

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for a substitute.

**IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.**

**S. 190**

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

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by  
\_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Federal Housing Enterprise Regulatory Reform Act of  
6 2005”.

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

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

TITLE I—REFORM OF REGULATION OF ENTERPRISES

## 2

## Subtitle A—Improvement of Safety and Soundness Supervision

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

## Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
- Sec. 122. Review of enterprise products.
- Sec. 123. Monitoring and enforcing compliance with housing goals.
- Sec. 124. Assumption by Director of other HUD responsibilities.
- Sec. 125. Administrative and judicial enforcement proceedings.
- Sec. 126. Conforming loan limits.

## Subtitle C—Prompt Corrective Action

- Sec. 141. Critical capital levels.
- Sec. 142. 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 regulated entities.

## Subtitle D—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.
- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.
- Sec. 157. Notice after separation from service.
- Sec. 158. Subpoena authority.

## Subtitle E—General Provisions

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

## TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Directors.
- Sec. 202. Definitions.
- Sec. 203. Agency oversight of Federal Home Loan Banks.
- Sec. 204. Debt financing facility.

- Sec. 205. Exclusion from certain securities reporting requirements.  
 Sec. 207. Mergers.  
 Sec. 208. Authority to reduce districts.

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

Subtitle A—OFHEO

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

Subtitle B—Federal Housing Finance Board

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

TITLE IV—STUDIES AND REPORTS

- Sec. 401. Study and report on Basel II and enterprise debt.  
 Sec. 402. Affordable housing audits.  
 Sec. 403. Report on insured depository institution holdings of regulated entity debt and mortgage-backed securities.  
 Sec. 404. Report on risk-based capital levels.  
 Sec. 405. Report on resources and allocations.  
 Sec. 406. Study and report on guarantee fees.  
 Sec. 407. Study and report on debt and mortgage-backed securities registration under the Securities Act of 1933.  
 Sec. 408. Recommendations.

1 **SEC. 2. DEFINITIONS.**

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

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

9 (2) in paragraph (14), by striking “Office of  
 10 Federal Housing Enterprise Oversight of the De-

1       partment of Housing and Urban Development” and  
2       inserting “Federal Housing Enterprise Regulatory  
3       Agency”;

4               (3) by redesignating paragraphs (16) through  
5       (19) as paragraphs (22) through (25), respectively;

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

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

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

12               “(B) the Federal Home Loan Mortgage  
13       Corporation and any affiliate thereof; and

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

15               (5) by striking paragraph (13);

16               (6) by redesignating paragraphs (7) through  
17       (12) and (14) as paragraphs (14) through (20), re-  
18       spectively;

19               (7) in paragraph (5)—

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

21       and

22               (B) by striking “Office of Federal Housing  
23       Enterprise Oversight of the Department of  
24       Housing and Urban Development” and insert-

1 ing “Federal Housing Enterprise Regulatory  
2 Agency”;

3 (8) by redesignating paragraph (6) as para-  
4 graph (10);

5 (9) by redesignating paragraphs (2) through  
6 (4) as paragraphs (5) through (7), respectively;

7 (10) by inserting after paragraph (7), as redesi-  
8 gnated, the following:

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

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

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

20 “(i) in the opinion of the Agency—

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

1                   “(II) the regulated entity has in-  
2                   curred or is likely to incur losses that  
3                   will deplete all or substantially all of  
4                   its capital; and

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

8                   (11) by inserting after paragraph (1) the fol-  
9                   lowing:

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

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

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

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

18                   “(A) the Federal National Mortgage Asso-  
19                   ciation Charter Act;

20                   “(B) the Federal Home Loan Mortgage  
21                   Corporation Act; and

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

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

1           (12) by inserting after paragraph (10), as re-  
2 designated, the following:

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

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

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

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

22                           “(i) the independent contractor know-  
23 ingly or recklessly participates in—

24                                   “(I) any violation of any law or  
25 regulation;

1                   “(II) any breach of fiduciary  
2                   duty; or

3                   “(III) any unsafe or unsound  
4                   practice; and

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

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

12                  “(E) the Finance Facility.

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

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

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

24                  “(25) VIOLATION.—The term ‘violation’ in-  
25                  cludes any action (alone or in combination with an-

1 other or others) for or toward causing, bringing  
2 about, participating in, counseling, or aiding or abet-  
3 ting a violation.”.

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

6 (1) the term “Agency” means the Federal  
7 Housing Enterprise Regulatory Agency;

8 (2) the term “Director” means the Director of  
9 the Agency; and

10 (3) the terms “enterprise” and “regulated enti-  
11 ty” have the same meanings as in section 1303 of  
12 the Federal Housing Enterprises Financial Safety  
13 and Soundness Act of 1992, as amended by this Act.

14 **TITLE I—REFORM OF**  
15 **REGULATION OF ENTERPRISES**  
16 **Subtitle A—Improvement of Safety**  
17 **and Soundness Supervision**

18 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING EN-**  
19 **TERPRISE REGULATORY AGENCY.**

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

1 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**  
2 **ENTERPRISE REGULATORY AGENCY.**

3 “(a) ESTABLISHMENT.—There is established the  
4 Federal Housing Enterprise Regulatory Agency, which  
5 shall be an independent agency of the Federal Govern-  
6 ment.

7 “(b) GENERAL SUPERVISORY AND REGULATORY AU-  
8 THORITY.—

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

12 “(2) AUTHORITY OVER FANNIE MAE AND  
13 FREDDIE MAC, THE FEDERAL HOME LOAN BANKS,  
14 AND THE FEDERAL HOME LOAN BANK FINANCE FA-  
15 CILITY.—The Director shall have general regulatory  
16 authority over each regulated entity and the Finance  
17 Facility, and shall exercise such general regulatory  
18 authority, including such duties and authorities set  
19 forth under section 1313 of this Act, to ensure that  
20 the purposes of this Act, the authorizing statutes,  
21 and any other applicable law are carried out.

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

1 **“SEC. 1312. DIRECTOR.**

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

5       “(b) APPOINTMENT; TERM.—

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

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

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

24           “(4) SERVICE AFTER END OF TERM.—An indi-  
25 vidual may serve as the Director after the expiration

1 of the term for which appointed until a successor  
2 has been appointed.

3 “(5) TRANSITIONAL PROVISION.—Notwith-  
4 standing paragraphs (1) and (2), during the period  
5 beginning on the effective date of this section and  
6 ending on the date on which the Director is ap-  
7 pointed and confirmed, the person serving as the Di-  
8 rector of the Office of Federal Housing Enterprise  
9 Oversight of the Department of Housing and Urban  
10 Development on the effective date of the Federal  
11 Housing Enterprise Regulatory Reform Act of 2005,  
12 shall act for all purposes as, and with the full pow-  
13 ers of, the Director.

14 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-  
15 TERPRISE REGULATION.—

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

24 “(2) FUNCTIONS.—The Deputy Director of the  
25 Division of Enterprise Regulation shall have such

1 functions, powers, and duties with respect to the  
2 oversight of the enterprises as the Director shall pre-  
3 scribe.

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

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

14 “(2) FUNCTIONS.—The Deputy Director of the  
15 Division of Federal Home Loan Bank Regulation  
16 shall have such functions, powers, and duties with  
17 respect to the oversight of the Federal Home Loan  
18 Banks as the Director shall prescribe.

19 “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND  
20 GOALS.—

21 “(1) IN GENERAL.—The Agency shall have a  
22 Deputy Director for Housing Mission and Goals,  
23 who shall be designated by the Director from among  
24 individuals who are citizens of the United States,

1 and have a demonstrated understanding of the hous-  
2 ing markets and housing finance.

3 “(2) FUNCTIONS.—The Deputy Director for  
4 Housing Mission and Goals shall have such func-  
5 tions, powers, and duties with respect to the over-  
6 sight of the housing mission and goals of the regu-  
7 lated entities as the Director shall prescribe.

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

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

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

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

23 “(3) have served as an executive officer or di-  
24 rector of any regulated entity, or entity-affiliated  
25 party, at any time during the 3-year period ending

1 on the date of appointment of such individual as Di-  
2 rector or Deputy Director.”.

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

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

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

8 “(a) DUTIES.—

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

11 “(A) to oversee the prudential operations  
12 of each regulated entity; and

13 “(B) to ensure that—

14 “(i) each regulated entity operates in  
15 a safe and sound manner, including main-  
16 tenance of adequate capital and internal  
17 controls;

18 “(ii) the operations and activities of  
19 each regulated entity foster liquid, effi-  
20 cient, competitive, and resilient national  
21 housing finance markets (including activi-  
22 ties relating to mortgages on housing for  
23 low- and moderate-income families involv-  
24 ing a reasonable economic return that may

1 be less than the return earned on other ac-  
2 tivities);

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

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

12 “(v) the activities of each regulated  
13 entity and the manner in which such regu-  
14 lated entity is operated are consistent with  
15 the public interest;

16 “(vi) each regulated entity remains  
17 adequately capitalized, after due consider-  
18 ation of the risk to such regulated entity;  
19 and

20 “(vii) in the case of the Federal Home  
21 Loan Banks, they provide funds to com-  
22 munity financial institutions for small  
23 businesses, small farms, and small agricul-  
24 tural businesses and accept as collateral  
25 whole interests in such obligations.

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

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

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

12          “(b) DELEGATION OF AUTHORITY.—The Director  
13          may delegate to officers and employees of the Agency any  
14          of the functions, powers, or duties of the Director, as the  
15          Director considers appropriate.

16          “(c) LITIGATION AUTHORITY.—

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

1           “(2) SUBJECT TO SUIT.—Except as otherwise  
2           provided by law, the Director shall be subject to suit  
3           (other than suits on claims for money damages) by  
4           a regulated entity with respect to any matter under  
5           this title or any other applicable provision of law,  
6           rule, order, or regulation under this title, in the  
7           United States district court for the judicial district  
8           in which the regulated entity has its principle place  
9           of business, or in the United States District Court  
10          for the District of Columbia, and the Director may  
11          be served with process in the manner prescribed by  
12          the Federal Rules of Civil Procedure.”.

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

19          (a) IN GENERAL.—The Federal Housing Enterprises  
20          Financial Safety and Soundness Act of 1992 (12 U.S.C.  
21          4501 et seq.) is amended by inserting after section 1313  
22          the following:

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

24          “(a) IN GENERAL.—There is established the Federal  
25          Housing Enterprise Board, which shall advise the Director

1 with respect to overall strategies and policies in carrying  
2 out the duties of the Director under this title.

3 “(b) LIMITATIONS.—The Board may not exercise any  
4 executive authority, and the Director may not delegate to  
5 the Board any of the functions, powers, or duties of the  
6 Director.

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

9 “(1) 1 member shall be the Secretary of the  
10 Treasury;

11 “(2) 1 member shall be the Secretary of Hous-  
12 ing and Urban Development;

13 “(3) 1 member shall be the Chairman of the  
14 Securities and Exchange Commission; and

15 “(4) 1 member shall be the Director, who shall  
16 serve as the Chairperson of the Board.

17 “(d) MEETINGS.—

18 “(1) IN GENERAL.—The Board shall meet upon  
19 notice by the Director, but in no event shall the  
20 Board meet less frequently than once every 3  
21 months.

22 “(2) SPECIAL MEETINGS.—Either the Secretary  
23 of the Treasury, the Secretary of Housing and  
24 Urban Development, or the Chairman of the Securi-  
25 ties and Exchange Commission may, upon giving

1 written notice to the Director, require a special  
2 meeting of the Board.

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

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

7 “(2) any material deficiencies in the conduct of  
8 the operations of the regulated entities;

9 “(3) the overall operational status of the regu-  
10 lated entities;

11 “(4) an evaluation of the performance of the  
12 regulated entities in carrying out their respective  
13 missions;

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

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

19 (b) ANNUAL REPORT OF THE DIRECTOR.—Section  
20 1319B(a) of the Federal Housing Enterprises Financial  
21 Safety and Soundness Act of 1992 (12 U.S.C. 4521 (a))  
22 is amended—

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

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

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

5           (4) in paragraph (4), by striking the period at  
6 the end and inserting “; and”; and

7           (5) by inserting after paragraph (4) the fol-  
8 lowing:

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

11                 “(A) the safety and soundness of the regu-  
12 lated entities;

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

15                 “(C) the overall operational status of the  
16 regulated entities; and

17                 “(D) an evaluation of the performance of  
18 the regulated entities in carrying out their re-  
19 spective missions;

20           “(6) operations, resources, and performance of  
21 the Agency; and

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

1 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
2 **LATED ENTITIES.**

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

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

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

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

12 (4) in subsection (a)—

13 (A) in the subsection heading, by striking  
14 “SPECIAL REPORTS AND REPORTS OF FINAN-  
15 CIAL CONDITION” and inserting “REGULAR  
16 AND SPECIAL REPORTS”;

17 (B) in paragraph (1)—

18 (i) by striking the paragraph heading  
19 and inserting the following:

20 “(1) REGULAR REPORTS.—”;

21 (ii) by inserting “, by general or spe-  
22 cific orders,” after “The Director may re-  
23 quire”; and

24 (iii) by striking “reports of financial  
25 condition and operations” and inserting  
26 “regular reports, including financial state-

1                   ments determined on a fair value basis, on  
2                   the condition (including financial condi-  
3                   tion), management, activities, or operations  
4                   of the regulated entity, as the Director  
5                   considers appropriate”; and

6                   (C) in paragraph (2)—

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

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

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

14                  “(c) PENALTIES FOR FAILURE TO MAKE RE-  
15                  PORTS.—

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

18                  “(A) to fail to make, obtain, transmit, or  
19                  publish any report or information required by  
20                  the Director under this section, section 309(k)  
21                  of the Federal National Mortgage Association  
22                  Charter Act, or section 307(c) of the Federal  
23                  Home Loan Mortgage Corporation Act, within  
24                  the period of time specified in statute or other-  
25                  wise by the Director; or

1           “(B) to submit or publish any false or mis-  
2 leading report or information under this sec-  
3 tion.

4           “(2) PENALTIES.—

5           “(A) TIER 1.—

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

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

16           “(II) the violation was an inad-  
17 vertent transmittal or publication of  
18 any report which was minimally late.

19           “(ii) BURDEN OF PROOF.—For pur-  
20 poses of this subparagraph, the regulated  
21 entity shall have the burden of proving  
22 that the error was inadvertent or that a re-  
23 port was inadvertently transmitted or pub-  
24 lished late.

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

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

17           “(4) ASSESSMENTS.—Any penalty imposed  
18 under this subsection shall be in lieu of a penalty  
19 under section 1376, but shall be assessed and col-  
20 lected by the Director in the manner provided in sec-  
21 tion 1376 for penalties imposed under that section,  
22 and any such assessment (including the determina-  
23 tion of the amount of the penalty) shall be otherwise  
24 subject to the provisions of section 1376.



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

3 (5) by inserting after subsection (c) the fol-  
4 lowing:

5 “(d) INSPECTOR GENERAL.—There shall be within  
6 the Agency an Inspector General, who shall be appointed  
7 in accordance with section 3(a) of the Inspector General  
8 Act of 1978.”.

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

14 “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,  
15 AND EXAMINERS.—

16 “(1) APPLICABILITY.—This section shall apply  
17 with respect to any position of examiner, accountant,  
18 economist, and specialist in financial markets and in  
19 technology at the Agency, with respect to supervision  
20 and regulation of the regulated entities, that is in  
21 the competitive service.

22 “(2) APPOINTMENT AUTHORITY.—The Director  
23 may appoint candidates to any position described in  
24 paragraph (1)—

1           “(A) in accordance with the statutes, rules,  
2           and regulations governing appointments in the  
3           excepted service; and

4           “(B) notwithstanding any statutes, rules,  
5           and regulations governing appointments in the  
6           competitive service.”.

7           (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—  
8           Section 11 of the Inspector General Act of 1978 (5 U.S.C.  
9           11 App.) is amended—

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

13           (2) in paragraph (2), by inserting “, the Fed-  
14           eral Housing Enterprises Regulatory Agency” after  
15           “Social Security Administration”.

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

21           **SEC. 106. ASSESSMENTS.**

22           Section 1316 of the Federal Housing Enterprises Fi-  
23           nancial Safety and Soundness Act of 1992 (12 U.S.C.  
24           4516) is amended—

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

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

8           “(1) the expenses of any examinations under  
9 section 1317;

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

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

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

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

19           (4) by striking “enterprise” each place that  
20 term appears, except in subparagraph (B) of sub-  
21 section (b)(3), and inserting “regulated entity”;

22           (5) in subsection (b)—

23           (A) in paragraph (1), by striking “both”  
24 and inserting “all”;

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

3 (C) in paragraph (3)(B)—

4 (i) by inserting “with respect to an  
5 enterprise,” before “the unpaid principal”;  
6 and

7 (ii) by striking “by the enterprise”  
8 and inserting “by an enterprise”;

9 (6) in subsection (c)—

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

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

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

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

22 “(3) SPECIAL CIRCUMSTANCES.—If at any  
23 time, as a result of increased costs of regulation of  
24 a regulated entity that is not classified (for purposes  
25 of subtitle B) as adequately capitalized, or as the re-

1 sult of supervisory or enforcement activities under  
2 subtitle B or C for a regulated entity, the amount  
3 available from any semiannual payment made by  
4 such regulated entity pursuant to subsection (b) is  
5 insufficient to cover the costs of the Agency with re-  
6 spect to such entity, the Director may make and col-  
7 lect from such entity an immediate assessment to  
8 cover the amount of such deficiency for the semi-  
9 annual period. If, at the end of any semiannual pe-  
10 riod during which such an assessment is made, any  
11 amount remains from such assessment, such remain-  
12 ing amount shall be deducted from the assessment  
13 for such regulated entity for the following semi-  
14 annual period.”;

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

18 (8) by striking subsection (e) and inserting the  
19 following:

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

1 cess of the amount that the Director deems necessary to  
2 maintain working capital.”;

3 (9) by striking subsection (f) and inserting the  
4 following:

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

13 (10) in subsection (g)—

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

16 (B) in paragraph (3)—

17 (i) by striking “(A)”; and

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

21 **SEC. 107. REGULATIONS AND ORDERS.**

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

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

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

9 (2) by striking subsection (c).

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

12 Part 1 of subtitle A of the Federal Housing Enter-  
13 prises Financial Safety and Soundness Act of 1992 (12  
14 U.S.C. 4501 et seq.) is amended by inserting after section  
15 1313 the following new section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 and

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

14 **“SEC. 1369E. RESTRICTION ON ASSETS OF ENTERPRISES.**

15 “(a) **AUTHORITY OF THE DIRECTOR.**—The Director  
16 shall, by regulation, establish criteria regarding the assets  
17 that an enterprise may hold, consistent with the statutory  
18 missions of the enterprises and this section.

19 “(b) **CONSIDERATIONS.**—In establishing the rules re-  
20 quired by subsection (a), the Director shall consider the  
21 safe and sound operations of the enterprises and the sys-  
22 temic risk posed by the size and nature of the holdings  
23 of the enterprises.

24 “(c) **PROHIBITED ACTIVITIES.**—The Director shall  
25 prohibit each enterprise from acquiring or holding assets  
26 not specified in subsection (d).

1       “(d) PERMISSIBLE ASSETS.—An enterprise may ac-  
2 quire and hold—

3           “(1) mortgages and mortgage-backed securities  
4 for the purpose of securitization;

5           “(2) mortgages acquired to meet affordable  
6 housing goals, if such assets are not readily  
7 securitized;

8           “(3) a limited inventory of mortgages solely for  
9 the purpose of supporting the guarantee business;

10          “(4) cash;

11          “(5) real estate acquired through foreclosure;

12          “(6) United States Treasury securities (held for  
13 liquidity purposes); and

14          “(7) real estate, intellectual property, fixtures,  
15 and equipment for use in the business operations of  
16 the enterprise.

17       “(e) TEMPORARY ADJUSTMENTS.—The Director  
18 may, by order, make temporary adjustments to the criteria  
19 established by the regulations required by subsection (a).

20       “(f) REQUIRED DISPOSITION.—Each regulated entity  
21 shall submit to the Director for approval a plan for the  
22 disposition of assets other than those described in sub-  
23 section (d). The Director may permit the amortization of  
24 mortgage-backed securities that an enterprise owns for in-  
25 vestment purposes.

1           “(g) SAVINGS CLAUSE.—Nothing in this section shall  
2 be construed to supersede any other provision of law re-  
3 stricting, qualifying, or limiting the assets that an enter-  
4 prise may acquire, hold, or securitize.”.

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

6           (a) RISK CAPITAL LEVELS.—Section 1361 of the  
7 Federal Housing Enterprises Financial Safety and Sound-  
8 ness Act of 1992 (12 U.S.C. 4611) is amended to read  
9 as follows:

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

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

17           “(b) NO LIMITATION.—Nothing in this section limits  
18 the authority of the Director to require other reports or  
19 undertakings in furtherance of the responsibilities of the  
20 Director under this Act.”.

21           (b) MINIMUM CAPITAL LEVELS FOR REGULATED  
22 ENTITIES.—

23           (1) FOR THE ENTERPRISES.—Section 1362 of  
24 the Federal Housing Enterprises Financial Safety

1 and Soundness Act of 1992 (12 U.S.C. 4612) is  
2 amended—

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

5 (B) by striking subsection (b) and insert-  
6 ing the following:

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

10 (2) **FOR THE FEDERAL HOME LOAN BANKS.**—

11 Section 6(a)(2) of the Federal Home Loan Bank Act  
12 (12 U.S.C. 1426(a)(2)) is amended by adding at the  
13 end the following:

14 “(C) **AUTHORITY TO ALTER LEVEL.**—The  
15 Director may, by regulation or order, establish  
16 a minimum capital level that is higher than the  
17 level specified in subparagraph (A).”.

18 **SEC. 111. REQUIRED REGISTRATION UNDER THE SECURI-**  
19 **TIES LAWS.**

20 Subtitle B of title XIII of the Housing and Commu-  
21 nity Development Act of 1992 (12 U.S.C. 4611 et seq.),  
22 as amended by this Act, is amended by adding at the end  
23 the following:

1 **“SEC. 1369F. REQUIRED REGISTRATION UNDER THE SECURITIES LAWS.**  
2

3 “(a) REQUIRED REGISTRATION UNDER THE SECURITIES EXCHANGE ACT OF 1934.—

5 “(1) REGULATED ENTITIES.—Each regulated  
6 entity shall register at least one class of the capital  
7 stock of such regulated entity, and maintain such  
8 registration with the Securities and Exchange Com-  
9 mission, under the Securities Exchange Act of 1934.

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

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

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

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

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

23 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-  
24 TION PAYMENTS.—The Agency may prohibit or  
25 limit, by regulation or order, any golden parachute  
26 payment or indemnification payment.

1           (2) FACTORS TO BE TAKEN INTO ACCOUNT.—

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

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

13                   “(B) whether there is a reasonable basis to  
14          believe that the affiliated party is substantially  
15          responsible for the insolvency of the regulated  
16          entity, the appointment of a conservator or re-  
17          ceiver for the regulated entity, or the regulated  
18          entity’s troubled condition (as defined in the  
19          regulations prescribed pursuant to section  
20          32(f));

21                   “(C) whether there is a reasonable basis to  
22          believe that the affiliated party has materially  
23          violated any applicable Federal or State law or  
24          regulation that has had a material affect on the  
25          financial condition of the regulated entity;

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

4           “(E) the length of time the party was af-  
5           filiated with the regulated entity, and the de-  
6           gree to which—

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

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

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

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

20                   “(B) with a view to, or has the result of—

21                           “(i) preventing the proper application  
22                           of the assets of the regulated entity to  
23                           creditors; or

24                           “(ii) preferring one creditor over an-  
25                           other.

1           “(4) GOLDEN PARACHUTE PAYMENT DE-  
2 FINED.—For purposes of this subsection—

3           “(A) IN GENERAL.—The term ‘golden  
4 parachute payment’ means any payment (or  
5 any agreement to make any payment) in the  
6 nature of compensation by any regulated entity  
7 for the benefit of any affiliated party pursuant  
8 to an obligation of such regulated entity that—

9           “(i) is contingent on the termination  
10 of such party’s affiliation with the regu-  
11 lated entity; and

12           “(ii) is received on or after the date  
13 on which—

14           “(I) the regulated entity became  
15 insolvent;

16           “(II) any conservator or receiver  
17 is appointed for such regulated entity;  
18 or

19           “(III) the Agency determines  
20 that the regulated entity is in a trou-  
21 bled condition (as defined in the regu-  
22 lations of the Agency).

23           “(B) CERTAIN PAYMENTS IN CONTEMPLA-  
24 TION OF AN EVENT.—Any payment which  
25 would be a golden parachute payment but for

1 the fact that such payment was made before the  
2 date referred to in subparagraph (A)(ii) shall be  
3 treated as a golden parachute payment if the  
4 payment was made in contemplation of the oc-  
5 currence of an event described in any subclause  
6 of such subparagraph.

7 “(C) CERTAIN PAYMENTS NOT IN-  
8 CLUDED.—The term ‘golden parachute pay-  
9 ment’ shall not include—

10 “(i) any payment made pursuant to a  
11 retirement plan which is qualified (or is in-  
12 tended to be qualified) under section 401  
13 of the Internal Revenue Code of 1986 or  
14 other nondiscriminatory benefit plan;

15 “(ii) any payment made pursuant to a  
16 bona fide deferred compensation plan or  
17 arrangement which the Board determines,  
18 by regulation or order, to be permissible;  
19 or

20 “(iii) any payment made by reason of  
21 the death or disability of an affiliated  
22 party.

23 “(5) OTHER DEFINITIONS.—For purposes of  
24 this subsection—

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

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

13                   “(ii) is removed or prohibited from  
14                   participating in conduct of the affairs of  
15                   the regulated entity; or

16                   “(iii) is required to take any affirma-  
17                   tive action to correct certain conditions re-  
18                   sulting from violations or practices, by  
19                   order of the Agency.

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

22                   “(i) any legal or other professional ex-  
23                   pense incurred in connection with any  
24                   claim, proceeding, or action;

1           “(ii) the amount of, and any cost in-  
2           curred in connection with, any settlement  
3           of any claim, proceeding, or action; and

4           “(iii) the amount of, and any cost in-  
5           curred in connection with, any judgment or  
6           penalty imposed with respect to any claim,  
7           proceeding, or action.

8           “(C) PAYMENT.—The term “payment”  
9           includes—

10           “(i) any direct or indirect transfer of  
11           any funds or any asset; and

12           “(ii) any segregation of any funds or  
13           assets for the purpose of making, or pursu-  
14           ant to an agreement to make, any payment  
15           after the date on which such funds or as-  
16           sets are segregated, without regard to  
17           whether the obligation to make such pay-  
18           ment is contingent on—

19           “(I) the determination, after such  
20           date, of the liability for the payment  
21           of such amount; or

22           “(II) the liquidation, after such  
23           date, of the amount of such payment.

24           “(6) CERTAIN COMMERCIAL INSURANCE COV-  
25           ERAGE NOT TREATED AS COVERED BENEFIT PAY-

1       MENT.—No provision of this subsection shall be con-  
2       strued as prohibiting any regulated entity from pur-  
3       chasing any commercial insurance policy or fidelity  
4       bond, except that, subject to any requirement de-  
5       scribed in paragraph (5)(A)(iii), such insurance pol-  
6       icy or bond shall not cover any legal or liability ex-  
7       pense of the regulated entity which is described in  
8       paragraph (5)(A).”.

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

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

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

15       “(a) REQUIREMENT TO REPORT.—The Director  
16       shall require a regulated entity to submit to the Director  
17       a timely report upon discovery by the regulated entity that  
18       it has purchased or sold a fraudulent loan or financial in-  
19       strument, or suspects a possible fraud relating to the pur-  
20       chase or sale of any loan or financial instrument. The Di-  
21       rector shall require each regulated entity to establish and  
22       maintain procedures designed to discover any such trans-  
23       actions.

24       “(b) PROTECTION FROM LIABILITY FOR REPORTS.—  
25       Any regulated entity that makes a report pursuant to sub-

1 section (a), and any entity-affiliated party, who makes or  
2 requires another to make any such report shall not be lia-  
3 ble to any person under any provision of law or regulation,  
4 any constitution, law, or regulation of any State or polit-  
5 ical subdivision of any State, or under any contract or  
6 other legally enforceable agreement (including any arbitra-  
7 tion agreement), for such report or for any failure to pro-  
8 vide notice of such report to the person who is the subject  
9 of such report or any other persons identified in the re-  
10 port.”.

11 **Subtitle B—Improvement of**  
12 **Mission Supervision**

13 **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**  
14 **ING GOAL OVERSIGHT.**

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

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

20 **“PART 2—ADDITIONAL AUTHORI-**  
21 **TIES OF THE DIRECTOR”;**

22 and

23 (2) by striking sections 1321 and 1322.

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

2 Part 2 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.), as amended by this Act, is amended  
5 by adding at the end the following:

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

7 “(a) IN GENERAL.—The Director shall require each  
8 enterprise to obtain the approval of the Director for any  
9 product of the enterprise before initially offering the prod-  
10 uct.

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

14 “(1) in the case of a product of the Federal Na-  
15 tional Mortgage Association, the Director determines  
16 that the product is authorized under paragraph (2),  
17 (3), (4), or (5) of section 302(b) or section 304 of  
18 the Federal National Mortgage Association Charter  
19 Act (12 U.S.C. 1717(b), 1719);

20 “(2) in the case of a product of the Federal  
21 Home Loan Mortgage Corporation, the Director de-  
22 termines that the product is authorized under para-  
23 graph (1), (4), or (5) of section 305(a) of the Fed-  
24 eral Home Loan Mortgage Corporation Act (12  
25 U.S.C. 1451(a));

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

1           “(4) the product is consistent with the safety  
2 and soundness of the enterprise or the mortgage fi-  
3 nance system; and

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

6           “(c) PROCEDURE FOR APPROVAL.—

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

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

21           “(3) PUBLIC COMMENT PERIOD.—During the  
22 30-day period beginning on the date of publication  
23 pursuant to paragraph (2) of a request for approval  
24 of a product, the Director shall receive public com-  
25 ments regarding the proposed product.

1 “(4) OFFERING OF PRODUCT.—

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

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

11 “(d) EXPEDITED REVIEW.—

12 “(1) DETERMINATION AND NOTICE.—If an en-  
13 terprise determines that any new activity, service,  
14 undertaking or offering is not a product, as defined  
15 in subsection (f), then the enterprise shall provide  
16 written notice to the Director prior to the com-  
17 mencement of such activity, service, undertaking, or  
18 offering.

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

23 “(3) DETERMINATION AND TREATMENT AS A  
24 PRODUCT.—If the Director determines that any new

1 activity, service, undertaking, or offering consists of,  
2 relates to, or involves a product—

3 “(A) the Director shall notify the enter-  
4 prise of the determination;

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

9 “(C) the enterprise shall withdraw its re-  
10 quest or submit a written request for approval  
11 of the product pursuant to subsection (e).

12 “(e) **CONDITIONAL APPROVAL.**—The Director may  
13 conditionally approve the offering of any product by an  
14 enterprise, and may establish terms, conditions, or limita-  
15 tions with respect to such product with which the enter-  
16 prise must comply in order to offer such product.

17 “(f) **DEFINITION OF PRODUCT.**—As used in this sec-  
18 tion, the term ‘product’ does not include—

19 “(1) the automated loan underwriting system of  
20 an enterprise in existence as of the date of enact-  
21 ment of the Federal Housing Enterprise Regulatory  
22 Reform Act of 2005, including any upgrade to the  
23 technology, operating system, or software to operate  
24 the underwriting system; or

1           “(2) any modification to the mortgage terms  
2           and conditions or mortgage underwriting criteria re-  
3           lating to the mortgages that are purchased or guar-  
4           anteed by an enterprise, provided that such modi-  
5           fications do not alter the underlying transaction so  
6           as to include services or financing, other than resi-  
7           dential mortgage financing, or create significant new  
8           exposure to risk for the enterprise or the holder of  
9           the mortgage.

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

12           “(1) the safety and soundness authority of the  
13           Director over all new and existing products or activi-  
14           ties; or

15           “(2) the authority of the Director to review all  
16           new and existing products or activities to determine  
17           that such products or activities are consistent with  
18           the statutory mission of the enterprise.”.

19 **SEC. 123. MONITORING AND ENFORCING COMPLIANCE**  
20 **WITH HOUSING GOALS.**

21          Section 1336 of the Federal Housing Enterprises Fi-  
22 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
23 4566) is amended—

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

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

4   **SEC. 124. ASSUMPTION BY DIRECTOR OF OTHER HUD RE-**  
5                           **SPONSIBILITIES.**

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

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

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

12                       (B) subsections (a), (b), and (c) of section  
13          1331 (12 U.S.C. 4561);

14                       (C) subsections (a), (b), and (c) of section  
15          1332 (12 U.S.C. 4562);

16                       (D) subsections (a), (b), and (c) of section  
17          1333 (12 U.S.C. 4563);

18                       (E) subsections (a), (b), and (c) of section  
19          1334 (12 U.S.C. 4564); and

20                       (F) subsections (a), (b), and (c) of section  
21          1336 (12 U.S.C. 4566);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (b) ACTIONS BY SECRETARY.—Section 1348(c) of the  
3 Federal Housing Enterprises Financial Safety and Sound-  
4 ness Act of 1992 (12 U.S.C. 4588(c)) is amended by in-  
5 serting “may,” after “bring an action or”.

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

7 (a) FANNIE MAE.—Section 302(b)(2) of the Federal  
8 National Mortgage Association Charter Act (12 U.S.C.  
9 1717(b)(2)) is amended by striking all that follows after  
10 “such cooperative housing corporation.” and inserting the  
11 following: “Such limitations shall not exceed \$359,650 for  
12 a mortgage secured by a single-family residence, \$460,400  
13 for a mortgage secured by a 2-family residence, \$556,500  
14 for a mortgage secured by a 3-family residence, and  
15 \$691,600 for a mortgage secured by a 4-family residence,  
16 except that such maximum limitations shall be adjusted  
17 effective January 1 of each year beginning after the effec-  
18 tive date under section 163 of the Federal Housing Enter-  
19 prise Regulatory Reform Act of 2005, subject to the limi-  
20 tations in this paragraph. Such limitation shall be cal-  
21 culated with respect to the total original principal obliga-  
22 tion of the mortgage, and not merely with respect to the  
23 interest purchased by the enterprise. Each adjustment  
24 shall be made by adding to or subtracting from each such  
25 amount (as it may have been previously adjusted) a per-

1 centage thereof equal to the percentage increase or de-  
2 crease, during the most recent 12-month or fourth quarter  
3 period ending before the time of determining such annual  
4 adjustment, in the housing price index maintained by the  
5 Director of the Federal Housing Enterprise Regulatory  
6 Agency (pursuant to section 1321 of the Housing and  
7 Community Development Act of 1992 (12 U.S.C.  
8 4541)).”.

9 (b) FREDDIE MAC.—Section 305(a)(2) of the Fed-  
10 eral Home Loan Mortgage Corporation Act (12 U.S.C.  
11 1454(a)(2)) is amended by striking all that follows after  
12 “eligible seller which is such a member.” and inserting the  
13 following: “Such limitations shall not exceed \$359,650 for  
14 a mortgage secured by a single-family residence, \$460,400  
15 for a mortgage secured by a 2-family residence, \$556,500  
16 for a mortgage secured by a 3-family residence, and  
17 \$691,600 for a mortgage secured by a 4-family residence,  
18 except that such maximum limitations shall be adjusted  
19 effective January 1 of each year beginning after the effec-  
20 tive date under section 163 of the Federal Housing Enter-  
21 prise Regulatory Reform Act of 2005, subject to the limi-  
22 tations in this paragraph. Such limitation shall be cal-  
23 culated with respect to the total original principal obliga-  
24 tion of the mortgage and not merely with respect to the  
25 interest purchased by the enterprise. Each adjustment

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

10 (c) HOUSING PRICE INDEX.—

11 (1) IN GENERAL.—Title XIII of the Housing  
12 and Community Development Act of 1992 (as  
13 amended by this Act) is amended by inserting before  
14 section 1323 the following new section:

15 **“SEC. 1321. HOUSING PRICE INDEX.**

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

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

1 sight of the Department of Housing and Urban Develop-  
2 ment before the effective date under section 163 of the  
3 Federal Housing Enterprise Regulatory Reform Act of  
4 2005, any appropriate housing price indexes of the Bureau  
5 of the Census of the Department of Commerce, and any  
6 other indexes or measure that the Director considers ap-  
7 propriate.”.

8 (2) CLERICAL AMENDMENT.—Title XIII of the  
9 Housing and Community Development Act of 1992  
10 (as amended by this Act) is amended by redesignig-  
11 nating sections 1323 through 1326 as sections 1322  
12 through 1325, respectively.

## 13 **Subtitle C—Prompt Corrective** 14 **Action**

### 15 **SEC. 141. CRITICAL CAPITAL LEVELS.**

16 Section 1363 of the Federal Housing Enterprises Fi-  
17 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
18 4613) is amended—

19 (1) by redesignating paragraphs (1) through  
20 (3) as clauses (i) through (iii), respectively, and in-  
21 denting appropriately;

22 (2) by striking “this subtitle, the critical capital  
23 level for each enterprise shall be the sum of—” and  
24 inserting the following: “this subtitle, the critical cap-  
25 ital level—

1 “(1) for each enterprise shall be—

2 “(A) the sum of—”; and

3 (3) in subparagraph (A)(iii), as so designated  
4 by this section, by striking the period at the end and  
5 inserting the following: “; or

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

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

11 **SEC. 142. CAPITAL CLASSIFICATIONS.**

12 Section 1364 of the Federal Housing Enterprises Fi-  
13 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
14 4614) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (3)(A)—

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

18 (ii) by redesignating clauses (ii) and

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

20 and

21 (B) in paragraph (4)(A), by striking “en-  
22 terprise-” and all that follows through “(ii)  
23 does” and inserting “enterprise does”;

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

1 “(b) DISCRETIONARY CLASSIFICATION.—

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

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

12 “(B) after notice and an opportunity for  
13 hearing, the Director determines that a regu-  
14 lated entity is in an unsafe or unsound condi-  
15 tion; or

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

19 “(2) RECLASSIFICATION.—In addition to any  
20 other action authorized under this title, including  
21 the reclassification of a regulated entity for any rea-  
22 son not specified in this subsection, if the Director  
23 takes any action described in paragraph (1), the Di-  
24 rector may reclassify a regulated entity—

1           “(A) as ‘undercapitalized’, if the regulated  
2           entity is otherwise classified as adequately cap-  
3           italized;

4           “(B) as ‘significantly undercapitalized’, if  
5           the regulated entity is otherwise classified as  
6           undercapitalized; and

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

10          (3) by striking subsection (d) and inserting the  
11          following:

12          “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

13                 “(1) IN GENERAL.—A regulated entity shall  
14                 make no capital distribution if, after making the dis-  
15                 tribution, the regulated entity would be under-  
16                 capitalized.

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

22                         “(A) is made in connection with the  
23                         issuance of additional shares or obligations of  
24                         the regulated entity in at least an equivalent  
25                         amount; and

1           “(B) will reduce the financial obligations of  
2           the regulated entity or otherwise improve the fi-  
3           nancial condition of the regulated entity.”.

4 **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
5 **CAPITALIZED REGULATED ENTITIES.**

6           Section 1365 of the Federal Housing Enterprises Fi-  
7           nancial Safety and Soundness Act of 1992 (12 U.S.C.  
8           4615) is amended—

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

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

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

15          (4) in subsection (a)—

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

18                 (B) by inserting before paragraph (2), as  
19                 redesignated, the following:

20                 “(1) **REQUIRED MONITORING.**—The Director  
21                 shall—

22                         “(A) closely monitor the condition of any  
23                         undercapitalized regulated entity;

24                         “(B) closely monitor compliance with the  
25                         capital restoration plan, restrictions, and re-

1            requirements imposed on an undercapitalized reg-  
2            ulated entity under this section; and

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

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

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

14           “(A) the Director has accepted the capital  
15           restoration plan of the regulated entity;

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

18           “(C) the ratio of tangible equity to assets  
19           of the regulated entity increases during the cal-  
20           endar quarter at a rate sufficient to enable the  
21           regulated entity to become adequately capital-  
22           ized within a reasonable time.

23           “(5) PRIOR APPROVAL OF ACQUISITIONS AND  
24           NEW ACTIVITIES.—An undercapitalized regulated en-  
25           tity shall not, directly or indirectly, acquire any in-

1       terest in any entity or engage in any new activity,  
2       unless—

3               “(A) the Director has accepted the capital  
4               restoration plan of the regulated entity, the reg-  
5               ulated entity is implementing the plan, and the  
6               Director determines that the proposed action is  
7               consistent with and will further the achievement  
8               of the plan; or

9               “(B) the Director determines that the pro-  
10              posed action will further the purpose of this  
11              subtitle.”;

12             (5) in subsection (b)—

13               (A) in the subsection heading, by striking  
14               “DISCRETIONARY”;

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

17               (C) in paragraph (2)—

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

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

22               and

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

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

8 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
9                           **CANTLY UNDERCAPITALIZED REGULATED**  
10                           **ENTITIES.**

11           Section 1366 of the Federal Housing Enterprises Fi-  
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
13 4616) is amended—

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

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

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

20                   (4) in subsection (b)—

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

24                           (B) in the matter preceding paragraph (1),  
25 by striking “may, at any time, take any” and

1 inserting “shall carry out this section by taking,  
2 at any time, 1 or more”;

3 (C) by striking paragraph (6);

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

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

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

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

13 “(B) DISMISSAL OF DIRECTORS OR EXECU-  
14 TIVE OFFICERS.—Require the regulated entity  
15 to dismiss from office any director or executive  
16 officer who had held office for more than 180  
17 days immediately before the date on which the  
18 regulated entity became undercapitalized. Dis-  
19 missal under this subparagraph shall not be  
20 construed to be a removal pursuant to the en-  
21 forcement powers of the Director under section  
22 1377.

23 “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
24 FICERS.—Require the regulated entity to em-  
25 ploy qualified executive officers (who, if the Di-

1 rector so specifies, shall be subject to approval  
2 by the Director).”; and

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

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

9 (5) by redesignating subsection (c) as sub-  
10 section (d); and

11 (6) by inserting after subsection (b) the fol-  
12 lowing:

13 “(c) RESTRICTION ON COMPENSATION OF EXECU-  
14 TIVE OFFICERS.—A regulated entity that is classified as  
15 significantly undercapitalized in accordance with section  
16 1364 may not, without prior written approval by the  
17 Director—

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

19 “(2) provide compensation to any executive offi-  
20 cer at a rate exceeding the average rate of com-  
21 pensation of that officer (excluding bonuses, stock  
22 options, and profit sharing) during the 12 calendar  
23 months preceding the calendar month in which the  
24 regulated entity became significantly undercapital-  
25 ized.”.

1 **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
2 **IZED REGULATED ENTITIES.**

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

6 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
7 **IZED REGULATED ENTITIES.**

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

10 “(1) IN GENERAL.—Notwithstanding any other  
11 provision of Federal or State law, the Director may  
12 establish a conservatorship or receivership in the  
13 manner provided under paragraph (2) or (4).

14 “(2) DISCRETIONARY APPOINTMENT.—The  
15 Agency may, at the discretion of the Director, be ap-  
16 pointed conservator or receiver for the purpose of re-  
17 organizing, rehabilitating, or winding up the affairs  
18 of a regulated entity.

19 “(3) GROUNDS FOR DISCRETIONARY APPOINT-  
20 MENT OF CONSERVATOR OR RECEIVER.—The  
21 grounds for appointing a conservator or receiver for  
22 any regulated entity under paragraph (2) are as fol-  
23 lows:

24 “(A) SUBSTANTIAL DISSIPATION.—Sub-  
25 stantial dissipation of assets or earnings due  
26 to—

1                   “(i) any violation of any provision of  
2                   Federal or State law; or

3                   “(ii) any unsafe or unsound practice.

4                   “(B) UNSAFE OR UNSOUND CONDITION.—  
5                   An unsafe or unsound condition to transact  
6                   business.

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

10                  “(D) CONCEALMENT.—Any concealment of  
11                  the books, papers, records, or assets of the reg-  
12                  ulated entity, or any refusal to submit the  
13                  books, papers, records, or affairs of the regu-  
14                  lated entity, for inspection to any examiner or  
15                  to any lawful agent of the Director.

16                  “(E) INABILITY TO MEET OBLIGATIONS.—  
17                  The regulated entity is likely to be unable to  
18                  pay its obligations or meet the demands of its  
19                  creditors in the normal course of business.

20                  “(F) LOSSES.—The regulated entity has  
21                  incurred or is likely to incur losses that will de-  
22                  plete all or substantially all of its capital, and  
23                  there is no reasonable prospect for the regu-  
24                  lated entity to become adequately capitalized  
25                  (as defined in section 1364(a)(1)).

1           “(G) VIOLATIONS OF LAW.—Any violation  
2 of any law or regulation, or any unsafe or un-  
3 sound practice or condition that is likely to—

4           “(i) cause insolvency or substantial  
5 dissipation of assets or earnings; or

6           “(ii) weaken the condition of the regu-  
7 lated entity.

8           “(H) CONSENT.—The regulated entity, by  
9 resolution of its board of directors or its share-  
10 holders or members, consents to the appoint-  
11 ment.

12           “(I) UNDERCAPITALIZATION.—The regu-  
13 lated entity is undercapitalized or significantly  
14 undercapitalized (as defined in section  
15 1364(a)(3)), and—

16           “(i) has no reasonable prospect of be-  
17 coming adequately capitalized;

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

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

22           “(II) section 1366(a)(1) with re-  
23 spect to a significantly undercapital-  
24 ized regulated entity;

1           “(iii) fails to submit a capital restora-  
2           tion plan acceptable to the Agency within  
3           the time prescribed under section 1369C;  
4           or

5           “(iv) materially fails to implement a  
6           capital restoration plan submitted and ac-  
7           cepted under section 1369C.

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

11          “(K) MONEY LAUNDERING.—The Attorney  
12          General notifies the Director in writing that the  
13          regulated entity has been found guilty of a  
14          criminal offense under section 1956 or 1957 of  
15          title 18, United States Code, or section 5322 or  
16          5324 of title 31, United States Code.

17          “(4) MANDATORY RECEIVERSHIP.—

18          “(A) IN GENERAL.—The Director shall ap-  
19          point the Agency as receiver for a regulated en-  
20          tity if the Director determines, in writing,  
21          that—

22                 “(i) the assets of the regulated entity  
23                 are, and during the preceding 30 calendar  
24                 days have been, less than the obligations of

1 the regulated entity to its creditors and  
2 others; or

3 “(ii) the regulated entity is not, and  
4 during the preceding 30 calendar days has  
5 not been, generally paying the debts of the  
6 regulated entity (other than debts that are  
7 the subject of a bona fide dispute) as such  
8 debts become due.

9 “(B) PERIODIC DETERMINATION RE-  
10 QUIRED FOR CRITICALLY UNDERCAPITALIZED  
11 REGULATED ENTITY.—If a regulated entity is  
12 critically undercapitalized, the Director shall  
13 make a determination, in writing, as to whether  
14 the regulated entity meets the criteria specified  
15 in clause (i) or (ii) of subparagraph (A)—

16 “(i) not later than 30 calendar days  
17 after the regulated entity initially becomes  
18 critically undercapitalized; and

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

21 “(C) DETERMINATION NOT REQUIRED IF  
22 RECEIVERSHIP ALREADY IN PLACE.—Subpara-  
23 graph (B) does not apply with respect to a reg-  
24 ulated entity in any period during which the

1 Agency serves as receiver for the regulated enti-  
2 ty.

3 “(D) RECEIVERSHIP TERMINATES CON-  
4 SERVATORSHIP.—The appointment of the Agen-  
5 cy as receiver of a regulated entity under this  
6 section shall immediately terminate any con-  
7 servatorship established for the regulated entity  
8 under this title.

9 “(5) JUDICIAL REVIEW.—

10 “(A) IN GENERAL.—If the Agency is ap-  
11 pointed conservator or receiver under this sec-  
12 tion, the regulated entity may, within 30 days  
13 of such appointment, bring an action in the  
14 United States District Court for the judicial  
15 district in which the home office of such regu-  
16 lated entity is located, or in the United States  
17 District Court for the District of Columbia, for  
18 an order requiring the Agency to remove itself  
19 as conservator or receiver.

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

1           “(6) DIRECTORS NOT LIABLE FOR ACQUI-  
2           ESCING IN APPOINTMENT OF CONSERVATOR OR RE-  
3           CEIVER.—The members of the board of directors of  
4           a regulated entity shall not be liable to the share-  
5           holders or creditors of the regulated entity for acqui-  
6           escing in or consenting in good faith to the appoint-  
7           ment of the Agency as conservator or receiver for  
8           that regulated entity.

9           “(7) 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 REGULATED ENTI-  
23                         TY.—The Agency shall, as conservator or re-  
24                         ceiver, and by operation of law, immediately  
25                         succeed to—

1           “(i) all rights, titles, powers, and  
2           privileges of the regulated entity, and of  
3           any stockholder, officer, or director of such  
4           regulated entity with respect to the regu-  
5           lated entity and the assets of the regulated  
6           entity; and

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

10          “(B) OPERATE THE REGULATED ENTI-  
11          TY.—The Agency may, as conservator or  
12          receiver—

13               “(i) take over the assets of and oper-  
14               ate the regulated entity with all the powers  
15               of the shareholders, the directors, and the  
16               officers of the regulated entity and conduct  
17               all business of the regulated entity;

18               “(ii) collect all obligations and money  
19               due the regulated entity;

20               “(iii) perform all functions of the reg-  
21               ulated entity in the name of the regulated  
22               entity which are consistent with the ap-  
23               pointment as conservator or receiver;

24               “(iv) preserve and conserve the assets  
25               and property of the regulated entity; and

1           “(v) provide by contract for assistance  
2           in fulfilling any function, activity, action,  
3           or duty of the Agency as conservator or re-  
4           ceiver.

5           “(C) FUNCTIONS OF OFFICERS, DIREC-  
6           TORS, AND SHAREHOLDERS OF A REGULATED  
7           ENTITY.—The Agency may, by regulation or  
8           order, provide for the exercise of any function  
9           by any stockholder, director, or officer of any  
10          regulated entity for which the Agency has been  
11          named conservator or receiver.

12          “(D) POWERS AS CONSERVATOR.—The  
13          Agency may, as conservator, take such action  
14          as may be—

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

17                 “(ii) appropriate to carry on the busi-  
18                 ness of the regulated entity and preserve  
19                 and conserve the assets and property of  
20                 the regulated entity.

21          “(E) ADDITIONAL POWERS AS RE-  
22          CEIVER.—In any case in which the Agency is  
23          acting as receiver, the Agency shall place the  
24          regulated entity in liquidation and proceed to  
25          realize upon the assets of the regulated entity

1 in such manner as the Agency deems appro-  
2 priate, including through the sale of assets, the  
3 transfer of assets to a limited-life regulated en-  
4 tity established under subsection (i), or the ex-  
5 ercise of any other rights or privileges granted  
6 to the Agency under this paragraph.

7 “(F) ORGANIZATION OF NEW ENTER-  
8 PRISE.—The Agency shall, as receiver for an  
9 enterprise, organize a successor enterprise that  
10 will operate pursuant to subsection (i).

11 “(G) TRANSFER OR SALE OF ASSETS AND  
12 LIABILITIES.—The Agency may, as conservator  
13 or receiver, transfer or sell any asset or liability  
14 of the regulated entity in default, and may do  
15 so without any approval, assignment, or consent  
16 with respect to such transfer or sale.

17 “(H) PAYMENT OF VALID OBLIGATIONS.—  
18 The Agency, as conservator or receiver, shall, to  
19 the extent of proceeds realized from the per-  
20 formance of contracts or sale of the assets of a  
21 regulated entity, pay all valid obligations of the  
22 regulated entity that are due and payable at the  
23 time of the appointment of the Agency as con-  
24 servator or receiver, in accordance with the pre-  
25 scriptions and limitations of this section.

1 “(I) SUBPOENA AUTHORITY.—

2 “(i) IN GENERAL.—

3 “(I) AGENCY AUTHORITY.—The  
4 Agency may, as conservator or re-  
5 ceiver, and for purposes of carrying  
6 out any power, authority, or duty with  
7 respect to a regulated entity (includ-  
8 ing determining any claim against the  
9 regulated entity and determining and  
10 realizing upon any asset of any person  
11 in the course of collecting money due  
12 the regulated entity), exercise any  
13 power established under section 1348.

14 “(II) APPLICABILITY OF LAW.—  
15 The provisions of section 1348 shall  
16 apply with respect to the exercise of  
17 any power exercised under this sub-  
18 paragraph in the same manner as  
19 such provisions apply under that sec-  
20 tion.

21 “(ii) AUTHORITY OF DIRECTOR.—A  
22 subpoena or subpoena duces tecum may be  
23 issued under clause (i) only by, or with the  
24 written approval of, the Director, or the  
25 designee of the Director.

1           “(iii) RULE OF CONSTRUCTION.—This  
2 subsection shall not be construed to limit  
3 any rights that the Agency, in any capac-  
4 ity, might otherwise have under section  
5 1317 or 1379B.

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

8           “(i) exercise all powers and authori-  
9 ties specifically granted to conservators or  
10 receivers, respectively, under this section,  
11 and such incidental powers as shall be nec-  
12 essary to carry out such powers; and

13           “(ii) take any action authorized by  
14 this section, which the Agency determines  
15 is in the best interests of the regulated en-  
16 tity or the Agency.

17           “(K) OTHER PROVISIONS.—

18           “(i) SHAREHOLDERS AND CREDITORS  
19 OF FAILED REGULATED ENTITY.—Not-  
20 withstanding any other provision of law,  
21 the appointment of the Agency as receiver  
22 for a regulated entity pursuant to para-  
23 graph (2) or (4) of subsection (a) and its  
24 succession, by operation of law, to the  
25 rights, titles, powers, and privileges de-

1           scribed in subsection (b)(2)(A) shall termi-  
2           nate all rights and claims that the stock-  
3           holders and creditors of the regulated enti-  
4           ty may have against the assets or charter  
5           of the regulated entity or the Agency aris-  
6           ing as a result of their status as stock-  
7           holders or creditors, except for their right  
8           to payment, resolution, or other satisfac-  
9           tion of their claims, as permitted under  
10          subsections (b)(9), (c), and (e).

11                   “(ii) ASSETS OF REGULATED ENTI-  
12                   TY.—Notwithstanding any other provision  
13                   of law, for purposes of this subparagraph,  
14                   the charter of a regulated entity shall not  
15                   be considered an asset of the regulated en-  
16                   tity.

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

19                           “(A) IN GENERAL.—The Agency may, as  
20                   receiver, determine claims in accordance with  
21                   the requirements of this subsection and any  
22                   regulations prescribed under paragraph (4).

23                           “(B) NOTICE REQUIREMENTS.—The re-  
24                   ceiver, in any case involving the liquidation or

1 winding up of the affairs of a closed regulated  
2 entity, shall—

3 “(i) promptly publish a notice to the  
4 creditors of the regulated entity to present  
5 their claims, together with proof, to the re-  
6 ceiver by a date specified in the notice  
7 which shall be not less than 90 days after  
8 the publication of such notice; and

9 “(ii) republish such notice approxi-  
10 mately 1 month and 2 months, respec-  
11 tively, after the publication under clause  
12 (i).

13 “(C) MAILING REQUIRED.—The receiver  
14 shall mail a notice similar to the notice pub-  
15 lished under subparagraph (B)(i) at the time of  
16 such publication to any creditor shown on the  
17 books of the regulated entity—

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

20 “(ii) upon discovery of the name and  
21 address of a claimant not appearing on the  
22 books of the regulated entity within 30  
23 days after the discovery of such name and  
24 address.

1           “(4) RULEMAKING AUTHORITY RELATING TO  
2 DETERMINATION OF CLAIMS.—Subject to subsection  
3 (c), the Director may prescribe regulations regarding  
4 the allowance or disallowance of claims by the re-  
5 ceiver and providing for administrative determina-  
6 tion of claims and review of such determination.

7           “(5) PROCEDURES FOR DETERMINATION OF  
8 CLAIMS.—

9           “(A) DETERMINATION PERIOD.—

10           “(i) IN GENERAL.—Before the end of  
11 the 180-day period beginning on the date  
12 on which any claim against a regulated en-  
13 tity is filed with the Agency as receiver,  
14 the Agency shall determine whether to  
15 allow or disallow the claim and shall notify  
16 the claimant of any determination with re-  
17 spect to such claim.

18           “(ii) EXTENSION OF TIME.—The pe-  
19 riod described in clause (i) may be ex-  
20 tended by a written agreement between the  
21 claimant and the Agency.

22           “(iii) MAILING OF NOTICE SUFFI-  
23 CIENT.—The requirements of clause (i)  
24 shall be deemed to be satisfied if the notice  
25 of any determination with respect to any

1 claim is mailed to the last address of the  
2 claimant which appears—

3 “(I) on the books of the regu-  
4 lated entity;

5 “(II) in the claim filed by the  
6 claimant; or

7 “(III) in documents submitted in  
8 proof of the claim.

9 “(iv) CONTENTS OF NOTICE OF DIS-  
10 ALLOWANCE.—If any claim filed under  
11 clause (i) is disallowed, the notice to the  
12 claimant shall contain—

13 “(I) a statement of each reason  
14 for the disallowance; and

15 “(II) the procedures available for  
16 obtaining agency review of the deter-  
17 mination to disallow the claim or judi-  
18 cial determination of the claim.

19 “(B) ALLOWANCE OF PROVEN CLAIM.—  
20 The receiver shall allow any claim received on  
21 or before the date specified in the notice pub-  
22 lished under paragraph (3)(B)(i) by the receiver  
23 from any claimant which is proved to the satis-  
24 faction of the receiver.

1           “(C) DISALLOWANCE OF CLAIMS FILED  
2 AFTER END OF FILING PERIOD.—Claims filed  
3 after the date specified in the notice published  
4 under paragraph (3)(B)(i), or the date specified  
5 under paragraph (3)(C), shall be disallowed and  
6 such disallowance shall be final.

7           “(D) AUTHORITY TO DISALLOW CLAIMS.—

8           “(i) IN GENERAL.—The receiver may  
9 disallow any portion of any claim by a  
10 creditor or claim of security, preference, or  
11 priority which is not proved to the satisfac-  
12 tion of the receiver.

13           “(ii) PAYMENTS TO LESS THAN  
14 FULLY SECURED CREDITORS.—In the case  
15 of a claim of a creditor against a regulated  
16 entity which is secured by any property or  
17 other asset of such regulated entity, the  
18 receiver—

19           “(I) may treat the portion of  
20 such claim which exceeds an amount  
21 equal to the fair market value of such  
22 property or other asset as an unse-  
23 cured claim against the regulated en-  
24 tity; and

1                   “(II) may not make any payment  
2                   with respect to such unsecured por-  
3                   tion of the claim, other than in con-  
4                   nection with the disposition of all  
5                   claims of unsecured creditors of the  
6                   regulated entity.

7                   “(iii) EXCEPTIONS.—No provision of  
8                   this paragraph shall apply with respect  
9                   to—

10                   “(I) any extension of credit from  
11                   any Federal Reserve Bank or the  
12                   United States Treasury; or

13                   “(II) any security interest in the  
14                   assets of the regulated entity securing  
15                   any such extension of credit.

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

21                   “(F) LEGAL EFFECT OF FILING.—

22                   “(i) STATUTE OF LIMITATION  
23                   TOLLED.—For purposes of any applicable  
24                   statute of limitations, the filing of a claim

1 with the receiver shall constitute a com-  
2 mencement of an action.

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

11 “(6) PROVISION FOR JUDICIAL DETERMINATION  
12 OF CLAIMS.—

13 “(A) IN GENERAL.—The claimant may file  
14 suit on a claim (or continue an action com-  
15 menced before the appointment of the receiver)  
16 in the district or territorial court of the United  
17 States for the district within which the prin-  
18 cipal place of business of the regulated entity is  
19 located or the United States District Court for  
20 the District of Columbia (and such court shall  
21 have jurisdiction to hear such claim), before the  
22 end of the 60-day period beginning on the ear-  
23 lier of—

24 “(i) the end of the period described in  
25 paragraph (5)(A)(i) with respect to any

1 claim against a regulated entity for which  
2 the Agency is receiver; or

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

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

17 “(7) REVIEW OF CLAIMS.—

18 “(A) OTHER REVIEW PROCEDURES.—

19 “(i) IN GENERAL.—The Agency shall  
20 establish such alternative dispute resolu-  
21 tion processes as may be appropriate for  
22 the resolution of claims filed under para-  
23 graph (5)(A)(i).

24 “(ii) CRITERIA.—In establishing alter-  
25 native dispute resolution processes, the

1 Agency shall strive for procedures which  
2 are expeditious, fair, independent, and low  
3 cost.

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

12 “(B) CONSIDERATION OF INCENTIVES.—  
13 The Agency shall seek to develop incentives for  
14 claimants to participate in the alternative dis-  
15 pute resolution process.

16 “(8) EXPEDITED DETERMINATION OF  
17 CLAIMS.—

18 “(A) ESTABLISHMENT REQUIRED.—The  
19 Agency shall establish a procedure for expedited  
20 relief outside of the routine claims process es-  
21 tablished under paragraph (5) for claimants  
22 who—

23 “(i) allege the existence of legally  
24 valid and enforceable or perfected security  
25 interests in assets of any regulated entity

1 for which the Agency has been appointed  
2 receiver; and

3 “(ii) allege that irreparable injury will  
4 occur if the routine claims procedure is fol-  
5 lowed.

6 “(B) DETERMINATION PERIOD.—Before  
7 the end of the 90-day period beginning on the  
8 date any claim is filed in accordance with the  
9 procedures established under subparagraph (A),  
10 the Director shall—

11 “(i) determine—

12 “(I) whether to allow or disallow  
13 such claim; or

14 “(II) whether such claim should  
15 be determined pursuant to the proce-  
16 dures established under paragraph  
17 (5); and

18 “(ii) notify the claimant of the deter-  
19 mination, and if the claim is disallowed,  
20 provide a statement of each reason for the  
21 disallowance and the procedure for obtain-  
22 ing agency review or judicial determina-  
23 tion.

24 “(C) PERIOD FOR FILING OR RENEWING  
25 SUIT.—Any claimant who files a request for ex-

1           pedited relief shall be permitted to file a suit,  
2           or to continue a suit filed before the appoint-  
3           ment of the receiver, seeking a determination of  
4           the rights of the claimant with respect to such  
5           security interest after the earlier of—

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

9                   “(ii) the date the Agency denies the  
10                  claim.

11           “(D) STATUTE OF LIMITATIONS.—If an  
12           action described under subparagraph (C) is not  
13           filed, or the motion to renew a previously filed  
14           suit is not made, before the end of the 30-day  
15           period beginning on the date on which such ac-  
16           tion or motion may be filed under subparagraph  
17           (B), the claim shall be deemed to be disallowed  
18           as of the end of such period (other than any  
19           portion of such claim which was allowed by the  
20           receiver), such disallowance shall be final, and  
21           the claimant shall have no further rights or  
22           remedies with respect to such claim.

23           “(E) LEGAL EFFECT OF FILING.—

24                   “(i) STATUTE OF LIMITATION  
25                  TOLLED.—For purposes of any applicable

1 statute of limitations, the filing of a claim  
2 with the receiver shall constitute a com-  
3 mencement of an action.

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

11 “(9) PAYMENT OF CLAIMS.—

12 “(A) IN GENERAL.—The receiver may, in  
13 the discretion of the receiver, and to the extent  
14 funds are available from the assets of the regu-  
15 lated entity, pay creditor claims, in such man-  
16 ner and amounts as are authorized under this  
17 section, which are—

18 “(i) allowed by the receiver;

19 “(ii) approved by the Agency pursuant  
20 to a final determination pursuant to para-  
21 graph (7) or (8); or

22 “(iii) determined by the final judg-  
23 ment of any court of competent jurisdic-  
24 tion.

1           “(B) AGREEMENTS AGAINST THE INTER-  
2           EST OF THE AGENCY.—No agreement that  
3           tends to diminish or defeat the interest of the  
4           Agency in any asset acquired by the Agency as  
5           receiver under this section shall be valid against  
6           the Agency unless such agreement is in writing  
7           and executed by an authorized officer or rep-  
8           resentative of the regulated entity.

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

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

1 receiver of the principal amount of all creditor  
2 claims.

3 “(10) SUSPENSION OF LEGAL ACTIONS.—

4 “(A) IN GENERAL.—After the appointment  
5 of a conservator or receiver for a regulated enti-  
6 ty, the conservator or receiver may, in any judi-  
7 cial action or proceeding to which such regu-  
8 lated entity is or becomes a party, request a  
9 stay for a period 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 regulated entity (before the  
9 appointment of such conservator or re-  
10 ceiver) and the Agency, including removal  
11 to Federal court and all appellate rights;  
12 and

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

15 “(C) NO ATTACHMENT OR EXECUTION.—  
16 No attachment or execution may issue by any  
17 court upon assets in the possession of the re-  
18 ceiver, or upon the charter, of a regulated enti-  
19 ty for which the Agency has been appointed re-  
20 ceiver.

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

24 “(i) any claim or action for payment  
25 from, or any action seeking a determina-

1                   tion of rights with respect to, the assets or  
2                   charter of any regulated entity for which  
3                   the Agency has been appointed receiver; or

4                   “(ii) any claim relating to any act or  
5                   omission of such regulated entity or the  
6                   Agency as receiver.

7                   “(E) DISPOSITION OF ASSETS.—In exer-  
8                   cising any right, power, privilege, or authority  
9                   as conservator or receiver in connection with  
10                  any sale or disposition of assets of a regulated  
11                  entity for which the Agency has been appointed  
12                  conservator or receiver, the Agency shall con-  
13                  duct its operations in a manner which—

14                  “(i) maximizes the net present value  
15                  return from the sale or disposition of such  
16                  assets;

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

19                  “(iii) ensures adequate competition  
20                  and fair and consistent treatment of  
21                  offerors.

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

24                  “(A) IN GENERAL.—Notwithstanding any  
25                  provision of any contract, the applicable statute

1 of limitations with regard to any action brought  
2 by the Agency as conservator or receiver shall  
3 be—

4 “(i) in the case of any contract claim,  
5 the longer of—

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

8 “(II) the period applicable under  
9 State law; and

10 “(ii) in the case of any tort claim, the  
11 longer of—

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

14 “(II) the period applicable under  
15 State law.

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

22 “(i) the date of the appointment of  
23 the Agency as conservator or receiver; or

24 “(ii) the date on which the cause of  
25 action accrues.

1           “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
2 ACTION.—

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

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

20           “(14) ACCOUNTING AND RECORDKEEPING RE-  
21 QUIREMENTS.—

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

1 accounting of each conservatorship and receiv-  
2 ership or other disposition of a regulated entity  
3 in default.

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

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

18 “(D) RECORDKEEPING REQUIREMENT.—  
19 After the end of the 6-year period beginning on  
20 the date that the conservatorship or receiver-  
21 ship is terminated by the Director, the Agency  
22 may destroy any records of such regulated enti-  
23 ty which the Agency, in the discretion of the  
24 Agency, determines to be unnecessary unless di-  
25 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 entity-affiliated party, or any  
7 person who the conservator or receiver deter-  
8 mines is a debtor of the regulated entity, in  
9 property, or any obligation incurred by such  
10 party or person, that was made within 5 years  
11 of the date on which the Agency was appointed  
12 conservator or receiver, if such party or person  
13 voluntarily or involuntarily made such transfer  
14 or incurred such liability with the intent to  
15 hinder, delay, or defraud the regulated entity,  
16 the Agency, 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 regulated entity, the property  
21 transferred, or, if a court so orders, the value  
22 of such property (at the time of such transfer)  
23 from—

24 “(i) the initial transferee of such  
25 transfer or the regulated entity-affiliated

1 party or person for whose benefit such  
2 transfer 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,  
14 pool of mortgages, or interest in a pool of  
15 mortgages held in trust, custodial, or agen-  
16 cy capacity by an enterprise for the benefit  
17 of any person other than the enterprise  
18 shall not be available to satisfy the claims  
19 of creditors generally.

20 “(ii) HOLDING OF MORTGAGES.—Any  
21 mortgage, pool of mortgages, or interest in  
22 a pool of mortgages described in clause (i)  
23 shall be held by the conservator or receiver  
24 appointed under this section for the bene-  
25 ficial owners of such mortgage, pool of

1 mortgages, or interest in accordance with  
2 the terms of the agreement creating such  
3 trust, custodial, or other agency arrange-  
4 ment.

5 “(iii) LIABILITY OF CONSERVATOR OR  
6 RECEIVER.—The liability of a conservator  
7 or receiver appointed under this section for  
8 damages shall, in the case of any contin-  
9 gent or unliquidated claim relating to the  
10 mortgages held in trust, be estimated in  
11 accordance set forth in the regulations of  
12 the Director.

13 “(c) PRIORITY OF EXPENSES AND UNSECURED  
14 CLAIMS.—

15 “(1) IN GENERAL.—Unsecured claims against a  
16 regulated entity, or a receiver, that are proven to the  
17 satisfaction of the receiver shall have priority in the  
18 following order:

19 “(A) Administrative expenses of the re-  
20 ceiver.

21 “(B) Any other general or senior liability  
22 of the regulated entity (which is not a liability  
23 described under subparagraph (C) or (D).

1           “(C) Any obligation subordinated to gen-  
2           eral creditors (which is not an obligation de-  
3           scribed under subparagraph (D)).

4           “(D) Any obligation to shareholders or  
5           members arising as a result of their status as  
6           shareholder or members.

7           “(2) CREDITORS SIMILARLY SITUATED.—All  
8           creditors that are similarly situated under paragraph  
9           (1) shall be treated in a similar manner, except that  
10          the Agency may take any action (including making  
11          payments) that do not comply with this paragraph,  
12          if—

13                 “(A) the Director determines that such ac-  
14                 tion is necessary to maximize the value of the  
15                 assets of the regulated entity, to maximize the  
16                 present value return from the sale or other dis-  
17                 position of the assets of the regulated entity, or  
18                 to minimize the amount of any loss realized  
19                 upon the sale or other disposition of the assets  
20                 of the regulated entity assets; and

21                 “(B) all creditors that are similarly situ-  
22                 ated under paragraph (1) receive not less than  
23                 the amount provided in subsection (e)(2).

24           “(3) DEFINITION.—The term ‘administrative  
25           expenses of the receiver’ includes—

1           “(A) the actual, necessary costs and ex-  
2           penses incurred by the receiver in preserving  
3           the assets of a failed regulated entity or liqui-  
4           dating or otherwise resolving the affairs of a  
5           failed regulated entity; and

6           “(B) any obligations that the receiver de-  
7           termines are necessary and appropriate to fa-  
8           cilitate the smooth and orderly liquidation or  
9           other resolution of the regulated entity.

10          “(d) PROVISIONS RELATING TO CONTRACTS EN-  
11          TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
12          OR RECEIVER.—

13                 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—  
14          In addition to any other rights a conservator or re-  
15          ceiver may have, the conservator or receiver for any  
16          regulated entity may disaffirm or repudiate any con-  
17          tract or lease—

18                 “(A) to which such regulated entity is a  
19                 party;

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

23                 “(C) the disaffirmance or repudiation of  
24                 which the conservator or receiver determines, in  
25                 its sole discretion, will promote the orderly ad-

1           ministration of the affairs of the regulated enti-  
2           ty.

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

8           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
9           ATION.—

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

16                   “(i) limited to actual direct compen-  
17                   satory damages; and

18                   “(ii) determined as of—

19                           “(I) the date of the appointment  
20                           of the conservator or receiver; or

21                           “(II) in the case of any contract  
22                           or agreement referred to in paragraph  
23                           (8), the date of the disaffirmance or  
24                           repudiation of such contract or agree-  
25                           ment.

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

5                   “(i) punitive or exemplary damages;

6                   “(ii) damages for lost profits or op-  
7 portunity; or

8                   “(iii) damages for pain and suffering.

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

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

19                   “(ii) paid in accordance with this sub-  
20 section and subsection (e), except as other-  
21 wise specifically provided in this section.

22           “(4) LEASES UNDER WHICH THE REGULATED  
23 ENTITY IS THE LESSEE.—

24                   “(A) IN GENERAL.—If the conservator or  
25 receiver disaffirms or repudiates a lease under

1 which the regulated entity was the lessee, the  
2 conservator or receiver shall not be liable for  
3 any damages (other than damages determined  
4 under subparagraph (B)) for the disaffirmance  
5 or repudiation of such lease.

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

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

12 “(I) the notice of disaffirmance  
13 or repudiation is mailed; or

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

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

21 “(iii) have a claim for any unpaid  
22 rent, subject to all appropriate offsets and  
23 defenses, due as of the date of the appoint-  
24 ment, which shall be paid in accordance  
25 with this subsection and subsection (e).

1           “(5) LEASES UNDER WHICH THE REGULATED  
2 ENTITY IS THE LESSOR.—

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

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

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

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

22           “(i) the lessee—

23           “(I) shall continue to pay the  
24 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 regulated entity  
9 under 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 regulated entity  
19                   under the 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 regulated  
6 entity for which the Agency has been appointed  
7 conservator or receiver, any claim of such per-  
8 son for services performed before the appoint-  
9 ment of the conservator or the receiver shall  
10 be—

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

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

16           “(B) SERVICES PERFORMED AFTER AP-  
17 POINTMENT AND PRIOR TO REPUDIATION.—If,  
18 in the case of any contract for services de-  
19 scribed under subparagraph (A), the conser-  
20 vator or receiver accepts performance by the  
21 other person before the conservator or receiver  
22 makes any determination to exercise the right  
23 of repudiation of such contract under this  
24 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 paragraphs (9) and (10),  
21          and notwithstanding any other provision of this  
22          Act (other than subsection (b)(9)(B) of this  
23          section), any other Federal law, or the law of  
24          any State, no person shall be stayed or prohib-  
25          ited from exercising—

1           “(i) any right of that person to cause  
2           the termination, liquidation, or acceleration  
3           of any qualified financial contract with a  
4           regulated entity that arises upon the ap-  
5           pointment of the Agency as receiver for  
6           such regulated entity at any time after  
7           such appointment;

8           “(ii) any right under any security  
9           agreement or arrangement or other credit  
10          enhancement relating to one or more quali-  
11          fied financial contracts; or

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

19          “(B) APPLICABILITY OF OTHER PROVI-  
20          SIONS.—Subsection (b)(10) shall apply in the  
21          case of any judicial action or proceeding  
22          brought against any receiver referred to under  
23          subparagraph (A), or the regulated entity for  
24          which such receiver was appointed, by any  
25          party to a contract or agreement described

1 under subparagraph (A)(i) with such regulated  
2 entity.

3 “(C) CERTAIN TRANSFERS NOT AVOID-  
4 ABLE.—

5 “(i) IN GENERAL.—Notwithstanding  
6 paragraph (11), or any other provision of  
7 Federal or State law relating to the avoid-  
8 ance of preferential or fraudulent trans-  
9 fers, the Agency, whether acting as such or  
10 as conservator or receiver of a regulated  
11 entity, may not avoid any transfer of  
12 money or other property in connection with  
13 any qualified financial contract with a reg-  
14 ulated entity.

15 “(ii) EXCEPTION FOR CERTAIN  
16 TRANSFERS.—Clause (i) shall not apply to  
17 any transfer of money or other property in  
18 connection with any qualified financial con-  
19 tract with a regulated entity if the Agency  
20 determines that the transferee had actual  
21 intent to hinder, delay, or defraud such  
22 regulated entity, the creditors of such reg-  
23 ulated entity, or any conservator or re-  
24 ceiver appointed for such regulated entity.

1           “(D) CERTAIN CONTRACTS AND AGREE-  
2           MENTS DEFINED.—In this subsection the fol-  
3           lowing definitions shall apply:

4                   “(i) QUALIFIED FINANCIAL CON-  
5                   TRACT.—The term ‘qualified financial con-  
6                   tract’ means any securities contract, com-  
7                   modity contract, forward contract, repur-  
8                   chase agreement, swap agreement, and any  
9                   similar agreement that the Agency deter-  
10                  mines by regulation, resolution, or order to  
11                  be a qualified financial contract for pur-  
12                  poses of this paragraph.

13                  “(ii) SECURITIES CONTRACT.—The  
14                  term ‘securities contract’—

15                   “(I) means a contract for the  
16                   purchase, sale, or loan of a security, a  
17                   certificate of deposit, a mortgage loan,  
18                   or any interest in a mortgage loan, a  
19                   group or index of securities, certifi-  
20                   cates of deposit, or mortgage loans or  
21                   interests therein (including any inter-  
22                   est therein or based on the value  
23                   thereof) or any option on any of the  
24                   foregoing, including any option to  
25                   purchase or sell any such security,

1 certificate of deposit, mortgage loan,  
2 interest, group or index, or option,  
3 and including any repurchase or re-  
4 verse repurchase transaction on any  
5 such security, certificate of deposit,  
6 mortgage loan, interest, group or  
7 index, or option;

8 “(II) does not include any pur-  
9 chase, sale, or repurchase obligation  
10 under a participation in a commercial  
11 mortgage loan unless the Agency de-  
12 termines by regulation, resolution, or  
13 order to include any such agreement  
14 within the meaning of such term;

15 “(III) means any option entered  
16 into on a national securities exchange  
17 relating to foreign currencies;

18 “(IV) means the guarantee by or  
19 to any securities clearing agency of  
20 any settlement of cash, securities, cer-  
21 tificates of deposit, mortgage loans or  
22 interests therein, group or index of se-  
23 curities, certificates of deposit, or  
24 mortgage loans or interests therein  
25 (including any interest therein or

1 based on the value thereof) or option  
2 on any of the foregoing, including any  
3 option to purchase or sell any such se-  
4 curity, certificate of deposit, mortgage  
5 loan, interest, group or index, or op-  
6 tion;

7 “(V) means any margin loan;

8 “(VI) means any other agree-  
9 ment or transaction that is similar to  
10 any agreement or transaction referred  
11 to in this clause;

12 “(VII) means any combination of  
13 the agreements or transactions re-  
14 ferred to in this clause;

15 “(VIII) means any option to  
16 enter into any agreement or trans-  
17 action referred to in this clause;

18 “(IX) means a master agreement  
19 that provides for an agreement or  
20 transaction referred to in subclause  
21 (I), (III), (IV), (V), (VI), (VII), or  
22 (VIII), together with all supplements  
23 to any such master agreement, with-  
24 out regard to whether the master  
25 agreement provides for an agreement

1 or transaction that is not a securities  
2 contract under this clause, except that  
3 the master agreement shall be consid-  
4 ered to be a securities contract under  
5 this clause only with respect to each  
6 agreement or transaction under the  
7 master agreement that is referred to  
8 in subclause (I), (III), (IV), (V), (VI),  
9 (VII), or (VIII); and

10 “(X) means any security agree-  
11 ment or arrangement or other credit  
12 enhancement related to any agree-  
13 ment or transaction referred to in this  
14 clause, including any guarantee or re-  
15 imbursement obligation in connection  
16 with any agreement or transaction re-  
17 ferred to in this clause.

18 “(iii) COMMODITY CONTRACT.—The  
19 term ‘commodity contract’ means—

20 “(I) with respect to a futures  
21 commission merchant, a contract for  
22 the purchase or sale of a commodity  
23 for future delivery on, or subject to  
24 the rules of, a contract market or  
25 board of trade;

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1                   “(II) with respect to a foreign fu-  
2                   tures commission merchant, a foreign  
3                   future;

4                   “(III) with respect to a leverage  
5                   transaction merchant, a leverage  
6                   transaction;

7                   “(IV) with respect to a clearing  
8                   organization, a contract for the pur-  
9                   chase or sale of a commodity for fu-  
10                  ture delivery on, or subject to the  
11                  rules of, a contract market or board  
12                  of trade that is cleared by such clear-  
13                  ing organization, or commodity option  
14                  traded on, or subject to the rules of,  
15                  a contract market or board of trade  
16                  that is cleared by such clearing orga-  
17                  nization;

18                  “(V) with respect to a commodity  
19                  options dealer, a commodity option;

20                  “(VI) any other agreement or  
21                  transaction that is similar to any  
22                  agreement or transaction referred to  
23                  in this clause;

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1                   “(VII) any combination of the  
2                   agreements or transactions referred to  
3                   in this clause;

4                   “(VIII) any option to enter into  
5                   any agreement or transaction referred  
6                   to in this clause;

7                   “(IX) a master agreement that  
8                   provides for an agreement or trans-  
9                   action referred to in subclause (I),  
10                  (II), (III), (IV), (V), (VI), (VII), or  
11                  (VIII), together with all supplements  
12                  to any such master agreement, with-  
13                  out regard to whether the master  
14                  agreement provides for an agreement  
15                  or transaction that is not a com-  
16                  modity contract under this clause, ex-  
17                  cept that the master agreement shall  
18                  be considered to be a commodity con-  
19                  tract under this clause only with re-  
20                  spect to each agreement or trans-  
21                  action under the master agreement  
22                  that is referred to in subclause (I),  
23                  (II), (III), (IV), (V), (VI), (VII), or  
24                  (VIII); or

1                   “(X) any security agreement or  
2                   arrangement or other credit enhance-  
3                   ment related to any agreement or  
4                   transaction referred to in this clause,  
5                   including any guarantee or reimburse-  
6                   ment obligation in connection with  
7                   any agreement or transaction referred  
8                   to in this clause.

9                   “(iv) FORWARD CONTRACT.—The  
10                  term ‘forward contract’ means—

11                   “(I) a contract (other than a  
12                   commodity contract) for the purchase,  
13                   sale, or transfer of a commodity or  
14                   any similar good, article, service,  
15                   right, or interest which is presently or  
16                   in the future becomes the subject of  
17                   dealing in the forward contract trade,  
18                   or product or byproduct thereof, with  
19                   a maturity date more than 2 days  
20                   after the date the contract is entered  
21                   into, including, a repurchase trans-  
22                   action, reverse repurchase transaction,  
23                   consignment, lease, swap, hedge  
24                   transaction, deposit, loan, option, allo-  
25                   cated transaction, unallocated trans-

1 action, or any other similar agree-  
2 ment;

3 “(II) any combination of agree-  
4 ments or transactions referred to in  
5 subclauses (I) and (III);

6 “(III) any option to enter into  
7 any agreement or transaction referred  
8 to in subclause (I) or (II);

9 “(IV) a master agreement that  
10 provides for an agreement or trans-  
11 action referred to in subclauses (I),  
12 (II), or (III), together with all supple-  
13 ments to any such master agreement,  
14 without regard to whether the master  
15 agreement provides for an agreement  
16 or transaction that is not a forward  
17 contract under this clause, except that  
18 the master agreement shall be consid-  
19 ered to be a forward contract under  
20 this clause only with respect to each  
21 agreement or transaction under the  
22 master agreement that is referred to  
23 in subclause (I), (II), or (III); or

24 “(V) any security agreement or  
25 arrangement or other credit enhance-

1                   ment related to any agreement or  
2                   transaction referred to in subclause  
3                   (I), (II), (III), or (IV), including any  
4                   guarantee or reimbursement obliga-  
5                   tion in connection with any agreement  
6                   or transaction referred to in any such  
7                   subclause.

8                   “(v) REPURCHASE AGREEMENT.—The  
9                   term ‘repurchase agreement’ (including a  
10                  reverse repurchase agreement)—

11                   “(I) means an agreement, includ-  
12                  ing related terms, which provides for  
13                  the transfer of one or more certifi-  
14                  cates of deposit, mortgage-related se-  
15                  curities (as such term is defined in  
16                  the Securities Exchange Act of 1934),  
17                  mortgage loans, interests in mortgage-  
18                  related securities or mortgage loans,  
19                  eligible bankers’ acceptances, qualified  
20                  foreign government securities or secu-  
21                  rities that are direct obligations of, or  
22                  that are fully guaranteed by, the  
23                  United States or any agency of the  
24                  United States against the transfer of  
25                  funds by the transferee of such certifi-

1 cates of deposit, eligible bankers' ac-  
2 ceptances, securities, mortgage loans,  
3 or interests with a simultaneous  
4 agreement by such transferee to  
5 transfer to the transferor thereof cer-  
6 tificates of deposit, eligible bankers'  
7 acceptances, securities, mortgage  
8 loans, or interests as described above,  
9 at a date certain not later than 1 year  
10 after such transfers or on demand,  
11 against the transfer of funds, or any  
12 other similar agreement;

13 “(II) does not include any repur-  
14 chase obligation under a participation  
15 in a commercial mortgage loan unless  
16 the Agency determines by regulation,  
17 resolution, or order to include any  
18 such participation within the meaning  
19 of such term;

20 “(III) means any combination of  
21 agreements or transactions referred to  
22 in subclauses (I) and (IV);

23 “(IV) means any option to enter  
24 into any agreement or transaction re-  
25 ferred to in subclause (I) or (III);

1                   “(V) means a master agreement  
2                   that provides for an agreement or  
3                   transaction referred to in subclause  
4                   (I), (III), or (IV), together with all  
5                   supplements to any such master  
6                   agreement, without regard to whether  
7                   the master agreement provides for an  
8                   agreement or transaction that is not a  
9                   repurchase agreement under this  
10                  clause, except that the master agree-  
11                  ment shall be considered to be a re-  
12                  purchase agreement under this sub-  
13                  clause only with respect to each agree-  
14                  ment or transaction under the master  
15                  agreement that is referred to in sub-  
16                  clause (I), (III), or (IV); and

17                  “(VI) means any security agree-  
18                  ment or arrangement or other credit  
19                  enhancement related to any agree-  
20                  ment or transaction referred to in  
21                  subclause (I), (III), (IV), or (V), in-  
22                  cluding any guarantee or reimburse-  
23                  ment obligation in connection with  
24                  any agreement or transaction referred  
25                  to in any such subclause.

1 For purposes of this clause, the term  
2 ‘qualified foreign government security’  
3 means a security that is a direct obligation  
4 of, or that is fully guaranteed by, the cen-  
5 tral government of a member of the Orga-  
6 nization for Economic Cooperation and  
7 Development (as determined by regulation  
8 or order adopted by the appropriate Fed-  
9 eral banking authority).

10 “(vi) SWAP AGREEMENT.—The term  
11 ‘swap agreement’ means—

12 “(I) any agreement, including the  
13 terms and conditions incorporated by  
14 reference in any such agreement,  
15 which is an interest rate swap, option,  
16 future, or forward agreement, includ-  
17 ing a rate floor, rate cap, rate collar,  
18 cross-currency rate swap, and basis  
19 swap; a spot, same day-tomorrow, to-  
20 morrow-next, forward, or other for-  
21 eign exchange or precious metals  
22 agreement; a currency swap, option,  
23 future, or forward agreement; an eq-  
24 uity index or equity swap, option, fu-  
25 ture, or forward agreement; a debt

1 index or debt swap, option, future, or  
2 forward agreement; a total return,  
3 credit spread or credit swap, option,  
4 future, or forward agreement; a com-  
5 modity index or commodity swap, op-  
6 tion, future, or forward agreement; or  
7 a weather swap, weather derivative, or  
8 weather option;

9 “(II) any agreement or trans-  
10 action that is similar to any other  
11 agreement or transaction referred to  
12 in this clause and that is of a type  
13 that has been, is presently, or in the  
14 future becomes, the subject of recur-  
15 rent dealings in the swap markets (in-  
16 cluding terms and conditions incor-  
17 porated by reference in such agree-  
18 ment) and that is a forward, swap, fu-  
19 ture, or option on one or more rates,  
20 currencies, commodities, equity securi-  
21 ties or other equity instruments, debt  
22 securities or other debt instruments,  
23 quantitative measures associated with  
24 an occurrence, extent of an occur-  
25 rence, or contingency associated with

1 a financial, commercial, or economic  
2 consequence, or economic or financial  
3 indices or measures of economic or fi-  
4 nancial risk or value;

5 “(III) any combination of agree-  
6 ments or transactions referred to in  
7 this clause;

8 “(IV) any option to enter into  
9 any agreement or transaction referred  
10 to in this clause;

11 “(V) a master agreement that  
12 provides for an agreement or trans-  
13 action referred to in subclause (I),  
14 (II), (III), or (IV), together with all  
15 supplements to any such master  
16 agreement, without regard to whether  
17 the master agreement contains an  
18 agreement or transaction that is not a  
19 swap agreement under this clause, ex-  
20 cept that the master agreement shall  
21 be considered to be a swap agreement  
22 under this clause only with respect to  
23 each agreement or transaction under  
24 the master agreement that is referred

1 to in subclause (I), (II), (III), or (IV);  
2 and

3 “(VI) any security agreement or  
4 arrangement or other credit enhance-  
5 ment related to any agreements or  
6 transactions referred to in subclause  
7 (I), (II), (III), (IV), or (V), including  
8 any guarantee or reimbursement obli-  
9 gation in connection with any agree-  
10 ment or transaction referred to in any  
11 such subclause.

12 Such term is applicable for purposes of  
13 this subsection only and shall not be con-  
14 strued or applied so as to challenge or af-  
15 fect the characterization, definition, or  
16 treatment of any swap agreement under  
17 any other statute, regulation, or rule, in-  
18 cluding the Securities Act of 1933, the Se-  
19 curities Exchange Act of 1934, the Public  
20 Utility Holding Company Act of 1935, the  
21 Trust Indenture Act of 1939, the Invest-  
22 ment Company Act of 1940, the Invest-  
23 ment Advisers Act of 1940, the Securities  
24 Investor Protection Act of 1970, the Com-  
25 modity Exchange Act, the Gramm-Leach-

1 Bliley Act, and the Legal Certainty for  
2 Bank Products Act of 2000.

3 “(vii) TREATMENT OF MASTER  
4 AGREEMENT AS ONE AGREEMENT.—Any  
5 master agreement for any contract or  
6 agreement described in any preceding  
7 clause of this subparagraph (or any master  
8 agreement for such master agreement or  
9 agreements), together with all supplements  
10 to such master agreement, shall be treated  
11 as a single agreement and a single quali-  
12 fied financial contract. If a master agree-  
13 ment contains provisions relating to agree-  
14 ments or transactions that are not them-  
15 selves qualified financial contracts, the  
16 master agreement shall be deemed to be a  
17 qualified financial contract only with re-  
18 spect to those transactions that are them-  
19 selves qualified financial contracts.

20 “(viii) TRANSFER.—The term ‘trans-  
21 fer’ means every mode, direct or indirect,  
22 absolute or conditional, voluntary or invol-  
23 untary, of disposing of or parting with  
24 property or with an interest in property,  
25 including retention of title as a security in-

1           terest and foreclosure of the equity of re-  
2           demption of the regulated entity.

3           “(E) CERTAIN PROTECTIONS IN EVENT OF  
4           APPOINTMENT OF CONSERVATOR.—Notwith-  
5           standing any other provision of this section, any  
6           other Federal law, or the law of any State  
7           (other than paragraph (10) of this subsection  
8           and subsection (b)(9)(B)), no person shall be  
9           stayed or prohibited from exercising—

10           “(i) any right such person has to  
11           cause the termination, liquidation, or accel-  
12           eration of any qualified financial contract  
13           with a regulated entity in a conservator-  
14           ship based upon a default under such fi-  
15           nancial contract which is enforceable under  
16           applicable noninsolvency law;

17           “(ii) any right under any security  
18           agreement or arrangement or other credit  
19           enhancement relating to 1 or more such  
20           qualified financial contracts; or

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

1           “(F) CLARIFICATION.—No provision of law  
2 shall be construed as limiting the right or  
3 power of the Agency, or authorizing any court  
4 or agency to limit or delay in any manner, the  
5 right or power of the Agency to transfer any  
6 qualified financial contract in accordance with  
7 paragraphs (9) and (10), or to disaffirm or re-  
8 pudiate any such contract in accordance with  
9 subsection (d)(1).

10           “(G) WALKAWAY CLAUSES NOT EFFEC-  
11 TIVE.—

12           “(i) IN GENERAL.—Notwithstanding  
13 the provisions of subparagraphs (A) and  
14 (E), and sections 403 and 404 of the Fed-  
15 eral Deposit Insurance Corporation Im-  
16 provement Act of 1991, no walkaway  
17 clause shall be enforceable in a qualified fi-  
18 nancial contract of a regulated entity in  
19 default.

20           “(ii) WALKAWAY CLAUSE DEFINED.—  
21 For purposes of this subparagraph, the  
22 term ‘walkaway clause’ means a provision  
23 in a qualified financial contract that, after  
24 calculation of a value of a party’s position  
25 or an amount due to or from 1 of the par-

1 ties in accordance with its terms upon ter-  
2 mination, liquidation, or acceleration of the  
3 qualified financial contract, either does not  
4 create a payment obligation of a party or  
5 extinguishes a payment obligation of a  
6 party in whole or in part solely because of  
7 the status of such party as a nondefaulting  
8 party.

9 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
10 TRACTS.—In making any transfer of assets or liabil-  
11 ities of a regulated entity in default which includes  
12 any qualified financial contract, the conservator or  
13 receiver for such regulated entity shall either—

14 “(A) transfer to 1 limited-life regulated  
15 entity—

16 “(i) all qualified financial contracts  
17 between any person (or any affiliate of  
18 such person) and the regulated entity in  
19 default;

20 “(ii) all claims of such person (or any  
21 affiliate of such person) against such regu-  
22 lated entity under any such contract (other  
23 than any claim which, under the terms of  
24 any such contract, is subordinated to the

1 claims of general unsecured creditors of  
2 such regulated entity);

3 “(iii) all claims of such regulated enti-  
4 ty against such person (or any affiliate of  
5 such person) under any such contract; and

6 “(iv) all property securing, or any  
7 other credit enhancement for any contract  
8 described in clause (i), or any claim de-  
9 scribed in clause (ii) or (iii) under any  
10 such contract; or

11 “(B) transfer none of the financial con-  
12 tracts, claims, or property referred to under  
13 subparagraph (A) (with respect to such person  
14 and any affiliate of such person).

15 “(10) NOTIFICATION OF TRANSFER.—

16 “(A) IN GENERAL.—The conservator or re-  
17 ceiver shall notify any person that is a party to  
18 a contract or transfer by 5:00 p.m. (Eastern  
19 Standard Time) on the business day following  
20 the date of the appointment of the receiver in  
21 the case of a receivership, or the business day  
22 following such transfer in the case of a con-  
23 servatorship, if—

24 “(i) the conservator or receiver for a  
25 regulated entity in default makes any

1 transfer of the assets and liabilities of such  
2 regulated entity; and

3 “(ii) such transfer includes any quali-  
4 fied financial contract.

5 “(B) CERTAIN RIGHTS NOT ENFORCE-  
6 ABLE.—

7 “(i) RECEIVERSHIP.—A person who is  
8 a party to a qualified financial contract  
9 with a regulated entity may not exercise  
10 any right that such person has to termi-  
11 nate, liquidate, or net such contract under  
12 paragraph (8)(A) of this subsection or sec-  
13 tion 403 or 404 of the Federal Deposit In-  
14 surance Corporation Improvement Act of  
15 1991, solely by reason of or incidental to  
16 the appointment of a receiver for the regu-  
17 lated entity (or the insolvency or financial  
18 condition of the regulated entity for which  
19 the receiver has been appointed)—

20 “(I) until 5:00 p.m. (eastern  
21 time) on the business day following  
22 the date of the appointment of the re-  
23 ceiver; or

24 “(II) after the person has re-  
25 ceived notice that the contract has

1           been transferred pursuant to para-  
2           graph (9)(A).

3           “(ii) CONSERVATORSHIP.—A person  
4           who is a party to a qualified financial con-  
5           tract with a regulated entity may not exer-  
6           cise any right that such person has to ter-  
7           minate, liquidate, or net such contract  
8           under paragraph (8)(E) of this subsection  
9           or section 403 or 404 of the Federal De-  
10          posit Insurance Corporation Improvement  
11          Act of 1991, solely by reason of or inci-  
12          dental to the appointment of a conservator  
13          for the regulated entity (or the insolvency  
14          or financial condition of the regulated enti-  
15          ty for which the conservator has been ap-  
16          pointed).

17          “(iii) NOTICE.—For purposes of this  
18          paragraph, the Agency as receiver or con-  
19          servator of a regulated entity shall be  
20          deemed to have notified a person who is a  
21          party to a qualified financial contract with  
22          such regulated entity, if the Agency has  
23          taken steps reasonably calculated to pro-  
24          vide notice to such person by the time  
25          specified in subparagraph (A).

1           “(C) BUSINESS DAY DEFINED.—For pur-  
2           poses of this paragraph, the term ‘business day’  
3           means any day other than any Saturday, Sun-  
4           day, or any day on which either the New York  
5           Stock Exchange or the Federal Reserve Bank  
6           of New York is closed.

7           “(11) DISAFFIRMANCE OR REPUDIATION OF  
8           QUALIFIED FINANCIAL CONTRACTS.—In exercising  
9           the rights of disaffirmance or repudiation of a con-  
10          servator or receiver with respect to any qualified fi-  
11          nancial contract to which a regulated entity is a  
12          party, the conservator or receiver for such institution  
13          shall either—

14                 “(A) disaffirm or repudiate all qualified fi-  
15                 nancial contracts between—

16                         “(i) any person or any affiliate of  
17                         such person; and

18                         “(ii) the regulated entity in default; or

19                 “(B) disaffirm or repudiate none of the  
20                 qualified financial contracts referred to in sub-  
21                 paragraph (A) (with respect to such person or  
22                 any affiliate of such person).

23           “(12) CERTAIN SECURITY INTERESTS NOT  
24           AVOIDABLE.—No provision of this subsection shall  
25           be construed as permitting the avoidance of any le-

1 gally enforceable or perfected security interest in any  
2 of the assets of any regulated entity, except where  
3 such an interest is taken in contemplation of the in-  
4 solvency of the regulated entity, or with the intent  
5 to hinder, delay, or defraud the regulated entity or  
6 the creditors of such regulated entity.

7 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

8 “(A) IN GENERAL.—Notwithstanding any  
9 provision of a contract providing for termi-  
10 nation, default, acceleration, or exercise of  
11 rights upon, or solely by reason of, insolvency  
12 or the appointment of, or the exercise of rights  
13 or powers by, a conservator or receiver, the con-  
14 servator or receiver may enforce any contract,  
15 other than a contract for liability insurance for  
16 a director or officer, or a contract or a regu-  
17 lated entity bond, entered into by the regulated  
18 entity.

19 “(B) CERTAIN RIGHTS NOT AFFECTED.—

20 No provision of this paragraph may be con-  
21 strued as impairing or affecting any right of the  
22 conservator or receiver to enforce or recover  
23 under a liability insurance contract for an offi-  
24 cer or director, or regulated entity bond under  
25 other applicable law.

1 “(C) CONSENT REQUIREMENT.—

2 “(i) IN GENERAL.—Except as other-  
3 wise provided under this section, no person  
4 may exercise any right or power to termi-  
5 nate, accelerate, or declare a default under  
6 any contract to which a regulated entity is  
7 a party, or to obtain possession of or exer-  
8 cise control over any property of the regu-  
9 lated entity, or affect any contractual  
10 rights of the regulated entity, without the  
11 consent of the conservator or receiver, as  
12 appropriate, for a period of—

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

15 “(II) 90 days after the date of  
16 appointment of a receiver.

17 “(ii) EXCEPTIONS.—This subpara-  
18 graph shall—

19 “(I) not apply to a contract for  
20 liability insurance for an officer or di-  
21 rector;

22 “(II) not apply to the rights of  
23 parties to certain qualified financial  
24 contracts under subsection (d)(8); and

1                   “(III) not be construed as per-  
2                   mitting the conservator or receiver to  
3                   fail to comply with otherwise enforce-  
4                   able provisions of such contracts.

5                   “(14) SAVINGS CLAUSE.—The meanings of  
6                   terms used in this subsection are applicable for pur-  
7                   poses of this subsection only, and shall not be con-  
8                   strued or applied so as to challenge or affect the  
9                   characterization, definition, or treatment of any  
10                  similar terms under any other statute, regulation, or  
11                  rule, including the Gramm-Leach-Bliley Act, the  
12                  Legal Certainty for Bank Products Act of 2000, the  
13                  securities laws (as that term is defined in section  
14                  3(a)(47) of the Securities Exchange Act of 1934),  
15                  and the Commodity Exchange Act.

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

17                  “(1) IN GENERAL.—Notwithstanding any other  
18                  provision of Federal law or the law of any State, and  
19                  regardless of the method which the Agency deter-  
20                  mines to utilize with respect to a regulated entity in  
21                  default or in danger of default, including trans-  
22                  actions authorized under subsection (i), this sub-  
23                  section shall govern the rights of the creditors of  
24                  such regulated entity.

1           “(2) MAXIMUM LIABILITY.—The maximum li-  
2           ability of the Agency, acting as receiver or in any  
3           other capacity, to any person having a claim against  
4           the receiver or the regulated entity for which such  
5           receiver is appointed shall be not more than the  
6           amount that such claimant would have received if  
7           the Agency had liquidated the assets and liabilities  
8           of the regulated entity without exercising the author-  
9           ity of the Agency under subsection (i).

10          “(f) LIMITATION ON COURT ACTION.—Except as  
11          provided in this section or at the request of the Director,  
12          no court may take any action to restrain or affect the exer-  
13          cise of powers or functions of the Agency as a conservator  
14          or a receiver.

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

16                 “(1) IN GENERAL.—A director or officer of a  
17                 regulated entity may be held personally liable for  
18                 monetary damages in any civil action described in  
19                 paragraph (2) brought by, on behalf of, or at the re-  
20                 quest or direction of the Agency, and prosecuted  
21                 wholly or partially for the benefit of the Agency—

22                         “(A) acting as conservator or receiver of  
23                         such regulated entity; or

24                         “(B) acting based upon a suit, claim, or  
25                         cause of action purchased from, assigned by, or

1 otherwise conveyed by such receiver or conser-  
2 vator.

3 “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-  
4 plies in any civil action for gross negligence, includ-  
5 ing any similar conduct or conduct that dem-  
6 onstrates a greater disregard of a duty of care than  
7 gross negligence, including intentional tortious con-  
8 duct, as such terms are defined and determined  
9 under applicable State law.

10 “(3) NO LIMITATION.—Nothing in this sub-  
11 section shall impair or affect any right of the Agency  
12 under other applicable law.

13 “(h) DAMAGES.—In any proceeding related to any  
14 claim against a director, officer, employee, agent, attorney,  
15 accountant, appraiser, or any other party employed by or  
16 providing services to a regulated entity, recoverable dam-  
17 ages determined to result from the improvident or other-  
18 wise improper use or investment of any assets of the regu-  
19 lated entity shall include principal losses and appropriate  
20 interest.

21 “(i) LIMITED-LIFE REGULATED ENTITIES.—

22 “(1) ORGANIZATION.—

23 “(A) PURPOSE.—If the Agency is ap-  
24 pointed receiver pursuant to subsection (a)—

1           “(i) in the case of a Federal Home  
2           Loan Bank, the Agency may organize a  
3           limited-life regulated entity with those  
4           powers and attributes of the Federal Home  
5           Loan Bank in default or in danger of de-  
6           fault that the Director determines nec-  
7           essary, subject to the provisions of this  
8           subsection, and the Director shall grant a  
9           temporary charter to that limited-life regu-  
10          lated entity, and that limited-life regulated  
11          entity shall operate subject to that charter;  
12          and

13           “(ii) in the case of an enterprise, the  
14          Agency shall organize a limited-life entity  
15          with respect to that enterprise in accord-  
16          ance with this subsection.

17          “(B) AUTHORITIES.—Upon the creation of  
18          a limited-life regulated entity under subpara-  
19          graph (A), the limited-life regulated entity  
20          may—

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

1 the amount of assets purchased or trans-  
2 ferred from the regulated entity to the lim-  
3 ited-life regulated entity;

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

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

12 “(2) CHARTER AND ESTABLISHMENT.—

13 “(A) TRANSFER OF CHARTER.—

14 “(i) FANNIE MAE.—If the Agency is  
15 appointed as receiver for the Federal Na-  
16 tional Mortgage Association, the limited-  
17 life regulated entity established under this  
18 subsection with respect to such enterprise  
19 shall, by operation of law and immediately  
20 upon its organization—

21 “(I) succeed to the charter of the  
22 Federal National Mortgage Associa-  
23 tion, as set forth in the Federal Na-  
24 tional Mortgage Association Charter  
25 Act; and

1                   “(II) thereafter operate in ac-  
2                   cordance with, and subject to, such  
3                   charter, this Act, and any other provi-  
4                   sion of law to which the Federal Na-  
5                   tional Mortgage Association is subject,  
6                   except as otherwise provided in this  
7                   subsection.

8                   “(ii) FREDDIE MAC.—If the Agency is  
9                   appointed as receiver for the Federal  
10                  Home Loan Mortgage Corporation, the  
11                  limited-life regulated entity established  
12                  under this subsection with respect to such  
13                  enterprise shall, by operation of law and  
14                  immediately upon its organization—

15                  “(I) succeed to the charter of the  
16                  Federal Home Loan Mortgage Cor-  
17                  poration, as set forth in the Federal  
18                  Home Loan Mortgage Corporation  
19                  Charter Act; and

20                  “(II) thereafter operate in ac-  
21                  cordance with, and subject to, such  
22                  charter, this Act, and any other provi-  
23                  sion of law to which the Federal  
24                  Home Loan Mortgage Corporation is

1 subject, except as otherwise provided  
2 in this subsection.

3 “(B) INTERESTS IN AND ASSETS AND OB-  
4 LIGATIONS OF REGULATED ENTITY IN DE-  
5 FAULT.—Notwithstanding subparagraph (A) or  
6 any other provision of law—

7 “(i) a limited-life regulated entity  
8 shall assume, acquire, or succeed to the as-  
9 sets or liabilities of a regulated entity only  
10 to the extent that such assets or liabilities  
11 are transferred by the Agency to the lim-  
12 ited-life regulated entity in accordance  
13 with, and subject to the restrictions set  
14 forth in, paragraph (1)(B);

15 “(ii) a limited-life regulated entity  
16 shall not assume, acquire, or succeed to  
17 any obligation that a regulated entity for  
18 which a receiver has been appointed may  
19 have to any shareholder of the regulated  
20 entity that arises as a result of the status  
21 of that person as a shareholder of the reg-  
22 ulated entity; and

23 “(iii) no shareholder or creditor of a  
24 regulated entity shall have any right or  
25 claim against the charter of the regulated

1 entity once the Agency has been appointed  
2 receiver for the regulated entity and a lim-  
3 ited-life regulated entity succeeds to the  
4 charter pursuant to subparagraph (A).

5 “(C) LIMITED-LIFE REGULATED ENTITY  
6 TREATED AS BEING IN DEFAULT FOR CERTAIN  
7 PURPOSES.—A limited-life regulated entity shall  
8 be treated as a regulated entity in default at  
9 such times and for such purposes as the Agency  
10 may, in its discretion, determine.

11 “(D) MANAGEMENT.—Upon its establish-  
12 ment, a limited-life regulated entity shall be  
13 under the management of a board of directors  
14 consisting of not fewer than 5 nor more than  
15 10 members appointed by the Agency.

16 “(E) BYLAWS.—The board of directors of  
17 a limited-life regulated entity shall adopt such  
18 bylaws as may be approved by the Agency.

19 “(3) CAPITAL STOCK.—

20 “(A) NO AGENCY REQUIREMENT.—No  
21 capital stock need be paid into a limited-  
22 life regulated entity by the Agency, and the  
23 Agency is not required to issue any capital  
24 stock on behalf of a limited-life regulated  
25 entity established under this subsection.

1                   “(B) AUTHORITY.—If the Director  
2                   determines that such action is advisable,  
3                   the Agency may cause capital stock or  
4                   other securities of a limited-life enterprise  
5                   to be issued and offered for sale, in such  
6                   amounts and on such terms and conditions  
7                   as the Director may determine, in the dis-  
8                   cretion of the Director.

9                   “(4) INVESTMENTS.—Funds of a limited-life  
10                  regulated entity shall be kept on hand in cash, in-  
11                  vested in obligations of the United States or obliga-  
12                  tions guaranteed as to principal and interest by the  
13                  United States, or deposited with the Agency, or any  
14                  Federal reserve bank.

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

22                  “(6) WINDING UP.—

23                  “(A) IN GENERAL.—Subject to subpara-  
24                  graphs (B) and (C), not later than 2 years after  
25                  the date of its organization, the Agency shall

1 wind up the affairs of a limited-life regulated  
2 entity.

3 “(B) EXTENSION.—The Director may, in  
4 the discretion of the Director, extend the status  
5 of the limited-life regulated entity for 3 addi-  
6 tional 1-year periods.

7 “(C) TERMINATION OF STATUS AS LIM-  
8 ITED-LIFE.—

9 “(i) IN GENERAL.—Upon the sale by  
10 the Agency of 80 percent or more of the  
11 capital stock of a limited-life regulated en-  
12 tity, as defined in clause (iv), to 1 or more  
13 persons (other than the Agency)—

14 “(I) the status of the limited-life  
15 regulated entity as such shall termi-  
16 nate; and

17 “(II) the entity shall cease to be  
18 a limited-life regulated entity for pur-  
19 poses of this subsection.

20 “(ii) DIVESTITURE OF REMAINING  
21 STOCK, IF ANY.—

22 “(I) IN GENERAL.—Not later  
23 than 1 year after the date on which  
24 the status of a limited-life regulated  
25 entity is terminated pursuant to

1 clause (i), the Agency shall sell to 1 or  
2 more persons (other than the Agency)  
3 any remaining capital stock of the  
4 former limited-life enterprise that the  
5 Agency owns or controls.

6 “(II) EXTENSION AUTHORIZED.—The Director may extend the  
7 period referred to in subclause (I) for  
8 not longer than an additional 2 years  
9 if the Director determines that such  
10 action would be in the public interest.

11 “(iii) SAVINGS CLAUSE.—Notwith-  
12 standing any provision of law, other than  
13 clause (ii), the Agency shall not be re-  
14 quired to sell the capital stock of an enter-  
15 prise or a limited-life regulated entity es-  
16 tablished with respect to an enterprise.

17 “(iv) APPLICABILITY.—This subpara-  
18 graph applies only with respect to a lim-  
19 ited-life regulated entity that is established  
20 with respect to an enterprise.

21 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

22 “(A) IN GENERAL.—

23 “(i) TRANSFER OF ASSETS AND LI-  
24 ABILITIES.—The Agency, as receiver, may  
25

1 transfer any assets and liabilities of a reg-  
2 ulated entity in default, or in danger of de-  
3 fault, to the limited-life regulated entity in  
4 accordance with and subject to the restric-  
5 tions of paragraph (1).

6 “(ii) SUBSEQUENT TRANSFERS.—At  
7 any time after the establishment of a lim-  
8 ited-life regulated entity, the Agency, as  
9 receiver, may transfer any assets and li-  
10 abilities of the regulated entity in default,  
11 or in danger of default, as the Agency  
12 may, in its discretion, determine to be ap-  
13 propriate in accordance with and subject to  
14 the restrictions of paragraph (1).

15 “(iii) EFFECTIVE WITHOUT AP-  
16 PROVAL.—The transfer of any assets or li-  
17 abilities of a regulated entity in default or  
18 in danger of default, to a limited-life regu-  
19 lated entity shall be effective without any  
20 further approval under Federal or State  
21 law, assignment, or consent with respect  
22 thereto.

23 “(iv) EQUITABLE TREATMENT OF  
24 SIMILARLY SITUATED CREDITORS.—The  
25 Agency shall treat all creditors of a regu-

1           lated entity in default, or in danger of de-  
2           fault, that are similarly situated under  
3           subsection (c)(1) in a similar manner in  
4           exercising the authority of the Agency  
5           under this subsection to transfer any as-  
6           sets or liabilities of the regulated entity to  
7           the limited-life regulated entity established  
8           with respect to such regulated entity, ex-  
9           cept that the Agency may take actions (in-  
10          cluding making payments) that do not  
11          comply with this clause (iv) if—

12                           “(I) the Director determines that  
13                           such actions are necessary to maxi-  
14                           mize the value of the assets of the  
15                           regulated entity to maximize the  
16                           present value return from the sale or  
17                           other disposition of the regulated enti-  
18                           ty’s assets, or to minimize the amount  
19                           of any loss realized upon the sale or  
20                           other disposition of regulated entity’s  
21                           assets; and

22                           “(II) all creditors that are simi-  
23                           larly situated under subsection (c)(1)  
24                           receive not less than the amount pro-  
25                           vided in subsection (e)(2).

1           “(v) LIMITATION ON TRANSFER OF  
2           LIABILITIES.—Notwithstanding any other  
3           provision of law, the aggregate amount of  
4           liabilities of a regulated entity that are  
5           transferred to, or assumed by, a limited-  
6           life regulated entity may not exceed the ag-  
7           gregate amount of assets of the regulated  
8           entity that are transferred to, or purchased  
9           by, the limited-life regulated entity.

10           “(8) REGULATIONS.—The Agency may promul-  
11           gate such regulations as the Agency determines to  
12           be necessary or appropriate to implement this sub-  
13           section.

14           “(9) POWERS OF LIMITED-LIFE REGULATED  
15           ENTITIES.—

16           “(A) IN GENERAL.—Each limited-life regu-  
17           lated entity created under this subsection shall  
18           have all corporate powers of, and be subject to  
19           the same provisions of law as, the regulated en-  
20           tity in default or in danger of default to which  
21           it relates, except that—

22                   “(i) the Agency may—

23                           “(I) remove the directors of a  
24                           limited-life regulated entity;

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

6           “(III) indemnify the representa-  
7           tives for purposes of paragraph  
8           (1)(B), and the directors, officers, em-  
9           ployees, and agents of a limited-life  
10          regulated entity on such terms as the  
11          Agency determines to be appropriate;  
12          and

13          “(ii) the board of directors of a lim-  
14          ited-life regulated entity—

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

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

1                   without the prior approval of the  
2                   Agency.

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

12                  “(10) NO FEDERAL STATUS.—

13                  “(A) AGENCY STATUS.—A limited-life reg-  
14                  ulated entity is not an agency, establishment, or  
15                  instrumentality of the United States.

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

1           ficer, employee, or agent of a limited-life regu-  
2           lated entity shall not—

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

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

14                  “(11) OBTAINING CREDIT BY A LIMITED-LIFE  
15                  REGULATED ENTITY.—

16                   “(A) IN GENERAL.—A limited-life regu-  
17                   lated entity may obtain unsecured credit and  
18                   issue unsecured debt.

19                   “(B) INABILITY TO OBTAIN CREDIT.—If a  
20                   limited-life regulated entity is unable to obtain  
21                   unsecured credit or issue unsecured debt, the  
22                   Director may authorize the obtaining of credit  
23                   or the issuance of debt by the limited-life regu-  
24                   lated entity—

1           “(i) with priority over any or all of  
2 the obligations of the limited-life regulated  
3 entity;

4           “(ii) secured by a lien on property of  
5 the limited-life regulated entity that is not  
6 otherwise subject to a lien; or

7           “(iii) secured by a junior lien on prop-  
8 erty of the limited-life regulated entity that  
9 is subject to a lien.

10          “(C) LIMITATIONS.—

11           “(i) IN GENERAL.—The Director,  
12 after notice and a hearing, may authorize  
13 the obtaining of credit or the issuance of  
14 debt by a limited-life regulated entity that  
15 is secured by a senior or equal lien on  
16 property of the limited-life regulated entity  
17 that is subject to a lien (other than mort-  
18 gages that collateralize the mortgage-  
19 backed securities issued or guaranteed by  
20 an enterprise) only if—

21           “(I) the limited-life regulated en-  
22 tity is unable to otherwise obtain such  
23 credit or issue such debt; and

24           “(II) there is adequate protection  
25 of the interest of the holder of the lien

1                   on the property with respect to which  
2                   such senior or equal lien is proposed  
3                   to be granted.

4                   “(B) BURDEN OF PROOF.—In any hearing  
5                   under this subsection, the Director has the bur-  
6                   den of proof on the issue of adequate protec-  
7                   tion.

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

19                  “(j) OTHER AGENCY EXEMPTIONS.—

20                  “(1) APPLICABILITY.—The provisions of this  
21                  subsection shall apply with respect to the Agency in  
22                  any case in which the Agency is acting as a receiver.

23                  “(2) TAXATION.—The Agency, including its  
24                  franchise, its capital, reserves, and surplus, and its  
25                  income, shall be exempt from all taxation imposed

1 by any State, county, municipality, or local taxing  
2 authority, except that any real property of the Agen-  
3 cy shall be subject to State, territorial, county, mu-  
4 nicipal, or local taxation to the same extent accord-  
5 ing to its value as other real property is taxed, ex-  
6 cept that, notwithstanding the failure of any person  
7 to challenge an assessment under State law of the  
8 value of such property, and the tax thereon, shall be  
9 determined as of the period for which such tax is im-  
10 posed.

11 “(B) PROPERTY PROTECTION.—No prop-  
12 erty of the Agency shall be subject to levy, at-  
13 tachment, garnishment, foreclosure, or sale  
14 without the consent of the Agency, nor shall  
15 any involuntary lien attach to the property of  
16 the Agency.

17 “(C) PENALTIES AND FINES.—The Agency  
18 shall not be liable for any amounts in the na-  
19 ture of penalties or fines, including those aris-  
20 ing from the failure of any person to pay any  
21 real property, personal property, probate, or re-  
22 cording tax or any recording or filing fees when  
23 due.

1       “(k) PROHIBITION OF CHARTER REVOCATION.—In  
2 no case may a receiver appointed pursuant to this section  
3 revoke, annul, or terminate the charter of an enterprise.”.

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

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

9               (A) by striking “an enterprise” each place  
10 that term appears and inserting “a regulated  
11 entity”; and

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

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

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

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

22               (B) in subsection (a)(1), by striking “An  
23 enterprise” and inserting “A regulated entity”;  
24 and

1 (4) by striking sections 1369, 1369A, and  
2 1369B (12 U.S.C. 4619, 4620, and 4621).

### 3 **Subtitle D—Enforcement Actions**

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

5 Section 1371 of the Federal Housing Enterprises Fi-  
6 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
7 4631) is amended—

8 (1) by striking subsections (a) and (b) and in-  
9 serting the following:

10 “(a) ISSUANCE FOR UNSAFE OR UNSOUND PRAC-  
11 TICES AND VIOLATIONS.—If, in the opinion of the Direc-  
12 tor, a regulated entity or any entity-affiliated party is en-  
13 gaging or has engaged, or the Director has reasonable  
14 cause to believe that the regulated entity or any entity-  
15 affiliated party is about to engage, in an unsafe or un-  
16 sound practice in conducting the business of the regulated  
17 entity or the Finance Facility, or is violating or has vio-  
18 lated, or the Director has reasonable cause to believe is  
19 about to violate, a law, rule, regulation, or order, or any  
20 condition imposed in writing by the Director in connection  
21 with the granting of any application or other request by  
22 the regulated entity or the Finance Facility or any written  
23 agreement entered into with the Director, the Director  
24 may issue and serve upon the regulated entity or entity-  
25 affiliated party a notice of charges in respect thereof.

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

8           (2) in subsection (c)—

9           (A) in paragraph (1), by adding at the end  
10 the following: “unless the party served with a  
11 notice of charges shall appear at the hearing  
12 personally or by a duly authorized representa-  
13 tive, the party shall be deemed to have con-  
14 sented to the issuance of the cease-and-desist  
15 order”; and

16           (B) in paragraph (2)—

17           (i) by striking “or director” and in-  
18 serting “director, or entity-affiliated  
19 party”; and

20           (ii) by inserting “or entity-affiliated  
21 party” before “consents”;

22           (3) in each of subsections (c), (d), and (e)—

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

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

4 (C) by striking “conduct” each place that  
5 term appears and inserting “practice”;

6 (4) in subsection (d)—

7 (A) by striking “or director” and inserting  
8 “director, or entity-affiliated party”;

9 (B) by inserting “to require a regulated  
10 entity or entity-affiliated party” after “includes  
11 the authority”;

12 (C) in paragraph (1)—

13 (i) by striking “to require an executive  
14 officer or director to”; and

15 (ii) by striking “loss” and all that fol-  
16 lows through “person” and inserting “if”;

17 (iii) in subparagraph (A), by inserting  
18 “such entity or party or finance facility”  
19 before “was”; and

20 (iv) in subparagraph (B), by striking “en-  
21 gaged” and all that follows and inserting “the  
22 violation or practice involved a reckless dis-  
23 regard for the law or any applicable regulations  
24 or prior order of the Director”;

1 (D) in paragraph 4, insert “loan or” be-  
2 fore “asset”;

3 (5) in subsection (e), by inserting “or entity-af-  
4 filiated party” after “enterprise” each place that  
5 term appears; and

6 (6) in subsection (f)—

7 (A) by striking “enterprise” and inserting  
8 “regulated entity, finance facility,”; and

9 (B) by striking “or director” and inserting  
10 “director, or entity-affiliated party”.

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

12 Section 1372 of the Federal Housing Enterprises Fi-  
13 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
14 4632) is amended—

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

17 “(a) **GROUNDS FOR ISSUANCE.**—

18 “(1) **IN GENERAL.**—If the Director determines  
19 that the actions specified in the notice of charges  
20 served upon a regulated entity or any entity-affili-  
21 ated party pursuant to section 1371(a), or the con-  
22 tinuation thereof, is likely to cause insolvency or sig-  
23 nificant dissipation of assets or earnings of that en-  
24 tity, or is likely to weaken the condition of that enti-  
25 ty prior to the completion of the proceedings con-

1 ducted pursuant to sections 1371 and 1373, the Di-  
2 rector may—

3 “(A) issue a temporary order requiring  
4 that regulated entity or entity-affiliated party to  
5 cease and desist from any such violation or  
6 practice; and

7 “(B) require that regulated entity or enti-  
8 ty-affiliated party to take affirmative action to  
9 prevent or remedy such insolvency, dissipation,  
10 condition, or prejudice pending completion of  
11 such proceedings.

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

15 (2) in subsection (b)—

16 (A) by striking “or director” and inserting  
17 “director, or entity-affiliated party”; and

18 (B) by striking “enterprise” each place  
19 that term appears and inserting “regulated en-  
20 tity”;

21 (3) in subsection (c), by striking “enterprise”  
22 each place that term appears and inserting “regu-  
23 lated entity”;

24 (4) in subsection (d)—

1 (A) by striking “or director” each place  
2 that term appears and inserting “director, or  
3 entity-affiliated party”; and

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

6 (5) in subsection (e)—

7 (A) by striking “request the Attorney Gen-  
8 eral of the United States to”; and

9 (B) by striking “or may, under the direc-  
10 tion and control of the Attorney General, bring  
11 such action”.

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

13 (a) IN GENERAL.—Part 1 of subtitle C of the Federal  
14 Housing Enterprises Financial Safety and Soundness Act  
15 of 1992 (12 U.S.C. 4631 et seq.) is amended—

16 (1) by redesignating sections 1377 through  
17 1379B (12 U.S.C. 4637–4641) as sections 1379  
18 through 1379D, respectively; and

19 (2) by inserting after section 1376 (12 U.S.C.  
20 4636) the following:

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

22 **“(a) AUTHORITY TO ISSUE ORDER.—**

23 **“(1) IN GENERAL.—**The Director may serve  
24 upon a party described in paragraph (2), or any offi-  
25 cer, director, or management of the Finance Facility

1 a written notice of the intention of the Director to  
2 suspend or remove such party from office, or pro-  
3 hibit any further participation by such party, in any  
4 manner, in the conduct of the affairs of the regu-  
5 lated entity.

6 “(2) APPLICABILITY.—A party described in this  
7 paragraph is an entity-affiliated party or any officer,  
8 director, or management of the Finance Facility, if  
9 the Director determines that—

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

12 “(i) violated—

13 “(I) any law or regulation;

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

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

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

24 “(ii) engaged or participated in any  
25 unsafe or unsound practice in connection

1 with any regulated entity or business insti-  
2 tution; or

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

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

8 “(i) such regulated entity or business  
9 institution has suffered or will probably  
10 suffer financial loss or other damage; or

11 “(ii) such party has received financial  
12 gain or other benefit; and

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

15 “(i) involves personal dishonesty on  
16 the part of such party; or

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

21 “(b) SUSPENSION ORDER.—

22 “(1) SUSPENSION OR PROHIBITION AUTHOR-  
23 ITY.—If the Director serves written notice under  
24 subsection (a) upon a party subject to that sub-  
25 section (a), the Director may, by order, suspend or

1 remove such party from office, or prohibit such  
2 party from further participation in any manner in  
3 the conduct of the affairs of the regulated entity, if  
4 the Director—

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

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

10 “(2) EFFECTIVE PERIOD.—Any order issued  
11 under this subsection—

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

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

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

21 “(ii) the effective date of an order  
22 issued under subsection (b).

23 “(3) COPY OF ORDER.—If the Director issues  
24 an order under subsection (b) to any party, the Di-  
25 rector shall serve a copy of such order on any regu-

1       lated entity with which such party is affiliated at the  
2       time such order is issued.

3       “(c) NOTICE, HEARING, AND ORDER.—

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

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

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

17                      “(B) the Attorney General of the United  
18                      States.

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

1           “(4) ISSUANCE OF ORDER OF SUSPENSION.—

2           The Director may issue an order under this section,

3           as the Director may deem appropriate, if—

4                   “(A) a party is deemed to have consented

5                   to the issuance of an order under paragraph

6                   (3); or

7                   “(B) upon the record made at the hearing,

8                   the Director finds that any of the grounds spec-

9                   ified in the notice have been established.

10           “(5) EFFECTIVENESS OF ORDER.—Any order

11           issued under paragraph (4) shall become effective at

12           the expiration of 30 days after the date of service

13           upon the relevant regulated entity and party (except

14           in the case of an order issued upon consent under

15           paragraph (3), which shall become effective at the

16           time specified therein). Such order shall remain ef-

17           fective and enforceable except to such extent as it is

18           stayed, modified, terminated, or set aside by action

19           of the Director or a reviewing court.

20           “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-

21           TIES.—Any person subject to an order issued under this

22           section shall not—

23                   “(1) participate in any manner in the conduct

24                   of the affairs of any regulated entity or the Finance

25                   Facility;

1           “(2) solicit, procure, transfer, attempt to trans-  
2           fer, vote, or attempt to vote any proxy, consent, or  
3           authorization with respect to any voting rights in  
4           any regulated entity;

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

7           “(4) vote for a director, or serve or act as an  
8           entity-affiliated party of a regulated entity or as an  
9           officer or director of the Finance Facility.

10          “(e) INDUSTRY-WIDE PROHIBITION.—

11           “(1) IN GENERAL.—Except as provided in para-  
12           graph (2), any person who, pursuant to an order  
13           issued under this section, has been removed or sus-  
14           pended from office in a regulated entity or the Fi-  
15           nance Facility, or prohibited from participating in  
16           the conduct of the affairs of a regulated entity or  
17           the Finance Facility, may not, while such order is in  
18           effect, continue or commence to hold any office in,  
19           or participate in any manner in the conduct of the  
20           affairs of, any regulated entity or the Finance Facil-  
21           ity.

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

1 party from participating in the conduct of the affairs  
2 of a regulated entity or the Finance Facility, such  
3 party receives the written consent of the Director,  
4 the order shall, to the extent of such consent, cease  
5 to apply to such party with respect to the regulated  
6 entity or such Finance Facility described in the writ-  
7 ten consent. Any such consent shall be publicly dis-  
8 closed.

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

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

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

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

6 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-  
7 ATED PARTY CHARGED WITH FELONY.—

8 “(1) SUSPENSION OR PROHIBITION.—

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

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

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

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

10          “(2) REMOVAL OR PROHIBITION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

24           “(C) DETERMINATION.—Not later than 60  
25 days after the date of a hearing under subpara-

1 graph (B), the Director shall notify the entity-  
2 affiliated party whether the suspension or pro-  
3 hibition from participation in any manner in  
4 the conduct of the affairs of the regulated enti-  
5 ty will be continued, terminated, or otherwise  
6 modified, or whether the order removing such  
7 party from office or prohibiting such party from  
8 further participation in any manner in the con-  
9 duct of the affairs of the regulated entity will  
10 be rescinded or otherwise modified. Such notifi-  
11 cation shall contain a statement of the basis for  
12 any adverse decision of the Director.

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

16 (b) CONFORMING AMENDMENTS.—

17 (1) SAFETY AND SOUNDNESS ACT.—Subtitle C  
18 of title XIII of the Federal Housing Enterprises Fi-  
19 nancial Safety and Soundness Act of 1992 (42  
20 U.S.C. 4501 et seq.) is amended—

21 (A) in section 1317(f), by striking “section  
22 1379B” and inserting “section 1379D”;

23 (B) in section 1373(a)—

1 (i) in paragraph (1), by striking “or  
2 1376(c)” and inserting “, 1376(c), or  
3 1377”;

4 (ii) in paragraph (2), by inserting “or  
5 1377” after “1371”; and

6 (iii) in paragraph (4), by inserting “or  
7 removal or prohibition” after “cease and  
8 desist”; and

9 (C) in section 1374(a)—

10 (i) by striking “or 1376” and insert-  
11 ing “, 1376, or 1377”; and

12 (ii) by striking “such section” and in-  
13 serting “this title”.

14 (2) FANNIE MAE CHARTER ACT.—Section  
15 308(b) of the Federal National Mortgage Associa-  
16 tion Charter Act (12 U.S.C. 1723(b)) is amended in  
17 the second sentence, by striking “The” and inserting  
18 “Except to the extent that action under section  
19 1377 of the Federal Housing Enterprises Financial  
20 Safety and Soundness Act of 1992 temporarily re-  
21 sults in a lesser number, the”.

22 (3) FREDDIE MAC CHARTER ACT.—Section  
23 303(a)(2)(A) of the Federal Home Loan Mortgage  
24 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is  
25 amended, in the second sentence, by striking “The”

1 and inserting “Except to the extent action under  
2 section 1377 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 tempo-  
4 rarily results in a lesser number, the”.

5 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

6 (a) IN GENERAL.—Section 1375 of the Federal  
7 Housing Enterprises Financial Safety and Soundness Act  
8 of 1992 (12 U.S.C. 4635) is amended—

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

11 “(a) ENFORCEMENT.—The Director may, in the dis-  
12 cretion of the Director, apply to the United States District  
13 Court for the District of Columbia, or the United States  
14 district court within the jurisdiction of which the head-  
15 quarters of the regulated entity is located, for the enforce-  
16 ment of any effective and outstanding notice, order, or  
17 subpoena issued under this title, or request that the Attor-  
18 ney General of the United States bring such an action.  
19 Such court shall have jurisdiction and power to order and  
20 require compliance with such notice, order, or subpoena.”;  
21 and

22 (2) in subsection (b)—

23 (A) by striking “section 1371, 1372, or  
24 1376 or”;

1 (B) by inserting “subtitle C, or section  
2 1313A” after “subtitle B,”; and

3 (C) by inserting “, standard,” after “no-  
4 tice” each place that term appears.

5 (b) CONFORMING AMENDMENT.—Section 1379B of  
6 the Federal Housing Enterprises Financial Safety and  
7 Soundness Act of 1992 (12 U.S.C. 4641) is amended by  
8 striking subsection (c) and redesignating subsection (d) as  
9 subsection (c).

10 **SEC. 155. CIVIL MONEY PENALTIES.**

11 Section 1376 of the Federal Housing Enterprises Fi-  
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
13 4636) is amended—

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

16 “(a) IN GENERAL.—The Director may impose a civil  
17 money penalty in accordance with this section on any reg-  
18 ulated entity, or any executive offices of a regulated entity  
19 or any entity-affiliated party.”;

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

22 “(b) AMOUNT OF PENALTY.—

23 “(1) FIRST TIER.—A regulated entity or entity-  
24 affiliated party shall forfeit and pay a civil penalty  
25 of not more than \$10,000 for each day during which

1 a violation continues, if such regulated entity or  
2 party—

3 “(A) violates any provision of this title, the  
4 authorizing statutes, or any order, condition,  
5 rule, or regulation under this title or any au-  
6 thorizing statute;

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

9 “(C) violates any condition imposed in  
10 writing by the Director in connection with the  
11 grant of any application or other request by  
12 such regulated entity;

13 “(D) violates any written agreement be-  
14 tween the regulated entity and the Director; or

15 “(E) engages in any conduct that the Di-  
16 rector determines to be an unsafe or unsound  
17 practice.

18 “(2) SECOND TIER.—Notwithstanding para-  
19 graph (1), a regulated entity or entity-affiliated  
20 party shall forfeit and pay a civil penalty of not  
21 more than \$50,000 for each day during which a vio-  
22 lation, practice, or breach continues, if—

23 “(A) the regulated entity or entity-affili-  
24 ated party, respectively—

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

3                   “(ii) recklessly engages in an unsafe  
4                   or unsound practice in conducting the af-  
5                   fairs of the regulated entity; or

6                   “(iii) breaches any fiduciary duty; and  
7                   “(B) the violation, practice, or breach—

8                   “(i) is part of a pattern of mis-  
9                   conduct;

10                   “(ii) causes or is likely to cause more  
11                   than a minimal loss to the regulated entity;  
12                   or

13                   “(iii) results in pecuniary gain or  
14                   other benefit to such party.

15                   “(3) THIRD TIER.—Notwithstanding para-  
16                   graphs (1) and (2), any regulated entity or entity-  
17                   affiliated party shall forfeit and pay a civil penalty  
18                   in an amount not to exceed the applicable maximum  
19                   amount determined under paragraph (4) for each  
20                   day during which such violation, practice, or breach  
21                   continues, if such regulated entity or entity-affiliated  
22                   party—

23                   “(A) knowingly—

24                   “(i) commits any violation described  
25                   in any subparagraph of paragraph (1);

1           “(ii) engages in any unsafe or un-  
2           sound practice in conducting the affairs of  
3           the regulated entity; or

4           “(iii) breaches any fiduciary duty; and

5           “(B) knowingly or recklessly causes a sub-  
6           stantial loss to the regulated entity or a sub-  
7           stantial pecuniary gain or other benefit to such  
8           party by reason of such violation, practice, or  
9           breach.

10          “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
11          ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
12          The maximum daily amount of any civil penalty  
13          which may be assessed pursuant to paragraph (3)  
14          for any violation, practice, or breach described in  
15          paragraph (3) is—

16                 “(A) in the case of any entity-affiliated  
17                 party, an amount not to exceed \$2,000,000;  
18                 and

19                 “(B) in the case of any regulated entity,  
20                 \$2,000,000.”;

21          (3) in subsection (c)—

22                 (A) by striking “enterprise” each place  
23                 that term appears and inserting “regulated en-  
24                 tity”;

1 (B) by inserting “or entity-affiliated  
2 party” before “in writing”; and

3 (C) by inserting “or entity-affiliated party”  
4 before “has been given”;

5 (4) in subsection (d)—

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

9 (B) by striking “an enterprise” and insert-  
10 ing “a regulated entity”;

11 (C) by striking “the enterprise” and in-  
12 serting “the regulated entity”;

13 (D) by striking “request the Attorney Gen-  
14 eral of the United States to”;

15 (E) by inserting “, or the United States  
16 district court within the jurisdiction of which  
17 the headquarters of the regulated entity is lo-  
18 cated,” after “District of Columbia”;

19 (F) by striking “, or may, under the direc-  
20 tion and control of the Attorney General of the  
21 United States, bring such an action”; and

22 (G) by striking “and section 1374”; and

23 (5) in subsection (g), by striking “An enter-  
24 prise” and inserting “A regulated entity”.

1 **SEC. 156. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Subtitle C of title XIII of the  
3 Federal Housing Enterprises Financial Safety and Sound-  
4 ness Act of 1992 (12 U.S.C. 4631 et seq.), as amended  
5 by this Act, is amended by adding at the end the following:

6 **“SEC. 1378. CRIMINAL PENALTY.**

7 “Whoever, being subject to an order in effect under  
8 section 1377, without the prior written approval of the Di-  
9 rector, knowingly participates, directly or indirectly, in any  
10 manner (including by engaging in an activity specifically  
11 prohibited in such an order) in the conduct of the affairs  
12 of any regulated entity shall, notwithstanding section  
13 3571 of title 18, be fined not more than \$1,000,000, im-  
14 prisoned for not more than 5 years, or both.”.

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

19 (1) in section 1379 (as so designated by this  
20 Act)—

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

23 (B) by striking “the enterprise” and in-  
24 serting “the regulated entity”;

1 (2) in section 1379A (as so designated by this  
2 Act), by striking “an enterprise” and inserting “a  
3 regulated entity”;

4 (3) in section 1379B(c) (as so designated by  
5 this Act), by striking “enterprise” and inserting  
6 “regulated entity”; and

7 (4) in section 1379D (as so designated by this  
8 Act), by striking “enterprise” and inserting “regu-  
9 lated entity”.

10 **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

11 Section 1379 of the Federal Housing Enterprises Fi-  
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
13 4637), as so designated by this Act, is amended—

14 (1) by striking “2-year” and inserting “6-year”;  
15 and

16 (2) by inserting “or an entity-affiliated party”  
17 after “enterprise” each place that term appears.

18 **SEC. 158. SUBPOENA AUTHORITY.**

19 Section 1379B of the Federal Housing Enterprises  
20 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
21 4641) is amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph

24 (1)—

25 (i) by striking “administrative”;

1 (ii) by inserting “, examination, or in-  
2 vestigation” after “proceeding”;

3 (iii) by striking “subchapter” and in-  
4 sserting “title”; and

5 (iv) by inserting “or any designated  
6 representative thereof, including any per-  
7 son designated to conduct any hearing  
8 under this subtitle” after “Director”; and

9 (B) in paragraph (4), by striking “issued  
10 by the Director”;

11 (2) in subsection (b), by inserting “or in any  
12 territory or other place subject to the jurisdiction of  
13 the United States” after “State”;

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

16 “(c) ENFORCEMENT.—

17 “(1) IN GENERAL.—The Director, or any party  
18 to proceedings under this subtitle, may apply to the  
19 United States District Court for the District of Co-  
20 lumbia, or the United States district court for the  
21 judicial district of the United States in any territory  
22 in which such proceeding is being conducted, or  
23 where the witness resides or carries on business, for  
24 enforcement of any subpoena or subpoena duces  
25 tecum issued pursuant to this section.

1           “(2) POWER OF COURT.—The courts described  
2           under paragraph (1) shall have the jurisdiction and  
3           power to order and require compliance with any sub-  
4           poena issued under paragraph (1)”;

5           (4) in subsection (d), by inserting “enterprise-  
6           affiliated party” before “may allow”; and

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

8           “(e) PENALTIES.—A person shall be guilty of a mis-  
9           demeanor, and upon conviction, shall be subject to a fine  
10          of not more than \$1,000 or to imprisonment for a term  
11          of not more than 1 year, or both, if that person willfully  
12          fails or refuses, in disobedience of a subpoena issued under  
13          subsection (e), to—

14                 “(1) attend court;

15                 “(2) testify in court;

16                 “(3) answer any lawful inquiry; or

17                 “(4) produce books, papers, correspondence,  
18                 contracts, agreements, or such other records as re-  
19                 quested in the subpoena.

## 20           **Subtitle E—General Provisions**

### 21           **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

22           (a) AMENDMENTS TO 1992 ACT.—The Federal  
23           Housing Enterprises Financial Safety and Soundness Act  
24           of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,  
25           is amended—

- 1 (1) in section 1315 (12 U.S.C. 4515)—
- 2 (A) in subsection (a)—
- 3 (i) by striking “(a) OFFICE PER-
- 4 SONNEL.—The” and inserting “(a) IN
- 5 GENERAL.—Subject to title III of the Fed-
- 6 eral Enterprise Regulatory Reform Act of
- 7 2005, the”; and
- 8 (ii) by striking “the Office” each place
- 9 that term appears and inserting “the
- 10 Agency”;
- 11 (B) in subsection (c), by striking “the Of-
- 12 fice” and inserting “the Agency”;
- 13 (C) in subsection (e), by striking “the Of-
- 14 fice” and inserting “the Agency”;
- 15 (D) by striking subsection (d) and redesign-
- 16 ating subsection (e) as subsection (d); and
- 17 (E) by striking subsection (f);
- 18 (2) in section 1319A (12 U.S.C. 4520)—
- 19 (A) by striking “(a) IN GENERAL.—”; and
- 20 (B) by striking subsection (b);
- 21 (3) in section 1364(c) (12 U.S.C. 4614(c)), by
- 22 striking the last sentence;
- 23 (4) by striking section 1383 (12 U.S.C. 1451
- 24 note);

1 (5) in each of sections 1319D, 1319E, and  
2 1319F (12 U.S.C. 4523, 4524, 4525) by striking  
3 “the Office” each place that term appears and in-  
4 serting “the Agency”; and

5 (6) in each of sections 1319B and 1369(a)(3)  
6 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-  
7 mittee on Banking, Finance and Urban Affairs”  
8 each place such term appears and inserting “Com-  
9 mittee on Financial Services”.

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

13 (1) in each of sections 303(c)(2) (12 U.S.C.  
14 1718(e)(2)), 309(d)(3)(B) (12 U.S.C.  
15 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.  
16 1723a(k)(1)), by striking “Director of the Office of  
17 Federal Housing Enterprise Oversight of the De-  
18 partment of Housing and Urban Development” each  
19 place that term appears, and inserting “Director of  
20 the Federal Housing Enterprise Regulatory Agen-  
21 cy”;

22 (2) in section 309—

23 (A) in subsection (m) (12 U.S.C.  
24 1723a(m))—

1 (i) in paragraph (1), by striking “to  
2 the Secretary, in a form determined by the  
3 Secretary” and inserting “to the Director  
4 of the Federal Housing Enterprise Regu-  
5 latory Agency, in a form determined by the  
6 Director”; and

7 (ii) in paragraph (2), by striking “to  
8 the Secretary, in a form determined by the  
9 Secretary” and inserting “to the Director  
10 of the Federal Housing Enterprise Regu-  
11 latory Agency, in a form determined by the  
12 Director”;

13 (B) in subsection (n) (12 U.S.C.  
14 1723a(n))—

15 (i) in paragraph (1), by striking “and  
16 the Secretary” and inserting “and the Di-  
17 rector of the Federal Housing Enterprise  
18 Regulatory Agency”; and

19 (ii) in paragraph (2), by striking  
20 “Secretary” each place that term appears  
21 and inserting “Director of the Federal  
22 Housing Enterprise Regulatory Agency”;  
23 and

1 (C) in paragraph (3)(B), by striking “Sec-  
2 retary” and inserting “Director of the Federal  
3 Housing Enterprise Regulatory Agency”.

4 (c) AMENDMENTS TO FREDDIE MAC CHARTER  
5 ACT.—The Federal Home Loan Mortgage Corporation  
6 Act (12 U.S.C. 1451 et seq.) is amended—

7 (1) in each of sections 303(b)(2) (12 U.S.C.  
8 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and  
9 section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-  
10 ing “Director of the Office of Federal Housing En-  
11 terprise Oversight of the Department of Housing  
12 and Urban Development” each place that term ap-  
13 pears, and inserting “Director of the Federal Hous-  
14 ing Enterprise Regulatory Agency”;

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

16 (A) in subsection (c)(2), by inserting “the”  
17 after “Secretary of”;

18 (B) in subsection (i)—

19 (i) by striking “section 1316(c)” and  
20 inserting “section 306(c)”; and

21 (ii) by striking “section 106” and in-  
22 sserting “section 1316”; and

23 (C) in subsection (j), by striking “of sub-  
24 stantially” and inserting “or substantially”; and

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

1 (A) in subsection (e)—

2 (i) in paragraph (1), by striking “to  
3 the Secretary, in a form determined by the  
4 Secretary” and inserting “to the Director  
5 of the Federal Housing Enterprise Regu-  
6 latory Agency, in a form determined by the  
7 Director”; and

8 (ii) in paragraph (2), by striking “to  
9 the Secretary, in a form determined by the  
10 Secretary” and inserting “to the Director  
11 of the Federal Housing Enterprise Regu-  
12 latory Agency, in a form determined by the  
13 Director”; and

14 (B) in subsection (f)—

15 (i) in paragraph (1), by striking “and  
16 the Secretary” and inserting “and the Di-  
17 rector of the Federal Housing Enterprise  
18 Regulatory Agency”;

19 (ii) in paragraph (2), by striking “the  
20 Secretary” each place that term appears  
21 and inserting “the Director of the Federal  
22 Housing Enterprise Regulatory Agency”;  
23 and

24 (iii) in paragraph (3)(B), by striking  
25 “Secretary” and inserting “Director of the

1 Federal Housing Enterprise Regulatory  
2 Agency”.

3 (d) AMENDMENT TO TITLE 18, UNITED STATES  
4 CODE.—Section 1905 of title 18, United States Code, is  
5 amended by striking “Office of Federal Housing Enter-  
6 prise Oversight” and inserting “Federal Housing Enter-  
7 prise Regulatory Agency”.

8 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION  
9 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
10 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
11 is amended by striking “Director of the Office of Federal  
12 Housing Enterprise Oversight of the Department of Hous-  
13 ing and Urban Development” and inserting “Director of  
14 the Federal Housing Enterprise Regulatory Agency”.

15 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND  
16 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
17 ment of Housing and Urban Development Act (42 U.S.C.  
18 3534) is amended by striking subsection (d).

19 (g) AMENDMENT TO TITLE 5, UNITED STATES  
20 CODE.—Section 5313 of title 5, United States Code, is  
21 amended by striking the item relating to the Director of  
22 the Office of Federal Housing Enterprise Oversight, De-  
23 partment of Housing and Urban Development and insert-  
24 ing the following new item:

1           “Director of the Federal Housing Enterprise  
2       Regulatory Agency.”.

3       (h) AMENDMENT TO SARBANES-OXLEY ACT.—Sec-  
4       tion 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of  
5       2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by in-  
6       serting “and the Director of the Office of Federal Housing  
7       Enterprise Oversight,” after “Commission,”.

8       (i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE  
9       ACT.—Section 11(t)(2)(A) of the Federal Deposit Insur-  
10      ance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding  
11      at the end the following:

12                           “(vii) Office of Federal Housing En-  
13                           terprise Oversight.”.

14   **SEC. 162. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-**  
15                           **TERPRISES.**

16       (a) FANNIE MAE.—

17           (1) IN GENERAL.—Section 308(b) of the Fed-  
18       eral National Mortgage Association Charter Act (12  
19       U.S.C. 1723(b)) is amended—

20                   (A) in the first sentence, by striking  
21                   “eighteen persons, five of whom shall be ap-  
22                   pointed annually by the President of the United  
23                   States, and the remainder of whom” and insert-  
24                   ing “13 persons, or such other number that the  
25                   Director determines appropriate, who”;

1 (B) in the second sentence, by striking  
2 “appointed by the President”;

3 (C) in the third sentence—

4 (i) by striking “appointed or”; and

5 (ii) by striking “, except that any  
6 such appointed member may be removed  
7 from office by the President for good  
8 cause”;

9 (D) in the fourth sentence, by striking  
10 “elective”; and

11 (E) by striking the fifth sentence.

12 (2) TRANSITIONAL PROVISION.—The amend-  
13 ments made by paragraph (1) shall not apply to any  
14 appointed position of the board of directors of the  
15 Federal National Mortgage Association until the ex-  
16 piration of the annual term for such position during  
17 which the effective date under section 163 occurs.

18 (b) FREDDIE MAC.—

19 (1) IN GENERAL.—Section 303(a)(2) of the  
20 Federal Home Loan Mortgage Corporation Act (12  
21 U.S.C. 1452(a)(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) in the first sentence, by striking  
24 “13 persons, 5 of whom shall be appointed  
25 annually by the President of the United

1 States and the remainder of whom” and  
2 inserting “13 persons, or such other num-  
3 ber as the Director determines appropriate,  
4 who”; and

5 (ii) in the second sentence, by striking  
6 “appointed by the President of the United  
7 States”;

8 (B) in subparagraph (B)—

9 (i) by striking “such or”; and

10 (ii) by striking “, except that any ap-  
11 pointed member may be removed from of-  
12 fice by the President for good cause”; and

13 (C) in subparagraph (C)—

14 (i) by striking the first sentence; and

15 (ii) by striking “elective”.

16 (2) TRANSITIONAL PROVISION.—The amend-  
17 ments made by paragraph (1) shall not apply to any  
18 appointed position of the board of directors of the  
19 Federal Home Loan Mortgage Corporation until the  
20 expiration of the annual term for such position dur-  
21 ing which the effective date under section 163 oc-  
22 curs.

23 **SEC. 163. EFFECTIVE DATE.**

24 Except as otherwise specifically provided in this title,  
25 the amendments made by this title shall take effect on,

1 and shall apply beginning on, the date of enactment of  
2 this Act.

3 **TITLE II—FEDERAL HOME LOAN**  
4 **BANKS**

5 **SEC. 201. DIRECTORS.**

6 Section 7 of the Federal Home Loan Bank Act (12  
7 U.S.C. 1427) is amended—

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

10 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-  
11 FLICTS OF INTEREST.—

12 “(1) IN GENERAL.—Subject to paragraphs (2)  
13 through (4), the management of each Federal Home  
14 Loan Bank shall be vested in a board of 13 direc-  
15 tors, or such other number as the Director deter-  
16 mines appropriate.

17 “(2) BOARD MAKEUP.—The board of directors  
18 of each Bank shall be comprised of—

19 “(A) member directors, who shall comprise  
20 at least the majority of the members of the  
21 board of directors; and

22 “(B) independent directors, who shall com-  
23 prise not fewer than  $\frac{1}{3}$  of the members of the  
24 board of directors.

25 “(3) SELECTION CRITERIA.—

1           “(A) IN GENERAL.—Each member of the  
2 board of directors shall be—

3                   “(i) elected by plurality vote of the  
4 members, in accordance with procedures  
5 established under this section; and

6                   “(ii) a citizen of the United States.

7           “(B) INDEPENDENT DIRECTOR CRI-  
8 TERIA.—

9                   “(i) PUBLIC INTEREST.—Not fewer  
10 than 2 of the independent directors shall  
11 be selected from among representatives of  
12 organizations having more than a 2-year  
13 history of representing consumer or com-  
14 munity interests on banking services, cred-  
15 it needs, housing, or financial consumer  
16 protections.

17                   “(ii) CONFLICTS OF INTEREST.—No  
18 independent director may, during the term  
19 of service on the board of directors, serve  
20 as an officer of any Federal Home Loan  
21 Bank or as a director or officer of any  
22 member Bank.

23           “(4) DEFINITIONS.—For purposes of this sec-  
24 tion, the following definitions shall apply:

1           “(A) INDEPENDENT DIRECTOR.—The  
2 terms ‘independent director’ and ‘independent  
3 directorship’ mean a member of the board of di-  
4 rectors of a Federal Home Loan Bank who is  
5 a bona fide resident of the district in which the  
6 Federal Home Loan Bank is located, or the di-  
7 rectorship held by such a person, respectively.

8           “(B) MEMBER DIRECTOR.—The terms  
9 ‘member director’ and ‘member directorship’  
10 mean a member of the board of directors of a  
11 Federal Home Loan Bank who is an officer or  
12 director of a member bank that is located in the  
13 district in which the Federal Home Loan Bank  
14 is located, or the directorship held by such a  
15 person, respectively.”;

16           (2) by striking “elective” each place that term  
17 appears, other than in subsections (d), (e), and (f),  
18 and inserting “member”;

19           (3) in subsection (b)—

20           (A) by striking the subsection heading and  
21 all that follows through “Each elective director-  
22 ship” and inserting the following:

23           “(b) DIRECTORSHIPS.—

24           “(1) MEMBER DIRECTORSHIPS.—Each member  
25 directorship”; and

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

2 “(2) INDEPENDENT DIRECTORSHIP.—

3 “(A) ELECTIONS.—Each independent  
4 director—

5 “(i) shall be elected by the members  
6 entitled to vote, from among eligible per-  
7 sons nominated by the Board; and

8 “(ii) shall be filled by a plurality of  
9 the votes of the members of the Bank at  
10 large, with each member having the num-  
11 ber of votes for each such directorship as  
12 it has under subsection (b)(1) in an elec-  
13 tion to fill member directorships.

14 “(B) CRITERIA.—Nominees shall meet  
15 all applicable requirements prescribed in this  
16 section.

17 “(C) NOMINATION AND ELECTION  
18 PROCEDURES.—Procedures for nomination  
19 and election of nonmember directors shall  
20 be prescribed by the bylaws of each Fed-  
21 eral Home Loan Bank, in a manner con-  
22 sistent with the rules and regulations of  
23 the Federal Housing Enterprise Agency.”;

24 (4) in subsection (c), by striking the second,  
25 third, and fifth sentences.

- 1 (5) in subsection (d)—
- 2 (A) in the first sentence—
- 3 (i) by striking “, whether elected or
- 4 appointed,”; and
- 5 (ii) by striking “3 years” and insert-
- 6 ing “4 years”;
- 7 (B) in the second sentence—
- 8 (i) by striking “Federal Home Loan
- 9 Bank System Modernization Act of 1999”
- 10 and inserting “Federal Housing Enterprise
- 11 Regulatory Reform Act of 2005”;
- 12 (ii) by striking “ $\frac{1}{3}$ ” and inserting
- 13 “ $\frac{1}{4}$ ”; and
- 14 (iii) by striking “or appointed”; and
- 15 (C) in the third sentence—
- 16 (i) by striking “an elective” each place
- 17 that term appears and inserting “a”; and
- 18 (ii) by striking “in any elective direc-
- 19 torship or elective directorships”;
- 20 (6) in subsection (f)—
- 21 (A) by striking paragraph (2);
- 22 (B) by striking “appointed or” each place
- 23 that term appears; and
- 24 (C) in paragraph (3)—

1 (i) by striking “(3) ELECTED BANK  
2 DIRECTORS.—” and inserting “(2) ELEC-  
3 TION PROCESS.—”; and

4 (ii) by striking “elective” each place  
5 that term appears;

6 (7) in subsection (i)—

7 (A) in paragraph (1), by striking “Subject  
8 to paragraph (2), each” and inserting “Each”;  
9 and

10 (B) by striking paragraph (2); and

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

12 “(1) TRANSITION RULE.—Any member of the board  
13 of directors of a Bank elected or appointed in accordance  
14 with this section prior to the date of enactment of this  
15 subsection may continue to serve as a member of that  
16 board of directors for the remainder of the existing term  
17 of service.”.

18 **SEC. 202. DEFINITIONS.**

19 Section 2 of the Federal Home Loan Bank Act (12  
20 U.S.C. 1422) is amended—

21 (1) by striking paragraphs (1), (10), and (11);

22 (2) by redesignating paragraphs (2) through  
23 (9) as paragraphs (1) through (8), respectively;

24 (3) by redesignating paragraphs (12) and (13)  
25 as paragraphs (9) and (10), respectively; and

1 (4) by adding at the end the following:

2 “(11) DIRECTOR.—The term ‘Director’ means  
3 the Director of the Federal Housing Enterprise  
4 Agency.

5 “(12) AGENCY.—The term ‘Agency’ means the  
6 Federal Housing Enterprises Regulatory Agency.”.

7 **SEC. 203. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**  
8 **BANKS.**

9 The Federal Home Loan Bank Act (12 U.S.C. 1421  
10 et seq.), other than in provisions of that Act added or  
11 amended otherwise by this Act, is amended—

12 (1) by striking sections 2A, 2B, and 20 (12  
13 U.S.C. 1422a, 1422b, 1440);

14 (2) in section 18 (12 U.S.C. 1438), by striking  
15 subsection (b);

16 (3) in section 11 (12 U.S.C. 1431)—

17 (A) by striking subsections (b) and (c);

18 (B) by redesignating subsections (d)  
19 through (j) as subsections (e) through (h), re-  
20 spectively;

21 (C) in subsection (a)—

22 (i) by striking “Board” each place  
23 that term appears and inserting “Direc-  
24 tor”; and

1 (ii) by striking “upon such terms and  
2 conditions as the Board may approve”;

3 and

4 (D) by inserting after subsection (a) the  
5 following:

6 “(b) ISSUANCE OF FEDERAL HOME LOAN BANK  
7 BONDS.—The Finance Facility established under section  
8 11A may issue consolidated Federal Home Loan Bank  
9 debt, which shall be the joint and several obligations of  
10 all of the Federal Home Loan Banks, and shall be issued  
11 upon such terms and conditions as set by the Finance Fa-  
12 cility for the Federal Home Loan Banks.”;

13 (4) by striking “the Board” each place that  
14 term appears and inserting “the Director”;

15 (5) by striking “The Board” each place that  
16 term appears and inserting “The Director”;

17 (6) by striking “the Finance Board” each place  
18 that term appears and inserting “the Director”;

19 (7) by striking “The Finance Board” each  
20 place that term appears and inserting “The Direc-  
21 tor”;

22 (8) in section 6 (12 U.S.C. 1426(b)(1))—

23 (A) in subsection (b)(1), in the matter pre-  
24 ceding subparagraph (A), by striking “Finance

1 Board approval” and inserting “approval by the  
2 Director”; and

3 (B) in each of subsections (c)(4)(B) and  
4 (d)(2), by striking “Finance Board regulations”  
5 each place that term appears and inserting  
6 “regulations of the Director”;

7 (9) by striking “Federal Housing Finance  
8 Board” each place that term appears and inserting  
9 “Director”;

10 (10) in section 10 (12 U.S.C. 1430)—

11 (A) in the heading for subsection (b), by  
12 striking “FORMAL BOARD RESOLUTION” and  
13 inserting “APPROVAL OF DIRECTOR”; and

14 (B) in subsection (b), by striking “by for-  
15 mal resolution”;

16 (11) in section 21(b)(5) (12 U.S.C.  
17 1441(b)(5)), by striking “Chairperson of the Federal  
18 Housing Finance Board” and inserting “Director”;  
19 and

20 (12) in section 15 (12 U.S.C. 1435), by striking  
21 “issued with the approval of the Board” and insert-  
22 ing “issued under section 11(b)”.

1 **SEC. 204. DEBT FINANCING FACILITY.**

2 The Federal Home Loan Bank Act (12 U.S.C. 1421  
3 et seq.) is amended by inserting after section 11 the fol-  
4 lowing:

5 **“SEC. 11A. FEDERAL HOME LOAN BANK FINANCE FACILITY.**

6 “(a) ESTABLISHMENT.—

7 “(1) IN GENERAL.—The Federal Home Loan  
8 Banks shall establish a Federal Home Loan Bank  
9 Finance Facility .

10 “(2) PURPOSES.—The purposes of the Finance  
11 Facility are—

12 “(A) to issue and service the consolidated  
13 obligations of the Federal Home Loan Banks in  
14 accordance with this Act; and

15 “(B) to perform all other necessary and  
16 proper functions in relation to the issuance and  
17 service of such obligations, as fiscal agent on  
18 behalf of the Federal Home Loan Banks, and  
19 any other functions performed by the Office of  
20 Finance on behalf of the Financing Corporation  
21 (established under section 21) and the Resolu-  
22 tion Funding Corporation (established under  
23 section 21B).

24 “(3) TRANSFER OF FUNCTIONS.—

1           “(A) IN GENERAL.—The functions of the  
2 Office of Finance of the Federal Home Loan  
3 Banks shall be transferred on the effective time.

4           “(B) ORGANIZATIONAL MEETING.—The  
5 organizational meeting of the management  
6 board of the Finance Facility shall occur as  
7 soon as practicable after the date of enactment  
8 of the Federal Enterprise Regulatory Reform  
9 Act of 2005.

10           “(C) INTERIM PROCEDURES.—Until the ef-  
11 fective time, the predecessor office shall con-  
12 tinue to operate as if this section had not been  
13 enacted.

14           “(D) REFERENCES.—After the effective  
15 time, any reference under any provision of Fed-  
16 eral law to the Office of Finance and the Man-  
17 aging Director of the Office of Finance shall be  
18 deemed to be references to the Finance Facility  
19 and the chief executive officer of the Finance  
20 Facility, respectively.

21           “(4) SUCCESSION.—

22           “(A) ASSETS AND LIABILITIES.—On  
23 and after the effective time, the Finance  
24 Facility shall, by operation of law and  
25 without any further action by the Federal

1           Housing Finance Board, the Director, the  
2           predecessor office, or any court, succeed to  
3           the assets of, and assume all debts, obliga-  
4           tions, contracts, and other liabilities of the  
5           predecessor office, matured or unmatured,  
6           accrued or absolute, contingent or other-  
7           wise, and whether or not reflected or re-  
8           served against on balance sheets, books of  
9           account, or records of the predecessor of-  
10          fice.

11                   “(B) CONTRACTS.—On and after the  
12           effective time, the existing contractual obli-  
13           gations of the Federal Housing Finance  
14           Board, solely in its capacity as issuer of  
15           consolidated obligations of the Federal  
16           Home Loan Banks and the predecessor of-  
17           fice shall, by operation of law and without  
18           any further action by the Federal Housing  
19           Finance Board, the Director, the prede-  
20           cessor office, or any court, become obliga-  
21           tions, entitlements, and instruments of the  
22           Finance Facility.

23                   “(C) TAXATION.—The succession to  
24           assets, assumption of liabilities, conversion  
25           of obligations and instruments, and effec-

1                   tuation of any other transaction by the Fi-  
2                   nance Facility to carry out this subsection  
3                   shall not be treated as a taxable event  
4                   under the laws of any State, or any polit-  
5                   ical subdivision thereof.

6           “(b) POWERS.—Subject to the provisions of this Act,  
7 and such regulations as the Director may prescribe, the  
8 Finance Facility shall have the power—

9                   “(1) to issue and service Federal Home Loan  
10                  Bank consolidated notes, consolidated bonds, con-  
11                  solidated debentures, and other consolidated obliga-  
12                  tions authorized under section 11, as agent for the  
13                  Federal Home Loan Banks;

14                  “(2) to determine the amount, maturities, rate  
15                  of interest, terms, and other conditions of Federal  
16                  Home Loan Bank consolidated obligations;

17                  “(3) to make contracts;

18                  “(4) to determine the terms and conditions  
19                  under which the Finance Facility may indemnify the  
20                  members of the management board, as well as offi-  
21                  cers, employees, and agents of the Finance Facility;

22                  “(5) to determine and implement the method-  
23                  ology for assessments of the Federal Home Loan  
24                  Banks to fund all of the expenses of the Finance  
25                  Facility; and

1           “(6) to exercise such incidental powers not in-  
2 consistent with the provisions of this Act as are nec-  
3 essary or advisable to carry out the purposes of the  
4 Finance Facility.

5           “(c) MANAGEMENT OF THE FINANCE FACILITY.—

6           “(1) ESTABLISHMENT.—The management of  
7 the Finance Facility shall be vested in a manage-  
8 ment board composed of the president of each of the  
9 Federal Home Loan Banks, ex officio.

10           “(2) DUTIES.—The management board of the  
11 Finance Facility shall administer the affairs of the  
12 Finance Facility in accordance with the provisions of  
13 this section.

14           “(3) INTERIM APPOINTMENTS.—If the office of  
15 the president of any Federal Home Loan Bank is  
16 vacant, the person serving in such capacity on an  
17 acting basis shall serve on the management board of  
18 the Finance Facility until replaced by the next per-  
19 son to fill the office of the president of that Federal  
20 Home Loan Bank.

21           “(4) POWERS.—The management board of the  
22 Finance Facility shall exercise such powers as may  
23 be necessary or advisable to carry out this section,  
24 including the power to—

1           “(A) set policies for the management and  
2 operation of the Finance Facility;

3           “(B) approve a strategic business plan for  
4 the Finance Facility;

5           “(C) review, adopt, and monitor annual  
6 operation and capital budgets of the Finance  
7 Facility;

8           “(D) constitute and perform the duties of  
9 an audit committee, which to the extent pos-  
10 sible shall operate consistent with—

11           “(i) the requirements established for  
12 the Federal Home Loan Banks; and

13           “(ii) the requirements pertaining to  
14 audit committee reports set forth in the  
15 rules of the Securities and Exchange Com-  
16 mission;

17           “(E) select, employ, determine the com-  
18 pensation for, and assign the duties and func-  
19 tions of the President of the Finance Facility,  
20 who shall—

21           “(i) be the chief executive officer for  
22 the Finance Facility and shall direct the  
23 implementation of the policies adopted by  
24 the management board of the Finance Fa-  
25 cility;

1                   “(ii) serve as a member of the Direc-  
2                   torate of the Financing Corporation, under  
3                   section 21(b)(1)(A); and

4                   “(iii) serve as a member of the Direc-  
5                   torate of the Resolution Funding Corpora-  
6                   tion under section 21B(c)(1)(A);

7                   “(F) provide for the review and approval  
8                   of all contracts of the Finance Facility;

9                   “(G) have the exclusive authority to em-  
10                  ploy and contract for the services of an inde-  
11                  pendent, external auditor for the annual and  
12                  quarterly combined financial statements of the  
13                  Federal Home Loan Banks; and

14                  “(H) select, evaluate, determine the com-  
15                  pensation of, and, as appropriate, replace the  
16                  internal auditor of the Finance Facility, who  
17                  may be removed only by vote of the manage-  
18                  ment board of the Finance Facility.

19                  “(5) PAY.—The members of the management  
20                  board of the Finance Facility shall not receive com-  
21                  pensation for their services as members of the Man-  
22                  agement board.

23                  “(6) QUORUM REQUIREMENT.—

24                  “(A) IN GENERAL.—No business of the Fi-  
25                  nance Facility may be conducted by the man-

1           agement board unless a quorum of the members  
2           of the management board is present in person  
3           or by telephone or through action taken by  
4           written consent executed by all of the members  
5           of the management board.

6           “(B) NUMBER.—A quorum shall be a ma-  
7           jority of the members of the management  
8           board.

9           “(C) VOTE REQUIRED.—Action taken by  
10          the management board shall be approved by a  
11          majority of the members in attendance at any  
12          meeting at which a quorum is present, unless  
13          the management board adopts procedures re-  
14          quiring a greater voting requirement.

15          “(7) APPOINTMENT OF OFFICERS AND ADOP-  
16          TION OF RULES OF PROCEDURE.—The management  
17          board of the Finance Facility shall—

18                 “(A) select, from among the members of  
19                 such board, a Chairperson and a Vice Chair-  
20                 person; and

21                 “(B) adopt bylaws and other rules of pro-  
22                 cedure for actions before the management  
23                 board, including—

1                   “(i) the establishment of 1 or more  
2                   committees to take action on behalf of the  
3                   management board; and

4                   “(ii) the delegation of powers of the  
5                   management board to any committee or of-  
6                   ficer of the Finance Facility.

7           “(d) STATUS.—Except to the extent expressly pro-  
8           vided in this title, or in rules or regulations promulgated  
9           by the Director, or unless the context clearly indicates oth-  
10          erwise, the Finance Facility shall be accorded the same  
11          status as a Federal Home Loan Bank for purposes of any  
12          other provision of law (including section 13), other than  
13          section 1361(b) of the Federal Housing Enterprise Safety  
14          and Soundness Act of 1992.

15          “(e) DEFINITIONS.—As used in this section—

16                  “(1) the term ‘effective time’ means the conclu-  
17                  sion of the organizational meeting of the manage-  
18                  ment board established under subsection (c);

19                  “(2) the term ‘Finance Facility’ includes a cor-  
20                  poration, partnership, limited liability company, or  
21                  joint venture that is jointly owned by the Federal  
22                  Home Loan Banks; and

23                  “(3) the term ‘predecessor office’ means the Of-  
24                  fice of Finance established as a joint office of the  
25                  Federal Home Loan Banks.”.

1 **SEC. 205. EXCLUSION FROM CERTAIN SECURITIES REPORT-**  
2 **ING REQUIREMENTS.**

3 (a) IN GENERAL.—The Federal Home Loan Banks  
4 shall be exempt from compliance with—

5 (1) sections 13(e), 14(a), 14(c), and 17A of the  
6 Securities Exchange Act of 1934, and related Com-  
7 mission regulations; and

8 (2) section 15 of the Securities Exchange Act  
9 of 1934, and related Commission regulations, with  
10 respect to transactions in the capital stock of a Fed-  
11 eral Home Loan Bank.

12 (b) MEMBER EXEMPTION.—The members of the  
13 Federal Home Loan Bank System shall be exempt from  
14 compliance with sections 13(d), 13(f), 13(g), 14(d), and  
15 16 of the Securities Exchange Act of 1934, and related  
16 Commission regulations, with respect to ownership of or  
17 transactions in the capital stock of the Federal Home  
18 Loan Banks by such members.

19 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

20 (1) CAPITAL STOCK.—The capital stock issued  
21 by each of the Federal Home Loan Banks under  
22 section 6 of the Federal Home Loan Bank Act are—

23 (A) exempted securities, within the mean-  
24 ing of section 3(a)(2) of the Securities Act of  
25 1933; and

1 (B) exempted securities, within the mean-  
2 ing of section 3(a)(12)(A) of the Securities Ex-  
3 change Act of 1934.

4 (2) OTHER OBLIGATIONS.—The debentures,  
5 bonds, and other obligations issued under section 11  
6 of the Federal Home Loan Bank Act (12 U.S.C.  
7 1431) are—

8 (A) exempted securities, within the mean-  
9 ing of section 3(a)(2) of the Securities Act of  
10 1933;

11 (B) government securities, within the  
12 meaning of section 3(a)(42) of the Securities  
13 Exchange Act of 1934; and

14 (C) government securities, within the  
15 meaning of section 2(a)(16) of the Investment  
16 Company Act of 1940.

17 (3) BROKERS AND DEALERS.—A person that  
18 effects transactions in the capital stock or other obli-  
19 gations of a Federal Home Loan Bank, for the ac-  
20 count of others or for his own account, as applicable,  
21 is excluded from the definition of—

22 (A) the term “government securities  
23 broker” under section 3(a)(43) of the Securities  
24 Exchange Act of 1934; and

1 (B) the term “government securities deal-  
2 er” under section 3(a)(44) of the Securities Ex-  
3 change Act of 1934.

4 (d) EXEMPTION FROM REPORTING REQUIRE-  
5 MENTS.—The Federal Home Loan Banks shall be exempt  
6 from periodic reporting requirements under the securities  
7 laws pertaining to the disclosure of—

8 (1) related party transactions that occur in the  
9 ordinary course of the business of the Banks with  
10 members; and

11 (2) the unregistered sales of equity securities.

12 (e) TENDER OFFERS.—Commission rules relating to  
13 tender offers shall not apply in connection with trans-  
14 actions in the capital stock of the Federal Home Loan  
15 Banks.

16 (f) REGULATIONS.—

17 (1) FINAL RULES.—Not later than 1 year after  
18 the date of enactment of this Act, the Commission  
19 shall issue final rules to implement this section and  
20 the exemptions provided in this section.

21 (2) CONSIDERATIONS.—In issuing final regula-  
22 tions under this section, the Commission shall con-  
23 sider the distinctive characteristics of the Federal  
24 Home Loan Banks when evaluating—

1 (A) the accounting treatment with respect  
2 to the payment to the Resolution Funding Cor-  
3 poration;

4 (B) the role of the combined financial  
5 statements of the Federal Home Loan Banks;

6 (C) the accounting classification of redeem-  
7 able capital stock; and

8 (D) the accounting treatment related to  
9 the joint and several nature of the obligations  
10 of the Banks.

11 (g) DEFINITIONS.—As used in this section—

12 (1) the terms “Bank”, “Federal Home Loan  
13 Bank”, “member”, and “Federal Home Loan Bank  
14 System” have the same meanings as in section 2 of  
15 the Federal Home Loan Bank Act (12 U.S.C.  
16 1422);

17 (2) the term “Commission” means the Securi-  
18 ties and Exchange Commission”; and

19 (3) the term “securities laws” has the same  
20 meaning as in section 3(a)(47) of the Securities Ex-  
21 change Act of 1934.

22 **SEC. 207. MERGERS.**

23 Section 26 of the Federal Home Loan Bank Act (12  
24 U.S.C. 1446) is amended—

1 (1) by striking “Whenever” and inserting “(a)  
2 IN GENERAL.—Whenever”; and

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

4 “(b) MERGERS AUTHORIZED.—

5 “(1) IN GENERAL.—Any Federal Home Loan  
6 Bank may, with the approval of the Director and of  
7 the boards of directors of the Banks involved, merge  
8 with another Bank.

9 “(2) REGULATIONS REQUIRED.—The Director  
10 shall promulgate regulations establishing the condi-  
11 tions and procedures for the consideration and ap-  
12 proval of any voluntary merger described in para-  
13 graph (1).”.

14 **SEC. 208. AUTHORITY TO REDUCE DISTRICTS.**

15 Section 3 of the Federal Home Loan Bank Act (12  
16 U.S.C. 1423) is amended—

17 (1) by striking “As soon” and inserting “(a) IN  
18 GENERAL.—As soon”; and

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

20 “(b) AUTHORITY TO REDUCE DISTRICTS.—Notwith-  
21 standing subsection (a), the number of districts may be  
22 reduced to a number less than 8—

23 “(1) pursuant to a voluntary merger between  
24 Banks, as approved by the Director pursuant to sec-  
25 tion 26(b); or

1           “(2) pursuant to a decision by the Director to  
2           liquidate a bank pursuant to section 1367 of the  
3           Federal Housing Enterprises Financial Safety and  
4           Soundness Act of 1992.”.

5 **TITLE III—TRANSFER OF FUNC-**  
6 **TIONS, PERSONNEL, AND**  
7 **PROPERTY OF OFHEO AND**  
8 **THE FEDERAL HOUSING FI-**  
9 **NANCE BOARD**

10 **Subtitle A—OFHEO**

11 **SEC. 301. ABOLISHMENT OF OFHEO.**

12           (a) **IN GENERAL.**—Effective at the end of the 1-year  
13 period beginning on the date of enactment of this Act, the  
14 Office of Federal Housing Enterprise Oversight of the De-  
15 partment of Housing and Urban Development and the po-  
16 sitions of the Director and Deputy Director of such Office  
17 are abolished.

18           (b) **DISPOSITION OF AFFAIRS.**—During the 180-day  
19 period beginning on the date of enactment of this Act, the  
20 Director of the Office of Federal Housing Enterprise  
21 Oversight, solely for the purpose of winding up the affairs  
22 of the Office of Federal Housing Enterprise Oversight—

23           (1) shall manage the employees of such Office  
24           and provide for the payment of the compensation  
25           and benefits of any such employee which accrue be-

1 fore the effective date of the transfer of such em-  
2 ployee under section 303; and

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

5 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

6 The amendments made by title I and the abolishment of  
7 the Office of Federal Housing Enterprise Oversight under  
8 subsection (a) of this section may not be construed to af-  
9 fect the status of any employee of such Office as an em-  
10 ployee of an agency of the United States for purposes of  
11 any other provision of law before the effective date of the  
12 transfer of any such employee under section 303.

13 (d) USE OF PROPERTY AND SERVICES.—

14 (1) PROPERTY.—The Director of the Federal  
15 Housing Enterprise Regulatory Agency may use the  
16 property of the Office of Federal Housing Enter-  
17 prise Oversight to perform functions which have  
18 been transferred to the Director of the Federal  
19 Housing Enterprise Regulatory Agency for such  
20 time as is reasonable to facilitate the orderly trans-  
21 fer of functions transferred under any other provi-  
22 sion of this Act or any amendment made by this Act  
23 to any other provision of law.

24 (2) AGENCY SERVICES.—Any agency, depart-  
25 ment, or other instrumentality of the United States,

1 and any successor to any such agency, department,  
2 or instrumentality, which was providing supporting  
3 services to the Office of Federal Housing Enterprise  
4 Oversight before the expiration of the period under  
5 subsection (a) in connection with functions that are  
6 transferred to the Director of the Federal Housing  
7 Enterprise Regulatory Agency shall—

8 (A) continue to provide such services, on a  
9 reimbursable basis, until the transfer of such  
10 functions is complete; and

11 (B) consult with any such agency to co-  
12 ordinate and facilitate a prompt and reasonable  
13 transition.

14 (e) SAVINGS PROVISIONS.—

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

21 (A) arises under—

22 (i) title XIII of the Housing and Com-  
23 munity Development Act of 1992;

24 (ii) the Federal National Mortgage  
25 Association Charter Act;

1 (iii) the Federal Home Loan Mort-  
2 gage Corporation Act;

3 (iv) or any other provision of law ap-  
4 plicable with respect to such Office; and

5 (B) existed on the day before the date of  
6 abolishment under subsection (a).

7 (2) CONTINUATION OF SUITS.—No action or  
8 other proceeding commenced by or against the Di-  
9 rector of the Office of Federal Housing Enterprise  
10 Oversight in connection with functions that are  
11 transferred to the Director of the Federal Housing  
12 Enterprise Regulatory Agency shall abate by reason  
13 of the enactment of this Act, except that the Direc-  
14 tor of the Federal Housing Enterprise Regulatory  
15 Agency shall be substituted for the Director of the  
16 Office of Federal Housing Enterprise Oversight as a  
17 party to any such action or proceeding.

18 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**  
19 **REGULATIONS.**

20 (a) IN GENERAL.—All regulations, orders, and deter-  
21 minations described under subsection (b) shall remain in  
22 effect according to the terms of such regulations, orders,  
23 and determinations, and shall be enforceable by or against  
24 the Director of the Federal Housing Enterprise Regu-  
25 latory Agency or the Secretary of Housing and Urban De-

1 velopment, as the case may be, until modified, terminated,  
2 set aside, or superseded in accordance with applicable law  
3 by the Director or the Secretary, as the case may be, any  
4 court of competent jurisdiction, or operation of law.

5 (b) APPLICABILITY.—A regulation, order, or deter-  
6 mination is described under this subsection if it—

7 (1) was issued, made, prescribed, or allowed to  
8 become effective by—

9 (A) the Office of Federal Housing Enter-  
10 prise Oversight;

11 (B) the Secretary of Housing and Urban  
12 Development, and relates to the authority of  
13 the Secretary under—

14 (i) title XIII of the Housing and Com-  
15 munity Development Act of 1992;

16 (ii) the Federal National Mortgage  
17 Association Charter Act, with respect to  
18 the Federal National Mortgage Associa-  
19 tion; or

20 (iii) the Federal Home Loan Mort-  
21 gage Corporation Act, with respect to the  
22 Federal Home Loan Mortgage Corpora-  
23 tion; or

24 (C) a court of competent jurisdiction and  
25 relates to functions transferred by this Act; and

1           (2) is in effect on the effective date of the abol-  
2           ishment under section 301(a).

3 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
4 **OFHEO.**

5           (a) TRANSFER.—Each employee of the Office of Fed-  
6           eral Housing Enterprise Oversight shall be transferred to  
7           the Federal Housing Enterprise Regulatory Agency for  
8           employment not later than the effective date of the abol-  
9           ishment under section 301(a), and such transfer shall be  
10          deemed a transfer of function for purposes of section 3503  
11          of title 5, United States Code.

12          (b) GUARANTEED POSITIONS.—

13           (1) IN GENERAL.—Each employee transferred  
14           under subsection (a) shall be guaranteed a position  
15           with the same status, tenure, grade, and pay as that  
16           held on the day immediately preceding the transfer.

17           (2) NO INVOLUNTARY SEPARATION OR REDUC-  
18           TION.—An employee transferred under subsection  
19           (a) holding a permanent position on the day imme-  
20           diately preceding the transfer may not be involun-  
21           tarily separated or reduced in grade or compensation  
22           during the 12-month period beginning on the date of  
23           transfer, except for cause, or, in the case of a tem-  
24           porary employee, separated in accordance with the  
25           terms of the appointment of the employee.

1 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
2 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

3 (1) IN GENERAL.—In the case of an employee  
4 occupying a position in the excepted service or the  
5 Senior Executive Service, any appointment authority  
6 established under law or by regulations of the Office  
7 of Personnel Management for filling such position  
8 shall be transferred, subject to paragraph (2).

9 (2) DECLINE OF TRANSFER.—The Director of  
10 the Federal Housing Enterprise Regulatory Agency  
11 may decline a transfer of authority under paragraph  
12 (1) to the extent that such authority relates to—

13 (A) a position excepted from the competi-  
14 tive service because of its confidential, policy-  
15 making, policy-determining, or policy-advocating  
16 character; or

17 (B) a noncareer position in the Senior Ex-  
18 ecutive Service (within the meaning of section  
19 3132(a)(7) of title 5, United States Code).

20 (d) REORGANIZATION.—If the Director of the Fed-  
21 eral Housing Enterprise Regulatory Agency determines,  
22 after the end of the 1-year period beginning on the effec-  
23 tive date of the abolishment under section 301(a), that  
24 a reorganization of the combined workforce is required,  
25 that reorganization shall be deemed a major reorganiza-

1 tion for purposes of affording affected employee retire-  
2 ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
3 5, United States Code.

4 (e) EMPLOYEE BENEFIT PROGRAMS.—

5 (1) IN GENERAL.—Any employee of the Office  
6 of Federal Housing Enterprise Oversight accepting  
7 employment with the Federal Housing Enterprise  
8 Regulatory Agency as a result of a transfer under  
9 subsection (a) may retain for 12 months after the  
10 date on which such transfer occurs membership in  
11 any employee benefit program of the Director of the  
12 Federal Housing Enterprise Regulatory Agency or  
13 the Office of Federal Housing Enterprise Oversight  
14 of the Department of Housing and Urban Develop-  
15 ment, as applicable, including insurance, to which  
16 such employee belongs on the date of the abolish-  
17 ment under section 301(a) if—

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

20 (B) the benefit or program is continued by  
21 the Director of the Federal Housing Enterprise  
22 Regulatory Agency.

23 (2) COST DIFFERENTIAL.—

24 (A) IN GENERAL.—The difference in the  
25 costs between the benefits which would have

1           been provided by the Office of Federal Housing  
2           Enterprise Oversight and those provided by this  
3           section shall be paid by the Director of the Fed-  
4           eral Housing Enterprise Regulatory Agency.

5           (B) HEALTH INSURANCE.—If any em-  
6           ployee elects to give up membership in a health  
7           insurance program or the health insurance pro-  
8           gram is not continued by such Director, the em-  
9           ployee shall be permitted to select an alternate  
10          Federal health insurance program not later  
11          than 30 days after the date of such election or  
12          notice, without regard to any other regularly  
13          scheduled open season.

14 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

15          Upon the effective date of its abolishment under sec-  
16          tion 301(a), all property of the Office of Federal Housing  
17          Enterprise Oversight of the Department of Housing and  
18          Urban Development shall transfer to the Director of the  
19          Federal Housing Enterprise Regulatory Agency.

20                   **Subtitle B—Federal Housing**  
21                   **Finance Board**

22 **SEC. 311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**  
23                   **NANCE BOARD.**

24          (a) IN GENERAL.—Effective at the end of the 1-year  
25          period beginning on the date of enactment of this Act, the

1 Federal Housing Finance Board (in this subtitle referred  
2 to as the “Board”) is abolished.

3 (b) DISPOSITION OF AFFAIRS.—In addition to nor-  
4 mal operations, during the 1-year period beginning on the  
5 date of enactment of this Act, the Board, solely for the  
6 purpose of winding up the affairs of the Board—

7 (1) shall manage the employees of such Board  
8 and provide for the payment of the compensation  
9 and benefits of any such employee which accrue be-  
10 fore the effective date of the transfer of such em-  
11 ployee under section 313; and

12 (2) may take any other action necessary for the  
13 purpose of winding up the affairs of the Board.

14 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—  
15 The amendments made by titles I and II and the abolish-  
16 ment of the Board under subsection (a) may not be con-  
17 strued to affect the status of any employee of such Board  
18 as an employee of an agency of the United States for pur-  
19 poses of any other provision of law before the effective  
20 date of the transfer of any such employee under section  
21 313.

22 (d) USE OF PROPERTY AND SERVICES.—

23 (1) PROPERTY.—The Director of the Federal  
24 Housing Enterprise Regulatory Agency may use the  
25 property of the Board to perform functions which

1 have been transferred to the Director of the Federal  
2 Housing Enterprise Regulatory Agency for such  
3 time as is reasonable to facilitate the orderly trans-  
4 fer of functions transferred under any other provi-  
5 sion of this Act or any amendment made by this Act  
6 to any other provision of law.

7 (2) AGENCY SERVICES.—Any agency, depart-  
8 ment, or other instrumentality of the United States,  
9 and any successor to any such agency, department,  
10 or instrumentality, which was providing supporting  
11 services to the Board before the expiration of the 1-  
12 year period under subsection (a) in connection with  
13 functions that are transferred to the Director of the  
14 Federal Housing Enterprise Regulatory Agency  
15 shall—

16 (A) continue to provide such services, on a  
17 reimbursable basis, until the transfer of such  
18 functions is complete; and

19 (B) consult with any such agency to co-  
20 ordinate and facilitate a prompt and reasonable  
21 transition.

22 (e) SAVINGS PROVISIONS.—

23 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
24 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
25 fect the validity of any right, duty, or obligation of

1 the United States, a member of the Board, or any  
2 other person, which—

3 (A) arises under the Federal Home Loan  
4 Bank Act, or any other provision of law applica-  
5 ble with respect to such Board; and

6 (B) existed on the day before the effective  
7 date of the abolishment under subsection (a).

8 (2) CONTINUATION OF SUITS.—No action or  
9 other proceeding commenced by or against the  
10 Board in connection with functions that are trans-  
11 ferred under this Act to the Director of the Federal  
12 Housing Enterprise Regulatory Agency shall abate  
13 by reason of the enactment of this Act, except that  
14 the Director of the Federal Housing Enterprise Reg-  
15 ulatory Agency shall be substituted for the Board or  
16 any member thereof as a party to any such action  
17 or proceeding.

18 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**  
19 **REGULATIONS.**

20 (a) IN GENERAL.—All regulations, orders, and deter-  
21 minations described under subsection (b) shall remain in  
22 effect according to the terms of such regulations, orders,  
23 and determinations, and shall be enforceable by or against  
24 the Director of the Federal Housing Enterprise Regu-  
25 latory Agency until modified, terminated, set aside, or su-

1 perseded in accordance with applicable law by such Direc-  
2 tor, any court of competent jurisdiction, or operation of  
3 law.

4 (b) APPLICABILITY.—A regulation, order, or deter-  
5 mination is described under this subsection if it—

6 (1) was issued, made, prescribed, or allowed to  
7 become effective by—

8 (A) the Board; or

9 (B) a court of competent jurisdiction and  
10 relates to functions transferred by this Act; and

11 (2) is in effect on the effective date of the abol-  
12 ishment under section 311(a).

13 **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
14 **FEDERAL HOUSING FINANCE BOARD.**

15 (a) TRANSFER.—Each employee of the Board shall  
16 be transferred to the Federal Housing Enterprise Regu-  
17 latory Agency for employment not later than the effective  
18 date of the abolishment under section 311(a), and such  
19 transfer shall be deemed a transfer of function for pur-  
20 poses of section 3503 of title 5, United States Code.

21 (b) GUARANTEED POSITIONS.—

22 (1) IN GENERAL.—Each employee transferred  
23 under subsection (a) shall be guaranteed a position  
24 with the same status, tenure, grade, and pay as that  
25 held on the day immediately preceding the transfer.

1           (2) NO INVOLUNTARY SEPARATION OR REDUC-  
2           TION.—An employee holding a permanent position  
3           on the day immediately preceding the transfer may  
4           not be involuntarily separated or reduced in grade or  
5           compensation during the 12-month period beginning  
6           on the date of transfer, except for cause, or, if the  
7           employee is a temporary employee, separated in ac-  
8           cordance with the terms of the appointment of the  
9           employee.

10          (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
11 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

12           (1) IN GENERAL.—In the case of an employee  
13           occupying a position in the excepted service or the  
14           Senior Executive Service, any appointment authority  
15           established under law or by regulations of the Office  
16           of Personnel Management for filling such position  
17           shall be transferred, subject to paragraph (2).

18           (2) DECLINE OF TRANSFER.—The Director of  
19           the Federal Housing Enterprise Regulatory Agency  
20           may decline a transfer of authority under paragraph  
21           (1) to the extent that such authority relates to—

22                   (A) a position excepted from the competi-  
23                   tive service because of its confidential, policy-  
24                   making, policy-determining, or policy-advocating  
25                   character; or

1 (B) a noncareer position in the Senior Ex-  
2 ecutive Service (within the meaning of section  
3 3132(a)(7) of title 5, United States Code).

4 (d) REORGANIZATION.—If the Director of the Fed-  
5 eral Housing Enterprise Regulatory Agency determines,  
6 after the end of the 1-year period beginning on the effec-  
7 tive date of the abolishment under section 311(a), that  
8 a reorganization of the combined workforce is required,  
9 that reorganization shall be deemed a major reorganiza-  
10 tion for purposes of affording affected employee retire-  
11 ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
12 5, United States Code.

13 (e) EMPLOYEE BENEFIT PROGRAMS.—

14 (1) IN GENERAL.—Any employee of the Board  
15 accepting employment with the Federal Housing En-  
16 terprise Regulatory Agency as a result of a transfer  
17 under subsection (a) may retain for 12 months after  
18 the date on which such transfer occurs membership  
19 in any employee benefit program of the Federal  
20 Housing Enterprise Regulatory Agency or the  
21 Board, as applicable, including insurance, to which  
22 such employee belongs on the effective date of the  
23 abolishment under section 311(a) if—

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

1 (B) the benefit or program is continued by  
2 the Director of the Federal Housing Enterprise  
3 Regulatory Agency.

4 (2) COST DIFFERENTIAL.—

5 (A) IN GENERAL.—The difference in the  
6 costs between the benefits which would have  
7 been provided by the Board and those provided  
8 by this section shall be paid by the Director of  
9 the Federal Housing Enterprise Regulatory  
10 Agency.

11 (B) HEALTH INSURANCE.—If any em-  
12 ployee elects to give up membership in a health  
13 insurance program or the health insurance pro-  
14 gram is not continued by such Director, the em-  
15 ployee shall be permitted to select an alternate  
16 Federal health insurance program not later  
17 than 30 days after the date of such election or  
18 notice, without regard to any other regularly  
19 scheduled open season.

20 **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

21 Upon the effective date of the abolishment under sec-  
22 tion 311(a), all property of the Board shall transfer to  
23 the Director of the Federal Housing Enterprise Regu-  
24 latory Agency.

1                   **TITLE IV—STUDIES AND**  
2                   **REPORTS**

3   **SEC. 401. STUDY AND REPORT ON BASEL II AND ENTER-**  
4                   **PRISE DEBT.**

5           (a) **STUDY.**—The Board of Governors of the Federal  
6 Reserve System shall conduct a study on the effects on  
7 the regulated entities of the new Basel Capital Accord  
8 (Basel II), as endorsed by the Group of Ten countries in  
9 the “International Convergence of Capital Measurement  
10 and Capital Standards: a Revised Framework”. The study  
11 shall examine the debt of the regulated entities and the  
12 capital classification on financial institutions that hold  
13 such debt.

14          (b) **REPORT.**—The Chairman of the Board of Gov-  
15 ernors of the Federal Reserve System shall submit a re-  
16 port to Congress on the results of the study required by  
17 this section not later than 2 years after the date of enact-  
18 ment of this Act.

19   **SEC. 402. AFFORDABLE HOUSING AUDITS.**

20          The Inspector General of the Agency shall conduct  
21 an annual audit of the affordable housing activities, pro-  
22 grams, and partnerships of the Federal National Mort-  
23 gage Association and the Federal Home Loan Mortgage  
24 Corporation, to ensure that such activities, programs, and

1 partnerships support the affordable housing missions of  
2 those enterprises.

3 **SEC. 403. REPORT ON INSURED DEPOSITORY INSTITUTION**  
4 **HOLDINGS OF REGULATED ENTITY DEBT AND**  
5 **MORTGAGE-BACKED SECURITIES.**

6 Not later than 2 years after the date of enactment  
7 of this Act, the Director, the Secretary of the Treasury,  
8 the Board of Governors of the Federal Reserve System,  
9 the Board of Directors of the Federal Deposit Insurance  
10 Corporation, and the National Credit Union Administra-  
11 tion Board shall jointly submit a report to Congress  
12 regarding—

13 (1) the extent to which obligations issued or  
14 guaranteed by the regulated entities (including mort-  
15 gage-backed securities) are held by federally insured  
16 depository institutions, including such extent by type  
17 of institution and such extent relative to the capital  
18 of the institution;

19 (2) the extent to which the unlimited holdings  
20 by federally insured depository institutions of the ob-  
21 ligations of the regulated entities could produce sys-  
22 temic risk issues, particularly for the safety and  
23 soundness of the banking system in the United  
24 States, in the event of default or failure by a regu-  
25 lated entity;

1           (3) the effects on the regulated entities, the  
2 banking industry, and mortgage markets, if prudent  
3 limits on the holdings of the obligations of a regu-  
4 lated entity were placed on federally insured deposi-  
5 tory institutions; and

6           (4) the extent to which alternative investments  
7 are available to community depository institutions,  
8 and the impact that such alternative investments  
9 would have on the safety and soundness and capital  
10 levels of such community depository institutions.

11 **SEC. 404. REPORT ON RISK-BASED CAPITAL LEVELS.**

12       (a) IN GENERAL.—The Director shall submit a re-  
13 port to Congress at the end of each fiscal quarter  
14 regarding—

15           (A) the risk-based capital levels for the  
16 regulated entities under section 1361 of the  
17 Federal Housing Enterprises Financial Safety  
18 and Soundness Act of 1992, as amended by this  
19 Act, including a description of the risk-based  
20 capital test under that section and any assump-  
21 tions of the Director and factors used by the  
22 Director in establishing the test; and

23           (B) the minimum and critical capital levels  
24 for the regulated entities pursuant to sections

1           1362 and 1363, respectively, of that Act, as so  
2           amended.

3           (b) TIMING.—Each report under this section shall be  
4 submitted not later than 60 days after the end of each  
5 fiscal quarter.

6 **SEC. 405. REPORT ON RESOURCES AND ALLOCATIONS.**

7           The Comptroller General of the United States shall  
8 submit a report to Congress annually, on a fiscal year  
9 basis, regarding—

10           (1) the allocation of resources of the Agency by  
11           the Director; and

12           (2) the level of assessments collected by the Di-  
13           rector for the operation of the Agency.

14 **SEC. 406. STUDY AND REPORT ON GUARANTEE FEES.**

15           (a) ONGOING STUDY OF FEES.—The Director shall  
16 conduct an ongoing study of fees charged by enterprises  
17 for guaranteeing a mortgage.

18           (b) COLLECTION OF DATA.—The Director shall, by  
19 regulation or order, establish procedures for the collection  
20 of data from enterprises for purposes of this subsection,  
21 including the format and the process for collection of such  
22 data.

23           (c) REPORT TO CONGRESS.—The Director shall an-  
24 nually submit a report to Congress on the results of the  
25 study conducted under subsection (a), based on the aggre-

1 gated data collected under subsection (a) for the subject  
2 year, regarding the amount of such fees and the criteria  
3 used by the enterprises to determine such fees.

4 (d) CONTENTS OF REPORTS.—The reports required  
5 under subsection (c) shall identify and analyze—

6 (1) the factors considered in determining the  
7 amount of the guarantee fees charged;

8 (2) the total revenue earned by the enterprises  
9 from guarantee fees;

10 (3) the total costs incurred by the enterprises  
11 for providing guarantees;

12 (4) the average guarantee fee charged by the  
13 enterprises;

14 (5) an analysis of any increase or decrease in  
15 guarantee fees from the preceding year;

16 (6) a breakdown of the revenue and costs asso-  
17 ciated with providing guarantees, based on product  
18 type and risk classifications; and

19 (7) a breakdown of guarantee fees charged  
20 based on asset size of the originator and the number  
21 of loans sold or transferred to an enterprise.

22 (e) PROTECTION OF INFORMATION.—Nothing in this  
23 section may be construed to require or authorize the Di-  
24 rector to publicly disclose information that is confidential  
25 or proprietary.

1 **SEC. 407. STUDY AND REPORT ON DEBT AND MORTGAGE-**  
2 **BACKED SECURITIES REGISTRATION UNDER**  
3 **THE SECURITIES ACT OF 1933.**

4 (a) STUDY.—The Agency, the Securities and Ex-  
5 change Commission, and the Secretary of the Treasury  
6 shall jointly examine registration of the debt securities of  
7 the regulated entities under the Securities Act of 1933,  
8 including mortgage-backed securities and equities in the  
9 case of the enterprises.

10 (b) CONSIDERATIONS.—The study required by sub-  
11 section (a) shall include consideration of—

12 (1) how the registration requirements under the  
13 Securities Act of 1933 would apply to the regulated  
14 entities;

15 (2) the enhanced disclosures deriving from such  
16 registration;

17 (3) the impact of such registration on the debt  
18 issuance practices of the regulated entities;

19 (4) costs of compliance;

20 (5) the impact of registration on the operation  
21 of the national debt and mortgage markets; and

22 (6) how the registration scheme could be modi-  
23 fied to accommodate the unique debt issuance prac-  
24 tices of the regulated entities and the unique struc-  
25 ture of the Federal Home Loan Bank System.

1           (c) REPORT.—Not later than 18 months after the  
2 date of enactment of this Act, a report on the study con-  
3 ducted under this section shall be submitted to the Com-  
4 mittee on Banking, Housing, and Urban Affairs of the  
5 Senate.

6 **SEC. 408. RECOMMENDATIONS.**

7           Each report submitted pursuant to this title shall in-  
8 clude specific recommendations, if any, of appropriate  
9 policies, limitations, regulations, legislation, or other ac-  
10 tions to deal appropriately and effectively with the issues  
11 addressed by such report.