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110TH CONGRESS
2D SESSION

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[Report No. 110-_____]]

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

IN THE SENATE OF THE UNITED STATES

Mr. DODD from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Housing Finance Regulatory Reform Act of
6 2008”.

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

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

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 101. Establishment of the Federal Housing Finance Agency.
- Sec. 102. Duties and authorities of the Director.
- Sec. 103. Federal Housing Finance Oversight Board.
- Sec. 104. Authority to require reports by regulated entities.
- Sec. 105. Examiners and accountants; authority to contract for reviews of regulated entities; ombudsman.
- Sec. 106. Assessments.
- Sec. 107. Regulations and orders.
- Sec. 108. Prudential management and operations standards.
- Sec. 109. Review of and authority over enterprise assets and liabilities.
- Sec. 110. Risk-based capital requirements.
- Sec. 111. Minimum capital levels.
- Sec. 112. Registration under the securities laws.
- Sec. 113. Prohibition and withholding of executive compensation.
- Sec. 114. Limit on golden parachutes.
- Sec. 115. Reporting of fraudulent loans.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
- Sec. 122. Assumption by the Director of certain other HUD responsibilities.
- Sec. 123. Review of enterprise products.
- Sec. 124. Conforming loan limits.
- Sec. 125. Annual housing report.
- Sec. 126. Public use database.
- Sec. 127. Reporting of mortgage data.
- Sec. 128. Revision of housing goals.
- Sec. 129. Duty to serve underserved markets.
- Sec. 130. Monitoring and enforcing compliance with housing goals.
- Sec. 131. Affordable housing programs.
- Sec. 132. Financial education and counseling.
- Sec. 133. Transfer and rights of certain HUD employees.

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

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

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- 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. Recognition of distinctions between the enterprises and the Federal Home Loan Banks.
- Sec. 202. Directors.
- Sec. 203. Definitions.
- Sec. 204. Agency oversight of Federal Home Loan Banks.
- Sec. 205. Housing goals.
- Sec. 206. Community development financial institutions.
- Sec. 207. Sharing of information among Federal Home Loan Banks.
- Sec. 208. Exclusion from certain securities reporting requirements.
- Sec. 209. Mergers.
- Sec. 210. Authority to reduce districts.
- Sec. 211. Community financial institution members.
- Sec. 212. Public use data base; reports to Congress.
- Sec. 213. Semiannual reports.
- Sec. 214. Liquidation or reorganization of a Federal Home Loan Bank.
- Sec. 215. Study and report to Congress on securitization of Acquired Member Assets.
- Sec. 216. Technical and conforming amendments.
- Sec. 217. Study on Federal Home Loan Bank advances.
- Sec. 218. Federal Home Loan Bank refinancing authority for certain residential mortgage loans.

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—HOPE FOR HOMEOWNERS

- Sec. 401. Short title.
- Sec. 402. Establishment of HOPE for Homeowners Program.
- Sec. 403. Fiduciary duty of servicers of pooled residential mortgage loans.
- Sec. 404. Revised standards for FHA appraisers.

TITLE V—MISCELLANEOUS

- Sec. 501. Study and reports on guarantee fees.
- Sec. 502. Study and report on default risk evaluation.
- Sec. 503. Conversion of HUD contracts.

TITLE VI—S.A.F.E. MORTGAGE LICENSING ACT

- Sec. 601. Short title.
- Sec. 602. Purposes and methods for establishing a mortgage licensing system and registry.
- Sec. 603. Definitions.
- Sec. 604. License or registration required.
- Sec. 605. State license and registration application and issuance.
- Sec. 606. Standards for State license renewal.
- Sec. 607. System of registration administration by Federal banking agencies.
- Sec. 608. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
- Sec. 609. Backup authority to establish a nationwide mortgage licensing and registry system.
- Sec. 610. Fees.
- Sec. 611. Background checks of loan originators.
- Sec. 612. Confidentiality of information.
- Sec. 613. Liability provisions.
- Sec. 614. Enforcement under HUD backup licensing system.
- Sec. 615. State examination authority.
- Sec. 616. Preemption of State law.
- Sec. 617. Reports and recommendations to Congress.
- Sec. 618. Study and reports on defaults and foreclosures.

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 department of Housing and Urban Development” and
2 inserting “Federal Housing Finance Agency”;

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

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

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

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

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

13 “(C) any Federal Home Loan Bank.”;

14 (5) by striking paragraph (13);

15 (6) by redesignating paragraph (7) as para-
16 graph (13);

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

19 (8) by redesignating paragraphs (8) through
20 (10) as paragraphs (15) through (17), respectively;

21 (9) in paragraph (5)—

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

23 and

24 (B) by striking “Office of Federal Housing
25 Enterprise Oversight of the Department of

1 Housing and Urban Development” and insert-
2 ing “Federal Housing Finance Agency”;

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

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

7 (12) 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 (13) by inserting after paragraph (1) the fol-
9 lowing:

10 “(2) AGENCY; DIRECTOR.—The term—

11 “(A) ‘Agency’ means the Federal Housing
12 Finance Agency established under section 1311;
13 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 Finance Oversight Board estab-
25 lished under section 1313A.”;

1 (14) 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;

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 Office of Finance.

13 “(12) OFFICE OF FINANCE.—The term ‘Office
14 of Finance’ means the Office of Finance of the Fed-
15 eral Home Loan Bank System (or any successor
16 thereto).

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 (15) by adding at the end the following:

24 “(26) 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 Finance Agency;

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

10 (3) the terms “enterprise”, “regulated entity”,
11 and “authorizing statutes” have the same meanings
12 as in section 1303 of the Federal Housing Enter-
13 prises Financial Safety and Soundness Act of 1992,
14 as amended by this Act.

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

19 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**
20 **NANCE AGENCY.**

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

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

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

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

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

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

21 “(c) SAVINGS PROVISION.—The authority of the Di-
22 rector to take actions under subtitles B and C shall not
23 in any way limit the general supervisory and regulatory
24 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 5 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 the Federal Hous-
6 ing Finance Regulatory Reform Act of 2008, and
7 ending on the date on which the Director is ap-
8 pointed and confirmed, the person serving as the Di-
9 rector of the Office of Federal Housing Enterprise
10 Oversight of the Department of Housing and Urban
11 Development on that effective date shall act for all
12 purposes as, and with the full powers of, the Direc-
13 tor.

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 enter-
7 prises, and with respect to oversight of the housing
8 finance and community and economic development
9 mission of the Federal Home Loan Banks, as the
10 Director shall prescribe.

11 “(3) CONSIDERATIONS.—In exercising such
12 functions, powers, and duties, the Deputy Director
13 for Housing Mission and Goals shall consider the
14 differences between the enterprises and the Federal
15 Home Loan Banks, including those described in sec-
16 tion 1313(f).

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

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

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

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

7 “(3) have served as an executive officer or di-
8 rector of any regulated entity or entity-affiliated
9 party at any time during the 3-year period preceding
10 the date of appointment or designation of such indi-
11 vidual as Director or Deputy Director, as applica-
12 ble.”.

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

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

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

18 “(a) DUTIES.—

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

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

23 “(B) to ensure that—

24 “(i) each regulated entity operates in
25 a safe and sound manner, including main-

1 tenance of adequate capital and internal
2 controls;

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

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

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

21 “(v) the activities of each regulated
22 entity and the manner in which such regu-
23 lated entity is operated are consistent with
24 the public interest.

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 principal 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 principal 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 Finance Agency”.

18 **SEC. 103. FEDERAL HOUSING FINANCE OVERSIGHT 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:

1 **“SEC. 1313A. FEDERAL HOUSING FINANCE OVERSIGHT**
2 **BOARD.**

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

7 “(b) LIMITATIONS.—The Board may not exercise any
8 executive authority, and the Director may not delegate to
9 the Board any of the functions, powers, or duties of the
10 Director.

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

13 “(1) 1 member shall be the Secretary of the
14 Treasury;

15 “(2) 1 member shall be the Secretary of Hous-
16 ing and Urban Development;

17 “(3) 1 member shall be the Chairman of the
18 Securities and Exchange Commission; and

19 “(4) 1 member shall be the Director, who shall
20 serve as the Chairperson of the Board.

21 “(d) MEETINGS.—

22 “(1) IN GENERAL.—The Board shall meet upon
23 notice by the Director, but in no event shall the
24 Board meet less frequently than once every 3
25 months.

1 “(2) SPECIAL MEETINGS.—Either the Secretary
2 of the Treasury, the Secretary of Housing and
3 Urban Development, or the Chairman of the Securi-
4 ties and Exchange Commission may, upon giving
5 written notice to the Director, require a special
6 meeting of the Board.

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

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

11 “(2) any material deficiencies in the conduct of
12 the operations of the regulated entities;

13 “(3) the overall operational status of the regu-
14 lated entities;

15 “(4) an evaluation of the performance of the
16 regulated entities in carrying out their respective
17 missions;

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

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

23 (b) ANNUAL REPORT OF THE DIRECTOR.—Section
24 1319B(a) of the Federal Housing Enterprises Financial

1 Safety and Soundness Act of 1992 (12 U.S.C. 4521(a))

2 is amended—

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

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

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

9 (4) in paragraph (4), by striking “1994.” and
10 inserting “1994; and”; and

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

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

14 “(A) the safety and soundness of the regu-
15 lated entities;

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

18 “(C) the overall operational status of the
19 regulated entities; and

20 “(D) an evaluation of the performance of
21 the regulated entities in carrying out their re-
22 spective missions;

23 “(6) operations, resources, and performance of
24 the Agency; and

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

3 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
4 **LATED ENTITIES.**

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

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

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

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

14 (4) in subsection (a)—

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

18 “(a) **REGULAR AND SPECIAL REPORTS.**—

19 “(1) **REGULAR REPORTS.**—The Director may
20 require, by general or specific orders, a regulated en-
21 tity to submit regular reports, including financial
22 statements determined on a fair value basis, on the
23 condition (including financial condition), manage-
24 ment, activities, or operations of the regulated enti-
25 ty, as the Director considers appropriate”; and

1 (B) in paragraph (2)—

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

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

7 and

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

9 “(c) PENALTIES FOR FAILURE TO MAKE RE-
10 PORTS.—

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

13 “(A) to fail to make, transmit, or publish
14 any report or obtain any information required
15 by the Director under this section, section
16 309(k) of the Federal National Mortgage Asso-
17 ciation Charter Act, or section 307(c) of the
18 Federal Home Loan Mortgage Corporation Act,
19 within the period of time specified in such pro-
20 vision of law or otherwise by the Director; or

21 “(B) to submit or publish any false or mis-
22 leading report or information under this sec-
23 tion.

24 “(2) PENALTIES.—

25 “(A) FIRST TIER.—

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

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

11 “(II) the violation was an inad-
12 vertent transmittal or publication of
13 any report which was minimally late.

14 “(ii) BURDEN OF PROOF.—For pur-
15 poses of this subparagraph, the regulated
16 entity shall have the burden of proving
17 that the error was inadvertent or that a re-
18 port was inadvertently transmitted or pub-
19 lished late.

20 “(B) SECOND TIER.—A violation described
21 in paragraph (1) shall be subject to a penalty
22 of not more than \$20,000 for each day during
23 which such violation continues or such false or
24 misleading information is not corrected, in any

1 case that is not addressed in subparagraph (A)
2 or (C).

3 “(C) THIRD TIER.—A violation described
4 in paragraph (1) shall be subject to a penalty
5 of not more than \$1,000,000 per day for each
6 day during which such violation continues or
7 such false or misleading information is not cor-
8 rected, in any case in which the subject regu-
9 lated entity committed such violation knowingly
10 or with reckless disregard for the accuracy of
11 any such information or report.

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

20 “(4) HEARING.—A regulated entity against
21 which a penalty is assessed under this section shall
22 be afforded an agency hearing if the regulated entity
23 submits a request for a hearing not later than 20
24 days after the date of the issuance of the notice of

1 assessment. Section 1374 shall apply to any such
2 proceedings.”.

3 (b) CONFORMING AMENDMENT.—The Federal Hous-
4 ing Enterprises Financial Safety and Soundness Act of
5 1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-
6 tions 1327 and 1328.

7 **SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**
8 **CONTRACT FOR REVIEWS OF REGULATED EN-**
9 **TITIES; OMBUDSMAN.**

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

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

16 (2) in subsection (b)—

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

19 (B) by striking “to determine the condition
20 of an enterprise for the purpose of ensuring its
21 financial safety and soundness” and inserting
22 “or appropriate”;

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

1 (4) by redesignating subsections (d) through (f)
2 as subsections (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 Federal Housing Enterprises Financial Safety and
12 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
13 adding at the end the 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 Finance Agency” after
12 “Social Security Administration”; and

13 (2) in paragraph (2), by inserting “, the Fed-
14 eral Housing Finance Agency” after “Social Secu-
15 rity 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—

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

23 (2) by striking “enterprises” and inserting
24 “regulated entities”.

1 (e) OFFICE OF THE OMBUDSMAN.—Section 1317 of
2 the Federal Housing Enterprises Financial Safety and
3 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
4 adding at the end the following:

5 “(i) OMBUDSMAN.—The Director shall establish, by
6 regulation, an Office of the Ombudsman within the Agen-
7 cy, which shall be responsible for considering complaints
8 and appeals, from any regulated entity and any person
9 that has a business relationship with a regulated entity,
10 regarding any matter relating to the regulation and super-
11 vision of such regulated entity by the Agency. The regula-
12 tion issued by the Director under this subsection shall
13 specify the authority and duties of the Office of the Om-
14 budsman.”.

15 **SEC. 106. ASSESSMENTS.**

16 Section 1316 of the Federal Housing Enterprises Fi-
17 nancial Safety and Soundness Act of 1992 (12 U.S.C.
18 4516) is amended—

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

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

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

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

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

10 “(4) the windup of the affairs of the Office of
11 Federal Housing Enterprise Oversight and the Fed-
12 eral Housing Finance Board under title III of the
13 Federal Housing Finance Regulatory Reform Act of
14 2008.”.

15 (2) in subsection (b)—

16 (A) in the subsection heading, by striking
17 “ENTERPRISES” and inserting “REGULATED
18 ENTITIES”;

19 (B) by realigning paragraph (2) two ems
20 from the left margin, so as to align the left
21 margin of such paragraph with the left margins
22 of paragraph (1);

23 (C) in paragraph (1)—

24 (i) by striking “Each enterprise” and
25 inserting “Each regulated entity”;

1 (ii) by striking “each enterprise” and
2 inserting “each regulated entity”; and

3 (iii) by striking “both enterprises”
4 and inserting “all of the regulated enti-
5 ties”;

6 (D) in paragraph (3)—

7 (i) in subparagraph (B), by striking
8 “subparagraph (A)” and inserting “clause
9 (i)”;

10 (ii) by redesignating subparagraphs
11 (A), (B), and (C) as clauses (i), (ii), and
12 (iii), respectively, and realigning such
13 clauses, as so redesignated, so as to be in-
14 dented 6 ems from the left margin; and

15 (iii) by striking the matter that pre-
16 cedes clause (i), as so redesignated, and in-
17 serting the following:

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

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

23 (iv) by adding at the end the following
24 new subparagraph:

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

6 (E) by redesignating paragraphs (2) and
7 (3) as paragraphs (3) and (4), respectively; and

8 (F) by inserting after paragraph (1) the
9 following:

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

20 (3) by striking subsection (c) and inserting the
21 following:

22 “(c) INCREASED COSTS OF REGULATION.—

23 “(1) INCREASE FOR INADEQUATE CAPITALIZA-
24 TION.—The semiannual payments made pursuant to
25 subsection (b) by any regulated entity that is not

1 classified (for purposes of subtitle B) as adequately
2 capitalized may be increased, as necessary, in the
3 discretion of the Director to pay additional esti-
4 mated costs of regulation of the regulated entity.

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

13 “(3) ADDITIONAL ASSESSMENT FOR DEFICI-
14 CIENCIES.—If at any time, as a result of increased
15 costs of regulation of a regulated entity that is not
16 classified (for purposes of subtitle B) as adequately
17 capitalized or as the result of supervisory or enforce-
18 ment activities under this Act for a regulated entity,
19 the amount available from any semiannual payment
20 made by such regulated entity pursuant to sub-
21 section (b) is insufficient to cover the costs of the
22 Agency with respect to such entity, the Director may
23 make and collect from such regulated entity an im-
24 mediate assessment to cover the amount of such de-
25 ficiency for the semiannual period. If, at the end of

1 any semiannual period during which such an assess-
2 ment is made, any amount remains from such as-
3 sessment, such remaining amount shall be deducted
4 from the assessment for such regulated entity for
5 the following semiannual period.”;

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

9 (5) by striking subsections (e) through (g) and
10 inserting the following:

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

18 “(f) TREATMENT OF ASSESSMENTS.—

19 “(1) DEPOSIT.—Amounts received by the Di-
20 rector from assessments under this section may be
21 deposited by the Director in the manner provided in
22 section 5234 of the Revised Statutes of the United
23 States (12 U.S.C. 192) for monies deposited by the
24 Comptroller of the Currency.

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

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

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

17 “(5) AVAILABILITY OF OVERSIGHT FUND
18 AMOUNTS.—Notwithstanding any other provision of
19 law, any amounts remaining in the Federal Housing
20 Enterprises Oversight Fund established under this
21 section (as in effect before the effective date of the
22 Federal Housing Finance Regulatory Reform Act of
23 2008, and any amounts remaining from assessments
24 on the Federal Home Loan Banks pursuant to sec-
25 tion 18(b) of the Federal Home Loan Bank Act (12

1 U.S.C. 1438(b)), shall, upon such effective date, be
2 treated for purposes of this subsection as amounts
3 received from assessments under this section.

4 “(6) TREASURY INVESTMENTS.—

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

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

23 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

24 “(1) FINANCIAL OPERATING PLANS AND FORE-
25 CASTS.—The Director shall provide to the Director

1 of the Office of Management and Budget copies of
2 the Director's financial operating plans and fore-
3 casts, as prepared by the Director in the ordinary
4 course of the Agency's operations, and copies of the
5 quarterly reports of the Agency's financial condition
6 and results of operations, as prepared by the Direc-
7 tor in the ordinary course of the Agency's oper-
8 ations.

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

11 “(A) assets and liabilities and surplus or
12 deficit;

13 “(B) income and expenses; and

14 “(C) sources and application of funds.

15 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
16 Agency shall implement and maintain financial man-
17 agement systems that—

18 “(A) comply substantially with Federal fi-
19 nancial management systems requirements and
20 applicable Federal accounting standards; and

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

23 “(4) ASSERTION OF INTERNAL CONTROLS.—
24 The Director shall provide to the Comptroller Gen-
25 eral of the United States an assertion as to the ef-

1 fectiveness of the internal controls that apply to fi-
2 nancial reporting by the Agency, using the standards
3 established in section 3512(c) of title 31, United
4 States Code.

5 “(5) RULE OF CONSTRUCTION.—This sub-
6 section may not be construed as implying any obliga-
7 tion on the part of the Director to consult with or
8 obtain the consent or approval of the Director of the
9 Office of Management and Budget with respect to
10 any report, plan, forecast, or other information re-
11 ferred to in paragraph (1) or any jurisdiction or
12 oversight over the affairs or operations of the Agen-
13 cy.

14 “(h) AUDIT OF AGENCY.—

15 “(1) IN GENERAL.—The Comptroller General
16 shall annually audit the financial transactions of the
17 Agency in accordance with the United States gen-
18 erally accepted government auditing standards as
19 may be prescribed by the Comptroller General of the
20 United States. The audit shall be conducted at the
21 place or places where accounts of the Agency are
22 normally kept. The representatives of the Govern-
23 ment Accountability Office shall have access to the
24 personnel and to all books, accounts, documents, pa-
25 pers, records (including electronic records), reports,

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

19 “(2) REPORT.—The Comptroller General shall
20 submit to the Congress a report of each annual
21 audit conducted under this subsection. The report to
22 the Congress shall set forth the scope of the audit
23 and shall include the statement of assets and liabil-
24 ities and surplus or deficit, the statement of income
25 and expenses, the statement of sources and applica-

1 tion of funds, and such comments and information
2 as may be deemed necessary to inform Congress of
3 the financial operations and condition of the Agency,
4 together with such recommendations with respect
5 thereto as the Comptroller General may deem advis-
6 able. A copy of each report shall be furnished to the
7 President and to the Agency at the time submitted
8 to the Congress.

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

1 and without fiscal year limitation to cover the full
2 costs of the audit and report.”.

3 **SEC. 107. REGULATIONS AND ORDERS.**

4 Section 1319G of the Federal Housing Enterprises
5 Financial Safety and Soundness Act of 1992 (12 U.S.C.
6 4526) is amended—

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

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

14 (2) by striking subsection (c).

15 **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS**
16 **STANDARDS.**

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

21 **“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS**
22 **STANDARDS.**

23 “(a) **STANDARDS.**—The Director shall establish
24 standards, by regulation or guideline, for each regulated
25 entity relating to—

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

4 “(2) independence and adequacy of internal
5 audit systems;

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

7 “(4) management of market risk, including
8 standards that provide for systems that accurately
9 measure, monitor, and control market risks and, as
10 warranted, that establish limitations on market risk;

11 “(5) adequacy and maintenance of liquidity and
12 reserves;

13 “(6) management of asset and investment port-
14 folio growth;

15 “(7) investments and acquisitions of assets by
16 a regulated entity, to ensure that they are consistent
17 with the purposes of this title and the authorizing
18 statutes;

19 “(8) overall risk management processes, includ-
20 ing adequacy of oversight by senior management and
21 the board of directors and of processes and policies
22 to identify, measure, monitor, and control material
23 risks, including reputational risks, and for adequate,
24 well-tested business resumption plans for all major

1 systems with remote site facilities to protect against
2 disruptive events;

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

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

12 “(11) such other operational and management
13 standards as the Director determines to be appro-
14 priate.

15 “(b) FAILURE TO MEET STANDARDS.—

16 “(1) PLAN REQUIREMENT.—

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

20 “(i) if such standard is established by
21 regulation, the Director shall require the
22 regulated entity to submit an acceptable
23 plan to the Director within the time al-
24 lowed under subparagraph (C); and

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

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

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

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

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

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

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

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

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

22 “(ii) Require the regulated entity—

23 “(I) in the case of an enterprise,
24 to increase its ratio of core capital to
25 assets.

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

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

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

16 “(A) the Director determines that the reg-
17 ulated entity fails to meet any standard pre-
18 scribed under subsection (a);

19 “(B) the regulated entity has not corrected
20 the deficiency; and

21 “(C) during the 18-month period before
22 the date on which the regulated entity first
23 failed to meet the standard, the entity under-
24 went extraordinary growth, as defined by the
25 Director.

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

4 **SEC. 109. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
5 **ASSETS AND LIABILITIES.**

6 (a) IN GENERAL.—Subtitle B of the Federal Housing
7 Enterprises Financial Safety and Soundness Act of 1992
8 (12 U.S.C. 4611 et seq.) is amended—

9 (1) by striking the subtitle designation and
10 heading and inserting the following:

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

16 and

17 (2) by adding at the end the following new sec-
18 tion:

19 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**
20 **ITIES.**

21 “(a) IN GENERAL.—The Director shall, by regula-
22 tion, establish criteria governing the portfolio holdings of
23 the enterprises, to ensure that the holdings are backed by
24 sufficient capital and consistent with the mission and the
25 safe and sound operations of the enterprises. In estab-

1 lishing such criteria, the Director shall consider the ability
2 of the enterprises to provide a liquid secondary market
3 through securitization activities, the portfolio holdings in
4 relation to the overall mortgage market, and adherence to
5 the standards specified in section 1313B.

6 “(b) TEMPORARY ADJUSTMENTS.—The Director
7 may, by order, make temporary adjustments to the estab-
8 lished standards for an enterprise or both enterprises,
9 such as during times of economic distress or market dis-
10 ruption.

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

20 (b) REGULATIONS.—Not later than the expiration of
21 the 180-day period beginning on the effective date of this
22 Act, the Director shall issue regulations pursuant to sec-
23 tion 1369E(a) of the Federal Housing Enterprises Finan-
24 cial Safety and Soundness Act of 1992 (as added by sub-

1 section (a) of this section) establishing the portfolio hold-
2 ings standards under such section.

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

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

7 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**
8 **ENTITIES.**

9 “(a) IN GENERAL.—

10 “(1) ENTERPRISES.—The Director shall, by
11 regulation, establish risk-based capital requirements
12 for the enterprises to ensure that the enterprises op-
13 erate in a safe and sound manner, maintaining suffi-
14 cient capital and reserves to support the risks that
15 arise in the operations and management of the en-
16 terprises.

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

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

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

4 (1) by striking subparagraph (A) and inserting
5 the following:

6 “(A) RISK-BASED CAPITAL STANDARDS.—
7 The Director shall, by regulation, establish risk-
8 based capital standards for the Federal Home
9 Loan Banks to ensure that the Federal Home
10 Loan Banks operate in a safe and sound man-
11 ner, with sufficient permanent capital and re-
12 serves to support the risks that arise in the op-
13 erations and management of the Federal Home
14 Loans Banks.”; and

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

17 **SEC. 111. MINIMUM CAPITAL LEVELS.**

18 Section 1362 of the Federal Housing Enterprises Fi-
19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
20 4612) is amended—

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

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

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

7 “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-
8 ITAL LEVELS.—Notwithstanding subsections (a) and (b)
9 and notwithstanding the capital classifications of the regu-
10 lated entities, the Director may, by regulations issued
11 under section 1319G, establish a minimum capital level
12 for the enterprises, for the Federal Home Loan Banks,
13 or for both the enterprises and the banks, that is higher
14 than the level specified in subsection (a) for the enter-
15 prises or the level specified in subsection (b) for the Fed-
16 eral Home Loan Banks, to the extent needed to ensure
17 that the regulated entities operate in a safe and sound
18 manner.

19 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-
20 CREASE.—

21 “(1) IN GENERAL.—Notwithstanding sub-
22 sections (a) and (b) and any minimum capital level
23 established pursuant to subsection (c), the Director
24 may, by order, increase the minimum capital level
25 for a regulated entity on a temporary basis, when

1 the Director determines that such an increase is nec-
2 essary and consistent with the prudential regulation
3 and the safe and sound operations of a regulated en-
4 tity.

5 “(2) RESCISSION.—The Director shall rescind
6 any temporary minimum capital level established
7 under paragraph (1) when the Director determines
8 that the circumstances or facts no longer justify the
9 temporary minimum capital level.

10 “(3) REGULATIONS REQUIRED.—The Director
11 shall issue regulations establishing—

12 “(A) standards for the imposition of a
13 temporary increase in minimum capital under
14 paragraph (1);

15 “(B) the standards and procedures that
16 the Director will use to make the determination
17 referred to in paragraph (2); and

18 “(C) a reasonable time frame for periodic
19 review of any temporary increase in minimum
20 capital for the purpose of making the deter-
21 mination referred to in paragraph (2).

22 “(e) AUTHORITY TO ESTABLISH ADDITIONAL CAP-
23 ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR
24 PURPOSES.—The Director may, at any time by order or
25 regulation, establish such capital or reserve requirements

1 with respect to any product or activity of a regulated enti-
2 ty, as the Director considers appropriate to ensure that
3 the regulated entity operates in a safe and sound manner,
4 with sufficient capital and reserves to support the risks
5 that arise in the operations and management of the regu-
6 lated entity.

7 “(f) PERIODIC REVIEW.—The Director shall periodi-
8 cally review the amount of core capital maintained by the
9 enterprises, the amount of capital retained by the Federal
10 Home Loan Banks, and the minimum capital levels estab-
11 lished for such regulated entities pursuant to this sec-
12 tion.”.

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

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

16 **“SEC. 38. FEDERAL NATIONAL MORTGAGE ASSOCIATION,**
17 **FEDERAL HOME LOAN MORTGAGE CORPORA-**
18 **TION, FEDERAL HOME LOAN BANKS.**

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

25 “(b) FEDERAL HOME LOAN BANKS.—

1 “(1) REGISTRATION.—Each Federal Home
2 Loan Bank shall register a class of its common
3 stock under section 12(g), not later than 120 days
4 after the date of enactment of the Federal Housing
5 Finance Regulatory Reform Act of 2008, and shall
6 thereafter maintain such registration and be treated
7 for purposes of this title as an ‘issuer’, the securities
8 of which are required to be registered under section
9 12, regardless of the number of members holding
10 such stock at any given time.

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

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

24 “(1) FEDERAL HOME LOAN BANK; MEMBER.—
25 The terms ‘Federal Home Loan Bank’ and ‘mem-

1 ber’, have the same meanings as in section 2 of the
2 Federal Home Loan Bank Act.

3 “(2) FEDERAL NATIONAL MORTGAGE ASSOCIA-
4 TION.—The term ‘Federal National Mortgage Asso-
5 ciation’ means the corporation created by the Fed-
6 eral National Mortgage Association Charter Act.

7 “(3) FEDERAL HOME LOAN MORTGAGE COR-
8 PORATION.—The term ‘Federal Home Loan Mort-
9 gage Corporation’ means the corporation created by
10 the Federal Home Loan Mortgage Corporation
11 Act.”.

12 **SEC. 113. PROHIBITION AND WITHHOLDING OF EXECUTIVE**
13 **COMPENSATION.**

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

17 (1) in the section heading, by striking “**OF EX-**
18 **CESSIVE**” and inserting “**AND WITHHOLDING OF**
19 **EXECUTIVE**”;

20 (2) by redesignating subsection (b) as sub-
21 section (d); and

22 (3) by inserting after subsection (a) the fol-
23 lowing:

24 “(b) FACTORS.—In making any determination under
25 subsection (a), the Director may take into consideration

1 any factors the Director considers relevant, including any
2 wrongdoing on the part of the executive officer, and such
3 wrongdoing shall include any fraudulent act or omission,
4 breach of trust or fiduciary duty, violation of law, rule,
5 regulation, order, or written agreement, and insider abuse
6 with respect to the regulated entity. The approval of an
7 agreement or contract pursuant to section 309(d)(3)(B)
8 of the Federal National Mortgage Association Charter Act
9 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the
10 Federal Home Loan Mortgage Corporation Act (12 U.S.C.
11 1452(h)(2)) shall not preclude the Director from making
12 any subsequent determination under subsection (a).

13 “(c) WITHHOLDING OF COMPENSATION.—In car-
14 rying out subsection (a), the Director may require a regu-
15 lated entity to withhold any payment, transfer, or dis-
16 bursement of compensation to an executive officer, or to
17 place such compensation in an escrow account, during the
18 review of the reasonableness and comparability of com-
19 pensation.”.

20 (b) CONFORMING AMENDMENTS.—

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

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

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

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

21 (3) FEDERAL HOME LOAN BANKS.—Section 7
22 of the Federal Home Loan Bank Act (12 U.S.C.
23 1427) is amended by adding at the end the following
24 new subsection:

1 “(1) WITHHOLDING OF COMPENSATION.—Notwith-
2 standing any other provision of this section, a Federal
3 Home Loan Bank shall not transfer, disburse, or pay com-
4 pensation to any executive officer, or enter into an agree-
5 ment with such executive officer, without the approval of
6 the Director, for matters being reviewed under section
7 1318 of the Federal Housing Enterprises Financial Safety
8 and Soundness Act of 1992 (12 U.S.C. 4518).”.

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

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

13 “(e) AUTHORITY TO REGULATE OR PROHIBIT CER-
14 TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

15 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-
16 TION PAYMENTS.—The Director may prohibit or
17 limit, by regulation or order, any golden parachute
18 payment or indemnification payment.

19 “(2) FACTORS TO BE TAKEN INTO ACCOUNT.—
20 The Director shall prescribe, by regulation, the fac-
21 tors to be considered by the Director in taking any
22 action pursuant to paragraph (1), which may include
23 such factors as—

24 “(A) whether there is a reasonable basis to
25 believe that the affiliated party has committed

1 any fraudulent act or omission, breach of trust
2 or fiduciary duty, or insider abuse with regard
3 to the regulated entity that has had a material
4 effect on the financial condition of the regulated
5 entity;

6 “(B) whether there is a reasonable basis to
7 believe that the affiliated party is substantially
8 responsible for the insolvency of the regulated
9 entity, the appointment of a conservator or re-
10 ceiver for the regulated entity, or the troubled
11 condition of the regulated entity (as defined in
12 regulations prescribed by the Director);

13 “(C) whether there is a reasonable basis to
14 believe that the affiliated party has materially
15 violated any applicable provision of Federal or
16 State law or regulation that has had a material
17 effect on the financial condition of the regulated
18 entity;

19 “(D) whether the affiliated party was in a
20 position of managerial or fiduciary responsi-
21 bility; and

22 “(E) the length of time that the party was
23 affiliated with the regulated entity, and the de-
24 gree to which—

1 “(i) the payment reasonably reflects
2 compensation earned over the period of
3 employment; and

4 “(ii) the compensation involved rep-
5 resents a reasonable payment for services
6 rendered.

7 “(3) CERTAIN PAYMENTS PROHIBITED.—No
8 regulated entity may prepay the salary or any liabil-
9 ity or legal expense of any affiliated party if such
10 payment is made—

11 “(A) in contemplation of the insolvency of
12 such regulated entity, or after the commission
13 of an act of insolvency; and

14 “(B) with a view to, or having the result
15 of—

16 “(i) preventing the proper application
17 of the assets of the regulated entity to
18 creditors; or

19 “(ii) preferring one creditor over an-
20 other.

21 “(4) GOLDEN PARACHUTE PAYMENT DE-
22 FINED.—

23 “(A) IN GENERAL.—For purposes of this
24 subsection, the term ‘golden parachute pay-
25 ment’ means any payment (or any agreement to

1 make any payment) in the nature of compensa-
2 tion by any regulated entity for the benefit of
3 any affiliated party pursuant to an obligation of
4 such regulated entity that—

5 “(i) is contingent on the termination
6 of such party’s affiliation with the regu-
7 lated entity; and

8 “(ii) is received on or after the date
9 on which—

10 “(I) the regulated entity became
11 insolvent;

12 “(II) any conservator or receiver
13 is appointed for such regulated entity;
14 or

15 “(III) the Director determines
16 that the regulated entity is in a trou-
17 bled condition (as defined in the regu-
18 lations of the Director).

19 “(B) CERTAIN PAYMENTS IN CONTEMPLA-
20 TION OF AN EVENT.—Any payment which
21 would be a golden parachute payment but for
22 the fact that such payment was made before the
23 date referred to in subparagraph (A)(ii) shall be
24 treated as a golden parachute payment if the
25 payment was made in contemplation of the oc-

1 currence of an event described in any subclause
2 of such subparagraph.

3 “(C) CERTAIN PAYMENTS NOT IN-
4 CLUDED.—For purposes of this subsection, the
5 term ‘golden parachute payment’ shall not in-
6 clude—

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

12 “(ii) any payment made pursuant to a
13 bona fide deferred compensation plan or
14 arrangement which the Director deter-
15 mines, by regulation or order, to be per-
16 missible; or

17 “(iii) any payment made by reason of
18 the death or disability of an affiliated
19 party.

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

22 “(A) INDEMNIFICATION PAYMENT.—Sub-
23 ject to paragraph (6), the term ‘indemnification
24 payment’ means any payment (or any agree-
25 ment to make any payment) by any regulated

1 entity for the benefit of any person who is or
2 was an affiliated party, to pay or reimburse
3 such person for any liability or legal expense
4 with regard to any administrative proceeding or
5 civil action instituted by the Agency which re-
6 sults in a final order under which such per-
7 son—

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

9 “(ii) is removed or prohibited from
10 participating in conduct of the affairs of
11 the regulated entity; or

12 “(iii) is required to take any affirma-
13 tive action to correct certain conditions re-
14 sulting from violations or practices, by
15 order of the Director.

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

18 “(i) any legal or other professional ex-
19 pense incurred in connection with any
20 claim, proceeding, or action;

21 “(ii) the amount of, and any cost in-
22 curred in connection with, any settlement
23 of any claim, proceeding, or action; and

24 “(iii) the amount of, and any cost in-
25 curred in connection with, any judgment or

1 penalty imposed with respect to any claim,
2 proceeding, or action.

3 “(C) PAYMENT.—The term ‘payment’ in-
4 cludes—

5 “(i) any direct or indirect transfer of
6 any funds or any asset; and

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

14 “(I) the determination, after such
15 date, of the liability for the payment
16 of such amount; or

17 “(II) the liquidation, after such
18 date, of the amount of such payment.

19 “(6) CERTAIN COMMERCIAL INSURANCE COV-
20 ERAGE NOT TREATED AS COVERED BENEFIT PAY-
21 MENT.—No provision of this subsection shall be con-
22 strued as prohibiting any regulated entity from pur-
23 chasing any commercial insurance policy or fidelity
24 bond, except that, subject to any requirement de-
25 scribed in paragraph (5)(A)(iii), such insurance pol-

1 icy or bond shall not cover any legal or liability ex-
2 pense of the regulated entity which is described in
3 paragraph (5)(A).”.

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

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

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

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

19 “(b) **PROTECTION FROM LIABILITY FOR REPORTS.**—
20 Any regulated entity that makes a report pursuant to sub-
21 section (a), and any entity-affiliated party, that makes or
22 requires another to make any such report, shall not be
23 liable to any person under any provision of law or regula-
24 tion, any constitution, law, or regulation of any State or
25 political subdivision of any State, or under any contract

1 or other legally enforceable agreement (including any arbi-
2 tration agreement) for such report or for any failure to
3 provide notice of such report to the person who is the sub-
4 ject of such report or any other persons identified in the
5 report.”.

6 **Subtitle B—Improvement of**
7 **Mission Supervision**

8 **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**
9 **ING GOAL OVERSIGHT.**

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

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

15 **“PART 2—ADDITIONAL AUTHORITIES OF THE**
16 **DIRECTOR”;**

17 and

18 (2) by striking sections 1321 and 1322.

19 **SEC. 122. ASSUMPTION BY THE DIRECTOR OF CERTAIN**
20 **OTHER HUD RESPONSIBILITIES.**

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

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

4 (2) by striking sections 1338 and 1349 (12
5 U.S.C. 4568 and 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. 123. REVIEW OF ENTERPRISE PRODUCTS.**

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

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

18 “(a) **IN GENERAL.**—The Director shall require each
19 enterprise to obtain the approval of the Director for any
20 product of the enterprise before initially offering the prod-
21 uct.

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

1 “(1) in the case of a product of the Federal Na-
2 tional Mortgage Association, the product is author-
3 ized under paragraph (2), (3), (4), or (5) of section
4 302(b) or section 304 of the Federal National Mort-
5 gage Association Charter Act (12 U.S.C. 1717(b),
6 1719);

7 “(2) in the case of a product of the Federal
8 Home Loan Mortgage Corporation, the product is
9 authorized under paragraph (1), (4), or (5) of sec-
10 tion 305(a) of the Federal Home Loan Mortgage
11 Corporation Act (12 U.S.C. 1454(a));

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

13 “(4) the product is consistent with the safety
14 and soundness of the enterprise or the mortgage fi-
15 nance system.

16 “(c) PROCEDURE FOR APPROVAL.—

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

22 “(2) REQUEST FOR PUBLIC COMMENT.—Imme-
23 diately upon receipt of a request for approval of a
24 product, as required under paragraph (1), the Direc-
25 tor shall publish notice of such request and of the

1 period for public comment pursuant to paragraph
2 (3) regarding the product, and a description of the
3 product proposed by the request. The Director shall
4 give interested parties the opportunity to respond in
5 writing to the proposed product.

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

11 “(4) OFFERING OF PRODUCT.—

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

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

21 “(C) TEMPORARY APPROVAL.—The Direc-
22 tor may, subject to the rules of the Director,
23 provide for temporary approval of the offering
24 of a product without a public comment period,
25 if the Director finds that the existence of exi-

1 gent circumstances makes such delay contrary
2 to the public interest.

3 “(d) **CONDITIONAL APPROVAL.**—If the Director ap-
4 proves the offering of any product by an enterprise, the
5 Director may establish terms, conditions, or limitations
6 with respect to such product with which the enterprise
7 must comply in order to offer such product.

8 “(e) **EXCLUSIONS.**—

9 “(1) **IN GENERAL.**—The requirements of sub-
10 sections (a) through (d) do not apply with respect
11 to—

12 “(A) the automated loan underwriting sys-
13 tem of an enterprise in existence as of the date
14 of enactment of the Federal Housing Finance
15 Regulatory Reform Act of 2008, including any
16 upgrade to the technology, operating system, or
17 software to operate the underwriting system;

18 “(B) any modification to the mortgage
19 terms and conditions or mortgage underwriting
20 criteria relating to the mortgages that are pur-
21 chased or guaranteed by an enterprise, provided
22 that such modifications do not alter the under-
23 lying transaction so as to include services or fi-
24 nancing, other than residential mortgage fi-
25 nancing; or

1 “(C) any other activity that is substantially
2 similar, as determined by rule of the Director
3 to—

4 “(i) the activities described in sub-
5 paragraphs (A) and (B); and

6 “(ii) other activities that have been
7 approved by the Director in accordance
8 with this section.

9 “(2) EXPEDITED REVIEW.—

10 “(A) ENTERPRISE NOTICE.—For any new
11 activity that an enterprise considers not to be
12 a product, the enterprise shall provide written
13 notice to the Director of such activity, and may
14 not commence such activity until the date of re-
15 ceipt of a notice under subparagraph (B) or the
16 expiration of the period described in subpara-
17 graph (C). The Director shall establish, by reg-
18 ulation, the form and content of such written
19 notice.

20 “(B) DIRECTOR DETERMINATION.—Not
21 later than 15 days after the date of receipt of
22 a notice under subparagraph (A), the Director
23 shall determine whether such activity is a prod-
24 uct subject to approval under this section. The

1 Director shall, immediately upon so deter-
2 mining, notify the enterprise.

3 “(C) FAILURE TO ACT.—If the Director
4 fails to determine whether such activity is a
5 product within the 15-day period described in
6 subparagraph (B), the enterprise may com-
7 mence the new activity in accordance with sub-
8 paragraph (A).

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

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

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

18 **SEC. 124. CONFORMING LOAN LIMITS.**

19 (a) FANNIE MAE.—

20 (1) GENERAL LIMIT.—Section 302(b)(2) of the
21 Federal National Mortgage Association Charter Act
22 (12 U.S.C. 1717(b)(2)) is amended by striking the
23 7th and 8th sentences and inserting the following
24 new sentences: “Such limitations shall not exceed
25 \$417,000 for a mortgage secured by a single-family

1 residence, \$533,850 for a mortgage secured by a 2-
2 family residence, \$645,300 for a mortgage secured
3 by a 3-family residence, and \$801,950 for a mort-
4 gage secured by a 4-family residence, except that
5 such maximum limitations shall be adjusted effective
6 January 1 of each year beginning after the effective
7 date of Federal Housing Finance Regulatory Reform
8 Act of 2008, subject to the limitations in this para-
9 graph. Each adjustment shall be made by adding to
10 each such amount (as it may have been previously
11 adjusted) a percentage thereof equal to the percent-
12 age increase, during the most recent 12-month or
13 4th-quarter period ending before the time of deter-
14 mining such annual adjustment, in the housing price
15 index maintained by the Director of the Federal
16 Housing Finance Agency (pursuant to section 1322
17 of the Federal Housing Enterprises Financial Safety
18 and Soundness Act of 1992 (12 U.S.C. 4541)). If
19 the change in such house price index during the
20 most recent 12-month or 4th-quarter period ending
21 before the time of determining such annual adjust-
22 ment is a decrease, then no adjustment shall be
23 made for the next year, and the next adjustment
24 shall take into account prior declines in the house
25 price index, so that any adjustment shall reflect the

1 net change in the house price index since the last
2 adjustment. Declines in the house price index shall
3 be accumulated and then reduce increases until sub-
4 sequent increases exceed prior declines.”.

5 (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)
6 of the Federal National Mortgage Association Char-
7 ter Act (12 U.S.C. 1717(b)(2)) is amended by add-
8 ing after the period at the end the following: “Such
9 foregoing limitations shall also be increased with re-
10 spect to properties of a particular size located in any
11 area for which the median price for such size resi-
12 dence exceeds the foregoing limitation for such size
13 residence, to the lesser of 132 percent of such fore-
14 going limitation for such size residence or the
15 amount that is equal to the median price in such
16 area for such size residence. Any mortgages pur-
17 chased with original principal obligations exceeding
18 the general limits established in this section shall
19 not be retained on the portfolio of the Association,
20 either in the form of whole mortgages or mortgage-
21 backed securities, except to the extent that such
22 mortgages are held for the purpose of
23 securitization.”.

24 (b) FREDDIE MAC.—

1 (1) GENERAL LIMIT.—Section 305(a)(2) of the
2 Federal Home Loan Mortgage Corporation Act (12
3 U.S.C. 1454(a)(2)) is amended by striking the 6th
4 and 7th sentences and inserting the following new
5 sentences: “Such limitations shall not exceed
6 \$417,000 for a mortgage secured by a single-family
7 residence, \$533,850 for a mortgage secured by a 2-
8 family residence, \$645,300 for a mortgage secured
9 by a 3-family residence, and \$801,950 for a mort-
10 gage secured by a 4-family residence, except that
11 such maximum limitations shall be adjusted effective
12 January 1 of each year beginning after the effective
13 date of the Federal Housing Finance Regulatory Re-
14 form Act of 2008, subject to the limitations in this
15 paragraph. Each adjustment shall be made by add-
16 ing to each such amount (as it may have been pre-
17 viously adjusted) a percentage thereof equal to the
18 percentage increase, during the most recent 12-
19 month or fourth-quarter period ending before the
20 time of determining such annual adjustment, in the
21 housing price index maintained by the Director of
22 the Federal Housing Finance Agency (pursuant to
23 section 1322 of the Federal Housing Enterprises Fi-
24 nancial Safety and Soundness Act of 1992 (12
25 U.S.C. 4541)). If the change in such house price

1 index during the most recent 12-month or 4th-quarter
2 ter period ending before the time of determining
3 such annual adjustment is a decrease, then no ad-
4 justment shall be made for the next year, and the
5 next adjustment shall take into account prior de-
6 clines in the house price index, so that any adjust-
7 ment shall reflect the net change in the house price
8 index since the last adjustment. Declines in the
9 house price index shall be accumulated and then re-
10 duce increases until subsequent increases exceed
11 prior declines.”.

12 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)
13 of the Federal Home Loan Mortgage Corporation
14 Act is amended by adding after the period at the
15 end the following: “Such foregoing limitations shall
16 also be increased with respect to properties of a par-
17 ticular size located in any area for which the median
18 price for such size residence exceeds the foregoing
19 limitation for such size residence, to the lesser of
20 132 percent of such foregoing limitation for such
21 size residence or the amount that is equal to the me-
22 dian price in such area for such size residence. Any
23 mortgages purchased with original principal obliga-
24 tions exceeding the general limits established in this
25 section shall not be retained on the portfolio of the

1 corporation, either in the form of whole mortgages
2 or mortgage-backed securities, except to the extent
3 that such mortgages are held for the purpose of
4 securitization.”.

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

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

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

1 **SEC. 125. ANNUAL HOUSING REPORT.**

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

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

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

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

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

21 “(1) discuss—

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

23 “(i) each enterprise is achieving the
24 annual housing goals established under
25 subpart B;

1 “(ii) each enterprise is complying with
2 its duty to serve underserved markets, as
3 established under section 1335;

4 “(iii) each enterprise is complying
5 with section 1337;

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

10 “(v) each enterprise is achieving the
11 purposes of the enterprise established by
12 law; and

13 “(B) the actions that each enterprise could
14 undertake to promote and expand the purposes
15 of the enterprise;

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

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

23 “(4) identify the extent to which each enter-
24 prise is involved in mortgage purchases and sec-

1 ondary market activities involving subprime and
2 nontraditional loans; and

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

7 “(c) DATA COLLECTION AND REPORTING.—

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

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

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

22 “(i) the price of the house that se-
23 cures the mortgage;

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

4 “(iii) the terms of the mortgage;

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

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

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

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

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

1 “(A) is not released in an identifiable
2 form; and

3 “(B) is not otherwise obtainable from
4 other publicly available data sets.

5 “(4) DEFINITION.—For purposes of this sub-
6 section, the term ‘identifiable form’ means any rep-
7 resentation of information that permits the identity
8 of a borrower to which the information relates to be
9 reasonably inferred by either direct or indirect
10 means.”.

11 **SEC. 126. PUBLIC USE DATABASE.**

12 Section 1323 of the Federal Housing Enterprises Fi-
13 nancial Safety and Soundness Act of 1992 (42 U.S.C.
14 4543) is amended—

15 (1) in subsection (a)—

16 (A) by striking “(a) IN GENERAL.—The
17 Secretary” and inserting the following:

18 “(a) AVAILABILITY.—

19 “(1) IN GENERAL.—The Director”; and

20 (B) by adding at the end the following new
21 paragraph:

22 “(2) CENSUS TRACT LEVEL REPORTING.—Such
23 data shall include the data elements required to be
24 reported under the Home Mortgage Disclosure Act
25 of 1975, at the census tract level.”;

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

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

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

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

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

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

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

19 “(d) **MORTGAGE DATA.**—The Director shall, by regu-
20 lation or order, provide that certain information relating
21 to single family mortgage data of the enterprises shall be
22 disclosed to the public in order to make available to the
23 public the same data from the enterprises that is required
24 of insured depository institutions under the Home Mort-
25 gage Disclosure Act of 1975.”.

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

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

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

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

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

17 “(b) SPECIAL COUNTING REQUIREMENTS.—

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

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

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

10 “(c) ELIMINATING INTEREST RATE DISPARITIES.—

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

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

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

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

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

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

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

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

22 “(c) DETERMINATION.—

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

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

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

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

8 “(a) ESTABLISHMENT OF GOALS.—

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

14 “(A) Low-income families.

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

17 “(C) Very low-income families.

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

24 “(b) DETERMINATION OF COMPLIANCE.—

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

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

17 “(c) ANNUAL TARGETS.—

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

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

24 “(A) national housing needs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(a) PREPAYMENT OF EXISTING LOANS.—

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

14 “(A) Low-income families.

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

17 “(C) Very low-income families.

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

24 “(b) DETERMINATION OF COMPLIANCE.—

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

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

17 “(c) ANNUAL TARGETS.—

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

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

24 “(A) national housing needs;

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

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

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

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

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

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

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

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

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

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

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

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

19 “(a) ESTABLISHMENT.—

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

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

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

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

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

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

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

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

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

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

13 “(i) small multifamily projects;

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

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

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

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

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

3 “(1) are secured by a guarantee of the enter-
4 prise; or

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

7 “(c) USE OF TENANT RENT LEVEL.—

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

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

21 “(d) DETERMINATION OF COMPLIANCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(19) VERY LOW-INCOME.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) by striking subsection (b);

19 (3) in subsection (a)—

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

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

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

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

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

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

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

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

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

5 “(A) MANUFACTURED HOUSING.—The en-
6 terprise shall develop loan products and flexible
7 underwriting guidelines to facilitate a secondary
8 market for mortgages on manufactured homes
9 for very low-, low-, and moderate-income fami-
10 lies. In determining whether an enterprise has
11 complied with such duty, the Director may con-
12 sider loans secured by both real and personal
13 property.

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

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

1 “(ii) the program under section 236
2 of the National Housing Act;

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

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

9 “(v) the supportive housing program
10 for persons with disabilities under section
11 811 of the Cranston-Gonzalez National Af-
12 fordable Housing Act;

13 “(vi) the rural rental housing program
14 under section 515 of the Housing Act of
15 1949; and

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

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

1 “(D) COMMUNITY DEVELOPMENT FINAN-
2 CIAL INSTITUTIONS.—The enterprises shall—

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

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

1 cial institutions certified by the Secretary
2 of the Treasury, as determined by the Di-
3 rector and consistent with the Federal Na-
4 tional Mortgage Association Charter Act,
5 the Federal Home Loan Mortgage Cor-
6 poration Act, and the provisions of this
7 Act.

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

13 “(F) RURAL MARKETS.—

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

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

1 “(G) OTHER UNDERSERVED MARKETS.—

2 The Director may, by rule, determine other un-
3 derserved markets that the enterprises shall be
4 required to facilitate the availability of invest-
5 ment capital for mortgage financing for such
6 markets.”; and

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

9 “(c) EVALUATION AND REPORTING OF COMPLI-
10 ANCE.—

11 “(1) EVALUATING COMPLIANCE.—

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

1 of the National Housing Act (12 U.S.C. 1707
2 et seq.) and any other activities, services, and
3 products offered by any other Federal Govern-
4 ment agency as the Director may determine.

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

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

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

24 “(A) The development of loan products,
25 more flexible underwriting guidelines, and other

1 innovative approaches to providing financing to
2 each of such underserved markets.

3 “(B) The volume of loans purchased in
4 each of such underserved markets.

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

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

11 “(E) Such other factors as the Director
12 may determine.

13 “(d) NOTICE OF DETERMINATION AND ENTERPRISE
14 COMMENT.—

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

24 “(2) COMMENT PERIOD.—The Director shall
25 provide each enterprise and the public an oppor-

1 tunity to comment on the evaluation during the 30-
2 day period beginning upon receipt by the enterprise
3 of the notice.”.

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

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

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

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

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

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

1 any provision of the Federal National Mortgage
2 Association Charter Act or the Federal Home
3 Loan Mortgage Corporation Act.”.

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

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

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

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

20 “(2) RESPONSE PERIOD.—

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

1 siders appropriate for consideration by the Di-
2 rector in finally determining whether such fail-
3 ure has occurred or whether the achievement of
4 such goal was or is feasible.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **“Subpart C—Enforcement”.**

20 (c) CEASE AND DESIST PROCEEDINGS .—

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (d) CIVIL MONEY PENALTIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(c) PROCEDURES.—

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

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

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

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

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

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

10 “(A) the gravity of the offense;

11 “(B) any history of prior offenses;

12 “(C) ability to pay the penalty;

13 “(D) injury to the public;

14 “(E) benefits received;

15 “(F) deterrence of future violations;

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

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

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

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

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

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

16 (e) DIRECTOR AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(A) set aside an amount equal to 4.2
8 basis points for each dollar of the unpaid prin-
9 cipal balance of its total new business pur-
10 chases; and

11 “(B) allocate or otherwise transfer—

12 “(i) 65 percent of such amounts to
13 the Secretary of Housing and Urban De-
14 velopment to fund the Housing Trust
15 Fund established under section 1338; and

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

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

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

24 “(B) allocate or otherwise transfer—

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

1 velopment to fund the Housing Trust
2 Fund established under section 1338; and
3 “(ii) 35 percent of such amounts to
4 fund the Capital Magnet Fund established
5 pursuant to section 1339.

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

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

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

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

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

24 “(d) ENFORCEMENT OF REQUIREMENTS ON ENTER-
25 PRISE.—Compliance by the enterprises with the require-

1 ments under this section shall be enforceable under sub-
2 part C. Any reference in such subpart to this part or to
3 an order, rule, or regulation under this part specifically
4 includes this section and any order, rule, or regulation
5 under this section.

6 “(e) **REQUIRED AMOUNT FOR HOPE RESERVE**
7 **FUND.**—Of the aggregate amount allocated under sub-
8 section (a), 25 percent shall be deposited into a fund es-
9 tablished in the Treasury of the United States by the Sec-
10 retary of the Treasury for such purpose.

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

17 **“SEC. 1338. HOUSING TRUST FUND.**

18 “(a) **ESTABLISHMENT AND PURPOSE.**—The Sec-
19 retary of Housing and Urban Development (in this section
20 referred to as the ‘Secretary’) shall establish and manage
21 a Housing Trust Fund, which shall be funded with
22 amounts allocated by the enterprises under section 1337
23 and any amounts as are or may be appropriated, trans-
24 ferred, or credited to such Housing Trust Fund under any
25 other provisions of law. The purpose of the Housing Trust

1 Fund under this section is to provide grants to States for
2 use—

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

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

8 “(b) ALLOCATIONS FOR HOPE BOND PAYMENTS.—

9 “(1) IN GENERAL.—Notwithstanding subsection
10 (c), to help address the mortgage crisis, of the
11 amounts allocated pursuant to clauses (i) and (ii) of
12 section 1337(a)(1)(B) and clauses (i) and (ii) of sec-
13 tion 1337(a)(2)(B) in excess of amounts described in
14 section 1337(e)—

15 “(A) 100 percent of such excess shall be
16 used to reimburse the Treasury for payments
17 made pursuant to section 257(v)(1)(C) of the
18 National Housing Act in calendar year 2009;

19 “(B) 50 percent of such excess shall be
20 used to reimburse the Treasury for such pay-
21 ments in calendar year 2010; and

22 “(C) 25 percent of such excess shall be
23 used to reimburse the Treasury for such pay-
24 ments in calendar year 2011.

1 “(2) EXCESS FUNDS.—At the termination of
2 the HOPE for Homeowners Program established
3 under section 257 of the National Housing Act, if
4 amounts used to reimburse the Treasury under
5 paragraph (1) exceed the total net cost to the Gov-
6 ernment of the HOPE for Homeowners Program,
7 such amounts shall be used for their original pur-
8 pose, as described in paragraphs (1)(B) and (2)(B)
9 of section 1337(a).

10 “(3) TREASURY FUND.—The amounts referred
11 to in subparagraphs (A) through (C) of paragraph
12 (1) shall be deposited into a fund established in the
13 Treasury of the United States by the Secretary of
14 the Treasury for such purpose.

15 “(c) ALLOCATION FOR HOUSING TRUST FUND IN
16 2010 AND SUBSEQUENT YEARS.—

17 “(1) IN GENERAL.—Except as provided in sub-
18 section (b), the Secretary shall distribute the
19 amounts allocated for the Housing Trust Fund
20 under this section to provide affordable housing as
21 described in this subsection.

22 “(2) PERMISSIBLE DESIGNEES.—A State re-
23 ceiving grant amounts under this subsection may
24 designate a State housing finance agency, housing
25 and community development entity, tribally des-

1 ignated housing entity (as such term is defined in
2 section 4 of the Native American Housing Assist-
3 ance and Self-Determination Act of 1997 (25 U.S.C.
4 4103)), or any other qualified instrumentality of the
5 State to receive such grant amounts.

6 “(3) DISTRIBUTION TO STATES BY NEEDS-
7 BASED FORMULA.—

8 “(A) IN GENERAL.—The Secretary shall,
9 by regulation, establish a formula within 12
10 months of the date of enactment of the Federal
11 Housing Finance Regulatory Reform Act of
12 2008, to distribute amounts made available
13 under this subsection to each State to provide
14 affordable housing to extremely low- and very
15 low-income households.

16 “(B) BASIS FOR FORMULA.—The formula
17 required under subparagraph (A) shall include
18 the following:

19 “(i) The ratio of the shortage of
20 standard rental units both affordable and
21 available to extremely low-income renter
22 households in the State to the aggregate
23 shortage of standard rental units both af-
24 fordable and available to extremely low-in-
25 come renter households in all the States.

1 “(ii) The ratio of the shortage of
2 standard rental units both affordable and
3 available to very low-income renter house-
4 holds in the State to the aggregate short-
5 age of standard rental units both afford-
6 able and available to very low-income
7 renter households in all the States.

8 “(iii) The ratio of extremely low-in-
9 come renter households in the State living
10 with either (I) incomplete kitchen or
11 plumbing facilities, (II) more than 1 per-
12 son per room, or (III) paying more than
13 50 percent of income for housing costs, to
14 the aggregate number of extremely low-in-
15 come renter households living with either
16 (IV) incomplete kitchen or plumbing facili-
17 ties, (V) more than 1 person per room, or
18 (VI) paying more than 50 percent of in-
19 come for housing costs in all the States.

20 “(iv) The ratio of very low-income
21 renter households in the State paying more
22 than 50 percent of income on rent relative
23 to the aggregate number of very low-in-
24 come renter households paying more than

1 50 percent of income on rent in all the
2 States.

3 “(v) The resulting sum calculated
4 from the factors described in clauses (i)
5 through (iv) shall be multiplied by the rel-
6 ative cost of construction in the State. For
7 purposes of this subclause, the term ‘cost
8 of construction’—

9 “(I) means the cost of construc-
10 tion or building rehabilitation in the
11 State relative to the national cost of
12 construction or building rehabilitation;
13 and

14 “(II) shall be calculated such
15 that values higher than 1.0 indicate
16 that the State’s construction costs are
17 higher than the national average, a
18 value of 1.0 indicates that the State’s
19 construction costs are exactly the
20 same as the national average, and val-
21 ues lower than 1.0 indicate that the
22 State’s cost of construction are lower
23 than the national average.

24 “(C) PRIORITY.—The formula required
25 under subparagraph (A) shall give priority em-

1 phasis and consideration to the factor described
2 in subparagraph (B)(i).

3 “(4) ALLOCATION OF GRANT AMOUNTS.—

4 “(A) NOTICE.—Not later than 60 days
5 after the date that the Secretary determines the
6 formula amounts described in paragraph (3),
7 the Secretary shall caused to be published in
8 the Federal Register a notice that such
9 amounts shall be so available.

10 “(B) GRANT AMOUNT.—In each calendar
11 year other than calendar year 2009, the Sec-
12 retary shall make a grant to each State in an
13 amount that is equal to the formula amount de-
14 termined under paragraph (3) for that State.

15 “(C) MINIMUM STATE ALLOCATIONS.—If
16 the formula amount determined under para-
17 graph (3) for a calendar year would allocate
18 less than \$3,000,000 to any State, the alloca-
19 tion for such State shall be \$3,000,000, and the
20 increase shall be deducted pro rata from the al-
21 locations made to all other States.

22 “(5) ALLOCATION PLANS REQUIRED.—

23 “(A) IN GENERAL.—For each year that a
24 State or State designated entity receives a
25 grant under this subsection, the State or State

1 designated entity shall establish an allocation
2 plan. Such plan shall—

3 “(i) set forth a plan for the distribu-
4 tion of grant amounts received by the
5 State or State designated entity for such
6 year;

7 “(ii) be based on priority housing
8 needs, as determined by the State or State
9 designated entity in accordance with the
10 regulations established under subsection
11 (g)(2)(C);

12 “(iii) comply with paragraph (6); and

13 “(iv) include performance goals that
14 comply with the requirements established
15 by the Secretary pursuant to subsection
16 (g)(2).

17 “(B) ESTABLISHMENT.—In establishing
18 an allocation plan under this paragraph, a
19 State or State designated entity shall—

20 “(i) notify the public of the establish-
21 ment of the plan;

22 “(ii) provide an opportunity for public
23 comments regarding the plan;

24 “(iii) consider any public comments
25 received regarding the plan; and

1 “(iv) make the completed plan avail-
2 able to the public.

3 “(C) CONTENTS.—An allocation plan of a
4 State or State designated entity under this
5 paragraph shall set forth the requirements for
6 eligible recipients under paragraph (8) to apply
7 for such grant amounts, including a require-
8 ment that each such application include—

9 “(i) a description of the eligible activi-
10 ties to be conducted using such assistance;
11 and

12 “(ii) a certification by the eligible re-
13 cipient applying for such assistance that
14 any housing units assisted with such as-
15 sistance will comply with the requirements
16 under this section.

17 “(6) SELECTION OF ACTIVITIES FUNDED USING
18 HOUSING TRUST FUND GRANT AMOUNTS.—Grant
19 amounts received by a State or State designated en-
20 tity under this subsection may be used, or com-
21 mitted for use, only for activities that—

22 “(A) are eligible under paragraph (7) for
23 such use;

1 “(B) comply with the applicable allocation
2 plan of the State or State designated entity
3 under paragraph (5); and

4 “(C) are selected for funding by the State
5 or State designated entity in accordance with
6 the process and criteria for such selection estab-
7 lished pursuant to subsection (g)(2)(C).

8 “(7) ELIGIBLE ACTIVITIES.—Grant amounts al-
9 located to a State or State designated entity under
10 this subsection shall be eligible for use, or for com-
11 mitment for use, only for assistance for—

12 “(A) the production, preservation, and re-
13 habilitation of rental housing, including housing
14 under the programs identified in section
15 1335(a)(2)(B) and for operating costs, except
16 that 75 percent of such grant amounts may be
17 used for the benefit only of extremely low-in-
18 come families and 25 percent for the benefit
19 only of very low-income families; and

20 “(B) the production, preservation, and re-
21 habilitation of housing for homeownership, in-
22 cluding such forms as down payment assist-
23 ance, closing cost assistance, and assistance for
24 interest rate buy-downs, that—

1 “(i) is available for purchase only for
2 use as a principal residence by families
3 that qualify both as—

4 “(I) extremely low- and very low-
5 income families at the times described
6 in subparagraphs (A) through (C) of
7 section 215(b)(2) of the Cranston-
8 Gonzalez National Affordable Housing
9 Act (42 U.S.C. 12745(b)(2)); and

10 “(II) first-time homebuyers, as
11 such term is defined in section 104 of
12 the Cranston-Gonzalez National Af-
13 fordable Housing Act (42 U.S.C.
14 12704), except that any reference in
15 such section to assistance under title
16 II of such Act shall for purposes of
17 this subsection be considered to refer
18 to assistance from affordable housing
19 fund grant amounts;

20 “(ii) has an initial purchase price that
21 meets the requirements of section
22 215(b)(1) of the Cranston-Gonzalez Na-
23 tional Affordable Housing Act;

24 “(iii) is subject to the same resale re-
25 strictions established under section

1 215(b)(3) of the Cranston-Gonzalez Na-
2 tional Affordable Housing Act and applica-
3 ble to the participating jurisdiction that is
4 the State in which such housing is located;
5 and

6 “(iv) is made available for purchase
7 only by, or in the case of assistance under
8 this subsection, is made available only to
9 homebuyers who have, before purchase
10 completed a program of independent finan-
11 cial education and counseling from an eli-
12 gible organization that meets the require-
13 ments of section 132 of the Federal Hous-
14 ing Finance Regulatory Reform Act of
15 2008.

16 “(8) ELIGIBLE RECIPIENTS.—Grant amounts
17 allocated to a State or State designated entity under
18 this subsection may be provided only to a recipient
19 that is an organization, agency, or other entity (in-
20 cluding a for-profit entity or a nonprofit entity)
21 that—

22 “(A) has demonstrated experience and ca-
23 pacity to conduct an eligible activity under
24 paragraph (7), as evidenced by its ability to—

1 “(i) own, construct or rehabilitate,
2 manage, and operate an affordable multi-
3 family rental housing development;

4 “(ii) design, construct or rehabilitate,
5 and market affordable housing for home-
6 ownership; or

7 “(iii) provide forms of assistance, such
8 as down payments, closing costs, or inter-
9 est rate buy-downs for purchasers;

10 “(B) demonstrates the ability and financial
11 capacity to undertake, comply, and manage the
12 eligible activity;

13 “(C) demonstrates its familiarity with the
14 requirements of any other Federal, State, or
15 local housing program that will be used in con-
16 junction with such grant amounts to ensure
17 compliance with all applicable requirements and
18 regulations of such programs; and

19 “(D) makes such assurances to the State
20 or State designated entity as the Secretary
21 shall, by regulation, require to ensure that the
22 recipient will comply with the requirements of
23 this subsection during the entire period that be-
24 gins upon selection of the recipient to receive
25 such grant amounts and ending upon the con-

1 clusion of all activities under paragraph (8)
2 that are engaged in by the recipient and funded
3 with such grant amounts.

4 “(9) LIMITATIONS ON USE.—

5 “(A) REQUIRED AMOUNT FOR HOME-
6 OWNERSHIP ACTIVITIES.—Of the aggregate
7 amount allocated to a State or State designated
8 entity under this subsection not more than 10
9 percent shall be used for activities under sub-
10 paragraph (B) of paragraph (7).

11 “(B) DEADLINE FOR COMMITMENT OR
12 USE.—Grant amounts allocated to a State or
13 State designated entity under this subsection
14 shall be used or committed for use within 2
15 years of the date that such grant amounts are
16 made available to the State or State designated
17 entity. The Secretary shall recapture any such
18 amounts not so used or committed for use and
19 reallocate such amounts under this subsection
20 in the first year after such recapture.

21 “(C) USE OF RETURNS.—The Secretary
22 shall, by regulation, provide that any return on
23 a loan or other investment of any grant amount
24 used by a State or State designated entity to
25 provide a loan under this subsection shall be

1 treated, for purposes of availability to and use
2 by the State or State designated entity, as a
3 grant amount authorized under this subsection.

4 “(D) PROHIBITED USES.—The Secretary
5 shall, by regulation—

6 “(i) set forth prohibited uses of grant
7 amounts allocated under this subsection,
8 which shall include use for—

9 “(I) political activities;

10 “(II) advocacy;

11 “(III) lobbying, whether directly
12 or through other parties;

13 “(IV) counseling services;

14 “(V) travel expenses; and

15 “(VI) preparing or providing ad-
16 vice on tax returns;

17 “(ii) provide that, except as provided
18 in clause (iii), grant amounts of a State or
19 State designated entity may not be used
20 for administrative, outreach, or other costs
21 of—

22 “(I) the State or State des-
23 ignated entity; or

24 “(II) any other recipient of such
25 grant amounts; and

1 “(iii) limit the amount of any grant
2 amounts for a year that may be used by
3 the State or State designated entity for ad-
4 ministrative costs of carrying out the pro-
5 gram required under this subsection, in-
6 cluding home ownership counseling, to a
7 percentage of such grant amounts of the
8 State or State designated entity for such
9 year, which may not exceed 10 percent.

10 “(E) PROHIBITION OF CONSIDERATION OF
11 USE FOR MEETING HOUSING GOALS OR DUTY
12 TO SERVE.—In determining compliance with
13 the housing goals under this subpart and the
14 duty to serve underserved markets under sec-
15 tion 1335, the Director may not consider any
16 grant amounts used under this section for eligi-
17 ble activities under paragraph (7). The Director
18 shall give credit toward the achievement of such
19 housing goals and such duty to serve under-
20 served markets to purchases by the enterprises
21 of mortgages for housing that receives funding
22 from such grant amounts, but only to the ex-
23 tent that such purchases by the enterprises are
24 funded other than with such grant amounts.

1 “(d) REDUCTION FOR FAILURE TO OBTAIN RETURN
2 OF MISUSED FUNDS.—If in any year a State or State des-
3 ignated entity fails to obtain reimbursement or return of
4 the full amount required under subsection (e)(1)(B) to be
5 reimbursed or returned to the State or State designated
6 entity during such year—

7 “(1) except as provided in paragraph (2)—

8 “(A) the amount of the grant for the State
9 or State designated entity for the succeeding
10 year, as determined pursuant to this section,
11 shall be reduced by the amount by which such
12 amounts required to be reimbursed or returned
13 exceed the amount actually reimbursed or re-
14 turned; and

15 “(B) the amount of the grant for the suc-
16 ceeding year for each other State or State des-
17 ignated entity whose grant is not reduced pur-
18 suant to subparagraph (A) shall be increased by
19 the amount determined by applying the formula
20 established pursuant to this section to the total
21 amount of all reductions for all State or State
22 designated entities for such year pursuant to
23 subparagraph (A); or

24 “(2) in any case in which such failure to obtain
25 reimbursement or return occurs during a year imme-

1 diately preceding a year in which grants under this
2 section will not be made, the State or State des-
3 igned entity shall pay to the Secretary for realloca-
4 tion among the other grantees an amount equal to
5 the amount of the reduction for the entity that
6 would otherwise apply under paragraph (1)(A).

7 “(e) ACCOUNTABILITY OF RECIPIENTS AND GRANT-
8 EES.—

9 “(1) RECIPIENTS.—

10 “(A) TRACKING OF FUNDS.—The Sec-
11 retary shall—

12 “(i) require each State or State des-
13 igned entity to develop and maintain a
14 system to ensure that each recipient of as-
15 sistance under this section uses such
16 amounts in accordance with this section,
17 the regulations issued under this section,
18 and any requirements or conditions under
19 which such amounts were provided; and

20 “(ii) establish minimum requirements
21 for agreements, between the State or State
22 designated entity and recipients, regarding
23 assistance under this section, which shall
24 include—

1 “(I) appropriate periodic finan-
2 cial and project reporting, record re-
3 tention, and audit requirements for
4 the duration of the assistance to the
5 recipient to ensure compliance with
6 the limitations and requirements of
7 this section and the regulations under
8 this section; and

9 “(II) any other requirements that
10 the Secretary determines are nec-
11 essary to ensure appropriate adminis-
12 tration and compliance.

13 “(B) MISUSE OF FUNDS.—

14 “(i) REIMBURSEMENT REQUIRE-
15 MENT.—If any recipient of assistance
16 under this section is determined, in accord-
17 ance with clause (ii), to have used any
18 such amounts in a manner that is materi-
19 ally in violation of this section, the regula-
20 tions issued under this section, or any re-
21 quirements or conditions under which such
22 amounts were provided, the State or State
23 designated entity shall require that, within
24 12 months after the determination of such
25 misuse, the recipient shall reimburse the

1 State or State designated entity for such
2 misused amounts and return to the State
3 or State designated entity any such
4 amounts that remain unused or uncommit-
5 ted for use. The remedies under this clause
6 are in addition to any other remedies that
7 may be available under law.

8 “(ii) DETERMINATION.—A determina-
9 tion is made in accordance with this clause
10 if the determination is made by the Sec-
11 retary or made by the State or State des-
12 ignated entity, provided that—

13 “(I) the State or State des-
14 ignated entity provides notification of
15 the determination to the Secretary for
16 review, in the discretion of the Sec-
17 retary, of the determination; and

18 “(II) the Secretary does not sub-
19 sequently reverse the determination.

20 “(2) GRANTEES.—

21 “(A) REPORT.—

22 “(i) IN GENERAL.—The Secretary
23 shall require each State or State des-
24 ignated entity receiving grant amounts in
25 any given year under this section to submit

1 a report, for such year, to the Secretary
2 that—

3 “(I) describes the activities fund-
4 ed under this section during such year
5 with such grant amounts; and

6 “(II) the manner in which the
7 State or State designated entity com-
8 plied during such year with any allo-
9 cation plan established pursuant to
10 subsection (c).

11 “(ii) PUBLIC AVAILABILITY.—The
12 Secretary shall make such reports pursu-
13 ant to this subparagraph publicly available.

14 “(B) MISUSE OF FUNDS.—If the Secretary
15 determines, after reasonable notice and oppor-
16 tunity for hearing, that a State or State des-
17 ignated entity has failed to comply substantially
18 with any provision of this section, and until the
19 Secretary is satisfied that there is no longer
20 any such failure to comply, the Secretary
21 shall—

22 “(i) reduce the amount of assistance
23 under this section to the State or State
24 designated entity by an amount equal to

1 the amount of grant amounts which were
2 not used in accordance with this section;

3 “(ii) require the State or State des-
4 ignated entity to repay the Secretary any
5 amount of the grant which was not used in
6 accordance with this section;

7 “(iii) limit the availability of assist-
8 ance under this section to the State or
9 State designated entity to activities or re-
10 cipients not affected by such failure to
11 comply; or

12 “(iv) terminate any assistance under
13 this section to the State or State des-
14 ignated entity.

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

17 “(1) EXTREMELY LOW-INCOME RENTER
18 HOUSEHOLD.—The term ‘extremely low-income
19 renter household’ means a household whose income
20 is not in excess of 30 percent of the area median in-
21 come, with adjustments for smaller and larger fami-
22 lies, as determined by the Secretary.

23 “(2) RECIPIENT.—The term ‘recipient’ means
24 an individual or entity that receives assistance from
25 a State or State designated entity from amounts

1 made available to the State or State designated enti-
2 ty under this section.

3 “(3) SHORTAGE OF STANDARD RENTAL UNITS
4 BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY
5 LOW-INCOME RENTER HOUSEHOLDS.—

6 “(A) IN GENERAL.—The term ‘shortage of
7 standard rental units both affordable and avail-
8 able to extremely low-income renter households’
9 means for any State or other geographical area
10 the gap between—

11 “(i) the number of units with com-
12 plete plumbing and kitchen facilities with a
13 rent that is 30 percent or less of 30 per-
14 cent of the adjusted area median income as
15 determined by the Secretary that are occu-
16 pied by extremely low-income renter house-
17 holds or are vacant for rent; and

18 “(ii) the number of extremely low-in-
19 come renter households.

20 “(B) RULE OF CONSTRUCTION.—If the
21 number of units described in subparagraph
22 (A)(i) exceeds the number of extremely low-in-
23 come households as described in subparagraph
24 (A)(ii), there is no shortage.

1 “(4) SHORTAGE OF STANDARD RENTAL UNITS
2 BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-
3 INCOME RENTER HOUSEHOLDS.—

4 “(A) IN GENERAL.—The term ‘shortage of
5 standard rental units both affordable and avail-
6 able to very low-income renter households’
7 means for any State or other geographical area
8 the gap between—

9 “(i) the number of units with com-
10 plete plumbing and kitchen facilities with a
11 rent that is 30 percent or less of 50 per-
12 cent of the adjusted area median income as
13 determined by the Secretary that are occu-
14 pied by very low-income renter households
15 or are vacant for rent; and

16 “(ii) the number of very low-income
17 renter households.

18 “(B) RULE OF CONSTRUCTION.—If the
19 number of units described in subparagraph
20 (A)(i) exceeds the number of very low-income
21 households as described in subparagraph
22 (A)(ii), there is no shortage.

23 “(5) VERY LOW-INCOME FAMILY.—The term
24 ‘very low-income family’ has the meaning given such
25 term in section 1303, except that such term includes

1 any family that resides in a rural area that has an
2 income that does not exceed the poverty line (as
3 such term is defined in section 673(2) of the Omni-
4 bus Budget Reconciliation Act of 1981 (42 U.S.C.
5 9902(2)), including any revision required by such
6 section) applicable to a family of the size involved.

7 “(6) VERY LOW-INCOME RENTER HOUSE-
8 HOLDS.—The term ‘very low-income renter house-
9 holds’ means a household whose income is in excess
10 of 30 percent but not greater than 50 percent of the
11 area median income, with adjustments for smaller
12 and larger families, as determined by the Secretary.

13 “(g) REGULATIONS.—

14 “(1) IN GENERAL.—The Secretary shall issue
15 regulations to carry out this section.

16 “(2) REQUIRED CONTENTS.—The regulations
17 issued under this subsection shall include—

18 “(A) a requirement that the Secretary en-
19 sure that the use of grant amounts under this
20 section by States or State designated entities is
21 audited not less than annually to ensure compli-
22 ance with this section;

23 “(B) authority for the Secretary to audit,
24 provide for an audit, or otherwise verify a State

1 or State designated entity’s activities to ensure
2 compliance with this section;

3 “(C) requirements for a process for appli-
4 cation to, and selection by, each State or State
5 designated entity for activities meeting the
6 State or State designated entity’s priority hous-
7 ing needs to be funded with grant amounts
8 under this section, which shall provide for pri-
9 ority in funding to be based upon—

10 “(i) geographic diversity;

11 “(ii) ability to obligate amounts and
12 undertake activities so funded in a timely
13 manner;

14 “(iii) in the case of rental housing
15 projects under subsection (c)(7)(A), the ex-
16 tent to which rents for units in the project
17 funded are affordable, especially for ex-
18 tremely low-income families;

19 “(iv) in the case of rental housing
20 projects under subsection (c)(7)(A), the ex-
21 tent of the duration for which such rents
22 will remain affordable;

23 “(v) the extent to which the applica-
24 tion makes use of other funding sources;
25 and

1 “(vi) the merits of an applicant’s pro-
2 posed eligible activity;

3 “(D) requirements to ensure that grant
4 amounts provided to a State or State des-
5 ignated entity under this section that are used
6 for rental housing under subsection (c)(7)(A)
7 are used only for the benefit of extremely low-
8 and very low-income families; and

9 “(E) requirements and standards for es-
10 tablishment, by a State or State designated en-
11 tity, for use of grant amounts in 2009 and sub-
12 sequent years of performance goals, bench-
13 marks, and timetables for the production, pres-
14 ervation, and rehabilitation of affordable rental
15 and homeownership housing with such grant
16 amounts.

17 “(h) AFFORDABLE HOUSING TRUST FUND.—If,
18 after the date of enactment of the Federal Housing Fi-
19 nance Regulatory Reform Act of 2008, in any year, there
20 is enacted any provision of Federal law establishing an
21 affordable housing trust fund other than under this title
22 for use only for grants to provide affordable rental housing
23 and affordable homeownership opportunities, and the sub-
24 sequent year is a year referred to in subsection (c), the
25 Secretary shall in such subsequent year and any remaining

1 years referred to in subsection (c) transfer to such afford-
2 able housing trust fund the aggregate amount allocated
3 pursuant to subsection (c) in such year. Notwithstanding
4 any other provision of law, assistance provided using
5 amounts transferred to such affordable housing trust fund
6 pursuant to this subsection may not be used for any of
7 the activities specified in clauses (i) through (vi) of sub-
8 section (c)(9)(D).

9 “(i) FUNDING ACCOUNTABILITY AND TRANS-
10 PARENCY.—Any grant under this section to a grantee by
11 a State or State designated entity, any assistance provided
12 to a recipient by a State or State designated entity, and
13 any grant, award, or other assistance from an affordable
14 housing trust fund referred to in subsection (h) shall be
15 considered a Federal award for purposes of the Federal
16 Funding Accountability and Transparency Act of 2006
17 (31 U.S.C. 6101 note). Upon the request of the Director
18 of the Office of Management and Budget, the Secretary
19 shall obtain and provide such information regarding any
20 such grants, assistance, and awards as the Director of the
21 Office of Management and Budget considers necessary to
22 comply with the requirements of such Act, as applicable,
23 pursuant to the preceding sentence.

1 **“SEC. 1339. CAPITAL MAGNET FUND.**

2 “(a) ESTABLISHMENT.—There is established in the
3 Treasury of the United States a trust fund to be known
4 as the Capital Magnet Fund, which shall be a special ac-
5 count within the Community Development Financial Insti-
6 tutions Fund.

7 “(b) DEPOSITS TO TRUST FUND.—The Capital Mag-
8 net Fund shall consist of—

9 “(1) any amounts transferred to the Fund pur-
10 suant to section 1337; and

11 “(2) any amounts as are or may be appro-
12 priated, transferred, or credited to such Fund under
13 any other provisions of law.

14 “(c) EXPENDITURES FROM TRUST FUND.—Amounts
15 in the Capital Magnet Fund shall be available to the Sec-
16 retary of the Treasury to carry out a competitive grant
17 program to attract private capital for and increase invest-
18 ment in—

19 “(1) the development, preservation, rehabilita-
20 tion, or purchase of affordable housing for primarily
21 extremely low-, very low-, and low-income families;
22 and

23 “(2) economic development activities or commu-
24 nity service facilities, such as day care centers, work-
25 force development centers, and health care clinics,
26 which in conjunction with affordable housing activi-

1 ties implement a concerted strategy to stabilize or
2 revitalize a low-income area or underserved rural
3 area.

4 “(d) FEDERAL ASSISTANCE.—All assistance provided
5 using amounts in the Capital Magnet Fund shall be con-
6 sidered to be Federal financial assistance.

7 “(e) ELIGIBLE GRANTEES.—A grant under this sec-
8 tion may be made, pursuant to such requirements as the
9 Secretary of the Treasury shall establish for experience
10 and success in attracting private financing and carrying
11 out the types of activities proposed under the application
12 of the grantee, only to—

13 “(1) a Treasury certified community develop-
14 ment financial institution; or

15 “(2) a nonprofit organization having as 1 of its
16 principal purposes the development or management
17 of affordable housing.

18 “(f) ELIGIBLE USES.—Grant amounts awarded from
19 the Capital Magnet Fund pursuant to this section may
20 be used for the purposes described in paragraphs (1) and
21 (2) of subsection (e), including for the following uses:

22 “(1) To provide loan loss reserves.

23 “(2) To capitalize a revolving loan fund.

24 “(3) To capitalize an affordable housing fund.

1 “(4) To capitalize a fund to support activities
2 described in subsection (e)(2).

3 “(5) For risk-sharing loans.

4 “(g) APPLICATIONS.—

5 “(1) IN GENERAL.—The Secretary of the
6 Treasury shall provide, in a competitive application
7 process established by regulation, for eligible grant-
8 ees under subsection (e) to submit applications for
9 Capital Magnet Fund grants to the Secretary at
10 such time and in such manner as the Secretary shall
11 determine.

12 “(2) CONTENT OF APPLICATION.—The applica-
13 tion required under paragraph (1) shall include a de-
14 tailed description of—

15 “(A) the types of affordable housing, eco-
16 nomic, and community revitalization projects
17 that support or sustain residents of an afford-
18 able housing project funded by a grant under
19 this section for which such grant amounts
20 would be used, including the proposed use of el-
21 igible grants as authorized under this section;

22 “(B) the types, sources, and amounts of
23 other funding for such projects; and

24 “(C) the expected time frame of any grant
25 used for such project.

1 “(h) GRANT LIMITATION.—

2 “(1) IN GENERAL.—Any 1 eligible grantee and
3 its subsidiaries and affiliates may not be awarded
4 more than 15 percent of the aggregate funds avail-
5 able for grants during any year from the Capital
6 Magnet Fund.

7 “(2) GEOGRAPHIC DIVERSITY.—

8 “(A) GOAL.—The Secretary of the Treas-
9 ury shall seek to fund activities in geographi-
10 cally diverse areas of economic distress, includ-
11 ing metropolitan and underserved rural areas in
12 every State.

13 “(B) DIVERSITY DEFINED.—For purposes
14 of this paragraph, geographic diversity includes
15 those areas that meet objective criteria of eco-
16 nomic distress developed by the Secretary of the
17 Treasury, which may include—

18 “(i) the percentage of low-income
19 families or the extent of poverty;

20 “(ii) the rate of unemployment or
21 underemployment;

22 “(iii) extent of blight and disinvest-
23 ment;

24 “(iv) projects that target extremely
25 low-, very low-, and low-income families in

1 or outside a designated economic distress
2 area; or

3 “(v) any other criteria designated by
4 the Secretary of the Treasury.

5 “(3) LEVERAGE OF FUNDS.—Each grant from
6 the Capital Magnet Fund awarded under this section
7 shall be reasonably expected to result in eligible
8 housing, or economic and community development
9 projects that support or sustain an affordable hous-
10 ing project funded by a grant under this section
11 whose aggregate costs total at least 10 times the
12 grant amount.

13 “(4) COMMITMENT FOR USE DEADLINE.—
14 Amounts made available for grants under this sec-
15 tion shall be committed for use within 2 years of the
16 date of such allocation. The Secretary of the Treas-
17 ury shall recapture into the Capital Magnet Fund
18 any amounts not so used or committed for use and
19 allocate such amounts in the first year after such re-
20 capture.

21 “(5) LOBBYING RESTRICTIONS.—No assistance
22 or amounts made available under this section may
23 be expended by an eligible grantee to pay any person
24 to influence or attempt to influence any agency,
25 elected official, officer or employee of a State or

1 local government in connection with the making,
2 award, extension, continuation, renewal, amendment,
3 or modification of any State or local government
4 contract, grant, loan, or cooperative agreement as
5 such terms are defined in section 1352 of title 31,
6 United States Code.

7 “(6) PROHIBITION OF CONSIDERATION OF USE
8 FOR MEETING HOUSING GOALS OR DUTY TO
9 SERVE.—In determining the compliance of the enter-
10 prises with the housing goals under this section and
11 the duty to serve underserved markets under section
12 1335, the Director of the Federal Housing Finance
13 Agency may not consider any Capital Magnet Fund
14 amounts used under this section for eligible activities
15 under subsection (f). The Director of the Federal
16 Housing Finance Agency shall give credit toward the
17 achievement of such housing goals and such duty to
18 serve underserved markets to purchases by the en-
19 terprises of mortgages for housing that receives
20 funding from Capital Magnet Fund grant amounts,
21 but only to the extent that such purchases by the
22 enterprises are funded other than with such grant
23 amounts.

24 “(7) ACCOUNTABILITY OF RECIPIENTS AND
25 GRANTEES.—

1 “(A) TRACKING OF FUNDS.—The Sec-
2 retary of the Treasury shall—

3 “(i) require each grantee to develop
4 and maintain a system to ensure that each
5 recipient of assistance from the Capital
6 Magnet Fund uses such amounts in ac-
7 cordance with this section, the regulations
8 issued under this section, and any require-
9 ments or conditions under which such
10 amounts were provided; and

11 “(ii) establish minimum requirements
12 for agreements, between the grantee and
13 the Capital Magnet Fund, regarding as-
14 sistance from the Capital Magnet Fund,
15 which shall include—

16 “(I) appropriate periodic finan-
17 cial and project reporting, record re-
18 tention, and audit requirements for
19 the duration of the grant to the re-
20 cipient to ensure compliance with the
21 limitations and requirements of this
22 section and the regulations under this
23 section; and

24 “(II) any other requirements that
25 the Secretary determines are nec-

1 necessary to ensure appropriate grant ad-
2 ministration and compliance.

3 “(B) MISUSE OF FUNDS.—If the Secretary
4 of the Treasury determines, after reasonable
5 notice and opportunity for hearing, that a
6 grantee has failed to comply substantially with
7 any provision of this section and until the Sec-
8 retary is satisfied that there is no longer any
9 such failure to comply, the Secretary shall—

10 “(i) reduce the amount of assistance
11 under this section to the grantee by an
12 amount equal to the amount of Capital
13 Magnet Fund grant amounts which were
14 not used in accordance with this section;

15 “(ii) require the grantee to repay the
16 Secretary any amount of the Capital Mag-
17 net Fund grant amounts which were not
18 used in accordance with this section;

19 “(iii) limit the availability of assist-
20 ance under this section to the grantee to
21 activities or recipients not affected by such
22 failure to comply; or

23 “(iv) terminate any assistance under
24 this section to the grantee.

25 “(i) PERIODIC REPORTS.—

1 “(1) IN GENERAL.—The Secretary of the
2 Treasury shall submit a report, on a periodic basis,
3 to the Committee on Banking, Housing, and Urban
4 Affairs of the Senate and the Committee on Finan-
5 cial Services of the House of Representatives de-
6 scribing the activities to be funded under this sec-
7 tion.

8 “(2) REPORTS AVAILABLE TO PUBLIC.—The
9 Secretary of the Treasury shall make the reports re-
10 quired under paragraph (1) publicly available.

11 “(j) REGULATIONS.—

12 “(1) IN GENERAL.—The Secretary of the
13 Treasury shall issue regulations to carry out this
14 section.

15 “(2) REQUIRED CONTENTS.—The regulations
16 issued under this subsection shall include—

17 “(A) authority for the Secretary to audit,
18 provide for an audit, or otherwise verify an en-
19 terprise’s activities, to ensure compliance with
20 this section;

21 “(B) a requirement that the Secretary en-
22 sure that the allocation of each enterprise is au-
23 dited not less than annually to ensure compli-
24 ance with this section; and

1 “(C) requirements for a process for appli-
2 cation to, and selection by, the Secretary for ac-
3 tivities to be funded with amounts from the
4 Capital Magnet Fund, which shall provide
5 that—

6 “(i) funds be fairly distributed to
7 urban, suburban, and rural areas; and

8 “(ii) selection shall be based upon spe-
9 cific criteria, including a prioritization of
10 funding based upon—

11 “(I) the ability to use such funds
12 to generate additional investments;

13 “(II) affordable housing need
14 (taking into account the distinct needs
15 of different regions of the country);
16 and

17 “(III) ability to obligate amounts
18 and undertake activities so funded in
19 a timely manner.”.

20 **SEC. 132. FINANCIAL EDUCATION AND COUNSELING.**

21 (a) GOALS.—Financial education and counseling
22 under this section shall have the goal of—

23 (1) increasing the financial knowledge and deci-
24 sion making capabilities of prospective homebuyers;

1 (2) assisting prospective homebuyers to develop
2 monthly budgets, build personal savings, finance or
3 plan for major purchases, reduce their debt, improve
4 their financial stability, and set and reach their fi-
5 nancial goals;

6 (3) helping prospective homebuyers to improve
7 their credit scores by understanding the relationship
8 between their credit histories and their credit scores;
9 and

10 (4) educating prospective homebuyers about the
11 options available to build savings for short- and
12 long-term goals.

13 (b) GRANTS.—

14 (1) IN GENERAL.—The Secretary of the Treas-
15 ury (in this section referred to as the “Secretary”)
16 shall make grants to eligible organizations to enable
17 such organizations to provide a range of financial
18 education and counseling services to prospective
19 homebuyers.

20 (2) SELECTION.—The Secretary shall select eli-
21 gible organizations to receive assistance under this
22 section based on their experience and ability to pro-
23 vide financial education and counseling services that
24 result in documented positive behavioral changes.

25 (c) ELIGIBLE ORGANIZATIONS.—

1 (1) IN GENERAL.—For purposes of this section,
2 the term “eligible organization” means an organiza-
3 tion that is—

4 (A) certified in accordance with section
5 106(e)(1) of the Housing and Urban Develop-
6 ment Act of 1968 (12 U.S.C. 1701x(e)); or

7 (B) certified by the Office of Financial
8 Education of the Department of the Treasury
9 for purposes of this section, in accordance with
10 paragraph (2).

11 (2) OFE CERTIFICATION.—To be certified by
12 the Office of Financial Education for purposes of
13 this section, an eligible organization shall be—

14 (A) a housing counseling agency certified
15 by the Secretary of Housing and Urban Devel-
16 opment under section 106(e) of the Housing
17 and Urban Development Act of 1968;

18 (B) a State, local, or tribal government
19 agency;

20 (C) a community development financial in-
21 stitution (as defined in section 103(5) of the
22 Community Development Banking and Finan-
23 cial Institutions Act of 1994 (12 U.S.C.
24 4702(5)) or a credit union; or

1 (D) any collaborative effort of entities de-
2 scribed in any of subparagraphs (A) through
3 (C).

4 (d) AUTHORITY FOR PILOT PROJECTS.—

5 (1) IN GENERAL.—The Secretary of the Treas-
6 ury shall authorize not more than 5 pilot project
7 grants to eligible organizations under subsection (c)
8 in order to—

9 (A) carry out the services under this sec-
10 tion; and

11 (B) provide such other services that will
12 improve the financial stability and economic
13 condition of low- and moderate-income and low-
14 wealth individuals.

15 (2) GOAL.—The goal of the pilot project grants
16 under this subsection is to—

17 (A) identify successful methods resulting in
18 positive behavioral change for financial em-
19 powerment; and

20 (B) establish program models for organiza-
21 tions to carry out effective counseling services.

22 (e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary such
24 sums as are necessary to carry out this section and for
25 the provision of additional financial educational services.

1 (f) STUDY AND REPORT ON EFFECTIVENESS AND IM-
2 PACT.—

3 (1) IN GENERAL.—The Comptroller General of
4 the United States shall conduct a study on the effec-
5 tiveness and impact of the grant program estab-
6 lished under this section. Not later than 3 years
7 after the date of enactment of this Act, the Comp-
8 troller General shall submit a report on the results
9 of such study to the Committee on Banking, Hous-
10 ing, and Urban Affairs of the Senate and the Com-
11 mittee on Financial Services of the House of Rep-
12 resentatives.

13 (2) CONTENT OF STUDY.—The study required
14 under paragraph (1) shall include an evaluation of
15 the following:

16 (A) The effectiveness of the grant program
17 established under this section in improving the
18 financial situation of homeowners and prospec-
19 tive homebuyers served by the grant program.

20 (B) The extent to which financial edu-
21 cation and counseling services have resulted in
22 positive behavioral changes.

23 (C) The effectiveness and quality of the eli-
24 gible organizations providing financial education

1 and counseling services under the grant pro-
2 gram.

3 (g) REGULATIONS.—The Secretary is authorized to
4 promulgate such regulations as may be necessary to imple-
5 ment and administer the grant program authorized by this
6 section.

7 **SEC. 133. TRANSFER AND RIGHTS OF CERTAIN HUD EM-**
8 **PLOYEES.**

9 (a) TRANSFER.—Each employee of the Department
10 of Housing and Urban Development whose position re-
11 sponsibilities primarily involve the establishment and en-
12 forcement of the housing goals under subpart B of part
13 2 of subtitle A of the Federal Housing Enterprises Finan-
14 cial Safety and Soundness Act of 1992 (12 U.S.C. 4561
15 et seq.) shall be transferred to the Federal Housing Fi-
16 nance Agency for employment, not later than the effective
17 date of the Federal Housing Finance Regulatory Reform
18 Act of 2008, and such transfer shall be deemed a transfer
19 of function for purposes of section 3503 of title 5, United
20 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 transferred under subsection
3 (a) holding a permanent position on the day imme-
4 diately preceding the transfer may not be involun-
5 tarily separated or reduced in grade or compensation
6 during the 12-month period beginning on the date of
7 transfer, except for cause, or, in the case of a tem-
8 porary employee, separated in accordance with the
9 terms of the appointment of the 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
19 may decline a transfer of authority under paragraph
20 (1) to the extent that such authority relates to—

21 (A) a position excepted from the competi-
22 tive service because of its confidential, policy-
23 making, policy-determining, or policy-advocating
24 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 determines,
5 after the end of the 1-year period beginning on the effec-
6 tive date of the Federal Housing Finance Regulatory Re-
7 form Act of 2008, that a reorganization of the combined
8 workforce is required, that reorganization shall be deemed
9 a major reorganization for purposes of affording affected
10 employee retirement under section 8336(d)(2) or
11 8414(b)(1)(B) of title 5, United States Code.

12 (e) EMPLOYEE BENEFIT PROGRAMS.—

13 (1) IN GENERAL.—Any employee described
14 under subsection (a) accepting employment with the
15 Agency as a result of a transfer under subsection (a)
16 may retain, for 12 months after the date on which
17 such transfer occurs, membership in any employee
18 benefit program of the Agency or the Department of
19 Housing and Urban Development, as applicable, in-
20 cluding insurance, to which such employee belongs
21 on such effective date, if—

22 (A) the employee does not elect to give up
23 the benefit or membership in the program; and

1 (B) the benefit or program is continued by
2 the Director of the Federal Housing Finance
3 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 Department of Housing
8 and Urban Development and those provided by
9 this section shall be paid by the Director.

10 (B) HEALTH INSURANCE.—If any em-
11 ployee elects to give up membership in a health
12 insurance program or the health insurance pro-
13 gram is not continued by the Director, the em-
14 ployee shall be permitted to select an alternate
15 Federal health insurance program not later
16 than 30 days after the date of such election or
17 notice, without regard to any other regularly
18 scheduled open season.

19 **Subtitle C—Prompt Corrective**
20 **Action**

21 **SEC. 141. CRITICAL CAPITAL LEVELS.**

22 (a) IN GENERAL.—Section 1363 of the Federal
23 Housing Enterprises Financial Safety and Soundness Act
24 of 1992 (12 U.S.C. 4613) is amended—

1 (1) by striking “For” and inserting “(a) EN-
2 TERPRISES.—FOR”; and

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

5 “(b) FEDERAL HOME LOAN BANKS.—

6 “(1) IN GENERAL.—For purposes of this sub-
7 title, the critical capital level for each Federal Home
8 Loan Bank shall be such amount of capital as the
9 Director shall, by regulation, require.

10 “(2) CONSIDERATION OF OTHER CRITICAL CAP-
11 ITAL LEVELS.—In establishing the critical capital
12 level under paragraph (1) for the Federal Home
13 Loan Banks, the Director shall take due consider-
14 ation of the critical capital level established under
15 subsection (a) for the enterprises, with such modi-
16 fications as the Director determines to be appro-
17 priate to reflect the difference in operations between
18 the banks and the enterprises.”.

19 (b) REGULATIONS.—Not later than the expiration of
20 the 180-day period beginning on the date of enactment
21 of this Act, the Director of the Federal Housing Finance
22 Agency shall issue regulations pursuant to section 1363(b)
23 of the Federal Housing Enterprises Financial Safety and
24 Soundness Act of 1992 (as added by this section) estab-
25 lishing the critical capital level under such section.

1 **SEC. 142. CAPITAL CLASSIFICATIONS.**

2 (a) IN GENERAL.—Section 1364 of the Federal
3 Housing Enterprises Financial Safety and Soundness Act
4 of 1992 (12 U.S.C. 4614) is amended—

5 (1) in the heading for subsection (a) by striking
6 “In General” and inserting “Enterprises”;

7 (2) in subsection (c)—

8 (A) by striking “subsection (b)” and in-
9 serting “subsection (e)”;

10 (B) by striking “enterprises” and inserting
11 “regulated entities”; and

12 (C) by striking the last sentence;

13 (3) by redesignating subsections (c) (as so
14 amended by paragraph (2) of this subsection) and
15 (d) as subsections (d) and (f), respectively;

16 (4) by striking subsection (b) and inserting the
17 following:

18 “(b) FEDERAL HOME LOAN BANKS.—

19 “(1) ESTABLISHMENT AND CRITERIA.—For
20 purposes of this subtitle, the Director shall, by regu-
21 lation—

22 “(A) establish the capital classifications
23 specified under paragraph (2) for the Federal
24 Home Loan Banks;

25 “(B) establish criteria for each such cap-
26 ital classification based on the amount and

1 types of capital held by a bank and the risk-
2 based, minimum, and critical capital levels for
3 the banks and taking due consideration of the
4 capital classifications established under sub-
5 section (a) for the enterprises, with such modi-
6 fications as the Director determines to be ap-
7 propriate to reflect the difference in operations
8 between the banks and the enterprises; and

9 “(C) shall classify the Federal Home Loan
10 Banks according to such capital classifications.

11 “(2) CLASSIFICATIONS.—The capital classifica-
12 tions specified under this paragraph are—

13 “(A) adequately capitalized;

14 “(B) undercapitalized;

15 “(C) significantly undercapitalized; and

16 “(D) critically undercapitalized.

17 “(c) DISCRETIONARY CLASSIFICATION.—

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

21 “(A) at any time, the Director determines
22 in writing that the regulated entity is engaging
23 in conduct that could result in a rapid depletion
24 of core or total capital or the value of collateral
25 pledged as security has decreased significantly

1 or that the value of the property subject to any
2 mortgage held by the regulated entity (or
3 securitized in the case of an enterprise) has de-
4 creased significantly;

5 “(B) after notice and an opportunity for
6 hearing, the Director determines that the regu-
7 lated entity is in an unsafe or unsound condi-
8 tion; or

9 “(C) pursuant to section 1371(b), the Di-
10 rector deems the regulated entity to be engag-
11 ing in an unsafe or unsound practice.

12 “(2) RECLASSIFICATION.—In addition to any
13 other action authorized under this title, including
14 the reclassification of a regulated entity for any rea-
15 son not specified in this subsection, if the Director
16 takes any action described in paragraph (1), the Di-
17 rector may classify a regulated entity—

18 “(A) as undercapitalized, if the regulated
19 entity is otherwise classified as adequately cap-
20 italized;

21 “(B) as significantly undercapitalized, if
22 the regulated entity is otherwise classified as
23 undercapitalized; and

1 “(C) as critically undercapitalized, if the
2 regulated entity is otherwise classified as sig-
3 nificantly undercapitalized.”; and

4 (5) by inserting after subsection (d) (as so re-
5 designated by paragraph (3) of this subsection), the
6 following new subsection:

7 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

8 “(1) IN GENERAL.—A regulated entity shall
9 make no capital distribution if, after making the dis-
10 tribution, the regulated entity would be under-
11 capitalized.

12 “(2) EXCEPTION.—Notwithstanding paragraph
13 (1), the Director may permit a regulated entity, to
14 the extent appropriate or applicable, to repurchase,
15 redeem, retire, or otherwise acquire shares or owner-
16 ship interests if the repurchase, redemption, retire-
17 ment, or other acquisition—

18 “(A) is made in connection with the
19 issuance of additional shares or obligations of
20 the regulated entity in at least an equivalent
21 amount; and

22 “(B) will reduce the financial obligations of
23 the regulated entity or otherwise improve the fi-
24 nancial condition of the entity.”.

1 (b) REGULATIONS.—Not later than the expiration of
2 the 180-day period beginning on the date of enactment
3 of this Act, the Director of the Federal Housing Finance
4 Agency shall issue regulations to carry out section 1364(b)
5 of the Federal Housing Enterprises Financial Safety and
6 Soundness Act of 1992 (as added by this section), relating
7 to capital classifications for the Federal Home Loan
8 Banks.

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

11 Section 1365 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4615) 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 (a)—

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

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

1 “(1) REQUIRED MONITORING.—The Director
2 shall—

3 “(A) closely monitor the condition of any
4 undercapitalized regulated entity;

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

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

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

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

20 “(A) the Director has accepted the capital
21 restoration plan of the regulated entity;

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

24 “(C) the ratio of tangible equity to assets
25 of the regulated entity increases during the cal-

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

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

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

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

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

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

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

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

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

3 (5) in subsection (b)—

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

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

11 (C) by striking paragraph (6);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(ii) any unsafe or unsound practice.

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

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

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

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

3 “(E) INABILITY TO MEET OBLIGATIONS.—
4 The regulated entity is likely to be unable to
5 pay its obligations or meet the demands of its
6 creditors in the normal course of business.

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

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

16 “(i) cause insolvency or substantial
17 dissipation of assets or earnings; or

18 “(ii) weaken the condition of the regu-
19 lated entity.

20 “(H) CONSENT.—The regulated entity, by
21 resolution of its board of directors or its share-
22 holders or members, consents to the appoint-
23 ment.

24 “(I) UNDERCAPITALIZATION.—The regu-
25 lated entity is undercapitalized or significantly

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

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

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

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

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

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

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

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

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

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

3 “(4) MANDATORY RECEIVERSHIP.—

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

8 “(i) the assets of the regulated entity
9 are, and during the preceding 60 calendar
10 days have been, less than the obligations of
11 the regulated entity to its creditors and
12 others; or

13 “(ii) the regulated entity is not, and
14 during the preceding 60 calendar days has
15 not been, generally paying the debts of the
16 regulated entity (other than debts that are
17 the subject of a bona fide dispute) as such
18 debts become due.

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

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

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

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

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

18 “(5) JUDICIAL REVIEW.—

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

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

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

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

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

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

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

5 “(2) GENERAL POWERS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(I) SUBPOENA AUTHORITY.—

13 “(i) IN GENERAL.—

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

1 “(II) APPLICABILITY OF LAW.—

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

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

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

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

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

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

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

3 “(K) OTHER PROVISIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(A) DETERMINATION PERIOD.—

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

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

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

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

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

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

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

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

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

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

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

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

17 “(D) AUTHORITY TO DISALLOW CLAIMS.—

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

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

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

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

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

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

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

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

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

6 “(F) LEGAL EFFECT OF FILING.—

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

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

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

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

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

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

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

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

1 “(7) REVIEW OF CLAIMS.—

2 “(A) OTHER REVIEW PROCEDURES.—

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

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

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

21 “(B) CONSIDERATION OF INCENTIVES.—

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

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

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

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

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

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

21 “(i) determine—

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

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

1 dures established under paragraph
2 (5); and

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

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

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

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

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

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

8 “(E) LEGAL EFFECT OF FILING.—

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

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

21 “(9) PAYMENT OF CLAIMS.—

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

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

3 “(i) allowed by the receiver;

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

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

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

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

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

11 “(10) SUSPENSION OF LEGAL ACTIONS.—

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

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

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

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

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

4 “(11) ADDITIONAL RIGHTS AND DUTIES.—

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

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

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

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

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

1 “(iii) ensures adequate competition
2 and fair and consistent treatment of
3 offerors.

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

6 “(A) IN GENERAL.—Notwithstanding any
7 provision of any contract, the applicable statute
8 of limitations with regard to any action brought
9 by the Agency as conservator or receiver shall
10 be—

11 “(i) in the case of any contract claim,
12 the longer of—

13 “(I) the 6-year period beginning
14 on the date on which the claim ac-
15 crues; or

16 “(II) the period applicable under
17 State law; and

18 “(ii) in the case of any tort claim, the
19 longer of—

20 “(I) the 3-year period beginning
21 on the date on which the claim ac-
22 crues; or

23 “(II) the period applicable under
24 State law.

1 “(B) DETERMINATION OF THE DATE ON
2 WHICH A CLAIM ACCRUES.—For purposes of
3 subparagraph (A), the date on which the stat-
4 ute of limitations begins to run on any claim
5 described in such subparagraph shall be the
6 later of—

7 “(i) the date of the appointment of
8 the Agency as conservator or receiver; or

9 “(ii) the date on which the cause of
10 action accrues.

11 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
12 ACTION.—

13 “(A) IN GENERAL.—In the case of any tort
14 claim described under clause (ii) for which the
15 statute of limitations applicable under State law
16 with respect to such claim has expired not more
17 than 5 years before the appointment of the
18 Agency as conservator or receiver, the Agency
19 may bring an action as conservator or receiver
20 on such claim without regard to the expiration
21 of the statute of limitations applicable under
22 State law.

23 “(B) CLAIMS DESCRIBED.—A tort claim
24 referred to under clause (i) is a claim arising
25 from fraud, intentional misconduct resulting in

1 unjust enrichment, or intentional misconduct
2 resulting in substantial loss to the regulated en-
3 tity.

4 “(14) ACCOUNTING AND RECORDKEEPING RE-
5 QUIREMENTS.—

6 “(A) IN GENERAL.—The Agency as conser-
7 vator or receiver shall, consistent with the ac-
8 counting and reporting practices and proce-
9 dures established by the Agency, maintain a full
10 accounting of each conservatorship and receiv-
11 ership or other disposition of a regulated entity
12 in default.

13 “(B) ANNUAL ACCOUNTING OR REPORT.—
14 With respect to each conservatorship or receiv-
15 ership, the Agency shall make an annual ac-
16 counting or report available to the Board, the
17 Comptroller General of the United States, the
18 Committee on Banking, Housing, and Urban
19 Affairs of the Senate, and the Committee on
20 Financial Services of the House of Representa-
21 tives.

22 “(C) AVAILABILITY OF REPORTS.—Any re-
23 port prepared under subparagraph (B) shall be
24 made available by the Agency upon request to

1 any shareholder of a regulated entity or any
2 member of the public.

3 “(D) RECORDKEEPING REQUIREMENT.—

4 After the end of the 6-year period beginning on
5 the date on which the conservatorship or receiv-
6 ership is terminated by the Director, the Agen-
7 cy may destroy any records of such regulated
8 entity which the Agency, in the discretion of the
9 Agency, determines to be unnecessary, unless
10 directed not to do so by a court of competent
11 jurisdiction or governmental agency, or prohib-
12 ited by law.

13 “(15) FRAUDULENT TRANSFERS.—

14 “(A) IN GENERAL.—The Agency, as con-
15 servator or receiver, may avoid a transfer of
16 any interest of an entity-affiliated party, or any
17 person determined by the conservator or re-
18 ceiver to be a debtor of the regulated entity, in
19 property, or any obligation incurred by such
20 party or person, that was made within 5 years
21 of the date on which the Agency was appointed
22 conservator or receiver, if such party or person
23 voluntarily or involuntarily made such transfer
24 or incurred such liability with the intent to

1 hinder, delay, or defraud the regulated entity,
2 the Agency, the conservator, or receiver.

3 “(B) RIGHT OF RECOVERY.—To the extent
4 a transfer is avoided under subparagraph (A),
5 the conservator or receiver may recover, for the
6 benefit of the regulated entity, the property
7 transferred, or, if a court so orders, the value
8 of such property (at the time of such transfer)
9 from—

10 “(i) the initial transferee of such
11 transfer or the entity-affiliated party or
12 person for whose benefit such transfer was
13 made; or

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

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

19 “(i) any transferee that takes for
20 value, including satisfaction or securing of
21 a present or antecedent debt, in good faith;
22 or

23 “(ii) any immediate or mediate good
24 faith transferee of such transferee.

1 “(D) RIGHTS UNDER THIS PARAGRAPH.—

2 The rights under this paragraph of the conser-
3 vator or receiver described under subparagraph
4 (A) shall be superior to any rights of a trustee
5 or any other party (other than any party which
6 is a Federal agency) under title 11, United
7 States Code.

8 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
9 JUNCTIVE RELIEF.—Subject to paragraph (17), any
10 court of competent jurisdiction may, at the request
11 of the conservator or receiver, issue an order in ac-
12 cordance with rule 65 of the Federal Rules of Civil
13 Procedure, including an order placing the assets of
14 any person designated by the conservator or receiver
15 under the control of the court, and appointing a
16 trustee to hold such assets.

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

23 “(18) TREATMENT OF CLAIMS ARISING FROM
24 BREACH OF CONTRACTS EXECUTED BY THE CON-
25 SERVATOR OR RECEIVER.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of this subsection, any final and
3 unappealable judgment for monetary damages
4 entered against the conservator or receiver for
5 the breach of an agreement executed or ap-
6 proved in writing by the conservator or receiver
7 after the date of its appointment, shall be paid
8 as an administrative expense of the conservator
9 or receiver.

10 “(B) NO LIMITATION OF POWER.—Nothing
11 in this paragraph shall be construed to limit the
12 power of the conservator or receiver to exercise
13 any rights under contract or law, including to
14 terminate, breach, cancel, or otherwise dis-
15 continue such agreement.

16 “(19) GENERAL EXCEPTIONS.—

17 “(A) LIMITATIONS.—The rights of the
18 conservator or receiver appointed under this
19 section shall be subject to the limitations on the
20 powers of a receiver under sections 402 through
21 407 of the Federal Deposit Insurance Corpora-
22 tion Improvement Act of 1991 (12 U.S.C. 4402
23 through 4407).

24 “(B) MORTGAGES HELD IN TRUST.—

1 “(i) IN GENERAL.—Any mortgage,
2 pool of mortgages, or interest in a pool of
3 mortgages held in trust, custodial, or agen-
4 cy capacity by an enterprise for the benefit
5 of any person other than the enterprise
6 shall not be available to satisfy the claims
7 of creditors generally.

8 “(ii) HOLDING OF MORTGAGES.—Any
9 mortgage, pool of mortgages, or interest in
10 a pool of mortgages described in clause (i)
11 shall be held by the conservator or receiver
12 appointed under this section for the bene-
13 ficial owners of such mortgage, pool of
14 mortgages, or interest in accordance with
15 the terms of the agreement creating such
16 trust, custodial, or other agency arrange-
17 ment.

18 “(iii) LIABILITY OF CONSERVATOR OR
19 RECEIVER.—The liability of the conser-
20 vator or receiver appointed under this sec-
21 tion for damages shall, in the case of any
22 contingent or unliquidated claim relating
23 to the mortgages held in trust, be esti-
24 mated in accordance with the regulations
25 of the Director.

1 “(c) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS.—

3 “(1) IN GENERAL.—Unsecured claims against a
4 regulated entity, or the receiver therefor, that are
5 proven to the satisfaction of the receiver shall have
6 priority in the following order:

7 “(A) Administrative expenses of the re-
8 ceiver.

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

12 “(C) Any obligation subordinated to gen-
13 eral creditors (which is not an obligation de-
14 scribed under subparagraph (D)).

15 “(D) Any obligation to shareholders or
16 members arising as a result of their status as
17 shareholder or members.

18 “(2) CREDITORS SIMILARLY SITUATED.—All
19 creditors that are similarly situated under paragraph
20 (1) shall be treated in a similar manner, except that
21 the receiver may take any action (including making
22 payments) that does not comply with this subsection,
23 if—

24 “(A) the Director determines that such ac-
25 tion is necessary to maximize the value of the

1 assets of the regulated entity, to maximize the
2 present value return from the sale or other dis-
3 position of the assets of the regulated entity, or
4 to minimize the amount of any loss realized
5 upon the sale or other disposition of the assets
6 of the regulated entity; and

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

10 “(3) DEFINITION.—As used in this subsection,
11 the term ‘administrative expenses of the receiver’ in-
12 cludes—

13 “(A) the actual, necessary costs and ex-
14 penses incurred by the receiver in preserving
15 the assets of a failed regulated entity or liqui-
16 dating or otherwise resolving the affairs of a
17 failed regulated entity; and

18 “(B) any obligations that the receiver de-
19 termines are necessary and appropriate to fa-
20 cilitate the smooth and orderly liquidation or
21 other resolution of the regulated entity.

22 “(d) PROVISIONS RELATING TO CONTRACTS EN-
23 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
24 OR RECEIVER.—

1 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

2 In addition to any other rights a conservator or re-
3 ceiver may have, the conservator or receiver for any
4 regulated entity may disaffirm or repudiate any con-
5 tract or lease—

6 “(A) to which such regulated entity is a
7 party;

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

11 “(C) the disaffirmance or repudiation of
12 which the conservator or receiver determines, in
13 its sole discretion, will promote the orderly ad-
14 ministration of the affairs of the regulated enti-
15 ty.

16 “(2) TIMING OF REPUDIATION.—The conser-
17 vator or receiver shall determine whether or not to
18 exercise the rights of repudiation under this sub-
19 section within a reasonable period following such ap-
20 pointment.

21 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
22 ATION.—

23 “(A) IN GENERAL.—Except as otherwise
24 provided under subparagraph (C) and para-
25 graphs (4), (5), and (6), the liability of the con-

1 servator or receiver for the disaffirmance or re-
2 pudiation of any contract pursuant to para-
3 graph (1) shall be—

4 “(i) limited to actual direct compen-
5 satory damages; and

6 “(ii) determined as of—

7 “(I) the date of the appointment
8 of the conservator or receiver; or

9 “(II) in the case of any contract
10 or agreement referred to in paragraph
11 (8), the date of the disaffirmance or
12 repudiation of such contract or agree-
13 ment.

14 “(B) NO LIABILITY FOR OTHER DAM-
15 AGES.—For purposes of subparagraph (A), the
16 term ‘actual direct compensatory damages’ shall
17 not include—

18 “(i) punitive or exemplary damages;

19 “(ii) damages for lost profits or op-
20 portunity; or

21 “(iii) damages for pain and suffering.

22 “(C) MEASURE OF DAMAGES FOR REPUDI-
23 ATION OF FINANCIAL CONTRACTS.—In the case
24 of any qualified financial contract or agreement

1 to which paragraph (8) applies, compensatory
2 damages shall be—

3 “(i) deemed to include normal and
4 reasonable costs of cover or other reason-
5 able measures of damages utilized in the
6 industries for such contract and agreement
7 claims; and

8 “(ii) paid in accordance with this sub-
9 section and subsection (e), except as other-
10 wise specifically provided in this section.

11 “(4) LEASES UNDER WHICH THE REGULATED
12 ENTITY IS THE LESSEE.—

13 “(A) IN GENERAL.—If the conservator or
14 receiver disaffirms or repudiates a lease under
15 which the regulated entity was the lessee, the
16 conservator or receiver shall not be liable for
17 any damages (other than damages determined
18 under subparagraph (B)) for the disaffirmance
19 or repudiation of such lease.

20 “(B) PAYMENTS OF RENT.—Notwith-
21 standing subparagraph (A), the lessor under a
22 lease to which that subparagraph applies
23 shall—

1 “(i) be entitled to the contractual rent
2 accruing before the later of the date on
3 which—

4 “(I) the notice of disaffirmance
5 or repudiation is mailed; or

6 “(II) the disaffirmance or repudi-
7 ation becomes effective, unless the les-
8 sor is in default or breach of the
9 terms of the lease;

10 “(ii) have no claim for damages under
11 any acceleration clause or other penalty
12 provision in the lease; and

13 “(iii) have a claim for any unpaid
14 rent, subject to all appropriate offsets and
15 defenses, due as of the date of the appoint-
16 ment, which shall be paid in accordance
17 with this subsection and subsection (e).

18 “(5) LEASES UNDER WHICH THE REGULATED
19 ENTITY IS THE LESSOR.—

20 “(A) IN GENERAL.—If the conservator or
21 receiver repudiates an unexpired written lease
22 of real property of the regulated entity under
23 which the regulated entity is the lessor and the
24 lessee is not, as of the date of such repudiation,

1 in default, the lessee under such lease may ei-
2 ther—

3 “(i) treat the lease as terminated by
4 such repudiation; or

5 “(ii) remain in possession of the lease-
6 hold interest for the balance of the term of
7 the lease, unless the lessee defaults under
8 the terms of the lease after the date of
9 such repudiation.

10 “(B) PROVISIONS APPLICABLE TO LESSEE
11 REMAINING IN POSSESSION.—If any lessee
12 under a lease described under subparagraph (A)
13 remains in possession of a leasehold interest
14 under clause (ii) of subparagraph (A)—

15 “(i) the lessee—

16 “(I) shall continue to pay the
17 contractual rent pursuant to the
18 terms of the lease after the date of
19 the repudiation of such lease; and

20 “(II) may offset against any rent
21 payment which accrues after the date
22 of the repudiation of the lease, and
23 any damages which accrue after such
24 date due to the nonperformance of

1 any obligation of the regulated entity
2 under the lease after such date; and
3 “(ii) the conservator or receiver shall
4 not be liable to the lessee for any damages
5 arising after such date as a result of the
6 repudiation, other than the amount of any
7 offset allowed under clause (i)(II).

8 “(6) CONTRACTS FOR THE SALE OF REAL
9 PROPERTY.—

10 “(A) IN GENERAL.—If the conservator or
11 receiver repudiates any contract for the sale of
12 real property and the purchaser of such real
13 property under such contract is in possession,
14 and is not, as of the date of such repudiation,
15 in default, such purchaser may either—

16 “(i) treat the contract as terminated
17 by such repudiation; or

18 “(ii) remain in possession of such real
19 property.

20 “(B) PROVISIONS APPLICABLE TO PUR-
21 CHASER REMAINING IN POSSESSION.—If any
22 purchaser of real property under any contract
23 described under subparagraph (A) remains in
24 possession of such property under clause (ii) of
25 subparagraph (A)—

1 “(i) the purchaser—

2 “(I) shall continue to make all
3 payments due under the contract after
4 the date of the repudiation of the con-
5 tract; and

6 “(II) may offset against any such
7 payments any damages which accrue
8 after such date due to the non-
9 performance (after such date) of any
10 obligation of the regulated entity
11 under the contract; and

12 “(ii) the conservator or receiver
13 shall—

14 “(I) not be liable to the pur-
15 chaser for any damages arising after
16 such date as a result of the repudi-
17 ation, other than the amount of any
18 offset allowed under clause (i)(II);

19 “(II) deliver title to the pur-
20 chaser in accordance with the provi-
21 sions of the contract; and

22 “(III) have no obligation under
23 the contract other than the perform-
24 ance required under subclause (II).

25 “(C) ASSIGNMENT AND SALE ALLOWED.—

1 “(ii) deemed to have arisen as of the
2 date on which the conservator or receiver
3 was appointed.

4 “(B) SERVICES PERFORMED AFTER AP-
5 POINTMENT AND PRIOR TO REPUDIATION.—If,
6 in the case of any contract for services de-
7 scribed under subparagraph (A), the conser-
8 vator or receiver accepts performance by the
9 other person before the conservator or receiver
10 makes any determination to exercise the right
11 of repudiation of such contract under this sec-
12 tion—

13 “(i) the other party shall be paid
14 under the terms of the contract for the
15 services performed; and

16 “(ii) the amount of such payment
17 shall be treated as an administrative ex-
18 pense of the conservatorship or receiver-
19 ship.

20 “(C) ACCEPTANCE OF PERFORMANCE NO
21 BAR TO SUBSEQUENT REPUDIATION.—The ac-
22 ceptance by the conservator or receiver of serv-
23 ices referred to under subparagraph (B) in con-
24 nection with a contract described in such sub-
25 paragraph shall not affect the right of the con-

1 servator or receiver to repudiate such contract
2 under this section at any time after such per-
3 formance.

4 “(8) CERTAIN QUALIFIED FINANCIAL CON-
5 TRACTS.—

6 “(A) RIGHTS OF PARTIES TO CON-
7 TRACTS.—Subject to paragraphs (9) and (10),
8 and notwithstanding any other provision of this
9 title (other than subsection (b)(9)(B) of this
10 section), any other Federal law, or the law of
11 any State, no person shall be stayed or prohib-
12 ited from exercising—

13 “(i) any right of that person to cause
14 the termination, liquidation, or acceleration
15 of any qualified financial contract with a
16 regulated entity that arises upon the ap-
17 pointment of the Agency as receiver for
18 such regulated entity at any time after
19 such appointment;

20 “(ii) any right under any security
21 agreement or arrangement or other credit
22 enhancement relating to one or more quali-
23 fied financial contracts; or

24 “(iii) any right to offset or net out
25 any termination value, payment amount, or

1 other transfer obligation arising under or
2 in connection with 1 or more contracts and
3 agreements described in clause (i), includ-
4 ing any master agreement for such con-
5 tracts or agreements.

6 “(B) APPLICABILITY OF OTHER PROVI-
7 SIONS.—Subsection (b)(10) shall apply in the
8 case of any judicial action or proceeding
9 brought against any receiver referred to under
10 subparagraph (A), or the regulated entity for
11 which such receiver was appointed, by any
12 party to a contract or agreement described
13 under subparagraph (A)(i) with such regulated
14 entity.

15 “(C) CERTAIN TRANSFERS NOT AVOID-
16 ABLE.—

17 “(i) IN GENERAL.—Notwithstanding
18 paragraph (11), or any other provision of
19 Federal or State law relating to the avoid-
20 ance of preferential or fraudulent trans-
21 fers, the Agency, whether acting as such or
22 as conservator or receiver of a regulated
23 entity, may not avoid any transfer of
24 money or other property in connection with

1 any qualified financial contract with a reg-
2 ulated entity.

3 “(ii) EXCEPTION FOR CERTAIN
4 TRANSFERS.—Clause (i) shall not apply to
5 any transfer of money or other property in
6 connection with any qualified financial con-
7 tract with a regulated entity if the Agency
8 determines that the transferee had actual
9 intent to hinder, delay, or defraud such
10 regulated entity, the creditors of such reg-
11 ulated entity, or any conservator or re-
12 ceiver appointed for such regulated entity.

13 “(D) CERTAIN CONTRACTS AND AGREE-
14 MENTS DEFINED.—In this subsection the fol-
15 lowing definitions shall apply:

16 “(i) QUALIFIED FINANCIAL CON-
17 TRACT.—The term ‘qualified financial con-
18 tract’ means any securities contract, com-
19 modity contract, forward contract, repur-
20 chase agreement, swap agreement, and any
21 similar agreement that the Agency deter-
22 mines by regulation, resolution, or order to
23 be a qualified financial contract for pur-
24 poses of this paragraph.

1 “(ii) SECURITIES CONTRACT.—The
2 term ‘securities contract’—

3 “(I) means a contract for the
4 purchase, sale, or loan of a security, a
5 certificate of deposit, a mortgage loan,
6 or any interest in a mortgage loan, a
7 group or index of securities, certifi-
8 cates of deposit, or mortgage loans or
9 interests therein (including any inter-
10 est therein or based on the value
11 thereof) or any option on any of the
12 foregoing, including any option to
13 purchase or sell any such security,
14 certificate of deposit, mortgage loan,
15 interest, group or index, or option,
16 and including any repurchase or re-
17 verse repurchase transaction on any
18 such security, certificate of deposit,
19 mortgage loan, interest, group or
20 index, or option;

21 “(II) does not include any pur-
22 chase, sale, or repurchase obligation
23 under a participation in a commercial
24 mortgage loan, unless the Agency de-
25 termines by regulation, resolution, or

1 order to include any such agreement
2 within the meaning of such term;

3 “(III) means any option entered
4 into on a national securities exchange
5 relating to foreign currencies;

6 “(IV) means the guarantee by or
7 to any securities clearing agency of
8 any settlement of cash, securities, cer-
9 tificates of deposit, mortgage loans or
10 interests therein, group or index of se-
11 curities, certificates of deposit, or
12 mortgage loans or interests therein
13 (including any interest therein or
14 based on the value thereof) or option
15 on any of the foregoing, including any
16 option to purchase or sell any such se-
17 curity, certificate of deposit, mortgage
18 loan, interest, group or index, or op-
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-
22 ment or transaction that is similar to
23 any agreement or transaction referred
24 to in this clause;

1 “(VII) means any combination of
2 the agreements or transactions re-
3 ferred to in this clause;

4 “(VIII) means any option to
5 enter into any agreement or trans-
6 action referred to in this clause;

7 “(IX) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), (IV), (V), (VI), (VII), or
11 (VIII), together with all supplements
12 to any such master agreement, with-
13 out regard to whether the master
14 agreement provides for an agreement
15 or transaction that is not a securities
16 contract under this clause, except that
17 the master agreement shall be consid-
18 ered to be a securities contract under
19 this clause only with respect to each
20 agreement or transaction under the
21 master agreement that is referred to
22 in subclause (I), (III), (IV), (V), (VI),
23 (VII), or (VIII); and

24 “(X) means any security agree-
25 ment or arrangement or other credit

1 enhancement related to any agree-
2 ment or transaction referred to in this
3 clause, including any guarantee or re-
4 imbursement obligation in connection
5 with any agreement or transaction re-
6 ferred to in this clause.

7 “(iii) COMMODITY CONTRACT.—The
8 term ‘commodity contract’ means—

9 “(I) with respect to a futures
10 commission merchant, a contract for
11 the purchase or sale of a commodity
12 for future delivery on, or subject to
13 the rules of, a contract market or
14 board of trade;

15 “(II) with respect to a foreign fu-
16 tures commission merchant, a foreign
17 future;

18 “(III) with respect to a leverage
19 transaction merchant, a leverage
20 transaction;

21 “(IV) with respect to a clearing
22 organization, a contract for the pur-
23 chase or sale of a commodity for fu-
24 ture delivery on, or subject to the
25 rules of, a contract market or board

1 of trade that is cleared by such clear-
2 ing organization, or commodity option
3 traded on, or subject to the rules of,
4 a contract market or board of trade
5 that is cleared by such clearing orga-
6 nization;

7 “(V) with respect to a commodity
8 options dealer, a commodity option;

9 “(VI) any other agreement or
10 transaction that is similar to any
11 agreement or transaction referred to
12 in this clause;

13 “(VII) any combination of the
14 agreements or transactions referred to
15 in this clause;

16 “(VIII) any option to enter into
17 any agreement or transaction referred
18 to in this clause;

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

1 agreement provides for an agreement
2 or transaction that is not a com-
3 modity contract under this clause, ex-
4 cept that the master agreement shall
5 be considered to be a commodity con-
6 tract under this clause only with re-
7 spect to each agreement or trans-
8 action under the master agreement
9 that is referred to in subclause (I),
10 (II), (III), (IV), (V), (VI), (VII), or
11 (VIII); or

12 “(X) any security agreement or
13 arrangement or other credit enhance-
14 ment related to any agreement or
15 transaction referred to in this clause,
16 including any guarantee or reimburse-
17 ment obligation in connection with
18 any agreement or transaction referred
19 to in this clause.

20 “(iv) FORWARD CONTRACT.—The
21 term ‘forward contract’ means—

22 “(I) a contract (other than a
23 commodity contract) for the purchase,
24 sale, or transfer of a commodity or
25 any similar good, article, service,

1 right, or interest which is presently or
2 in the future becomes the subject of
3 dealing in the forward contract trade,
4 or product or byproduct thereof, with
5 a maturity date more than 2 days
6 after the date on which the contract is
7 entered into, including a repurchase
8 transaction, reverse repurchase trans-
9 action, consignment, lease, swap,
10 hedge transaction, deposit, loan, op-
11 tion, allocated transaction, unallocated
12 transaction, or any other similar
13 agreement;

14 “(II) any combination of agree-
15 ments or transactions referred to in
16 subclauses (I) and (III);

17 “(III) any option to enter into
18 any agreement or transaction referred
19 to in subclause (I) or (II);

20 “(IV) a master agreement that
21 provides for an agreement or trans-
22 action referred to in subclauses (I),
23 (II), or (III), together with all supple-
24 ments to any such master agreement,
25 without regard to whether the master

1 agreement provides for an agreement
2 or transaction that is not a forward
3 contract under this clause, except that
4 the master agreement shall be consid-
5 ered to be a forward contract under
6 this clause only with respect to each
7 agreement or transaction under the
8 master agreement that is referred to
9 in subclause (I), (II), or (III); or

10 “(V) any security agreement or
11 arrangement or other credit enhance-
12 ment related to any agreement or
13 transaction referred to in subclause
14 (I), (II), (III), or (IV), including any
15 guarantee or reimbursement obliga-
16 tion in connection with any agreement
17 or transaction referred to in any such
18 subclause.

19 “(v) REPURCHASE AGREEMENT.—The
20 term ‘repurchase agreement’ (including a
21 reverse repurchase agreement)—

22 “(I) means an agreement, includ-
23 ing related terms, which provides for
24 the transfer of one or more certifi-
25 cates of deposit, mortgage-related se-

1 securities (as such term is defined in
2 section 3 of the Securities Exchange
3 Act of 1934), mortgage loans, inter-
4 ests in mortgage-related securities or
5 mortgage loans, eligible bankers' ac-
6 ceptances, qualified foreign govern-
7 ment securities (defined for purposes
8 of this clause as a security that is a
9 direct obligation of, or that is fully
10 guaranteed by, the central government
11 of a member of the Organization for
12 Economic Cooperation and Develop-
13 ment, as determined by regulation or
14 order adopted by the appropriate Fed-
15 eral banking authority), or securities
16 that are direct obligations of, or that
17 are fully guaranteed by, the United
18 States or any agency of the United
19 States against the transfer of funds
20 by the transferee of such certificates
21 of deposit, eligible bankers' accept-
22 ances, securities, mortgage loans, or
23 interests with a simultaneous agree-
24 ment by such transferee to transfer to
25 the transferor thereof certificates of

1 deposit, eligible bankers' acceptances,
2 securities, mortgage loans, or interests
3 as described above, at a date certain
4 not later than 1 year after such trans-
5 fers or on demand, against the trans-
6 fer of funds, or any other similar
7 agreement;

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

15 “(III) means any combination of
16 agreements or transactions referred to
17 in subclauses (I) and (IV);

18 “(IV) means any option to enter
19 into any agreement or transaction re-
20 ferred to in subclause (I) or (III);

21 “(V) means a master agreement
22 that provides for an agreement or
23 transaction referred to in subclause
24 (I), (III), or (IV), together with all
25 supplements to any such master

1 agreement, without regard to whether
2 the master agreement provides for an
3 agreement or transaction that is not a
4 repurchase agreement under this
5 clause, except that the master agree-
6 ment shall be considered to be a re-
7 purchase agreement under this sub-
8 clause only with respect to each agree-
9 ment or transaction under the master
10 agreement that is referred to in sub-
11 clause (I), (III), or (IV); and

12 “(VI) means any security agree-
13 ment or arrangement or other credit
14 enhancement related to any agree-
15 ment or transaction referred to in
16 subclause (I), (III), (IV), or (V), in-
17 cluding any guarantee or reimburse-
18 ment obligation in connection with
19 any agreement or transaction referred
20 to in any such subclause.

21 “(vi) SWAP AGREEMENT.—The term
22 ‘swap agreement’ means—

23 “(I) any agreement, including the
24 terms and conditions incorporated by
25 reference in any such agreement,

1 which is an interest rate swap, option,
2 future, or forward agreement, includ-
3 ing a rate floor, rate cap, rate collar,
4 cross-currency rate swap, and basis
5 swap; a spot, same day-tomorrow, to-
6 morrow-next, forward, or other for-
7 eign exchange or precious metals
8 agreement; a currency swap, option,
9 future, or forward agreement; an eq-
10 uity index or equity swap, option, fu-
11 ture, or forward agreement; a debt
12 index or debt swap, option, future, or
13 forward agreement; a total return,
14 credit spread or credit swap, option,
15 future, or forward agreement; a com-
16 modity index or commodity swap, op-
17 tion, future, or forward agreement; or
18 a weather swap, weather derivative, or
19 weather option;

20 “(II) any agreement or trans-
21 action that is similar to any other
22 agreement or transaction referred to
23 in this clause and that is of a type
24 that has been, is presently, or in the
25 future becomes, the subject of recur-

1 supplements to any such master
2 agreement, without regard to whether
3 the master agreement contains an
4 agreement or transaction that is not a
5 swap agreement under this clause, ex-
6 cept that the master agreement shall
7 be considered to be a swap agreement
8 under this clause only with respect to
9 each agreement or transaction under
10 the master agreement that is referred
11 to in subclause (I), (II), (III), or (IV);
12 and

13 “(VI) any security agreement or
14 arrangement or other credit enhance-
15 ment related to any agreements or
16 transactions referred to in subclause
17 (I), (II), (III), (IV), or (V), including
18 any guarantee or reimbursement obli-
19 gation in connection with any agree-
20 ment or transaction referred to in any
21 such subclause.

22 “(vii) TREATMENT OF MASTER
23 AGREEMENT AS ONE AGREEMENT.—Any
24 master agreement for any contract or
25 agreement described in any preceding

1 clause of this subparagraph (or any master
2 agreement for such master agreement or
3 agreements), together with all supplements
4 to such master agreement, shall be treated
5 as a single agreement and a single quali-
6 fied financial contract. If a master agree-
7 ment contains provisions relating to agree-
8 ments or transactions that are not them-
9 selves qualified financial contracts, the
10 master agreement shall be deemed to be a
11 qualified financial contract only with re-
12 spect to those transactions that are them-
13 selves qualified financial contracts.

14 “(viii) TRANSFER.—The term ‘trans-
15 fer’ means every mode, direct or indirect,
16 absolute or conditional, voluntary or invol-
17 untary, of disposing of or parting with
18 property or with an interest in property,
19 including retention of title as a security in-
20 terest and foreclosure of the equity of re-
21 demption of the regulated entity.

22 “(E) CERTAIN PROTECTIONS IN EVENT OF
23 APPOINTMENT OF CONSERVATOR.—Notwith-
24 standing any other provision of this section, any
25 other Federal law, or the law of any State

1 (other than paragraph (10) of this subsection
2 and subsection (b)(9)(B)), no person shall be
3 stayed or prohibited from exercising—

4 “(i) any right such person has to
5 cause the termination, liquidation, or accel-
6 eration of any qualified financial contract
7 with a regulated entity in a conservator-
8 ship based upon a default under such fi-
9 nancial contract which is enforceable under
10 applicable noninsolvency law;

11 “(ii) any right under any security
12 agreement or arrangement or other credit
13 enhancement relating to 1 or more such
14 qualified financial contracts; or

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

20 “(F) CLARIFICATION.—No provision of law
21 shall be construed as limiting the right or
22 power of the Agency, or authorizing any court
23 or agency to limit or delay in any manner, the
24 right or power of the Agency to transfer any
25 qualified financial contract in accordance with

1 paragraphs (9) and (10), or to disaffirm or re-
2 pudiate any such contract in accordance with
3 subsection (d)(1).

4 “(G) WALKAWAY CLAUSES NOT EFFEC-
5 TIVE.—

6 “(i) IN GENERAL.—Notwithstanding
7 the provisions of subparagraphs (A) and
8 (E), and sections 403 and 404 of the Fed-
9 eral Deposit Insurance Corporation Im-
10 provement Act of 1991, no walkaway
11 clause shall be enforceable in a qualified fi-
12 nancial contract of a regulated entity in
13 default.

14 “(ii) WALKAWAY CLAUSE DEFINED.—
15 For purposes of this subparagraph, the
16 term ‘walkaway clause’ means a provision
17 in a qualified financial contract that, after
18 calculation of a value of a party’s position
19 or an amount due to or from 1 of the par-
20 ties in accordance with its terms upon ter-
21 mination, liquidation, or acceleration of the
22 qualified financial contract, either does not
23 create a payment obligation of a party or
24 extinguishes a payment obligation of a
25 party in whole or in part solely because of

1 the status of such party as a nondefaulting
2 party.

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

8 “(A) transfer to 1 person—

9 “(i) all qualified financial contracts
10 between any person (or any affiliate of
11 such person) and the regulated entity in
12 default;

13 “(ii) all claims of such person (or any
14 affiliate of such person) against such regu-
15 lated entity under any such contract (other
16 than any claim which, under the terms of
17 any such contract, is subordinated to the
18 claims of general unsecured creditors of
19 such regulated entity);

20 “(iii) all claims of such regulated enti-
21 ty against such person (or any affiliate of
22 such person) under any such contract; and

23 “(iv) all property securing, or any
24 other credit enhancement for any contract
25 described in clause (i), or any claim de-

1 scribed in clause (ii) or (iii) under any
2 such contract; or

3 “(B) transfer none of the financial con-
4 tracts, claims, or property referred to under
5 subparagraph (A) (with respect to such person
6 and any affiliate of such person).

7 “(10) NOTIFICATION OF TRANSFER.—

8 “(A) IN GENERAL.—The conservator or re-
9 ceiver shall notify any person that is a party to
10 a contract or transfer by 5:00 p.m. (Eastern
11 Standard Time) on the business day following
12 the date of the appointment of the receiver in
13 the case of a receivership, or the business day
14 following such transfer in the case of a con-
15 servatorship, if—

16 “(i) the conservator or receiver for a
17 regulated entity in default makes any
18 transfer of the assets and liabilities of such
19 regulated entity; and

20 “(ii) such transfer includes any quali-
21 fied financial contract.

22 “(B) CERTAIN RIGHTS NOT ENFORCE-
23 ABLE.—

24 “(i) RECEIVERSHIP.—A person who is
25 a party to a qualified financial contract

1 with a regulated entity may not exercise
2 any right that such person has to termi-
3 nate, liquidate, or net such contract under
4 paragraph (8)(A) of this subsection or
5 under section 403 or 404 of the Federal
6 Deposit Insurance Corporation Improve-
7 ment Act of 1991, solely by reason of or
8 incidental to the appointment of a receiver
9 for the regulated entity (or the insolvency
10 or financial condition of the regulated enti-
11 ty for which the receiver has been ap-
12 pointed)—

13 “(I) until 5:00 p.m. (Eastern
14 Standard Time) on the business day
15 following the date of the appointment
16 of the receiver; or

17 “(II) after the person has re-
18 ceived notice that the contract has
19 been transferred pursuant to para-
20 graph (9)(A).

21 “(ii) CONSERVATORSHIP.—A person
22 who is a party to a qualified financial con-
23 tract with a regulated entity may not exer-
24 cise any right that such person has to ter-
25minate, liquidate, or net such contract

1 under paragraph (8)(E) of this subsection
2 or under section 403 or 404 of the Federal
3 Deposit Insurance Corporation Improve-
4 ment Act of 1991, solely by reason of or
5 incidental to the appointment of a conser-
6 vator for the regulated entity (or the insol-
7 vency or financial condition of the regu-
8 lated entity for which the conservator has
9 been appointed).

10 “(iii) NOTICE.—For purposes of this
11 paragraph, the conservator or receiver of a
12 regulated entity shall be deemed to have
13 notified a person who is a party to a quali-
14 fied financial contract with such regulated
15 entity, if the conservator or receiver has
16 taken steps reasonably calculated to pro-
17 vide notice to such person by the time
18 specified in subparagraph (A).

19 “(C) BUSINESS DAY DEFINED.—For pur-
20 poses of this paragraph, the term ‘business day’
21 means any day other than any Saturday, Sun-
22 day, or any day on which either the New York
23 Stock Exchange or the Federal Reserve Bank
24 of New York is closed.

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

8 “(A) disaffirm or repudiate all qualified fi-
9 nancial contracts between—

10 “(i) any person or any affiliate of
11 such person; and

12 “(ii) the regulated entity in default; or

13 “(B) disaffirm or repudiate none of the
14 qualified financial contracts referred to in sub-
15 paragraph (A) (with respect to such person or
16 any affiliate of such person).

17 “(12) CERTAIN SECURITY INTERESTS NOT
18 AVOIDABLE.—No provision of this subsection shall
19 be construed as permitting the avoidance of any le-
20 gally enforceable or perfected security interest in any
21 of the assets of any regulated entity, except where
22 such an interest is taken in contemplation of the in-
23 solveny of the regulated entity, or with the intent
24 to hinder, delay, or defraud the regulated entity or
25 the creditors of such regulated entity.

1 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

2 “(A) IN GENERAL.—Notwithstanding any
3 provision of a contract providing for termi-
4 nation, default, acceleration, or exercise of
5 rights upon, or solely by reason of, insolvency
6 or the appointment of, or the exercise of rights
7 or powers by, a conservator or receiver, the con-
8 servator or receiver may enforce any contract,
9 other than a contract for liability insurance for
10 a director or officer, or a contract or a regu-
11 lated entity bond, entered into by the regulated
12 entity.

13 “(B) CERTAIN RIGHTS NOT AFFECTED.—
14 No provision of this paragraph may be con-
15 strued as impairing or affecting any right of the
16 conservator or receiver to enforce or recover
17 under a liability insurance contract for an offi-
18 cer or director, or regulated entity bond under
19 other applicable law.

20 “(C) CONSENT REQUIREMENT.—

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

1 a party, or to obtain possession of or exer-
2 cise control over any property of the regu-
3 lated entity, or affect any contractual
4 rights of the regulated entity, without the
5 consent of the conservator or receiver, as
6 appropriate, for a period of—

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

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

11 “(ii) EXCEPTIONS.—This subpara-
12 graph shall not—

13 “(I) apply to a contract for liabil-
14 ity insurance for an officer or direc-
15 tor;

16 “(II) apply to the rights of par-
17 ties to certain qualified financial con-
18 tracts under subsection (d)(8); and

19 “(III) be construed as permitting
20 the conservator or receiver to fail to
21 comply with otherwise enforceable
22 provisions of such contracts.

23 “(14) SAVINGS CLAUSE.—The meanings of
24 terms used in this subsection are applicable for pur-
25 poses of this subsection only, and shall not be con-

1 strued or applied so as to challenge or affect the
2 characterization, definition, or treatment of any
3 similar terms under any other statute, regulation, or
4 rule, including the Gramm-Leach-Bliley Act, the
5 Legal Certainty for Bank Products Act of 2000, the
6 securities laws (as that term is defined in section
7 3(a)(47) of the Securities Exchange Act of 1934),
8 and the Commodity Exchange Act.

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

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of Federal law or the law of any State, and
12 regardless of the method which the Agency deter-
13 mines to utilize with respect to a regulated entity in
14 default or in danger of default, including trans-
15 actions authorized under subsection (i), this sub-
16 section shall govern the rights of the creditors of
17 such regulated entity.

18 “(2) MAXIMUM LIABILITY.—The maximum li-
19 ability of the Agency, acting as receiver or in any
20 other capacity, to any person having a claim against
21 the receiver or the regulated entity for which such
22 receiver is appointed shall be not more than the
23 amount that such claimant would have received if
24 the Agency had liquidated the assets and liabilities

1 of the regulated entity without exercising the author-
2 ity of the Agency under subsection (i).

3 “(f) LIMITATION ON COURT ACTION.—Except as
4 provided in this section or at the request of the Director,
5 no court may take any action to restrain or affect the exer-
6 cise of powers or functions of the Agency as a conservator
7 or a receiver.

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

9 “(1) IN GENERAL.—A director or officer of a
10 regulated entity may be held personally liable for
11 monetary damages in any civil action described in
12 paragraph (2) brought by, on behalf of, or at the re-
13 quest or direction of the Agency, and prosecuted
14 wholly or partially for the benefit of the Agency—

15 “(A) acting as conservator or receiver of
16 such regulated entity; or

17 “(B) acting based upon a suit, claim, or
18 cause of action purchased from, assigned by, or
19 otherwise conveyed by such receiver or conser-
20 vator.

21 “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-
22 plies in any civil action for gross negligence, includ-
23 ing any similar conduct or conduct that dem-
24 onstrates a greater disregard of a duty of care than
25 gross negligence, including intentional tortious con-

1 duct, as such terms are defined and determined
2 under applicable State law.

3 “(3) NO LIMITATION.—Nothing in this sub-
4 section shall impair or affect any right of the Agency
5 under other applicable law.

6 “(h) DAMAGES.—In any proceeding related to any
7 claim against a director, officer, employee, agent, attorney,
8 accountant, appraiser, or any other party employed by or
9 providing services to a regulated entity, recoverable dam-
10 ages determined to result from the improvident or other-
11 wise improper use or investment of any assets of the regu-
12 lated entity shall include principal losses and appropriate
13 interest.

14 “(i) LIMITED-LIFE REGULATED ENTITIES.—

15 “(1) ORGANIZATION.—

16 “(A) PURPOSE.—The Agency, as receiver
17 appointed pursuant to subsection (a)—

18 “(i) may, in the case of a Federal
19 Home Loan Bank, organize a limited-life
20 regulated entity with those powers and at-
21 tributes of the Federal Home Loan Bank
22 in default or in danger of default as the
23 Director determines necessary, subject to
24 the provisions of this subsection, and the
25 Director shall grant a temporary charter to

1 that limited-life regulated entity, and that
2 limited-life regulated entity shall operate
3 subject to that charter; and

4 “(ii) shall, in the case of an enter-
5 prise, organize a limited-life regulated enti-
6 ty with respect to that enterprise in ac-
7 cordance with this subsection.

8 “(B) AUTHORITIES.—Upon the creation of
9 a limited-life regulated entity under subpara-
10 graph (A), the limited-life regulated entity
11 may—

12 “(i) assume such liabilities of the reg-
13 ulated entity that is in default or in danger
14 of default as the Agency may, in its discre-
15 tion, determine to be appropriate, except
16 that the liabilities assumed shall not exceed
17 the amount of assets purchased or trans-
18 ferred from the regulated entity to the lim-
19 ited-life regulated entity;

20 “(ii) purchase such assets of the regu-
21 lated entity that is in default, or in danger
22 of default as the Agency may, in its discre-
23 tion, determine to be appropriate; and

24 “(iii) perform any other temporary
25 function which the Agency may, in its dis-

1 cretion, prescribe in accordance with this
2 section.

3 “(2) CHARTER AND ESTABLISHMENT.—

4 “(A) TRANSFER OF CHARTER.—

5 “(i) FANNIE MAE.—If the Agency is
6 appointed as receiver for the Federal Na-
7 tional Mortgage Association, the limited-
8 life regulated entity established under this
9 subsection with respect to such enterprise
10 shall, by operation of law and immediately
11 upon its organization—

12 “(I) succeed to the charter of the
13 Federal National Mortgage Associa-
14 tion, as set forth in the Federal Na-
15 tional Mortgage Association Charter
16 Act; and

17 “(II) thereafter operate in ac-
18 cordance with, and subject to, such
19 charter, this Act, and any other provi-
20 sion of law to which the Federal Na-
21 tional Mortgage Association is subject,
22 except as otherwise provided in this
23 subsection.

24 “(ii) FREDDIE MAC.—If the Agency is
25 appointed as receiver for the Federal

1 Home Loan Mortgage Corporation, the
2 limited-life regulated entity established
3 under this subsection with respect to such
4 enterprise shall, by operation of law and
5 immediately upon its organization—

6 “(I) succeed to the charter of the
7 Federal Home Loan Mortgage Cor-
8 poration, as set forth in the Federal
9 Home Loan Mortgage Corporation
10 Charter Act; and

11 “(II) thereafter operate in ac-
12 cordance with, and subject to, such
13 charter, this Act, and any other provi-
14 sion of law to which the Federal
15 Home Loan Mortgage Corporation is
16 subject, except as otherwise provided
17 in this subsection.

18 “(B) INTERESTS IN AND ASSETS AND OB-
19 LIGATIONS OF REGULATED ENTITY IN DE-
20 FAULT.—Notwithstanding subparagraph (A) or
21 any other provision of law—

22 “(i) a limited-life regulated entity
23 shall assume, acquire, or succeed to the as-
24 sets or liabilities of a regulated entity only
25 to the extent that such assets or liabilities

1 are transferred by the Agency to the lim-
2 ited-life regulated entity in accordance
3 with, and subject to the restrictions set
4 forth in, paragraph (1)(B);

5 “(ii) a limited-life regulated entity
6 shall not assume, acquire, or succeed to
7 any obligation that a regulated entity for
8 which a receiver has been appointed may
9 have to any shareholder of the regulated
10 entity that arises as a result of the status
11 of that person as a shareholder of the reg-
12 ulated entity; and

13 “(iii) no shareholder or creditor of a
14 regulated entity shall have any right or
15 claim against the charter of the regulated
16 entity once the Agency has been appointed
17 receiver for the regulated entity and a lim-
18 ited-life regulated entity succeeds to the
19 charter pursuant to subparagraph (A).

20 “(C) LIMITED-LIFE REGULATED ENTITY
21 TREATED AS BEING IN DEFAULT FOR CERTAIN
22 PURPOSES.—A limited-life regulated entity shall
23 be treated as a regulated entity in default at
24 such times and for such purposes as the Agency
25 may, in its discretion, determine.

1 “(D) MANAGEMENT.—Upon its establish-
2 ment, a limited-life regulated entity shall be
3 under the management of a board of directors
4 consisting of not fewer than 5 nor more than
5 10 members appointed by the Agency.

6 “(E) BYLAWS.—The board of directors of
7 a limited-life regulated entity shall adopt such
8 bylaws as may be approved by the Agency.

9 “(3) CAPITAL STOCK.—

10 “(A) NO AGENCY REQUIREMENT.—
11 The Agency is not required to pay capital
12 stock into a limited-life regulated entity or
13 to issue any capital stock on behalf of a
14 limited-life regulated entity established
15 under this subsection.

16 “(B) AUTHORITY.—If the Director
17 determines that such action is advisable,
18 the Agency may cause capital stock or
19 other securities of a limited-life regulated
20 entity established with respect to an enter-
21 prise to be issued and offered for sale, in
22 such amounts and on such terms and con-
23 ditions as the Director may determine, in
24 the discretion of the Director.

1 “(4) INVESTMENTS.—Funds of a limited-life
2 regulated entity shall be kept on hand in cash, in-
3 vested in obligations of the United States or obliga-
4 tions guaranteed as to principal and interest by the
5 United States, or deposited with the Agency, or any
6 Federal reserve bank.

7 “(5) EXEMPT TAX STATUS.—Notwithstanding
8 any other provision of Federal or State law, a lim-
9 ited-life regulated entity, its franchise, property, and
10 income shall be exempt from all taxation now or
11 hereafter imposed by the United States, by any ter-
12 ritory, dependency, or possession thereof, or by any
13 State, county, municipality, or local taxing authority.

14 “(6) WINDING UP.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graphs (B) and (C), not later than 2 years after
17 the date of its organization, the Agency shall
18 wind up the affairs of a limited-life regulated
19 entity.

20 “(B) EXTENSION.—The Director may, in
21 the discretion of the Director, extend the status
22 of a limited-life regulated entity for 3 additional
23 1-year periods.

24 “(C) TERMINATION OF STATUS AS LIM-
25 ITED-LIFE REGULATED ENTITY.—

1 “(i) IN GENERAL.—Upon the sale by
2 the Agency of 80 percent or more of the
3 capital stock of a limited-life regulated en-
4 tity, as defined in clause (iv), to 1 or more
5 persons (other than the Agency)—

6 “(I) the status of the limited-life
7 regulated entity as such shall termi-
8 nate; and

9 “(II) the entity shall cease to be
10 a limited-life regulated entity for pur-
11 poses of this subsection.

12 “(ii) DIVESTITURE OF REMAINING
13 STOCK, IF ANY.—

14 “(I) IN GENERAL.—Not later
15 than 1 year after the date on which
16 the status of a limited-life regulated
17 entity is terminated pursuant to
18 clause (i), the Agency shall sell to 1 or
19 more persons (other than the Agency)
20 any remaining capital stock of the
21 former limited-life regulated entity.

22 “(II) EXTENSION AUTHORIZED.—The Director may extend the
23 period referred to in subclause (I) for
24 not longer than an additional 2 years,
25

1 if the Director determines that such
2 action would be in the public interest.

3 “(iii) SAVINGS CLAUSE.—Notwith-
4 standing any provision of law, other than
5 clause (ii), the Agency shall not be re-
6 quired to sell the capital stock of an enter-
7 prise or a limited-life regulated entity es-
8 tablished with respect to an enterprise.

9 “(iv) APPLICABILITY.—This subpara-
10 graph applies only with respect to a lim-
11 ited-life regulated entity that is established
12 with respect to an enterprise.

13 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

14 “(A) IN GENERAL.—

15 “(i) TRANSFER OF ASSETS AND LI-
16 ABILITIES.—The Agency, as receiver, may
17 transfer any assets and liabilities of a reg-
18 ulated entity in default, or in danger of de-
19 fault, to the limited-life regulated entity in
20 accordance with and subject to the restric-
21 tions of paragraph (1).

22 “(ii) SUBSEQUENT TRANSFERS.—At
23 any time after the establishment of a lim-
24 ited-life regulated entity, the Agency, as
25 receiver, may transfer any assets and li-

1 abilities of the regulated entity in default,
2 or in danger of default, as the Agency
3 may, in its discretion, determine to be ap-
4 propriate in accordance with and subject to
5 the restrictions of paragraph (1).

6 “(iii) EFFECTIVE WITHOUT AP-
7 PROVAL.—The transfer of any assets or li-
8 abilities of a regulated entity in default or
9 in danger of default to a limited-life regu-
10 lated entity shall be effective without any
11 further approval under Federal or State
12 law, assignment, or consent with respect
13 thereto.

14 “(iv) EQUITABLE TREATMENT OF
15 SIMILARLY SITUATED CREDITORS.—The
16 Agency shall treat all creditors of a regu-
17 lated entity in default or in danger of de-
18 fault that are similarly situated under sub-
19 section (c)(1) in a similar manner in exer-
20 cising the authority of the Agency under
21 this subsection to transfer any assets or li-
22 abilities of the regulated entity to the lim-
23 ited-life regulated entity established with
24 respect to such regulated entity, except
25 that the Agency may take actions (includ-

1 ing making payments) that do not comply
2 with this clause, if—

3 “(I) the Director determines that
4 such actions are necessary to maxi-
5 mize the value of the assets of the
6 regulated entity, to maximize the
7 present value return from the sale or
8 other disposition of the assets of the
9 regulated entity, or to minimize the
10 amount of any loss realized upon the
11 sale or other disposition of the assets
12 of the regulated entity; and

13 “(II) all creditors that are simi-
14 larly situated under subsection (e)(1)
15 receive not less than the amount pro-
16 vided in subsection (e)(2).

17 “(v) LIMITATION ON TRANSFER OF
18 LIABILITIES.—Notwithstanding any other
19 provision of law, the aggregate amount of
20 liabilities of a regulated entity that are
21 transferred to, or assumed by, a limited-
22 life regulated entity may not exceed the ag-
23 gregate amount of assets of the regulated
24 entity that are transferred to, or purchased
25 by, the limited-life regulated entity.

1 Agency determines to be appropriate;
2 and

3 “(ii) the board of directors of a lim-
4 ited-life regulated entity—

5 “(I) shall elect a chairperson who
6 may also serve in the position of chief
7 executive officer, except that such per-
8 son shall not serve either as chair-
9 person or as chief executive officer
10 without the prior approval of the
11 Agency; and

12 “(II) may appoint a chief execu-
13 tive officer who is not also the chair-
14 person, except that such person shall
15 not serve as chief executive officer
16 without the prior approval of the
17 Agency.

18 “(B) STAY OF JUDICIAL ACTION.—Any ju-
19 dicial action to which a limited-life regulated
20 entity becomes a party by virtue of its acquisi-
21 tion of any assets or assumption of any liabil-
22 ities of a regulated entity in default shall be
23 stayed from further proceedings for a period of
24 not longer than 45 days, at the request of the

1 limited-life regulated entity. Such period may
2 be modified upon the consent of all parties.

3 “(10) NO FEDERAL STATUS.—

4 “(A) AGENCY STATUS.—A limited-life reg-
5 ulated entity is not an agency, establishment, or
6 instrumentality of the United States.

7 “(B) EMPLOYEE STATUS.—Representa-
8 tives for purposes of paragraph (1)(B), interim
9 directors, directors, officers, employees, or
10 agents of a limited-life regulated entity are not,
11 solely by virtue of service in any such capacity,
12 officers or employees of the United States. Any
13 employee of the Agency or of any Federal in-
14 strumentality who serves at the request of the
15 Agency as a representative for purposes of
16 paragraph (1)(B), interim director, director, of-
17 ficer, employee, or agent of a limited-life regu-
18 lated entity shall not—

19 “(i) solely by virtue of service in any
20 such capacity lose any existing status as
21 an officer or employee of the United States
22 for purposes of title 5, United States Code,
23 or any other provision of law; or

24 “(ii) receive any salary or benefits for
25 service in any such capacity with respect to

1 a limited-life regulated entity in addition to
2 such salary or benefits as are obtained
3 through employment with the Agency or
4 such Federal instrumentality.

5 “(11) AUTHORITY TO OBTAIN CREDIT.—

6 “(A) IN GENERAL.—A limited-life regu-
7 lated entity may obtain unsecured credit and
8 issue unsecured debt.

9 “(B) INABILITY TO OBTAIN CREDIT.—If a
10 limited-life regulated entity is unable to obtain
11 unsecured credit or issue unsecured debt, the
12 Director may authorize the obtaining of credit
13 or the issuance of debt by the limited-life regu-
14 lated entity—

15 “(i) with priority over any or all of
16 the obligations of the limited-life regulated
17 entity;

18 “(ii) secured by a lien on property of
19 the limited-life regulated entity that is not
20 otherwise subject to a lien; or

21 “(iii) secured by a junior lien on prop-
22 erty of the limited-life regulated entity that
23 is subject to a lien.

24 “(C) LIMITATIONS.—

1 “(i) IN GENERAL.—The Director,
2 after notice and a hearing, may authorize
3 the obtaining of credit or the issuance of
4 debt by a limited-life regulated entity that
5 is secured by a senior or equal lien on
6 property of the limited-life regulated entity
7 that is subject to a lien (other than mort-
8 gages that collateralize the mortgage-
9 backed securities issued or guaranteed by
10 an enterprise) only if—

11 “(I) the limited-life regulated en-
12 tity is unable to otherwise obtain such
13 credit or issue such debt; and

14 “(II) there is adequate protection
15 of the interest of the holder of the lien
16 on the property with respect to which
17 such senior or equal lien is proposed
18 to be granted.

19 “(D) BURDEN OF PROOF.—In any hearing
20 under this subsection, the Director has the bur-
21 den of proof on the issue of adequate protec-
22 tion.

23 “(12) AFFECT ON DEBTS AND LIENS.—The re-
24 versal or modification on appeal of an authorization
25 under this subsection to obtain credit or issue debt,

1 or of a grant under this section of a priority or a
2 lien, does not affect the validity of any debt so
3 issued, or any priority or lien so granted, to an enti-
4 ty that extended such credit in good faith, whether
5 or not such entity knew of the pendency of the ap-
6 peal, unless such authorization and the issuance of
7 such debt, or the granting of such priority or lien,
8 were stayed pending appeal.

9 “(j) OTHER AGENCY EXEMPTIONS.—

10 “(1) APPLICABILITY.—The provisions of this
11 subsection shall apply with respect to the Agency in
12 any case in which the Agency is acting as a conser-
13 vator or a receiver.

14 “(2) TAXATION.—The Agency, including its
15 franchise, its capital, reserves, and surplus, and its
16 income, shall be exempt from all taxation imposed
17 by any State, county, municipality, or local taxing
18 authority, except that any real property of the Agen-
19 cy shall be subject to State, territorial, county, mu-
20 nicipal, or local taxation to the same extent accord-
21 ing to its value as other real property is taxed, ex-
22 cept that, notwithstanding the failure of any person
23 to challenge an assessment under State law of the
24 value of such property, and the tax thereon, shall be

1 determined as of the period for which such tax is im-
2 posed.

3 “(3) PROPERTY PROTECTION.—No property of
4 the Agency shall be subject to levy, attachment, gar-
5 nishment, foreclosure, or sale without the consent of
6 the Agency, nor shall any involuntary lien attach to
7 the property of the Agency.

8 “(4) PENALTIES AND FINES.—The Agency
9 shall not be liable for any amounts in the nature of
10 penalties or fines, including those arising from the
11 failure of any person to pay any real property, per-
12 sonal property, probate, or recording tax or any re-
13 cording or filing fees when due.

14 “(k) PROHIBITION OF CHARTER REVOCATION.—In
15 no case may the receiver appointed pursuant to this sec-
16 tion revoke, annul, or terminate the charter of an enter-
17 prise.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
19 The Federal Housing Enterprises Financial Safety and
20 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
21 ed—

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

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

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

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

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

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

11 (B) in subsection (a)(1), by striking “An
12 enterprise” and inserting “A regulated entity”;
13 and

14 (4) by striking sections 1369, 1369A, and
15 1369B (12 U.S.C. 4619, 4620, and 4621).

16 **Subtitle D—Enforcement Actions**

17 **SEC. 151. CEASE AND DESIST PROCEEDINGS.**

18 Section 1371 of the Federal Housing Enterprises Fi-
19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
20 4631) is amended—

21 (1) by striking subsections (a) and (b) and in-
22 serting the following:

23 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
24 **TICES AND VIOLATIONS.—**

1 “(1) AUTHORITY OF DIRECTOR.—If, in the
2 opinion of the Director, a regulated entity or any en-
3 tity-affiliated party is engaging or has engaged, or
4 the Director has reasonable cause to believe that the
5 regulated entity or any entity-affiliated party is
6 about to engage, in an unsafe or unsound practice
7 in conducting the business of the regulated entity or
8 the Office of Finance, or is violating or has violated,
9 or the Director has reasonable cause to believe is
10 about to violate, a law, rule, regulation, or order, or
11 any condition imposed in writing by the Director in
12 connection with the granting of any application or
13 other request by the regulated entity or the Office
14 of Finance or any written agreement entered into
15 with the Director, the Director may issue and serve
16 upon the regulated entity or entity-affiliated party a
17 notice of charges in respect thereof.

18 “(2) LIMITATION.—The Director may not, pur-
19 suant to this section, enforce compliance with any
20 housing goal established under subpart B of part 2
21 of subtitle A of this title, with section 1336 or 1337
22 of this title, with subsection (m) or (n) of section
23 309 of the Federal National Mortgage Association
24 Charter Act (12 U.S.C. 1723a(m), (n)), with sub-
25 section (e) or (f) of section 307 of the Federal Home

1 Loan Mortgage Corporation Act (12 U.S.C. 1456(e),
2 (f)), or with paragraph (5) of section 10(j) of the
3 Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

4 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
5 regulated entity receives, in its most recent report of ex-
6 amination, a less-than-satisfactory rating for asset quality,
7 management, earnings, or liquidity, the Director may (if
8 the deficiency is not corrected) deem the regulated entity
9 to be engaging in an unsafe or unsound practice for pur-
10 poses of subsection (a).”;

11 (2) in subsection (c)—

12 (A) in paragraph (1), by inserting before
13 the period at the end the following: “, unless
14 the party served with a notice of charges shall
15 appear at the hearing personally or by a duly
16 authorized representative, the party shall be
17 deemed to have consented to the issuance of the
18 cease and desist order”; and

19 (B) in paragraph (2)—

20 (i) by striking “or director” and in-
21 serting “director, or entity-affiliated
22 party”; and

23 (ii) by inserting “or entity-affiliated
24 party” before “consents”;

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

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

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

7 (C) by striking “conduct” each place that
8 term appears and inserting “practice”;

9 (4) in subsection (d)—

10 (A) in the matter preceding paragraph
11 (1)—

12 (i) by striking “or director” and in-
13 serting “director, or entity-affiliated
14 party”; and

15 (ii) by inserting “to require a regu-
16 lated entity or entity-affiliated party” after
17 “includes the authority”;

18 (B) in paragraph (1)—

19 (i) by striking “to require an executive
20 officer or a director to”; and

21 (ii) by striking “loss” and all that fol-
22 lows through “person” and inserting “loss,
23 if”;

1 (iii) in subparagraph (A), by inserting
2 “such entity or party or finance facility”
3 before “was”; and

4 (iv) by striking subparagraph (B) and
5 inserting the following:

6 “(B) the violation or practice involved a
7 reckless disregard for the law or any applicable
8 regulations or prior order of the Director;” and

9 (C) in paragraph (4), by inserting “loan
10 or” before “asset”;

11 (5) in subsection (e), by inserting “or entity-af-
12 filiated party”—

13 (A) before “or any executive”; and

14 (B) before the period at the end; and

15 (6) in subsection (f)—

16 (A) by striking “enterprise” and inserting
17 “regulated entity, finance facility,”; and

18 (B) by striking “or director” and inserting
19 “director, or entity-affiliated party”.

20 **SEC. 152. TEMPORARY CEASE AND DESIST PROCEEDINGS.**

21 Section 1372 of the Federal Housing Enterprises Fi-
22 nancial Safety and Soundness Act of 1992 (12 U.S.C.
23 4632) is amended—

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

1 “(a) GROUNDS FOR ISSUANCE.—

2 “(1) IN GENERAL.—If the Director determines
3 that the actions specified in the notice of charges
4 served upon a regulated entity or any entity-affili-
5 ated party pursuant to section 1371(a), or the con-
6 tinuation thereof, is likely to cause insolvency or sig-
7 nificant dissipation of assets or earnings of that en-
8 tity, or is likely to weaken the condition of that enti-
9 ty prior to the completion of the proceedings con-
10 ducted pursuant to sections 1371 and 1373, the Di-
11 rector may—

12 “(A) issue a temporary order requiring
13 that regulated entity or entity-affiliated party to
14 cease and desist from any such violation or
15 practice; and

16 “(B) require that regulated entity or enti-
17 ty-affiliated party to take affirmative action to
18 prevent or remedy such insolvency, dissipation,
19 condition, or prejudice pending completion of
20 such proceedings.

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

24 (2) in subsection (b)—

1 (A) by striking “or director” and inserting
2 “director, or entity-affiliated party”; and

3 (B) by striking “enterprise” each place
4 that term appears and inserting “regulated en-
5 tity”;

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

9 (4) in subsection (d)—

10 (A) by striking “or director” each place
11 that term appears and inserting “director, or
12 entity-affiliated party”; and

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

15 (5) in subsection (e)—

16 (A) by striking “request the Attorney Gen-
17 eral of the United States to”; and

18 (B) by striking “or may, under the direc-
19 tion and control of the Attorney General, bring
20 such action”.

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

22 (a) IN GENERAL.—Part 1 of subtitle C of the Federal
23 Housing Enterprises Financial Safety and Soundness Act
24 of 1992 (12 U.S.C. 4631 et seq.) is amended—

1 (1) by redesignating sections 1377 through
2 1379B (12 U.S.C. 4637–4641) as sections 1379
3 through 1379D, respectively; and

4 (2) by inserting after section 1376 (12 U.S.C.
5 4636) the following:

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

7 “(a) AUTHORITY TO ISSUE ORDER.—

8 “(1) IN GENERAL.—The Director may serve
9 upon a party described in paragraph (2), or any offi-
10 cer, director, or management of the Office of Fi-
11 nance a written notice of the intention of the Direc-
12 tor to suspend or remove such party from office, or
13 prohibit any further participation by such party, in
14 any manner, in the conduct of the affairs of the reg-
15 ulated entity.

16 “(2) APPLICABILITY.—A party described in this
17 paragraph is an entity-affiliated party or any officer,
18 director, or management of the Office of Finance, if
19 the Director determines that—

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

22 “(i) violated—

23 “(I) any law or regulation;

24 “(II) any cease and desist order

25 which has become final;

1 “(III) any condition imposed in
2 writing by the Director in connection
3 with the grant of any application or
4 other request by such regulated enti-
5 ty; or

6 “(IV) any written agreement be-
7 tween such regulated entity and the
8 Director;

9 “(ii) engaged or participated in any
10 unsafe or unsound practice in connection
11 with any regulated entity or business insti-
12 tution; or

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

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

18 “(i) such regulated entity or business
19 institution has suffered or will probably
20 suffer financial loss or other damage; or

21 “(ii) such party has received financial
22 gain or other benefit; and

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

1 “(i) involves personal dishonesty on
2 the part of such party; or

3 “(ii) demonstrates willful or con-
4 tinuing disregard by such party for the
5 safety or soundness of such regulated enti-
6 ty or business institution.

7 “(b) SUSPENSION ORDER.—

8 “(1) SUSPENSION OR PROHIBITION AUTHOR-
9 ITY.—If the Director serves written notice under
10 subsection (a) upon a party subject to that sub-
11 section (a), the Director may, by order, suspend or
12 remove such party from office, or prohibit such
13 party from further participation in any manner in
14 the conduct of the affairs of the regulated entity, if
15 the Director—

16 “(A) determines that such action is nec-
17 essary for the protection of the regulated entity;
18 and

19 “(B) serves such party with written notice
20 of the order.

21 “(2) EFFECTIVE PERIOD.—Any order issued
22 under this subsection—

23 “(A) shall become effective upon service;
24 and

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

4 “(i) the date on which the Director
5 dismisses the charges contained in the no-
6 tice served under subsection (a) with re-
7 spect to such party; or

8 “(ii) the effective date of an order
9 issued under subsection (b).

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

15 “(c) NOTICE, HEARING, AND ORDER.—

16 “(1) NOTICE.—A notice under subsection (a) of
17 the intention of the Director to issue an order under
18 this section shall contain a statement of the facts
19 constituting grounds for such action, and shall fix a
20 time and place at which a hearing will be held on
21 such action.

22 “(2) TIMING OF HEARING.—A hearing shall be
23 fixed for a date not earlier than 30 days, nor later
24 than 60 days, after the date of service of notice

1 under subsection (a), unless an earlier or a later
2 date is set by the Director at the request of—

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

5 “(B) the Attorney General of the United
6 States.

7 “(3) CONSENT.—Unless the party that is the
8 subject of a notice delivered under subsection (a) ap-
9 pears at the hearing in person or by a duly author-
10 ized representative, such party shall be deemed to
11 have consented to the issuance of an order under
12 this section.

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

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

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

22 “(5) EFFECTIVENESS OF ORDER.—Any order
23 issued under paragraph (4) shall become effective at
24 the expiration of 30 days after the date of service
25 upon the relevant regulated entity and party (except

1 in the case of an order issued upon consent under
2 paragraph (3), which shall become effective at the
3 time specified therein). Such order shall remain ef-
4 fective and enforceable except to such extent as it is
5 stayed, modified, terminated, or set aside by action
6 of the Director or a reviewing court.

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

10 “(1) participate in any manner in the conduct
11 of the affairs of any regulated entity or the Office
12 of Finance;

13 “(2) solicit, procure, transfer, attempt to trans-
14 fer, vote, or attempt to vote any proxy, consent, or
15 authorization with respect to any voting rights in
16 any regulated entity;

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

19 “(4) vote for a director, or serve or act as an
20 entity-affiliated party of a regulated entity or as an
21 officer or director of the Office of Finance.

22 “(e) INDUSTRY-WIDE PROHIBITION.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), any person who, pursuant to an order
25 issued under this section, has been removed or sus-

1 pended from office in a regulated entity or the Of-
2 fice of Finance, or prohibited from participating in
3 the conduct of the affairs of a regulated entity or
4 the Office of Finance, may not, while such order is
5 in effect, continue or commence to hold any office in,
6 or participate in any manner in the conduct of the
7 affairs of, any regulated entity or the Office of Fi-
8 nance.

9 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
10 TEN CONSENT.—If, on or after the date on which an
11 order is issued under this section which removes or
12 suspends from office any party, or prohibits such
13 party from participating in the conduct of the affairs
14 of a regulated entity or the Office of Finance, such
15 party receives the written consent of the Director,
16 the order shall, to the extent of such consent, cease
17 to apply to such party with respect to the regulated
18 entity or such Office of Finance described in the
19 written consent. Any such consent shall be publicly
20 disclosed.

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

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

5 “(g) STAY OF SUSPENSION AND PROHIBITION OF
6 ENTITY-AFFILIATED PARTY.—Not later than 10 days
7 after the date on which any entity-affiliated party has been
8 suspended from office or prohibited from participation in
9 the conduct of the affairs of a regulated entity under this
10 section, such party may apply to the United States Dis-
11 trict Court for the District of Columbia, or the United
12 States district court for the judicial district in which the
13 headquarters of the regulated entity is located, for a stay
14 of such suspension or prohibition pending the completion
15 of the administrative proceedings pursuant to subsection
16 (c). The court shall have jurisdiction to stay such suspen-
17 sion or prohibition.

18 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-
19 ATED PARTY CHARGED WITH FELONY.—

20 “(1) SUSPENSION OR PROHIBITION.—

21 “(A) IN GENERAL.—Whenever any entity-
22 affiliated party is charged in any information,
23 indictment, or complaint, with the commission
24 of or participation in a crime involving dishon-
25 esty or breach of trust which is punishable by

1 imprisonment for a term exceeding 1 year
2 under Federal or State law, the Director may,
3 if continued service or participation by such
4 party may pose a threat to the regulated entity
5 or impair public confidence in the regulated en-
6 tity, by written notice served upon such party,
7 suspend such party from office or prohibit such
8 party from further participation in any manner
9 in the conduct of the affairs of any regulated
10 entity.

11 “(B) PROVISIONS APPLICABLE TO NO-
12 TICE.—

13 “(i) COPY.—A copy of any notice
14 under subparagraph (A) shall be served
15 upon the relevant regulated entity.

16 “(ii) EFFECTIVE PERIOD.—A suspen-
17 sion or prohibition under subparagraph (A)
18 shall remain in effect until the informa-
19 tion, indictment, or complaint referred to
20 in subparagraph (A) is finally disposed of,
21 or until terminated by the Director.

22 “(2) REMOVAL OR PROHIBITION.—

23 “(A) IN GENERAL.—If a judgment of con-
24 viction or an agreement to enter a pretrial di-
25 version or other similar program is entered

1 against an entity-affiliated party in connection
2 with a crime described in paragraph (1)(A), at
3 such time as such judgment is not subject to
4 further appellate review, the Director may, if
5 continued service or participation by such party
6 may pose a threat to the regulated entity or im-
7 pair public confidence in the regulated entity,
8 issue and serve upon such party an order re-
9 moving such party from office or prohibiting
10 such party from further participation in any
11 manner in the conduct of the affairs of the reg-
12 ulated entity without the prior written consent
13 of the Director.

14 “(B) PROVISIONS APPLICABLE TO
15 ORDER.—

16 “(i) COPY.—A copy of any order
17 under subparagraph (A) shall be served
18 upon the relevant regulated entity, at
19 which time the entity-affiliated party who
20 is subject to the order (if a director or an
21 officer) shall cease to be a director or offi-
22 cer of such regulated entity.

23 “(ii) EFFECT OF ACQUITTAL.—A find-
24 ing of not guilty or other disposition of the
25 charge shall not preclude the Director from

1 instituting proceedings after such finding
2 or disposition to remove a party from of-
3 fice or to prohibit further participation in
4 the affairs of a regulated entity pursuant
5 to subsection (a) or (b).

6 “(iii) EFFECTIVE PERIOD.—Unless
7 terminated by the Director, any notice of
8 suspension or order of removal issued
9 under this subsection shall remain effective
10 and outstanding until the completion of
11 any hearing or appeal authorized under
12 paragraph (4).

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

15 “(A) IN GENERAL.—If at any time, be-
16 cause of the suspension of 1 or more directors
17 pursuant to this section, there shall be on the
18 board of directors of a regulated entity less
19 than a quorum of directors not so suspended,
20 all powers and functions vested in or exercisable
21 by such board shall vest in and be exercisable
22 by the director or directors on the board not so
23 suspended, until such time as there shall be a
24 quorum of the board of directors.

1 “(B) APPOINTMENT OF TEMPORARY DI-
2 RECTORS.—If all of the directors of a regulated
3 entity are suspended pursuant to this section,
4 the Director shall appoint persons to serve tem-
5 porarily as directors pending the termination of
6 such suspensions, or until such time as those
7 who have been suspended cease to be directors
8 of the regulated entity and their respective suc-
9 cessors take office.

10 “(4) HEARING REGARDING CONTINUED PAR-
11 TICIPATION.—

12 “(A) IN GENERAL.—Not later than 30
13 days after the date of service of any notice of
14 suspension or order of removal issued pursuant
15 to paragraph (1) or (2), the entity-affiliated
16 party may request in writing an opportunity to
17 appear before the Director to show that the
18 continued service or participation in the con-
19 duct of the affairs of the regulated entity by
20 such party does not, or is not likely to, pose a
21 threat to the interests of the regulated entity,
22 or threaten to impair public confidence in the
23 regulated entity.

24 “(B) TIMING AND FORM OF HEARING.—
25 Upon receipt of a request for a hearing under

1 subparagraph (A), the Director shall fix a time
2 (not later than 30 days after the date of receipt
3 of such request, unless extended at the request
4 of such party) and place at which the entity-af-
5 filiated party may appear, personally or through
6 counsel, before the Director or 1 or more des-
7 ignated employees of the Director to submit
8 written materials (or, at the discretion of the
9 Director, oral testimony) and oral argument.

10 “(C) DETERMINATION.—Not later than 60
11 days after the date of a hearing under subpara-
12 graph (B), the Director shall notify the entity-
13 affiliated party whether the suspension or pro-
14 hibition from participation in any manner in
15 the conduct of the affairs of the regulated enti-
16 ty will be continued, terminated, or otherwise
17 modified, or whether the order removing such
18 party from office or prohibiting such party from
19 further participation in any manner in the con-
20 duct of the affairs of the regulated entity will
21 be rescinded or otherwise modified. Such notifi-
22 cation shall contain a statement of the basis for
23 any adverse decision of the Director.

1 “(5) RULES.—The Director is authorized to
2 prescribe such rules as may be necessary to carry
3 out this subsection.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) SAFETY AND SOUNDNESS ACT.—Subtitle C
6 of the Federal Housing Enterprises Financial Safety
7 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.)
8 is amended—

9 (A) in section 1317(f), by striking “section
10 1379B” and inserting “section 1379D”;

11 (B) in section 1373(a)—

12 (i) in paragraph (1), by striking “or
13 1376(c)” and inserting “, 1376(c), or
14 1377”;

15 (ii) in paragraph (2), by inserting “or
16 1377” after “1371”; and

17 (iii) in paragraph (4), by inserting “or
18 removal or prohibition” after “cease and
19 desist”; and

20 (C) in section 1374(a)—

21 (i) by striking “or 1376” and insert-
22 ing “1313B , 1376, or 1377”; and

23 (ii) by striking “such section” and in-
24 serting “this title”.

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

9 (3) FREDDIE MAC CHARTER ACT.—Section
10 303(a)(2)(A) of the Federal Home Loan Mortgage
11 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is
12 amended, in the second sentence, by striking “The”
13 and inserting “Except to the extent action under
14 section 1377 of the Federal Housing Enterprises Fi-
15 nancial Safety and Soundness Act of 1992 tempo-
16 rarily results in a lesser number, the”.

17 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

18 Section 1375 of the Federal Housing Enterprises Fi-
19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
20 4635) is amended—

21 (1) by striking subsection (a) and inserting the
22 following new subsection:

23 “(a) ENFORCEMENT.—The Director may, in the dis-
24 cretion of the Director, apply to the United States District
25 Court for the District of Columbia, or the United States

1 district court within the jurisdiction of which the head-
2 quarters of the regulated entity is located, for the enforce-
3 ment of any effective and outstanding notice or order
4 issued under this subtitle or subtitle B, or request that
5 the Attorney General of the United States bring such an
6 action. Such court shall have jurisdiction and power to
7 order and require compliance with such notice or order.”;
8 and

9 (2) in subsection (b), by striking “or 1376” and
10 inserting “1313B, 1376, or 1377”.

11 **SEC. 155. CIVIL MONEY PENALTIES.**

12 Section 1376 of the Federal Housing Enterprises Fi-
13 nancial Safety and Soundness Act of 1992 (12 U.S.C.
14 4636) is amended—

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

17 “(a) IN GENERAL.—The Director may impose a civil
18 money penalty in accordance with this section on any reg-
19 ulated entity, or any executive offices of a regulated entity
20 or any entity-affiliated party.”;

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

23 “(b) AMOUNT OF PENALTY.—

24 “(1) FIRST TIER.—A regulated entity or entity-
25 affiliated party shall forfeit and pay a civil penalty

1 of not more than \$10,000 for each day during which
2 a violation continues, if such regulated entity or
3 party—

4 “(A) violates any provision of this title, the
5 authorizing statutes, or any order, condition,
6 rule, or regulation under this title or any au-
7 thorizing statute;

8 “(B) violates any final or temporary order
9 or notice issued pursuant to this title;

10 “(C) violates any condition imposed in
11 writing by the Director in connection with the
12 grant of any application or other request by
13 such regulated entity;

14 “(D) violates any written agreement be-
15 tween the regulated entity and the Director; or

16 “(E) engages in any conduct that the Di-
17 rector determines to be an unsafe or unsound
18 practice.

19 “(2) SECOND TIER.—Notwithstanding para-
20 graph (1), a regulated entity or entity-affiliated
21 party shall forfeit and pay a civil penalty of not
22 more than \$50,000 for each day during which a vio-
23 lation, practice, or breach continues, if—

24 “(A) the regulated entity or entity-affili-
25 ated party, respectively—

1 “(i) commits any violation described
2 in any subparagraph of paragraph (1);

3 “(ii) recklessly engages in an unsafe
4 or unsound practice in conducting the af-
5 fairs of the regulated entity; or

6 “(iii) breaches any fiduciary duty; and
7 “(B) the violation, practice, or breach—

8 “(i) is part of a pattern of mis-
9 conduct;

10 “(ii) causes or is likely to cause more
11 than a minimal loss to the regulated entity;
12 or

13 “(iii) results in pecuniary gain or
14 other benefit to such party.

15 “(3) THIRD TIER.—Notwithstanding para-
16 graphs (1) and (2), any regulated entity or entity-
17 affiliated party shall forfeit and pay a civil penalty
18 in an amount not to exceed the applicable maximum
19 amount determined under paragraph (4) for each
20 day during which such violation, practice, or breach
21 continues, if such regulated entity or entity-affiliated
22 party—

23 “(A) knowingly—

24 “(i) commits any violation described
25 in any subparagraph of paragraph (1);

1 “(ii) engages in any unsafe or un-
2 sound practice in conducting the affairs of
3 the regulated entity; or

4 “(iii) breaches any fiduciary duty; and

5 “(B) knowingly or recklessly causes a sub-
6 stantial loss to the regulated entity or a sub-
7 stantial pecuniary gain or other benefit to such
8 party by reason of such violation, practice, or
9 breach.

10 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
11 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—
12 The maximum daily amount of any civil penalty
13 which may be assessed pursuant to paragraph (3)
14 for any violation, practice, or breach described in
15 paragraph (3) is—

16 “(A) in the case of any entity-affiliated
17 party, an amount not to exceed \$2,000,000;
18 and

19 “(B) in the case of any regulated entity,
20 \$2,000,000.”;

21 (3) in subsection (c)—

22 (A) by striking “enterprise” each place
23 that term appears and inserting “regulated en-
24 tity”;

1 (B) by inserting “or entity-affiliated
2 party” before “in writing”; and

3 (C) by inserting “or entity-affiliated party”
4 before “has been given”;

5 (4) in subsection (d)—

6 (A) by striking “or director” each place
7 such term appears and inserting “director, or
8 entity-affiliated party”;

9 (B) by striking “an enterprise” and insert-
10 ing “a regulated entity”;

11 (C) by striking “the enterprise” and in-
12 serting “the regulated entity”;

13 (D) by striking “request the Attorney Gen-
14 eral of the United States to”;

15 (E) by inserting “, or the United States
16 district court within the jurisdiction of which
17 the headquarters of the regulated entity is lo-
18 cated,” after “District of Columbia”;

19 (F) by striking “, or may, under the direc-
20 tion and control of the Attorney General of the
21 United States, bring such an action”; and

22 (G) by striking “and section 1374”; and

23 (5) in subsection (g), by striking “An enter-
24 prise” and inserting “A regulated entity”.

1 **SEC. 156. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Subtitle C of the Federal Housing
3 Enterprises Financial Safety and Soundness Act of 1992
4 (12 U.S.C. 4631 et seq.), as amended by this Act, is
5 amended by adding at the end the following:

6 **“SEC. 1378. CRIMINAL PENALTY.**

7 “Whoever, being subject to an order in effect under
8 section 1377, without the prior written approval of the Di-
9 rector, knowingly participates, directly or indirectly, in any
10 manner (including by engaging in an activity specifically
11 prohibited in such an order) in the conduct of the affairs
12 of any regulated entity shall, notwithstanding section
13 3571 of title 18, be fined not more than \$1,000,000, im-
14 prisoned for not more than 5 years, or both.”.

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

19 (1) in section 1379 (as so designated by this
20 Act)—

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

23 (B) by striking “the enterprise” and in-
24 serting “the regulated entity”;

1 (2) in section 1379A (as so designated by this
2 Act), by striking “an enterprise” and inserting “a
3 regulated entity”;

4 (3) in section 1379B(c) (as so designated by
5 this Act), by striking “enterprise” and inserting
6 “regulated entity”; and

7 (4) in section 1379D (as so designated by this
8 Act), by striking “enterprise” and inserting “regu-
9 lated entity”.

10 **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

11 Section 1379 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4637), as so designated by this Act, is amended—

14 (1) by striking “2-year” and inserting “6-year”;

15 (2) by striking “a director or executive officer
16 of an enterprise” and inserting “an entity-affiliated
17 party”;

18 (3) by striking “director or officer” each place
19 that term appears and inserting “entity-affiliated
20 party”; and

21 (4) by striking “enterprise.” and inserting “reg-
22 ulated entity.”.

1 **SEC. 158. SUBPOENA AUTHORITY.**

2 (a) IN GENERAL.—Section 1379B of the Federal
3 Housing Enterprises Financial Safety and Soundness Act
4 of 1992 (12 U.S.C. 4641) is amended—

5 (1) in subsection (a)—

6 (A) in the matter preceding paragraph

7 (1)—

8 (i) by striking “administrative”;

9 (ii) by inserting “, examination, or in-
10 vestigation” after “proceeding”;

11 (iii) by striking “subtitle” and insert-
12 ing “title”; and

13 (iv) by inserting “or any designated
14 representative thereof, including any per-
15 son designated to conduct any hearing
16 under this subtitle” after “Director”; and

17 (B) in paragraph (4), by striking “issued
18 by the Director”;

19 (2) in subsection (b), by inserting “or in any
20 territory or other place subject to the jurisdiction of
21 the United States” after “State”;

22 (3) by striking subsection (c) and inserting the
23 following:

24 “(c) ENFORCEMENT.—

25 “(1) IN GENERAL.—The Director, or any party
26 to proceedings under this subtitle, may apply to the

1 United States District Court for the District of Co-
2 lumbia, or the United States district court for the
3 judicial district of the United States in any territory
4 in which such proceeding is being conducted, or
5 where the witness resides or carries on business, for
6 enforcement of any subpoena or subpoena duces
7 tecum issued pursuant to this section.

8 “(2) POWER OF COURT.—The courts described
9 under paragraph (1) shall have the jurisdiction and
10 power to order and require compliance with any sub-
11 poena issued under paragraph (1).”;

12 (4) in subsection (d), by inserting “enterprise-
13 affiliated party” before “may allow”; and

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

15 “(e) PENALTIES.—A person shall be guilty of a mis-
16 demeanor, and upon conviction, shall be subject to a fine
17 of not more than \$1,000 or to imprisonment for a term
18 of not more than 1 year, or both, if that person willfully
19 fails or refuses, in disobedience of a subpoena issued under
20 subsection (e), to—

21 “(1) attend court;

22 “(2) testify in court;

23 “(3) answer any lawful inquiry; or

1 “(4) produce books, papers, correspondence,
2 contracts, agreements, or such other records as re-
3 quested in the subpoena.”.

4 **Subtitle E—General Provisions**

5 **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

6 (a) AMENDMENTS TO 1992 ACT.—The Federal
7 Housing Enterprises Financial Safety and Soundness Act
8 of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,
9 is amended—

10 (1) in section 1315 (12 U.S.C. 4515)—

11 (A) in subsection (a)—

12 (i) by striking “(a) OFFICE PER-
13 SONNEL.—The” and inserting “(a) IN
14 GENERAL.—Subject to title III of the Fed-
15 eral Housing Finance Regulatory Reform
16 Act of 2008, the”; and

17 (ii) by striking “the Office” each place
18 that term appears and inserting “the
19 Agency”;

20 (B) in subsection (c), by striking “the Of-
21 fice” and inserting “the Agency”;

22 (C) in subsection (e), by striking “the Of-
23 fice” and inserting “the Agency”;

24 (D) by striking subsection (d) and redesign-
25 nating subsection (e) as subsection (d); and

1 (E) by striking subsection (f);

2 (2) in section 1319A (12 U.S.C. 4520)—

3 (A) by striking “(a) IN GENERAL.—”; and

4 (B) by striking subsection (b);

5 (3) in section 1364(e) (12 U.S.C. 4614(e)), by
6 striking the last sentence;

7 (4) by striking section 1383 (12 U.S.C. 1451
8 note);

9 (5) in each of sections 1319D, 1319E, and
10 1319F (12 U.S.C. 4523, 4524, 4525) by striking
11 “the Office” each place that term appears and in-
12 serting “the Agency”; and

13 (6) in each of sections 1319B and 1369(a)(3)
14 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-
15 mittee on Banking, Finance and Urban Affairs”
16 each place such term appears and inserting “Com-
17 mittee on Financial Services”.

18 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
19 The Federal National Mortgage Association Charter Act
20 (12 U.S.C. 1716 et seq.) is amended—

21 (1) in each of sections 303(c)(2) (12 U.S.C.
22 1718(e)(2)), 309(d)(3)(B) (12 U.S.C.
23 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.
24 1723a(k)(1)), by striking “Director of the Office of
25 Federal Housing Enterprise Oversight of the De-

1 partment of Housing and Urban Development” each
2 place that term appears, and inserting “Director of
3 the Federal Housing Finance Agency”; and

4 (2) in section 309—

5 (A) in subsection (m) (12 U.S.C.
6 1723a(m))—

7 (i) in paragraph (1), by striking “to
8 the Secretary, in a form determined by the
9 Secretary” and inserting “to the Director
10 of the Federal Housing Finance Agency, in
11 a form determined by the Director”; and

12 (ii) in paragraph (2), by striking “to
13 the Secretary, in a form determined by the
14 Secretary” and inserting “to the Director
15 of the Federal Housing Finance Agency, in
16 a form determined by the Director”;

17 (B) in subsection (n) (12 U.S.C.
18 1723a(n))—

19 (i) in paragraph (1), by striking “and
20 the Secretary” and inserting “and the Di-
21 rector of the Federal Housing Finance
22 Agency”; and

23 (ii) in paragraph (2), by striking
24 “Secretary” each place that term appears

1 (C) in subsection (j), by striking “of sub-
2 stantially” and inserting “or substantially”; and
3 (3) in section 307 (12 U.S.C. 1456)—

4 (A) in subsection (e)—

5 (i) in paragraph (1), by striking “to
6 the Secretary, in a form determined by the
7 Secretary” and inserting “to the Director
8 of the Federal Housing Finance Agency, in
9 a form determined by the Director”; and

10 (ii) in paragraph (2), by striking “to
11 the Secretary, in a form determined by the
12 Secretary” and inserting “to the Director
13 of the Federal Housing Finance Agency, in
14 a form determined by the Director”; and

15 (B) in subsection (f)—

16 (i) in paragraph (1), by striking “and
17 the Secretary” and inserting “and the Di-
18 rector of the Federal Housing Finance
19 Agency”;

20 (ii) in paragraph (2), by striking “the
21 Secretary” each place that term appears
22 and inserting “the Director of the Federal
23 Housing Finance Agency”; and

1 (iii) in paragraph (3)(B), by striking
2 “Secretary” and inserting “Director of the
3 Federal Housing Finance Agency”.

4 (d) AMENDMENT TO TITLE 18, UNITED STATES
5 CODE.—Section 1905 of title 18, United States Code, is
6 amended by striking “Office of Federal Housing Enter-
7 prise Oversight” and inserting “Federal Housing Finance
8 Agency”.

9 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION
10 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-
11 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))
12 is amended by striking “Director of the Office of Federal
13 Housing Enterprise Oversight of the Department of Hous-
14 ing and Urban Development” and inserting “Director of
15 the Federal Housing Finance Agency”.

16 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND
17 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-
18 ment of Housing and Urban Development Act (42 U.S.C.
19 3534) is amended by striking subsection (d).

20 (g) AMENDMENT TO TITLE 5, UNITED STATES
21 CODE.—Section 5313 of title 5, United States Code, is
22 amended by striking the item relating to the Director of
23 the Office of Federal Housing Enterprise Oversight, De-
24 partment of Housing and Urban Development and insert-
25 ing the following new item:

1 (B) in the second sentence, by striking
2 “appointed by the President”;

3 (C) in the third sentence—

4 (i) by striking “appointed or”; and

5 (ii) by striking “, except that any
6 such appointed member may be removed
7 from office by the President for good
8 cause”;

9 (D) in the fourth sentence, by striking
10 “elective”; and

11 (E) by striking the fifth sentence.

12 (2) TRANSITIONAL PROVISION.—The amend-
13 ments made by paragraph (1) shall not apply to any
14 appointed position of the board of directors of the
15 Federal National Mortgage Association until the ex-
16 piration of the annual term for such position during
17 which the effective date under section 163 occurs.

18 (b) FREDDIE MAC.—

19 (1) IN GENERAL.—Section 303(a)(2) of the
20 Federal Home Loan Mortgage Corporation Act (12
21 U.S.C. 1452(a)(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) in the first sentence, by striking
24 “13 persons, 5 of whom shall be appointed
25 annually by the President of the United

1 States and the remainder of whom” and
2 inserting “13 persons, or such other num-
3 ber as the Director determines appropriate,
4 who”; and

5 (ii) in the second sentence, by striking
6 “appointed by the President of the United
7 States”;

8 (B) in subparagraph (B)—

9 (i) by striking “such or”; and

10 (ii) by striking “, except that any ap-
11 pointed member may be removed from of-
12 fice by the President for good cause”; and

13 (C) in subparagraph (C)—

14 (i) by striking the first sentence; and

15 (ii) by striking “elective”.

16 (2) TRANSITIONAL PROVISION.—The amend-
17 ments made by paragraph (1) shall not apply to any
18 appointed position of the board of directors of the
19 Federal Home Loan Mortgage Corporation until the
20 expiration of the annual term for such position dur-
21 ing which the effective date under section 163 oc-
22 curs.

23 **SEC. 163. EFFECTIVE DATE.**

24 Except as otherwise specifically provided in this title,
25 this title and the amendments made by this title shall take

1 effect on, and shall apply beginning on, the date of enact-
2 ment of this Act.

3 **TITLE II—FEDERAL HOME LOAN**
4 **BANKS**

5 **SEC. 201. RECOGNITION OF DISTINCTIONS BETWEEN THE**
6 **ENTERPRISES AND THE FEDERAL HOME**
7 **LOAN BANKS.**

8 Section 1313 of the Federal Housing Enterprises Fi-
9 nancial Safety and Soundness Act of 1992 (12 U.S.C.
10 4513) is amended by adding at the end the following:

11 “(f) RECOGNITION OF DISTINCTIONS BETWEEN THE
12 ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—
13 Prior to taking any formal or informal supervisory, regu-
14 latory, or enforcement action relating to the Federal Home
15 Loan Banks, including the issuance of examination guid-
16 ance, the Director shall consider the differences between
17 the Federal Home Loan Banks and the enterprises, in-
18 cluding the Banks’—

19 “(1) cooperative ownership structure;

20 “(2) affordable housing and community devel-
21 opment mission;

22 “(3) capital structure; and

23 “(4) joint and several liability.”.

1 **SEC. 202. DIRECTORS.**

2 Section 7 of the Federal Home Loan Bank Act (12
3 U.S.C. 1427) is amended—

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

6 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
7 Flicts OF INTEREST.—

8 “(1) IN GENERAL.—Subject to paragraphs (2)
9 through (4), the management of each Federal Home
10 Loan Bank shall be vested in a board of 13 direc-
11 tors, or such other number as the Director deter-
12 mines appropriate.

13 “(2) BOARD MAKEUP.—The board of directors
14 of each Bank shall be comprised of—

15 “(A) member directors, who shall comprise
16 at least the majority of the members of the
17 board of directors; and

18 “(B) independent directors, who shall com-
19 prise not fewer than $\frac{2}{5}$ of the members of the
20 board of directors.

21 “(3) SELECTION CRITERIA.—

22 “(A) IN GENERAL.—Each member of the
23 board of directors shall be—

24 “(i) elected by plurality vote of the
25 members, in accordance with procedures
26 established under this section; and

1 “(ii) a citizen of the United States.

2 “(B) INDEPENDENT DIRECTOR CRI-
3 TERIA.—

4 “(i) IN GENERAL.—Each independent
5 director that is not a public interest direc-
6 tor under clause (ii) shall have dem-
7 onstrated knowledge of, or experience in,
8 financial management, auditing and ac-
9 counting, risk management practices, de-
10 rivatives, project development, or organiza-
11 tional management, or such other knowl-
12 edge or expertise as the Director may pro-
13 vide by regulation.

14 “(ii) PUBLIC INTEREST.—Not fewer
15 than 2 of the independent directors shall
16 have more than 4 years of experience in
17 representing consumer or community inter-
18 ests on banking services, credit needs,
19 housing, or financial consumer protections.

20 “(iii) CONFLICTS OF INTEREST.—No
21 independent director may, during the term
22 of service on the board of directors, serve
23 as an officer of any Federal Home Loan
24 Bank or as a director, officer, or employee

1 of any member of a Bank, or of any person
2 that receives advances from a Bank.

3 “(4) DEFINITIONS.—For purposes of this sec-
4 tion, the following definitions shall apply:

5 “(A) INDEPENDENT DIRECTOR.—The
6 terms ‘independent director’ and ‘independent
7 directorship’ mean a member of the board of di-
8 rectors of a Federal Home Loan Bank who is
9 a bona fide resident of the district in which the
10 Federal Home Loan Bank is located, or the di-
11 rectorship held by such a person, respectively.

12 “(B) MEMBER DIRECTOR.—The terms
13 ‘member director’ and ‘member directorship’
14 mean a member of the board of directors of a
15 Federal Home Loan Bank who is an officer or
16 director of a member institution that is located
17 in the district in which the Federal Home Loan
18 Bank is located, or the directorship held by
19 such a person, respectively.”;

20 (2) by striking “elective” each place that term
21 appears, other than in subsections (d), (e), and (f),
22 and inserting “member”;

23 (3) in subsection (b)—

1 (A) by striking the subsection heading and
2 all that follows through “Each elective director-
3 ship” and inserting the following:

4 “(b) DIRECTORSHIPS.—

5 “(1) MEMBER DIRECTORSHIPS.—Each member
6 directorship”; and

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

8 “(2) INDEPENDENT DIRECTORSHIPS.—

9 “(A) ELECTIONS.—Each independent di-
10 rector—

11 “(i) shall be elected by the members
12 entitled to vote, from among eligible per-
13 sons nominated, after consultation with the
14 Advisory Council of the Bank, by the
15 board of directors of the Bank; and

16 “(ii) shall be elected by a plurality of
17 the votes of the members of the Bank at
18 large, with each member having the num-
19 ber of votes for each such directorship as
20 it has under paragraph (1) in an election
21 to fill member directorships.

22 “(B) CRITERIA.—Nominees shall meet all
23 applicable requirements prescribed in this sec-
24 tion.

1 “(C) NOMINATION AND ELECTION PROCE-
2 DURES.—Procedures for nomination and elec-
3 tion of independent directors shall be prescribed
4 by the bylaws of each Federal Home Loan
5 Bank, in a manner consistent with the rules
6 and regulations of the Agency.”;

7 (4) in subsection (c)—

8 (A) by striking “elective” each place that
9 term appears and inserting “member”, ex-
10 cept—

11 (i) in the second sentence, the second
12 place that term appears; and

13 (ii) each place that term appears in
14 the fifth sentence; and

15 (B) in the second sentence—

16 (i) by inserting “(A) except as pro-
17 vided in clause (B) of this sentence,” be-
18 fore “if at any time”; and

19 (ii) by inserting before the period at
20 the end the following: “, and (B) clause
21 (A) of this sentence shall not apply to the
22 directorships of any Federal Home Loan
23 Bank resulting from the merger of any 2
24 or more such Banks”;

25 (5) in subsection (d)—

1 (A) in the first sentence—

2 (i) by striking “, whether elected or
3 appointed,”; and

4 (ii) by striking “3 years” and insert-
5 ing “4 years”;

6 (B) in the second sentence—

7 (i) by striking “Federal Home Loan
8 Bank System Modernization Act of 1999”
9 and inserting “Federal Housing Finance
10 Regulatory Reform Act of 2008”;

11 (ii) by striking “ $\frac{1}{3}$ ” and inserting
12 “ $\frac{1}{4}$ ”; and

13 (iii) by striking “or appointed”; and

14 (C) in the third sentence—

15 (i) by striking “an elective” each place
16 that term appears and inserting “a”; and

17 (ii) by striking “in any elective direc-
18 torship or elective directorships”;

19 (6) in subsection (f)—

20 (A) by striking paragraph (2);

21 (B) by striking “appointed or” each place
22 that term appears; and

23 (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 insert-
11 ing the following:

12 “(2) ANNUAL REPORT.—The Director shall in-
13 clude, in the annual report submitted to the Con-
14 gress pursuant to section 1319B of the Federal
15 Housing Enterprises Financial Safety and Sound-
16 ness Act of 1992, information regarding the com-
17 pensation and expenses paid by the Federal Home
18 Loan Banks to the directors on the boards of direc-
19 tors of the Banks.”; and

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

21 “(1) TRANSITION RULE.—Any member of the board
22 of directors of a Bank elected or appointed in accordance
23 with this section prior to the date of enactment of this
24 subsection may continue to serve as a member of that

1 board of directors for the remainder of the existing term
2 of service.”.

3 **SEC. 203. DEFINITIONS.**

4 Section 2 of the Federal Home Loan Bank Act (12
5 U.S.C. 1422) is amended—

6 (1) by striking paragraphs (1), (10), and (11);

7 (2) by redesignating paragraphs (2) through
8 (9) as paragraphs (1) through (8), respectively;

9 (3) by redesignating paragraphs (12) and (13)
10 as paragraphs (9) and (10), respectively; and

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

12 “(11) DIRECTOR.—The term ‘Director’ means
13 the Director of the Federal Housing Finance Agen-
14 cy.

15 “(12) AGENCY.—The term ‘Agency’ means the
16 Federal Housing Finance Agency, established under
17 section 1311 of the Federal Housing Enterprises Fi-
18 nancial Safety and Soundness Act of 1992.”.

19 **SEC. 204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**
20 **BANKS.**

21 The Federal Home Loan Bank Act (12 U.S.C. 1421
22 et seq.), other than in provisions of that Act added or
23 amended otherwise by this Act, is amended—

24 (1) by striking sections 2A and 2B (12 U.S.C.
25 1422a, 1422b);

1 (2) in section 18 (12 U.S.C. 1438), by striking
2 subsection (b);

3 (3) in section 11 (12 U.S.C. 1431)—

4 (A) in subsection (b)—

5 (i) in the first sentence—

6 (I) by striking “The Board” and
7 inserting “The Office of Finance, as
8 agent for the Banks,”; and

9 (II) by striking “the Board” and
10 inserting “such Office”; and

11 (ii) in the second and fourth sen-
12 tences, by striking “the Board” each place
13 such term appears and inserting “the Of-
14 fice of Finance”;

15 (B) in subsection (c)—

16 (i) by striking “the Board” the first
17 place such term appears and inserting “the
18 Office of Finance, as agent for the
19 Banks,”; and

20 (ii) by striking “the Board” the sec-
21 ond place such term appears and inserting
22 “such Office”; and

23 (C) in subsection (f)—

24 (i) by striking the 2 commas after
25 “permit” and inserting “or”; and

1 (ii) by striking the comma after “re-
2 quire”;

3 (4) in section 6 (12 U.S.C. 1426)—

4 (A) in subsection (b)(1), in the matter pre-
5 ceding subparagraph (A), by striking “Finance
6 Board approval” and inserting “approval by the
7 Director”; and

8 (B) in each of subsections (c)(4)(B) and
9 (d)(2), by striking “Finance Board regulations”
10 each place that term appears and inserting
11 “regulations of the Director”;

12 (5) in section 10(b) (12 U.S.C. 1430(b))—

13 (A) in the subsection heading, by striking
14 “FORMAL BOARD RESOLUTION” and inserting
15 “APPROVAL OF DIRECTOR”; and

16 (B) by striking “by formal resolution”;

17 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),
18 by striking “Chairperson of the Federal Housing Fi-
19 nance Board” and inserting “Director”;

20 (7) in section 15 (12 U.S.C. 1435), by inserting
21 “or the Director” after “the Board”;

22 (8) by striking “the Board” each place that
23 term appears and inserting “the Director”;

24 (9) by striking “The Board” each place that
25 term appears and inserting “The Director”;

1 (10) by striking “the Finance Board” each
2 place that term appears and inserting “the Direc-
3 tor”;

4 (11) by striking “The Finance Board” each
5 place that term appears and inserting “The Direc-
6 tor”; and

7 (12) by striking “Federal Housing Finance
8 Board” each place that term appears and inserting
9 “Director”.

10 **SEC. 205. HOUSING GOALS.**

11 The Federal Home Loan Bank Act (12 U.S.C. 1421
12 et seq.) is amended by inserting after section 10b the fol-
13 lowing new section:

14 **“SEC. 10c. HOUSING GOALS.**

15 “(a) IN GENERAL.—The Director shall establish
16 housing goals with respect to the purchase of mortgages
17 by the Federal Home Loan Banks. Such goals shall be
18 consistent with the goals established under sections 1331
19 through 1334 of the Federal Housing Enterprises Finan-
20 cial Safety and Soundness Act of 1992.

21 “(b) CONSIDERATIONS.—In establishing the goals re-
22 quired by subsection (a), the Director shall consider the
23 unique mission and ownership structure of the Federal
24 Home Loan Banks.

1 “(c) TRANSITION PERIOD.—To facilitate an orderly
2 transition, the Director shall establish interim target goals
3 for purposes of this section for each of the 2 calendar
4 years following the date of enactment of this section.

5 “(d) MONITORING AND ENFORCEMENT OF GOALS.—
6 The requirements of section 1336 of the Federal Housing
7 Enterprises Safety and Soundness Act of 1992, shall
8 apply to this section, in the same manner and to the same
9 extent as that section applies to the Federal housing enter-
10 prises.

11 “(e) ANNUAL REPORT.—The Director shall annually
12 report to Congress on the performance of the Banks in
13 meeting the goals established under this section.”.

14 **SEC. 206. COMMUNITY DEVELOPMENT FINANCIAL INSTITU-**
15 **TIONS.**

16 Section 4(a)(1) of the Federal Home Loan Bank Act
17 (12 U.S.C. 1424(a)(1)) is amended—

18 (1) by inserting after “savings bank,” the fol-
19 lowing: “community development financial institu-
20 tion,”; and

21 (2) in subparagraph (B), by inserting after
22 “United States,” the following: “or, in the case of a
23 community development financial institution, is cer-
24 tified as a community development financial institu-

1 tion under the Community Development Banking
2 and Financial Institutions Act of 1994.”.

3 **SEC. 207. SHARING OF INFORMATION AMONG FEDERAL**
4 **HOME LOAN BANKS.**

5 The Federal Home Loan Bank Act is amended by
6 inserting after section 20 (12 U.S.C. 1440) the following
7 new section:

8 **“SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL**
9 **HOME LOAN BANKS.**

10 “(a) INFORMATION ON FINANCIAL CONDITION.—In
11 order to enable each Federal Home Loan Bank to evaluate
12 the financial condition of one or more of the other Federal
13 Home Loan Banks individually and the Federal Home
14 Loan Bank System (including any risks associated with
15 the issuance or repayment of consolidated Federal Home
16 Loan Bank bonds and debentures or other borrowings and
17 the joint and several liabilities of the Banks incurred due
18 to such borrowings), as well as to comply with any of its
19 obligations under the Securities Exchange Act of 1934 (15
20 U.S.C. 78a et seq.), the Director shall make available to
21 the Banks such reports, records, or other information as
22 may be available, relating to the condition of any Federal
23 Home Loan Bank.

24 “(b) SHARING OF INFORMATION.—

1 “(1) IN GENERAL.—The Director shall facili-
2 tate the sharing of information made available under
3 subsection (a) directly among the Federal Home
4 Loan Banks and members of the Banks.

5 “(2) LIMITATION.—Notwithstanding paragraph
6 (1), a Federal Home Loan Bank responding to a re-
7 quest from another Bank or from the Director for
8 information pursuant to this section may request
9 that the Director determine that such information is
10 proprietary and that the public interest requires that
11 such information not be shared with members of a
12 Bank.

13 “(c) LIMITATION.—Nothing in this section shall af-
14 fect the obligations of any Federal Home Loan Bank
15 under the Securities Exchange Act of 1934 (15 U.S.C.
16 78a et seq.) or the regulations issued by the Securities
17 and Exchange Commission thereunder.”.

18 **SEC. 208. EXCLUSION FROM CERTAIN SECURITIES REPORT-**
19 **ING REQUIREMENTS.**

20 (a) IN GENERAL.—The Federal Home Loan Banks
21 shall be exempt from compliance with—

22 (1) sections 13(e), 14(a), and 14(c) of the Se-
23 curities Exchange Act of 1934, and related Commis-
24 sion regulations; and

1 (2) section 15(d) of the Securities Exchange
2 Act of 1934, and related Commission regulations,
3 with respect to transactions in the capital stock of
4 a Federal Home Loan Bank.

5 (b) MEMBER EXEMPTION.—The members of the
6 Federal Home Loan Bank System shall be exempt from
7 compliance with sections 13(d), 13(f), 13(g), 14(d), and
8 16 of the Securities Exchange Act of 1934, and related
9 Commission regulations, with respect to ownership of or
10 transactions in the capital stock of the Federal Home
11 Loan Banks by such members.

12 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

13 (1) CAPITAL STOCK.—The capital stock issued
14 by each of the Federal Home Loan Banks under
15 section 6 of the Federal Home Loan Bank Act are—

16 (A) exempted securities, within the mean-
17 ing of section 3(a)(2) of the Securities Act of
18 1933; and

19 (B) exempted securities, within the mean-
20 ing of section 3(a)(12)(A) of the Securities Ex-
21 change Act of 1934, except to the extent pro-
22 vided in section 38 of that Act.

23 (2) OTHER OBLIGATIONS.—The debentures,
24 bonds, and other obligations issued under section 11

1 of the Federal Home Loan Bank Act (12 U.S.C.
2 1431) are—

3 (A) exempted securities, within the mean-
4 ing of section 3(a)(2) of the Securities Act of
5 1933;

6 (B) government securities, within the
7 meaning of section 3(a)(42) of the Securities
8 Exchange Act of 1934; and

9 (C) government securities, within the
10 meaning of section 2(a)(16) of the Investment
11 Company Act of 1940.

12 (3) BROKERS AND DEALERS.—A person that
13 effects transactions in the capital stock or other obli-
14 gations of a Federal Home Loan Bank, for the ac-
15 count of others or for his own account, as applicable,
16 is a broker or dealer, as those terms are defined in
17 paragraphs (4) and (5), respectively, of section 3(a)
18 of the Securities Exchange Act of 1934, but is ex-
19 cluded from the definition of—

20 (A) the term “government securities
21 broker” under section 3(a)(43) of the Securities
22 Exchange Act of 1934; and

23 (B) the term “government securities deal-
24 er” under section 3(a)(44) of the Securities Ex-
25 change Act of 1934.

1 (d) EXEMPTION FROM REPORTING REQUIRE-
2 MENTS.—The Federal Home Loan Banks shall be exempt
3 from periodic reporting requirements under the securities
4 laws pertaining to the disclosure of—

5 (1) related party transactions that occur in the
6 ordinary course of the business of the Banks with
7 members; and

8 (2) the unregistered sales of equity securities.

9 (e) TENDER OFFERS.—Commission rules relating to
10 tender offers shall not apply in connection with trans-
11 actions in the capital stock of the Federal Home Loan
12 Banks.

13 (f) REGULATIONS.—

14 (1) IN GENERAL.—The Commission shall pro-
15 mulgate such rules and regulations as may be nec-
16 essary or appropriate in the public interest or in fur-
17 therance of this section and the exemptions provided
18 in this section.

19 (2) CONSIDERATIONS.—In issuing regulations
20 under this section, the Commission shall consider
21 the distinctive characteristics of the Federal Home
22 Loan Banks when evaluating—

23 (A) the accounting treatment with respect
24 to the payment to the Resolution Funding Cor-
25 poration;

1 (B) the role of the combined financial
2 statements of the Federal Home Loan Banks;

3 (C) the accounting classification of redeem-
4 able capital stock; and

5 (D) the accounting treatment related to
6 the joint and several nature of the obligations
7 of the Banks.

8 (g) DEFINITIONS.—As used in this section—

9 (1) the terms “Bank”, “Federal Home Loan
10 Bank”, “member”, and “Federal Home Loan Bank
11 System” have the same meanings as in section 2 of
12 the Federal Home Loan Bank Act (12 U.S.C.
13 1422);

14 (2) the term “Commission” means the Securi-
15 ties and Exchange Commission; and

16 (3) the term “securities laws” has the same
17 meaning as in section 3(a)(47) of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78c(a)(47)).

19 **SEC. 209. MERGERS.**

20 Section 26 of the Federal Home Loan Bank Act (12
21 U.S.C. 1446) is amended—

22 (1) by striking “Whenever” and inserting “(a)
23 IN GENERAL.—Whenever”; and

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

25 “(b) MERGERS AUTHORIZED.—

1 “(1) IN GENERAL.—Any Federal Home Loan
2 Bank may, with the approval of the Director and of
3 the boards of directors of the Banks involved, merge
4 with another Bank.

5 “(2) REGULATIONS REQUIRED.—The Director
6 shall promulgate regulations establishing the condi-
7 tions and procedures for the consideration and ap-
8 proval of any voluntary merger described in para-
9 graph (1), including the procedures for Bank mem-
10 ber approval.”.

11 **SEC. 210. AUTHORITY TO REDUCE DISTRICTS.**

12 Section 3 of the Federal Home Loan Bank Act (12
13 U.S.C. 1423) is amended—

14 (1) by striking “As soon” and inserting “(a) IN
15 GENERAL.—As soon”; and

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

17 “(b) AUTHORITY TO REDUCE DISTRICTS.—Notwith-
18 standing subsection (a), the number of districts may be
19 reduced to a number less than 8—

20 “(1) pursuant to a voluntary merger between
21 Banks, as approved pursuant to section 26(b); or

22 “(2) pursuant to a decision by the Director to
23 liquidate a Bank pursuant to section 1367 of the
24 Federal Housing Enterprises Financial Safety and
25 Soundness Act of 1992.”.

1 **SEC. 211. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

2 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)
3 of section 2 of the Federal Home Loan Bank Act (12
4 U.S.C. 1422(10)), as so redesignated by section 201(3)
5 of this Act, is amended by striking “\$500,000,000” each
6 place such term appears and inserting “\$1,000,000,000”.

7 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
8 MENT ACTIVITIES.—Section 10(a) of the Federal Home
9 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

10 (1) in paragraph (2)(B)—

11 (A) by striking “and”; and

12 (B) by inserting “, and community devel-
13 opment activities” before the period at the end;

14 (2) in paragraph (3)(E), by inserting “or com-
15 munity development activities” after “agriculture,”;
16 and

17 (3) in paragraph (6)—

18 (A) by striking “and”; and

19 (B) by inserting “, and ‘community devel-
20 opment activities’ ” before “shall”.

21 **SEC. 212. PUBLIC USE DATA BASE; REPORTS TO CONGRESS.**

22 Section 10 of the Federal Home Loan Bank Act (12
23 U.S.C. 1430) is amended—

24 (1) in subsection (j)(12)—

25 (A) by striking subparagraph (C) and in-
26 serting the following:

1 “(C) REPORTS.—The Director shall annu-
2 ally report to the Committee on Banking, Hous-
3 ing, and Urban Affairs of the Senate and the
4 Committee on Financial Services of the House
5 of Representatives on the collateral pledged to
6 the Banks, including an analysis of collateral by
7 type and by Bank district.”; and

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

9 “(D) SUBMISSION TO CONGRESS.—The Di-
10 rector shall submit the reports under subpara-
11 graphs (A) and (C) to the Committee on Bank-
12 ing, Housing, and Urban Affairs of the Senate
13 and the Committee on Financial Services of the
14 House of Representatives, not later than 180
15 days after the date of enactment of the Federal
16 Housing Finance Regulatory Reform Act of
17 2008.”; and

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

19 “(k) PUBLIC USE DATABASE.—

20 “(1) DATA.—Each Federal Home Loan Bank
21 shall provide to the Director, in a form determined
22 by the Director, census tract level data relating to
23 mortgages purchased, if any, including—

24 “(A) data consistent with that reported
25 under section 1323 of the Federal Housing En-

1 terprises Financial Safety and Soundness Act
2 of 1992;

3 “(B) data elements required to be reported
4 under the Home Mortgage Disclosure Act of
5 1975; and

6 “(C) any other data elements that the Di-
7 rector considers appropriate.

8 “(2) PUBLIC USE DATABASE.—

9 “(A) IN GENERAL.—The Director shall
10 make available to the public, in a form that is
11 useful to the public (including forms accessible
12 electronically), and to the extent practicable,
13 the data provided to the Director under para-
14 graph (1).

15 “(B) PROPRIETARY INFORMATION.—Not
16 withstanding subparagraph (A), the Director
17 may not provide public access to, or disclose to
18 the public, any information required to be sub-
19 mitted under this subsection that the Director
20 determines is proprietary or that would provide
21 personally identifiable information and that is
22 not otherwise publicly accessible through other
23 forms, unless the Director determines that it is
24 in the public interest to provide such informa-
25 tion.”.

1 **SEC. 213. SEMIANNUAL REPORTS.**

2 Section 21B of the Federal Home Loan Bank Act
3 is amended in subsection (f)(2)(C), by adding at the end
4 the following:

5 “(v) SEMIANNUAL REPORTS.—The
6 Director shall report semiannually to the
7 Committee on Banking, Housing, and
8 Urban Affairs of the Senate and the Com-
9 mittee on Financial Services of the House
10 of Representatives on the projected date
11 for the completion of contributions re-
12 quired by this section.”.

13 **SEC. 214. LIQUIDATION OR REORGANIZATION OF A FED-**
14 **ERAL HOME LOAN BANK.**

15 Section 26 of the Federal Home Loan Bank Act (12
16 U.S.C. 1446) is amended by adding at the end the fol-
17 lowing: “At least 30 days prior to liquidating or reorga-
18 nizing any Bank under this section, the Director shall no-
19 tify the Bank of its determination and the facts and cir-
20 cumstances upon which such determination is based. The
21 Bank may contest that determination in a hearing before
22 the Director, in which all issues shall be determined on
23 the record pursuant to section 554 of title 5, United
24 States Code.”.

1 **SEC. 215. STUDY AND REPORT TO CONGRESS ON**
2 **SECURITIZATION OF ACQUIRED MEMBER AS-**
3 **SETS.**

4 (a) **STUDY.**—The Director shall conduct a study on
5 securitization of home mortgage loans purchased or to be
6 purchased from member financial institutions under the
7 Acquired Member Assets programs. In conducting the
8 study, the Director shall establish a process for the formal
9 submission of comments.

10 (b) **ELEMENTS.**—The study shall encompass—

11 (1) the benefits and risks associated with
12 securitization of Acquired Member Assets;

13 (2) the potential impact of securitization upon
14 liquidity in the mortgage and broader credit mar-
15 kets;

16 (3) the ability of the Federal Home Loan Bank
17 or Banks in question to manage the risks associated
18 with such a program;

19 (4) the impact of such a program on the exist-
20 ing activities of the Banks, including their mortgage
21 portfolios and advances; and

22 (5) the joint and several liability of the Banks
23 and the cooperative structure of the Federal Home
24 Loan Bank System.

25 (c) **CONSULTATIONS.**—In conducting the study under
26 this section, the Director shall consult with the Federal

1 Home Loan Banks, the Banks' fiscal agent, representa-
2 tives of the mortgage lending industry, practitioners in the
3 structured finance field, and other experts as needed.

4 (d) REPORT.—Not later than 1 year after the date
5 of enactment of this Act, the Director shall submit a re-
6 port to Congress on the results of the study conducted
7 under subsection (a), including policy recommendations
8 based on the analysis of the Director of the feasibility of
9 mortgage-backed securities issuance by a Federal Home
10 Loan Bank or Banks and the risks and benefits associated
11 with such program or programs.

12 (e) DEFINITIONS.—As used in this section, the terms
13 “member”, “Bank”, and “Federal Home Loan Bank”
14 have the same meanings as in section 2 of the Federal
15 Home Loan Bank Act (12 U.S.C. 1422).

16 **SEC. 216. TECHNICAL AND CONFORMING AMENDMENTS.**

17 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—
18 Section 1113(o) of the Right to Financial Privacy Act of
19 1978 (12 U.S.C. 3413(o)) is amended—

20 (1) by striking “Federal Housing Finance
21 Board” and inserting “Federal Housing Finance
22 Agency”; and

23 (2) by striking “Federal Housing Finance
24 Board’s” and inserting “Federal Housing Finance
25 Agency’s”.

1 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
2 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of
3 the Riegle Community Development and Regulatory Im-
4 provement Act of 1994 (12 U.S.C. 4716(e)) is amended
5 by striking “Federal Housing Finance Board” and insert-
6 ing “Federal Housing Finance Agency”.

7 (c) TITLE 18, UNITED STATES CODE.—Title 18,
8 United States Code, is amended by striking “Federal
9 Housing Finance Board” each place such term appears
10 in each of sections 212, 657, 1006, and 1014, and insert-
11 ing “Federal Housing Finance Agency”.

12 (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the
13 Multifamily Assisted Housing Reform and Affordability
14 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
15 ing “Federal Housing Finance Board” and inserting
16 “Federal Housing Finance Agency”.

17 (e) TITLE 44, UNITED STATES CODE.—Section
18 3502(5) of title 44, United States Code, is amended by
19 striking “Federal Housing Finance Board” and inserting
20 “Federal Housing Finance Agency”.

21 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
22 1004(d)(2)(D)(iii) of the Launching Our Communities’
23 Access to Local Television Act of 2000 (47 U.S.C.
24 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
25 eral Housing Enterprise Oversight, the Federal Housing

1 Finance Board” and inserting “Federal Housing Finance
2 Agency”.

3 (g) FIRREA.—Section 1216 of the Financial Institu-
4 tions Reform, Recovery, and Enhancement Act of 1989
5 (12 U.S.C. 1833e) is amended—

6 (1) in subsection (a), by striking paragraph (3)
7 and inserting the following:

8 “(3) the Federal Housing Finance Agency;”;

9 (2) in subsection (b), by striking “Federal Na-
10 tional Mortgage Association” and inserting “Federal
11 Home Loan Banks, the Federal National Mortgage
12 Association,”; and

13 (3) in subsection (c), by striking “Finance
14 Board” and inserting “Finance Agency”.

15 **SEC. 217. STUDY ON FEDERAL HOME LOAN BANK AD-**
16 **VANCES.**

17 (a) IN GENERAL.—Not later than 1 year after the
18 date of enactment of this Act, the Director shall conduct
19 a study and submit a report to the Committee on Banking,
20 Housing, and Urban Affairs of the Senate and the Com-
21 mittee on Financial Services of the House or Representa-
22 tives on the extent to which loans and securities used as
23 collateral to support Federal Home Loan Bank advances
24 are consistent with the interagency guidance on nontradi-
25 tional mortgage products.

1 (b) REQUIRED CONTENT.—The study required under
2 subsection (a) shall—

3 (1) consider and recommend any additional reg-
4 ulations, guidance, advisory bulletins, or other ad-
5 ministrative actions necessary to ensure that the
6 Federal Home Loan Banks are not supporting loans
7 with predatory characteristics; and

8 (2) include an opportunity for the public to
9 comment on any recommendations made under para-
10 graph (1).

11 **SEC. 218. FEDERAL HOME LOAN BANK REFINANCING AU-**
12 **THORITY FOR CERTAIN RESIDENTIAL MORT-**
13 **GAGE LOANS.**

14 Section 10(j)(2) of the Federal Home Loan Bank Act
15 (12 U.S.C. 1430(j)(2)) is amended—

16 (1) in subparagraph (A), by striking “or” at
17 the end;

18 (2) in subparagraph (B), by striking the period
19 at the end and inserting “; or”; and

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

21 “(C) during the 2-year period beginning on
22 the date of enactment of this subparagraph, re-
23 finance loans that are secured by a first mort-
24 gage on a primary residence of any family hav-

1 ing an income at or below 80 percent of the me-
2 dian income for the area.”.

3 **TITLE III—TRANSFER OF FUNC-**
4 **TIONS, PERSONNEL, AND**
5 **PROPERTY OF OFHEO AND**
6 **THE FEDERAL HOUSING FI-**
7 **NANCE BOARD**

8 **Subtitle A—OFHEO**

9 **SEC. 301. ABOLISHMENT OF OFHEO.**

10 (a) IN GENERAL.—Effective at the end of the 1-year
11 period beginning on the date of enactment of this Act, the
12 Office of Federal Housing Enterprise Oversight of the De-
13 partment of Housing and Urban Development and the po-
14 sitions of the Director and Deputy Director of such Office
15 are abolished.

16 (b) DISPOSITION OF AFFAIRS.—During the 1-year
17 period beginning on the date of enactment of this Act, the
18 Director of the Office of Federal Housing Enterprise
19 Oversight, solely for the purpose of winding up the affairs
20 of the Office of Federal Housing Enterprise Oversight—

21 (1) shall manage the employees of such Office
22 and provide for the payment of the compensation
23 and benefits of any such employee which accrue be-
24 fore the effective date of the transfer of such em-
25 ployee under section 303; and

1 (2) may take any other action necessary for the
2 purpose of winding up the affairs of the Office.

3 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

4 The amendments made by title I and the abolishment of
5 the Office of Federal Housing Enterprise Oversight under
6 subsection (a) of this section may not be construed to af-
7 fect the status of any employee of such Office as an em-
8 ployee of an agency of the United States for purposes of
9 any other provision of law before the effective date of the
10 transfer of any such employee under section 303.

11 (d) USE OF PROPERTY AND SERVICES.—

12 (1) PROPERTY.—The Director may use the
13 property of the Office of Federal Housing Enter-
14 prise Oversight to perform functions which have
15 been transferred to the Director for such time as is
16 reasonable to facilitate the orderly transfer of func-
17 tions transferred under any other provision of this
18 Act or any amendment made by this Act to any
19 other provision of law.

20 (2) AGENCY SERVICES.—Any agency, depart-
21 ment, or other instrumentality of the United States,
22 and any successor to any such agency, department,
23 or instrumentality, which was providing supporting
24 services to the Office of Federal Housing Enterprise
25 Oversight before the expiration of the period under

1 subsection (a) in connection with functions that are
2 transferred to the Director shall—

3 (A) continue to provide such services, on a
4 reimbursable basis, until the transfer of such
5 functions is complete; and

6 (B) consult with any such agency to co-
7 ordinate and facilitate a prompt and reasonable
8 transition.

9 (e) SAVINGS PROVISIONS.—

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Subsection (a) shall not af-
12 fect the validity of any right, duty, or obligation of
13 the United States, the Director of the Office of Fed-
14 eral Housing Enterprise Oversight, or any other per-
15 son, which—

16 (A) arises under—

17 (i) the Federal Housing Enterprises
18 Financial Safety and Soundness Act of
19 1992;

20 (ii) the Federal National Mortgage
21 Association Charter Act;

22 (iii) the Federal Home Loan Mort-
23 gage Corporation Act; or

24 (iv) any other provision of law appli-
25 cable with respect to such Office; and

1 (B) existed on the day before the date of
2 abolishment under subsection (a).

3 (2) CONTINUATION OF SUITS.—No action or
4 other proceeding commenced by or against the Di-
5 rector of the Office of Federal Housing Enterprise
6 Oversight in connection with functions that are
7 transferred to the Director of the Federal Housing
8 Finance Agency shall abate by reason of the enact-
9 ment of this Act, except that the Director of the
10 Federal Housing Finance Agency shall be sub-
11 stituted for the Director of the Office of Federal
12 Housing Enterprise Oversight as a party to any
13 such action or proceeding.

14 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
15 **REGULATIONS.**

16 (a) IN GENERAL.—All regulations, orders, and deter-
17 minations described in subsection (b) shall remain in ef-
18 fect according to the terms of such regulations, orders,
19 and determinations, and shall be enforceable by or against
20 the Director or the Secretary of Housing and Urban De-
21 velopment, as the case may be, until modified, terminated,
22 set aside, or superseded in accordance with applicable law
23 by the Director or the Secretary, as the case may be, any
24 court of competent jurisdiction, or operation of law.

1 (b) APPLICABILITY.—A regulation, order, or deter-
2 mination is described in this subsection if it—

3 (1) was issued, made, prescribed, or allowed to
4 become effective by—

5 (A) the Office of Federal Housing Enter-
6 prise Oversight;

7 (B) the Secretary of Housing and Urban
8 Development, and relates to the authority of
9 the Secretary under—

10 (i) the Federal Housing Enterprises
11 Financial Safety and Soundness Act of
12 1992;

13 (ii) the Federal National Mortgage
14 Association Charter Act, with respect to
15 the Federal National Mortgage Associa-
16 tion; or

17 (iii) the Federal Home Loan Mort-
18 gage Corporation Act, with respect to the
19 Federal Home Loan Mortgage Corpora-
20 tion; or

21 (C) a court of competent jurisdiction, and
22 relates to functions transferred by this Act; and

23 (2) is in effect on the effective date of the abol-
24 ishment under section 301(a).

1 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
2 **OFHEO.**

3 (a) TRANSFER.—Each employee of the Office of Fed-
4 eral Housing Enterprise Oversight shall be transferred to
5 the Agency for employment, not later than the effective
6 date of the abolishment under section 301(a), and such
7 transfer shall be deemed a transfer of function for pur-
8 poses of section 3503 of title 5, United States Code.

9 (b) GUARANTEED POSITIONS.—

10 (1) IN GENERAL.—Each employee transferred
11 under subsection (a) shall be guaranteed a position
12 with the same status, tenure, grade, and pay as that
13 held on the day immediately preceding the transfer.

14 (2) NO INVOLUNTARY SEPARATION OR REDUC-
15 TION.—An employee transferred under subsection
16 (a) holding a permanent position on the day imme-
17 diately preceding the transfer may not be involun-
18 tarily separated or reduced in grade or compensation
19 during the 12-month period beginning on the date of
20 transfer, except for cause, or, in the case of a tem-
21 porary employee, separated in accordance with the
22 terms of the appointment of the employee.

23 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
24 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

25 (1) IN GENERAL.—In the case of an employee
26 occupying a position in the excepted service or the

1 Senior Executive Service, any appointment authority
2 established under law or by regulations of the Office
3 of Personnel Management for filling such position
4 shall be transferred, subject to paragraph (2).

5 (2) DECLINE OF TRANSFER.—The Director
6 may decline a transfer of authority under paragraph
7 (1) to the extent that such authority relates to—

8 (A) a position excepted from the competi-
9 tive service because of its confidential, policy-
10 making, policy-determining, or policy-advocating
11 character; or

12 (B) a noncareer position in the Senior Ex-
13 ecutive Service (within the meaning of section
14 3132(a)(7) of title 5, United States Code).

15 (d) REORGANIZATION.—If the Director determines,
16 after the end of the 1-year period beginning on the effec-
17 tive date of the abolishment under section 301(a), that
18 a reorganization of the combined workforce is required,
19 that reorganization shall be deemed a major reorganiza-
20 tion for purposes of affording affected employee retire-
21 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
22 5, United States Code.

23 (e) EMPLOYEE BENEFIT PROGRAMS.—

24 (1) IN GENERAL.—Any employee of the Office
25 of Federal Housing Enterprise Oversight accepting

1 employment with the Agency as a result of a trans-
2 fer under subsection (a) may retain, for 12 months
3 after the date on which such transfer occurs, mem-
4 bership in any employee benefit program of the
5 Agency or the Office of Federal Housing Enterprise
6 Oversight of the Department of Housing and Urban
7 Development, as applicable, including insurance, to
8 which such employee belongs on the date of the abol-
9 ishment under section 301(a), if—

10 (A) the employee does not elect to give up
11 the benefit or membership in the program; and

12 (B) the benefit or program is continued by
13 the Director of the Federal Housing Finance
14 Agency.

15 (2) COST DIFFERENTIAL.—

16 (A) IN GENERAL.—The difference in the
17 costs between the benefits which would have
18 been provided by the Office of Federal Housing
19 Enterprise Oversight and those provided by this
20 section shall be paid by the Director.

21 (B) HEALTH INSURANCE.—If any em-
22 ployee elects to give up membership in a health
23 insurance program or the health insurance pro-
24 gram is not continued by the Director, the em-
25 ployee shall be permitted to select an alternate

1 Federal health insurance program not later
2 than 30 days after the date of such election or
3 notice, without regard to any other regularly
4 scheduled open season.

5 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

6 Upon the effective date of its abolishment under sec-
7 tion 301(a), all property of the Office of Federal Housing
8 Enterprise Oversight shall transfer to the Agency.

9 **Subtitle B—Federal Housing**
10 **Finance Board**

11 **SEC. 311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
12 **NANCE BOARD.**

13 (a) IN GENERAL.—Effective at the end of the 1-year
14 period beginning on the date of enactment of this Act, the
15 Federal Housing Finance Board (in this subtitle referred
16 to as the “Board”) is abolished.

17 (b) DISPOSITION OF AFFAIRS.—During the 1-year
18 period beginning on the date of enactment of this Act, the
19 Board, solely for the purpose of winding up the affairs
20 of the Board—

21 (1) shall manage the employees of the Board
22 and provide for the payment of the compensation
23 and benefits of any such employee which accrue be-
24 fore the effective date of the transfer of such em-
25 ployee under section 313; and

1 (2) may take any other action necessary for the
2 purpose of winding up the affairs of the Board.

3 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

4 The amendments made by titles I and II and the abolish-
5 ment of the Board under subsection (a) may not be con-
6 strued to affect the status of any employee of the Board
7 as an employee of an agency of the United States for pur-
8 poses of any other provision of law before the effective
9 date of the transfer of any such employee under section
10 313.

11 (d) USE OF PROPERTY AND SERVICES.—

12 (1) PROPERTY.—The Director may use the
13 property of the Board to perform functions which
14 have been transferred to the Director, for such time
15 as is reasonable to facilitate the orderly transfer of
16 functions transferred under any other provision of
17 this Act or any amendment made by this Act to any
18 other provision of law.

19 (2) AGENCY SERVICES.—Any agency, depart-
20 ment, or other instrumentality of the United States,
21 and any successor to any such agency, department,
22 or instrumentality, which was providing supporting
23 services to the Board before the expiration of the 1-
24 year period under subsection (a) in connection with

1 functions that are transferred to the Director
2 shall—

3 (A) continue to provide such services, on a
4 reimbursable basis, until the transfer of such
5 functions is complete; and

6 (B) consult with any such agency to co-
7 ordinate and facilitate a prompt and reasonable
8 transition.

9 (e) SAVINGS PROVISIONS.—

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Subsection (a) shall not af-
12 fect the validity of any right, duty, or obligation of
13 the United States, a member of the Board, or any
14 other person, which—

15 (A) arises under the Federal Home Loan
16 Bank Act, or any other provision of law applica-
17 ble with respect to the Board; and

18 (B) existed on the day before the effective
19 date of the abolishment under subsection (a).

20 (2) CONTINUATION OF SUITS.—No action or
21 other proceeding commenced by or against the
22 Board in connection with functions that are trans-
23 ferred under this Act to the Director shall abate by
24 reason of the enactment of this Act, except that the
25 Director shall be substituted for the Board or any

1 member thereof as a party to any such action or
2 proceeding.

3 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**
4 **REGULATIONS.**

5 (a) IN GENERAL.—All regulations, orders, and deter-
6 minations described under subsection (b) shall remain in
7 effect according to the terms of such regulations, orders,
8 and determinations, and shall be enforceable by or against
9 the Director until modified, terminated, set aside, or su-
10 perseded in accordance with applicable law by the Direc-
11 tor, any court of competent jurisdiction, or operation of
12 law.

13 (b) APPLICABILITY.—A regulation, order, or deter-
14 mination is described under this subsection if it—

15 (1) was issued, made, prescribed, or allowed to
16 become effective by—

17 (A) the Board; or

18 (B) a court of competent jurisdiction, and
19 relates to functions transferred by this Act; and

20 (2) is in effect on the effective date of the abol-
21 ishment under section 311(a).

22 **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
23 **FEDERAL HOUSING FINANCE BOARD.**

24 (a) TRANSFER.—Each employee of the Board shall
25 be transferred to the Agency for employment, not later

1 than the effective date of the abolishment under section
2 311(a), and such transfer shall be deemed a transfer of
3 function for purposes of section 3503 of title 5, United
4 States Code.

5 (b) GUARANTEED POSITIONS.—

6 (1) IN GENERAL.—Each employee transferred
7 under subsection (a) shall be guaranteed a position
8 with the same status, tenure, grade, and pay as that
9 held on the day immediately preceding the transfer.

10 (2) NO INVOLUNTARY SEPARATION OR REDUC-
11 TION.—An employee holding a permanent position
12 on the day immediately preceding the transfer may
13 not be involuntarily separated or reduced in grade or
14 compensation during the 12-month period beginning
15 on the date of transfer, except for cause, or, if the
16 employee is a temporary employee, separated in ac-
17 cordance with the terms of the appointment of the
18 employee.

19 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
20 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

21 (1) IN GENERAL.—In the case of an employee
22 occupying a position in the excepted service or the
23 Senior Executive Service, any appointment authority
24 established under law or by regulations of the Office

1 of Personnel Management for filling such position
2 shall be transferred, subject to paragraph (2).

3 (2) DECLINE OF TRANSFER.—The Director
4 may decline a transfer of authority under paragraph
5 (1) to the extent that such authority relates to—

6 (A) a position excepted from the competi-
7 tive service because of its confidential, policy-
8 making, policy-determining, or policy-advocating
9 character; or

10 (B) a noncareer position in the Senior Ex-
11 ecutive Service (within the meaning of section
12 3132(a)(7) of title 5, United States Code).

13 (d) REORGANIZATION.—If the Director determines,
14 after the end of the 1-year period beginning on the effec-
15 tive date of the abolishment under section 311(a), that
16 a reorganization of the combined workforce is required,
17 that reorganization shall be deemed a major reorganiza-
18 tion for purposes of affording affected employee retire-
19 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
20 5, United States Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee of the Board
23 accepting employment with the Agency as a result of
24 a transfer under subsection (a) may retain, for 12
25 months after the date on which such transfer occurs,

1 membership in any employee benefit program of the
2 Agency or the Board, as applicable, including insur-
3 ance, to which such employee belongs on the effec-
4 tive date of the abolishment under section 311(a)
5 if—

6 (A) the employee does not elect to give up
7 the benefit or membership in the program; and

8 (B) the benefit or program is continued by
9 the Director.

10 (2) COST DIFFERENTIAL.—

11 (A) IN GENERAL.—The difference in the
12 costs between the benefits which would have
13 been provided by the Board and those provided
14 by this section shall be paid by the Director.

15 (B) HEALTH INSURANCE.—If any em-
16 ployee elects to give up membership in a health
17 insurance program or the health insurance pro-
18 gram is not continued by the Director, the em-
19 ployee shall be permitted to select an alternate
20 Federal health insurance program not later
21 than 30 days after the date of such election or
22 notice, without regard to any other regularly
23 scheduled open season.

1 **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

2 Upon the effective date of the abolishment under sec-
3 tion 311(a), all property of the Board shall transfer to
4 the Agency.

5 **TITLE IV—HOPE FOR**
6 **HOMEOWNERS**

7 **SEC. 401. SHORT TITLE.**

8 This title may be cited as the “HOPE for Home-
9 owners Act of 2008”.

10 **SEC. 402. ESTABLISHMENT OF HOPE FOR HOMEOWNERS**
11 **PROGRAM.**

12 (a) ESTABLISHMENT.—Title II of the National Hous-
13 ing Act (12 U.S.C. 1707 et seq.) is amended by adding
14 at the end the following:

15 **“SEC. 257. HOPE FOR HOMEOWNERS PROGRAM.**

16 “(a) ESTABLISHMENT.—There is established in the
17 Federal Housing Administration a HOPE for Home-
18 owners Program.

19 “(b) PURPOSE.—The purpose of the HOPE for
20 Homeowners Program is—

21 “(1) to create an FHA program, participation
22 in which is voluntary on the part of homeowners and
23 existing loan holders to insure refinanced loans for
24 distressed borrowers to support long-term, sustain-
25 able homeownership;

1 “(2) to allow homeowners to avoid foreclosure
2 by reducing the principle balance outstanding, and
3 interest rate charged, on their mortgages;

4 “(3) to help stabilize and provide confidence in
5 mortgage markets by bringing transparency to the
6 value of assets based on mortgage assets;

7 “(4) to target mortgage assistance under this
8 section to homeowners for their principal residence;

9 “(5) to enhance the administrative capacity of
10 the FHA to carry out its expanded role under the
11 HOPE for Homeowners Program;

12 “(6) to ensure the HOPE for Homeowners Pro-
13 gram remains in effect only for as long as is nec-
14 essary to provide stability to the housing market;
15 and

16 “(7) to provide servicers of delinquent mort-
17 gages with additional methods and approaches to
18 avoid foreclosure.

19 “(c) ESTABLISHMENT AND IMPLEMENTATION OF
20 PROGRAM REQUIREMENTS.—

21 “(1) DUTIES OF THE BOARD.—In order to
22 carry out the purposes of the HOPE for Home-
23 owners Program, the Board shall—

24 “(A) establish requirements and standards
25 for the program; and

1 debt, and has not knowingly, or willfully
2 and with actual knowledge, furnished ma-
3 terial information known to be false for the
4 purpose of obtaining any eligible mortgage.

5 “(ii) PENALTIES.—

6 “(I) FALSE STATEMENT.—Any
7 certification filed pursuant to clause
8 (i) shall contain an acknowledgment
9 that any willful false statement made
10 in such certification is punishable
11 under section 1001, of title 18, United
12 States Code, by fine or imprisonment
13 of not more than 5 years, or both.

14 “(II) LIABILITY FOR REPAY-
15 MENT.—The mortgagor shall agree in
16 writing that the mortgagor shall be
17 liable to repay to the Federal Housing
18 Administration any direct financial
19 benefit achieved from the reduction of
20 indebtedness on the existing mortgage
21 or mortgages on the residence refi-
22 nanced under this section derived
23 from misrepresentations made in the
24 certifications and documentation re-

1 quired under this subparagraph, sub-
2 ject to the discretion of the Secretary.

3 “(B) CURRENT BORROWER DEBT-TO-IN-
4 COME RATIO.—As of March 1, 2008, the mort-
5 gagor shall have had a ratio of mortgage debt
6 to income, taking into consideration all existing
7 mortgages of that mortgagor at such time,
8 greater than 31 percent (or such higher amount
9 as the Board determines appropriate).

10 “(2) DETERMINATION OF PRINCIPAL OBLIGA-
11 TION AMOUNT.—The principal obligation amount of
12 the refinanced eligible mortgage to be insured
13 shall—

14 “(A) be determined by the lesser of—

15 “(i) the reasonable ability of the mort-
16 gagor to make his or her mortgage pay-
17 ments, as such ability is determined by the
18 Secretary pursuant to section 203(b)(4) or
19 by any other underwriting standards estab-
20 lished by the Board; or

21 “(ii) if the Board establishes a proce-
22 dure for auction pursuant to subsection
23 (f), the amount established at auction for
24 such mortgage; and

1 “(B) not exceed 90 percent of the ap-
2 praised value of the property to which such
3 mortgage relates.

4 “(3) REQUIRED WAIVER OF PREPAYMENT PEN-
5 ALTIES AND FEES.—All penalties for prepayment or
6 refinancing of the eligible mortgage, and all fees and
7 penalties related to default or delinquency on the eli-
8 gible mortgage, shall be waived or forgiven.

9 “(4) EXTINGUISHMENT OF SUBORDINATE
10 LIENS.—

11 “(A) REQUIRED AGREEMENT.—All holders
12 of outstanding mortgage liens on the property
13 to which the eligible mortgage relates shall
14 agree to accept the proceeds of the insured loan
15 as payment in full of all indebtedness under the
16 eligible mortgage, and all encumbrances related
17 to such eligible mortgage shall be removed. The
18 Secretary may take such actions, subject to
19 standards established by the Board under sub-
20 paragraph (B), as may be necessary and appro-
21 priate to facilitate coordination and agreement
22 between the holders of the existing senior mort-
23 gage and any existing subordinate mortgages,
24 taking into consideration the subordinate lien
25 status of such subordinate mortgages.

1 “(B) SHARED APPRECIATION.—

2 “(i) IN GENERAL.—The Board shall
3 establish standards and policies that will
4 allow for the payment to the holder of any
5 existing subordinate mortgage of a portion
6 of any future appreciation in the property
7 secured by such eligible mortgage that is
8 owed to the Secretary pursuant to sub-
9 section (k).

10 “(ii) FACTORS.—In establishing the
11 standards and policies required under
12 clause (i), the Board shall take into consid-
13 eration—

14 “(I) the status of any subordi-
15 nate mortgage;

16 “(II) the outstanding principal
17 balance of and accrued interest on the
18 existing senior mortgage and any out-
19 standing subordinate mortgages;

20 “(III) the extent to which the
21 current appraised value of the prop-
22 erty securing a subordinate mortgage
23 is less than the outstanding principal
24 balance and accrued interest on any

1 other liens that are senior to such
2 subordinate mortgage; and

3 “(IV) such other factors as the
4 Board determines to be appropriate.

5 “(C) VOLUNTARY PROGRAM.—This para-
6 graph may not be construed to require any
7 holder of any existing mortgage to participate
8 in the program under this section generally, or
9 with respect to any particular loan.

10 “(5) TERM OF MORTGAGE.—The refinanced eli-
11 gible mortgage to be insured shall—

12 “(A) bear interest at a single rate that is
13 fixed for the entire term of the mortgage; and

14 “(B) have a maturity of not less than 30
15 years from the date of the beginning of amorti-
16 zation of such refinanced eligible mortgage.

17 “(6) MAXIMUM LOAN AMOUNT.—The principal
18 obligation amount of the eligible mortgage to be in-
19 sured shall not exceed 132 percent of the dollar
20 amount limitation in effect for 2007 under section
21 305(a)(2) of the Federal Home Loan Mortgage Cor-
22 poration Act (12 U.S.C. 1454(a)(2)) for a property
23 of the applicable size.

24 “(7) PROHIBITION ON SECOND LIENS.—A
25 mortgagor may not grant a new second lien on the

1 mortgaged property during the first 5 years of the
2 term of the mortgage insured under this section.

3 “(8) APPRAISALS.—Any appraisal conducted in
4 connection with a mortgage insured under this sec-
5 tion shall—

6 “(A) be based on the current value of the
7 property;

8 “(B) be conducted in accordance with title
9 XI of the Financial Institutions Reform, Recov-
10 ery, and Enforcement Act of 1989 (12 U.S.C.
11 3331 et seq.);

12 “(C) be completed by an appraiser who
13 meets the competency requirements of the Uni-
14 form Standards of Professional Appraisal Prac-
15 tice;

16 “(D) be wholly consistent with the ap-
17 praisal standards, practices, and procedures
18 under section 202(e) of this Act that apply to
19 all loans insured under this Act; and

20 “(E) comply with the requirements of sub-
21 section (g) of this section (relating to appraisal
22 independence).

23 “(9) DOCUMENTATION AND VERIFICATION OF
24 INCOME.—In complying with the FHA underwriting
25 requirements under the HOPE for Homeowners

1 Program under this section, the mortgagee under
2 the mortgage shall document and verify the income
3 of the mortgagor by procuring an Internal Revenue
4 Service transcript of the income tax returns of the
5 mortgagor for the 2 most recent years for which the
6 filing deadline for such years has passed and by any
7 other method, in accordance with procedures and
8 standards that the Board or the Secretary shall es-
9 tablish.

10 “(10) MORTGAGE FRAUD.—The mortgagor
11 shall not have been convicted under any provision of
12 Federal or State law for fraud, including mortgage
13 fraud.

14 “(11) PRIMARY RESIDENCE.—The mortgagor
15 shall provide documentation satisfactory in the de-
16 termination of the Secretary to prove that the resi-
17 dence covered by the mortgage to be insured under
18 this section is occupied by the mortgagor as the pri-
19 mary residence of the mortgagor, and that such resi-
20 dence is the only residence in which the mortgagor
21 has any present ownership interest.

22 “(f) AUCTION.—

23 “(1) IN GENERAL.—The Board shall, if fea-
24 sible, establish a structure and organize procedures

1 for an auction to refinance eligible mortgages on a
2 wholesale or bulk basis.

3 “(2) NO STAY OR SUSPENSION OF PROGRAM.—

4 The ability of the Secretary to insure mortgages
5 under this section shall not be stayed or suspended
6 during the period of time needed to establish the
7 structure and procedures required under paragraph
8 (1).

9 “(g) APPRAISAL INDEPENDENCE.—

10 “(1) PROHIBITIONS ON INTERESTED PARTIES
11 IN A REAL ESTATE TRANSACTION.—No mortgage
12 lender, mortgage broker, mortgage banker, real es-
13 tate broker, appraisal management company, em-
14 ployee of an appraisal management company, nor
15 any other person with an interest in a real estate
16 transaction involving an appraisal in connection with
17 a mortgage insured under this section shall improper-
18 ly influence, or attempt to improperly influence,
19 through coercion, extortion, collusion, compensation,
20 instruction, inducement, intimidation, nonpayment
21 for services rendered, or bribery, the development,
22 reporting, result, or review of a real estate appraisal
23 sought in connection with the mortgage.

24 “(2) CIVIL MONETARY PENALTIES.—The Sec-
25 retary may impose a civil money penalty for any

1 knowing and material violation of paragraph (1)
2 under the same terms and conditions as are author-
3 ized in section 536(a) of this Act.

4 “(h) STANDARDS TO PROTECT AGAINST ADVERSE
5 SELECTION.—

6 “(1) IN GENERAL.—The Board shall, by rule or
7 order, establish standards and policies to require the
8 underwriter of the insured loan to provide such rep-
9 resentations and warranties as the Board considers
10 necessary or appropriate to enforce compliance with
11 all underwriting and appraisal standards of the
12 HOPE for Homeowners Program.

13 “(2) EXCLUSION FOR VIOLATIONS.—The Board
14 shall prohibit the Secretary from paying insurance
15 benefits to a mortgagee who violates the representa-
16 tions and warranties, as established under para-
17 graph (1), or in any case in which a mortgagor fails
18 to make the first payment on a refinanced eligible
19 mortgage.

20 “(3) OTHER AUTHORITY.—The Board may es-
21 tablish such other standards or policies as necessary
22 to protect against adverse selection, including requir-
23 ing loans identified by the Secretary as higher risk
24 loans to demonstrate payment performance for a

1 reasonable period of time prior to being insured
2 under the program.

3 “(i) PREMIUMS.—For each refinanced eligible mort-
4 gage insured under this section, the Secretary shall estab-
5 lish and collect—

6 “(1) at the time of insurance, a single premium
7 payment in an amount equal to 3 percent of the
8 amount of the original insured principal obligation of
9 the refinanced eligible mortgage, which shall be paid
10 from the proceeds of the mortgage being insured
11 under this section, through the reduction of the
12 amount of indebtedness that existed on the eligible
13 mortgage prior to refinancing; and

14 “(2) in addition to the premium required under
15 paragraph (1), an annual premium in an amount
16 equal to 1.5 percent of the amount of the remaining
17 insured principal balance of the mortgage.

18 “(j) ORIGINATION FEES AND INTEREST RATE.—The
19 Board shall establish—

20 “(1) a reasonable limitation on origination fees
21 for refinanced eligible mortgages insured under this
22 section; and

23 “(2) procedures to ensure that interest rates on
24 such mortgages shall be commensurate with market
25 rate interest rates on such types of loans.

1 “(k) EQUITY AND APPRECIATION.—

2 “(1) FIVE-YEAR PHASE-IN FOR EQUITY AS A
3 RESULT OF SALE OR REFINANCING.—For each eligi-
4 ble mortgage insured under this section, the Sec-
5 retary and the mortgagor of such mortgage shall,
6 upon any sale or disposition of the property to which
7 such mortgage relates, or upon the subsequent refi-
8 nancing of such mortgage, be entitled to the fol-
9 lowing with respect to any equity created as a direct
10 result of such sale or refinancing:

11 “(A) If such sale or refinancing occurs
12 during the period that begins on the date that
13 such mortgage is insured and ends 1 year after
14 such date of insurance, the Secretary shall be
15 entitled to 100 percent of such equity.

16 “(B) If such sale or refinancing occurs
17 during the period that begins 1 year after such
18 date of insurance and ends 2 years after such
19 date of insurance, the Secretary shall be enti-
20 tled to 90 percent of such equity and the mort-
21 gator shall be entitled to 10 percent of such eq-
22 uity.

23 “(C) If such sale or refinancing occurs
24 during the period that begins 2 years after such
25 date of insurance and ends 3 years after such

1 date of insurance, the Secretary shall be enti-
2 tled to 80 percent of such equity and the mort-
3 gator shall be entitled to 20 percent of such eq-
4 uity.

5 “(D) If such sale or refinancing occurs
6 during the period that begins 3 years after such
7 date of insurance and ends 4 years after such
8 date of insurance, the Secretary shall be enti-
9 tled to 70 percent of such equity and the mort-
10 gator shall be entitled to 30 percent of such eq-
11 uity.

12 “(E) If such sale or refinancing occurs
13 during the period that begins 4 years after such
14 date of insurance and ends 5 years after such
15 date of insurance, the Secretary shall be enti-
16 tled to 60 percent of such equity and the mort-
17 gator shall be entitled to 40 percent of such eq-
18 uity.

19 “(F) If such sale or refinancing occurs
20 during any period that begins 5 years after
21 such date of insurance, the Secretary shall be
22 entitled to 50 percent of such equity and the
23 mortgator shall be entitled to 50 percent of
24 such equity.

1 “(2) APPRECIATION IN VALUE.—For each eligi-
2 ble mortgage insured under this section, the Sec-
3 retary and the mortgagor of such mortgage shall,
4 upon any sale or disposition of the property to which
5 such mortgage relates, each be entitled to 50 percent
6 of any appreciation in value of the appraised value
7 of such property that has occurred since the date
8 that such mortgage was insured under this section.

9 “(1) ESTABLISHMENT OF HOPE FUND.—

10 “(1) IN GENERAL.—There is established in the
11 Federal Housing Administration a revolving fund to
12 be known as the Home Ownership Preservation En-
13 tity Fund, which shall be used by the Board for car-
14 rying out the mortgage insurance obligations under
15 this section.

16 “(2) MANAGEMENT OF FUND.—The HOPE
17 Fund shall be administered and managed by the
18 Secretary, who shall establish reasonable and pru-
19 dent criteria for the management and operation of
20 any amounts in the HOPE Fund.

21 “(m) LIMITATION ON AGGREGATE INSURANCE AU-
22 THORITY.—The aggregate original principal obligation of
23 all mortgages insured under this section may not exceed
24 \$300,000,000,000.

1 “(n) REPORTS BY THE BOARD.—The Board shall
2 submit monthly reports to the Congress identifying the
3 progress of the HOPE for Homeowners Program, which
4 shall contain the following information for each month:

5 “(1) The number of new mortgages insured
6 under this section, including the location of the
7 properties subject to such mortgages by census
8 tract.

9 “(2) The aggregate principal obligation of new
10 mortgages insured under this section.

11 “(3) The average amount by which the principle
12 balance outstanding on mortgages insured this sec-
13 tion was reduced.

14 “(4) The amount of premiums collected for in-
15 surance of mortgages under this section.

16 “(5) The claim and loss rates for mortgages in-
17 sured under this section.

18 “(6) Any other information that the Board con-
19 siders appropriate.

20 “(o) REQUIRED OUTREACH EFFORTS.—The Sec-
21 retary shall carry out outreach efforts to ensure that
22 homeowners, lenders, and the general public are aware of
23 the opportunities for assistance available under this sec-
24 tion.

1 “(p) ENHANCEMENT OF FHA CAPACITY.—Under
2 the direction of the Board, the Secretary shall take such
3 actions as may be necessary to—

4 “(1) contract for the establishment of under-
5 writing criteria, automated underwriting systems,
6 pricing standards, and other factors relating to eligi-
7 bility for mortgages insured under this section;

8 “(2) contract for independent quality reviews of
9 underwriting, including appraisal reviews and fraud
10 detection, of mortgages insured under this section or
11 pools of such mortgages; and

12 “(3) increase personnel of the Department as
13 necessary to process or monitor the processing of
14 mortgages insured under this section.

15 “(q) GNMA COMMITMENT AUTHORITY.—

16 “(1) GUARANTEES.—The Secretary shall take
17 such actions as may be necessary to ensure that se-
18 curities based on and backed by a trust or pool com-
19 posed of mortgages insured under this section are
20 available to be guaranteed by the Government Na-
21 tional Mortgage Association as to the timely pay-
22 ment of principal and interest.

23 “(2) GUARANTEE AUTHORITY.—To carry out
24 the purposes of section 306 of the National Housing
25 Act (12 U.S.C. 1721), the Government National

1 Mortgage Association may enter into new commit-
2 ments to issue guarantees of securities based on or
3 backed by mortgages insured under this section, not
4 exceeding \$300,000,000,000. The amount of author-
5 ity provided under the preceding sentence to enter
6 into new commitments to issue guarantees is in ad-
7 dition to any amount of authority to make new com-
8 mitments to issue guarantees that is provided to the
9 Association under any other provision of law.

10 “(r) SUNSET.—The Secretary may not enter into any
11 new commitment to insure any refinanced eligible mort-
12 gage, or newly insure any refinanced eligible mortgage
13 pursuant to this section before October 1, 2008 or after
14 September 30, 2011.

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

17 “(1) APPROVED FINANCIAL INSTITUTION OR
18 MORTGAGEE.—The term ‘approved financial institu-
19 tion or mortgagee’ means a financial institution or
20 mortgagee approved by the Secretary under section
21 203 as responsible and able to service mortgages re-
22 sponsibly.

23 “(2) BOARD.—The term ‘Board’ means the
24 Board of Directors of the HOPE for Homeowners
25 Program. The Board shall be composed of the Sec-

1 retary, the Secretary of the Treasury, and the Chair-
2 person of the Board of Directors of the Federal De-
3 posit Insurance Corporation.

4 “(3) ELIGIBLE MORTGAGE.—The term ‘eligible
5 mortgage’ means a mortgage—

6 “(A) the mortgagor of which—

7 “(i) occupies such property as his or
8 her principal residence; and

9 “(ii) cannot, subject to subsection
10 (e)(1)(B) and such other standards estab-
11 lished by the Board, afford his or her
12 mortgage payments; and

13 “(B) originated on or before January 1,
14 2008.

15 “(4) EXISTING SENIOR MORTGAGE.—The term
16 ‘existing senior mortgage’ means, with respect to a
17 mortgage insured under this section, the existing
18 mortgage that has superior priority.

19 “(5) EXISTING SUBORDINATE MORTGAGE.—The
20 term ‘existing subordinate mortgage’ means, with re-
21 spect to a mortgage insured under this section, an
22 existing mortgage that has subordinate priority to
23 the existing senior mortgage.

1 “(6) HOPE FOR HOMEOWNERS PROGRAM.—
2 The term ‘HOPE for Homeowners Program’ means
3 the program established under this section.

4 “(7) SECRETARY.—The term ‘Secretary’ means
5 the Secretary of Housing and Urban Development,
6 except where specifically provided otherwise.

7 “(t) REQUIREMENTS RELATED TO THE BOARD.—

8 “(1) COMPENSATION, ACTUAL, NECESSARY,
9 AND TRANSPORTATION EXPENSES.—

10 “(A) FEDERAL EMPLOYEES.—A member
11 of the Board who is an officer or employee of
12 the Federal Government shall serve without ad-
13 ditional pay (or benefits in the nature of com-
14 pensation) for service as a member of the
15 Board.

16 “(B) TRAVEL EXPENSES.—Members of the
17 Board shall be entitled to receive travel ex-
18 penses, including per diem in lieu of subsist-
19 ence, equivalent to those set forth in subchapter
20 I of chapter 57 of title 5, United States Code.

21 “(2) BYLAWS.—The Board may prescribe,
22 amend, and repeal such bylaws as may be necessary
23 for carrying out the functions of the Board.

24 “(3) QUORUM.—A majority of the Board shall
25 constitute a quorum.

1 “(4) STAFF; EXPERTS AND CONSULTANTS.—

2 “(A) DETAIL OF GOVERNMENT EMPLOY-
3 EES.—Upon request of the Board, any Federal
4 Government employee may be detailed to the
5 Board without reimbursement, and such detail
6 shall be without interruption or loss of civil
7 service status or privilege.

8 “(B) EXPERTS AND CONSULTANTS.—The
9 Board shall procure the services of experts and
10 consultants as the Board considers appropriate.

11 “(u) RULE OF CONSTRUCTION RELATED TO VOL-
12 UNTARY NATURE OF THE PROGRAM.—This section shall
13 not be construed to require that any approved financial
14 institution or mortgagee participate in any activity author-
15 ized under this section, including any activity related to
16 the refinancing of an eligible mortgage.

17 “(v) HOPE BONDS.—

18 “(1) ISSUANCE AND REPAYMENT OF BONDS.—
19 Notwithstanding section 504(b) of the Federal Cred-
20 it Reform Act of 1990 (2 U.S.C. 661d(b)), the Sec-
21 retary of the Treasury shall—

22 “(A) subject to such terms and conditions
23 as the Secretary of the Treasury deems nec-
24 essary, issue Federal credit instruments, to be
25 known as ‘HOPE Bonds’, that are callable at

1 the discretion of the Secretary of the Treasury
2 and do not, in the aggregate, exceed the
3 amount specified in subsection (m);

4 “(B) provide the subsidy amounts nec-
5 essary for loan guarantees under the HOPE for
6 Homeowners Program, not to exceed the
7 amount specified in subsection (m), in accord-
8 ance with the provisions of the Federal Credit
9 Reform Act of 1990 (2 U.S.C. 661 et seq.), ex-
10 cept as provided in this paragraph; and

11 “(C) use the proceeds from HOPE Bonds
12 only to pay for the net costs to the Federal
13 Government of the HOPE for Homeowners
14 Program, including administrative costs.

15 “(2) REIMBURSEMENTS TO TREASURY.—Funds
16 received pursuant to section 1338(b) of the Federal
17 Housing Enterprises Regulatory Reform Act of
18 1992 shall be used to reimburse the Secretary of the
19 Treasury for amounts borrowed under paragraph
20 (1).

21 “(3) USE OF RESERVE FUND.—If the net cost
22 to the Federal Government for the HOPE for
23 Homeowners Program exceeds the amount of funds
24 received under paragraph (2), remaining debts of
25 the HOPE for Homeowners Program shall be paid

1 from amounts deposited into the fund established by
2 the Secretary under section 1337(e) of the Federal
3 Housing Enterprises Financial Safety and Sound-
4 ness Act of 1992, remaining amounts in such fund
5 to be used to reduce the National debt.

6 “(4) REDUCTION OF NATIONAL DEBT.—
7 Amounts collected under the HOPE for Home-
8 owners Program in accordance with subsections (i)
9 and (k) in excess of the net cost to the Federal Gov-
10 ernment for such Program shall be used to reduce
11 the National debt.”.

12 **SEC. 403. FIDUCIARY DUTY OF SERVICERS OF POOLED RES-**
13 **IDENTIAL MORTGAGE LOANS.**

14 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
15 is amended by inserting after section 129 the following
16 new section:

17 **“SEC. 129A. FIDUCIARY DUTY OF SERVICERS OF POOLED**
18 **RESIDENTIAL MORTGAGES.**

19 “(a) IN GENERAL.—Except as may be established in
20 any investment contract between a servicer of pooled resi-
21 dential mortgages and an investor, a servicer of pooled res-
22 idential mortgages—

23 “(1) owes any duty to maximize the net present
24 value of the pooled mortgages in an investment to all
25 investors and parties having a direct or indirect in-

1 terest in such investment, not to any individual
2 party or group of parties; and

3 “(2) shall be deemed to act in the best interests
4 of all such investors and parties if the servicer
5 agrees to or implements a modification or workout
6 plan, including any modification or refinancing un-
7 dertaken pursuant to the HOPE for Homeowners
8 Act of 2008, for a residential mortgage or a class of
9 residential mortgages that constitute a part or all of
10 the pooled mortgages in such investment, provided
11 that any mortgage so modified meets the following
12 criteria:

13 “(A) Default on the payment of such mort-
14 gage has occurred or is reasonably foreseeable.

15 “(B) The property securing such mortgage
16 is occupied by the mortgagor of such mortgage.

17 “(C) The anticipated recovery on the prin-
18 cipal outstanding obligation of the mortgage
19 under the modification or workout plan exceeds,
20 on a net present value basis, the anticipated re-
21 covery on the principal outstanding obligation
22 of the mortgage through foreclosure.

23 “(b) DEFINITION.—As used in this section, the term
24 ‘servicer’ has the same meaning as in section 6(i)(2) of

1 the Real Estate Settlement Procedures Act (12 U.S.C.
2 2605(i)(2)).”.

3 **SEC. 404. REVISED STANDARDS FOR FHA APPRAISERS.**

4 Section 202(e) of the National Housing Act (12
5 U.S.C. 1708(e)) is amended by adding at the end the fol-
6 lowing:

7 “(5) **ADDITIONAL APPRAISER STANDARDS.**—
8 Beginning on the date of enactment of the Federal
9 Housing Finance Regulatory Reform Act of 2008,
10 any appraiser chosen or approved to conduct ap-
11 praisals for mortgages under this title shall—

12 “(A) be certified—

13 “(i) by the State in which the prop-
14 erty to be appraised is located; or

15 “(ii) by a nationally recognized profes-
16 sional appraisal organization; and

17 “(B) have demonstrated verifiable edu-
18 cation in the appraisal requirements established
19 by the Federal Housing Administration under
20 this subsection.”.

21 **TITLE V—MISCELLANEOUS**

22 **SEC. 501. STUDY AND REPORTS ON GUARANTEE FEES.**

23 (a) **ONGOING STUDY OF FEES.**—The Director shall
24 conduct an ongoing study of fees charged by enterprises
25 for guaranteeing a mortgage.

1 (b) COLLECTION OF DATA.—The Director shall, by
2 regulation or order, establish procedures for the collection
3 of data from enterprises for purposes of this subsection,
4 including the format and the process for collection of such
5 data.

6 (c) REPORTS TO CONGRESS.—The Director shall an-
7 nually submit a report to Congress on the results of the
8 study conducted under subsection (a), based on the aggre-
9 gated data collected under subsection (a) for the subject
10 year, regarding the amount of such fees and the criteria
11 used by the enterprises to determine such fees.

12 (d) CONTENTS OF REPORTS.—The reports required
13 under subsection (c) shall identify and analyze—

14 (1) the factors considered in determining the
15 amount of the guarantee fees charged;

16 (2) the total revenue earned by the enterprises
17 from guarantee fees;

18 (3) the total costs incurred by the enterprises
19 for providing guarantees;

20 (4) the average guarantee fee charged by the
21 enterprises;

22 (5) an analysis of any increase or decrease in
23 guarantee fees from the preceding year;

1 (6) a breakdown of the revenue and costs asso-
2 ciated with providing guarantees, based on product
3 type and risk classifications; and

4 (7) a breakdown of guarantee fees charged
5 based on asset size of the originator and the number
6 of loans sold or transferred to an enterprise.

7 (e) PROTECTION OF INFORMATION.—Nothing in this
8 section may be construed to require or authorize the Di-
9 rector to publicly disclose information that is confidential
10 or proprietary.

11 **SEC. 502. STUDY AND REPORT ON DEFAULT RISK EVALUA-**
12 **TION.**

13 (a) STUDY.—The Director shall conduct a study of
14 ways to improve the overall default risk evaluation used
15 with respect to residential mortgage loans. Particular at-
16 tention shall be paid to the development and utilization
17 of processes and technologies that provide a means to
18 standardize the measurement of risk.

19 (b) REPORT.—The Director shall submit a report on
20 the study conducted under this section to the Committee
21 on Banking, Housing, and Urban Affairs of the Senate
22 and the Committee on Financial Services of the House of
23 Representatives, not later than 1 year after the date of
24 enactment of this Act.

1 **SEC. 503. CONVERSION OF HUD CONTRACTS.**

2 (a) IN GENERAL.—Notwithstanding any other provi-
3 sion of law, the Secretary may, at the request of an owner
4 of a multifamily housing project that exceeds 5,000 units
5 to which a contract for project-based rental assistance
6 under section 8 of the United States Housing Act of 1937
7 (“Act”) (42 U.S.C. 1437f) and a Rental Assistance Pay-
8 ment contract is subject, convert such contracts to a con-
9 tract for project-based rental assistance under section 8
10 of the Act.

11 (b) INITIAL RENEWAL.—

12 (1) At the request of an owner under subsection
13 (a) made no later than 90 days prior to a conver-
14 sion, the Secretary may, to the extent sufficient
15 amounts are made available in appropriation Acts
16 and notwithstanding any other law, treat the con-
17 templated resulting contract as if such contract were
18 eligible for initial renewal under section 524(a) of
19 the MultiFamily Assisted Housing Reform and Af-
20 fordability Act of 1997 (42 U.S.C. 1437f note)
21 (“MAHRA”) (42 U.S.C. 1437f note).

22 (2) A request by an owner pursuant to para-
23 graph (1) shall be upon such terms and conditions
24 as the Secretary may require.

25 (c) RESULTING CONTRACT.—The resulting contract
26 shall—

1 (1) be subject to section 524(a) of MAHRA (42
2 U.S.C. 1437f note);

3 (2) be considered for all purposes a contract
4 that has been renewed under section 524(a) of
5 MAHRA (42 U.S.C. 1437f note) for a term not to
6 exceed 20 years;

7 (3) be subsequently renewable at the request of
8 an owner, under any renewal option for which the
9 project is eligible under MAHRA (42 U.S.C. 1437f
10 note);

11 (4) contain provisions limiting distributions, as
12 the Secretary determines appropriate, not to exceed
13 10 percent of the initial investment of the owner;

14 (5) be subject to the availability of sufficient
15 amounts in appropriation Acts; and

16 (6) be subject to such other terms and condi-
17 tions as the Secretary considers appropriate.

18 (d) INCOME TARGETING.—To the extent that the
19 project serves low-income families as defined in section
20 3(b)(2) of the Act (42 U.S.C. 1437a(b)(2)) it shall be con-
21 sidered to be in compliance with all income targeting re-
22 quirements under the Act (42 U.S.C. 1437 et seq).

23 (e) TENANT ELIGIBILITY.—Notwithstanding any
24 other provision of law, each family residing in an assisted
25 dwelling unit on the date of enactment of this section, sub-

1 ject to the resulting contract under subsection (a), shall
2 be considered to meet the applicable requirements for in-
3 come eligibility and occupancy.

4 (f) DEFINITIONS.—As used in this section—

5 (1) the term “Secretary” means the Secretary
6 of Housing and Urban Development;

7 (2) the term “conversion” means the action
8 under which a contract for project-based rental as-
9 sistance under section 8 of the Act and a Rental As-
10 sistance Payment contract become a contract for
11 project-based rental assistance under section 8 of
12 the Act (42 U.S.C. 1437f) pursuant to subsection
13 (a);

14 (3) the term “resulting contract” means the
15 new contract after a conversion pursuant to sub-
16 section (a); and

17 (4) the term “assisted dwelling unit” means a
18 dwelling unit in a multifamily housing project that
19 exceeds 5,000 units that, on the date of enactment
20 of this section is subject to a contract for project-
21 based rental assistance under section 8 of the Act
22 (42 U.S.C. 1437f) or a Rental Assistance Payment
23 contract.

1 **TITLE VI—S.A.F.E. MORTGAGE**
2 **LICENSING ACT**

3 **SEC. 601. SHORT TITLE.**

4 This title may be cited as the “Secure and Fair En-
5 forcement for Mortgage Licensing Act of 2008” or
6 “S.A.F.E. Mortgage Licensing Act of 2008”.

7 **SEC. 602. PURPOSES AND METHODS FOR ESTABLISHING A**
8 **MORTGAGE LICENSING SYSTEM AND REG-**
9 **ISTRY.**

10 In order to increase uniformity, reduce regulatory
11 burden, enhance consumer protection, and reduce fraud,
12 the States, through the Conference of State Bank Super-
13 visors and the American Association of Residential Mort-
14 gage Regulators, are hereby encouraged to establish a Na-
15 tionwide Mortgage Licensing System and Registry for the
16 residential mortgage industry that accomplishes all of the
17 following objectives:

18 (1) Provides uniform license applications and
19 reporting requirements for State-licensed loan origi-
20 nators.

21 (2) Provides a comprehensive licensing and su-
22 pervisory database.

23 (3) Aggregates and improves the flow of infor-
24 mation to and between regulators.

1 (4) Provides increased accountability and track-
2 ing of loan originators.

3 (5) Streamlines the licensing process and re-
4 duces the regulatory burden.

5 (6) Enhances consumer protections and sup-
6 ports anti-fraud measures.

7 (7) Provides consumers with easily accessible
8 information, offered at no charge, utilizing electronic
9 media, including the Internet, regarding the employ-
10 ment history of, and publicly adjudicated discipli-
11 nary and enforcement actions against, loan origina-
12 tors.

13 (8) Establishes a means by which residential
14 mortgage loan originators would, to the greatest ex-
15 tent possible, be required to act in the best interests
16 of the consumer.

17 (9) Facilitates responsible behavior in the
18 subprime mortgage market place and provides com-
19 prehensive training and examination requirements
20 related to subprime mortgage lending.

21 (10) Facilitates the collection and disbursement
22 of consumer complaints on behalf of State and Fed-
23 eral mortgage regulators.

1 **SEC. 603. DEFINITIONS.**

2 For purposes of this title, the following definitions
3 shall apply:

4 (1) **FEDERAL BANKING AGENCIES.**—The term
5 “Federal banking agencies” means the Board of
6 Governors of the Federal Reserve System, the
7 Comptroller of the Currency, the Director of the Of-
8 fice of Thrift Supervision, the National Credit Union
9 Administration, and the Federal Deposit Insurance
10 Corporation.

11 (2) **DEPOSITORY INSTITUTION.**—The term “de-
12 pository institution” has the same meaning as in
13 section 3 of the Federal Deposit Insurance Act, and
14 includes any credit union.

15 (3) **LOAN ORIGINATOR.**—

16 (A) **IN GENERAL.**—The term “loan origi-
17 nator”—

18 (i) means an individual who—

19 (I) takes a residential mortgage
20 loan application; and

21 (II) offers or negotiates terms of
22 a residential mortgage loan for com-
23 pensation or gain;

24 (ii) does not include any individual
25 who is not otherwise described in clause (i)
26 and who performs purely administrative or

1 clerical tasks on behalf of a person who is
2 described in any such clause; and

3 (iii) does not include a person or enti-
4 ty that only performs real estate brokerage
5 activities and is licensed or registered in
6 accordance with applicable State law, un-
7 less the person or entity is compensated by
8 a lender, a mortgage broker, or other loan
9 originator or by any agent of such lender,
10 mortgage broker, or other loan originator.

11 (B) OTHER DEFINITIONS RELATING TO
12 LOAN ORIGINATOR.—For purposes of this sub-
13 section, an individual “assists a consumer in
14 obtaining or applying to obtain a residential
15 mortgage loan” by, among other things, advis-
16 ing on loan terms (including rates, fees, other
17 costs), preparing loan packages, or collecting in-
18 formation on behalf of the consumer with re-
19 gard to a residential mortgage loan.

20 (C) ADMINISTRATIVE OR CLERICAL
21 TASKS.—The term “administrative or clerical
22 tasks” means the receipt, collection, and dis-
23 tribution of information common for the proc-
24 essing or underwriting of a loan in the mort-
25 gage industry and communication with a con-

1 consumer to obtain information necessary for the
2 processing or underwriting of a residential
3 mortgage loan.

4 (D) REAL ESTATE BROKERAGE ACTIVITY
5 DEFINED.—The term “real estate brokerage ac-
6 tivity” means any activity that involves offering
7 or providing real estate brokerage services to
8 the public, including—

9 (i) acting as a real estate agent or
10 real estate broker for a buyer, seller, les-
11 sor, or lessee of real property;

12 (ii) bringing together parties inter-
13 ested in the sale, purchase, lease, rental, or
14 exchange of real property;

15 (iii) negotiating, on behalf of any
16 party, any portion of a contract relating to
17 the sale, purchase, lease, rental, or ex-
18 change of real property (other than in con-
19 nection with providing financing with re-
20 spect to any such transaction);

21 (iv) engaging in any activity for which
22 a person engaged in the activity is required
23 to be registered or licensed as a real estate
24 agent or real estate broker under any ap-
25 plicable law; and

1 (v) offering to engage in any activity,
2 or act in any capacity, described in clause
3 (i), (ii), (iii), or (iv).

4 (4) LOAN PROCESSOR OR UNDERWRITER.—

5 (A) IN GENERAL.—The term “loan proc-
6 essor or underwriter” means an individual who
7 performs clerical or support duties at the direc-
8 tion of and subject to the supervision and in-
9 struction of—

10 (i) a State-licensed loan originator; or
11 (ii) a registered loan originator.

12 (B) CLERICAL OR SUPPORT DUTIES.—For
13 purposes of subparagraph (A), the term “cler-
14 ical or support duties” may include—

15 (i) the receipt, collection, distribution,
16 and analysis of information common for
17 the processing or underwriting of a resi-
18 dential mortgage loan; and

19 (ii) communicating with a consumer
20 to obtain the information necessary for the
21 processing or underwriting of a loan, to the
22 extent that such communication does not
23 include offering or negotiating loan rates
24 or terms, or counseling consumers about
25 residential mortgage loan rates or terms.

1 (5) NATIONWIDE MORTGAGE LICENSING SYS-
2 TEM AND REGISTRY.—The term “Nationwide Mort-
3 gage Licensing System and Registry” means a mort-
4 gage licensing system developed and maintained by
5 the Conference of State Bank Supervisors and the
6 American Association of Residential Mortgage Regu-
7 lators for the State licensing and registration of
8 State-licensed loan originators and the registration
9 of registered loan originators or any system estab-
10 lished by the Secretary under section 609.

11 (6) NONTRADITIONAL MORTGAGE PRODUCT.—
12 The term “nontraditional mortgage product” means
13 any mortgage product other than a 30-year fixed
14 rate mortgage.

15 (7) REGISTERED LOAN ORIGINATOR.—The term
16 “registered loan originator” means any individual
17 who—

18 (A) meets the definition of loan originator
19 and is an employee of a depository institution
20 or a wholly-owned subsidiary of a depository in-
21 stitution; and

22 (B) is registered with, and maintains a
23 unique identifier through, the Nationwide Mort-
24 gage Licensing System and Registry.

1 (8) RESIDENTIAL MORTGAGE LOAN.—The term
2 “residential mortgage loan” means any loan pri-
3 marily for personal, family, or household use that is
4 secured by a mortgage, deed of trust, or other equiv-
5 alent consensual security interest on a dwelling (as
6 defined in section 103(v) of the Truth in Lending
7 Act) or residential real estate upon which is con-
8 structed or intended to be constructed a dwelling (as
9 so defined).

10 (9) SECRETARY.—The term “Secretary” means
11 the Secretary of Housing and Urban Development.

12 (10) STATE-LICENSED LOAN ORIGINATOR.—
13 The term “State-licensed loan originator” means
14 any individual who—

15 (A) is a loan originator;

16 (B) is not an employee of a depository in-
17 stitution or any wholly-owned subsidiary of a
18 depository institution; and

19 (C) is licensed by a State or by the Sec-
20 retary under section 608 and registered as a
21 loan originator with, and maintains a unique
22 identifier through, the Nationwide Mortgage Li-
23 censing System and Registry.

24 (11) UNIQUE IDENTIFIER.—

1 (A) IN GENERAL.—The term “unique identifier” means a number or other identifier
2 that—
3

4 (i) permanently identifies a loan originator;
5

6 (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal
7 banking agencies to facilitate electronic tracking of loan originators and uniform
8 identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
9
10
11
12
13
14

15 (iii) shall not be used for purposes other than those set forth under this title.
16

17 (B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the
18 purpose of this title, States shall use unique
19 identifiers in lieu of social security numbers.
20

21 **SEC. 604. LICENSE OR REGISTRATION REQUIRED.**

22 (a) IN GENERAL.—An individual may not engage in
23 the business of a loan originator without first—

24 (1) obtaining, and maintaining annually—

1 (A) a registration as a registered loan
2 originator; or

3 (B) a license and registration as a State-
4 licensed loan originator; and

5 (2) obtaining a unique identifier.

6 (b) LOAN PROCESSORS AND UNDERWRITERS.—

7 (1) SUPERVISED LOAN PROCESSORS AND UN-
8 DERWRITERS.—A loan processor or underwriter who
9 does not represent to the public, through advertising
10 or other means of communicating or providing infor-
11 mation (including the use of business cards, sta-
12 tionery, brochures, signs, rate lists, or other pro-
13 motional items), that such individual can or will per-
14 form any of the activities of a loan originator shall
15 not be required to be a State-licensed loan originator
16 or a registered loan originator.

17 (2) INDEPENDENT CONTRACTORS.—An inde-
18 pendent contractor may not engage in residential
19 mortgage loan origination activities as a loan proc-
20 essor or underwriter unless such independent con-
21 tractor is a State-licensed loan originator or a reg-
22 istered loan originator.

1 **SEC. 605. STATE LICENSE AND REGISTRATION APPLICA-**
2 **TION AND ISSUANCE.**

3 (a) **BACKGROUND CHECKS.**—In connection with an
4 application to any State for licensing and registration as
5 a State-licensed loan originator, the applicant shall, at a
6 minimum, furnish to the Nationwide Mortgage Licensing
7 System and Registry information concerning the appli-
8 cant's identity, including—

9 (1) fingerprints for submission to the Federal
10 Bureau of Investigation, and any governmental
11 agency or entity authorized to receive such informa-
12 tion for a State and national criminal history back-
13 ground check; and

14 (2) personal history and experience, including
15 authorization for the System to obtain—

16 (A) an independent credit report obtained
17 from a consumer reporting agency described in
18 section 603(p) of the Fair Credit Reporting
19 Act; and

20 (B) information related to any administra-
21 tive, civil or criminal findings by any govern-
22 mental jurisdiction.

23 (b) **ISSUANCE OF LICENSE.**—The minimum stand-
24 ards for licensing and registration as a State-licensed loan
25 originator shall include the following:

1 (1) The applicant has never had a loan origi-
2 nator license revoked in any governmental jurisdic-
3 tion.

4 (2) The applicant has never been convicted of,
5 or pled guilty or nolo contendere to, a felony in a do-
6 mestic, foreign, or military court.

7 (3) The applicant has demonstrated financial
8 responsibility, character, and general fitness such as
9 to command the confidence of the community and to
10 warrant a determination that the loan originator will
11 operate honestly, fairly, and efficiently within the
12 purposes of this title.

13 (4) The applicant has completed the pre-licens-
14 ing education requirement described in subsection
15 (c).

16 (5) The applicant has passed a written test that
17 meets the test requirement described in subsection
18 (d).

19 (6) The applicant has met either a net worth or
20 surety bond requirement, as required by the State
21 pursuant to section 608(d)(6).

22 (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-
23 TORS.—

24 (1) MINIMUM EDUCATIONAL REQUIREMENTS.—

25 In order to meet the pre-licensing education require-

1 ment referred to in subsection (b)(4), a person shall
2 complete at least 20 hours of education approved in
3 accordance with paragraph (2), which shall include
4 at least—

5 (A) 3 hours of Federal law and regula-
6 tions;

7 (B) 3 hours of ethics, which shall include
8 instruction on fraud, consumer protection, and
9 fair lending issues; and

10 (C) 2 hours of training related to lending
11 standards for the nontraditional mortgage prod-
12 uct marketplace.

13 (2) APPROVED EDUCATIONAL COURSES.—For
14 purposes of paragraph (1), pre-licensing education
15 courses shall be reviewed, and approved by the Na-
16 tionwide Mortgage Licensing System and Registry.

17 (3) LIMITATION AND STANDARDS.—

18 (A) LIMITATION.—To maintain the inde-
19 pendence of the approval process, the Nation-
20 wide Mortgage Licensing System and Registry
21 shall not directly or indirectly offer pre-licen-
22 sure educational courses for loan originators.

23 (B) STANDARDS.—In approving courses
24 under this section, the Nationwide Mortgage Li-
25 censing System and Registry shall apply rea-

1 sonable standards in the review and approval of
2 courses.

3 (d) TESTING OF LOAN ORIGINATORS.—

4 (1) IN GENERAL.—In order to meet the written
5 test requirement referred to in subsection (b)(5), an
6 individual shall pass, in accordance with the stand-
7 ards established under this subsection, a qualified
8 written test developed by the Nationwide Mortgage
9 Licensing System and Registry and administered by
10 an approved test provider.

11 (2) QUALIFIED TEST.—A written test shall not
12 be treated as a qualified written test for purposes of
13 paragraph (1) unless the test adequately measures
14 the applicant's knowledge and comprehension in ap-
15 propriate subject areas, including—

16 (A) ethics;

17 (B) Federal law and regulation pertaining
18 to mortgage origination;

19 (C) State law and regulation pertaining to
20 mortgage origination;

21 (D) Federal and State law and regulation,
22 including instruction on fraud, consumer pro-
23 tection, the nontraditional mortgage market-
24 place, and fair lending issues.

25 (3) MINIMUM COMPETENCE.—

1 (A) PASSING SCORE.—An individual shall
2 not be considered to have passed a qualified
3 written test unless the individual achieves a test
4 score of not less than 75 percent correct an-
5 swers to questions.

6 (B) INITIAL RETESTS.—An individual may
7 retake a test 3 consecutive times with each con-
8 secutive taking occurring at least 30 days after
9 the preceding test.

10 (C) SUBSEQUENT RETESTS.—After failing
11 3 consecutive tests, an individual shall wait at
12 least 6 months before taking the test again.

13 (D) RETEST AFTER LAPSE OF LICENSE.—
14 A State-licensed loan originator who fails to
15 maintain a valid license for a period of 5 years
16 or longer shall retake the test, not taking into
17 account any time during which such individual
18 is a registered loan originator.

19 (e) MORTGAGE CALL REPORTS.—Each mortgage li-
20 censee shall submit to the Nationwide Mortgage Licensing
21 System and Registry reports of condition, which shall be
22 in such form and shall contain such information as the
23 Nationwide Mortgage Licensing System and Registry may
24 require.

1 **SEC. 606. STANDARDS FOR STATE LICENSE RENEWAL.**

2 (a) IN GENERAL.—The minimum standards for li-
3 cense renewal for State-licensed loan originators shall in-
4 clude the following:

5 (1) The loan originator continues to meet the
6 minimum standards for license issuance.

7 (2) The loan originator has satisfied the annual
8 continuing education requirements described in sub-
9 section (b).

10 (b) CONTINUING EDUCATION FOR STATE-LICENSED
11 LOAN ORIGINATORS.—

12 (1) IN GENERAL.—In order to meet the annual
13 continuing education requirements referred to in
14 subsection (a)(2), a State-licensed loan originator
15 shall complete at least 8 hours of education ap-
16 proved in accordance with paragraph (2), which
17 shall include at least—

18 (A) 3 hours of Federal law and regula-
19 tions;

20 (B) 2 hours of ethics, which shall include
21 instruction on fraud, consumer protection, and
22 fair lending issues; and

23 (C) 2 hours of training related to lending
24 standards for the nontraditional mortgage prod-
25 uct marketplace.

1 (2) APPROVED EDUCATIONAL COURSES.—For
2 purposes of paragraph (1), continuing education
3 courses shall be reviewed, and approved by the Na-
4 tionwide Mortgage Licensing System and Registry.

5 (3) CALCULATION OF CONTINUING EDUCATION
6 CREDITS.—A State-licensed loan originator—

7 (A) may only receive credit for a con-
8 tinuing education course in the year in which
9 the course is taken; and

10 (B) may not take the same approved
11 course in the same or successive years to meet
12 the annual requirements for continuing edu-
13 cation.

14 (4) INSTRUCTOR CREDIT.—A State-licensed
15 loan originator who is approved as an instructor of
16 an approved continuing education course may receive
17 credit for the originator's own annual continuing
18 education requirement at the rate of 2 hours credit
19 for every 1 hour taught.

20 (5) LIMITATION AND STANDARDS.—

21 (A) LIMITATION.—To maintain the inde-
22 pendence of the approval process, the Nation-
23 wide Mortgage Licensing System and Registry
24 shall not directly or indirectly offer any con-
25 tinuing education courses for loan originators.

1 (B) STANDARDS.—In approving courses
2 under this section, the Nationwide Mortgage Li-
3 censing System and Registry shall apply rea-
4 sonable standards in the review and approval of
5 courses.

6 **SEC. 607. SYSTEM OF REGISTRATION ADMINISTRATION BY**
7 **FEDERAL BANKING AGENCIES.**

8 (a) DEVELOPMENT.—

9 (1) IN GENERAL.—The Federal banking agen-
10 cies shall jointly, through the Federal Financial In-
11 stitutions Examination Council, develop and main-
12 tain a system for registering employees of depository
13 institutions or subsidiaries of depository institutions
14 as registered loan originators with the Nationwide
15 Mortgage Licensing System and Registry. The sys-
16 tem shall be implemented before the end of the 1-
17 year period beginning on the date of the enactment
18 of this title.

19 (2) REGISTRATION REQUIREMENTS.—In con-
20 nection with the registration of any loan originator
21 who is an employee of a depository institution or a
22 wholly-owned subsidiary of a depository institution
23 with the Nationwide Mortgage Licensing System and
24 Registry, the appropriate Federal banking agency
25 shall, at a minimum, furnish or cause to be fur-

1 nished to the Nationwide Mortgage Licensing Sys-
2 tem and Registry information concerning the
3 employees's identity, including—

4 (A) fingerprints for submission to the Fed-
5 eral Bureau of Investigation, and any govern-
6 mental agency or entity authorized to receive
7 such information for a State and national
8 criminal history background check; and

9 (B) personal history and experience, in-
10 cluding authorization for the Nationwide Mort-
11 gage Licensing System and Registry to obtain
12 information related to any administrative, civil
13 or criminal findings by any governmental juris-
14 diction.

15 (b) COORDINATION.—

16 (1) UNIQUE IDENTIFIER.—The Federal bank-
17 ing agencies, through the Financial Institutions Ex-
18 amination Council, shall coordinate with the Nation-
19 wide Mortgage Licensing System and Registry to es-
20 tablish protocols for assigning a unique identifier to
21 each registered loan originator that will facilitate
22 electronic tracking and uniform identification of, and
23 public access to, the employment history of and pub-
24 licly adjudicated disciplinary and enforcement ac-
25 tions against loan originators.

1 (2) NATIONWIDE MORTGAGE LICENSING SYS-
2 TEM AND REGISTRY DEVELOPMENT.—To facilitate
3 the transfer of information required by subsection
4 (a)(2), the Nationwide Mortgage Licensing System
5 and Registry shall coordinate with the Federal bank-
6 ing agencies, through the Financial Institutions Ex-
7 amination Council, concerning the development and
8 operation, by such System and Registry, of the reg-
9 istration functionality and data requirements for
10 loan originators.

11 (c) CONSIDERATION OF FACTORS AND PROCE-
12 DURES.—In establishing the registration procedures under
13 subsection (a) and the protocols for assigning a unique
14 identifier to a registered loan originator, the Federal bank-
15 ing agencies shall make such de minimis exceptions as
16 may be appropriate to paragraphs (1)(A) and (2) of sec-
17 tion 604(a), shall make reasonable efforts to utilize exist-
18 ing information to minimize the burden of registering loan
19 originators, and shall consider methods for automating the
20 process to the greatest extent practicable consistent with
21 the purposes of this title.

1 **SEC. 608. SECRETARY OF HOUSING AND URBAN DEVELOP-**
2 **MENT BACKUP AUTHORITY TO ESTABLISH A**
3 **LOAN ORIGINATOR LICENSING SYSTEM.**

4 (a) **BACKUP LICENSING SYSTEM.**—If, by the end of
5 the 1-year period, or the 2-year period in the case of a
6 State whose legislature meets only biennially, beginning
7 on the date of the enactment of this title or at any time
8 thereafter, the Secretary determines that a State does not
9 have in place by law or regulation a system for licensing
10 and registering loan originators that meets the require-
11 ments of sections 605 and 606 and subsection (d) of this
12 section, or does not participate in the Nationwide Mort-
13 gage Licensing System and Registry, the Secretary shall
14 provide for the establishment and maintenance of a system
15 for the licensing and registration by the Secretary of loan
16 originators operating in such State as State-licensed loan
17 originators.

18 (b) **LICENSING AND REGISTRATION REQUIRE-**
19 **MENTS.**—The system established by the Secretary under
20 subsection (a) for any State shall meet the requirements
21 of sections 605 and 606 for State-licensed loan origina-
22 tors.

23 (c) **UNIQUE IDENTIFIER.**—The Secretary shall co-
24 ordinate with the Nationwide Mortgage Licensing System
25 and Registry to establish protocols for assigning a unique
26 identifier to each loan originator licensed by the Secretary

1 as a State-licensed loan originator that will facilitate elec-
2 tronic tracking and uniform identification of, and public
3 access to, the employment history of and the publicly adju-
4 dicated disciplinary and enforcement actions against loan
5 originators.

6 (d) STATE LICENSING LAW REQUIREMENTS.—For
7 purposes of this section, the law in effect in a State meets
8 the requirements of this subsection if the Secretary deter-
9 mines the law satisfies the following minimum require-
10 ments:

11 (1) A State loan originator supervisory author-
12 ity is maintained to provide effective supervision and
13 enforcement of such law, including the suspension,
14 termination, or nonrenewal of a license for a viola-
15 tion of State or Federal law.

16 (2) The State loan originator supervisory au-
17 thority ensures that all State-licensed loan origina-
18 tors operating in the State are registered with Na-
19 tionwide Mortgage Licensing System and Registry.

20 (3) The State loan originator supervisory au-
21 thority is required to regularly report violations of
22 such law, as well as enforcement actions and other
23 relevant information, to the Nationwide Mortgage
24 Licensing System and Registry.

1 (4) The State loan originator supervisory au-
2 thority has a process in place for challenging infor-
3 mation contained in the Nationwide Mortgage Li-
4 censing System and Registry.

5 (5) The State loan originator supervisory au-
6 thority has established a mechanism to assess civil
7 money penalties for individuals acting as mortgage
8 originators in their State without a valid license or
9 registration.

10 (6) The State loan originator supervisory au-
11 thority has established minimum net worth or surety
12 bonding requirements that reflect the dollar amount
13 of loans originated by a residential mortgage loan
14 originator.

15 (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-
16 retary may extend, by not more than 24 months, the 1-
17 year or 2-year period, as the case may be, referred to in
18 subsection (a) for the licensing of loan originators in any
19 State under a State licensing law that meets the require-
20 ments of sections 605 and 606 and subsection (d) if the
21 Secretary determines that such State is making a good
22 faith effort to establish a State licensing law that meets
23 such requirements, license mortgage originators under
24 such law, and register such originators with the Nation-
25 wide Mortgage Licensing System and Registry.

1 (f) CONTRACTING AUTHORITY.—The Secretary may
2 enter into contracts with qualified independent parties, as
3 necessary to efficiently fulfill the obligations of the Sec-
4 retary under this section.

5 **SEC. 609. BACKUP AUTHORITY TO ESTABLISH A NATION-**
6 **WIDE MORTGAGE LICENSING AND REGISTRY**
7 **SYSTEM.**

8 If at any time the Secretary determines that the Na-
9 tionwide Mortgage Licensing System and Registry is fail-
10 ing to meet the requirements and purposes of this title
11 for a comprehensive licensing, supervisory, and tracking
12 system for loan originators, the Secretary shall establish
13 and maintain such a system to carry out the purposes of
14 this title and the effective registration and regulation of
15 loan originators.

16 **SEC. 610. FEES.**

17 The Federal banking agencies, the Secretary, and the
18 Nationwide Mortgage Licensing System and Registry may
19 charge reasonable fees to cover the costs of maintaining
20 and providing access to information from the Nationwide
21 Mortgage Licensing System and Registry, to the extent
22 that such fees are not charged to consumers for access
23 to such system and registry.

1 **SEC. 611. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

2 (a) ACCESS TO RECORDS.—Notwithstanding any
3 other provision of law, in providing identification and
4 processing functions, the Attorney General shall provide
5 access to all criminal history information to the appro-
6 priate State officials responsible for regulating State-li-
7 censed loan originators to the extent criminal history
8 background checks are required under the laws of the
9 State for the licensing of such loan originators.

10 (b) AGENT.—For the purposes of this section and in
11 order to reduce the points of contact which the Federal
12 Bureau of Investigation may have to maintain for pur-
13 poses of subsection (a), the Conference of State Bank Su-
14 pervisors or a wholly owned subsidiary may be used as
15 a channeling agent of the States for requesting and dis-
16 tributing information between the Department of Justice
17 and the appropriate State agencies.

18 **SEC. 612. CONFIDENTIALITY OF INFORMATION.**

19 (a) SYSTEM CONFIDENTIALITY.—Except as other-
20 wise provided in this section, any requirement under Fed-
21 eral or State law regarding the privacy or confidentiality
22 of any information or material provided to the Nationwide
23 Mortgage Licensing System and Registry or a system es-
24 tablished by the Secretary under section 609, and any
25 privilege arising under Federal or State law (including the
26 rules of any Federal or State court) with respect to such

1 information or material, shall continue to apply to such
2 information or material after the information or material
3 has been disclosed to the system. Such information and
4 material may be shared with all State and Federal regu-
5 latory officials with mortgage industry oversight authority
6 without the loss of privilege or the loss of confidentiality
7 protections provided by Federal and State laws.

8 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-
9 MENTS.—Information or material that is subject to a
10 privilege or confidentiality under subsection (a) shall not
11 be subject to—

12 (1) disclosure under any Federal or State law
13 governing the disclosure to the public of information
14 held by an officer or an agency of the Federal Gov-
15 ernment or the respective State; or

16 (2) subpoena or discovery, or admission into
17 evidence, in any private civil action or administrative
18 process, unless with respect to any privilege held by
19 the Nationwide Mortgage Licensing System and
20 Registry or the Secretary with respect to such infor-
21 mation or material, the person to whom such infor-
22 mation or material pertains waives, in whole or in
23 part, in the discretion of such person, that privilege.

24 (c) COORDINATION WITH OTHER LAW.—Any State
25 law, including any State open record law, relating to the

1 disclosure of confidential supervisory information or any
2 information or material described in subsection (a) that
3 is inconsistent with subsection (a) shall be superseded by
4 the requirements of such provision to the extent State law
5 provides less confidentiality or a weaker privilege.

6 (d) PUBLIC ACCESS TO INFORMATION.—This section
7 shall not apply with respect to the information or material
8 relating to the employment history of, and publicly adju-
9 dicated disciplinary and enforcement actions against, loan
10 originators that is included in Nationwide Mortgage Li-
11 censing System and Registry for access by the public.

12 **SEC. 613. LIABILITY PROVISIONS.**

13 The Secretary, any State official or agency, any Fed-
14 eral banking agency, or any organization serving as the
15 administrator of the Nationwide Mortgage Licensing Sys-
16 tem and Registry or a system established by the Secretary
17 under section 609, or any officer or employee of any such
18 entity, shall not be subject to any civil action or proceeding
19 for monetary damages by reason of the good faith action
20 or omission of any officer or employee of any such entity,
21 while acting within the scope of office or employment, re-
22 lating to the collection, furnishing, or dissemination of in-
23 formation concerning persons who are loan originators or
24 are applying for licensing or registration as loan origina-
25 tors.

1 **SEC. 614. ENFORCEMENT UNDER HUD BACKUP LICENSING**
2 **SYSTEM.**

3 (a) **SUMMONS AUTHORITY.**—The Secretary may—

4 (1) examine any books, papers, records, or
5 other data of any loan originator operating in any
6 State which is subject to a licensing system estab-
7 lished by the Secretary under section 608; and

8 (2) summon any loan originator referred to in
9 paragraph (1) or any person having possession, cus-
10 tody, or care of the reports and records relating to
11 such loan originator, to appear before the Secretary
12 or any delegate of the Secretary at a time and place
13 named in the summons and to produce such books,
14 papers, records, or other data, and to give testi-
15 mony, under oath, as may be relevant or material to
16 an investigation of such loan originator for compli-
17 ance with the requirements of this title.

18 (b) **EXAMINATION AUTHORITY.**—

19 (1) **IN GENERAL.**—If the Secretary establishes
20 a licensing system under section 608 for any State,
21 the Secretary shall appoint examiners for the pur-
22 poses of administering such section.

23 (2) **POWER TO EXAMINE.**—Any examiner ap-
24 pointed under paragraph (1) shall have power, on
25 behalf of the Secretary, to make any examination of
26 any loan originator operating in any State which is

1 subject to a licensing system established by the Sec-
2 retary under section 608 whenever the Secretary de-
3 termines an examination of any loan originator is
4 necessary to determine the compliance by the origi-
5 nator with this title.

6 (3) REPORT OF EXAMINATION.—Each examiner
7 appointed under paragraph (1) shall make a full and
8 detailed report of examination of any loan originator
9 examined to the Secretary.

10 (4) ADMINISTRATION OF OATHS AND AFFIRMA-
11 TIONS; EVIDENCE.—In connection with examinations
12 of loan originators operating in any State which is
13 subject to a licensing system established by the Sec-
14 retary under section 608, or with other types of in-
15 vestigations to determine compliance with applicable
16 law and regulations, the Secretary and examiners
17 appointed by the Secretary may administer oaths
18 and affirmations and examine and take and preserve
19 testimony under oath as to any matter in respect to
20 the affairs of any such loan originator.

21 (5) ASSESSMENTS.—The cost of conducting any
22 examination of any loan originator operating in any
23 State which is subject to a licensing system estab-
24 lished by the Secretary under section 608 shall be
25 assessed by the Secretary against the loan originator

1 to meet the Secretary's expenses in carrying out
2 such examination.

3 (c) CEASE AND DESIST PROCEEDING.—

4 (1) AUTHORITY OF SECRETARY.—If the Sec-
5 retary finds, after notice and opportunity for hear-
6 ing, that any person is violating, has violated, or is
7 about to violate any provision of this title, or any
8 regulation thereunder, with respect to a State which
9 is subject to a licensing system established by the
10 Secretary under section 608, the Secretary may pub-
11 lish such findings and enter an order requiring such
12 person, and any other person that is, was, or would
13 be a cause of the violation, due to an act or omission
14 the person knew or should have known would con-
15 tribute to such violation, to cease and desist from
16 committing or causing such violation and any future
17 violation of the same provision, rule, or regulation.
18 Such order may, in addition to requiring a person to
19 cease and desist from committing or causing a viola-
20 tion, require such person to comply, or to take steps
21 to effect compliance, with such provision or regula-
22 tion, upon such terms and conditions and within
23 such time as the Secretary may specify in such
24 order. Any such order may, as the Secretary deems
25 appropriate, require future compliance or steps to

1 effect future compliance, either permanently or for
2 such period of time as the Secretary may specify,
3 with such provision or regulation with respect to any
4 loan originator.

5 (2) HEARING.—The notice instituting pro-
6 ceedings pursuant to paragraph (1) shall fix a hear-
7 ing date not earlier than 30 days nor later than 60
8 days after service of the notice unless an earlier or
9 a later date is set by the Secretary with the consent
10 of any respondent so served.

11 (3) TEMPORARY ORDER.—Whenever the Sec-
12 retary determines that the alleged violation or
13 threatened violation specified in the notice insti-
14 tuting proceedings pursuant to paragraph (1), or the
15 continuation thereof, is likely to result in significant
16 dissipation or conversion of assets, significant harm
17 to consumers, or substantial harm to the public in-
18 terest prior to the completion of the proceedings, the
19 Secretary may enter a temporary order requiring the
20 respondent to cease and desist from the violation or
21 threatened violation and to take such action to pre-
22 vent the violation or threatened violation and to pre-
23 vent dissipation or conversion of assets, significant
24 harm to consumers, or substantial harm to the pub-
25 lic interest as the Secretary deems appropriate pend-

1 ing completion of such proceedings. Such an order
2 shall be entered only after notice and opportunity for
3 a hearing, unless the Secretary determines that no-
4 tice and hearing prior to entry would be impracti-
5 cable or contrary to the public interest. A temporary
6 order shall become effective upon service upon the
7 respondent and, unless set aside, limited, or sus-
8 pended by the Secretary or a court of competent ju-
9 risdiction, shall remain effective and enforceable
10 pending the completion of the proceedings.

11 (4) REVIEW OF TEMPORARY ORDERS.—

12 (A) REVIEW BY SECRETARY.—At any time
13 after the respondent has been served with a
14 temporary cease and desist order pursuant to
15 paragraph (3), the respondent may apply to the
16 Secretary to have the order set aside, limited,
17 or suspended. If the respondent has been served
18 with a temporary cease and desist order entered
19 without a prior hearing before the Secretary,
20 the respondent may, within 10 days after the
21 date on which the order was served, request a
22 hearing on such application and the Secretary
23 shall hold a hearing and render a decision on
24 such application at the earliest possible time.

25 (B) JUDICIAL REVIEW.—Within—

1 (i) 10 days after the date the respond-
2 ent was served with a temporary cease and
3 desist order entered with a prior hearing
4 before the Secretary; or

5 (ii) 10 days after the Secretary ren-
6 ders a decision on an application and hear-
7 ing under paragraph (1), with respect to
8 any temporary cease and desist order en-
9 tered without a prior hearing before the
10 Secretary,

11 the respondent may apply to the United States
12 district court for the district in which the re-
13 spondent resides or has its principal place of
14 business, or for the District of Columbia, for an
15 order setting aside, limiting, or suspending the
16 effectiveness or enforcement of the order, and
17 the court shall have jurisdiction to enter such
18 an order. A respondent served with a temporary
19 cease and desist order entered without a prior
20 hearing before the Secretary may not apply to
21 the court except after hearing and decision by
22 the Secretary on the respondent's application
23 under subparagraph (A).

24 (C) NO AUTOMATIC STAY OF TEMPORARY
25 ORDER.—The commencement of proceedings

1 under subparagraph (B) shall not, unless spe-
2 cifically ordered by the court, operate as a stay
3 of the Secretary's order.

4 (5) AUTHORITY OF THE SECRETARY TO PRO-
5 HIBIT PERSONS FROM SERVING AS LOAN ORIGINA-
6 TORS.—In any cease and desist proceeding under
7 paragraph (1), the Secretary may issue an order to
8 prohibit, conditionally or unconditionally, and per-
9 manently or for such period of time as the Secretary
10 shall determine, any person who has violated this
11 title or regulations thereunder, from acting as a loan
12 originator if the conduct of that person dem-
13 onstrates unfitness to serve as a loan originator.

14 (d) AUTHORITY OF THE SECRETARY TO ASSESS
15 MONEY PENALTIES.—

16 (1) IN GENERAL.—The Secretary may impose a
17 civil penalty on a loan originator operating in any
18 State which is subject to a licensing system estab-
19 lished by the Secretary under section 608, if the
20 Secretary finds, on the record after notice and op-
21 portunity for hearing, that such loan originator has
22 violated or failed to comply with any requirement of
23 this title or any regulation prescribed by the Sec-
24 retary under this title or order issued under sub-
25 section (c).

1 (2) MAXIMUM AMOUNT OF PENALTY.—The
2 maximum amount of penalty for each act or omis-
3 sion described in paragraph (1) shall be \$25,000.

4 **SEC. 615. STATE EXAMINATION AUTHORITY.**

5 In addition to any authority allowed under State law
6 a State licensing agency shall have the authority to con-
7 duct investigations and examinations as follows:

8 (1) For the purposes of investigating violations
9 or complaints arising under this title, or for the pur-
10 poses of examination, the State licensing agency may
11 review, investigate, or examine any loan originator
12 licensed or required to be licensed under this title,
13 as often as necessary in order to carry out the pur-
14 poses of this title.

15 (2) Each such loan originator shall make avail-
16 able upon request to the State licensing agency the
17 books and records relating to the operations of such
18 originator. The State licensing agency may have ac-
19 cess to such books and records and interview the of-
20 ficers, principals, loan originators, employees, inde-
21 pendent contractors, agents, and customers of the li-
22 censee concerning their business.

23 (3) The authority of this section shall remain in
24 effect, whether such a loan originator acts or claims

1 to act under any licensing or registration law of such
2 State, or claims to act without such authority.

3 (4) No person subject to investigation or exam-
4 ination under this section may knowingly withhold,
5 abstract, remove, mutilate, destroy, or secrete any
6 books, records, computer records, or other informa-
7 tion.

8 **SEC. 616. PREEMPTION OF STATE LAW.**

9 Nothing in this title may be construed to preempt the
10 law of any State, to the extent that such State law pro-
11 vides greater protection to consumers than is provided
12 under this title.

13 **SEC. 617. REPORTS AND RECOMMENDATIONS TO CON-**
14 **GRESS.**

15 (a) ANNUAL REPORTS.—Not later than 1 year after
16 the date of enactment of this title, and annually there-
17 after, the Secretary shall submit a report to Congress on
18 the effectiveness of the provisions of this title, including
19 legislative recommendations, if any, for strengthening con-
20 sumer protections, enhancing examination standards,
21 streamlining communication between all stakeholders in-
22 volved in residential mortgage loan origination and proc-
23 essing, and establishing performance based bonding re-
24 quirements for mortgage originators or institutions that
25 employ such brokers.

1 (b) LEGISLATIVE RECOMMENDATIONS.—Not later
2 than 6 months after the date of enactment of this title,
3 the Secretary shall make recommendations to Congress on
4 legislative reforms to the Real Estate Settlement Proce-
5 dures Act of 1974, that the Secretary deems appropriate
6 to promote more transparent disclosures, allowing con-
7 sumers to better shop and compare mortgage loan terms
8 and settlement costs.

9 **SEC. 618. STUDY AND REPORTS ON DEFAULTS AND FORE-**
10 **CLOSURES.**

11 (a) STUDY REQUIRED.—The Secretary shall conduct
12 an extensive study of the root causes of default and fore-
13 closure of home loans, using as much empirical data as
14 is available.

15 (b) PRELIMINARY REPORT TO CONGRESS.—Not later
16 than 6 months after the date of enactment of this title,
17 the Secretary shall submit to Congress a preliminary re-
18 port regarding the study required by this section.

19 (c) FINAL REPORT TO CONGRESS.—Not later than
20 12 months after the date of enactment of this title, the
21 Secretary shall submit to Congress a final report regard-
22 ing the results of the study required by this section, which
23 shall include any recommended legislation relating to the
24 study, and recommendations for best practices and for a

- 1 process to provide targeted assistance to populations with
- 2 the highest risk of potential default or foreclosure.