for, a regu-  
22                   lated entity;

23                   “(B) any shareholder, affiliate, consultant,  
24                   or joint venture partner of a regulated entity,  
25                   and any other person, as determined by the Di-

1 rector (by regulation or on a case-by-case basis)  
2 that participates in the conduct of the affairs of  
3 a regulated entity; and

4 “(C) any independent contractor for a reg-  
5 ulated entity (including any attorney, appraiser,  
6 or accountant), if—

7 “(i) the independent contractor know-  
8 ingly or recklessly participates in—

9 “(I) any violation of any law or  
10 regulation;

11 “(II) any breach of fiduciary  
12 duty; or

13 “(III) any unsafe or unsound  
14 practice; and

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

19 “(D) any not-for-profit corporation that re-  
20 ceives its principal funding, on an ongoing  
21 basis, from any regulated entity.”; and

22 (12) by inserting before paragraph (2), as re-  
23 designated, the following:

24 “(1) AGENCY.—The term ‘Agency’ means the  
25 Federal Housing Enterprise Supervisory Agency.”.

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

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

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

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

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

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

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

22                         “(2) AUTHORITY OVER FANNIE MAE AND  
23                         FREDDIE MAC, THE FEDERAL HOME LOAN BANKS,  
24                         AND THE FEDERAL HOME LOAN BANK FINANCE  
25                         CORPORATION.—The Director shall have general

1 regulatory authority over each regulated entity and  
2 the Federal Home Loan Bank Finance Corporation,  
3 and shall exercise such general regulatory authority,  
4 including such duties and authorities set forth under  
5 section 1313 of this Act, to ensure that the purposes  
6 of this Act, the authorizing statutes, and any other  
7 applicable law are carried out.

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

12 **“SEC. 1312. DIRECTOR.**

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

16 “(b) APPOINTMENT; TERM.—

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

1           “(2) TERM.—The Director shall be appointed  
2 for a term of 6 years, unless removed by the Presi-  
3 dent upon reasons to be communicated by the Presi-  
4 dent to the Senate.

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

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

16           “(5) TRANSITIONAL PROVISION.—Notwith-  
17 standing paragraphs (1) and (2), the person serving  
18 as the Director of the Office of Federal Housing En-  
19 terprise Oversight of the Department of Housing  
20 and Urban Development on the date of enactment of  
21 the Federal Housing Enterprise Regulatory Reform  
22 Act of 2004, shall serve as the Director until a suc-  
23 cessor has been appointed under paragraph (1).

24           “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-  
25 TERPRISE REGULATION.—

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

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

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

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

24           “(2) FUNCTIONS.—The Deputy Director of the  
25 Division of Federal Home Loan Bank Regulation

1 shall have such functions, powers, and duties with  
2 respect to the oversight of the Federal home loan  
3 banks as the Director shall prescribe.

4 “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND  
5 GOALS.—

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

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

17 “(f) ACTING DIRECTOR.—In the event of the death,  
18 resignation, sickness, or absence of the Director, the  
19 Board shall, by a majority vote, designate either the Dep-  
20 uty Director of the Division of Enterprise Regulation, the  
21 Deputy Director of the Division of Federal Home Loan  
22 Bank Regulation, or the Deputy Director for Housing  
23 Mission and Goals, to serve as acting Director until the  
24 return of the Director, or the appointment of a successor  
25 pursuant to subsection (b).

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

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

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

8 “(3) have served as an executive officer or di-  
9 rector of any regulated entity, or enterprise-affiliated  
10 party, at any time during the 3-year period ending  
11 on the date of appointment of such individual as Di-  
12 rector or Deputy Director.”.

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

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

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

18 “(a) DUTIES.—

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

21 “(A) to oversee the prudential operations  
22 of each regulated entity, on a consolidated  
23 basis; and

24 “(B) to ensure that—

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

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

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

18          “(iv) each regulated entity carries out  
19          its statutory mission only through activi-  
20          ties that are consistent with this title and  
21          the authorizing statutes.

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

24                  “(A) to review and, if warranted based on  
25                  the principal duties described in paragraph (1),

1 reject any acquisition or transfer of a control-  
2 ling interest in an enterprise; and

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

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

12 “(c) LITIGATION AUTHORITY.—

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

22 “(2) SUBJECT TO SUIT.—Except as otherwise  
23 provided by law, the Director shall be subject to suit  
24 (other than suits on claims for money damages) by  
25 a regulated entity or director or officer thereof with

1 respect to any matter under this title or any other  
2 applicable provision of law, rule, order, or regulation  
3 under this title, in the United States district court  
4 for the judicial district in which the regulated entity  
5 has its principal place of business, or in the United  
6 States District Court for the District of Columbia,  
7 and the Director may be served with process in the  
8 manner prescribed by the Federal Rules of Civil  
9 Procedure.”.

10 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY  
11 AND RECOMMENDATIONS.—Section 111 of Public Law  
12 93–495 (12 U.S.C. 250) is amended by striking “the Fed-  
13 eral Housing Finance Board” and inserting “the Director  
14 of the Federal Housing Enterprise Supervisory Agency”.  
15 **SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.**

16 (a) IN GENERAL.—The Federal Housing Enterprises  
17 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
18 4501 et seq.) is amended by inserting after section 1313  
19 the following:

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

21 “(a) IN GENERAL.—There is established the Federal  
22 Housing Enterprise Board.

23 “(b) DUTIES.—The Board shall advise the Director  
24 with respect to overall strategies and policies in carrying  
25 out the duties of the Director under this title. Except as

1 otherwise provided under this Act, the Board shall not ex-  
2 ercise any executive authority.

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

21           (2) in paragraph (4), by striking the period at  
22 the end and inserting “; and”; and

23           (3) by inserting after paragraph (4) the fol-  
24 lowing:

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

3 “(A) the safety and soundness of the regu-  
4 lated entities;

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

7 “(C) the overall operational status of the  
8 regulated entities; and

9 “(D) an evaluation of the performance of  
10 the regulated entities in carrying out their re-  
11 spective missions;

12 “(6) operations, resources, and performance of  
13 the Agency; and

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

16 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
17 **LATED ENTITIES.**

18 Section 1314 of the Federal Housing Enterprises Fi-  
19 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
20 4514) is amended—

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

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

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

3 (4) in subsection (a)—

4 (A) in the subsection heading, by striking  
5 “SPECIAL REPORTS AND REPORTS OF FINAN-  
6 CIAL CONDITION” and inserting “REGULAR  
7 AND SPECIAL REPORTS”;

8 (B) in paragraph (1)—

9 (i) by striking the paragraph heading  
10 and inserting “(1) REGULAR REPORTS.—”;  
11 and

12 (ii) by striking “reports of financial  
13 condition and operations” and inserting  
14 “regular reports on the condition (includ-  
15 ing financial condition), management, ac-  
16 tivities, or operations of the regulated enti-  
17 ty, as the Director considers appropriate”;  
18 and

19 (C) in paragraph (2), by striking “when-  
20 ever” and inserting “on any of the topics speci-  
21 fied in paragraph (1) or any other relevant top-  
22 ics, if”.

1 **SEC. 105. EXAMINERS AND ACCOUNTANTS.**

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

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

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

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

13 (4) by redesignating subsections (d) through (f)  
14 as (e) through (g); and

15 (5) by inserting after subsection (c) the fol-  
16 lowing:

17 “(d) INSPECTOR GENERAL.—There shall be within  
18 the Agency an Inspector General, who shall be appointed  
19 in accordance with section 3(a) of the Inspector General  
20 Act of 1978.”.

21 (b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-  
22 ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of  
23 the Housing and Community Development Act of 1992  
24 (12 U.S.C. 4517) is amended by adding at the end the  
25 following:

1           “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,  
2 AND EXAMINERS.—

3           “(1) APPLICABILITY.—This section shall apply  
4 with respect to any position of examiner, accountant,  
5 and economist at the Office, with respect to super-  
6 vision and regulation of the enterprises, that is in  
7 the competitive service.

8           “(2) APPOINTMENT AUTHORITY.—The Director  
9 may appoint candidates to any position described in  
10 paragraph (1)—

11           “(A) in accordance with the statutes, rules,  
12 and regulations governing appointments in the  
13 excepted service; and

14           “(B) notwithstanding any statutes, rules,  
15 and regulations governing appointments in the  
16 competitive service.”.

17           (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—  
18 Section 11 of the Inspector General Act of 1978 (5 U.S.C.  
19 11 App.) is amended—

20           (1) in paragraph (1), by inserting “, the Direc-  
21 tor of the Federal Housing Enterprises Supervisory  
22 Agency” after “Social Security Administration”; and

23           (2) in paragraph (2), by inserting “, the Fed-  
24 eral Housing Enterprises Supervisory Agency” after  
25 “Social Security Administration”.

1 **SEC. 106. ASSESSMENTS.**

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

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

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

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

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

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

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

21 (3) by striking “enterprise” each place that  
22 term appears (other than as described in paragraph  
23 (1)), except in subparagraphs (A) and (B) of sub-  
24 section (b)(3), and inserting “regulated entity”;

25 (4) in subsection (b)—

1 (A) in paragraph (2), by moving the mar-  
2 gin 2 ems to the left; and

3 (B) in paragraph (3)(B), by striking “by  
4 the enterprise” and inserting “by an enter-  
5 prise”;

6 (5) in subsection (c), by adding at the end the  
7 following: “The Director may adjust the amounts of  
8 any semiannual assessments for an assessment  
9 under subsection (a) that are to be paid pursuant to  
10 subsection (b) by a regulated entity, as the Director  
11 determines necessary to ensure that the costs of en-  
12 forcement activities under subtitles B and C for an  
13 enterprise are borne only by that regulated entity.”;

14 (6) in subsection (d), by striking “If” and in-  
15 sserting “Except with respect to amounts collected  
16 pursuant to subsection (a)(3), if”;

17 (7) by striking subsection (e) and inserting the  
18 following:

19 “(e) REMISSION OF ASSESSMENT.—At the end of  
20 each year for which an assessment under this section is  
21 made, the Director shall remit to each regulated entity any  
22 amount of an assessment collected from the regulated en-  
23 tity that is attributable to subsection (a)(3), and is in ex-  
24 cess of the amount that the Director deems necessary to  
25 maintain working capital.”;

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

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

11          (9) in subsection (g)—

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

14                 (B) in paragraph (3)—

15                         (i) by striking “(A)”; and

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

19   **SEC. 107. REGULATIONS AND ORDERS.**

20           Section 1319G of the Federal Housing Enterprises  
21   Financial Safety and Soundness Act of 1992 (12 U.S.C.  
22   4526) is amended—

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

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

6           (2) in subsection (c), by striking “Committee on  
7   Banking, Finance and Urban Affairs” and inserting  
8   “Committee on Financial Services”.

9   **SEC. 108. RISK-BASED CAPITAL TEST FOR ENTERPRISES**  
10                           **AND REQUIREMENTS TO ENHANCE CAPITAL**  
11                           **STRENGTH, DISCLOSURE, AND MARKET DIS-**  
12                           **CIPLINE.**

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

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

18           “(a) **IN GENERAL.**—The Director shall, by regula-  
19   tion, establish risk-based capital requirements for each of  
20   the regulated entities to ensure that the regulated entities  
21   operate in a safe and sound manner, with sufficient capital  
22   and reserves to support the risks that arise in the oper-  
23   ations and management of each regulated entity.

24           “(b) **REQUIRED REGISTRATION UNDER THE SECURI-**  
25   **TIES EXCHANGE ACT OF 1934.**—

1           “(1) IN GENERAL.—Each regulated entity shall  
2 register at least one class of the capital stock of  
3 such regulated entity, and maintain such registra-  
4 tion with the Securities and Exchange Commission,  
5 under the Securities Exchange Act of 1934.

6           “(2) ENTERPRISES.—Each enterprise shall  
7 comply with sections 14 and 16 of the Securities Ex-  
8 change Act of 1934.

9           “(c) NO LIMITATION.—Nothing in this section shall  
10 limit the authority of the Director to require other reports  
11 or undertakings in furtherance of the responsibilities of  
12 the Director under this Act.”.

13           (b) MINIMUM CAPITAL LEVELS FOR ENTER-  
14 PRISES.—Section 1362 of the Federal Housing Enter-  
15 prises Financial Safety and Soundness Act of 1992 (12  
16 U.S.C. 4612) is amended—

17           (1) in the section heading, by inserting “**FOR**  
18           **ENTERPRISES**” after “**LEVELS**”; and

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

21           “(b) REGULATORY DISCRETION.—The Director may,  
22 by regulation, establish a minimum capital level that is  
23 higher than the level specified in subsection (a) if the Di-  
24 rector determines that the benefits derived from the in-  
25 creased capital levels of the enterprise outweigh any ad-

1 verse impact to the ability of the enterprise to achieve the  
2 housing mission established for the enterprise.

3 “(c) FACTORS FOR CONSIDERATION.—In establishing  
4 the minimum capital ratio under subsection (b), the Direc-  
5 tor shall take into account such factors as the Director  
6 may determine appropriate, including whether the  
7 enterprise—

8 “(1) is experiencing rapid growth of assets;

9 “(2) is engaging in a significant new activity or  
10 newly approved program;

11 “(3) has or is expected to have losses resulting  
12 in capital inadequacy;

13 “(4) has or is expected to have significant expo-  
14 sure due to the risks from concentrations of credit,  
15 or the overall inability of management to monitor  
16 and control financial and operating risks presented  
17 by concentrations of credit and nontraditional activi-  
18 ties;

19 “(5) has significant exposure due to fiduciary,  
20 compliance, or operational risk;

21 “(6) has exposure to a high degree of asset de-  
22 preciation, or a low level of liquid assets in relation  
23 to short-term liabilities;

24 “(7) is exposed to a high volume of, or particu-  
25 larly severe, problem loans;

1           “(8) cannot present to the Director an accurate  
2 representation of the financial condition of the enter-  
3 prise, through audited statements or other similar  
4 means; or

5           “(9) has inadequate audit and internal control  
6 systems.

7           “(d) PUBLICATION OF PROPOSED CHANGE IN  
8 RATIO.—In soliciting comments on any proposed change  
9 in the minimum capital ratio under subparagraph (b), the  
10 Director shall include in the published proposal a thorough  
11 analysis of the data and projections on which the proposal  
12 is based.”.

13           **Subtitle B—Improvement of**  
14           **Mission Supervision**

15           **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**  
16           **ING GOAL OVERSIGHT.**

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

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

22           **“PART 2—PROGRAM APPROVAL BY THE DIREC-**  
23           **TOR AND ESTABLISHMENT OF HOUSING**  
24           **GOALS”**; and

25           (2) by striking sections 1321 and 1322.

1 **SEC. 122. REVIEW OF ENTERPRISE PROGRAMS.**

2 Part 1 of subtitle A of the Federal Housing Enter-  
3 prises Financial Safety and Soundness Act of 1992 (12  
4 U.S.C. 4501 et seq.) is amended by adding at the end  
5 the following:

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

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

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

15 “(1) in the case of a new program of the Fed-  
16 eral National Mortgage Association, the Director de-  
17 termines that the program is not authorized under  
18 paragraph (2), (3), (4), or (5) of section 302(b) or  
19 section 304 of the Federal National Mortgage Asso-  
20 ciation Charter Act (12 U.S.C. 1717(b), 1719);

21 “(2) in the case of a new program of the Fed-  
22 eral Home Loan Mortgage Corporation, the Director  
23 determines that the program is not authorized under  
24 paragraph (1), (4), or (5) of section 305(a) of the  
25 Federal Home Loan Mortgage Corporation Act (12  
26 U.S.C. 1451 et seq.); or

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

3           “(c) PROCEDURE FOR APPROVAL.—

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

9           “(2) RESPONSE.—

10           “(A) IN GENERAL.—Not later than 45  
11           days after the date of submission of a request  
12           for approval under paragraph (1), the Director  
13           shall approve or deny the request, and set forth,  
14           in writing, the grounds for the approval or de-  
15           nial of the request.

16           “(B) EXTENSION.—The Director may ex-  
17           tend the time period under subparagraph (A)  
18           for a single additional 15-day period only if the  
19           Director requests additional information from  
20           the enterprise.

21           “(3) FAILURE TO RESPOND.—If the Director  
22           fails to approve the request under paragraph (2)  
23           during the period provided, the request shall be con-  
24           sidered to have been approved by the Director.

1           “(d) NOTICE OF NEW ACTIVITY.—An enterprise that  
2 commences any business product or activity under this  
3 section shall provide written notice to the Director of the  
4 business product or activity not later than 30 days prior  
5 to the commencement of such business product or activity.

6           “(e) NO LIMITATION.—Nothing in this paragraph  
7 shall be deemed to restrict the safety and soundness au-  
8 thority of the Director over all new and existing programs,  
9 products, or activities.”.

10 **SEC. 123. AUTHORITY TO REQUIRE REPORTS BY ENTER-**  
11 **PRISES.**

12           The Federal Housing Enterprises Financial Safety  
13 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
14 amended by striking sections 1327 and 1328.

15 **SEC. 124. MONITORING AND ENFORCING COMPLIANCE**  
16 **WITH HOUSING GOALS.**

17           Section 1336 of the Federal Housing Enterprises Fi-  
18 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
19 4566) is amended—

20           (1) by striking “Secretary” each place that  
21 term appears and inserting “Director”; and

22           (2) in subsection (a)(1), by striking “estab-  
23 lished” and all that follows through “1334” and in-  
24 serting “under this subpart”.

1 **SEC. 125. ASSUMPTION BY DIRECTOR OF OTHER HUD RE-**  
2 **SPONSIBILITIES.**

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

6 (1) by striking “Secretary” each place that  
7 term appears and inserting “Director” in each of—

8 (A) sections 1323, 1324, and 1326;

9 (B) subsections (a), (b), and (c) of section  
10 1331 (12 U.S.C. 4561);

11 (C) subsections (a), (b), and (c) of section  
12 1332 (12 U.S.C. 4562);

13 (D) subsections (a), (b), and (c) of section  
14 1333 (12 U.S.C. 4563);

15 (E) subsections (a), (b), and (c) of section  
16 1334 (12 U.S.C. 4564); and

17 (F) subsections (a), (b), and (c) of section  
18 1336 (12 U.S.C. 4566);

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

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

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

25 (5) by striking sections 1337 and 1338 (12  
26 U.S.C. 4567, 4562 note); and

1 (6) by striking section 1349 (12 U.S.C. 4589).

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

8 **SEC. 126. ADMINISTRATIVE AND JUDICIAL ENFORCEMENT**  
9 **PROCEEDINGS.**

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

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

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

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

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

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

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

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

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

1           **Subtitle C—Prompt Corrective**  
2                           **Action**

3   **SEC. 141. CAPITAL CLASSIFICATIONS.**

4           Section 1364 of the Federal Housing Enterprises Fi-  
5 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
6 4614) is amended—

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

9           “(b) DISCRETIONARY CLASSIFICATION.—

10                   “(1) GROUNDS FOR RECLASSIFICATION.—The  
11 Director may reclassify a regulated entity under  
12 paragraph (2) if—

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

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

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

4           “(2) RECLASSIFICATION.—In addition to any  
5           other action authorized under this title, including  
6           the reclassification of a regulated entity for any rea-  
7           son not specified in this subsection, if the Director  
8           takes any action described in paragraph (1), the Di-  
9           rector may reclassify a regulated entity—

10           “(A) as ‘undercapitalized’, if the regulated  
11           entity is otherwise classified as adequately cap-  
12           italized;

13           “(B) as ‘significantly undercapitalized’, if  
14           the regulated entity is otherwise classified as  
15           undercapitalized; and

16           “(C) as ‘critically undercapitalized’, if the  
17           regulated entity is otherwise classified as sig-  
18           nificantly undercapitalized.”;

19           (2) by redesignating subsection (d) as sub-  
20           section (e); and

21           (3) by inserting after subsection (c) the fol-  
22           lowing:

23           “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

24           “(1) IN GENERAL.—A regulated entity shall  
25           make no capital distribution if, after making the dis-

1       tribution, the regulated entity would be under-  
2       capitalized.

3               “(2) EXCEPTION.—Notwithstanding paragraph  
4       (1), the Director may permit a regulated entity to  
5       repurchase, redeem, retire, or otherwise acquire  
6       shares or ownership interests if the repurchase, re-  
7       demption, retirement, or other acquisition—

8               “(A) is made in connection with the  
9       issuance of additional shares or obligations of  
10       the regulated entity in at least an equivalent  
11       amount; and

12               “(B) will reduce the financial obligations of  
13       the regulated entity or otherwise improve the fi-  
14       nancial condition of the regulated entity.”.

15       **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
16               **CAPITALIZED REGULATED ENTITIES.**

17       Section 1365 of the Federal Housing Enterprises Fi-  
18       nancial Safety and Soundness Act of 1992 (12 U.S.C.  
19       4615) is amended—

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

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

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

1 (4) in subsection (a)—

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

4 (B) by inserting before paragraph (2), as  
5 redesignated, the following:

6 “(1) REQUIRED MONITORING.—The Director  
7 shall—

8 “(A) closely monitor the condition of any  
9 undercapitalized regulated entity;

10 “(B) closely monitor compliance with the  
11 capital restoration plan, restrictions, and re-  
12 quirements imposed on an undercapitalized reg-  
13 ulated entity under this section; and

14 “(C) periodically review the plan, restric-  
15 tions, and requirements applicable to an under-  
16 capitalized regulated entity to determine wheth-  
17 er the plan, restrictions, and requirements are  
18 achieving the purpose of this section.”; and

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

20 “(4) RESTRICTION OF ASSET GROWTH.—An  
21 undercapitalized regulated entity shall not permit its  
22 average total assets during any calendar quarter to  
23 exceed its average total assets during the preceding  
24 calendar quarter, unless—

1           “(A) the Director has accepted the capital  
2 restoration plan of the regulated entity;

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

5           “(C) the ratio of tangible equity to assets  
6 of the regulated entity increases during the cal-  
7 endar quarter at a rate sufficient to enable the  
8 enterprise to become adequately capitalized  
9 within a reasonable time.

10          “(5) PRIOR APPROVAL OF ACQUISITIONS AND  
11 NEW ACTIVITIES.—An undercapitalized regulated en-  
12 tity shall not, directly or indirectly, acquire any in-  
13 terest in any entity or engage in any new activity,  
14 unless—

15           “(A) the Director has accepted the capital  
16 restoration plan of the regulated entity, the reg-  
17 ulated entity is implementing the plan, and the  
18 Director determines that the proposed action is  
19 consistent with and will further the achievement  
20 of the plan; or

21           “(B) the Director determines that the pro-  
22 posed action will further the purpose of this  
23 subtitle.”;

24          (5) in subsection (b)—

1 (A) in the subsection heading, by striking  
2 “DISCRETIONARY”;

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

5 (C) in paragraph (2)—

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

8 (ii) by striking the period at the end  
9 and inserting “in any material respect.”;

10 and

11 (6) by striking subsection (c) and inserting the  
12 following:

13 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The  
14 Director may take, with respect to an undercapitalized  
15 regulated entity, any of the actions authorized to be taken  
16 under section 1366 with respect to a significantly under-  
17 capitalized regulated entity, if the Director determines  
18 that such actions are necessary to carry out the purpose  
19 of this subtitle.”.

20 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
21 **CANTLY UNDERCAPITALIZED REGULATED**  
22 **ENTITIES.**

23 Section 1366 of the Federal Housing Enterprises Fi-  
24 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
25 4616) is amended—

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

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

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

7 (4) in subsection (b)—

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

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

15 (C) by striking paragraph (6);

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

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

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

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

1           “(B) DISMISSAL OF DIRECTORS OR EXECU-  
2           TIVE OFFICERS.—Require the regulated entity  
3           to dismiss from office any director or executive  
4           officer who had held office for more than 180  
5           days immediately before the date on which the  
6           regulated entity became undercapitalized. Dis-  
7           missal under this subparagraph shall not be  
8           construed to be a removal pursuant to the en-  
9           forcement powers of the Director under section  
10          1377.

11          “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
12          FICERS.—Require the regulated entity to em-  
13          ploy qualified executive officers (who, if the Di-  
14          rector so specifies, shall be subject to approval  
15          by the Director).”; and

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

17          “(8) OTHER ACTION.—Require the regulated  
18          entity to take any other action that the Director de-  
19          termines will better carry out the purpose of this  
20          section than any of the actions specified in this  
21          paragraph.”;

22          (5) by redesignating subsection (c) as sub-  
23          section (d); and

24          (6) by inserting after subsection (b) the fol-  
25          lowing:

1           “(c) RESTRICTION ON COMPENSATION OF EXECU-  
2 TIVE OFFICERS.—A regulated entity that is classified as  
3 significantly undercapitalized in accordance with section  
4 1364 may not, without prior written approval by the  
5 Director—

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

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

14 **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
15 **IZED ENTERPRISES.**

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

19 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
20 **IZED ENTERPRISES.**

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

23           “(1) IN GENERAL.—Notwithstanding any other  
24 provision of Federal law, the Director may establish

1 a conservatorship or receivership in the manner pro-  
2 vided under paragraph (2).

3 “(2) APPOINTMENT.—The Agency may, at the  
4 discretion of the Director, be appointed conservator  
5 or receiver for the purpose of reorganizing, rehabili-  
6 tating, or winding up the affairs of an enterprise.

7 “(3) GROUNDS FOR APPOINTING CONSERVATOR  
8 OR RECEIVER.—The grounds for appointing a con-  
9 servator or receiver for any enterprise are as follows:

10 “(A) ASSETS INSUFFICIENT FOR OBLIGA-  
11 TIONS.—The assets of the enterprise are less  
12 than the obligations of the enterprise to its  
13 creditors and others.

14 “(B) SUBSTANTIAL DISSIPATION.—Sub-  
15 stantial dissipation of assets or earnings due  
16 to—

17 “(i) any violation of any provision of  
18 Federal or State law; or

19 “(ii) any unsafe or unsound practice.

20 “(C) UNSAFE OR UNSOUND CONDITION.—  
21 An unsafe or unsound condition to transact  
22 business.

23 “(D) CEASE-AND-DESIST ORDERS.—Any  
24 willful violation of a cease-and-desist order that  
25 has become final.

1           “(E) CONCEALMENT.—Any concealment of  
2 the books, papers, records, or assets of the en-  
3 terprise, or any refusal to submit the books, pa-  
4 pers, records, or affairs of the enterprise, for  
5 inspection to any examiner or to any lawful  
6 agent of the Director.

7           “(F) INABILITY TO MEET OBLIGATIONS.—  
8 The enterprise is likely to be unable to pay its  
9 obligations or meet the demands of its creditors  
10 in the normal course of business.

11           “(G) LOSSES.—The enterprise has in-  
12 curred or is likely to incur losses that will de-  
13plete all or substantially all of its capital, and  
14 there is no reasonable prospect for the enter-  
15prise to become adequately capitalized (as de-  
16fined in section 1364(a)(1)).

17           “(H) VIOLATIONS OF LAW.—Any violation  
18 of any law or regulation, or any unsafe or un-  
19 sound practice or condition that is likely to—

20                   “(i) cause insolvency or substantial  
21 dissipation of assets or earnings; or

22                   “(ii) weaken the condition of the en-  
23terprise.

1           “(I) CONSENT.—The enterprise, by resolu-  
2           tion of its board of directors or its shareholders  
3           or members, consents to the appointment.

4           “(J) UNDERCAPITALIZATION.—The enter-  
5           prise is undercapitalized or significantly under-  
6           capitalized (as defined in section 1364(a)(3)),  
7           and—

8                   “(i) has no reasonable prospect of be-  
9                   coming adequately capitalized;

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

12                           “(I) section 1365(a)(1) with re-  
13                           spect to an undercapitalized enter-  
14                           prise; or

15                           “(II) section 1366(a)(1) with re-  
16                           spect to a significantly undercapital-  
17                           ized enterprise;

18                           “(iii) fails to submit a capital restora-  
19                           tion plan acceptable to the Agency within  
20                           the time prescribed under section 1369C;  
21                           or

22                           “(iv) materially fails to implement a  
23                           capital restoration plan submitted and ac-  
24                           cepted under section 1369C.

1           “(K) CRITICAL UNDERCAPITALIZATION.—  
2           The enterprise is critically undercapitalized, as  
3           defined in section 1364(a)(4).

4           “(L) MONEY LAUNDERING.—The Attorney  
5           General notifies the Director in writing that the  
6           enterprise has been found guilty of a criminal  
7           offense under section 1956 or 1957 of title 18,  
8           United States Code, or section 5322 or 5324 of  
9           title 31, United States Code.

10          “(4) JUDICIAL REVIEW.—

11           “(A) IN GENERAL.—If the Agency is ap-  
12           pointed conservator or receiver under this sec-  
13           tion, the enterprise may, within 30 days of such  
14           appointment, bring an action in the United  
15           States District Court for the judicial district in  
16           which the home office of such enterprise is lo-  
17           cated, or in the United States District Court  
18           for the District of Columbia, for an order re-  
19           quiring the Agency to remove itself as conser-  
20           vator or receiver.

21           “(B) REVIEW.—Upon the filing of an ac-  
22           tion under subparagraph (A), the court shall,  
23           upon the merits, dismiss such action or direct  
24           the Agency to remove itself as such conservator  
25           or receiver.

1           “(5) DIRECTORS NOT LIABLE FOR ACQUI-  
2           ESCING IN APPOINTMENT OF CONSERVATOR OR RE-  
3           CEIVER.—The members of the board of directors of  
4           an enterprise shall not be liable to the shareholders  
5           or creditors of the enterprise for acquiescing in or  
6           consenting in good faith to the appointment of the  
7           Agency as conservator or receiver for that enter-  
8           prise.

9           “(6) AGENCY NOT SUBJECT TO ANY OTHER  
10          FEDERAL AGENCY.—When acting as conservator or  
11          receiver, the Agency shall not be subject to the di-  
12          rection or supervision of any other agency of the  
13          United States or any State in the exercise of the  
14          rights, powers, and privileges of the Agency.

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

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

21                 “(2) GENERAL POWERS.—

22                         “(A) SUCCESSOR TO ENTERPRISE.—The  
23                         Agency shall, as conservator or receiver, and by  
24                         operation of law, immediately succeed to—

1           “(i) all rights, titles, powers, and  
2           privileges of the enterprise, and of any  
3           stockholder, officer, or director of such en-  
4           terprise with respect to the enterprise and  
5           the assets of the enterprise; and

6           “(ii) title to the books, records, and  
7           assets of any other legal custodian of such  
8           enterprise.

9           “(B) OPERATE THE ENTERPRISE.—The  
10          Agency may, as conservator or receiver—

11           “(i) take over the assets of and oper-  
12           ate the enterprise with all the powers of  
13           the shareholders, the directors, and the of-  
14           ficers of the enterprise and conduct all  
15           business of the enterprise;

16           “(ii) collect all obligations and money  
17           due the enterprise;

18           “(iii) perform all functions of the en-  
19           terprise in the name of the enterprise  
20           which are consistent with the appointment  
21           as conservator or receiver; and

22           “(iv) preserve and conserve the assets  
23           and property of such enterprise.

24           “(C) FUNCTIONS OF OFFICERS, DIREC-  
25          TORS, AND SHAREHOLDERS OF AN ENTER-

1           PRISE.—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           enterprise 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 enterprise in  
10                   a sound and solvent condition; and

11                   “(ii) appropriate to carry on the busi-  
12                   ness of the enterprise and preserve and  
13                   conserve the assets and property of the en-  
14                   terprise.

15           “(E) ADDITIONAL POWERS AS RE-  
16           CEIVER.—The Agency may, as receiver, place  
17           the enterprise in liquidation and proceed to re-  
18           alize upon the assets of the enterprise, having  
19           due regard to the conditions of the housing fi-  
20           nance market.

21           “(F) ORGANIZATION OF NEW ENTER-  
22           PRISES.—The Agency may, as receiver, orga-  
23           nize a successor enterprise that will operate  
24           pursuant to subsection (i).

1           “(G) TRANSFER OF ASSETS AND LIABIL-  
2 ITIES.—The Agency may, as conservator or re-  
3 ceiver, transfer any asset or liability of the en-  
4 terprise in default without any approval, assign-  
5 ment, or consent with respect to such transfer.

6           “(H) PAYMENT OF VALID OBLIGATIONS.—  
7 The Agency, as conservator or receiver, shall, to  
8 the extent of proceeds realized from the per-  
9 formance of contracts or sale of the assets of an  
10 enterprise, pay all valid obligations of the enter-  
11 prise in accordance with the prescriptions and  
12 limitations of this section.

13           “(I) SUBPOENA AUTHORITY.—

14           “(i) IN GENERAL.—

15           “(I) IN GENERAL.—The Agency  
16 may, as conservator or receiver, and  
17 for purposes of carrying out any  
18 power, authority, or duty with respect  
19 to an enterprise (including deter-  
20 mining any claim against the enter-  
21 prise and determining and realizing  
22 upon any asset of any person in the  
23 course of collecting money due the en-  
24 terprise), exercise any power estab-  
25 lished under section 1348.

1                   “(II) APPLICABILITY OF LAW.—

2                   The provisions of section 1348 shall  
3                   apply with respect to the exercise of  
4                   any power exercised under this sub-  
5                   paragraph in the same manner as  
6                   such provisions apply under that sec-  
7                   tion.

8                   “(ii) AUTHORITY OF DIRECTOR.—A  
9                   subpoena or subpoena duces tecum may be  
10                  issued under clause (i) only by, or with the  
11                  written approval of, the Director, or the  
12                  designee of the Director.

13                  “(iii) RULE OF CONSTRUCTION.—This  
14                  subsection shall not be construed to limit  
15                  any rights that the Agency, in any capac-  
16                  ity, might otherwise have under section  
17                  1317 or 1379B.

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

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

1                   “(ii) take any action authorized by  
2                   this section, which the Agency determines  
3                   is in the best interests of the enterprise or  
4                   the Agency.

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

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

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

15                         “(i) promptly publish a notice to the  
16                         creditors of the enterprise to present their  
17                         claims, together with proof, to the receiver  
18                         by a date specified in the notice which  
19                         shall be not less than 90 days after the  
20                         publication of such notice; and

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

1           “(C) MAILING REQUIRED.—The receiver  
2           shall mail a notice similar to the notice pub-  
3           lished under subparagraph (B)(i) at the time of  
4           such publication to any creditor shown on the  
5           books of the enterprise—

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

8                   “(ii) upon discovery of the name and  
9                   address of a claimant not appearing on the  
10                  books of the enterprise within 30 days  
11                  after the discovery of such name and ad-  
12                  dress.

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

19           “(5) PROCEDURES FOR DETERMINATION OF  
20           CLAIMS.—

21                   “(A) DETERMINATION PERIOD.—

22                           “(i) IN GENERAL.—Before the end of  
23                           the 180-day period beginning on the date  
24                           on which any claim against an enterprise is  
25                           filed with the Agency as receiver, the

1 Agency shall determine whether to allow or  
2 disallow the claim and shall notify the  
3 claimant of any determination with respect  
4 to such claim.

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

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

15 “(I) on the books of the enter-  
16 prise;

17 “(II) in the claim filed by the  
18 claimant; or

19 “(III) in documents submitted in  
20 proof of the claim.

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

1                   “(I) a statement of each reason  
2                   for the disallowance; and

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

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

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

19                  “(D) AUTHORITY TO DISALLOW CLAIMS.—

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

1           “(ii) PAYMENTS TO LESS THAN  
2 FULLY SECURED CREDITORS.—In the case  
3 of a claim of a creditor against an enter-  
4 prise which is secured by any property or  
5 other asset of such enterprise, the receiver  
6 may treat the portion of such claim which  
7 exceeds an amount equal to the fair mar-  
8 ket value of such property or other asset  
9 as an unsecured claim against the enter-  
10 prise.

11           “(iii) EXCEPTIONS.—No provision of  
12 this paragraph shall apply with respect  
13 to—

14                   “(I) any extension of credit from  
15 any Federal Reserve Bank or the  
16 United States Treasury; or

17                   “(II) any security interest in the  
18 assets of the enterprise securing any  
19 such extension of credit.

20           “(E) NO JUDICIAL REVIEW OF DETER-  
21 MINATION PURSUANT TO SUBPARAGRAPH (D).—  
22 No court may review the determination of the  
23 Agency under subparagraph (D) to disallow a  
24 claim.

25           “(F) LEGAL EFFECT OF FILING.—

1                   “(i) STATUTE OF LIMITATION  
2                   TOLLED.—For purposes of any applicable  
3                   statute of limitations, the filing of a claim  
4                   with the receiver shall constitute a com-  
5                   mencement of an action.

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

14                  “(6) PROVISION FOR JUDICIAL DETERMINATION  
15                  OF CLAIMS.—

16                  “(A) IN GENERAL.—The claimant may file  
17                  suit on a claim (or continue an action com-  
18                  menced before the appointment of the receiver)  
19                  in the district or territorial court of the United  
20                  States for the district within which the prin-  
21                  cipal place of business of the enterprise is lo-  
22                  cated or the United States District Court for  
23                  the District of Columbia (and such court shall  
24                  have jurisdiction to hear such claim), before the

1 end of the 60-day period beginning on the ear-  
2 lier of—

3 “(i) the end of the period described in  
4 paragraph (5)(A)(i) with respect to any  
5 claim against an enterprise for which the  
6 Agency is receiver; or

7 “(ii) the date of any notice of dis-  
8 allowance of such claim pursuant to para-  
9 graph (5)(A)(i).

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

21 “(7) REVIEW OF CLAIMS.—

22 “(A) OTHER REVIEW PROCEDURES.—

23 “(i) IN GENERAL.—The Agency shall  
24 establish such alternative dispute resolu-  
25 tion processes as may be appropriate for

1 the resolution of claims filed under para-  
2 graph (5)(A)(i).

3 “(ii) CRITERIA.—In establishing alter-  
4 native dispute resolution processes, the  
5 Agency shall strive for procedures which  
6 are expeditious, fair, independent, and low  
7 cost.

8 “(iii) VOLUNTARY BINDING OR NON-  
9 BINDING PROCEDURES.—The Agency may  
10 establish both binding and nonbinding  
11 processes, which may be conducted by any  
12 government or private party. All parties,  
13 including the claimant and the Agency,  
14 must agree to the use of the process in a  
15 particular case.

16 “(B) CONSIDERATION OF INCENTIVES.—  
17 The Agency shall seek to develop incentives for  
18 claimants to participate in the alternative dis-  
19 pute resolution process.

20 “(8) EXPEDITED DETERMINATION OF  
21 CLAIMS.—

22 “(A) ESTABLISHMENT REQUIRED.—The  
23 Agency shall establish a procedure for expedited  
24 relief outside of the routine claims process es-

1           tablished under paragraph (5) for claimants  
2           who—

3                   “(i) allege the existence of legally  
4                   valid and enforceable or perfected security  
5                   interests in assets of any enterprise for  
6                   which the Agency has been appointed re-  
7                   ceiver; and

8                   “(ii) allege that irreparable injury will  
9                   occur if the routine claims procedure is fol-  
10                  lowed.

11                  “(B) DETERMINATION PERIOD.—Before  
12                  the end of the 90-day period beginning on the  
13                  date any claim is filed in accordance with the  
14                  procedures established under subparagraph (A),  
15                  the Director shall—

16                   “(i) determine—

17                           “(I) whether to allow or disallow  
18                           such claim; or

19                           “(II) whether such claim should  
20                           be determined pursuant to the proce-  
21                           dures established under paragraph  
22                           (5); and

23                   “(ii) notify the claimant of the deter-  
24                   mination, and if the claim is disallowed,  
25                   provide a statement of each reason for the

1 disallowance and the procedure for obtain-  
2 ing agency review or judicial determina-  
3 tion.

4 “(C) PERIOD FOR FILING OR RENEWING  
5 SUIT.—Any claimant who files a request for ex-  
6 pedited relief shall be permitted to file a suit,  
7 or to continue a suit filed before the appoint-  
8 ment of the receiver, seeking a determination of  
9 the rights of the claimant with respect to such  
10 security interest after the earlier of—

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

14 “(ii) the date the Agency denies the  
15 claim.

16 “(D) STATUTE OF LIMITATIONS.—If an  
17 action described under subparagraph (C) is not  
18 filed, or the motion to renew a previously filed  
19 suit is not made, before the end of the 30-day  
20 period beginning on the date on which such ac-  
21 tion or motion may be filed under subparagraph  
22 (B), the claim shall be deemed to be disallowed  
23 as of the end of such period (other than any  
24 portion of such claim which was allowed by the  
25 receiver), such disallowance shall be final, and

1 the claimant shall have no further rights or  
2 remedies with respect to such claim.

3 “(E) LEGAL EFFECT OF FILING.—

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

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

16 “(9) PAYMENT OF CLAIMS.—

17 “(A) IN GENERAL.—The receiver may, in  
18 the discretion of the receiver, and to the extent  
19 funds are available, pay creditor claims, in such  
20 manner and amounts as are authorized under  
21 this section, which are—

22 “(i) allowed by the receiver;

23 “(ii) approved by the Agency pursuant  
24 to a final determination pursuant to para-  
25 graph (7) or (8); or

1                   “(iii) determined by the final judg-  
2                   ment of any court of competent jurisdic-  
3                   tion.

4                   “(B) AGREEMENTS AGAINST THE INTER-  
5                   EST OF THE AGENCY.—No agreement that  
6                   tends to diminish or defeat the interest of the  
7                   Agency in any asset acquired by the Agency as  
8                   receiver under this section shall be valid against  
9                   the Agency unless such agreement is in writing.

10                  “(C) PAYMENT OF DIVIDENDS ON  
11                  CLAIMS.—The receiver may, in the sole discre-  
12                  tion of the receiver, pay dividends on proved  
13                  claims at any time, and no liability shall attach  
14                  to the Agency, by reason of any such payment,  
15                  for failure to pay dividends to a claimant whose  
16                  claim is not proved at the time of any such pay-  
17                  ment.

18                  “(C) RULEMAKING AUTHORITY OF THE DI-  
19                  RECTOR.—The Director may prescribe such  
20                  rules, including definitions of terms, as the Di-  
21                  rector deems appropriate to establish a single  
22                  uniform interest rate for, or to make payments  
23                  of post-insolvency interest to creditors holding  
24                  proven claims against the receivership estates of

1 enterprises following satisfaction by the receiver  
2 of the principal amount of all creditor claims.

3 “(10) SUSPENSION OF LEGAL ACTIONS.—

4 “(A) IN GENERAL.—After the appointment  
5 of a conservator or receiver for an enterprise,  
6 the conservator or receiver may, in any judicial  
7 action or proceeding to which such enterprise is  
8 or becomes a party, request a stay for a period  
9 not to exceed—

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

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

14 “(B) GRANT OF STAY BY ALL COURTS RE-  
15 QUIRED.—Upon receipt of a request by any  
16 conservator or receiver under subparagraph (A)  
17 for a stay of any judicial action or proceeding  
18 in any court with jurisdiction of such action or  
19 proceeding, the court shall grant such stay as  
20 to all parties.

21 “(11) ADDITIONAL RIGHTS AND DUTIES.—

22 “(A) PRIOR FINAL ADJUDICATION.—The  
23 Agency shall abide by any final unappealable  
24 judgment of any court of competent jurisdiction

1 which was rendered before the appointment of  
2 the Agency as conservator or receiver.

3 “(B) RIGHTS AND REMEDIES OF CONSER-  
4 VATOR OR RECEIVER.—In the event of any ap-  
5 pealable judgment, the Agency as conservator  
6 or receiver shall—

7 “(i) have all the rights and remedies  
8 available to the enterprise (before the ap-  
9 pointment of such conservator or receiver)  
10 and the Agency, including removal to Fed-  
11 eral court and all appellate rights; and

12 “(ii) not be required to post any bond  
13 in order to pursue such remedies.

14 “(C) NO ATTACHMENT OR EXECUTION.—  
15 No attachment or execution may issue by any  
16 court upon assets in the possession of the re-  
17 ceiver.

18 “(D) LIMITATION ON JUDICIAL REVIEW.—  
19 Except as otherwise provided in this subsection,  
20 no court shall have jurisdiction over—

21 “(i) any claim or action for payment  
22 from, or any action seeking a determina-  
23 tion of rights with respect to, the assets of  
24 any enterprise for which the Agency has  
25 been appointed receiver; or

1                   “(ii) any claim relating to any act or  
2                   omission of such enterprise or the Agency  
3                   as receiver.

4                   “(E) DISPOSITION OF ASSETS.—In exer-  
5                   cising any right, power, privilege, or authority  
6                   as conservator or receiver in connection with  
7                   any sale or disposition of assets of an enterprise  
8                   for which the Agency has been appointed con-  
9                   servator or receiver, the Agency shall conduct  
10                  its operations in a manner which—

11                   “(i) maximizes the net present value  
12                   return from the sale or disposition of such  
13                   assets;

14                   “(ii) minimizes the amount of any loss  
15                   realized in the resolution of cases; and

16                   “(iii) ensures adequate competition  
17                   and fair and consistent treatment of  
18                   offerors.

19                   “(12) STATUTE OF LIMITATIONS FOR ACTIONS  
20                   BROUGHT BY CONSERVATOR OR RECEIVER.—

21                   “(A) IN GENERAL.—Notwithstanding any  
22                   provision of any contract, the applicable statute  
23                   of limitations with regard to any action brought  
24                   by the Agency as conservator or receiver shall  
25                   be—

1                   “(i) in the case of any contract claim,  
2                   the longer of—

3                   “(I) the 6-year period beginning  
4                   on the date the claim accrues; or

5                   “(II) the period applicable under  
6                   State law; and

7                   “(ii) in the case of any tort claim, the  
8                   longer of—

9                   “(I) the 3-year period beginning  
10                  on the date the claim accrues; or

11                  “(II) the period applicable under  
12                  State law.

13                  “(B) DETERMINATION OF THE DATE ON  
14                  WHICH A CLAIM ACCRUES.—For purposes of  
15                  subparagraph (A), the date on which the stat-  
16                  ute of limitations begins to run on any claim  
17                  described in such subparagraph shall be the  
18                  later of—

19                  “(i) the date of the appointment of  
20                  the Agency as conservator or receiver; or

21                  “(ii) the date on which the cause of  
22                  action accrues.

23                  “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
24                  ACTION.—

1                   “(i) IN GENERAL.—In the case of any  
2                   tort claim described under clause (ii) for  
3                   which the statute of limitations applicable  
4                   under State law with respect to such claim  
5                   has expired not more than 5 years before  
6                   the appointment of the Agency as conser-  
7                   vator or receiver, the Agency may bring an  
8                   action as conservator or receiver on such  
9                   claim without regard to the expiration of  
10                  the statute of limitation applicable under  
11                  State law.

12                  “(ii) CLAIMS DESCRIBED.—A tort  
13                  claim referred to under clause (i) is a  
14                  claim arising from fraud, intentional mis-  
15                  conduct resulting in unjust enrichment, or  
16                  intentional misconduct resulting in sub-  
17                  stantial loss to the enterprise.

18                  “(14) ACCOUNTING AND RECORDKEEPING RE-  
19                  QUIREMENTS.—

20                  “(A) IN GENERAL.—The Agency as conser-  
21                  vator or receiver shall, consistent with the ac-  
22                  counting and reporting practices and proce-  
23                  dures established by the Agency, maintain a full  
24                  accounting of each conservatorship and receiv-

1           ership or other disposition of an enterprise in  
2           default.

3           “(B) ANNUAL ACCOUNTING OR REPORT.—  
4           With respect to each conservatorship or receiver-  
5           ership, the Agency shall make an annual ac-  
6           counting or report available to the Board, the  
7           Comptroller General of the United States, the  
8           Committee on Banking, Housing, and Urban  
9           Affairs of the Senate, and the Committee on  
10          Financial Services of the House of Representa-  
11          tives.

12          “(C) AVAILABILITY OF REPORTS.—Any re-  
13          port prepared under subparagraph (B) shall be  
14          made available by the Agency upon request to  
15          any shareholder of an enterprise or any member  
16          of the public.

17          “(D) RECORDKEEPING REQUIREMENT.—  
18          After the end of the 6-year period beginning on  
19          the date that the conservatorship or receiver-  
20          ship is terminated by the Director, the Agency  
21          may destroy any records of such enterprise  
22          which the Agency, in the discretion of the Agen-  
23          cy, determines to be unnecessary unless di-  
24          rected not to do so by a court of competent ju-

1 jurisdiction or governmental agency, or prohibited  
2 by law.

3 “(15) FRAUDULENT TRANSFERS.—

4 “(A) IN GENERAL.—The Agency, as con-  
5 servator or receiver, may avoid a transfer of  
6 any interest of an enterprise-affiliated party, or  
7 any person who the conservator or receiver de-  
8 termines is a debtor of the enterprise, in prop-  
9 erty, or any obligation incurred by such party  
10 or person, that was made within 5 years of the  
11 date on which the Agency was appointed con-  
12 servator or receiver, if such party or person vol-  
13 untarily or involuntarily made such transfer or  
14 incurred such liability with the intent to hinder,  
15 delay, or defraud the enterprise, the Agency,  
16 the conservator, or receiver.

17 “(B) RIGHT OF RECOVERY.—To the extent  
18 a transfer is avoided under subparagraph (A),  
19 the conservator or receiver may recover, for the  
20 benefit of the enterprise, the property trans-  
21 ferred, or, if a court so orders, the value of  
22 such property (at the time of such transfer)  
23 from—

24 “(i) the initial transferee of such  
25 transfer or the enterprise-affiliated party

1 or person for whose benefit such transfer  
2 was made; or

3 “(ii) any immediate or mediate trans-  
4 feree of any such initial transferee.

5 “(C) RIGHTS OF TRANSFEREE OR OBLI-  
6 GEE.—The conservator or receiver may not re-  
7 cover under subparagraph (B) from—

8 “(i) any transferee that takes for  
9 value, including satisfaction or securing of  
10 a present or antecedent debt, in good faith;  
11 or

12 “(ii) any immediate or mediate good  
13 faith transferee of such transferee.

14 “(D) RIGHTS UNDER THIS PARAGRAPH.—  
15 The rights under this paragraph of the conser-  
16 vator or receiver described under subparagraph  
17 (A) shall be superior to any rights of a trustee  
18 or any other party (other than any party which  
19 is a Federal agency) under title 11, United  
20 States Code.

21 “(16) ATTACHMENT OF ASSETS AND OTHER IN-  
22 JUNCTIVE RELIEF.—Subject to paragraph (17), any  
23 court of competent jurisdiction may, at the request  
24 of the conservator or receiver, issue an order in ac-  
25 cordance with Rule 65 of the Federal Rules of Civil

1 Procedure, including an order placing the assets of  
2 any person designated by the Agency or such conser-  
3 vator under the control of the court, and appointing  
4 a trustee to hold such assets.

5 “(17) STANDARDS OF PROOF.—Rule 65 of the  
6 Federal Rules of Civil Procedure shall apply with re-  
7 spect to any proceeding under paragraph (16) with-  
8 out regard to the requirement of such rule that the  
9 applicant show that the injury, loss, or damage is ir-  
10 reparable and immediate.

11 “(18) TREATMENT OF CLAIMS ARISING FROM  
12 BREACH OF CONTRACTS EXECUTED BY THE RE-  
13 CEIVER OR CONSERVATOR.—

14 “(A) IN GENERAL.—Notwithstanding any  
15 other provision of this subsection, any final and  
16 unappealable judgment for monetary damages  
17 entered against a receiver or conservator for the  
18 breach of an agreement executed or approved in  
19 writing by such receiver or conservator after the  
20 date of its appointment, shall be paid as an ad-  
21 ministrative expense of the receiver or conser-  
22 vator.

23 “(B) NO LIMITATION OF POWER.—Nothing  
24 in this paragraph shall be construed to limit the  
25 power of a receiver or conservator to exercise

1 any rights under contract or law, including to  
2 terminate, breach, cancel, or otherwise dis-  
3 continue such agreement.

4 “(19) GENERAL EXCEPTIONS.—

5 “(A) LIMITATIONS.—The rights of a con-  
6 servator or receiver appointed under this section  
7 shall be subject to the limitations on the powers  
8 of a receiver under sections 402 through 407 of  
9 the Federal Deposit Insurance Corporation Im-  
10 provement Act of 1991 (12 U.S.C. 4402  
11 through 4407).

12 “(B) MORTGAGES HELD IN TRUST.—

13 “(i) IN GENERAL.—Any mortgage, or  
14 pool of mortgages, held in trust, custodial,  
15 or agency capacity by an enterprise shall  
16 not be available to satisfy the claims of  
17 creditors generally.

18 “(ii) HOLDING OF MORTGAGES.—Any  
19 mortgage or pool of mortgages described  
20 under clause (i) shall be held by the con-  
21 servator or receiver appointed under this  
22 subsection for the beneficial owners of such  
23 mortgages, under the terms of the agree-  
24 ment creating such trust, custodial, or  
25 other agency arrangement.

1                   “(iii) LIABILITY OF RECEIVER.—The  
2                   liability of a receiver appointed under this  
3                   section for damages shall, in the case of  
4                   any contingent or unliquidated claim relat-  
5                   ing to the mortgages held in trust, be esti-  
6                   mated in accordance set forth in the regu-  
7                   lations of the Director.

8                   “(c) PRIORITY OF EXPENSES AND UNSECURED  
9 CLAIMS.—

10                   “(1) IN GENERAL.—Unsecured claims against  
11                   an enterprise, or a receiver, that are proven to the  
12                   satisfaction of the receiver shall have priority in the  
13                   following order:

14                   “(A) Administrative expenses of the re-  
15                   ceiver.

16                   “(B) Any general or senior liability of the  
17                   enterprise (which is not a liability described  
18                   under subparagraph (C) or (D).

19                   “(C) Any obligation subordinated to gen-  
20                   eral creditors (which is not an obligation de-  
21                   scribed under subparagraph (D)).

22                   “(D) Any obligation to shareholders or  
23                   members arising as a result of their status as  
24                   shareholder or members.

1           “(2) CREDITORS SIMILARLY SITUATED.—All  
2 creditors that are similarly situated under paragraph  
3 (1) shall be treated in a similar manner.

4           “(3) DEFINITION.—The term ‘administrative  
5 expenses of the receiver’ shall include those nec-  
6 essary expenses incurred by the receiver in liqui-  
7 dating or otherwise resolving the affairs of a failed  
8 enterprise. Such expenses shall include pre-failure  
9 and post-failure obligations that the receiver deter-  
10 mines are necessary and appropriate to facilitate the  
11 smooth and orderly liquidation or other resolution of  
12 the enterprise.

13           “(d) PROVISIONS RELATING TO CONTRACTS EN-  
14 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
15 OR RECEIVER.—

16           “(1) AUTHORITY TO REPUDIATE CONTRACTS.—  
17 In addition to any other rights a conservator or re-  
18 ceiver may have, the conservator or receiver for any  
19 enterprise may disaffirm or repudiate any contract  
20 or lease—

21                   “(A) to which such enterprise is a party;

22                   “(B) the performance of which the conser-  
23 vator or receiver, in its sole discretion, deter-  
24 mines to be burdensome; and

1           “(C) the disaffirmance or repudiation of  
2           which the conservator or receiver determines, in  
3           its sole discretion, will promote the orderly ad-  
4           ministration of the affairs of the enterprise.

5           “(2) TIMING OF REPUDIATION.—The conser-  
6           vator or receiver shall determine whether or not to  
7           exercise the rights of repudiation under this sub-  
8           section within a reasonable period following such ap-  
9           pointment.

10           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
11           ATION.—

12           “(A) IN GENERAL.—Except as otherwise  
13           provided under subparagraph (C) and para-  
14           graphs (4), (5), and (6), the liability of the con-  
15           servator or receiver for the disaffirmance or re-  
16           pudiation of any contract pursuant to para-  
17           graph (1) shall be—

18                   “(i) limited to actual direct compen-  
19                   satory damages; and

20                   “(ii) determined as of—

21                           “(I) the date of the appointment  
22                           of the conservator or receiver; or

23                           “(II) in the case of any contract  
24                           or agreement referred to in paragraph  
25                           (8), the date of the disaffirmance or

1                   repudiation of such contract or agree-  
2                   ment.

3                   “(B) NO LIABILITY FOR OTHER DAM-  
4                   AGES.—For purposes of subparagraph (A), the  
5                   term ‘actual direct compensatory damages’ shall  
6                   not include—

- 7                   “(i) punitive or exemplary damages;
- 8                   “(ii) damages for lost profits or op-  
9                   portunity; or
- 10                  “(iii) damages for pain and suffering.

11                  “(C) MEASURE OF DAMAGES FOR REPUDI-  
12                  ATION OF FINANCIAL CONTRACTS.—In the case  
13                  of any qualified financial contract or agreement  
14                  to which paragraph (8) applies, compensatory  
15                  damages shall be—

- 16                  “(i) deemed to include normal and  
17                  reasonable costs of cover or other reason-  
18                  able measures of damages utilized in the  
19                  industries for such contract and agreement  
20                  claims; and

- 21                  “(ii) paid in accordance with this sub-  
22                  section and subsection (f), except as other-  
23                  wise specifically provided in this section.

24                  “(4) LEASES UNDER WHICH THE ENTERPRISE  
25                  IS THE LESSEE.—

1           “(A) IN GENERAL.—If the conservator or  
2 receiver disaffirms or repudiates a lease under  
3 which the enterprise was the lessee, the conser-  
4 vator or receiver shall not be liable for any  
5 damages (other than damages determined  
6 under subparagraph (B)) for the disaffirmance  
7 or repudiation of such lease.

8           “(B) PAYMENTS OF RENT.—Notwith-  
9 standing subparagraph (A), the lessor under a  
10 lease to which that subparagraph applies  
11 shall—

12                   “(i) be entitled to the contractual rent  
13 accruing before the later of the date—

14                           “(I) the notice of disaffirmance  
15 or repudiation is mailed; or

16                           “(II) the disaffirmance or repudi-  
17 ation becomes effective, unless the les-  
18 sor is in default or breach of the  
19 terms of the lease;

20                   “(ii) have no claim for damages under  
21 any acceleration clause or other penalty  
22 provision in the lease; and

23                   “(iii) have a claim for any unpaid  
24 rent, subject to all appropriate offsets and  
25 defenses, due as of the date of the appoint-

1                   ment, which shall be paid in accordance  
2                   with this subsection and subsection (f).

3                   “(5) LEASES UNDER WHICH THE ENTERPRISE  
4                   IS THE LESSOR.—

5                   “(A) IN GENERAL.—If the conservator or  
6                   receiver repudiates an unexpired written lease  
7                   of real property of the enterprise under which  
8                   the enterprise is the lessor and the lessee is not,  
9                   as of the date of such repudiation, in default,  
10                  the lessee under such lease may either—

11                  “(i) treat the lease as terminated by  
12                  such repudiation; or

13                  “(ii) remain in possession of the lease-  
14                  hold interest for the balance of the term of  
15                  the lease, unless the lessee defaults under  
16                  the terms of the lease after the date of  
17                  such repudiation.

18                  “(B) PROVISIONS APPLICABLE TO LESSEE  
19                  REMAINING IN POSSESSION.—If any lessee  
20                  under a lease described under subparagraph (A)  
21                  remains in possession of a leasehold interest  
22                  under clause (ii) of such subparagraph—

23                  “(i) the lessee—

24                                 “(I) shall continue to pay the  
25                                 contractual rent pursuant to the

1 terms of the lease after the date of  
2 the repudiation of such lease; and

3 “(II) may offset against any rent  
4 payment which accrues after the date  
5 of the repudiation of the lease, and  
6 any damages which accrue after such  
7 date due to the nonperformance of  
8 any obligation of the enterprise under  
9 the lease after such date; and

10 “(ii) the conservator or receiver shall  
11 not be liable to the lessee for any damages  
12 arising after such date as a result of the  
13 repudiation other than the amount of any  
14 offset allowed under clause (i)(II).

15 “(6) CONTRACTS FOR THE SALE OF REAL  
16 PROPERTY.—

17 “(A) IN GENERAL.—If the conservator or  
18 receiver repudiates any contract for the sale of  
19 real property and the purchaser of such real  
20 property under such contract is in possession,  
21 and is not, as of the date of such repudiation,  
22 in default, such purchaser may either—

23 “(i) treat the contract as terminated  
24 by such repudiation; or

1                   “(ii) remain in possession of such real  
2                   property.

3                   “(B) PROVISIONS APPLICABLE TO PUR-  
4                   CHASER REMAINING IN POSSESSION.—If any  
5                   purchaser of real property under any contract  
6                   described under subparagraph (A) remains in  
7                   possession of such property under clause (ii) of  
8                   such subparagraph—

9                   “(i) the purchaser—

10                   “(I) shall continue to make all  
11                   payments due under the contract after  
12                   the date of the repudiation of the con-  
13                   tract; and

14                   “(II) may offset against any such  
15                   payments any damages which accrue  
16                   after such date due to the non-  
17                   performance (after such date) of any  
18                   obligation of the enterprise under the  
19                   contract; and

20                   “(ii) the conservator or receiver  
21                   shall—

22                   “(I) not be liable to the pur-  
23                   chaser for any damages arising after  
24                   such date as a result of the repudi-

1                   ation other than the amount of any  
2                   offset allowed under clause (i)(II);

3                   “(II) deliver title to the pur-  
4                   chaser in accordance with the provi-  
5                   sions of the contract; and

6                   “(III) have no obligation under  
7                   the contract other than the perform-  
8                   ance required under subclause (II).

9                   “(C) ASSIGNMENT AND SALE ALLOWED.—

10                   “(i) IN GENERAL.—No provision of  
11                   this paragraph shall be construed as lim-  
12                   iting the right of the conservator or re-  
13                   ceiver to assign the contract described  
14                   under subparagraph (A), and sell the prop-  
15                   erty subject to the contract and the provi-  
16                   sions of this paragraph.

17                   “(ii) NO LIABILITY AFTER ASSIGN-  
18                   MENT AND SALE.—If an assignment and  
19                   sale described under clause (i) is con-  
20                   summated, the conservator or receiver  
21                   shall have no further liability under the  
22                   contract described under subparagraph  
23                   (A), or with respect to the real property  
24                   which was the subject of such contract.

1           “(7) PROVISIONS APPLICABLE TO SERVICE CON-  
2 TRACTS.—

3           “(A) SERVICES PERFORMED BEFORE AP-  
4 POINTMENT.—In the case of any contract for  
5 services between any person and any enterprise  
6 for which the Agency has been appointed con-  
7 servator or receiver, any claim of such person  
8 for services performed before the appointment  
9 of the conservator or the receiver shall be—

10                   “(i) a claim to be paid in accordance  
11 with subsections (b) and (f); and

12                   “(ii) deemed to have arisen as of the  
13 date the conservator or receiver was ap-  
14 pointed.

15           “(B) SERVICES PERFORMED AFTER AP-  
16 POINTMENT AND PRIOR TO REPUDIATION.—If,  
17 in the case of any contract for services de-  
18 scribed under subparagraph (A), the conser-  
19 vator or receiver accepts performance by the  
20 other person before the conservator or receiver  
21 makes any determination to exercise the right  
22 of repudiation of such contract under this  
23 section—

1           “(i) the other party shall be paid  
2           under the terms of the contract for the  
3           services performed; and

4           “(ii) the amount of such payment  
5           shall be treated as an administrative ex-  
6           pense of the conservatorship or receiver-  
7           ship.

8           “(C) ACCEPTANCE OF PERFORMANCE NO  
9           BAR TO SUBSEQUENT REPUDIATION.—The ac-  
10          ceptance by any conservator or receiver of serv-  
11          ices referred to under subparagraph (B) in con-  
12          nection with a contract described in such sub-  
13          paragraph shall not affect the right of the con-  
14          servator or receiver to repudiate such contract  
15          under this section at any time after such per-  
16          formance.

17          “(8) CERTAIN QUALIFIED FINANCIAL CON-  
18          TRACTS.—

19                 “(A) RIGHTS OF PARTIES TO CON-  
20          TRACTS.—Subject to paragraph (10) and not-  
21          withstanding any other provision of this Act,  
22          any other Federal law, or the law of any State,  
23          no person shall be stayed or prohibited from  
24          exercising—

1           “(i) any right to cause the termi-  
2 nation or liquidation of any qualified finan-  
3 cial contract with an enterprise that arises  
4 upon the appointment of the Agency as re-  
5 ceiver for such enterprise at any time after  
6 such appointment;

7           “(ii) any right under any security ar-  
8 rangement relating to any contract or  
9 agreement described in clause (i); or

10           “(iii) any right to offset or net out  
11 any termination value, payment amount, or  
12 other transfer obligation arising under or  
13 in connection with 1 or more contracts and  
14 agreements described in clause (i), includ-  
15 ing any master agreement for such con-  
16 tracts or agreements.

17           “(B) APPLICABILITY OF OTHER PROVI-  
18 SIONS.—Subsection (b)(12) shall apply in the  
19 case of any judicial action or proceeding  
20 brought against any receiver referred to under  
21 subparagraph (A), or the enterprise for which  
22 such receiver was appointed, by any party to a  
23 contract or agreement described under subpara-  
24 graph (A)(i) with such enterprise.

1                   “(C) CERTAIN TRANSFERS NOT AVOID-  
2 ABLE.—

3                   “(i) IN GENERAL.—Notwithstanding  
4 paragraph (11), the Agency, whether act-  
5 ing as such or as conservator or receiver of  
6 an enterprise, may not avoid any transfer  
7 of money or other property in connection  
8 with any qualified financial contract with  
9 an enterprise.

10                   “(ii) EXCEPTION FOR CERTAIN  
11 TRANSFERS.—Clause (i) shall not apply to  
12 any transfer of money or other property in  
13 connection with any qualified financial con-  
14 tract with an enterprise if the Agency de-  
15 termines that the transferee had actual in-  
16 tent to hinder, delay, or defraud such en-  
17 terprise, the creditors of such enterprise,  
18 or any conservator or receiver appointed  
19 for such enterprise.

20                   “(D) CERTAIN CONTRACTS AND AGREE-  
21 MENTS DEFINED.—In this subsection:

22                   “(i) QUALIFIED FINANCIAL CON-  
23 TRACT.—The term ‘qualified financial con-  
24 tract’ means any securities contract, com-  
25 modity contract, forward contract, repur-

1 chase agreement, swap agreement, and any  
2 similar agreement that the Agency deter-  
3 mines by regulation to be a qualified finan-  
4 cial contract for purposes of this para-  
5 graph.

6 “(ii) SECURITIES CONTRACT.—The  
7 term ‘securities contract’ has the meaning  
8 given to such term under section 741 of  
9 title 11, United States Code, except that  
10 the term ‘security’ (as used in such sec-  
11 tion) shall be deemed to include any mort-  
12 gage loan, any mortgage-related security  
13 (as defined in section 3(a)(41) of the Secu-  
14 rities Exchange Act of 1934), and any in-  
15 terest in any mortgage loan or mortgage-  
16 related security, and does not include any  
17 participation in a commercial mortgage  
18 loan.

19 “(iii) COMMODITY CONTRACT.—The  
20 term ‘commodity contract’ has the mean-  
21 ing given to such term in section 761 of  
22 title 11, United States Code.

23 “(iv) FORWARD CONTRACT.—The  
24 term ‘forward contract’ has the meaning

1 given to such term in section 101 of title  
2 11, United States Code.

3 “(v) REPURCHASE AGREEMENT.—The  
4 term ‘repurchase agreement’ has the mean-  
5 ing given to such term in section 101 of  
6 title 11, the United States Code, except  
7 that the items (as described in such sec-  
8 tion) which may be subject to any such  
9 agreement shall be deemed to include  
10 mortgage-related securities (as such term  
11 is defined in section 3(a)(41) of the Securi-  
12 ties Exchange Act of 1934), any mortgage  
13 loan, and any interest in any mortgage  
14 loan and does not include any participation  
15 in a commercial mortgage loan unless the  
16 Agency determines by regulation, resolu-  
17 tion, or order to include any such partici-  
18 pation within the meaning of such term.

19 “(vi) SWAP AGREEMENT.—The term  
20 ‘swap agreement’—

21 “(I) means any agreement, in-  
22 cluding the terms and conditions in-  
23 corporated by reference in any such  
24 agreement, which is a rate swap  
25 agreement, basis swap, commodity

1 swap, forward rate agreement, inter-  
2 est rate future, interest rate option  
3 purchased, forward foreign exchange  
4 agreement, rate cap agreement, rate  
5 floor agreement, rate collar agree-  
6 ment, currency swap agreement,  
7 cross-currency rate swap agreement,  
8 currency future, or currency option  
9 purchased or any other similar agree-  
10 ment; and

11 “(II) includes any combination of  
12 such agreements and any option to  
13 enter into any such agreement.

14 “(vii) TREATMENT OF MASTER  
15 AGREEMENT AS 1 QUALIFIED FINANCIAL  
16 CONTRACT.—Any master agreement for  
17 any agreements described under this sub-  
18 paragraph, together with all supplements  
19 to such master agreement, shall be treated  
20 as 1 qualified financial contract.

21 “(viii) TRANSFER.—The term ‘trans-  
22 fer’ has the meaning given to such term in  
23 section 101 of title 11, United States  
24 Code.

1           “(E) CERTAIN PROTECTIONS IN EVENT OF  
2 APPOINTMENT OF CONSERVATOR.—Notwith-  
3 standing any other provision of this Act (other  
4 than paragraph (12) of this subsection), any  
5 other Federal law, or the law of any State, no  
6 person shall be stayed or prohibited from  
7 exercising—

8           “(i) any right such person has to  
9 cause the termination, liquidation, or accel-  
10 eration of any qualified financial contract  
11 with an enterprise in a conservatorship  
12 based upon a default under such financial  
13 contract which is enforceable under appli-  
14 cable noninsolvency law;

15           “(ii) any right under any security ar-  
16 rangement relating to such qualified finan-  
17 cial contracts; or

18           “(iii) any right to offset or net out  
19 any termination values, payment amounts,  
20 or other transfer obligations arising under  
21 or in connection with such qualified finan-  
22 cial contracts.

23           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
24 TRACTS.—In making any transfer of assets or liabil-  
25 ities of an enterprise in default which includes any

1 qualified financial contract, the conservator or re-  
2 ceiver for such enterprise shall either—

3 “(A) transfer to 1 person—

4 “(i) all qualified financial contracts  
5 between—

6 “(I) any person (or any affiliate  
7 of such person); and

8 “(II) the enterprise in default;

9 “(ii) all claims of such person (or any  
10 affiliate of such person) against such en-  
11 terprise under any such contract (other  
12 than any claim which, under the terms of  
13 any such contract, is subordinated to the  
14 claims of general unsecured creditors of  
15 such enterprise);

16 “(iii) all claims of such enterprise  
17 against such person (or any affiliate of  
18 such person) under any such contract; and

19 “(iv) all property securing any claim  
20 described in clause (ii) or (iii) under any  
21 such contract; or

22 “(B) transfer none of the financial con-  
23 tracts, claims, or property referred to under  
24 subparagraph (A) (with respect to such person  
25 and any affiliate of such person).

1           “(10) NOTIFICATION OF TRANSFER.—

2                   “(A) IN GENERAL.—If—

3                           “(i) the conservator or receiver for an  
4                           enterprise in default makes any transfer of  
5                           the assets and liabilities of such enterprise;

6                           “(ii) the transfer includes any quali-  
7                           fied financial contract; and

8                           “(iii) the conservator or receiver shall  
9                           use best efforts to notify any person who  
10                          is a party to any such contract of such  
11                          transfer by 12 p.m. (noon) (Eastern  
12                          Standard Time) on the business day fol-  
13                          lowing such transfer.

14                          “(B) BUSINESS DAY DEFINED.—For pur-  
15                          poses of this paragraph, the term ‘business day’  
16                          means any day other than any Saturday, Sun-  
17                          day, or any day on which either the New York  
18                          Stock Exchange or the Federal Reserve Bank  
19                          of New York is closed.

20                          “(11) CERTAIN SECURITY INTERESTS NOT  
21                          AVOIDABLE.—No provision of this subsection shall  
22                          be construed as permitting the avoidance of any le-  
23                          gally enforceable or perfected security interest in any  
24                          of the assets of any enterprise, except where such an  
25                          interest is taken in contemplation of the insolvency

1 of the enterprise, or with the intent to hinder, delay,  
2 or defraud the enterprise or the creditors of such en-  
3 terprise.

4 “(12) AUTHORITY TO ENFORCE CONTRACTS.—

5 “(A) IN GENERAL.—Notwithstanding any  
6 provision of a contract providing for termi-  
7 nation, default, acceleration, or exercise of  
8 rights upon, or solely by reason of, insolvency  
9 or the appointment of a conservator or receiver,  
10 the conservator or receiver may enforce any  
11 contract, other than a liability insurance of a  
12 director or officer, or a contract or an enter-  
13 prise bond, entered into by the enterprise.

14 “(B) CERTAIN RIGHTS NOT AFFECTED.—

15 No provision of this paragraph may be con-  
16 strued as impairing or affecting any right of the  
17 conservator or receiver to enforce or recover  
18 under a liability insurance contract of an officer  
19 or director, or enterprise bond under other ap-  
20 plicable law.

21 “(C) CONSENT REQUIREMENT.—

22 “(i) IN GENERAL.—Except as other-  
23 wise provided under this section, no person  
24 may exercise any right or power to termi-  
25 nate, accelerate, or declare a default under

1 any contract to which an enterprise is a  
2 party, or to obtain possession of or exercise  
3 control over any property of the enterprise,  
4 or affect any contractual rights of the en-  
5 terprise, without the consent of the conser-  
6 vator or receiver, as appropriate, for a pe-  
7 riod of—

8 “(I) 45 days after the date of ap-  
9 pointment of a conservator; or

10 “(II) 90 days after the date of  
11 appointment of a receiver.

12 “(ii) EXCEPTIONS.—This subpara-  
13 graph shall—

14 “(I) not apply to the liability in-  
15 surance contract of an officer or di-  
16 rector;

17 “(II) not apply to the rights of  
18 parties to certain qualified financial  
19 contracts under subsection (d)(8); and

20 “(III) not be construed as per-  
21 mitting the conservator or receiver to  
22 fail to comply with otherwise enforce-  
23 able provisions of such contracts.

24 “(e) VALUATION OF CLAIMS IN DEFAULT.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of Federal law or the law of any State, and  
3           regardless of the method which the Agency deter-  
4           mines to utilize with respect to an enterprise in de-  
5           fault or in danger of default, including transactions  
6           authorized under subsection (i), this subsection shall  
7           govern the rights of the creditors of such enterprise.

8           “(2) MAXIMUM LIABILITY.—The maximum li-  
9           ability of the Agency, acting as receiver or in any  
10          other capacity, to any person having a claim against  
11          the receiver or the enterprise for which such receiver  
12          is appointed shall equal the lesser of—

13                 “(A) the amount such claimant would have  
14                 received if the Agency had liquidated the assets  
15                 and liabilities of such enterprise without exer-  
16                 cising the authority of the Agency under sub-  
17                 section (i) of this section; or

18                 “(B) the amount of proceeds realized from  
19                 the performance of contracts or sale of the as-  
20                 sets of the enterprise.

21          “(f) LIMITATION ON COURT ACTION.—Except as  
22          provided in this section, no court may take any action,  
23          except at the request of the Director, by regulation or  
24          order, to restrain or affect the exercise of powers or func-  
25          tions of the Agency as a conservator or a receiver.

1 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

2 “(1) IN GENERAL.—A director or officer of an  
3 enterprise may be held personally liable for mone-  
4 tary damages in any civil action by, on behalf of, or  
5 at the request or direction of the Agency, which ac-  
6 tion is prosecuted wholly or partially for the benefit  
7 of the Agency—

8 “(A) acting as conservator or receiver of  
9 such enterprise;

10 “(B) acting based upon a suit, claim, or  
11 cause of action purchased from, assigned by, or  
12 otherwise conveyed by such receiver or conser-  
13 vator; or

14 “(C) for gross negligence, including any  
15 similar conduct or conduct that demonstrates a  
16 greater disregard of a duty of care (than gross  
17 negligence) including intentional tortious con-  
18 duct, as such terms are defined and determined  
19 under applicable State law.

20 “(2) NO LIMITATION.—Nothing in this para-  
21 graph shall impair or affect any right of the Agency  
22 under other applicable law.

23 “(h) DAMAGES.—In any proceeding related to any  
24 claim against a director, officer, employee, agent, attorney,  
25 accountant, appraiser, or any other party employed by or

1 providing services to an enterprise, recoverable damages  
2 determined to result from the improvident or otherwise  
3 improper use or investment of any assets of the enterprise  
4 shall include principal losses and appropriate interest.

5 “(i) LIMITED-LIFE ENTERPRISE.—

6 “(1) ORGANIZATION.—

7 “(A) PURPOSE.—If an enterprise is in de-  
8 fault, or if the Agency anticipates that an en-  
9 terprise will default, the Agency may organize a  
10 limited-life enterprise with those powers and at-  
11 tributes of the enterprise in default or in dan-  
12 ger of default that the Director determines nec-  
13 essary, subject to the provisions of this sub-  
14 section. The Director shall grant a temporary  
15 charter to the limited-life enterprise, and the  
16 limited-life enterprise shall operate subject to  
17 that charter.

18 “(B) AUTHORITIES.—Upon the creation of  
19 a limited-life enterprise under subparagraph  
20 (A), the limited-life enterprise may—

21 “(i) assume such liabilities of the en-  
22 terprise that is in default or in danger of  
23 default as the Agency may, in its discre-  
24 tion, determine to be appropriate, provided  
25 that the liabilities assumed shall not exceed

1 the amount of assets of the limited-life en-  
2 terprise;

3 “(ii) purchase such assets of the en-  
4 terprise that is in default, or in danger of  
5 default, as the Agency may, in its discre-  
6 tion, determine to be appropriate; and

7 “(iii) perform any other temporary  
8 function which the Agency may, in its dis-  
9 cretion, prescribe in accordance with this  
10 section.

11 “(2) CHARTER.—

12 “(A) CONDITIONS.—The Agency may  
13 grant a temporary charter if the Agency deter-  
14 mines that the continued operation of the enter-  
15 prise in default or in danger of default is in the  
16 best interest of the national economy and the  
17 housing markets.

18 “(B) LIMITED-LIFE ENTERPRISE TREATED  
19 AS BEING IN DEFAULT FOR CERTAIN PUR-  
20 POSES.—A limited-life enterprise shall be treat-  
21 ed as an enterprise in default at such times and  
22 for such purposes as the Agency may, in its dis-  
23 cretion, determine.

24 “(C) MANAGEMENT.—A limited-life enter-  
25 prise, upon the granting of its charter, shall be

1 under the management of a board of directors  
2 consisting of not fewer than 5 nor more than  
3 10 members appointed by the Agency.

4 “(D) BYLAWS.—The board of directors of  
5 a limited-life enterprise shall adopt such bylaws  
6 as may be approved by the Agency.

7 “(3) CAPITAL STOCK.—No capital stock need  
8 be paid into a limited-life enterprise by the Agency.

9 “(4) INVESTMENTS.—Funds of a limited-life  
10 enterprise shall be kept on hand in cash, invested in  
11 obligations of the United States or obligations guar-  
12 anteed as to principal and interest by the United  
13 States, or deposited with the Agency, or any Federal  
14 Reserve bank.

15 “(5) EXEMPT STATUS.—Notwithstanding any  
16 other provision of Federal or State law, the limited-  
17 life enterprise, its franchise, property, and income  
18 shall be exempt from all taxation now or hereafter  
19 imposed by the United States, by any territory, de-  
20 pendency, or possession thereof, or by any State,  
21 county, municipality, or local taxing authority.

22 “(6) OTHER EXEMPTIONS.—When acting as a  
23 receiver, the following provisions shall apply with re-  
24 spect to the Agency:

1           “(A) The Agency, including its franchise,  
2           its capital, reserves, and surplus, and its in-  
3           come, shall be exempt from all taxation imposed  
4           by any State, country, municipality, or local  
5           taxing authority, except that any real property  
6           of the Agency shall be subject to State, terri-  
7           torial, county, municipal, or local taxation to  
8           the same extent according to its value as other  
9           real property is taxed, except that, notwith-  
10          standing the failure of any person to challenge  
11          an assessment under State law of the value of  
12          such property, and the tax thereon, shall be de-  
13          termined as of the period for which such tax is  
14          imposed.

15                 “(B) No property of the Agency shall be  
16                 subject to levy, attachment, garnishment, fore-  
17                 closure, or sale without the consent of the  
18                 Agency, nor shall any involuntary lien attach to  
19                 the property of the Agency.

20                 “(C) The Agency shall not be liable for any  
21                 amounts in the nature of penalties or fines, in-  
22                 cluding those arising from the failure of any  
23                 person to pay any real property, personal prop-  
24                 erty, probate, or recording tax or any recording  
25                 or filing fees when due.

1 “(7) WINDING UP.—

2 “(A) IN GENERAL.—Subject to subpara-  
3 graph (B), unless Congress authorizes the sale  
4 of the capital stock of the limited-life enter-  
5 prise, not later than 2 years after the date of  
6 its organization, the Agency shall wind up the  
7 affairs of the limited-life enterprise.

8 “(B) EXTENSION.—The Director may, in  
9 the discretion of the Director, extend the status  
10 of the limited-life enterprise for 3 additional 1-  
11 year periods.

12 “(8) TRANSFER OF ASSETS AND LIABILITIES.—

13 “(A) IN GENERAL.—

14 “(i) TRANSFER OF ASSETS AND LI-  
15 ABILITIES.—The Agency, as receiver, may  
16 transfer any assets and liabilities of an en-  
17 terprise in default, or in danger of default,  
18 to the limited-life enterprise in accordance  
19 with paragraph (1).

20 “(ii) SUBSEQUENT TRANSFERS.—At  
21 any time after a charter is transferred to  
22 a limited-life enterprise, the Agency, as re-  
23 ceiver, may transfer any assets and liabil-  
24 ities of such enterprise in default, or in  
25 danger in default, as the Agency may, in

1           its discretion, determine to be appropriate  
2           in accordance with paragraph (1).

3                   “(iii) EFFECTIVE WITHOUT AP-  
4           PROVAL.—The transfer of any assets or li-  
5           abilities of an enterprise in default, or in  
6           danger of default, transferred to a limited-  
7           life enterprise shall be effective without  
8           any further approval under Federal or  
9           State law, assignment, or consent with re-  
10          spect thereto.

11                   “(9) PROCEEDS.—To the extent that available  
12          proceeds from the limited-life enterprise exceed  
13          amounts required to pay obligations, such proceeds  
14          may be paid to the enterprise in default, or in dan-  
15          ger of default.

16                   “(10) POWERS OF LIMITED-LIFE ENTER-  
17          PRISES.—

18                   “(A) IN GENERAL.—Each limited-life en-  
19          terprise created under this subsection shall have  
20          all corporate powers of, and be subject to the  
21          same provisions of law as, the enterprise in de-  
22          fault or in danger of default to which it relates,  
23          except that—

24                           “(i) the Agency may—

1           “(I) remove the directors of a  
2           limited-life enterprise; and

3           “(II) fix the compensation of  
4           members of the board of directors and  
5           senior management, as determined by  
6           the Agency in its discretion, of a lim-  
7           ited-life enterprise;

8           “(ii) the Agency may indemnify the  
9           representatives for purposes of paragraph  
10          (1)(B), and the directors, officers, employ-  
11          ees, and agents of a limited-life enterprise  
12          on such terms as the Agency determines to  
13          be appropriate; and

14          “(iii) the board of directors of a lim-  
15          ited-life enterprise—

16               “(I) shall elect a chairperson who  
17               may also serve in the position of chief  
18               executive officer, except that such per-  
19               son shall not serve either as chair-  
20               person or as chief executive officer  
21               without the prior approval of the  
22               Agency; and

23               “(II) may appoint a chief execu-  
24               tive officer who is not also the chair-  
25               person, except that such person shall

1 not serve as chief executive officer  
2 without the prior approval of the  
3 Agency.

4 “(B) STAY OF JUDICIAL ACTION.—Any ju-  
5 dicial action to which a limited-life enterprise  
6 becomes a party by virtue of its acquisition of  
7 any assets or assumption of any liabilities of an  
8 enterprise in default shall be stayed from fur-  
9 ther proceedings for a period of up to 45 days  
10 at the request of the limited-life enterprise.  
11 Such period may be modified upon the consent  
12 of all parties.

13 “(11) NO FEDERAL STATUS.—

14 “(A) AGENCY STATUS.—A limited-life en-  
15 terprise is not an agency, establishment, or in-  
16 strumentality of the United States.

17 “(B) EMPLOYEE STATUS.—Representa-  
18 tives for purposes of paragraph (1)(B), interim  
19 directors, directors, officers, employees, or  
20 agents of a limited-life enterprise are not, solely  
21 by virtue of service in any such capacity, offi-  
22 cers or employees of the United States. Any  
23 employee of the Agency or of any Federal in-  
24 strumentality who serves at the request of the  
25 Agency as a representative for purposes of

1 paragraph (1)(B), interim director, director, of-  
2 ficer, employee, or agent of a limited-life enter-  
3 prise shall not—

4 “(i) solely by virtue of service in any  
5 such capacity lose any existing status as  
6 an officer or employee of the United States  
7 for purposes of title 5, United States Code,  
8 or any other provision of law; or

9 “(ii) receive any salary or benefits for  
10 service in any such capacity with respect to  
11 a limited-life enterprise in addition to such  
12 salary or benefits as are obtained through  
13 employment with the Agency or such Fed-  
14 eral instrumentality.

15 “(j) PROHIBITION OF CHARTER REVOCATION.—In  
16 no case may a receiver appointed pursuant to this section  
17 revoke, annul, or terminate the charter of an enterprise.

18 “(k) OBTAINING CREDIT BY A LIMITED-LIFE EN-  
19 TERPRISE.—

20 “(1) IN GENERAL.—The limited-life enterprise  
21 may obtain unsecured credit and incur unsecured  
22 debt in the ordinary course of business.

23 “(2) INABILITY TO OBTAIN CREDIT.—If the  
24 limited-life enterprise is unable to obtain unsecured

1 credit the Director may authorize the obtaining of  
2 credit or the incurring of debt—

3 “(A) with priority over any or all adminis-  
4 trative expenses;

5 “(B) secured by a lien on property that is  
6 not otherwise subject to a lien; or

7 “(C) secured by a junior lien on property  
8 that is subject to a lien.

9 “(3) LIMITATIONS.—

10 “(A) IN GENERAL.—The Director, after  
11 notice and a hearing, may authorize the obtain-  
12 ing of credit or the incurring of debt secured by  
13 a senior or equal lien on property that is sub-  
14 ject to a lien (other than mortgages that  
15 collateralize the mortgage-backed securities  
16 issued or guaranteed by the enterprise) only  
17 if—

18 “(i) the limited-life enterprise is un-  
19 able to obtain such credit otherwise; and

20 “(ii) there is adequate protection of  
21 the interest of the holder of the lien on the  
22 property which such senior or equal lien is  
23 proposed to be granted.

24 “(B) BURDEN OF PROOF.—In any hearing  
25 under this subsection, the Director has the bur-

1 den of proof on the issue of adequate protec-  
2 tion.

3 “(4) AFFECT ON DEBTS AND LIENS.—The re-  
4 versal or modification on appeal of an authorization  
5 under this subsection to obtain credit or incur debt,  
6 or of a grant under this section of a priority or a  
7 lien, does not affect the validity of any debt so in-  
8 curred, or any priority or lien so granted, to an enti-  
9 ty that extended such credit in good faith, whether  
10 or not such entity knew of the pendency of the ap-  
11 peal, unless such authorization and the incurring of  
12 such debt, or the granting of such priority or lien,  
13 were stayed pending appeal.

14 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
15 The Federal Housing Enterprises Financial Safety and  
16 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
17 amended—

18 (1) in section 1368 (12 U.S.C. 4618)—

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

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

1           (2) in section 1369C (12 U.S.C. 4622), by  
2 striking “enterprise” each place that term appears  
3 and inserting “regulated entity”;

4           (3) in section 1369D (12 U.S.C. 4623)—

5                 (A) by striking “an enterprise” each place  
6 that term appears and inserting “a regulated  
7 entity”; and

8                 (B) in subsection (a)(1), by striking “An  
9 enterprise” and inserting “A regulated entity”;  
10 and

11           (4) by striking sections 1369, 1369A, and  
12 1369B (12 U.S.C. 4619, 4620, and 4621).

## 13 **Subtitle D—Enforcement Actions**

### 14 **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

15           Section 1371 of the Federal Housing Enterprises Fi-  
16 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
17 4631) is amended—

18                 (1) by striking subsections (a) and (b) and in-  
19 serting the following:

20                 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**  
21 **TICES AND VIOLATIONS.**—If, in the opinion of the Direc-  
22 tor, a regulated entity, any enterprise-affiliated party, or  
23 the Federal Home Loan Bank Finance Corporation, is en-  
24 gaging or has engaged, or the Director has reasonable  
25 cause to believe that the regulated entity, any enterprise-

1 affiliated party, or the Federal Home Loan Bank Finance  
2 Corporation is about to engage, in an unsafe or unsound  
3 practice in conducting the business of the regulated entity,  
4 or is violating or has violated, or the Director has reason-  
5 able cause to believe that the regulated entity, any enter-  
6 prise-affiliated party, or the Federal Home Loan Bank Fi-  
7 nance Corporation is about to violate, a law, rule, or regu-  
8 lation, or any condition imposed in writing by the Director  
9 in connection with the granting of any application or other  
10 request by the regulated entity or any written agreement  
11 entered into with the Director, the Director may issue and  
12 serve upon the regulated entity, enterprise-affiliated party,  
13 or the Federal Home Loan Bank Finance Corporation a  
14 notice of charges in respect thereof.

15 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a  
16 regulated entity receives, in its most recent report of ex-  
17 amination, a less-than-satisfactory rating for credit risk,  
18 market risk, operations, or corporate governance, the Di-  
19 rector may (if the deficiency is not corrected) deem the  
20 regulated entity to be engaging in an unsafe or unsound  
21 practice for purposes of subsection (a).”;

22 (2) in subsection (c)(2), by striking “or direc-  
23 tor” and inserting “director, or enterprise-affiliated  
24 party”; and

25 (3) in subsections (c), (d), and (e)—

1 (A) by striking “the enterprise” each place  
2 that term appears and inserting “the regulated  
3 entity”; and

4 (B) by striking “an enterprise” each place  
5 that term appears and inserting “a regulated  
6 entity”.

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

8 Section 1372 of the Federal Housing Enterprises Fi-  
9 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
10 4632) is amended—

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

13 “(a) **GROUNDS FOR ISSUANCE.**—

14 “(1) **IN GENERAL.**—If the Director determines  
15 that the actions specified in the notice of charges  
16 served upon a regulated entity, any enterprise-affili-  
17 ated party, or the Federal Home Loan Bank Fi-  
18 nance Corporation, pursuant to section 1371(a), or  
19 the continuation thereof, is likely to cause insolvency  
20 or significant dissipation of assets or earnings of  
21 that entity, or is likely to weaken the condition of  
22 that entity prior to the completion of the pro-  
23 ceedings conducted pursuant to sections 1371 and  
24 1373, the Director may—

1           “(A) issue a temporary order requiring  
2           that entity to cease and desist from any such  
3           violation or practice; and

4           “(B) require that entity to take affirmative  
5           action to prevent or remedy such insolvency,  
6           dissipation, condition, or prejudice pending  
7           completion of such proceedings.

8           “(2) ADDITIONAL REQUIREMENTS.—An order  
9           issued under paragraph (1) may include any require-  
10          ment authorized under subsection 1371(d).”;

11          (2) in subsection (b)—

12                 (A) by striking “or director” and inserting  
13                 “director, or enterprise-affiliated party”; and

14                 (B) by striking “enterprise” and inserting  
15                 “regulated entity”;

16          (3) in subsection (c), by striking “enterprise”  
17          and inserting “regulated entity”;

18          (4) in subsection (d)—

19                 (A) by striking “or director” and inserting  
20                 “director, or enterprise-affiliated party”; and

21                 (B) by striking “An enterprise” and insert-  
22                 ing “A regulated entity”; and

23          (5) by striking subsection (e) and inserting the  
24          following:

1           “(e) ENFORCEMENT.—If a temporary cease-and-de-  
2 sist order is issued under subsection (a), the Director may  
3 apply to the United States District Court for the District  
4 of Columbia, or the United States district court within the  
5 jurisdiction of which the headquarters of the regulated en-  
6 tity is located, for an injunction to enforce such order,  
7 and, if the court determines that the notice of charges  
8 issued under section 1371(a) are accurate, it shall be the  
9 duty of the court to issue such injunction.”.

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

11           (a) IN GENERAL.—Subtitle C of the Federal Housing  
12 Enterprises Financial Safety and Soundness Act of 1992  
13 (12 U.S.C. 4631 et seq.) is amended—

14                   (1) by redesignating sections 1377 through  
15                   1379B (12 U.S.C. 4637–4641) as sections 1379  
16                   through 1379D, respectively; and

17                   (2) by inserting after section 1376 (12 U.S.C.  
18                   4636) the following:

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

20           “(a) AUTHORITY TO ISSUE ORDER.—

21                   “(1) IN GENERAL.—The Director may serve  
22                   upon a party described in paragraph (2), or any offi-  
23                   cer or director of the Federal Home Loan Bank Fi-  
24                   nance Corporation a written notice of the intention  
25                   of the Director to suspend or remove such party

1 from office, or prohibit any further participation by  
2 such party, in any manner, in the conduct of the af-  
3 fairs of the regulated entity.

4 “(2) APPLICABILITY.—A party described in this  
5 paragraph is an enterprise-affiliated party or any of-  
6 ficer or director of the Federal Home Loan Bank  
7 Finance Corporation, if the Director determines  
8 that—

9 “(A) that party, officer, or director has, di-  
10 rectly or indirectly—

11 “(i) violated—

12 “(I) any law or regulation;

13 “(II) any cease-and-desist order  
14 which has become final;

15 “(III) any condition imposed in  
16 writing by the Director in connection  
17 with the grant of any application or  
18 other request by such regulated enti-  
19 ty; or

20 “(IV) any written agreement be-  
21 tween such regulated entity and the  
22 Director;

23 “(ii) engaged or participated in any  
24 unsafe or unsound practice in connection  
25 with any regulated entity; or

1           “(iii) committed or engaged in any  
2           act, omission, or practice which constitutes  
3           a breach of such party’s fiduciary duty;

4           “(B) by reason of the violation, practice, or  
5           breach described in subparagraph (A)—

6           “(i) such regulated entity has suffered  
7           or will probably suffer financial loss or  
8           other damage; or

9           “(ii) such party has received financial  
10          gain or other benefit; and

11          “(C) the violation, practice, or breach de-  
12          scribed in subparagraph (A)—

13          “(i) involves personal dishonesty on  
14          the part of such party; or

15          “(ii) demonstrates willful or con-  
16          tinuing disregard by such party for the  
17          safety or soundness of such regulated enti-  
18          ty.

19          “(b) SUSPENSION ORDER.—

20                 “(1) SUSPENSION OR PROHIBITION AUTHOR-  
21                 ITY.—If the Director serves written notice under  
22                 subsection (a) upon a party subject to that sub-  
23                 section (a), the Director may, by order, suspend or  
24                 remove such party from office, or prohibit such  
25                 party from further participation in any manner in

1 the conduct of the affairs of the regulated entity, if  
2 the Director—

3 “(A) determines that such action is nec-  
4 essary for the protection of the regulated entity;  
5 and

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

8 “(2) EFFECTIVE PERIOD.—Any order issued  
9 under this subsection—

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

12 “(B) unless a court issues a stay of such  
13 order under subsection (g), shall remain in ef-  
14 fect and enforceable until—

15 “(i) the date on which the Director  
16 dismisses the charges contained in the no-  
17 tice served under subsection (a) with re-  
18 spect to such party; or

19 “(ii) the effective date of an order  
20 issued under subsection (b).

21 “(3) COPY OF ORDER.—If the Director issues  
22 an order under subsection (b) to any party, the Di-  
23 rector shall serve a copy of such order on any regu-  
24 lated entity with which such party is affiliated at the  
25 time such order is issued.

1 “(c) NOTICE, HEARING, AND ORDER.—

2 “(1) NOTICE.—A notice under subsection (a) of  
3 the intention of the Director to issue an order under  
4 this section shall contain a statement of the facts  
5 constituting grounds for such action, and shall fix a  
6 time and place at which a hearing will be held on  
7 such action.

8 “(2) TIMING OF HEARING.—A hearing shall be  
9 fixed for a date not earlier than 30 days, nor later  
10 than 60 days, after the date of service of notice  
11 under subsection (a), unless an earlier or a later  
12 date is set by the Director at the request of—

13 “(A) the party receiving such notice, and  
14 good cause is shown; or

15 “(B) the Attorney General of the United  
16 States.

17 “(3) CONSENT.—Unless the party that is the  
18 subject of a notice delivered under subsection (a) ap-  
19 pears at the hearing in person or by a duly author-  
20 ized representative, such party shall be deemed to  
21 have consented to the issuance of an order under  
22 this section.

23 “(4) ISSUANCE OF ORDER OF SUSPENSION.—  
24 The Director may issue an order under this section,  
25 as the Director may deem appropriate, if—

1           “(A) a party is deemed to have consented  
2           to the issuance of an order under paragraph  
3           (3); or

4           “(B) upon the record made at the hearing,  
5           the Director finds that any of the grounds spec-  
6           ified in the notice have been established.

7           “(5) EFFECTIVENESS OF ORDER.—Any order  
8           issued under paragraph (4) shall become effective at  
9           the expiration of 30 days after the date of service  
10          upon the relevant regulated entity and party (except  
11          in the case of an order issued upon consent under  
12          paragraph (3), which shall become effective at the  
13          time specified therein). Such order shall remain ef-  
14          fective and enforceable except to such extent as it is  
15          stayed, modified, terminated, or set aside by action  
16          of the Director or a reviewing court.

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

20                 “(1) participate in any manner in the conduct  
21                 of the affairs of any regulated entity or the Federal  
22                 Home Loan Bank Finance Corporation;

23                 “(2) solicit, procure, transfer, attempt to trans-  
24                 fer, vote, or attempt to vote any proxy, consent, or

1 authorization with respect to any voting rights in  
2 any regulated entity;

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

5 “(4) vote for a director, or serve or act as an  
6 enterprise-affiliated party of a regulated entity or as  
7 an officer or director of the Federal Home Loan  
8 Bank Finance Corporation.

9 “(e) INDUSTRY-WIDE PROHIBITION.—

10 “(1) IN GENERAL.—Except as provided in para-  
11 graph (2), any person who, pursuant to an order  
12 issued under this section, has been removed or sus-  
13 pended from office in a regulated entity or the Fed-  
14 eral Home Loan Bank Finance Corporation, or pro-  
15 hibited from participating in the conduct of the af-  
16 fairs of a regulated entity or such Corporation, may  
17 not, while such order is in effect, continue or com-  
18 mence to hold any office in, or participate in any  
19 manner in the conduct of the affairs of, any regu-  
20 lated entity or such Corporation.

21 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-  
22 TEN CONSENT.—If, on or after the date on which an  
23 order is issued under this section which removes or  
24 suspends from office any party, or prohibits such  
25 party from participating in the conduct of the affairs

1 of a regulated entity or the Federal Home Loan  
2 Bank Finance Corporation, such party receives the  
3 written consent of the Director, the order shall, to  
4 the extent of such consent, cease to apply to such  
5 party with respect to the regulated entity or such  
6 Corporation described in the written consent. Any  
7 such consent shall be publicly disclosed.

8 “(3) VIOLATION OF PARAGRAPH (1) TREATED  
9 AS VIOLATION OF ORDER.—Any violation of para-  
10 graph (1) by any person who is subject to an order  
11 issued under subsection (h) shall be treated as a vio-  
12 lation of the order.

13 “(f) APPLICABILITY.—This section shall only apply  
14 to a person who is an individual, unless the Director spe-  
15 cifically finds that it should apply to a corporation, firm,  
16 or other business entity.

17 “(g) STAY OF SUSPENSION AND PROHIBITION OF  
18 ENTERPRISE-AFFILIATED PARTY.—Not later than 10  
19 days after the date on which any enterprise-affiliated  
20 party has been suspended from office or prohibited from  
21 participation in the conduct of the affairs of a regulated  
22 entity under this section, such party may apply to the  
23 United States District Court for the District of Columbia,  
24 or the United States district court for the judicial district  
25 in which the headquarters of the regulated entity is lo-

1 cated, for a stay of such suspension or prohibition pending  
2 the completion of the administrative proceedings pursuant  
3 to subsection (c). The court shall have jurisdiction to stay  
4 such suspension or prohibition.

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

7 “(1) SUSPENSION OR PROHIBITION.—

8 “(A) IN GENERAL.—Whenever any enter-  
9 prise-affiliated party is charged in any informa-  
10 tion, indictment, or complaint, with the commis-  
11 sion of or participation in a crime involving dis-  
12 honesty or breach of trust which is punishable  
13 by imprisonment for a term exceeding 1 year  
14 under Federal or State law, the Director may,  
15 if continued service or participation by such  
16 party may pose a threat to the regulated entity  
17 or impair public confidence in the regulated en-  
18 tity, by written notice served upon such party,  
19 suspend such party from office or prohibit such  
20 party from further participation in any manner  
21 in the conduct of the affairs of any regulated  
22 entity.

23 “(B) PROVISIONS APPLICABLE TO NO-  
24 TICE.—

1           “(i) COPY.—A copy of any notice  
2           under subparagraph (A) shall be served  
3           upon the relevant regulated entity.

4           “(ii) EFFECTIVE PERIOD.—A suspen-  
5           sion or prohibition under subparagraph (A)  
6           shall remain in effect until the informa-  
7           tion, indictment, or complaint referred to  
8           in subparagraph (A) is finally disposed of,  
9           or until terminated by the Director.

10          “(2) REMOVAL OR PROHIBITION.—

11           “(A) IN GENERAL.—If a judgment of con-  
12          viction or an agreement to enter a pretrial di-  
13          version or other similar program is entered  
14          against an enterprise-affiliated party in connec-  
15          tion with a crime described in paragraph  
16          (1)(A), at such time as such judgment is not  
17          subject to further appellate review, the Director  
18          may, if continued service or participation by  
19          such party may pose a threat to the regulated  
20          entity or impair public confidence in the regu-  
21          lated entity, issue and serve upon such party an  
22          order removing such party from office or pro-  
23          hibiting such party from further participation  
24          in any manner in the conduct of the affairs of

1 the regulated entity without the prior written  
2 consent of the Director.

3 “(B) PROVISIONS APPLICABLE TO  
4 ORDER.—

5 “(i) COPY.—A copy of any order  
6 under subparagraph (A) shall be served  
7 upon the relevant regulated entity, at  
8 which time the enterprise-affiliated party  
9 who is subject to the order (if a director or  
10 an officer) shall cease to be a director or  
11 officer of such regulated entity.

12 “(ii) EFFECT OF ACQUITTAL.—A find-  
13 ing of not guilty or other disposition of the  
14 charge shall not preclude the Director from  
15 instituting proceedings after such finding  
16 or disposition to remove a party from of-  
17 fice or to prohibit further participation in  
18 the affairs of a regulated entity pursuant  
19 to subsection (a), (d), or (e).

20 “(iii) EFFECTIVE PERIOD.—Unless  
21 terminated by the Director, any notice of  
22 suspension or order of removal issued  
23 under this subsection shall remain effective  
24 and outstanding until the completion of

1           any hearing or appeal authorized under  
2           paragraph (4).

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

5           “(A) IN GENERAL.—If at any time, be-  
6           cause of the suspension of 1 or more directors  
7           pursuant to this section, there shall be on the  
8           board of directors of a regulated entity less  
9           than a quorum of directors not so suspended,  
10          all powers and functions vested in or exercisable  
11          by such board shall vest in and be exercisable  
12          by the director or directors on the board not so  
13          suspended, until such time as there shall be a  
14          quorum of the board of directors.

15          “(B) APPOINTMENT OF TEMPORARY DI-  
16          RECTORS.—If all of the directors of a regulated  
17          entity are suspended pursuant to this section,  
18          the Director shall appoint persons to serve tem-  
19          porarily as directors pending the termination of  
20          such suspensions, or until such time as those  
21          who have been suspended cease to be directors  
22          of the regulated entity and their respective suc-  
23          cessors take office.

24          “(4) HEARING REGARDING CONTINUED PAR-  
25          TICIPATION.—

1           “(A) IN GENERAL.—Not later than 30  
2 days after the date of service of any notice of  
3 suspension or order of removal issued pursuant  
4 to paragraph (1) or (2), the enterprise-affiliated  
5 party may request in writing an opportunity to  
6 appear before the Director to show that the  
7 continued service or participation in the con-  
8 duct of the affairs of the regulated entity by  
9 such party does not, or is not likely to, pose a  
10 threat to the interests of the regulated entity,  
11 or threaten to impair public confidence in the  
12 regulated entity.

13           “(B) TIMING AND FORM OF HEARING.—  
14 Upon receipt of a request for a hearing under  
15 subparagraph (A), the Director shall fix a time  
16 (not later than 30 days after the date of receipt  
17 of such request, unless extended at the request  
18 of such party) and place at which the enter-  
19 prise-affiliated party may appear, personally or  
20 through counsel, before the Director or 1 or  
21 more designated employees of the Director to  
22 submit written materials (or, at the discretion  
23 of the Director, oral testimony) and oral argu-  
24 ment.

1           “(C) DETERMINATION.—Not later than 60  
2           days after the date of a hearing under subpara-  
3           graph (B), the Director shall notify the enter-  
4           prise-affiliated party whether the suspension or  
5           prohibition from participation in any manner in  
6           the conduct of the affairs of the regulated enti-  
7           ty will be continued, terminated, or otherwise  
8           modified, or whether the order removing such  
9           party from office or prohibiting such party from  
10          further participation in any manner in the con-  
11          duct of the affairs of the regulated entity will  
12          be rescinded or otherwise modified. Such notifi-  
13          cation shall contain a statement of the basis for  
14          any adverse decision of the Director.

15          “(5) RULES.—The Director is authorized to  
16          prescribe such rules as may be necessary to carry  
17          out this subsection.

18          “(i) HEARINGS AND JUDICIAL REVIEW.—

19                 “(1) VENUE AND PROCEDURE.—

20                         “(A) IN GENERAL.—Any hearing under  
21                         this section shall be held in the District of Co-  
22                         lumbia or in the Federal judicial district in  
23                         which the headquarters of the regulated entity  
24                         is located, unless the party afforded the hearing  
25                         consents to another place, and shall be con-

1 ducted in accordance with the provisions of  
2 chapter 5 of title 5, United States Code.

3 “(B) DECISION.—After any hearing under  
4 this section, and not later than 90 days after  
5 the Director has notified the parties that the  
6 case has been submitted to it for final decision,  
7 the Director shall render its decision (which  
8 shall include findings of fact upon which the de-  
9 cision of the Director is predicated) and issue  
10 and serve upon each party to the proceeding an  
11 order or orders consistent with the provisions of  
12 this section.

13 “(C) JUDICIAL REVIEW.—Judicial review  
14 of any order issued under subparagraph (B)  
15 shall be exclusively as provided in this sub-  
16 section.

17 “(D) MODIFICATION OF ORDER.—

18 “(i) IN GENERAL.—Unless a petition  
19 for review is timely filed in a court of ap-  
20 peals of the United States, as provided in  
21 paragraph (2), and thereafter until the  
22 record in the proceeding has been filed  
23 with the court, the Director may at any  
24 time, upon such notice and in such manner

1 as it shall deem proper, modify, terminate,  
2 or set aside any such order.

3 “(ii) LIMITATION.—Upon the filing of  
4 the record, the Director may modify, ter-  
5 minate, or set aside any order under this  
6 subsection only with permission of the  
7 court.

8 “(2) REVIEW OF ORDER.—

9 “(A) IN GENERAL.—Any party to any pro-  
10 ceeding under paragraph (1) may obtain a re-  
11 view of any order served pursuant to paragraph  
12 (1) (other than an order issued with the con-  
13 sent of the regulated entity or the enterprise-af-  
14 filiated party, or an order issued under sub-  
15 section (h)) by the filing in the United States  
16 Court of Appeals for the District of Columbia  
17 Circuit, or the Court of Appeals of the United  
18 States for the circuit in which the headquarters  
19 of the relevant regulated entity is located, with-  
20 in 30 days after the date of service of such  
21 order, a written petition praying that the order  
22 of the Director be modified, terminated, or set  
23 aside.

24 “(B) FORWARDING OF PETITION; FILING  
25 OF RECORD.—A copy of any petition filed under

1           subparagraph (A) shall be transmitted by the  
2           clerk of the court to the Director, and the Di-  
3           rector shall file in the court the record in the  
4           proceeding, as provided in section 2112 of title  
5           28, United States Code.

6           “(C) JURISDICTION.—Upon the filing of a  
7           petition under subparagraph (B), the court  
8           shall have jurisdiction, which upon the filing of  
9           the record shall (except as provided under para-  
10          graph (1)(D)(ii)) be exclusive, to affirm, mod-  
11          ify, terminate, or set aside, in whole or in part,  
12          the order of the Director.

13          “(D) FINALITY OF DECREE.—The judg-  
14          ment and decree of the court under this para-  
15          graph shall be final, except that it shall be sub-  
16          ject to review by the Supreme Court of the  
17          United States, upon certiorari, as provided in  
18          section 1254 of title 28, United States Code.

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

24          (b) CONFORMING AMENDMENTS.—

1           (1) 1992 ACT.—Section 1317(f) of the Federal  
2     Housing Enterprises Financial Safety and Sound-  
3     ness Act of 1992 (12 U.S.C. 4517(f)) is amended by  
4     striking “section 1379B” and inserting “section  
5     1379D”.

6           (2) FANNIE MAE CHARTER ACT.—Section  
7     308(b) of the Federal National Mortgage Associa-  
8     tion Charter Act (12 U.S.C. 1723(b)) is amended in  
9     the second sentence, by striking “The” and inserting  
10    “Except to the extent that action under section  
11    1377 of the Federal Housing Enterprises Financial  
12    Safety and Soundness Act of 1992 temporarily re-  
13    sults in a lesser number, the”.

14          (3) FREDDIE MAC CHARTER ACT.—Section  
15    303(a)(2)(A) of the Federal Home Loan Mortgage  
16    Corporation Act (12 U.S.C. 1452(a)(2)(A)) is  
17    amended, in the second sentence, by striking “The”  
18    and inserting “Except to the extent action under  
19    section 1377 of the Federal Housing Enterprises Fi-  
20    nancial Safety and Soundness Act of 1992 tempo-  
21    rarily results in a lesser number, the”.

22 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

23        Section 1375 of the Federal Housing Enterprises Fi-  
24    nancial Safety and Soundness Act of 1992 (12 U.S.C.  
25    4635) is amended—

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

3           “(a) ENFORCEMENT.—The Director may, in the dis-  
4 cretion of the Director, apply to the United States District  
5 Court for the District of Columbia, or the United States  
6 district court within the jurisdiction of which the head-  
7 quarters of the regulated entity is located, for the enforce-  
8 ment of any effective and outstanding notice or order  
9 issued under this subtitle or subtitle B, or request that  
10 the Attorney General of the United States bring such an  
11 action. Such court shall have jurisdiction and power to  
12 order and require compliance with such notice or order.”;  
13 and

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

16 **SEC. 155. CIVIL MONEY PENALTIES.**

17           Section 1376 of the Federal Housing Enterprises Fi-  
18 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
19 4636) is amended—

20           (1) in subsection (a), in the matter preceding  
21 paragraph (1), by striking “Any enterprise, or any  
22 executive officer or director of any enterprise” and  
23 inserting “Any regulated entity, or any executive of-  
24 ficer of a regulated entity or any enterprise-affiliated  
25 party,”; and

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

3           “(b) AMOUNT OF PENALTY.—

4           “(1) FIRST TIER.—A regulated entity or enter-  
5 prise-affiliated party shall forfeit and pay a civil pen-  
6 alty of not more than \$10,000 for each day during  
7 which a violation continues, if such regulated entity  
8 or party—

9           “(A) violates any provision of this title, the  
10 authorizing statutes, or any order, condition,  
11 rule, or regulation under this title or any au-  
12 thorizing statute;

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

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

19           “(D) violates any written agreement be-  
20 tween the regulated entity and the Director; or

21           “(E) engages in any conduct that the Di-  
22 rector determines to be an unsafe or unsound  
23 practice.

24           “(2) SECOND TIER.—Notwithstanding para-  
25 graph (1), a regulated entity or enterprise-affiliated

1 party shall forfeit and pay a civil penalty of not  
2 more than \$50,000 for each day during which a vio-  
3 lation, practice, or breach continues, if—

4 “(A) the regulated entity or enterprise-af-  
5 filiated party, respectively—

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

8 “(ii) recklessly engages in an unsafe  
9 or unsound practice in conducting the af-  
10 fairs of the regulated entity; or

11 “(iii) breaches any fiduciary duty; and

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

13 “(i) is part of a pattern of mis-  
14 conduct;

15 “(ii) causes or is likely to cause more  
16 than a minimal loss to the regulated entity;  
17 or

18 “(iii) results in pecuniary gain or  
19 other benefit to such party.

20 “(3) THIRD TIER.—Notwithstanding para-  
21 graphs (1) and (2), any regulated entity or enter-  
22 prise-affiliated party shall forfeit and pay a civil pen-  
23 alty in an amount not to exceed the applicable max-  
24 imum amount determined under paragraph (4) for  
25 each day during which such violation, practice, or

1 breach continues, if such regulated entity or enter-  
2 prise-affiliated party—

3 “(A) knowingly—

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

6 “(ii) engages in any unsafe or un-  
7 sound practice in conducting the affairs of  
8 the regulated entity; or

9 “(iii) breaches any fiduciary duty; and

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

15 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
16 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
17 The maximum daily amount of any civil penalty  
18 which may be assessed pursuant to paragraph (3)  
19 for any violation, practice, or breach described in  
20 paragraph (3) is—

21 “(A) in the case of any enterprise-affiliated  
22 party, an amount not to exceed \$2,000,000;  
23 and

24 “(B) in the case of any regulated entity,  
25 \$2,000,000.”;

1           (3) in subsection (c), by striking “enterprise”  
2           each place that term appears and inserting “regu-  
3           lated entity”;

4           (4) in subsection (d)—

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

8                 (B) by striking “an enterprise” and insert-  
9                 ing “a regulated entity”;

10                (C) by striking “the enterprise” and in-  
11                serting “the regulated entity”;

12                (D) by striking “request the Attorney Gen-  
13                eral of the United States to”;

14                (E) by inserting “, or the United States  
15                district court within the jurisdiction of which  
16                the headquarters of the regulated entity is lo-  
17                cated,” after “District of Columbia”; and

18                (F) by striking “, or may, under the direc-  
19                tion and control of the Attorney General of the  
20                United States, bring such an action”; and

21           (5) in subsection (g), by striking “An enter-  
22           prise” and inserting “A regulated entity”.

23 **SEC. 156. CRIMINAL PENALTY.**

24           (a) IN GENERAL.—Subtitle C of title XIII of the  
25           Federal Housing Enterprises Financial Safety and Sound-

1 ness Act of 1992 (12 U.S.C. 4631 et seq.), as amended  
2 by this Act, is amended by adding at the end the following:

3 **“SEC. 1378. CRIMINAL PENALTY.**

4 “Whoever, being subject to an order in effect under  
5 section 1377, without the prior written approval of the Di-  
6 rector, knowingly participates, directly or indirectly, in any  
7 manner (including by engaging in an activity specifically  
8 prohibited in such an order) in the conduct of the affairs  
9 of any regulated entity shall, notwithstanding section  
10 3571 of title 18, be fined not more than \$1,000,000, im-  
11 prisoned for not more than 5 years, or both.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
13 The Federal Housing Enterprises Financial Safety and  
14 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
15 amended—

16 (1) in section 1379 (as so designated by this  
17 Act)—

18 (A) by striking “an enterprise” and insert-  
19 ing “a regulated entity”; and

20 (B) by striking “the enterprise” and in-  
21 serting “the regulated entity”;

22 (2) in section 1379A (as so designated by this  
23 Act), by striking “an enterprise” and inserting “a  
24 regulated entity”;

1 (3) in section 1379B(c) (as so designated by  
2 this Act), by striking “enterprise” and inserting  
3 “regulated entity”; and

4 (4) in section 1379D (as so designated by this  
5 Act), by striking “enterprise” and inserting “regu-  
6 lated entity”.

7 **Subtitle E—Other Reporting**  
8 **Regarding Regulated Entities**

9 **SEC. 161. REPORTING REGARDING REGULATED ENTITIES.**

10 Part 3 of subtitle A of the Federal Housing Enter-  
11 prises Financial Safety and Soundness Act of 1992 is  
12 amended—

13 (1) by striking sections 1351, 1352, and 1353  
14 (Public Law 102–550; 106 Stat. 3969), except that  
15 no provisions of law amended by any such section  
16 repealed shall be affected by such repeal; and

17 (2) by striking sections 1354, 1355, and 1356  
18 (12 U.S.C. 4601–3) and inserting the following:

19 **“SEC. 1351. REPORTS REGARDING ISSUES AND ACTIVITIES**  
20 **OF REGULATED ENTITIES.**

21 “(a) INSURED DEPOSITORY INSTITUTION HOLDINGS  
22 OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURI-  
23 TIES.—Not later than 2 years after the date of enactment  
24 of the Federal Housing Enterprise Regulatory Reform Act  
25 of 2004, the Director, the Secretary of the Treasury, the

1 Board of Governors of the Federal Reserve System, the  
2 Board of Directors of the Federal Deposit Insurance Cor-  
3 poration, and the National Credit Union Administration  
4 Board shall jointly submit a report to the Congress  
5 regarding—

6           “(1) the extent to which obligations issued or  
7           guaranteed by the regulated entities (including mort-  
8           gage-backed securities) are held by federally insured  
9           depository institutions, including such extent by type  
10          of institution and such extent relative to the capital  
11          of the institution;

12          “(2) the extent to which the unlimited holdings  
13          by federally insured depository institutions of the ob-  
14          ligations of the enterprises could produce systemic  
15          risk issues, particularly for the safety and soundness  
16          of the banking system in the United States, in the  
17          event of default or failure by a regulated entity; and

18          “(3) the effects on the enterprises, the banking  
19          industry, and mortgage markets, if prudent limits on  
20          the holdings of the obligations of a regulated entity  
21          were placed on federally insured depository institu-  
22          tions.

23          “(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT,  
24          AND MISSION.—

1           “(1) IN GENERAL.—Not later than 2 years  
2 after the date of enactment of the Federal Housing  
3 Enterprise Regulatory Reform Act of 2004, the Di-  
4 rector shall submit a report to the Congress—

5                   “(A) describing the holdings of the regu-  
6 lated entities in retained mortgages and repur-  
7 chased mortgage-backed securities and the use  
8 of derivatives for hedging purposes;

9                   “(B) describing the extent of such holdings  
10 relative to other assets and the risk implications  
11 of such holdings;

12                   “(C) containing an analysis of such hold-  
13 ings for safety and soundness or mission com-  
14 pliance purposes; and

15                   “(D) containing an assessment of whether  
16 such holdings and other assets of the regulated  
17 entities fulfill the mission purposes of the regu-  
18 lated entities under the Federal National Mort-  
19 gage Association Charter Act, the Federal  
20 Home Loan Mortgage Corporation Act, and the  
21 Federal Home Loan Bank Act.

22           “(2) CONSULTATION.—The Director shall con-  
23 sult with the Comptroller General of the United  
24 States in preparing the report under this subsection

1 and in conducting any research, analyses, and as-  
2 sessments for the report.

3 “(c) DEBT ISSUANCES.—Not later than 2 years after  
4 the date of enactment of the Federal Housing Enterprise  
5 Regulatory Reform Act of 2004, the Director shall submit  
6 a report to the Congress regarding—

7 “(1) the extent of outstanding obligations of the  
8 regulated entities and the rate of growth of such ob-  
9 ligations; and

10 “(2) an analysis of whether debt issuances  
11 should be limited or reduced if a regulated entity is  
12 not operating in a safe and sound manner or not  
13 complying with its mission, or if a regulated entity  
14 fails to maintain a certain credit rating or debt rat-  
15 ing.

16 “(d) RISK-BASED CAPITAL LEVELS.—

17 “(1) IN GENERAL.—The Director shall submit  
18 a report to the Congress, at the end of each fiscal  
19 quarter, regarding—

20 “(A) the risk-based capital levels for the  
21 enterprises under section 1361, including a de-  
22 scription of the risk-based capital test under  
23 that section and any assumptions of the Direc-  
24 tor and factors used by the Director in estab-  
25 lishing the test; and

1           “(B) the minimum and critical capital lev-  
2           els for the enterprises pursuant to sections  
3           1362 and 1363, respectively.

4           “(2) TIMING.—Each report under this sub-  
5           section shall be submitted not later than 60 days  
6           after the end of each fiscal quarter.

7           “(e) RESOURCES AND ALLOCATIONS.—The Comp-  
8           troller General of the United States shall submit a report  
9           to Congress annually, on a fiscal year basis, regarding—

10           “(1) the allocation of resources of the Agency  
11           by the Director; and

12           “(2) the level of assessments collected by the  
13           Director for the operation of the Agency.

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

## 19           **Subtitle F—General Provisions**

### 20           **SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.**

21           (a) AMENDMENTS TO 1992 ACT.—The Federal  
22           Housing Enterprises Financial Safety and Soundness Act  
23           of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,  
24           is amended—

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

1 (A) in subsection (a)—

2 (i) by striking “(a) OFFICE PER-  
3 SONNEL.—The” and inserting “(a) IN  
4 GENERAL.—Subject to title III of the Fed-  
5 eral Enterprise Regulatory Reform Act of  
6 2004, the”; and

7 (ii) by striking “the Office” each place  
8 that term appears and inserting “the  
9 Agency”;

10 (B) in subsection (c), by striking “the Of-  
11 fice” and inserting “the Agency”;

12 (C) in subsection (e), by striking “the Of-  
13 fice” and inserting “the Agency”;

14 (D) by striking subsection (d) and redesign-  
15 ating subsection (e) as subsection (d); and

16 (E) by striking subsection (f);

17 (2) in section 1319A (12 U.S.C. 4520)—

18 (A) by striking “(a) IN GENERAL.—”; and

19 (B) by striking subsection (b);

20 (3) in section 1364(e) (12 U.S.C. 4614(e)), by  
21 striking the last sentence;

22 (4) by striking section 1383 (12 U.S.C. 1451  
23 note);

24 (5) in each of sections 1319D, 1319E, and  
25 1319F (12 U.S.C. 4523, 4524, 4525) by striking

1 “the Office” each place that term appears and in-  
2 serting “the Agency”; and

3 (6) in each of sections 1319B and 1369(a)(3)  
4 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-  
5 mittee on Banking, Finance and Urban Affairs”  
6 each place such term appears and inserting “Com-  
7 mittee on Financial Services”.

8 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—

9 The Federal National Mortgage Association Charter Act  
10 (12 U.S.C. 1716 et seq.) is amended—

11 (1) in each of sections 303(c)(2) (12 U.S.C.  
12 1718(c)(2)), 309(d)(3)(B) (12 U.S.C.  
13 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.  
14 1723a(k)(1)), by striking “Director of the Office of  
15 Federal Housing Enterprise Oversight of the De-  
16 partment of Housing and Urban Development” each  
17 place that term appears, and inserting “Director of  
18 the Federal Housing Enterprise Supervisory Agen-  
19 cy”;

20 (2) in section 309—

21 (A) in subsection (m) (12 U.S.C.  
22 1723a(m))—

23 (i) in paragraph (1), by striking “to  
24 the Secretary, in a form determined by the  
25 Secretary” and inserting “to the Director

1 of the Federal Housing Enterprise Super-  
2 visory Agency, in a form determined by the  
3 Director”; and

4 (ii) in paragraph (2), by striking “to  
5 the Secretary, in a form determined by the  
6 Secretary” and inserting “to the Director  
7 of the Federal Housing Enterprise Super-  
8 visory Agency, in a form determined by the  
9 Director”;

10 (B) in subsection (n) (12 U.S.C.  
11 1723a(n))—

12 (i) in paragraph (1), by striking “and  
13 the Secretary” and inserting “and the Di-  
14 rector of the Federal Housing Enterprise  
15 Supervisory Agency”; and

16 (ii) in paragraph (2), by striking  
17 “Secretary” each place that term appears  
18 and inserting “Director of the Federal  
19 Housing Enterprise Supervisory Agency”;  
20 and

21 (C) in paragraph (3)(B), by striking “Sec-  
22 retary” and inserting “Director of the Federal  
23 Housing Enterprise Supervisory Agency”.

1 (c) AMENDMENTS TO FREDDIE MAC ACT.—The Fed-  
2 eral Home Loan Mortgage Corporation Act (12 U.S.C.  
3 1451 et seq.) is amended—

4 (1) in each of sections 303(b)(2) (12 U.S.C.  
5 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and  
6 section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-  
7 ing “Director of the Office of Federal Housing En-  
8 terprise Oversight of the Department of Housing  
9 and Urban Development” each place that term ap-  
10 pears, and inserting “Director of the Federal Hous-  
11 ing Enterprise Supervisory Agency”;

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

13 (A) in subsection (c)(2), by inserting “the”  
14 after “Secretary of”;

15 (B) in subsection (i)—

16 (i) by striking “section 1316(c)” and  
17 inserting “section 306(c)”; and

18 (ii) by striking “section 106” and in-  
19 serting “section 1316”; and

20 (C) in subsection (j), by striking “of sub-  
21 stantially” and inserting “or substantially”; and

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

23 (A) in subsection (e)—

24 (i) in paragraph (1), by striking “to  
25 the Secretary, in a form determined by the

1 Secretary” and inserting “to the Director  
2 of the Federal Housing Enterprise Super-  
3 visory Agency, in a form determined by the  
4 Director”; and

5 (ii) in paragraph (2), by striking “to  
6 the Secretary, in a form determined by the  
7 Secretary” and inserting “to the Director  
8 of the Federal Housing Enterprise Super-  
9 visory Agency, in a form determined by the  
10 Director”; and

11 (B) in subsection (f)—

12 (i) in paragraph (1), by striking “and  
13 the Secretary” and inserting “and the Di-  
14 rector of the Federal Housing Enterprise  
15 Supervisory Agency”;

16 (ii) in paragraph (2), by striking “the  
17 Secretary” each place that term appears  
18 and inserting “the Director of the Federal  
19 Housing Enterprise Supervisory Agency”;  
20 and

21 (iii) in paragraph (3)(B), by striking  
22 “Secretary” and inserting “Director of the  
23 Federal Housing Enterprise Supervisory  
24 Agency”.

1 (d) AMENDMENT TO TITLE 18, UNITED STATES  
2 CODE.—Section 1905 of title 18, United States Code, is  
3 amended by striking “Office of Federal Housing Enter-  
4 prise Oversight” and inserting “Federal Housing Enter-  
5 prise Supervisory Agency”.

6 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION  
7 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
8 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
9 is amended by striking “Director of the Office of Federal  
10 Housing Enterprise Oversight of the Department of Hous-  
11 ing and Urban Development” and inserting “Director of  
12 the Federal Housing Enterprise Supervisory Agency”.

13 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND  
14 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
15 ment of Housing and Urban Development Act (42 U.S.C.  
16 3534) is amended by striking subsection (d).

17 (g) AMENDMENT TO TITLE 5, UNITED STATES  
18 CODE.—Section 5313 of title 5, United States Code, is  
19 amended by striking the item relating to the Director of  
20 the Office of Federal Housing Enterprise Oversight, De-  
21 partment of Housing and Urban Development and insert-  
22 ing the following new item:

23 “Director of the Federal Housing Enterprise  
24 Supervisory Agency.”.

1 **SEC. 172. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-**  
2 **TERPRISES.**

3 (a) FANNIE MAE.—

4 (1) IN GENERAL.—Section 308(b) of the Fed-  
5 eral National Mortgage Association Charter Act (12  
6 U.S.C. 1723(b)) is amended—

7 (A) in the first sentence, by striking  
8 “eighteen persons, five of whom shall be ap-  
9 pointed annually by the President of the United  
10 States, and the remainder of whom” and insert-  
11 ing “13 persons, or such other number that the  
12 Director determines appropriate, who”;

13 (B) in the second sentence, by striking  
14 “appointed by the President”;

15 (C) in the third sentence—

16 (i) by striking “appointed or”; and

17 (ii) by striking “, except that any  
18 such appointed member may be removed  
19 from office by the President for good  
20 cause”;

21 (D) in the fourth sentence, by striking  
22 “elective”; and

23 (E) by striking the fifth sentence.

24 (2) TRANSITIONAL PROVISION.—The amend-  
25 ments made by paragraph (1) shall not apply to any  
26 appointed position of the board of directors of the

1 Federal National Mortgage Association until the ex-  
2 piration of the annual term for such position during  
3 which the effective date under section 173 occurs.

4 (b) FREDDIE MAC.—

5 (1) IN GENERAL.—Section 303(a)(2) of the  
6 Federal Home Loan Mortgage Corporation Act (12  
7 U.S.C. 1452(a)(2)) is amended—

8 (A) in subparagraph (A)—

9 (i) in the first sentence, by striking  
10 “13 persons, 5 of whom shall be appointed  
11 annually by the President of the United  
12 States and the remainder of whom” and  
13 inserting “13 persons, or such other num-  
14 ber as the Director determines appropriate,  
15 who”; and

16 (ii) in the second sentence, by striking  
17 “appointed by the President of the United  
18 States”;

19 (B) in subparagraph (B)—

20 (i) by striking “such or”; and

21 (ii) by striking “, except that any ap-  
22 pointed member may be removed from of-  
23 fice by the President for good cause”; and

24 (C) in subparagraph (C)—

25 (i) by striking the first sentence; and

1 (ii) by striking “elective”.

2 (2) TRANSITIONAL PROVISION.—The amend-  
3 ments made by paragraph (1) shall not apply to any  
4 appointed position of the board of directors of the  
5 Federal Home Loan Mortgage Corporation until the  
6 expiration of the annual term for such position dur-  
7 ing which the effective date under section 173 oc-  
8 curs.

9 **SEC. 173. EFFECTIVE DATE.**

10 Except as specifically provided otherwise in this title,  
11 the amendments made by this title shall take effect on,  
12 and shall apply beginning on, the expiration of the 1-year  
13 period beginning on the date of enactment of this Act.

14 **TITLE II—FEDERAL HOME LOAN**  
15 **BANKS**

16 **SEC. 201. DIRECTORS.**

17 Section 7 of the Federal Home Loan Bank Act (12  
18 U.S.C. 1427) is amended—

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

21 “(a) NUMBER; APPOINTMENT AND ELECTION;  
22 QUALIFICATIONS; CONFLICTS OF INTEREST.—

23 “(1) IN GENERAL.—Subject to paragraph (2),  
24 and except to the extent that action under section  
25 1377 of the Federal Housing Enterprises Financial

1 Safety and Soundness Act of 1992 results in a lesser  
2 number, the management of each Federal Home  
3 Loan Bank shall be vested in a board of 13 direc-  
4 tors, or such other number as the Director deter-  
5 mines appropriate, each of whom—

6 “(A) shall be elected by the members; and

7 “(B) shall be either a bona fide resident of  
8 the district in which such bank is located or an  
9 officer or director of a member of such bank lo-  
10 cated in that district.

11 “(2) PUBLIC INTEREST.—At least 2 directors  
12 elected under paragraph (1) shall be representatives  
13 chosen from organizations with more than a 2-year  
14 history of representing consumer or community in-  
15 terests on banking services, credit needs, housing, or  
16 financial consumer protections.”;

17 (2) by striking “elective” each place that term  
18 appears;

19 (3) in subsection (d)—

20 (A) in the first sentence by striking “,  
21 whether elected or appointed,”; and

22 (B) in the second sentence by striking “or  
23 appointed”; and

24 (4) in subsection (f), by striking “appointed or”  
25 each place that term appears.

1 **SEC. 202. DEFINITIONS.**

2 Section 2 of the Federal Home Loan Bank Act (12  
3 U.S.C. 1422) is amended—

4 (1) by striking paragraph (1);

5 (2) by redesignating paragraphs (2) through  
6 (13) as paragraphs (1) through (12), respectively;

7 and

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

9 “(13) DIRECTOR.—The term ‘Director’ means  
10 the Director of the Federal Housing Enterprise Su-  
11 pervisory Agency.

12 “(14) AGENCY.—The term ‘Agency’ means the  
13 Federal Housing Enterprises Supervisory Agency.”.

14 **SEC. 203. FEDERAL HOUSING ENTERPRISE SUPERVISORY**  
15 **AGENCY OVERSIGHT OF FEDERAL HOME**  
16 **LOAN BANKS.**

17 The Federal Home Loan Bank Act (12 U.S.C. 1421  
18 et seq.), other than in provisions of that Act added or  
19 amended otherwise by this Act, is amended—

20 (1) by striking sections 2A, 2B, and 20 (12  
21 U.S.C. 1422a, 1422b, 1440);

22 (2) in section 18 (12 U.S.C. 1438), by striking  
23 subsection (b);

24 (3) by striking “the Board” each place that  
25 term appears, except in sections 15 and 25, and sub-

1 sections (a), (b), and (c) of section 11, and inserting  
2 “the Director”;

3 (4) by striking “The Board” each place that  
4 term appears and inserting “The Director”;

5 (5) by striking “the Finance Board” each place  
6 that term appears and inserting “the Director”;

7 (6) by striking “The Finance Board” each  
8 place that term appears and inserting “The Direc-  
9 tor”;

10 (7) in section 6 (12 U.S.C. 1426(b)(1))—

11 (A) in subsection (b)(1), in the matter pre-  
12 ceding subparagraph (A), by striking “Finance  
13 Board approval” and inserting “approval by the  
14 Director”; and

15 (B) in each of subsections (c)(4)(B) and  
16 (d)(2), by striking “Finance Board regulations”  
17 each place that term appears and inserting  
18 “regulations of the Director”;

19 (8) by striking “Federal Housing Finance  
20 Board” each place that term appears and inserting  
21 “Director”;

22 (9) by striking “Federal Home Loan Bank  
23 Board” each place that term appears and inserting  
24 “Director”;

25 (10) in section 10 (12 U.S.C. 1430)—

1 (A) in the heading for subsection (b), by  
2 striking “FORMAL BOARD RESOLUTION” and  
3 inserting “APPROVAL OF DIRECTOR”; and

4 (B) in subsection (b), by striking “by for-  
5 mal resolution”; and

6 (11) in section 21(b)(5) (12 U.S.C. 1441(b)(5),  
7 by striking “Chairperson of the Federal Housing Fi-  
8 nance Board” and inserting “Director”.

9 **SEC. 204. DEBT ISSUING FACILITY.**

10 The Federal Home Loan Bank Act (12 U.S.C. 1421  
11 et seq.) is amended by inserting after section 11 the fol-  
12 lowing:

13 **“SEC. 11A. FEDERAL HOME LOAN BANK FINANCE COR-  
14 PORATION.**

15 “(a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—There is hereby established  
17 the Federal Home Loan Bank Finance Corporation,  
18 which shall be a jointly owned subsidiary of the Fed-  
19 eral Home Loan Banks (in this section referred to  
20 as the ‘Corporation’).

21 “(2) PURPOSES.—The purpose of the Corpora-  
22 tion shall be—

23 “(A) to issue and service the consolidated  
24 obligations of the Federal Home Loan Banks in  
25 accordance with this Act; and

1           “(B) to perform all other necessary and  
2 proper functions in relation to the issuance and  
3 service of such obligations, as fiscal agent on  
4 behalf of the Federal Home Loan Banks, and  
5 any other functions performed by the Office of  
6 Finance on behalf of the Financing Corporation  
7 (established under section 21) and the Resolu-  
8 tion Funding Corporation (established under  
9 section 21B).

10           “(3) TRANSFER OF FUNCTIONS.—

11           “(A) IN GENERAL.—The functions of the  
12 Office of Finance of the Federal Home Loan  
13 Banks, shall be transferred to the Corporation  
14 immediately upon the conclusion of the organi-  
15 zational meeting of the board of directors (re-  
16 ferred to in this subsection as the ‘effective  
17 time’) established under subsection (c).

18           “(B) ORGANIZATIONAL MEETING.—The  
19 organizational meeting of the board of directors  
20 of the Corporation shall occur as soon as prac-  
21 ticable after the date of enactment of the Fed-  
22 eral Enterprise Regulatory Reform Act of 2004.

23           “(C) INTERIM PROCEDURES.—Until the ef-  
24 fective time under subparagraph (A), the Office  
25 of Finance established as a joint office of the

1 Federal Home Loan Banks (referred to in this  
2 subsection as the ‘predecessor office’) shall con-  
3 tinue to operate as if this section had not been  
4 enacted.

5 “(D) REFERENCES.—After the effective  
6 time under subparagraph (A), any reference  
7 under any Federal law to the Office of Finance  
8 and the Managing Director of the Office of Fi-  
9 nance shall be deemed to be references to the  
10 Corporation and the chief executive officer of  
11 the Corporation, respectively.

12 “(4) SUCCESSION.—

13 “(i) ASSETS AND LIABILITIES.—At  
14 the effective time, the Corporation shall, by  
15 operation of law and without any further  
16 action by the Federal Housing Finance  
17 Board, the predecessor office, or any court,  
18 succeed to the assets of, and assume all  
19 debts, obligations, contracts, and other li-  
20 abilities of the predecessor office, matured  
21 or unmatured, accrued or absolute, contin-  
22 gent or otherwise, and whether or not re-  
23 flected or reserved against on balance  
24 sheets, books of account, or records of the  
25 predecessor office.

1                   “(ii) CONTRACTS.—At the effective  
2                   time, the existing contractual obligations of  
3                   the Federal Housing Finance Board, solely  
4                   in its capacity as issuer of consolidated ob-  
5                   ligations of the Federal Home Loan Banks  
6                   and the predecessor office shall, by oper-  
7                   ation of law and without any further action  
8                   by the Federal Housing Finance Board,  
9                   the predecessor office, or any court, be-  
10                  come obligations, entitlements, and instru-  
11                  ments of the Corporation.

12                  “(iii) TAXATION.—The succession to  
13                  assets, assumption of liabilities, conversion  
14                  of obligations and instruments, and effec-  
15                  tuation of any other transaction by the  
16                  Corporation to carry out this subsection  
17                  shall not be treated as a taxable event  
18                  under the laws of any State, or any polit-  
19                  ical subdivision thereof.

20                  “(b) POWERS.—Subject to the provisions of this Act,  
21                  and such regulations as the Director may prescribe, the  
22                  Corporation shall have the power to—

23                         “(1) issue voting capital stock to the Federal  
24                         Home Loan Banks;

1           “(2) issue and service Federal Home Loan  
2 Bank consolidated notes, consolidated bonds, con-  
3 solidated debentures and other consolidated obliga-  
4 tions under section 11 of this Act on behalf of the  
5 Federal Home Loan Banks;

6           “(3) determine the amount, maturities, rate of  
7 interest, terms, and other conditions of Federal  
8 Home Loan Bank consolidated obligations;

9           “(4) adopt, alter, and use a corporate seal;

10          “(5) make contracts;

11          “(6) sue and be sued in the corporate capacity  
12 of the Corporation, and to complain and defend in  
13 any action brought by or against the Corporation in  
14 any court of competent jurisdiction;

15          “(7) determine the terms and conditions under  
16 which the Corporation may indemnify its directors,  
17 officers, employees, and agents;

18          “(8) determine and implement the methodology  
19 for assessments of the Federal Home Loan Banks to  
20 fund all of the expenses of the Corporation; and

21          “(9) exercise such incidental powers not incon-  
22 sistent with the provisions of this Act as are nec-  
23 essary or advisable to carry out the purposes of the  
24 Corporation.

25          “(c) BOARD OF DIRECTORS.—

1           “(1) ESTABLISHMENT.—The management of  
2 the Corporation shall be vested in a board of direc-  
3 tors composed of the president of each of the Fed-  
4 eral Home Loan Banks, ex officio.

5           “(2) DUTIES.—The board of directors shall ad-  
6 minister the affairs of the Corporation in accordance  
7 with the provisions of this Act.

8           “(3) INTERIM APPOINTMENTS.—If the presi-  
9 dent of any Federal Home Loan Bank is vacant, the  
10 person serving in such capacity on an acting basis  
11 shall serve on the board of directors of the Corpora-  
12 tion until replaced by the next person to fill the of-  
13 fice of president of the Federal Home Loan Bank.

14           “(4) POWERS.—The board of directors shall ex-  
15 ercise such powers as may be necessary or advisable  
16 to carry out the purposes of this section, including  
17 the power to—

18                   “(A) set policies for the management and  
19 operation of the Corporation;

20                   “(B) approve a strategic business plan for  
21 the Corporation;

22                   “(C) review, adopt and monitor annual op-  
23 eration and capital budgets of the Corporation;

1           “(D) constitute and perform the duties of  
2 an audit committee, which to the extent pos-  
3 sible shall operate consistent with—

4           “(i) the requirements established for  
5 the Federal Home Loan Banks; and

6           “(ii) the requirements pertaining to  
7 audit committee reports set forth in the  
8 rules of Securities and Exchange Commis-  
9 sion;

10          “(E) select, employ, determine the com-  
11 pensation for, and assign the duties and func-  
12 tions of the president of the Corporation, who  
13 shall—

14          “(i) be the chief executive officer for  
15 the Corporation and shall direct the imple-  
16 mentation of the policies adopted by the  
17 board of directors of the Corporation;

18          “(ii) serve as a member of the Direc-  
19 torate of the Financing Corporation, under  
20 section 21(b)(1)(A) of this Act (12 U.S.C.  
21 1441(b)(1)(A)); and

22          “(iii) serve as a member of the Direc-  
23 torate of the Resolution Funding Corpora-  
24 tion, under section 21B(c)(1)(A) of this  
25 Act (12 U.S.C. 1441b(c)(1)(A));

1           “(F) provide for the review and approval  
2 of all contracts of the Corporation;

3           “(G) have the exclusive authority to em-  
4 ploy and contract for the services of an inde-  
5 pendent, external auditor for the annual and  
6 quarterly combined financial statements of the  
7 Federal Home Loan Banks; and

8           “(H) select, evaluate, determine the com-  
9 pensation of, and, as appropriate, replace the  
10 internal auditor of the Corporation, who may be  
11 removed only by vote of the board of directors  
12 of the Corporation.

13           “(5) PAY.—The members of the board of direc-  
14 tors of the Corporation shall not receive compensa-  
15 tion for their services as members of the board of di-  
16 rectors.

17           “(6) QUORUM REQUIREMENT.—

18           “(A) IN GENERAL.—No business of the  
19 Corporation may be conducted by the board of  
20 directors unless a quorum of the members of  
21 the board of directors is present in person or by  
22 telephone, or through action taken by written  
23 consent executed by all of the directors.

1           “(B) NUMBER.—Directors representing a  
2 majority of the members of the board of direc-  
3 tors shall constitute a quorum.

4           “(C) VOTE REQUIRED.—Action taken by  
5 the board of directors shall be approved by a  
6 majority of the directors in attendance at any  
7 meeting at which a quorum is present, unless  
8 the board of directors adopts procedures requir-  
9 ing a greater voting requirement.

10           “(7) APPOINTMENT OF OFFICERS AND ADOPT-  
11 TION OF RULES OF PROCEDURE.—The board of di-  
12 rectors of the Corporation shall—

13           “(A) select, from among the members of  
14 such board, a Chairperson and a Vice Chair-  
15 person; and

16           “(B) adopt by-laws and other rules of pro-  
17 cedure for actions before the board of directors,  
18 including the establishment of 1 or more com-  
19 mittees to take action on behalf of the board of  
20 directors, and the delegation of powers of the  
21 board of directors to any committee or officer  
22 of the Corporation.

23           “(d) STOCK.—

24           “(1) ISSUANCE OF EQUAL AMOUNT TO EACH  
25 BANK.—The Corporation shall issue to each Federal

1 home loan bank 1 share of voting capital stock, with  
2 a par value of \$100 per share.

3 “(2) RESTRICTED TRANSFERABILITY.—Stock  
4 issued under paragraph (1) may be owned and held  
5 only by the Federal Home Loan Banks.

6 “(3) PAYMENT UPON ISSUANCE.—Upon  
7 issuance of any share of stock under this subsection  
8 to any Federal Home Loan Bank, the bank shall  
9 pay to the Corporation the total amount due for  
10 such stock.

11 “(4) DISTRIBUTION REQUIREMENT.—

12 “(A) IN GENERAL.—The total amount of  
13 outstanding stock of the Corporation shall, at  
14 all times, be distributed equally among all the  
15 Federal Home Loan Banks.

16 “(B) PROCEDURES.—The board of direc-  
17 tors of the Corporation shall adopt procedures  
18 to implement subparagraph (A).

19 “(e) STATUS.—Except to the extent expressly pro-  
20 vided in this Act, or in rules and regulations promulgated  
21 by the Director, or unless the context clearly indicates oth-  
22 erwise, the Corporation shall be accorded the same status  
23 as a Federal Home Loan Bank for purposes of any law,  
24 including sections 2B and 13 of this Act.”.

1 **SEC. 205. SECURITIES AND EXCHANGE COMMISSION DIS-**  
2 **CLOSURE.**

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 that Act and related Securities  
9 and Exchange Commission regulations with respect  
10 to transactions in capital stock of the Banks.

11 (b) MEMBER EXEMPTION.—The members of the  
12 Federal Home Loan Banks shall be exempt from compli-  
13 ance with sections 13(d), 13(f), 13(g), 14(d), and 16 of  
14 the Securities Exchange Act of 1934 and related Securi-  
15 ties and Exchange Commission regulations with respect  
16 to their ownership of, or transactions in, capital stock of  
17 the Federal Home Loan Banks.

18 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

19 (1) CAPITAL STOCK.—The capital stock issued  
20 by each of the Federal Home Loan Banks under  
21 section 6 of the Federal Home Loan Bank Act are—

22 (A) exempted securities within the mean-  
23 ing of section 3(a)(2) of the Securities Act of  
24 1933; and

1 (B) “exempted securities” within the  
2 meaning of section 3(a)(12)(A) of the Securities  
3 Exchange Act of 1934.

4 (2) OTHER OBLIGATIONS.—The debentures,  
5 bonds, and other obligations issued under section 11  
6 of the Federal Home Loan Bank Act are—

7 (A) exempted securities within the mean-  
8 ing of section 3(a)(2) of the Securities Act of  
9 1933;

10 (B) “government securities” within the  
11 meaning of section 3(a)(42) of the Securities  
12 Exchange Act of 1934;

13 (C) excluded from the definition of “gov-  
14 ernment securities broker” within section  
15 3(a)(43) of the Securities Exchange Act of  
16 1934;

17 (D) excluded from the definition of “gov-  
18 ernment securities dealer” within section  
19 3(a)(44) of the Securities Exchange Act of  
20 1934; and

21 (E) “government securities” within the  
22 meaning of section 2(a)(16) of the Investment  
23 Company Act of 1940.

1 (d) EXEMPTION FROM REPORTING REQUIRE-  
2 MENTS.—The Federal Home Loan Banks shall be exempt  
3 from periodic reporting requirements pertaining to—

4 (1) the disclosure of related party transactions  
5 that occur in the ordinary course of business of the  
6 Banks with their members; and

7 (2) the disclosure of unregistered sales of equity  
8 securities.

9 (e) TENDER OFFERS.—The Securities and Exchange  
10 Commission's rules relating to tender offers shall not  
11 apply in connection with transactions in capital stock of  
12 the Federal Home Loan Banks.

13 (f) REGULATIONS.—In issuing final regulations to  
14 implement provisions of the Federal Housing Enterprise  
15 Regulatory Reform Act of 2004, the Securities and Ex-  
16 change Commission shall consider the distinctive charac-  
17 teristics of the Federal Home Loan Banks when evalu-  
18 ating the accounting treatment with respect to the pay-  
19 ment to REFCORP, the role of the combined financial  
20 statements of the twelve Banks, the accounting classifica-  
21 tion of redeemable capital stock, and the accounting treat-  
22 ment related to the joint and several nature of the obliga-  
23 tions of the Banks.

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 employ-  
6 ees of an agency of the United States for purposes of any  
7 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 of the Federal  
11 Housing Enterprise Supervisory Agency may use the  
12 property of the Office of Federal Housing Enter-  
13 prise Oversight to perform functions which have  
14 been transferred to the Director of the Federal  
15 Housing Enterprise Supervisory Agency for such  
16 time as is reasonable to facilitate the orderly trans-  
17 fer of functions transferred under any other provi-  
18 sion of this Act or any amendment made by this Act  
19 to any provision of law.

20 (2) AGENCY SERVICES.—Any agency, depart-  
21 ment, or other instrumentality of the United States,  
22 and any successor to any such agency, department,  
23 or instrumentality, which was providing supporting  
24 services to the Office of Federal Housing Enterprise  
25 Oversight before the expiration of the period under

1 subsection (a) in connection with functions that are  
2 transferred to the Director of the Federal Housing  
3 Enterprise Supervisory Agency shall—

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

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

10 (e) SAVINGS PROVISIONS.—

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

17 (A) arises under title XIII of the Housing  
18 and Community Development Act of 1992, the  
19 Federal National Mortgage Association Charter  
20 Act, the Federal Home Loan Mortgage Cor-  
21 poration Act, or any other provision of law ap-  
22 plicable with respect to such Office; and

23 (B) existed on the day before the date of  
24 abolishment under subsection (a).

1           (2) CONTINUATION OF SUITS.—No action or  
2 other proceeding commenced by or against the Di-  
3 rector of the Office of Federal Housing Enterprise  
4 Oversight in connection with functions that are  
5 transferred to the Director of the Federal Housing  
6 Enterprise Supervisory Agency shall abate by reason  
7 of the enactment of this Act, except that the Direc-  
8 tor of the Federal Housing Enterprise Supervisory  
9 Agency shall be substituted for the Director of the  
10 Office of Federal Housing Enterprise Oversight as a  
11 party to any such action or proceeding.

12 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**  
13 **REGULATIONS.**

14           (a) IN GENERAL.—All regulations, orders, and deter-  
15 minations described under subsection (b) shall remain in  
16 effect according to the terms of such regulations, orders,  
17 determinations, and resolutions, and shall be enforceable  
18 by or against the Director of the Federal Housing Enter-  
19 prise Supervisory Agency or the Secretary of Housing and  
20 Urban Development, as the case may be, until modified,  
21 terminated, set aside, or superseded in accordance with  
22 applicable law by such Director or Secretary, as the case  
23 may be, any court of competent jurisdiction, or operation  
24 of law.

1 (b) APPLICABILITY.—A regulation, order, or deter-  
2 mination is described under this subsection if they—

3 (1) were issued, made, prescribed, or allowed to  
4 become effective by—

5 (A) the Office of Federal Housing Enter-  
6 prise Oversight;

7 (B) the Secretary of Housing and Urban  
8 Development and that relate to the Secretary's  
9 authority under—

10 (i) title XIII of the Housing and Com-  
11 munity Development Act of 1992;

12 (ii) the Federal National Mortgage  
13 Association Charter Act, with respect to  
14 the Federal National Mortgage Associa-  
15 tion; or

16 (iii) the Federal Home Loan Mort-  
17 gage Corporation Act, with respect to the  
18 Federal Home Loan Mortgage Corpora-  
19 tion; or

20 (C) a court of competent jurisdiction and  
21 that relate to functions transferred by this Act;  
22 and

23 (2) are in effect on the effective date of the  
24 abolishment 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 Federal Housing Enterprise Supervisory Agency for  
6 employment not later than the effective date of the abol-  
7 ishment under section 301(a) and such transfer shall be  
8 deemed a transfer of function for purposes of section 3503  
9 of title 5, United States Code.

10 (b) GUARANTEED POSITIONS.—Each employee trans-  
11 ferred under subsection (a) shall be guaranteed a position  
12 with the same status, tenure, grade, and pay as that held  
13 on the day immediately preceding the transfer. Each such  
14 employee holding a permanent position shall not be invol-  
15 untarily separated or reduced in grade or compensation  
16 for 12 months after the date of transfer, except for cause  
17 or, if the employee is a temporary employee, separated in  
18 accordance with the terms of the appointment.

19 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
20 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

21 (1) IN GENERAL.—In the case of employees oc-  
22 cupying positions in the excepted service or the Sen-  
23 ior Executive Service, any appointment authority es-  
24 tablished under law or by regulations of the Office  
25 of Personnel Management for filling such positions  
26 shall be transferred, subject to paragraph (2).

1           (2) **DECLINE OF TRANSFER.**—The Director of  
2           the Federal Housing Enterprise Supervisory Agency  
3           may decline a transfer of authority under paragraph  
4           (1) to the extent that such authority relates to posi-  
5           tions excepted from the competitive service because  
6           of their confidential, policymaking, policy-deter-  
7           mining, or policy-advocating character, and non-  
8           career positions in the Senior Executive Service  
9           (within the meaning of section 3132(a)(7) of title 5,  
10          United States Code).

11          (d) **REORGANIZATION.**—If the Director of the Fed-  
12          eral Housing Enterprise Supervisory Agency determines,  
13          after the end of the 1-year period beginning on the effec-  
14          tive date of the abolishment under section 301(a), that  
15          a reorganization of the combined workforce is required,  
16          that reorganization shall be deemed a major reorganiza-  
17          tion for purposes of affording affected employees retire-  
18          ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
19          5, United States Code.

20          (e) **EMPLOYEE BENEFIT PROGRAMS.**—

21               (1) **IN GENERAL.**—Any employee of the Office  
22               of Federal Housing Enterprise Oversight accepting  
23               employment with the Federal Housing Enterprise  
24               Supervisory Agency as a result of a transfer under  
25               subsection (a) may retain for 12 months after the

1 date on which such transfer occurs membership in  
2 any employee benefit program of the Director of the  
3 Federal Housing Enterprise Supervisory Agency or  
4 the Office of Federal Housing Enterprise Oversight  
5 of the Department of Housing and Urban Develop-  
6 ment, as applicable, including insurance, to which  
7 such employee belongs on the date of the abolish-  
8 ment under section 301(a) if—

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

11 (B) the benefit or program is continued by  
12 the Director of the Federal Housing Enterprise  
13 Supervisory Agency.

14 (2) COST DIFFERENTIAL.—The difference in  
15 the costs between the benefits which would have  
16 been provided by the Office of Federal Housing En-  
17 terprise Oversight and those provided by this section  
18 shall be paid by the Director of the Federal Housing  
19 Enterprise Supervisory Agency. If any employee  
20 elects to give up membership in a health insurance  
21 program or the health insurance program is not con-  
22 tinued by such Director, the employee shall be per-  
23 mitted to select an alternate Federal health insur-  
24 ance program within 30 days after such election or

1 notice, without regard to any other regularly sched-  
2 uled open season.

3 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

4 Upon the effective date of its abolishment under sec-  
5 tion 301(a), all property of the Office of Federal Housing  
6 Enterprise Oversight of the Department of Housing and  
7 Urban Development shall transfer to the Director of the  
8 Federal Housing Enterprise Supervisory 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 title referred to  
16 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 such 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 403; 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 such Board  
7           as employees 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          403.

11          (d) USE OF PROPERTY AND SERVICES.—

12           (1) PROPERTY.—The Director of the Federal  
13           Housing Enterprise Supervisory Agency may use the  
14           property of the Board to perform functions which  
15           have been transferred to the Director of the Federal  
16           Housing Enterprise Supervisory Agency for such  
17           time as is reasonable to facilitate the orderly trans-  
18           fer of functions transferred under any other provi-  
19           sion of this Act or any amendment made by this Act  
20           to any other provision of law.

21           (2) AGENCY SERVICES.—Any agency, depart-  
22           ment, or other instrumentality of the United States,  
23           and any successor to any such agency, department,  
24           or instrumentality, which was providing supporting  
25           services to the Board before the expiration of the 1-

1 year period under subsection (a) in connection with  
2 functions that are transferred to the Director of the  
3 Federal Housing Enterprise Supervisory Agency  
4 shall—

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

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

11 (e) SAVINGS PROVISIONS.—

12 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
13 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
14 fect the validity of any right, duty, or obligation of  
15 the United States, a member of the Board, or any  
16 other person, which—

17 (A) arises under title XIII of the Housing  
18 and Community Development Act of 1992, the  
19 Federal National Mortgage Association Charter  
20 Act, the Federal Home Loan Mortgage Cor-  
21 poration Act, the Federal Home Loan Bank  
22 Act, or any other provision of law applicable  
23 with respect to such Board; and

24 (B) existed on the day before the effective  
25 date of the abolishment under subsection (a).

1           (2) CONTINUATION OF SUITS.—No action or  
2 other proceeding commenced by or against the  
3 Board in connection with functions that are trans-  
4 ferred to the Director of the Federal Housing Enter-  
5 prise Supervisory Agency shall abate by reason of  
6 the enactment of this Act, except that the Director  
7 of the Federal Housing Enterprise Supervisory  
8 Agency shall be substituted for the Board or any  
9 member thereof as a party to any such action or  
10 proceeding.

11 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**  
12 **REGULATIONS.**

13           (a) IN GENERAL.—All regulations, orders, and deter-  
14 minations described under subsection (b) shall remain in  
15 effect according to the terms of such regulations, orders,  
16 determinations, and resolutions, and shall be enforceable  
17 by or against the Director of the Federal Housing Enter-  
18 prise Supervisory Agency until modified, terminated, set  
19 aside, or superseded in accordance with applicable law by  
20 such Director, any court of competent jurisdiction, or op-  
21 eration of law.

22           (b) APPLICABILITY.—A regulation, order, or deter-  
23 mination is described under this subsection if they—

24                   (1) were issued, made, prescribed, or allowed to  
25 become effective by—

1 (A) the Board; or

2 (B) a court of competent jurisdiction and  
3 that relate to functions transferred by this Act;  
4 and

5 (2) are in effect on the effective date of the  
6 abolishment under section 401(a).

7 **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
8 **FEDERAL HOUSING FINANCE BOARD.**

9 (a) TRANSFER.—Each employee of the Board shall  
10 be transferred to the Federal Housing Enterprise Super-  
11 visory Agency for employment not later than the effective  
12 date of the abolishment under section 401(a), and such  
13 transfer shall be deemed a transfer of function for pur-  
14 poses of section 3503 of title 5, United States Code.

15 (b) GUARANTEED POSITIONS.—Each employee trans-  
16 ferred under subsection (a) shall be guaranteed a position  
17 with the same status, tenure, grade, and pay as that held  
18 on the day immediately preceding the transfer. Each such  
19 employee holding a permanent position shall not be invol-  
20 untarily separated or reduced in grade or compensation  
21 for 12 months after the date of transfer, except for cause  
22 or, if the employee is a temporary employee, separated in  
23 accordance with the terms of the appointment.

24 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
25 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

1           (1) IN GENERAL.—In the case of employees oc-  
2           cupying positions in the excepted service or the Sen-  
3           ior Executive Service, any appointment authority es-  
4           tablished under law or by regulations of the Office  
5           of Personnel Management for filling such positions  
6           shall be transferred, subject to paragraph (2).

7           (2) DECLINE OF TRANSFER.—The Director of  
8           the Federal Housing Enterprise Supervisory Agency  
9           may decline a transfer of authority under paragraph  
10          (1) to the extent that such authority relates to posi-  
11          tions excepted from the competitive service because  
12          of their confidential, policymaking, policy-deter-  
13          mining, or policy-advocating character, and non-  
14          career positions in the Senior Executive Service  
15          (within the meaning of section 3132(a)(7) of title 5,  
16          United States Code).

17          (d) REORGANIZATION.—If the Director of the Fed-  
18          eral Housing Enterprise Supervisory Agency determines,  
19          after the end of the 1-year period beginning on the effec-  
20          tive date of the abolishment under section 401(a), that  
21          a reorganization of the combined workforce is required,  
22          that reorganization shall be deemed a major reorganiza-  
23          tion for purposes of affording affected employees retire-  
24          ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
25          5, United States Code.

1 (e) EMPLOYEE BENEFIT PROGRAMS.—

2 (1) IN GENERAL.—Any employee of the Board  
3 accepting employment with the Federal Housing En-  
4 terprise Supervisory Agency as a result of a transfer  
5 under subsection (a) may retain for 12 months after  
6 the date on which such transfer occurs membership  
7 in any employee benefit program of the Federal  
8 Housing Enterprise Supervisory Agency or the  
9 Board, as applicable, including insurance, to which  
10 such employee belongs on the effective date of the  
11 abolishment under section 201(a) if—

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

14 (B) the benefit or program is continued by  
15 the Director of the Federal Housing Enterprise  
16 Supervisory Agency.

17 (2) COST DIFFERENTIAL.—The difference in  
18 the costs between the benefits which would have  
19 been provided by the Board and those provided by  
20 this section shall be paid by the Director of the Fed-  
21 eral Housing Enterprise Supervisory Agency. If any  
22 employee elects to give up membership in a health  
23 insurance program or the health insurance program  
24 is not continued by such Director, the employee shall  
25 be permitted to select an alternate Federal health in-

1       surance program within 30 days after such election  
2       or notice, without regard to any other regularly  
3       scheduled open season.

4       **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

5       Upon the effective date of the abolishment under sec-  
6       tion 401(a), all property of the Board shall transfer to  
7       the Director of the Federal Housing Enterprise Super-  
8       visory Agency.