

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

Purpose: To improve the bill.

**IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.**

**H. R. 3221**

Moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure.

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

Ordered to lie on the table and to be printed

AMENDMENT and an amendment to the title intended to  
be proposed by \_\_\_\_\_

Viz:

1 In lieu of the matter proposed to be inserted, insert  
2 the following:

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Housing and Economic Recovery Act of 2008”.

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

Sec. 1. Short title; table of contents.

## 2

- Sec. 1001. Short title.
- Sec. 1002. Definitions.

## TITLE I—REFORM OF REGULATION OF ENTERPRISES

## Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 1101. Establishment of the Federal Housing Finance Agency.
- Sec. 1102. Duties and authorities of the Director.
- Sec. 1103. Federal Housing Finance Oversight Board.
- Sec. 1104. Authority to require reports by regulated entities.
- Sec. 1105. Examiners and accountants; authority to contract for reviews of regulated entities; ombudsman.
- Sec. 1106. Assessments.
- Sec. 1107. Regulations and orders.
- Sec. 1108. Prudential management and operations standards.
- Sec. 1109. Review of and authority over enterprise assets and liabilities.
- Sec. 1110. Risk-based capital requirements.
- Sec. 1111. Minimum capital levels.
- Sec. 1112. Registration under the securities laws.
- Sec. 1113. Prohibition and withholding of executive compensation.
- Sec. 1114. Limit on golden parachutes.
- Sec. 1115. Reporting of fraudulent loans.

## Subtitle B—Improvement of Mission Supervision

- Sec. 1121. Transfer of program approval and housing goal oversight.
- Sec. 1122. Assumption by the Director of certain other HUD responsibilities.
- Sec. 1123. Review of enterprise products.
- Sec. 1124. Conforming loan limits.
- Sec. 1125. Annual housing report.
- Sec. 1126. Public use database.
- Sec. 1127. Reporting of mortgage data.
- Sec. 1128. Revision of housing goals.
- Sec. 1129. Duty to serve underserved markets.
- Sec. 1130. Monitoring and enforcing compliance with housing goals.
- Sec. 1131. Affordable housing programs.
- Sec. 1132. Financial education and counseling.
- Sec. 1133. Transfer and rights of certain HUD employees.

## Subtitle C—Prompt Corrective Action

- Sec. 1141. Critical capital levels.
- Sec. 1142. Capital classifications.
- Sec. 1143. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 1144. Supervisory actions applicable to significantly undercapitalized regulated entities.
- Sec. 1145. Authority over critically undercapitalized regulated entities.

## Subtitle D—Enforcement Actions

- Sec. 1151. Cease and desist proceedings.
- Sec. 1152. Temporary cease and desist proceedings.
- Sec. 1153. Removal and prohibition authority.
- Sec. 1154. Enforcement and jurisdiction.
- Sec. 1155. Civil money penalties.
- Sec. 1156. Criminal penalty.

## 3

- Sec. 1157. Notice after separation from service.
- Sec. 1158. Subpoena authority.

## Subtitle E—General Provisions

- Sec. 1161. Conforming and technical amendments.
- Sec. 1162. Presidentially-appointed directors of enterprises.
- Sec. 1163. Effective date.

## TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 1201. Recognition of distinctions between the enterprises and the Federal Home Loan Banks.
- Sec. 1202. Directors.
- Sec. 1203. Definitions.
- Sec. 1204. Agency oversight of Federal Home Loan Banks.
- Sec. 1205. Housing goals.
- Sec. 1206. Community development financial institutions.
- Sec. 1207. Sharing of information among Federal Home Loan Banks.
- Sec. 1208. Exclusion from certain requirements.
- Sec. 1209. Voluntary mergers.
- Sec. 1210. Authority to reduce districts.
- Sec. 1211. Community financial institution members.
- Sec. 1212. Public use data base; reports to Congress.
- Sec. 1213. Semiannual reports.
- Sec. 1214. Liquidation or reorganization of a Federal Home Loan Bank.
- Sec. 1215. Study and report to Congress on securitization of Acquired Member Assets.
- Sec. 1216. Technical and conforming amendments.
- Sec. 1217. Study on Federal Home Loan Bank advances.
- Sec. 1218. 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. 1301. Abolishment of OFHEO.
- Sec. 1302. Continuation and coordination of certain actions.
- Sec. 1303. Transfer and rights of employees of OFHEO.
- Sec. 1304. Transfer of property and facilities.

## Subtitle B—Federal Housing Finance Board

- Sec. 1311. Abolishment of the Federal Housing Finance Board.
- Sec. 1312. Continuation and coordination of certain regulations.
- Sec. 1313. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 1314. Transfer of property and facilities.

## TITLE IV—HOPE FOR HOMEOWNERS

- Sec. 1401. Short title.
- Sec. 1402. Establishment of HOPE for Homeowners Program.
- Sec. 1403. Fiduciary duty of servicers of pooled residential mortgage loans.
- Sec. 1404. Revised standards for FHA appraisers.

## 4

## TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

- Sec. 1501. Short title.
- Sec. 1502. Purposes and methods for establishing a mortgage licensing system and registry.
- Sec. 1503. Definitions.
- Sec. 1504. License or registration required.
- Sec. 1505. State license and registration application and issuance.
- Sec. 1506. Standards for State license renewal.
- Sec. 1507. System of registration administration by Federal agencies.
- Sec. 1508. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
- Sec. 1509. Backup authority to establish a nationwide mortgage licensing and registry system.
- Sec. 1510. Fees.
- Sec. 1511. Background checks of loan originators.
- Sec. 1512. Confidentiality of information.
- Sec. 1513. Liability provisions.
- Sec. 1514. Enforcement under HUD backup licensing system.
- Sec. 1515. State examination authority.
- Sec. 1516. Reports and recommendations to Congress.
- Sec. 1517. Study and reports on defaults and foreclosures.

## TITLE VI—MISCELLANEOUS

- Sec. 1601. Study and reports on guarantee fees.
- Sec. 1602. Study and report on default risk evaluation.
- Sec. 1603. Conversion of HUD contracts.
- Sec. 1604. Bridge depository institutions.
- Sec. 1605. Sense of the Senate.

## DIVISION B—FORECLOSURE PREVENTION

- Sec. 2001. Short title.
- Sec. 2002. Emergency designation.

## TITLE I—FHA MODERNIZATION ACT OF 2008

- Sec. 2101. Short title.

## Subtitle A—Building American Homeownership

- Sec. 2111. Short title.
- Sec. 2112. Maximum principal loan obligation.
- Sec. 2113. Cash investment requirement and prohibition of seller-funded down payment assistance.
- Sec. 2114. Mortgage insurance premiums.
- Sec. 2115. Rehabilitation loans.
- Sec. 2116. Discretionary action.
- Sec. 2117. Insurance of condominiums.
- Sec. 2118. Mutual Mortgage Insurance Fund.
- Sec. 2119. Hawaiian home lands and Indian reservations.
- Sec. 2120. Conforming and technical amendments.
- Sec. 2121. Insurance of mortgages.
- Sec. 2122. Home equity conversion mortgages.
- Sec. 2123. Energy efficient mortgages program.

- Sec. 2124. Pilot program for automated process for borrowers without sufficient credit history.
- Sec. 2125. Homeownership preservation.
- Sec. 2126. Use of FHA savings for improvements in FHA technologies, procedures, processes, program performance, staffing, and salaries.
- Sec. 2127. Post-purchase housing counseling eligibility improvements.
- Sec. 2128. Pre-purchase homeownership counseling demonstration.
- Sec. 2129. Fraud prevention.
- Sec. 2130. Limitation on mortgage insurance premium increases.
- Sec. 2131. Savings provision.
- Sec. 2132. Implementation.
- Sec. 2133. Moratorium on implementation of risk-based premiums.

#### Subtitle B—Manufactured Housing Loan Modernization

- Sec. 2141. Short title.
- Sec. 2142. Purposes.
- Sec. 2143. Exception to limitation on financial institution portfolio.
- Sec. 2144. Insurance benefits.
- Sec. 2145. Maximum loan limits.
- Sec. 2146. Insurance premiums.
- Sec. 2147. Technical corrections.
- Sec. 2148. Revision of underwriting criteria.
- Sec. 2149. Prohibition against kickbacks and unearned fees.
- Sec. 2150. Leasehold requirements.

#### TITLE II—MORTGAGE FORECLOSURE PROTECTIONS FOR SERVICEMEMBERS

- Sec. 2201. Temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs.
- Sec. 2202. Counseling on mortgage foreclosures for members of the Armed Forces returning from service abroad.
- Sec. 2203. Enhancement of protections for servicemembers relating to mortgages and mortgage foreclosures.

#### TITLE III—EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES

- Sec. 2301. Emergency assistance for the redevelopment of abandoned and foreclosed homes.
- Sec. 2302. Nationwide distribution of resources.
- Sec. 2303. Limitation on use of funds with respect to eminent domain.
- Sec. 2304. Limitation on distribution of funds.
- Sec. 2305. Counseling intermediaries.

#### TITLE IV—HOUSING COUNSELING RESOURCES

- Sec. 2401. Housing counseling resources.
- Sec. 2402. Credit counseling.

#### TITLE V—MORTGAGE DISCLOSURE IMPROVEMENT ACT

- Sec. 2501. Short title.
- Sec. 2502. Enhanced mortgage loan disclosures.
- Sec. 2503. Community Development Investment Authority for depository institutions.

## TITLE VI—VETERANS HOUSING MATTERS

- Sec. 2601. Home improvements and structural alterations for totally disabled members of the Armed Forces before discharge or release from the Armed Forces.
- Sec. 2602. Eligibility for specially adapted housing benefits and assistance for members of the Armed Forces with service-connected disabilities and individuals residing outside the United States.
- Sec. 2603. Specially adapted housing assistance for individuals with severe burn injuries.
- Sec. 2604. Extension of assistance for individuals residing temporarily in housing owned by a family member.
- Sec. 2605. Increase in specially adapted housing benefits for disabled veterans.
- Sec. 2606. Report on specially adapted housing for disabled individuals.
- Sec. 2607. Report on specially adapted housing assistance for individuals who reside in housing owned by a family member on permanent basis.
- Sec. 2608. Definition of annual income for purposes of section 8 and other public housing programs.
- Sec. 2609. Payment of transportation of baggage and household effects for members of the Armed Forces who relocate due to foreclosure of leased housing.

## 1 **DIVISION A—HOUSING FINANCE**

## 2 **REFORM**

### 3 **SEC. 1001. SHORT TITLE.**

4 This division may be cited as the “Federal Housing  
5 Finance Regulatory Reform Act of 2008”.

### 6 **SEC. 1002. DEFINITIONS.**

7 (a) FEDERAL SAFETY AND SOUNDNESS ACT DEFINI-  
8 TIONS.—Section 1303 of the Federal Housing Enterprises  
9 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
10 4502) is amended—

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

14 (2) by redesignating paragraphs (16) through  
15 (19) as paragraphs (21) through (24), respectively;

1           (3) by striking paragraphs (13) through (15)  
2           and inserting the following:

3           “(19) OFFICE OF FINANCE.—The term ‘Office  
4           of Finance’ means the Office of Finance of the Fed-  
5           eral Home Loan Bank System (or any successor  
6           thereto).

7           “(20) 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           (4) by redesignating paragraphs (11) and (12)  
15           as paragraphs (17) and (18), respectively;

16           (5) by redesignating paragraph (7) as para-  
17           graph (12);

18           (6) by redesignating paragraphs (8) through  
19           (10) as paragraphs (14) through (16), respectively;

20           (7) in paragraph (5)—

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

22                   and

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

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

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

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

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

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

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

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

21           “(i) the regulated entity is not likely  
22           to be able to pay the obligations of the reg-  
23           ulated entity in the normal course of busi-  
24           ness; or

25           “(ii) the regulated entity—

1                   “(I) has incurred or is likely to  
2                   incur losses that will deplete all or  
3                   substantially all of its capital; and

4                   “(II) there is no reasonable pros-  
5                   pect that the capital of the regulated  
6                   entity will be replenished.”;

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

9                   “(2) AGENCY.—The term ‘Agency’ means the  
10                  Federal Housing Finance Agency established under  
11                  section 1311.

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

14                         “(A) the Federal National Mortgage Asso-  
15                         ciation Charter Act;

16                         “(B) the Federal Home Loan Mortgage  
17                         Corporation Act; and

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

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

22                  (12) by inserting after paragraph (10), as re-  
23                  designated by this section, the following:

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

1           “(A) any director, officer, employee, or  
2 controlling stockholder of, or agent for, a regu-  
3 lated entity;

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

15           “(C) any independent contractor for a reg-  
16 ulated entity (including any attorney, appraiser,  
17 or accountant), if—

18                   “(i) the independent contractor know-  
19 ingly or recklessly participates in—

20                           “(I) any violation of any law or  
21 regulation;

22                           “(II) any breach of fiduciary  
23 duty; or

24                           “(III) any unsafe or unsound  
25 practice; and

1                   “(ii) such violation, breach, or prac-  
2                   tice caused, or is likely to cause, more than  
3                   a minimal financial loss to, or a significant  
4                   adverse effect on, the regulated entity;

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

8                   “(E) the Office of Finance.”;

9                   (13) by inserting after paragraph (12), as re-  
10                  designated by this section, the following:

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

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

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

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

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

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

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

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

14 **SEC. 1101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**  
15 **NANCE AGENCY.**

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

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

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

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

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

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

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

20 **“SEC. 1312. DIRECTOR.**

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

24           “(b) APPOINTMENT; TERM.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7   **SEC. 1102. DUTIES AND AUTHORITIES OF THE DIRECTOR.**

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

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

12           “(a) DUTIES.—

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

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

17                           “(B) to ensure that—

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

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

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

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

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

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

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

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

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

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

10          “(c) LITIGATION AUTHORITY.—

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

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

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

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

12 **SEC. 1103. FEDERAL HOUSING FINANCE OVERSIGHT**  
13 **BOARD.**

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

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

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

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

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

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

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

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

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

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

13 “(d) MEETINGS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **SEC. 1104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
20 **LATED ENTITIES.**

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

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

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

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

5           (4) in subsection (a)—

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

9           “(a) REGULAR AND SPECIAL REPORTS.—

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

17           (B) in paragraph (2)—

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

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

23           and

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

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

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

5           “(A) to fail to make, transmit, or publish  
6 any report or obtain any information required  
7 by the Director under this section, section  
8 309(k) of the Federal National Mortgage Asso-  
9 ciation Charter Act, section 307(c) of the Fed-  
10 eral Home Loan Mortgage Corporation Act, or  
11 section 20 of the Federal Home Loan Bank  
12 Act, within the period of time specified in such  
13 provision of law or otherwise by the Director; or

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

17           “(2) PENALTIES.—

18           “(A) FIRST TIER.—

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

24           “(I) the subject regulated entity  
25 maintains procedures reasonably

1 adapted to avoid any inadvertent error  
2 and the violation was unintentional  
3 and a result of such an error; or

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

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

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

20 “(C) THIRD TIER.—A violation described  
21 in paragraph (1) shall be subject to a penalty  
22 of not more than \$1,000,000 per day for each  
23 day during which such violation continues or  
24 such false or misleading information is not cor-  
25 rected, in any case in which the subject regu-

1           lated entity committed such violation knowingly  
2           or with reckless disregard for the accuracy of  
3           any such information or report.

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

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

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

1 **SEC. 1105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**  
2 **CONTRACT FOR REVIEWS OF REGULATED EN-**  
3 **TITIES; OMBUDSMAN.**

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

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

10 (2) in subsection (b)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(i) OMBUDSMAN.—The Director shall establish, by  
24 regulation, an Office of the Ombudsman within the Agen-  
25 cy, which shall be responsible for considering complaints

1 and appeals, from any regulated entity and any person  
2 that has a business relationship with a regulated entity,  
3 regarding any matter relating to the regulation and super-  
4 vision of such regulated entity by the Agency. The regula-  
5 tion issued by the Director under this subsection shall  
6 specify the authority and duties of the Office of the Om-  
7 budsman.”.

8 **SEC. 1106. ASSESSMENTS.**

9 Section 1316 of the Federal Housing Enterprises Fi-  
10 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
11 4516) is amended—

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

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

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

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

24 “(3) such amounts in excess of actual expenses  
25 for any given year as deemed necessary by the Di-

1 rector to maintain a working capital fund in accord-  
2 ance with subsection (e); and

3 “(4) the windup of the affairs of the Office of  
4 Federal Housing Enterprise Oversight and the Fed-  
5 eral Housing Finance Board under title III of the  
6 Federal Housing Finance Regulatory Reform Act of  
7 2008.”;

8 (2) in subsection (b)—

9 (A) by realigning the margins of para-  
10 graph (2) two ems from the left, so as to align  
11 the left margin of such paragraph with the left  
12 margins of paragraph (1);

13 (B) by redesignating paragraphs (2) and  
14 (3) as paragraphs (3) and (4), respectively; and

15 (C) by inserting after paragraph (1) the  
16 following:

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

1 and expenses described in subsection (a) relating to  
2 the Federal Home Loan Banks.”;

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

5 “(c) INCREASED COSTS OF REGULATION.—

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

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

21 “(3) ADDITIONAL ASSESSMENT FOR DEFI-  
22 CIENCIES.—If at any time, as a result of increased  
23 costs of regulation of a regulated entity that is not  
24 classified (for purposes of subtitle B) as adequately  
25 capitalized or as the result of supervisory or enforce-

1       ment activities under this Act for a regulated entity,  
2       the amount available from any semiannual payment  
3       made by such regulated entity pursuant to sub-  
4       section (b) is insufficient to cover the costs of the  
5       Agency with respect to such entity, the Director may  
6       make and collect from such regulated entity an im-  
7       mediate assessment to cover the amount of such de-  
8       ficiency for the semiannual period. If, at the end of  
9       any semiannual period during which such an assess-  
10      ment is made, any amount remains from such as-  
11      sessment, such remaining amount shall be deducted  
12      from the assessment for such regulated entity for  
13      the following semiannual period.”;

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

17           (5) by striking subsections (e) through (g) and  
18      inserting the following:

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

1 “(f) TREATMENT OF ASSESSMENTS.—

2 “(1) DEPOSIT.—Amounts received by the Di-  
3 rector from assessments under this section may be  
4 deposited by the Director in the manner provided in  
5 section 5234 of the Revised Statutes of the United  
6 States (12 U.S.C. 192) for monies deposited by the  
7 Comptroller of the Currency.

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

12 “(3) NO APPORTIONMENT OF FUNDS.—Not-  
13 withstanding any other provision of law, the  
14 amounts received by the Director from any assess-  
15 ment under this section shall not be subject to ap-  
16 portionment for the purpose of chapter 15 of title  
17 31, United States Code, or under any other author-  
18 ity.

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

24 “(5) AVAILABILITY OF OVERSIGHT FUND  
25 AMOUNTS.—Notwithstanding any other provision of

1 law, any amounts remaining in the Federal Housing  
2 Enterprises Oversight Fund established under this  
3 section (as in effect before the effective date of the  
4 Federal Housing Finance Regulatory Reform Act of  
5 2008, and any amounts remaining from assessments  
6 on the Federal Home Loan Banks pursuant to sec-  
7 tion 18(b) of the Federal Home Loan Bank Act (12  
8 U.S.C. 1438(b)), shall, upon such effective date, be  
9 treated for purposes of this subsection as amounts  
10 received from assessments under this section.

11 “(6) TREASURY INVESTMENTS.—

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

19 “(B) GOVERNMENT OBLIGATIONS.—Pursu-  
20 ant to a request under subparagraph (A), the  
21 Secretary of the Treasury shall invest such  
22 amounts in Government obligations guaranteed  
23 as to principal and interest by the United  
24 States with maturities suitable to the needs of  
25 the Agency and bearing interest at a rate deter-

1           mined by the Secretary of the Treasury taking  
2           into consideration current market yields on out-  
3           standing marketable obligations of the United  
4           States of comparable maturity.

5           “(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

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

18                  “(A) assets and liabilities and surplus or  
19          deficit;

20                  “(B) income and expenses; and

21                  “(C) sources and application of funds.

22          “(3) FINANCIAL MANAGEMENT SYSTEMS.—The  
23          Agency shall implement and maintain financial man-  
24          agement systems that—

1           “(A) comply substantially with Federal fi-  
2           nancial management systems requirements and  
3           applicable Federal accounting standards; and

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

6           “(4) ASSERTION OF INTERNAL CONTROLS.—

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

13          “(5) RULE OF CONSTRUCTION.—This sub-  
14          section may not be construed as implying any obliga-  
15          tion on the part of the Director to consult with or  
16          obtain the consent or approval of the Director of the  
17          Office of Management and Budget with respect to  
18          any report, plan, forecast, or other information re-  
19          ferred to in paragraph (1) or any jurisdiction or  
20          oversight over the affairs or operations of the Agen-  
21          cy.

22          “(h) AUDIT OF AGENCY.—

23          “(1) IN GENERAL.—The Comptroller General  
24          shall annually audit the financial transactions of the  
25          Agency in accordance with the United States gen-

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

1 be enforceable pursuant to section 716(c) of title 31,  
2 United States Code.

3 “(2) REPORT.—The Comptroller General shall  
4 submit to the Congress a report of each annual  
5 audit conducted under this subsection. The report to  
6 the Congress shall set forth the scope of the audit  
7 and shall include the statement of assets and liabil-  
8 ities and surplus or deficit, the statement of income  
9 and expenses, the statement of sources and applica-  
10 tion of funds, and such comments and information  
11 as may be deemed necessary to inform Congress of  
12 the financial operations and condition of the Agency,  
13 together with such recommendations with respect  
14 thereto as the Comptroller General may deem advis-  
15 able. A copy of each report shall be furnished to the  
16 President and to the Agency at the time submitted  
17 to the Congress.

18 “(3) ASSISTANCE AND COSTS.—For the purpose  
19 of conducting an audit under this subsection, the  
20 Comptroller General may, in the discretion of the  
21 Comptroller General, employ by contract, without re-  
22 gard to section 3709 of the Revised Statutes of the  
23 United States (41 U.S.C. 5), professional services of  
24 firms and organizations of certified public account-  
25 ants for temporary periods or for special purposes.

1       Upon the request of the Comptroller General, the  
2       Director of the Agency shall transfer to the Govern-  
3       ment Accountability Office from funds available, the  
4       amount requested by the Comptroller General to  
5       cover the full costs of any audit and report con-  
6       ducted by the Comptroller General. The Comptroller  
7       General shall credit funds transferred to the account  
8       established for salaries and expenses of the Govern-  
9       ment Accountability Office, and such amount shall  
10      be available upon receipt and without fiscal year lim-  
11      itation to cover the full costs of the audit and re-  
12      port.”.

13   **SEC. 1107. REGULATIONS AND ORDERS.**

14      Section 1319G of the Federal Housing Enterprises  
15   Financial Safety and Soundness Act of 1992 (12 U.S.C.  
16   4526) is amended—

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

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

24           (2) by striking subsection (c).

1 **SEC. 1108. PRUDENTIAL MANAGEMENT AND OPERATIONS**  
2 **STANDARDS.**

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

7 **“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS**  
8 **STANDARDS.**

9 “(a) STANDARDS.—The Director shall establish  
10 standards, by regulation or guideline, for each regulated  
11 entity relating to—

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

15 “(2) independence and adequacy of internal  
16 audit systems;

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

18 “(4) management of market risk, including  
19 standards that provide for systems that accurately  
20 measure, monitor, and control market risks and, as  
21 warranted, that establish limitations on market risk;

22 “(5) adequacy and maintenance of liquidity and  
23 reserves;

24 “(6) management of asset and investment port-  
25 folio growth;

1           “(7) investments and acquisitions of assets by  
2           a regulated entity, to ensure that they are consistent  
3           with the purposes of this title and the authorizing  
4           statutes;

5           “(8) overall risk management processes, includ-  
6           ing adequacy of oversight by senior management and  
7           the board of directors and of processes and policies  
8           to identify, measure, monitor, and control material  
9           risks, including reputational risks, and for adequate,  
10          well-tested business resumption plans for all major  
11          systems with remote site facilities to protect against  
12          disruptive events;

13          “(9) management of credit and counterparty  
14          risk, including systems to identify concentrations of  
15          credit risk and prudential limits to restrict exposure  
16          of the regulated entity to a single counterparty or  
17          groups of related counterparties;

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

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

25          “(b) FAILURE TO MEET STANDARDS.—

1           “(1) PLAN REQUIREMENT.—

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

5                           “(i) if such standard is established by  
6 regulation, the Director shall require the  
7 regulated entity to submit an acceptable  
8 plan to the Director within the time al-  
9 lowed under subparagraph (C); and

10                           “(ii) if such standard is established by  
11 guideline, the Director may require the  
12 regulated entity to submit a plan described  
13 in clause (i).

14           “(B) CONTENTS.—Any plan required  
15 under subparagraph (A) shall specify the ac-  
16 tions that the regulated entity will take to cor-  
17 rect the deficiency. If the regulated entity is  
18 undercapitalized, the plan may be a part of the  
19 capital restoration plan for the regulated entity  
20 under section 1369C.

21           “(C) DEADLINES FOR SUBMISSION AND  
22 REVIEW.—The Director shall by regulation es-  
23 tablish deadlines that—

24                           “(i) provide the regulated entities with  
25 reasonable time to submit plans required

1 under subparagraph (A), and generally re-  
2 quire a regulated entity to submit a plan  
3 not later than 30 days after the Director  
4 determines that the entity fails to meet  
5 any standard established under subsection  
6 (a); and

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

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

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

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

22 “(i) Prohibit the regulated entity from  
23 permitting its average total assets (as such  
24 term is defined in section 1316(b)) during  
25 any calendar quarter to exceed its average

1 total assets during the preceding calendar  
2 quarter, or restrict the rate at which the  
3 average total assets of the entity may in-  
4 crease from one calendar quarter to an-  
5 other.

6 “(ii) Require the regulated entity—

7 “(I) in the case of an enterprise,  
8 to increase its ratio of core capital to  
9 assets.

10 “(II) in the case of a Federal  
11 Home Loan Bank, to increase its  
12 ratio of total capital (as such term is  
13 defined in section 6(a)(5) of the Fed-  
14 eral Home Loan Bank Act (12 U.S.C.  
15 1426(a)(5)) to assets.

16 “(iii) Require the regulated entity to  
17 take any other action that the Director de-  
18 termines will better carry out the purposes  
19 of this section than any of the actions de-  
20 scribed in this subparagraph.

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



1 **“Subtitle B—Required Capital Lev-**  
2 **els for Regulated Entities, Spe-**  
3 **cial Enforcement Powers, and**  
4 **Reviews of Assets and Liabil-**  
5 **ities”;**

6 and

7 (2) by adding at the end the following new sec-  
8 tion:

9 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**  
10 **ITIES.**

11 “(a) IN GENERAL.—The Director shall, by regula-  
12 tion, establish criteria governing the portfolio holdings of  
13 the enterprises, to ensure that the holdings are backed by  
14 sufficient capital and consistent with the mission and the  
15 safe and sound operations of the enterprises. In estab-  
16 lishing such criteria, the Director shall consider the ability  
17 of the enterprises to provide a liquid secondary market  
18 through securitization activities, the portfolio holdings in  
19 relation to the overall mortgage market, and adherence to  
20 the standards specified in section 1313B.

21 “(b) TEMPORARY ADJUSTMENTS.—The Director  
22 may, by order, make temporary adjustments to the estab-  
23 lished standards for an enterprise or both enterprises,  
24 such as during times of economic distress or market dis-  
25 ruption.

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

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

17 **SEC. 1110. RISK-BASED CAPITAL REQUIREMENTS.**

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

21 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**  
22 **ENTITIES.**

23           “(a) **IN GENERAL.**—

24                   “(1) **ENTERPRISES.**—The Director shall, by  
25 regulation, establish risk-based capital requirements

1 for the enterprises to ensure that the enterprises op-  
2 erate in a safe and sound manner, maintaining suffi-  
3 cient capital and reserves to support the risks that  
4 arise in the operations and management of the en-  
5 terprises.

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

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

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

17 (1) by striking subparagraph (A) and inserting  
18 the following:

19 “(A) RISK-BASED CAPITAL STANDARDS.—  
20 The Director shall, by regulation, establish risk-  
21 based capital standards for the Federal Home  
22 Loan Banks to ensure that the Federal Home  
23 Loan Banks operate in a safe and sound man-  
24 ner, with sufficient permanent capital and re-  
25 serves to support the risks that arise in the op-

1           erations and management of the Federal Home  
2           Loans Banks.”; and  
3           (2) in subparagraph (B), by striking “(A)(ii)”  
4           and inserting “(A)”.

5 **SEC. 1111. MINIMUM CAPITAL LEVELS.**

6           Section 1362 of the Federal Housing Enterprises Fi-  
7           nancial Safety and Soundness Act of 1992 (12 U.S.C.  
8           4612) is amended—

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

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

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

19          “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-  
20          ITAL LEVELS.—Notwithstanding subsections (a) and (b)  
21          and notwithstanding the capital classifications of the regu-  
22          lated entities, the Director may, by regulations issued  
23          under section 1319G, establish a minimum capital level  
24          for the enterprises, for the Federal Home Loan Banks,  
25          or for both the enterprises and the banks, that is higher

1 than the level specified in subsection (a) for the enter-  
2 prises or the level specified in subsection (b) for the Fed-  
3 eral Home Loan Banks, to the extent needed to ensure  
4 that the regulated entities operate in a safe and sound  
5 manner.

6 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-  
7 CREASE.—

8 “(1) IN GENERAL.—Notwithstanding sub-  
9 sections (a) and (b) and any minimum capital level  
10 established pursuant to subsection (c), the Director  
11 may, by order, increase the minimum capital level  
12 for a regulated entity on a temporary basis, when  
13 the Director determines that such an increase is nec-  
14 essary and consistent with the prudential regulation  
15 and the safe and sound operations of a regulated en-  
16 tity.

17 “(2) RESCISSION.—The Director shall rescind  
18 any temporary minimum capital level established  
19 under paragraph (1) when the Director determines  
20 that the circumstances or facts no longer justify the  
21 temporary minimum capital level.

22 “(3) REGULATIONS REQUIRED.—The Director  
23 shall issue regulations establishing—

1           “(A) standards for the imposition of a  
2           temporary increase in minimum capital under  
3           paragraph (1);

4           “(B) the standards and procedures that  
5           the Director will use to make the determination  
6           referred to in paragraph (2); and

7           “(C) a reasonable time frame for periodic  
8           review of any temporary increase in minimum  
9           capital for the purpose of making the deter-  
10          mination referred to in paragraph (2).

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

21          “(f) **PERIODIC REVIEW.**—The Director shall periodi-  
22 cally review the amount of core capital maintained by the  
23 enterprises, the amount of capital retained by the Federal  
24 Home Loan Banks, and the minimum capital levels estab-

1 lished for such regulated entities pursuant to this sec-  
2 tion.”.

3 **SEC. 1112. REGISTRATION UNDER THE SECURITIES LAWS.**

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

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

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

15 “(b) FEDERAL HOME LOAN BANKS.—

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

1           “(2) STANDARDS RELATING TO AUDIT COMMIT-  
2           TEES.—Each Federal Home Loan Bank shall com-  
3           ply with the rules issued by the Commission under  
4           section 10A(m).

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

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

11          “(2) FEDERAL NATIONAL MORTGAGE ASSOCIA-  
12          TION.—The term ‘Federal National Mortgage Asso-  
13          ciation’ means the corporation created by the Fed-  
14          eral National Mortgage Association Charter Act.

15          “(3) FEDERAL HOME LOAN MORTGAGE COR-  
16          PORATION.—The term ‘Federal Home Loan Mort-  
17          gage Corporation’ means the corporation created by  
18          the Federal Home Loan Mortgage Corporation  
19          Act.”.

20   **SEC. 1113. PROHIBITION AND WITHHOLDING OF EXECU-**  
21                           **TIVE COMPENSATION.**

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

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

4           (2) by redesignating subsection (b) as sub-  
5           section (d); and

6           (3) by inserting after subsection (a) the fol-  
7           lowing:

8           “(b) **FACTORS.**—In making any determination under  
9           subsection (a), the Director may take into consideration  
10          any factors the Director considers relevant, including any  
11          wrongdoing on the part of the executive officer, and such  
12          wrongdoing shall include any fraudulent act or omission,  
13          breach of trust or fiduciary duty, violation of law, rule,  
14          regulation, order, or written agreement, and insider abuse  
15          with respect to the regulated entity. The approval of an  
16          agreement or contract pursuant to section 309(d)(3)(B)  
17          of the Federal National Mortgage Association Charter Act  
18          (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the  
19          Federal Home Loan Mortgage Corporation Act (12 U.S.C.  
20          1452(h)(2)) shall not preclude the Director from making  
21          any subsequent determination under subsection (a).

22          “(c) **WITHHOLDING OF COMPENSATION.**—In car-  
23          rying out subsection (a), the Director may require a regu-  
24          lated entity to withhold any payment, transfer, or dis-  
25          bursement of compensation to an executive officer, or to

1 place such compensation in an escrow account, during the  
2 review of the reasonableness and comparability of com-  
3 pensation.”.

4 (b) CONFORMING AMENDMENTS.—

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

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

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

21 “(4) Notwithstanding any other provision of this sec-  
22 tion, the Corporation shall not transfer, disburse, or pay  
23 compensation to any executive officer, or enter into an  
24 agreement with such executive officer, without the ap-  
25 proval of the Director, for matters being reviewed under

1 section 1318 of the Federal Housing Enterprises Finan-  
2 cial Safety and Soundness Act of 1992 (12 U.S.C.  
3 4518).”.

4 (3) FEDERAL HOME LOAN BANKS.—Section 7  
5 of the Federal Home Loan Bank Act (12 U.S.C.  
6 1427) is amended by adding at the end the following  
7 new subsection:

8 “(1) WITHHOLDING OF COMPENSATION.—Notwith-  
9 standing any other provision of this section, a Federal  
10 Home Loan Bank shall not transfer, disburse, or pay com-  
11 pensation to any executive officer, or enter into an agree-  
12 ment with such executive officer, without the approval of  
13 the Director, for matters being reviewed under section  
14 1318 of the Federal Housing Enterprises Financial Safety  
15 and Soundness Act of 1992 (12 U.S.C. 4518).”.

16 **SEC. 1114. LIMIT ON GOLDEN PARACHUTES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1                   “(ii) preferring one creditor over an-  
2                   other.

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

5                   “(A) IN GENERAL.—For purposes of this  
6 subsection, the term ‘golden parachute pay-  
7 ment’ means any payment (or any agreement to  
8 make any payment) in the nature of compensa-  
9 tion by any regulated entity for the benefit of  
10 any affiliated party pursuant to an obligation of  
11 such regulated entity that—

12                   “(i) is contingent on the termination  
13 of such party’s affiliation with the regu-  
14 lated entity; and

15                   “(ii) is received on or after the date  
16 on which—

17                   “(I) the regulated entity became  
18 insolvent;

19                   “(II) any conservator or receiver  
20 is appointed for such regulated entity;  
21 or

22                   “(III) the Director determines  
23 that the regulated entity is in a trou-  
24 bled condition (as defined in the regu-  
25 lations of the Director).

1           “(B) CERTAIN PAYMENTS IN CONTEMPLA-  
2           TION OF AN EVENT.—Any payment which  
3           would be a golden parachute payment but for  
4           the fact that such payment was made before the  
5           date referred to in subparagraph (A)(ii) shall be  
6           treated as a golden parachute payment if the  
7           payment was made in contemplation of the oc-  
8           currence of an event described in any subclause  
9           of such subparagraph.

10           “(C) CERTAIN PAYMENTS NOT IN-  
11           CLUDED.—For purposes of this subsection, the  
12           term ‘golden parachute payment’ shall not in-  
13           clude—

14                   “(i) any payment made pursuant to a  
15                   retirement plan which is qualified (or is in-  
16                   tended to be qualified) under section 401  
17                   of the Internal Revenue Code of 1986, or  
18                   other nondiscriminatory benefit plan;

19                   “(ii) any payment made pursuant to a  
20                   bona fide deferred compensation plan or  
21                   arrangement which the Director deter-  
22                   mines, by regulation or order, to be per-  
23                   missible; or

1                   “(iii) any payment made by reason of  
2                   the death or disability of an affiliated  
3                   party.

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

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

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

18                   “(ii) is removed or prohibited from  
19                   participating in conduct of the affairs of  
20                   the regulated entity; or

21                   “(iii) is required to take any affirma-  
22                   tive action to correct certain conditions re-  
23                   sulting from violations or practices, by  
24                   order of the Director.

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

3                   “(i) any legal or other professional ex-  
4 pense incurred in connection with any  
5 claim, proceeding, or action;

6                   “(ii) the amount of, and any cost in-  
7 curred in connection with, any settlement  
8 of any claim, proceeding, or action; and

9                   “(iii) the amount of, and any cost in-  
10 curred in connection with, any judgment or  
11 penalty imposed with respect to any claim,  
12 proceeding, or action.

13                   “(C) PAYMENT.—The term ‘payment’ in-  
14 cludes—

15                   “(i) any direct or indirect transfer of  
16 any funds or any asset; and

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

1                   “(I) the determination, after such  
2                   date, of the liability for the payment  
3                   of such amount; or

4                   “(II) the liquidation, after such  
5                   date, of the amount of such payment.

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

16 **SEC. 1115. REPORTING OF FRAUDULENT LOANS.**

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

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

22                  “(a) REQUIREMENT TO REPORT.—The Director shall  
23                  require a regulated entity to submit to the Director a time-  
24                  ly report upon discovery by the regulated entity that it  
25                  has purchased or sold a fraudulent loan or financial in-

1 strument, or suspects a possible fraud relating to the pur-  
2 chase or sale of any loan or financial instrument. The Di-  
3 rector shall require each regulated entity to establish and  
4 maintain procedures designed to discover any such trans-  
5 actions.

6 “(b) PROTECTION FROM LIABILITY FOR REPORTS.—  
7 Any regulated entity that, in good faith, makes a report  
8 pursuant to subsection (a), and any entity-affiliated party,  
9 that, in good faith, makes or requires another to make  
10 any such report, shall not be liable to any person under  
11 any provision of law or regulation, any constitution, law,  
12 or regulation of any State or political subdivision of any  
13 State, or under any contract or other legally enforceable  
14 agreement (including any arbitration agreement) for such  
15 report or for any failure to provide notice of such report  
16 to the person who is the subject of such report or any  
17 other persons identified in the report.”.

18 **Subtitle B—Improvement of**  
19 **Mission Supervision**

20 **SEC. 1121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**  
21 **ING GOAL OVERSIGHT.**

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

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

3 **“PART 2—ADDITIONAL AUTHORITIES OF THE**  
4 **DIRECTOR”;**

5 and

6 (2) by striking sections 1321 and 1322.

7 **SEC. 1122. ASSUMPTION BY THE DIRECTOR OF CERTAIN**  
8 **OTHER HUD RESPONSIBILITIES.**

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

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

15 (2) by striking sections 1338 and 1349 (12  
16 U.S.C. 4562 note and 4589).

17 (b) RETENTION OF FAIR HOUSING RESPONSIBIL-  
18 ITIES.—Section 1325 of the Federal Housing Enterprises  
19 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
20 4545) is amended in the matter preceding paragraph (1),  
21 by inserting “of Housing and Urban Development” after  
22 “The Secretary”.

23 **SEC. 1123. REVIEW OF ENTERPRISE PRODUCTS.**

24 Part 2 of subtitle A of the Federal Housing Enter-  
25 prises Financial Safety and Soundness Act of 1992 (12

1 U.S.C. 4541 et seq.) is amended by inserting before sec-  
2 tion 1323 the following:

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

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

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

11 “(1) in the case of a product of the Federal Na-  
12 tional Mortgage Association, the product is author-  
13 ized under paragraph (2), (3), (4), or (5) of section  
14 302(b) or section 304 of the Federal National Mort-  
15 gage Association Charter Act (12 U.S.C. 1717(b),  
16 1719);

17 “(2) in the case of a product of the Federal  
18 Home Loan Mortgage Corporation, the product is  
19 authorized under paragraph (1), (4), or (5) of sec-  
20 tion 305(a) of the Federal Home Loan Mortgage  
21 Corporation Act (12 U.S.C. 1454(a));

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

23 “(4) the product is consistent with the safety  
24 and soundness of the enterprise or the mortgage fi-  
25 nance system.

1 “(c) PROCEDURE FOR APPROVAL.—

2 “(1) SUBMISSION OF REQUEST.—An enterprise  
3 shall submit to the Director a written request for  
4 approval of a product that describes the product in  
5 such form as prescribed by order or regulation of the  
6 Director.

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

16 “(3) PUBLIC COMMENT PERIOD.—During the  
17 30-day period beginning on the date of publication  
18 pursuant to paragraph (2) of a request for approval  
19 of a product, the Director shall receive public com-  
20 ments regarding the proposed product.

21 “(4) OFFERING OF PRODUCT.—

22 “(A) IN GENERAL.—Not later than 30  
23 days after the close of the public comment pe-  
24 riod described in paragraph (3), the Director

1 shall approve or deny the product, specifying  
2 the grounds for such decision in writing.

3 “(B) FAILURE TO ACT.—If the Director  
4 fails to act within the 30-day period described  
5 in subparagraph (A), then the enterprise may  
6 offer the product.

7 “(C) TEMPORARY APPROVAL.—The Direc-  
8 tor may, subject to the rules of the Director,  
9 provide for temporary approval of the offering  
10 of a product without a public comment period,  
11 if the Director finds that the existence of exi-  
12 gent circumstances makes such delay contrary  
13 to the public interest.

14 “(d) CONDITIONAL APPROVAL.—If the Director ap-  
15 proves the offering of any product by an enterprise, the  
16 Director may establish terms, conditions, or limitations  
17 with respect to such product with which the enterprise  
18 must comply in order to offer such product.

19 “(e) EXCLUSIONS.—

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

23 “(A) the automated loan underwriting sys-  
24 tem of an enterprise in existence as of the date  
25 of enactment of the Federal Housing Finance

1 Regulatory Reform Act of 2008, including any  
2 upgrade to the technology, operating system, or  
3 software to operate the underwriting system;

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

12 “(C) any other activity that is substantially  
13 similar, as determined by rule of the Director  
14 to—

15 “(i) the activities described in sub-  
16 paragraphs (A) and (B); and

17 “(ii) other activities that have been  
18 approved by the Director in accordance  
19 with this section.

20 “(2) EXPEDITED REVIEW.—

21 “(A) ENTERPRISE NOTICE.—For any new  
22 activity that an enterprise considers not to be  
23 a product, the enterprise shall provide written  
24 notice to the Director of such activity, and may  
25 not commence such activity until the date of re-

1 receipt of a notice under subparagraph (B) or the  
2 expiration of the period described in subpara-  
3 graph (C). The Director shall establish, by reg-  
4 ulation, the form and content of such written  
5 notice.

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

13 “(C) FAILURE TO ACT.—If the Director  
14 fails to determine whether such activity is a  
15 product within the 15-day period described in  
16 subparagraph (B), the enterprise may com-  
17 mence the new activity in accordance with sub-  
18 paragraph (A).

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

21 “(1) the safety and soundness authority of the  
22 Director over all new and existing products or activi-  
23 ties; or

24 “(2) the authority of the Director to review all  
25 new and existing products or activities to determine

1       that such products or activities are consistent with  
2       the statutory mission of an enterprise.”.

3   **SEC. 1124. CONFORMING LOAN LIMITS.**

4       (a) FANNIE MAE.—

5           (1) GENERAL LIMIT.—Section 302(b)(2) of the  
6       Federal National Mortgage Association Charter Act  
7       (12 U.S.C. 1717(b)(2)) is amended by striking the  
8       7th and 8th sentences and inserting the following  
9       new sentences: “Such limitations shall not exceed  
10      \$417,000 for a mortgage secured by a single-family  
11      residence, \$533,850 for a mortgage secured by a 2-  
12      family residence, \$645,300 for a mortgage secured  
13      by a 3-family residence, and \$801,950 for a mort-  
14      gage secured by a 4-family residence, except that  
15      such maximum limitations shall be adjusted effective  
16      January 1 of each year beginning after the effective  
17      date of Federal Housing Finance Regulatory Reform  
18      Act of 2008, subject to the limitations in this para-  
19      graph. Each adjustment shall be made by adding to  
20      each such amount (as it may have been previously  
21      adjusted) a percentage thereof equal to the percent-  
22      age increase, during the most recent 12-month or  
23      4th-quarter period ending before the time of deter-  
24      mining such annual adjustment, in the housing price  
25      index maintained by the Director of the Federal

1       Housing Finance Agency (pursuant to section 1322  
2       of the Federal Housing Enterprises Financial Safety  
3       and Soundness Act of 1992 (12 U.S.C. 4541)). If  
4       the change in such house price index during the  
5       most recent 12-month or 4th-quarter period ending  
6       before the time of determining such annual adjust-  
7       ment is a decrease, then no adjustment shall be  
8       made for the next year, and the next adjustment  
9       shall take into account prior declines in the house  
10      price index, so that any adjustment shall reflect the  
11      net change in the house price index since the last  
12      adjustment. Declines in the house price index shall  
13      be accumulated and then reduce increases until sub-  
14      sequent increases exceed prior declines.”.

15           (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)  
16      of the Federal National Mortgage Association Char-  
17      ter Act (12 U.S.C. 1717(b)(2)) is amended by add-  
18      ing after the period at the end the following: “Such  
19      foregoing limitations shall also be increased with re-  
20      spect to properties of a particular size located in any  
21      area for which the median price for such size resi-  
22      dence exceeds the foregoing limitation for such size  
23      residence, to the lesser of 150 percent of such fore-  
24      going limitation for such size residence or the

1 amount that is equal to the median price in such  
2 area for such size residence.”.

3 (b) FREDDIE MAC.—

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

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

15 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)  
16 of the Federal Home Loan Mortgage Corporation  
17 Act is amended by adding after the period at the  
18 end the following: “Such foregoing limitations shall  
19 also be increased with respect to properties of a par-  
20 ticular size located in any area for which the median  
21 price for such size residence exceeds the foregoing  
22 limitation for such size residence, to the lesser of  
23 150 percent of such foregoing limitation for such  
24 size residence or the amount that is equal to the me-  
25 dian price in such area for such size residence.”.

1           (c) SENSE OF CONGRESS.—It is the sense of the Con-  
2 gress that the securitization of mortgages by the Federal  
3 National Mortgage Association and the Federal Home  
4 Loan Mortgage Corporation plays an important role in  
5 providing liquidity to the United States housing markets.  
6 Therefore, the Congress encourages the Federal National  
7 Mortgage Association and the Federal Home Loan Mort-  
8 gage Corporation to securitize mortgages acquired under  
9 the increased conforming loan limits established under this  
10 Act.

11           (d) HOUSING PRICE INDEX.—Part 2 of subtitle A of  
12 the Federal Housing Enterprises Financial Safety and  
13 Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amend-  
14 ed by inserting after section 1321 (as added by section  
15 1123 of this Act) the following new section:

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

17           “The Director shall establish and maintain a method  
18 of assessing the national average 1-family house price for  
19 use for adjusting the conforming loan limitations of the  
20 enterprises. In establishing such method, the Director  
21 shall take into consideration the monthly survey of all  
22 major lenders conducted by the Federal Housing Finance  
23 Agency to determine the national average 1-family house  
24 price, the House Price Index maintained by the Office of  
25 Federal Housing Enterprise Oversight of the Department

1 of Housing and Urban Development before the effective  
2 date of the Federal Housing Finance Regulatory Reform  
3 Act of 2008, any appropriate house price indexes of the  
4 Bureau of the Census of the Department of Commerce,  
5 and any other indexes or measures that the Director con-  
6 siderers appropriate.”.

7 **SEC. 1125. ANNUAL HOUSING REPORT.**

8 (a) REPEAL.—Section 1324 of the Federal Housing  
9 Enterprises Financial Safety and Soundness Act of 1992  
10 (12 U.S.C. 4544) is hereby repealed.

11 (b) ANNUAL HOUSING REPORT.—The Federal Hous-  
12 ing Enterprises Financial Safety and Soundness Act of  
13 1992 is amended by inserting after section 1323 the fol-  
14 lowing:

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

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

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

3                   “(1) discuss—

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

5                                   “(i) each enterprise is achieving the  
6 annual housing goals established under  
7 subpart B;

8                                   “(ii) each enterprise is complying with  
9 its duty to serve underserved markets, as  
10 established under section 1335;

11                                   “(iii) each enterprise is complying  
12 with section 1337;

13                                   “(iv) each enterprise received credit  
14 towards achieving each of its goals result-  
15 ing from a transaction or activity pursuant  
16 to section 1331(b)(2); and

17                                   “(v) each enterprise is achieving the  
18 purposes of the enterprise established by  
19 law; and

20                           “(B) the actions that each enterprise could  
21 undertake to promote and expand the purposes  
22 of the enterprise;

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

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

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

9           “(5) compare the characteristics of subprime  
10          and nontraditional loans both purchased and  
11          securitized by each enterprise to other loans pur-  
12          chased and securitized by each enterprise; and

13          “(6) compare the characteristics of high-cost  
14          loans purchased and securitized, where such securi-  
15          ties are not held on portfolio to loans purchased and  
16          securitized, where such securities are either retained  
17          on portfolio or repurchased by the enterprise, includ-  
18          ing such characteristics as—

19                 “(A) the purchase price of the property  
20                 that secures the mortgage;

21                 “(B) the loan-to-value ratio of the mort-  
22                 gage, which shall reflect any secondary liens on  
23                 the relevant property;

24                 “(C) the terms of the mortgage;





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

7   **SEC. 1126. PUBLIC USE DATABASE.**

8           Section 1323 of the Federal Housing Enterprises Fi-  
9           nancial Safety and Soundness Act of 1992 (42 U.S.C.  
10          4543) is amended—

11           (1) in subsection (a)—

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

14           “(a) AVAILABILITY.—

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

16                   (B) by adding at the end the following new  
17           paragraph:

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

22           (2) in subsection (b)(2), by inserting before the  
23           period at the end the following: “or with subsection  
24           (a)(2)”; and

1           (3) by adding at the end the following new sub-  
2           section:

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

8   **SEC. 1127. REPORTING OF MORTGAGE DATA.**

9           Section 1326 of the Federal Housing Enterprises Fi-  
10 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
11 4546) is amended—

12           (1) in subsection (a), by striking “The Direc-  
13           tor” and inserting “Subject to subsection (d), the  
14           Director”; and

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

16           “(d) **MORTGAGE INFORMATION.**—Subject to privacy  
17 considerations, as described in section 304(j) of the Home  
18 Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(j)), the  
19 Director shall, by regulation or order, provide that certain  
20 information relating to single family mortgage data of the  
21 enterprises shall be disclosed to the public, in order to  
22 make available to the public—

23           “(1) the same data from the enterprises that is  
24           required of insured depository institutions under the  
25           Home Mortgage Disclosure Act of 1975; and

1           “(2) information collected by the Director  
2           under section 1324(b)(6).”.

3 **SEC. 1128. REVISION OF HOUSING GOALS.**

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

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

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

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

19           “(b) SPECIAL COUNTING REQUIREMENTS.—

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

1           “(2) CONSIDERATIONS.—In making any deter-  
2           mination under paragraph (1), the Director shall  
3           consider whether a transaction or activity of an en-  
4           terprise is substantially equivalent to a mortgage  
5           purchase and either (A) creates a new market, or  
6           (B) adds liquidity to an existing market, provided  
7           however that the terms and conditions of such mort-  
8           gage purchase is neither determined to be unaccept-  
9           able, nor contrary to good lending practices, and  
10          otherwise promotes sustainable homeownership and  
11          further, that such mortgage purchase actually fulfills  
12          the purposes of the enterprise and is in accordance  
13          with the chartering Act of such enterprise.

14          “(c) ELIMINATING INTEREST RATE DISPARITIES.—

15                 “(1) IN GENERAL.—In establishing and imple-  
16                 menting the housing goals under this subpart, the  
17                 Director shall require the enterprises to disclose ap-  
18                 propriate information to allow the Director to assess  
19                 if there are any disparities in interest rates charged  
20                 on mortgages to borrowers who are minorities, as  
21                 compared with borrowers of similar creditworthiness  
22                 who are not minorities, as evidenced in reports pur-  
23                 suant to the Home Mortgage Disclosure Act of  
24                 1975.

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

2           Upon a finding by the Director that a pattern of dis-  
3           parities in interest rates exists pursuant to the infor-  
4           mation provided by an enterprise under paragraph  
5           (1), the Director shall—

6                   “(A) forward to the Committee on Bank-  
7                   ing, Housing, and Urban Affairs of the Senate  
8                   and the Committee on Financial Services of the  
9                   House of Representatives a report detailing the  
10                  disparities; and

11                   “(B) forward the report prepared under  
12                   subparagraph (A) to any other appropriate reg-  
13                   ulatory or enforcement agency.

14           “(3) IDENTITY OF INDIVIDUALS NOT DIS-  
15           CLOSED.—In carrying out this subsection, the Direc-  
16           tor shall ensure that no personally identifiable finan-  
17           cial information that would enable an individual bor-  
18           rower to be reasonably identified shall be made pub-  
19           lic.

20           “(d) TIMING.—The Director shall establish an an-  
21           nual deadline for the establishment of housing goals de-  
22           scribed in subsection (a), taking into consideration the  
23           need for the enterprises to reasonably and sufficiently plan  
24           their operations and activities in advance, including oper-  
25           ations and activities necessary to meet such goals.

1 **“SEC. 1331A. DISCRETIONARY ADJUSTMENT OF HOUSING**  
2 **GOALS.**

3 “(a) **AUTHORITY.**—

4 “(1) **REVIEW.**—The Director shall review the  
5 appropriateness of each goal established pursuant to  
6 this subpart at least once during each year to assure  
7 that given current market conditions that each such  
8 goal is feasible.

9 “(2) **PETITION TO REDUCE.**—An enterprise  
10 may petition the Director in writing at any time  
11 during a year to reduce the level of any goal for  
12 such year established pursuant to this subpart.

13 “(b) **STANDARD FOR REDUCTION.**—The Director  
14 may reduce the level for a goal pursuant to such a petition  
15 only if—

16 “(1) market and economic conditions or the fi-  
17 nancial condition of the enterprise require such ac-  
18 tion; or

19 “(2) efforts to meet the goal would result in the  
20 constraint of liquidity, over-investment in certain  
21 market segments, or other consequences contrary to  
22 the intent of this subpart, section 301(3) of the Fed-  
23 eral National Mortgage Association Charter Act (12  
24 U.S.C. 1716(3)), or section 301(b)(3) of the Federal  
25 Home Loan Mortgage Corporation Act (12 U.S.C.  
26 1451 note), as applicable.

1 “(c) DETERMINATION.—

2 “(1) 30-DAY PERIOD.—If an enterprise submits  
3 a petition for reduction to the Director under sub-  
4 section (a)(2), the Director shall make a determina-  
5 tion regarding any proposed reduction within 30  
6 days of receipt of the petition.

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

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

12 “(a) ESTABLISHMENT OF GOALS.—

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

18 “(A) Low-income families.

19 “(B) Families that reside in low-income  
20 areas.

21 “(C) Very low-income families.

22 “(2) GOALS AS PERCENTAGE OF TOTAL PUR-  
23 CHASE MONEY MORTGAGE PURCHASES.—The goals  
24 established under paragraph (1) shall be established  
25 as a percentage of the total number of single-family

1 dwelling units financed by single-family purchase  
2 money mortgage purchases of the enterprise.

3 “(b) DETERMINATION OF COMPLIANCE.—

4 “(1) IN GENERAL.—The Director shall deter-  
5 mine, for each year that the housing goals under  
6 this section are in effect pursuant to section  
7 1331(a), whether each enterprise has complied with  
8 the single-family housing goals established under  
9 this section for such year.

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

20 “(c) ANNUAL TARGETS.—

21 “(1) IN GENERAL.—The Director shall establish  
22 annual targets for each goal described in subsection  
23 (a).

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

4                   “(A) national housing needs;

5                   “(B) economic, housing, and demographic  
6 conditions;

7                   “(C) the performance and effort of the en-  
8 terprises toward achieving the housing goals  
9 under this section in previous years;

10                   “(D) the ability of the enterprise to lead  
11 the industry in making mortgage credit avail-  
12 able;

13                   “(E) recent information submitted in com-  
14 pliance with the Home Mortgage Disclosure Act  
15 of 1975 and such other reliable mortgage data  
16 as may be available;

17                   “(F) the size of the purchase money con-  
18 ventional mortgage market serving each of the  
19 types of families described in subsection (a),  
20 relative to the size of the overall purchase  
21 money mortgage market; and

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

24           “(3) HIGH-COST LOANS AND INAPPROPRIATE  
25 LENDING PRACTICES.—In establishing annual tar-

1 gets under paragraph (1), the Director shall not  
2 consider segments of the market determined to be  
3 unacceptable or contrary to good lending practices  
4 pursuant to section 1331(b)(2).

5 “(d) NOTICE OF DETERMINATION AND ENTERPRISE  
6 COMMENT.—

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

17 “(2) COMMENT PERIOD.—The Director shall  
18 provide each enterprise and the public an oppor-  
19 tunity to comment on the determination during the  
20 30-day period beginning upon receipt by the enter-  
21 prise of the notice.

22 “(e) USE OF BORROWER INCOME.—In monitoring  
23 the performance of each enterprise pursuant to the hous-  
24 ing goals under this section and evaluating such perform-  
25 ance (for purposes of section 1336), the Director shall

1 consider a mortgagor's income to be the income of the  
2 mortgagor at the time of origination of the mortgage.

3 “(f) CONSIDERATION OF PROPERTIES WITH RENTAL  
4 UNITS.—Mortgages financing 1-to-4 unit owner-occupied  
5 properties shall count toward the achievement of the sin-  
6 gle-family housing goal under this section, if such prop-  
7 erties otherwise meet the requirements under this section  
8 notwithstanding the use of 1 or more units for rental pur-  
9 poses.

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

11 “(a) PREPAYMENT OF EXISTING LOANS.—

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

18 “(A) Low-income families.

19 “(B) Families that reside in low-income  
20 areas.

21 “(C) Very low-income families.

22 “(2) GOALS AS PERCENTAGE OF TOTAL REFI-  
23 NANCING MORTGAGE PURCHASES.—The goals de-  
24 scribed under paragraph (1) shall be established as  
25 a percentage of the total number of single-family

1 dwelling units refinanced by mortgage purchases of  
2 each enterprise.

3 “(b) DETERMINATION OF COMPLIANCE.—

4 “(1) IN GENERAL.—The Director shall deter-  
5 mine, for each year that the housing goals under  
6 this section are in effect pursuant to section  
7 1331(a), whether each enterprise has complied with  
8 the single-family housing refinance goals established  
9 under this section for such year.

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

20 “(c) ANNUAL TARGETS.—

21 “(1) IN GENERAL.—The Director shall establish  
22 annual targets for each goal described in subsection  
23 (a).

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

4                   “(A) national housing needs;

5                   “(B) economic, housing, and demographic  
6 conditions;

7                   “(C) the performance and effort of the en-  
8 terprises toward achieving the housing goals  
9 under this section in previous years;

10                   “(D) the ability of the enterprise to lead  
11 the industry in making mortgage credit avail-  
12 able;

13                   “(E) recent information submitted in com-  
14 pliance with the Home Mortgage Disclosure Act  
15 of 1975 and such other reliable mortgage data  
16 as may be available;

17                   “(F) the size of the purchase money con-  
18 ventional mortgage market serving each of the  
19 types of families described in subsection (a),  
20 relative to the size of the overall purchase  
21 money mortgage market; and

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

24           “(d) NOTICE OF DETERMINATION AND ENTERPRISE  
25 COMMENT.—



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

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

8                   “(B) mortgages that finance dwelling units  
9                   assisted by the low-income housing tax credit  
10                  under section 42 of the Internal Revenue Code  
11                  of 1986.

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

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

4                   “(A) national multifamily mortgage credit  
5                   needs;

6                   “(B) the performance and effort of the en-  
7                   terprise in making mortgage credit available for  
8                   multifamily housing in previous years;

9                   “(C) the size of the multifamily mortgage  
10                  market, including the size of the small multi-  
11                  family mortgage market;

12                  “(D) the most recent information available  
13                  for the Residential Survey published by the  
14                  Census Bureau, and such other reliable data as  
15                  may be available regarding multifamily mort-  
16                  gages;

17                  “(E) the ability of the enterprise to lead  
18                  the industry in expanding mortgage credit  
19                  availability at favorable terms, especially for un-  
20                  derserved markets, such as for—

21                           “(i) small multifamily projects;

22                           “(ii) multifamily properties in need of  
23                           preservation and rehabilitation; and

24                           “(iii) multifamily properties located in  
25                           rural areas; and

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

3           “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-  
4   CY BONDS.—The Director may give credit toward the  
5   achievement of the multifamily special affordable housing  
6   goal under this section (for purposes of section 1336) to  
7   dwelling units in multifamily housing projects that other-  
8   wise qualify under such goal and that are financed by tax-  
9   exempt or taxable bonds issued by a State or local housing  
10   finance agency, but only if such bonds—

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

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

15   “(c) USE OF TENANT RENT LEVEL.—

16           “(1) IN GENERAL.—The Director shall monitor  
17   the performance of each enterprise in meeting the  
18   goal established under this section and shall evaluate  
19   such performance (for purposes of section 1336)  
20   based on whether the rent levels are affordable to  
21   low-income and very low-income families.

22           “(2) RENT LEVEL.—A rent level shall be con-  
23   sidered to be affordable for purposes of this sub-  
24   section for an income category referred to in this  
25   subsection if it does not exceed 30 percent of the

1 maximum income level of such income category, with  
2 appropriate adjustments for unit size as measured  
3 by the number of bedrooms.

4 “(d) DETERMINATION OF COMPLIANCE.—

5 “(1) IN GENERAL.—The Director shall, for  
6 each year that the housing goal under this section  
7 is in effect pursuant to section 1331(a), determine  
8 whether each enterprise has complied with such goal  
9 and the additional requirements under subsection  
10 (a)(2).

11 “(2) COMPLIANCE.—An enterprise shall be con-  
12 sidered to be in compliance with the goal described  
13 under subsection (a) for a year only if the multi-  
14 family mortgage purchases of the enterprise meet or  
15 exceed the goal for the year established under sub-  
16 section (a).

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

23 “(f) REMOVING CREDIT.—The Director shall sub-  
24 tract from the units or mortgages counted toward the goal  
25 established under this section in a current year any units

1 or mortgages credited toward such goal in a prior year  
2 if an enterprise requires a lender to repurchase, or reim-  
3 burse for losses, or indemnify the enterprise against poten-  
4 tial losses on such units or mortgages.

5 “(g) NOTICE OF DETERMINATION AND ENTERPRISE  
6 COMMENT.—

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

16 “(2) COMMENT PERIOD.—The Director shall  
17 provide each enterprise and the public an oppor-  
18 tunity to comment on the determination during the  
19 30-day period beginning upon receipt by the enter-  
20 prise of the notice.”.

21 (c) CONFORMING AMENDMENTS.—The Federal  
22 Housing Enterprises Financial Safety and Soundness Act  
23 of 1992 is amended—

24 (1) in section 1335(a) (12 U.S.C. 4565(a)), in  
25 the matter preceding paragraph (1), by striking

1 “low- and moderate-income housing goal” and all  
2 that follows through “section 1334” and inserting  
3 “housing goals established under this subpart”; and  
4 (2) in section 1336(a)(1) (12 U.S.C.  
5 4566(a)(1)), by striking “sections 1332, 1333, and  
6 1334,” and inserting “this subpart”.

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

10 (1) by striking paragraph (24), as so designated  
11 by section 1002 of this Act, and inserting the fol-  
12 lowing:

13 “(24) VERY LOW-INCOME.—

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

16 “(i) in the case of owner-occupied  
17 units, families having incomes not greater  
18 than 50 percent of the area median in-  
19 come; and

20 “(ii) in the case of rental units, fami-  
21 lies having incomes not greater than 50  
22 percent of the area median income, with  
23 adjustments for smaller and larger fami-  
24 lies, as determined by the Director.

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

4                   “(i) in the case of owner-occupied  
5                   units, income in excess of 30 percent but  
6                   not greater than 50 percent of the area  
7                   median income; and

8                   “(ii) in the case of rental units, in-  
9                   come in excess of 30 percent but not great-  
10                  er than 50 percent of the area median in-  
11                  come, with adjustments for smaller and  
12                  larger families, as determined by the Di-  
13                  rector.”; and

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

15           “(26) CONFORMING MORTGAGE.—The term  
16           ‘conforming mortgage’ means, with respect to an en-  
17           terprise, a conventional mortgage having an original  
18           principal obligation that does not exceed the applica-  
19           ble dollar limitation, in effect at the time of such  
20           origination, under—

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

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

1           “(27) EXTREMELY LOW-INCOME.—The term  
2           ‘extremely low-income’ means—

3                   “(A) in the case of owner-occupied units,  
4                   income not in excess of 30 percent of the area  
5                   median income; and

6                   “(B) in the case of rental units, income  
7                   not in excess of 30 percent of the area median  
8                   income, with adjustments for smaller and larger  
9                   families, as determined by the Director.

10           “(28) LOW-INCOME AREA.—The term ‘low-in-  
11           come area’ means a census tract or block numbering  
12           area in which the median income does not exceed 80  
13           percent of the median income for the area in which  
14           such census tract or block numbering area is lo-  
15           cated, and, for the purposes of section 1332(a)(2),  
16           shall include families having incomes not greater  
17           than 100 percent of the area median income who re-  
18           side in minority census tracts.

19           “(29) MINORITY CENSUS TRACT.—The term  
20           ‘minority census tract’ means a census tract that  
21           has a minority population of at least 30 percent and  
22           a median family income of less than 100 percent of  
23           the area family median income.

1           “(30) SHORTAGE OF STANDARD RENTAL UNITS  
2           BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY  
3           LOW-INCOME RENTER HOUSEHOLDS.—

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

8           “(i) the number of units with com-  
9           plete plumbing and kitchen facilities with a  
10          rent that is 30 percent or less of 30 per-  
11          cent of the adjusted area median income as  
12          determined by the Director that are occu-  
13          pied by extremely low-income renter house-  
14          holds or are vacant for rent; and

15          “(ii) the number of extremely low-in-  
16          come renter households.

17          “(B) RULE OF CONSTRUCTION.—If the  
18          number of units described in subparagraph  
19          (A)(i) exceeds the number of extremely low-in-  
20          come households as described in subparagraph  
21          (A)(ii), there is no shortage.

22          “(31) SHORTAGE OF STANDARD RENTAL UNITS  
23          BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-  
24          INCOME RENTER HOUSEHOLDS.—

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

5                   “(i) the number of units with com-  
6                   plete plumbing and kitchen facilities with a  
7                   rent that is 30 percent or less of 50 per-  
8                   cent of the adjusted area median income as  
9                   determined by the Director that are occu-  
10                  pied by either extremely low- or very low-  
11                  income renter households or are vacant for  
12                  rent; and

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

15           “(B) RULE OF CONSTRUCTION.—If the  
16           number of units described in subparagraph  
17           (A)(i) exceeds the number of extremely low- and  
18           very low-income households as described in sub-  
19           paragraph (A)(ii), there is no shortage.”.

20 **SEC. 1129. DUTY TO SERVE UNDERSERVED MARKETS.**

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

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

4 (2) by striking subsection (b);

5 (3) in subsection (a)—

6 (A) in the matter preceding paragraph (1),  
7 by inserting “and to carry out the duty under  
8 subsection (a) of this section” before “, each  
9 enterprise shall”;

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

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

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

15 (E) by redesignating such subsection as  
16 subsection (b);

17 (4) by inserting before subsection (b) (as so re-  
18 designated by paragraph (3)(E) of this subsection)  
19 the following new subsection:

20 “(a) **DUTY TO SERVE UNDERSERVED MARKETS.—**

21 “(1) **DUTY.—**In accordance with the purpose of  
22 the enterprises under section 301(3) of the Federal  
23 National Mortgage Association Charter Act (12  
24 U.S.C. 1716) and section 301(b)(3) of the Federal  
25 Home Loan Mortgage Corporation Act (12 U.S.C.

1       1451 note) to undertake activities relating to mort-  
2       gages on housing for very low-, low-, and moderate-  
3       income families involving a reasonable economic re-  
4       turn that may be less than the return earned on  
5       other activities, each enterprise shall have the duty  
6       to increase the liquidity of mortgage investments  
7       and improve the distribution of investment capital  
8       available for mortgage financing for underserved  
9       markets by purchasing or securitizing mortgage in-  
10      vestments.

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

15           “(A) MANUFACTURED HOUSING.—The en-  
16      terprise shall lead the industry in developing  
17      loan products and flexible underwriting guide-  
18      lines to facilitate a secondary market for mort-  
19      gages on manufactured homes for very low-,  
20      low-, and moderate-income families.

21           “(B) AFFORDABLE HOUSING PRESERVA-  
22      TION.—The enterprise shall lead the industry in  
23      developing loan products and flexible under-  
24      writing guidelines to facilitate a secondary mar-  
25      ket to preserve housing affordable to very low-

1           , low-, and moderate-income families, including  
2           housing projects subsidized under—

3                   “(i) the project-based and tenant-  
4                   based rental assistance programs under  
5                   section 8 of the United States Housing Act  
6                   of 1937;

7                   “(ii) the program under section 236  
8                   of the National Housing Act;

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

12                  “(iv) the supportive housing for the  
13                  elderly program under section 202 of the  
14                  Housing Act of 1959;

15                  “(v) the supportive housing program  
16                  for persons with disabilities under section  
17                  811 of the Cranston-Gonzalez National Af-  
18                  fordable Housing Act;

19                  “(vi) the programs under title IV of  
20                  the McKinney-Vento Homeless Assistance  
21                  Act (42 U.S.C. 11361 et seq.), but only  
22                  permanent supportive housing projects  
23                  subsidized under such programs; and

1                   “(vii) the rural rental housing pro-  
2                   gram under section 515 of the Housing  
3                   Act of 1949.

4                   “(C) RURAL AND OTHER UNDERSERVED  
5                   MARKETS.—The enterprise shall lead the indus-  
6                   try in developing loan products and flexible un-  
7                   derwriting guidelines to facilitate a secondary  
8                   market for mortgages on housing for very low-  
9                   , low-, and moderate-income families in rural  
10                  areas, and for mortgages for housing for any  
11                  other underserved market for very low-, low-,  
12                  and moderate-income families that the Director  
13                  identifies as lacking adequate credit through  
14                  conventional lending sources. Such underserved  
15                  markets may be identified by borrower type,  
16                  market segment, or geographic area.”; and

17                  (5) by adding at the end the following new sub-  
18                  section:

19                  “(c) EVALUATION AND REPORTING OF COMPLI-  
20                  ANCE.—

21                  “(1) IN GENERAL.—Not later than 6 months  
22                  after the effective date of the Federal Housing Fi-  
23                  nance Regulatory Reform Act of 2008, the Director  
24                  shall establish a manner for evaluating whether, and  
25                  the extent to which, the enterprises have complied

1 with the duty under subsection (a) to serve under-  
2 served markets and for rating the extent of such  
3 compliance. Using such method, the Director shall,  
4 for each year, evaluate such compliance and rate the  
5 performance of each enterprise as to extent of com-  
6 pliance. The Director shall include such evaluation  
7 and rating for each enterprise for a year in the re-  
8 port for that year submitted pursuant to section  
9 1319B(a).

10 “(2) SEPARATE EVALUATIONS.—In determining  
11 whether an enterprise has complied with the duty re-  
12 ferred to in paragraph (1), the Director shall sepa-  
13 rately evaluate whether the enterprise has complied  
14 with such duty with respect to each of the under-  
15 served markets identified in subsection (a), taking  
16 into consideration—

17 “(A) the development of loan products and  
18 more flexible underwriting guidelines;

19 “(B) the extent of outreach to qualified  
20 loan sellers in each of such underserved mar-  
21 kets; and

22 “(C) the volume of loans purchased in each  
23 of such underserved markets.

24 “(3) MANUFACTURED HOUSING MARKET.—In  
25 determining whether an enterprise has complied with

1 the duty under subparagraph (A) of subsection  
2 (a)(2), the Director may consider loans secured by  
3 both real and personal property.”.

4 (b) ENFORCEMENT.—Subsection (a) of section 1336  
5 of the Housing and Community Development Act of 1992  
6 (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 of such subsection, as  
12 amended by the preceding provisions of this subtitle,  
13 the following new paragraph:

14 “(4) ENFORCEMENT OF DUTY TO PROVIDE  
15 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—  
16 The duty under section 1335(a) of each enterprise  
17 to serve underserved markets (as determined in ac-  
18 cordance with section 1335(c)) shall be enforceable  
19 under this section to the same extent and under the  
20 same provisions that the housing goals established  
21 under this subpart are enforceable. Such duty shall  
22 not be enforceable under any other provision of this  
23 title (including subpart C of this part) other than  
24 this section or under any provision of the Federal

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

3 **SEC. 1130. MONITORING AND ENFORCING COMPLIANCE**  
4 **WITH HOUSING GOALS.**

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

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

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

19 “(2) RESPONSE PERIOD.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(3) DEADLINE FOR SUBMISSION.—The Direc-  
19 tor shall establish a deadline for an enterprise to  
20 comply with any remedial action or submit a housing  
21 plan to the Director, which may not be more than  
22 45 days after the enterprise is provided notice. The  
23 Director may extend the deadline to the extent that  
24 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. 1131. 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(w)(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 FISCAL YEAR 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 fiscal year  
11 other than fiscal year 2009, the Secretary shall  
12 make a grant to each State in an amount that  
13 is equal to the formula amount determined  
14 under paragraph (3) for that State.

15 “(C) MINIMUM STATE ALLOCATIONS.—If  
16 the formula amount determined under para-  
17 graph (3) for a fiscal year would allocate less  
18 than \$3,000,000 to any State, the allocation for  
19 such State shall be \$3,000,000, and the in-  
20 crease shall be deducted pro rata from the allo-  
21 cations 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 not less than 75 percent of such grant  
17           amounts shall be used for the benefit only of  
18           extremely low-income families and not more  
19           than 25 percent for the benefit only of very low-  
20           income families; and

21           “(B) the production, preservation, and re-  
22           habilitation of housing for homeownership, in-  
23           cluding such forms as down payment assist-  
24           ance, closing cost assistance, and assistance for  
25           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 ignated 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 ignated 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. 1132. 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           (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. 1141. 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. 1142. 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. 1143. 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. 1144. SUPERVISORY ACTIONS APPLICABLE TO SIG-**  
14 **NIFICANTLY UNDERCAPITALIZED REGU-**  
15 **LATED 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. 1145. 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, Federal  
21                  Home Loan Bank, or the United  
22                  States Treasury; or

23                  “(II) any security interest in the  
24                  assets of the regulated entity securing  
25                  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 a regulated entity for the  
5           benefit of any person other than the regu-  
6           lated entity shall not be available to satisfy  
7           the claims of creditors generally, except  
8           that nothing in this clause shall be con-  
9           strued to expand or otherwise affect the  
10          authority of any regulated entity.

11          “(ii) HOLDING OF MORTGAGES.—Any  
12          mortgage, pool of mortgages, or interest in  
13          a pool of mortgages described in clause (i)  
14          shall be held by the conservator or receiver  
15          appointed under this section for the bene-  
16          ficial owners of such mortgage, pool of  
17          mortgages, or interest in accordance with  
18          the terms of the agreement creating such  
19          trust, custodial, or other agency arrange-  
20          ment.

21          “(iii) LIABILITY OF CONSERVATOR OR  
22          RECEIVER.—The liability of the conser-  
23          vator or receiver appointed under this sec-  
24          tion for damages shall, in the case of any  
25          contingent or unliquidated claim relating

1           to the mortgages held in trust, be esti-  
2           mated in accordance with the regulations  
3           of the Director.

4           “(c) PRIORITY OF EXPENSES AND UNSECURED  
5 CLAIMS.—

6           “(1) IN GENERAL.—Unsecured claims against a  
7           regulated entity, or the receiver therefor, that are  
8           proven to the satisfaction of the receiver shall have  
9           priority in the following order:

10           “(A) Administrative expenses of the re-  
11           ceiver.

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

15           “(C) Any obligation subordinated to gen-  
16           eral creditors (which is not an obligation de-  
17           scribed under subparagraph (D)).

18           “(D) Any obligation to shareholders or  
19           members arising as a result of their status as  
20           shareholder or members.

21           “(2) CREDITORS SIMILARLY SITUATED.—All  
22           creditors that are similarly situated under paragraph  
23           (1) shall be treated in a similar manner, except that  
24           the receiver may take any action (including making

1       payments) that does not comply with this subsection,  
2       if—

3               “(A) the Director determines that such ac-  
4               tion is necessary to maximize the value of the  
5               assets of the regulated entity, to maximize the  
6               present value return from the sale or other dis-  
7               position of the assets of the regulated entity, or  
8               to minimize the amount of any loss realized  
9               upon the sale or other disposition of the assets  
10              of the regulated entity; and

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

14              “(3) DEFINITION.—As used in this subsection,  
15              the term ‘administrative expenses of the receiver’ in-  
16              cludes—

17              “(A) the actual, necessary costs and ex-  
18              penses incurred by the receiver in preserving  
19              the assets of a failed regulated entity or liqui-  
20              dating or otherwise resolving the affairs of a  
21              failed regulated entity; and

22              “(B) any obligations that the receiver de-  
23              termines are necessary and appropriate to fa-  
24              cilitate the smooth and orderly liquidation or  
25              other resolution of the regulated entity.

1           “(d) PROVISIONS RELATING TO CONTRACTS EN-  
2   TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
3   OR RECEIVER.—

4           “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

5           In addition to any other rights a conservator or re-  
6           ceiver may have, the conservator or receiver for any  
7           regulated entity may disaffirm or repudiate any con-  
8           tract or lease—

9                   “(A) to which such regulated entity is a  
10           party;

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

14                   “(C) the disaffirmance or repudiation of  
15           which the conservator or receiver determines, in  
16           its sole discretion, will promote the orderly ad-  
17           ministration of the affairs of the regulated enti-  
18           ty.

19           “(2) TIMING OF REPUDIATION.—The conser-  
20           vator or receiver shall determine whether or not to  
21           exercise the rights of repudiation under this sub-  
22           section within a reasonable period following such ap-  
23           pointment.

24           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
25           ATION.—

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

7                   “(i) limited to actual direct compen-  
8 satory damages; and

9                   “(ii) determined as of—

10                           “(I) the date of the appointment  
11 of the conservator or receiver; or

12                           “(II) in the case of any contract  
13 or agreement referred to in paragraph  
14 (8), the date of the disaffirmance or  
15 repudiation of such contract or agree-  
16 ment.

17           “(B) NO LIABILITY FOR OTHER DAM-  
18 AGES.—For purposes of subparagraph (A), the  
19 term ‘actual direct compensatory damages’ shall  
20 not include—

21                   “(i) punitive or exemplary damages;

22                   “(ii) damages for lost profits or op-  
23 portunity; or

24                   “(iii) damages for pain and suffering.

1                   “(C) MEASURE OF DAMAGES FOR REPUDI-  
2                   ATION OF FINANCIAL CONTRACTS.—In the case  
3                   of any qualified financial contract or agreement  
4                   to which paragraph (8) applies, compensatory  
5                   damages shall be—

6                   “(i) deemed to include normal and  
7                   reasonable costs of cover or other reason-  
8                   able measures of damages utilized in the  
9                   industries for such contract and agreement  
10                  claims; and

11                  “(ii) paid in accordance with this sub-  
12                  section and subsection (e), except as other-  
13                  wise specifically provided in this section.

14                  “(4) LEASES UNDER WHICH THE REGULATED  
15                  ENTITY IS THE LESSEE.—

16                  “(A) IN GENERAL.—If the conservator or  
17                  receiver disaffirms or repudiates a lease under  
18                  which the regulated entity was the lessee, the  
19                  conservator or receiver shall not be liable for  
20                  any damages (other than damages determined  
21                  under subparagraph (B)) for the disaffirmance  
22                  or repudiation of such lease.

23                  “(B) PAYMENTS OF RENT.—Notwith-  
24                  standing subparagraph (A), the lessor under a

1 lease to which that subparagraph applies  
2 shall—

3 “(i) be entitled to the contractual rent  
4 accruing before the later of the date on  
5 which—

6 “(I) the notice of disaffirmance  
7 or repudiation is mailed; or

8 “(II) the disaffirmance or repudi-  
9 ation becomes effective, unless the les-  
10 sor is in default or breach of the  
11 terms of the lease;

12 “(ii) have no claim for damages under  
13 any acceleration clause or other penalty  
14 provision in the lease; and

15 “(iii) have a claim for any unpaid  
16 rent, subject to all appropriate offsets and  
17 defenses, due as of the date of the appoint-  
18 ment, which shall be paid in accordance  
19 with this subsection and subsection (e).

20 “(5) LEASES UNDER WHICH THE REGULATED  
21 ENTITY IS THE LESSOR.—

22 “(A) IN GENERAL.—If the conservator or  
23 receiver repudiates an unexpired written lease  
24 of real property of the regulated entity under  
25 which the regulated entity is the lessor and the

1 lessee is not, as of the date of such repudiation,  
2 in default, the lessee under such lease may ei-  
3 ther—

4 “(i) treat the lease as terminated by  
5 such repudiation; or

6 “(ii) remain in possession of the lease-  
7 hold interest for the balance of the term of  
8 the lease, unless the lessee defaults under  
9 the terms of the lease after the date of  
10 such repudiation.

11 “(B) PROVISIONS APPLICABLE TO LESSEE  
12 REMAINING IN POSSESSION.—If any lessee  
13 under a lease described under subparagraph (A)  
14 remains in possession of a leasehold interest  
15 under clause (ii) of subparagraph (A)—

16 “(i) the lessee—

17 “(I) shall continue to pay the  
18 contractual rent pursuant to the  
19 terms of the lease after the date of  
20 the repudiation of such lease; and

21 “(II) may offset against any rent  
22 payment which accrues after the date  
23 of the repudiation of the lease, and  
24 any damages which accrue after such  
25 date due to the nonperformance of

1 any obligation of the regulated entity  
2 under the lease after such date; and  
3 “(ii) the conservator or receiver shall  
4 not be liable to the lessee for any damages  
5 arising after such date as a result of the  
6 repudiation, other than the amount of any  
7 offset allowed under clause (i)(II).

8 “(6) CONTRACTS FOR THE SALE OF REAL  
9 PROPERTY.—

10 “(A) IN GENERAL.—If the conservator or  
11 receiver repudiates any contract for the sale of  
12 real property and the purchaser of such real  
13 property under such contract is in possession,  
14 and is not, as of the date of such repudiation,  
15 in default, such purchaser may either—

16 “(i) treat the contract as terminated  
17 by such repudiation; or

18 “(ii) remain in possession of such real  
19 property.

20 “(B) PROVISIONS APPLICABLE TO PUR-  
21 CHASER REMAINING IN POSSESSION.—If any  
22 purchaser of real property under any contract  
23 described under subparagraph (A) remains in  
24 possession of such property under clause (ii) of  
25 subparagraph (A)—

1 “(i) the purchaser—

2 “(I) shall continue to make all  
3 payments due under the contract after  
4 the date of the repudiation of the con-  
5 tract; and

6 “(II) may offset against any such  
7 payments any damages which accrue  
8 after such date due to the non-  
9 performance (after such date) of any  
10 obligation of the regulated entity  
11 under the contract; and

12 “(ii) the conservator or receiver  
13 shall—

14 “(I) not be liable to the pur-  
15 chaser for any damages arising after  
16 such date as a result of the repudi-  
17 ation, other than the amount of any  
18 offset allowed under clause (i)(II);

19 “(II) deliver title to the pur-  
20 chaser in accordance with the provi-  
21 sions of the contract; and

22 “(III) have no obligation under  
23 the contract other than the perform-  
24 ance required under subclause (II).

25 “(C) ASSIGNMENT AND SALE ALLOWED.—



1                   “(ii) deemed to have arisen as of the  
2                   date on which the conservator or receiver  
3                   was appointed.

4                   “(B) SERVICES PERFORMED AFTER AP-  
5                   POINTMENT AND PRIOR TO REPUDIATION.—If,  
6                   in the case of any contract for services de-  
7                   scribed under subparagraph (A), the conser-  
8                   vator or receiver accepts performance by the  
9                   other person before the conservator or receiver  
10                  makes any determination to exercise the right  
11                  of repudiation of such contract under this sec-  
12                  tion—

13                  “(i) the other party shall be paid  
14                  under the terms of the contract for the  
15                  services performed; and

16                  “(ii) the amount of such payment  
17                  shall be treated as an administrative ex-  
18                  pense of the conservatorship or receiver-  
19                  ship.

20                  “(C) ACCEPTANCE OF PERFORMANCE NO  
21                  BAR TO SUBSEQUENT REPUDIATION.—The ac-  
22                  ceptance by the conservator or receiver of serv-  
23                  ices referred to under subparagraph (B) in con-  
24                  nection with a contract described in such sub-  
25                  paragraph shall not affect the right of the con-

1 servator or receiver to repudiate such contract  
2 under this section at any time after such per-  
3 formance.

4 “(8) CERTAIN QUALIFIED FINANCIAL CON-  
5 TRACTS.—

6 “(A) RIGHTS OF PARTIES TO CON-  
7 TRACTS.—Subject to paragraphs (9) and (10),  
8 and notwithstanding any other provision of this  
9 title (other than subsection (b)(9)(B) of this  
10 section), any other Federal law, or the law of  
11 any State, no person shall be stayed or prohib-  
12 ited from exercising—

13 “(i) any right of that person to cause  
14 the termination, liquidation, or acceleration  
15 of any qualified financial contract with a  
16 regulated entity that arises upon the ap-  
17 pointment of the Agency as receiver for  
18 such regulated entity at any time after  
19 such appointment;

20 “(ii) any right under any security  
21 agreement or arrangement or other credit  
22 enhancement relating to one or more quali-  
23 fied financial contracts; or

24 “(iii) any right to offset or net out  
25 any termination value, payment amount, or

1 other transfer obligation arising under or  
2 in connection with 1 or more contracts and  
3 agreements described in clause (i), includ-  
4 ing any master agreement for such con-  
5 tracts or agreements.

6 “(B) APPLICABILITY OF OTHER PROVI-  
7 SIONS.—Subsection (b)(10) shall apply in the  
8 case of any judicial action or proceeding  
9 brought against any receiver referred to under  
10 subparagraph (A), or the regulated entity for  
11 which such receiver was appointed, by any  
12 party to a contract or agreement described  
13 under subparagraph (A)(i) with such regulated  
14 entity.

15 “(C) CERTAIN TRANSFERS NOT AVOID-  
16 ABLE.—

17 “(i) IN GENERAL.—Notwithstanding  
18 paragraph (11), or any other provision of  
19 Federal or State law relating to the avoid-  
20 ance of preferential or fraudulent trans-  
21 fers, the Agency, whether acting as such or  
22 as conservator or receiver of a regulated  
23 entity, may not avoid any transfer of  
24 money or other property in connection with

1 any qualified financial contract with a reg-  
2 ulated entity.

3 “(ii) EXCEPTION FOR CERTAIN  
4 TRANSFERS.—Clause (i) shall not apply to  
5 any transfer of money or other property in  
6 connection with any qualified financial con-  
7 tract with a regulated entity if the Agency  
8 determines that the transferee had actual  
9 intent to hinder, delay, or defraud such  
10 regulated entity, the creditors of such reg-  
11 ulated entity, or any conservator or re-  
12 ceiver appointed for such regulated entity.

13 “(D) CERTAIN CONTRACTS AND AGREE-  
14 MENTS DEFINED.—In this subsection the fol-  
15 lowing definitions shall apply:

16 “(i) QUALIFIED FINANCIAL CON-  
17 TRACT.—The term ‘qualified financial con-  
18 tract’ means any securities contract, com-  
19 modity contract, forward contract, repur-  
20 chase agreement, swap agreement, and any  
21 similar agreement that the Agency deter-  
22 mines by regulation, resolution, or order to  
23 be a qualified financial contract for pur-  
24 poses of this paragraph.

1                   “(ii) SECURITIES CONTRACT.—The  
2                   term ‘securities contract’—

3                   “(I) means a contract for the  
4                   purchase, sale, or loan of a security, a  
5                   certificate of deposit, a mortgage loan,  
6                   or any interest in a mortgage loan, a  
7                   group or index of securities, certifi-  
8                   cates of deposit, or mortgage loans or  
9                   interests therein (including any inter-  
10                  est therein or based on the value  
11                  thereof) or any option on any of the  
12                  foregoing, including any option to  
13                  purchase or sell any such security,  
14                  certificate of deposit, mortgage loan,  
15                  interest, group or index, or option,  
16                  and including any repurchase or re-  
17                  verse repurchase transaction on any  
18                  such security, certificate of deposit,  
19                  mortgage loan, interest, group or  
20                  index, or option;

21                  “(II) does not include any pur-  
22                  chase, sale, or repurchase obligation  
23                  under a participation in a commercial  
24                  mortgage loan, unless the Agency de-  
25                  termines by regulation, resolution, or

1 order to include any such agreement  
2 within the meaning of such term;

3 “(III) means any option entered  
4 into on a national securities exchange  
5 relating to foreign currencies;

6 “(IV) means the guarantee by or  
7 to any securities clearing agency of  
8 any settlement of cash, securities, cer-  
9 tificates of deposit, mortgage loans or  
10 interests therein, group or index of se-  
11 curities, certificates of deposit, or  
12 mortgage loans or interests therein  
13 (including any interest therein or  
14 based on the value thereof) or option  
15 on any of the foregoing, including any  
16 option to purchase or sell any such se-  
17 curity, certificate of deposit, mortgage  
18 loan, interest, group or index, or op-  
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-  
22 ment or transaction that is similar to  
23 any agreement or transaction referred  
24 to in this clause;

1                   “(VII) means any combination of  
2                   the agreements or transactions re-  
3                   ferred to in this clause;

4                   “(VIII) means any option to  
5                   enter into any agreement or trans-  
6                   action referred to in this clause;

7                   “(IX) means a master agreement  
8                   that provides for an agreement or  
9                   transaction referred to in subclause  
10                  (I), (III), (IV), (V), (VI), (VII), or  
11                  (VIII), together with all supplements  
12                  to any such master agreement, with-  
13                  out regard to whether the master  
14                  agreement provides for an agreement  
15                  or transaction that is not a securities  
16                  contract under this clause, except that  
17                  the master agreement shall be consid-  
18                  ered to be a securities contract under  
19                  this clause only with respect to each  
20                  agreement or transaction under the  
21                  master agreement that is referred to  
22                  in subclause (I), (III), (IV), (V), (VI),  
23                  (VII), or (VIII); and

24                  “(X) means any security agree-  
25                  ment or arrangement or other credit

1 enhancement related to any agree-  
2 ment or transaction referred to in this  
3 clause, including any guarantee or re-  
4 imbursement obligation in connection  
5 with any agreement or transaction re-  
6 ferred to in this clause.

7 “(iii) COMMODITY CONTRACT.—The  
8 term ‘commodity contract’ means—

9 “(I) with respect to a futures  
10 commission merchant, a contract for  
11 the purchase or sale of a commodity  
12 for future delivery on, or subject to  
13 the rules of, a contract market or  
14 board of trade;

15 “(II) with respect to a foreign fu-  
16 tures commission merchant, a foreign  
17 future;

18 “(III) with respect to a leverage  
19 transaction merchant, a leverage  
20 transaction;

21 “(IV) with respect to a clearing  
22 organization, a contract for the pur-  
23 chase or sale of a commodity for fu-  
24 ture delivery on, or subject to the  
25 rules of, a contract market or board

1 of trade that is cleared by such clear-  
2 ing organization, or commodity option  
3 traded on, or subject to the rules of,  
4 a contract market or board of trade  
5 that is cleared by such clearing orga-  
6 nization;

7 “(V) with respect to a commodity  
8 options dealer, a commodity option;

9 “(VI) any other agreement or  
10 transaction that is similar to any  
11 agreement or transaction referred to  
12 in this clause;

13 “(VII) any combination of the  
14 agreements or transactions referred to  
15 in this clause;

16 “(VIII) any option to enter into  
17 any agreement or transaction referred  
18 to in this clause;

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

1 agreement provides for an agreement  
2 or transaction that is not a com-  
3 modity contract under this clause, ex-  
4 cept that the master agreement shall  
5 be considered to be a commodity con-  
6 tract under this clause only with re-  
7 spect to each agreement or trans-  
8 action under the master agreement  
9 that is referred to in subclause (I),  
10 (II), (III), (IV), (V), (VI), (VII), or  
11 (VIII); or

12 “(X) any security agreement or  
13 arrangement or other credit enhance-  
14 ment related to any agreement or  
15 transaction referred to in this clause,  
16 including any guarantee or reimburse-  
17 ment obligation in connection with  
18 any agreement or transaction referred  
19 to in this clause.

20 “(iv) FORWARD CONTRACT.—The  
21 term ‘forward contract’ means—

22 “(I) a contract (other than a  
23 commodity contract) for the purchase,  
24 sale, or transfer of a commodity or  
25 any similar good, article, service,

1 right, or interest which is presently or  
2 in the future becomes the subject of  
3 dealing in the forward contract trade,  
4 or product or byproduct thereof, with  
5 a maturity date more than 2 days  
6 after the date on which the contract is  
7 entered into, including a repurchase  
8 transaction, reverse repurchase trans-  
9 action, consignment, lease, swap,  
10 hedge transaction, deposit, loan, op-  
11 tion, allocated transaction, unallocated  
12 transaction, or any other similar  
13 agreement;

14 “(II) any combination of agree-  
15 ments or transactions referred to in  
16 subclauses (I) and (III);

17 “(III) any option to enter into  
18 any agreement or transaction referred  
19 to in subclause (I) or (II);

20 “(IV) a master agreement that  
21 provides for an agreement or trans-  
22 action referred to in subclauses (I),  
23 (II), or (III), together with all supple-  
24 ments to any such master agreement,  
25 without regard to whether the master

1 agreement provides for an agreement  
2 or transaction that is not a forward  
3 contract under this clause, except that  
4 the master agreement shall be consid-  
5 ered to be a forward contract under  
6 this clause only with respect to each  
7 agreement or transaction under the  
8 master agreement that is referred to  
9 in subclause (I), (II), or (III); or

10 “(V) any security agreement or  
11 arrangement or other credit enhance-  
12 ment related to any agreement or  
13 transaction referred to in subclause  
14 (I), (II), (III), or (IV), including any  
15 guarantee or reimbursement obliga-  
16 tion in connection with any agreement  
17 or transaction referred to in any such  
18 subclause.

19 “(v) REPURCHASE AGREEMENT.—The  
20 term ‘repurchase agreement’ (including a  
21 reverse repurchase agreement)—

22 “(I) means an agreement, includ-  
23 ing related terms, which provides for  
24 the transfer of one or more certifi-  
25 cates of deposit, mortgage-related se-

1 securities (as such term is defined in  
2 section 3 of the Securities Exchange  
3 Act of 1934), mortgage loans, inter-  
4 ests in mortgage-related securities or  
5 mortgage loans, eligible bankers' ac-  
6 ceptances, qualified foreign govern-  
7 ment securities (defined for purposes  
8 of this clause as a security that is a  
9 direct obligation of, or that is fully  
10 guaranteed by, the central government  
11 of a member of the Organization for  
12 Economic Cooperation and Develop-  
13 ment, as determined by regulation or  
14 order adopted by the appropriate Fed-  
15 eral banking authority), or securities  
16 that are direct obligations of, or that  
17 are fully guaranteed by, the United  
18 States or any agency of the United  
19 States against the transfer of funds  
20 by the transferee of such certificates  
21 of deposit, eligible bankers' accept-  
22 ances, securities, mortgage loans, or  
23 interests with a simultaneous agree-  
24 ment by such transferee to transfer to  
25 the transferor thereof certificates of

1 deposit, eligible bankers' acceptances,  
2 securities, mortgage loans, or interests  
3 as described above, at a date certain  
4 not later than 1 year after such trans-  
5 fers or on demand, against the trans-  
6 fer of funds, or any other similar  
7 agreement;

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

15 “(III) means any combination of  
16 agreements or transactions referred to  
17 in subclauses (I) and (IV);

18 “(IV) means any option to enter  
19 into any agreement or transaction re-  
20 ferred to in subclause (I) or (III);

21 “(V) means a master agreement  
22 that provides for an agreement or  
23 transaction referred to in subclause  
24 (I), (III), or (IV), together with all  
25 supplements to any such master

1 agreement, without regard to whether  
2 the master agreement provides for an  
3 agreement or transaction that is not a  
4 repurchase agreement under this  
5 clause, except that the master agree-  
6 ment shall be considered to be a re-  
7 purchase agreement under this sub-  
8 clause only with respect to each agree-  
9 ment or transaction under the master  
10 agreement that is referred to in sub-  
11 clause (I), (III), or (IV); and

12 “(VI) means any security agree-  
13 ment or arrangement or other credit  
14 enhancement related to any agree-  
15 ment or transaction referred to in  
16 subclause (I), (III), (IV), or (V), in-  
17 cluding any guarantee or reimburse-  
18 ment obligation in connection with  
19 any agreement or transaction referred  
20 to in any such subclause.

21 “(vi) SWAP AGREEMENT.—The term  
22 ‘swap agreement’ means—

23 “(I) any agreement, including the  
24 terms and conditions incorporated by  
25 reference in any such agreement,

1 which is an interest rate swap, option,  
2 future, or forward agreement, includ-  
3 ing a rate floor, rate cap, rate collar,  
4 cross-currency rate swap, and basis  
5 swap; a spot, same day-tomorrow, to-  
6 morrow-next, forward, or other for-  
7 eign exchange or precious metals  
8 agreement; a currency swap, option,  
9 future, or forward agreement; an eq-  
10 uity index or equity swap, option, fu-  
11 ture, or forward agreement; a debt  
12 index or debt swap, option, future, or  
13 forward agreement; a total return,  
14 credit spread or credit swap, option,  
15 future, or forward agreement; a com-  
16 modity index or commodity swap, op-  
17 tion, future, or forward agreement; or  
18 a weather swap, weather derivative, or  
19 weather option;

20 “(II) any agreement or trans-  
21 action that is similar to any other  
22 agreement or transaction referred to  
23 in this clause and that is of a type  
24 that has been, is presently, or in the  
25 future becomes, the subject of recur-



1 supplements to any such master  
2 agreement, without regard to whether  
3 the master agreement contains an  
4 agreement or transaction that is not a  
5 swap agreement under this clause, ex-  
6 cept that the master agreement shall  
7 be considered to be a swap agreement  
8 under this clause only with respect to  
9 each agreement or transaction under  
10 the master agreement that is referred  
11 to in subclause (I), (II), (III), or (IV);  
12 and

13 “(VI) any security agreement or  
14 arrangement or other credit enhance-  
15 ment related to any agreements or  
16 transactions referred to in subclause  
17 (I), (II), (III), (IV), or (V), including  
18 any guarantee or reimbursement obli-  
19 gation in connection with any agree-  
20 ment or transaction referred to in any  
21 such subclause.

22 “(vii) TREATMENT OF MASTER  
23 AGREEMENT AS ONE AGREEMENT.—Any  
24 master agreement for any contract or  
25 agreement described in any preceding

1 clause of this subparagraph (or any master  
2 agreement for such master agreement or  
3 agreements), together with all supplements  
4 to such master agreement, shall be treated  
5 as a single agreement and a single quali-  
6 fied financial contract. If a master agree-  
7 ment contains provisions relating to agree-  
8 ments or transactions that are not them-  
9 selves qualified financial contracts, the  
10 master agreement shall be deemed to be a  
11 qualified financial contract only with re-  
12 spect to those transactions that are them-  
13 selves qualified financial contracts.

14 “(viii) TRANSFER.—The term ‘trans-  
15 fer’ means every mode, direct or indirect,  
16 absolute or conditional, voluntary or invol-  
17 untary, of disposing of or parting with  
18 property or with an interest in property,  
19 including retention of title as a security in-  
20 terest and foreclosure of the equity of re-  
21 demption of the regulated entity.

22 “(E) CERTAIN PROTECTIONS IN EVENT OF  
23 APPOINTMENT OF CONSERVATOR.—Notwith-  
24 standing any other provision of this section, any  
25 other Federal law, or the law of any State

1 (other than paragraph (10) of this subsection  
2 and subsection (b)(9)(B)), no person shall be  
3 stayed or prohibited from exercising—

4 “(i) any right such person has to  
5 cause the termination, liquidation, or accel-  
6 eration of any qualified financial contract  
7 with a regulated entity in a conservator-  
8 ship based upon a default under such fi-  
9 nancial contract which is enforceable under  
10 applicable noninsolvency law;

11 “(ii) any right under any security  
12 agreement or arrangement or other credit  
13 enhancement relating to 1 or more such  
14 qualified financial contracts; or

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

20 “(F) CLARIFICATION.—No provision of law  
21 shall be construed as limiting the right or  
22 power of the Agency, or authorizing any court  
23 or agency to limit or delay in any manner, the  
24 right or power of the Agency to transfer any  
25 qualified financial contract in accordance with

1 paragraphs (9) and (10), or to disaffirm or re-  
2 pudiate any such contract in accordance with  
3 subsection (d)(1).

4 “(G) WALKAWAY CLAUSES NOT EFFEC-  
5 TIVE.—

6 “(i) IN GENERAL.—Notwithstanding  
7 the provisions of subparagraphs (A) and  
8 (E), and sections 403 and 404 of the Fed-  
9 eral Deposit Insurance Corporation Im-  
10 provement Act of 1991, no walkaway  
11 clause shall be enforceable in a qualified fi-  
12 nancial contract of a regulated entity in  
13 default.

14 “(ii) WALKAWAY CLAUSE DEFINED.—  
15 For purposes of this subparagraph, the  
16 term ‘walkaway clause’ means a provision  
17 in a qualified financial contract that, after  
18 calculation of a value of a party’s position  
19 or an amount due to or from 1 of the par-  
20 ties in accordance with its terms upon ter-  
21 mination, liquidation, or acceleration of the  
22 qualified financial contract, either does not  
23 create a payment obligation of a party or  
24 extinguishes a payment obligation of a  
25 party in whole or in part solely because of

1                   the status of such party as a nondefaulting  
2                   party.

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

8                   “(A) transfer to 1 person—

9                   “(i) all qualified financial contracts  
10                  between any person (or any affiliate of  
11                  such person) and the regulated entity in  
12                  default;

13                  “(ii) all claims of such person (or any  
14                  affiliate of such person) against such regu-  
15                  lated entity under any such contract (other  
16                  than any claim which, under the terms of  
17                  any such contract, is subordinated to the  
18                  claims of general unsecured creditors of  
19                  such regulated entity);

20                  “(iii) all claims of such regulated enti-  
21                  ty against such person (or any affiliate of  
22                  such person) under any such contract; and

23                  “(iv) all property securing, or any  
24                  other credit enhancement for any contract  
25                  described in clause (i), or any claim de-

1           scribed in clause (ii) or (iii) under any  
2           such contract; or

3           “(B) transfer none of the financial con-  
4           tracts, claims, or property referred to under  
5           subparagraph (A) (with respect to such person  
6           and any affiliate of such person).

7           “(10) NOTIFICATION OF TRANSFER.—

8           “(A) IN GENERAL.—The conservator or re-  
9           ceiver shall notify any person that is a party to  
10          a contract or transfer by 5:00 p.m. (Eastern  
11          Standard Time) on the business day following  
12          the date of the appointment of the receiver in  
13          the case of a receivership, or the business day  
14          following such transfer in the case of a con-  
15          servatorship, if—

16               “(i) the conservator or receiver for a  
17               regulated entity in default makes any  
18               transfer of the assets and liabilities of such  
19               regulated entity; and

20               “(ii) such transfer includes any quali-  
21               fied financial contract.

22           “(B) CERTAIN RIGHTS NOT ENFORCE-  
23           ABLE.—

24               “(i) RECEIVERSHIP.—A person who is  
25               a party to a qualified financial contract

1 with a regulated entity may not exercise  
2 any right that such person has to termi-  
3 nate, liquidate, or net such contract under  
4 paragraph (8)(A) of this subsection or  
5 under section 403 or 404 of the Federal  
6 Deposit Insurance Corporation Improve-  
7 ment Act of 1991, solely by reason of or  
8 incidental to the appointment of a receiver  
9 for the regulated entity (or the insolvency  
10 or financial condition of the regulated enti-  
11 ty for which the receiver has been ap-  
12 pointed)—

13 “(I) until 5:00 p.m. (Eastern  
14 Standard Time) on the business day  
15 following the date of the appointment  
16 of the receiver; or

17 “(II) after the person has re-  
18 ceived notice that the contract has  
19 been transferred pursuant to para-  
20 graph (9)(A).

21 “(ii) CONSERVATORSHIP.—A person  
22 who is a party to a qualified financial con-  
23 tract with a regulated entity may not exer-  
24 cise any right that such person has to ter-  
25minate, liquidate, or net such contract

1 under paragraph (8)(E) of this subsection  
2 or under section 403 or 404 of the Federal  
3 Deposit Insurance Corporation Improve-  
4 ment Act of 1991, solely by reason of or  
5 incidental to the appointment of a conser-  
6 vator for the regulated entity (or the insol-  
7 vency or financial condition of the regu-  
8 lated entity for which the conservator has  
9 been appointed).

10 “(iii) NOTICE.—For purposes of this  
11 paragraph, the conservator or receiver of a  
12 regulated entity shall be deemed to have  
13 notified a person who is a party to a quali-  
14 fied financial contract with such regulated  
15 entity, if the conservator or receiver has  
16 taken steps reasonably calculated to pro-  
17 vide notice to such person by the time  
18 specified in subparagraph (A).

19 “(C) BUSINESS DAY DEFINED.—For pur-  
20 poses of this paragraph, the term ‘business day’  
21 means any day other than any Saturday, Sun-  
22 day, or any day on which either the New York  
23 Stock Exchange or the Federal Reserve Bank  
24 of New York is closed.

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

8                   “(A) disaffirm or repudiate all qualified fi-  
9                   nancial contracts between—

10                           “(i) any person or any affiliate of  
11                           such person; and

12                           “(ii) the regulated entity in default; or

13                   “(B) disaffirm or repudiate none of the  
14                   qualified financial contracts referred to in sub-  
15                   paragraph (A) (with respect to such person or  
16                   any affiliate of such person).

17           “(12) CERTAIN SECURITY INTERESTS NOT  
18           AVOIDABLE.—No provision of this subsection shall  
19           be construed as permitting the avoidance of any le-  
20           gally enforceable or perfected security interest in any  
21           of the assets of any regulated entity, except where  
22           such an interest is taken in contemplation of the in-  
23           solveny of the regulated entity, or with the intent  
24           to hinder, delay, or defraud the regulated entity or  
25           the creditors of such regulated entity.

1           “(13) AUTHORITY TO ENFORCE CONTRACTS.—

2           “(A) IN GENERAL.—Notwithstanding any  
3 provision of a contract providing for termi-  
4 nation, default, acceleration, or exercise of  
5 rights upon, or solely by reason of, insolvency  
6 or the appointment of, or the exercise of rights  
7 or powers by, a conservator or receiver, the con-  
8 servator or receiver may enforce any contract,  
9 other than a contract for liability insurance for  
10 a director or officer, or a contract or a regu-  
11 lated entity bond, entered into by the regulated  
12 entity.

13           “(B) CERTAIN RIGHTS NOT AFFECTED.—  
14 No provision of this paragraph may be con-  
15 strued as impairing or affecting any right of the  
16 conservator or receiver to enforce or recover  
17 under a liability insurance contract for an offi-  
18 cer or director, or regulated entity bond under  
19 other applicable law.

20           “(C) CONSENT REQUIREMENT.—

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

1 a party, or to obtain possession of or exer-  
2 cise control over any property of the regu-  
3 lated entity, or affect any contractual  
4 rights of the regulated entity, without the  
5 consent of the conservator or receiver, as  
6 appropriate, for a period of—

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

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

11 “(ii) EXCEPTIONS.—This subpara-  
12 graph shall not—

13 “(I) apply to a contract for liabil-  
14 ity insurance for an officer or direc-  
15 tor;

16 “(II) apply to the rights of par-  
17 ties to certain qualified financial con-  
18 tracts under subsection (d)(8); and

19 “(III) be construed as permitting  
20 the conservator or receiver to fail to  
21 comply with otherwise enforceable  
22 provisions of such contracts.

23 “(14) SAVINGS CLAUSE.—The meanings of  
24 terms used in this subsection are applicable for pur-  
25 poses of this subsection only, and shall not be con-

1       strued or applied so as to challenge or affect the  
2       characterization, definition, or treatment of any  
3       similar terms under any other statute, regulation, or  
4       rule, including the Gramm-Leach-Bliley Act, the  
5       Legal Certainty for Bank Products Act of 2000, the  
6       securities laws (as that term is defined in section  
7       3(a)(47) of the Securities Exchange Act of 1934),  
8       and the Commodity Exchange Act.

9               “(15) EXCEPTION FOR FEDERAL RESERVE AND  
10       FEDERAL HOME LOAN BANKS.—No provision of this  
11       subsection shall apply with respect to—

12               “(A) any extension of credit from any Fed-  
13       eral Home Loan Bank or Federal Reserve  
14       Bank to any regulated entity; or

15               “(B) any security interest in the assets of  
16       the regulated entity securing any such extension  
17       of credit.

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

19               “(1) IN GENERAL.—Notwithstanding any other  
20       provision of Federal law or the law of any State, and  
21       regardless of the method which the Agency deter-  
22       mines to utilize with respect to a regulated entity in  
23       default or in danger of default, including trans-  
24       actions authorized under subsection (i), this sub-

1 section shall govern the rights of the creditors of  
2 such regulated entity.

3 “(2) MAXIMUM LIABILITY.—The maximum li-  
4 ability of the Agency, acting as receiver or in any  
5 other capacity, to any person having a claim against  
6 the receiver or the regulated entity for which such  
7 receiver is appointed shall be not more than the  
8 amount that such claimant would have received if  
9 the Agency had liquidated the assets and liabilities  
10 of the regulated entity without exercising the author-  
11 ity of the Agency under subsection (i).

12 “(f) LIMITATION ON COURT ACTION.—Except as  
13 provided in this section or at the request of the Director,  
14 no court may take any action to restrain or affect the exer-  
15 cise of powers or functions of the Agency as a conservator  
16 or a receiver.

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

18 “(1) IN GENERAL.—A director or officer of a  
19 regulated entity may be held personally liable for  
20 monetary damages in any civil action described in  
21 paragraph (2) brought by, on behalf of, or at the re-  
22 quest or direction of the Agency, and prosecuted  
23 wholly or partially for the benefit of the Agency—

24 “(A) acting as conservator or receiver of  
25 such regulated entity; or

1           “(B) acting based upon a suit, claim, or  
2           cause of action purchased from, assigned by, or  
3           otherwise conveyed by such receiver or conser-  
4           vator.

5           “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-  
6           plies in any civil action for gross negligence, includ-  
7           ing any similar conduct or conduct that dem-  
8           onstrates a greater disregard of a duty of care than  
9           gross negligence, including intentional tortious con-  
10          duct, as such terms are defined and determined  
11          under applicable State law.

12          “(3) NO LIMITATION.—Nothing in this sub-  
13          section shall impair or affect any right of the Agency  
14          under other applicable law.

15          “(h) DAMAGES.—In any proceeding related to any  
16          claim against a director, officer, employee, agent, attorney,  
17          accountant, appraiser, or any other party employed by or  
18          providing services to a regulated entity, recoverable dam-  
19          ages determined to result from the improvident or other-  
20          wise improper use or investment of any assets of the regu-  
21          lated entity shall include principal losses and appropriate  
22          interest.

23          “(i) LIMITED-LIFE REGULATED ENTITIES.—

24          “(1) ORGANIZATION.—

1           “(A) PURPOSE.—The Agency, as receiver  
2 appointed pursuant to subsection (a)—

3           “(i) may, in the case of a Federal  
4 Home Loan Bank, organize a limited-life  
5 regulated entity with those powers and at-  
6 tributes of the Federal Home Loan Bank  
7 in default or in danger of default as the  
8 Director determines necessary, subject to  
9 the provisions of this subsection, and the  
10 Director shall grant a temporary charter to  
11 that limited-life regulated entity, and that  
12 limited-life regulated entity shall operate  
13 subject to that charter; and

14           “(ii) shall, in the case of an enter-  
15 prise, organize a limited-life regulated enti-  
16 ty with respect to that enterprise in ac-  
17 cordance with this subsection.

18           “(B) AUTHORITIES.—Upon the creation of  
19 a limited-life regulated entity under subpara-  
20 graph (A), the limited-life regulated entity  
21 may—

22           “(i) assume such liabilities of the reg-  
23 ulated entity that is in default or in danger  
24 of default as the Agency may, in its discre-  
25 tion, determine to be appropriate, except

1           that the liabilities assumed shall not exceed  
2           the amount of assets purchased or trans-  
3           ferred from the regulated entity to the lim-  
4           ited-life regulated entity;

5           “(ii) purchase such assets of the regu-  
6           lated entity that is in default, or in danger  
7           of default as the Agency may, in its discre-  
8           tion, determine to be appropriate; and

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

13          “(2) CHARTER AND ESTABLISHMENT.—

14          “(A) TRANSFER OF CHARTER.—

15          “(i) FANNIE MAE.—If the Agency is  
16          appointed as receiver for the Federal Na-  
17          tional Mortgage Association, the limited-  
18          life regulated entity established under this  
19          subsection with respect to such enterprise  
20          shall, by operation of law and immediately  
21          upon its organization—

22                  “(I) succeed to the charter of the  
23                  Federal National Mortgage Associa-  
24                  tion, as set forth in the Federal Na-

1 tional Mortgage Association Charter  
2 Act; and

3 “(II) thereafter operate in ac-  
4 cordance with, and subject to, such  
5 charter, this Act, and any other provi-  
6 sion of law to which the Federal Na-  
7 tional Mortgage Association is subject,  
8 except as otherwise provided in this  
9 subsection.

10 “(ii) FREDDIE MAC.—If the Agency is  
11 appointed as receiver for the Federal  
12 Home Loan Mortgage Corporation, the  
13 limited-life regulated entity established  
14 under this subsection with respect to such  
15 enterprise shall, by operation of law and  
16 immediately upon its organization—

17 “(I) succeed to the charter of the  
18 Federal Home Loan Mortgage Cor-  
19 poration, as set forth in the Federal  
20 Home Loan Mortgage Corporation  
21 Charter Act; and

22 “(II) thereafter operate in ac-  
23 cordance with, and subject to, such  
24 charter, this Act, and any other provi-  
25 sion of law to which the Federal

1 Home Loan Mortgage Corporation is  
2 subject, except as otherwise provided  
3 in this subsection.

4 “(B) INTERESTS IN AND ASSETS AND OB-  
5 LIGATIONS OF REGULATED ENTITY IN DE-  
6 FAULT.—Notwithstanding subparagraph (A) or  
7 any other provision of law—

8 “(i) a limited-life regulated entity  
9 shall assume, acquire, or succeed to the as-  
10 sets or liabilities of a regulated entity only  
11 to the extent that such assets or liabilities  
12 are transferred by the Agency to the lim-  
13 ited-life regulated entity in accordance  
14 with, and subject to the restrictions set  
15 forth in, paragraph (1)(B);

16 “(ii) a limited-life regulated entity  
17 shall not assume, acquire, or succeed to  
18 any obligation that a regulated entity for  
19 which a receiver has been appointed may  
20 have to any shareholder of the regulated  
21 entity that arises as a result of the status  
22 of that person as a shareholder of the reg-  
23 ulated entity; and

24 “(iii) no shareholder or creditor of a  
25 regulated entity shall have any right or

1 claim against the charter of the regulated  
2 entity once the Agency has been appointed  
3 receiver for the regulated entity and a lim-  
4 ited-life regulated entity succeeds to the  
5 charter pursuant to subparagraph (A).

6 “(C) LIMITED-LIFE REGULATED ENTITY  
7 TREATED AS BEING IN DEFAULT FOR CERTAIN  
8 PURPOSES.—A limited-life regulated entity shall  
9 be treated as a regulated entity in default at  
10 such times and for such purposes as the Agency  
11 may, in its discretion, determine.

12 “(D) MANAGEMENT.—Upon its establish-  
13 ment, a limited-life regulated entity shall be  
14 under the management of a board of directors  
15 consisting of not fewer than 5 nor more than  
16 10 members appointed by the Agency.

17 “(E) BYLAWS.—The board of directors of  
18 a limited-life regulated entity shall adopt such  
19 bylaws as may be approved by the Agency.

20 “(3) CAPITAL STOCK.—

21 “(A) NO AGENCY REQUIREMENT.—  
22 The Agency is not required to pay capital  
23 stock into a limited-life regulated entity or  
24 to issue any capital stock on behalf of a

1           limited-life regulated entity established  
2           under this subsection.

3                   “(B) AUTHORITY.—If the Director  
4           determines that such action is advisable,  
5           the Agency may cause capital stock or  
6           other securities of a limited-life regulated  
7           entity established with respect to an enter-  
8           prise to be issued and offered for sale, in  
9           such amounts and on such terms and con-  
10          ditions as the Director may determine, in  
11          the discretion of the Director.

12                   “(4) INVESTMENTS.—Funds of a limited-life  
13          regulated entity shall be kept on hand in cash, in-  
14          vested in obligations of the United States or obliga-  
15          tions guaranteed as to principal and interest by the  
16          United States, or deposited with the Agency, or any  
17          Federal reserve bank.

18                   “(5) EXEMPT TAX STATUS.—Notwithstanding  
19          any other provision of Federal or State law, a lim-  
20          ited-life regulated entity, its franchise, property, and  
21          income shall be exempt from all taxation now or  
22          hereafter imposed by the United States, by any ter-  
23          ritory, dependency, or possession thereof, or by any  
24          State, county, municipality, or local taxing authority.

25                   “(6) WINDING UP.—

1           “(A) IN GENERAL.—Subject to subpara-  
2           graphs (B) and (C), not later than 2 years after  
3           the date of its organization, the Agency shall  
4           wind up the affairs of a limited-life regulated  
5           entity.

6           “(B) EXTENSION.—The Director may, in  
7           the discretion of the Director, extend the status  
8           of a limited-life regulated entity for 3 additional  
9           1-year periods.

10           “(C) TERMINATION OF STATUS AS LIM-  
11           ITED-LIFE REGULATED ENTITY.—

12           “(i) IN GENERAL.—Upon the sale by  
13           the Agency of 80 percent or more of the  
14           capital stock of a limited-life regulated en-  
15           tity, as defined in clause (iv), to 1 or more  
16           persons (other than the Agency)—

17           “(I) the status of the limited-life  
18           regulated entity as such shall termi-  
19           nate; and

20           “(II) the entity shall cease to be  
21           a limited-life regulated entity for pur-  
22           poses of this subsection.

23           “(ii) DIVESTITURE OF REMAINING  
24           STOCK, IF ANY.—

1                   “(I) IN GENERAL.—Not later  
2                   than 1 year after the date on which  
3                   the status of a limited-life regulated  
4                   entity is terminated pursuant to  
5                   clause (i), the Agency shall sell to 1 or  
6                   more persons (other than the Agency)  
7                   any remaining capital stock of the  
8                   former limited-life regulated entity.

9                   “(II) EXTENSION AUTHORIZED.—The Director may extend the  
10                  period referred to in subclause (I) for  
11                  not longer than an additional 2 years,  
12                  if the Director determines that such  
13                  action would be in the public interest.

14                  “(iii) SAVINGS CLAUSE.—Notwith-  
15                  standing any provision of law, other than  
16                  clause (ii), the Agency shall not be re-  
17                  quired to sell the capital stock of an enter-  
18                  prise or a limited-life regulated entity es-  
19                  tablished with respect to an enterprise.  
20                  

21                  “(iv) APPLICABILITY.—This subpara-  
22                  graph applies only with respect to a lim-  
23                  ited-life regulated entity that is established  
24                  with respect to an enterprise.

25                  “(7) TRANSFER OF ASSETS AND LIABILITIES.—

1 “(A) IN GENERAL.—

2 “(i) TRANSFER OF ASSETS AND LI-  
3 ABILITIES.—The Agency, as receiver, may  
4 transfer any assets and liabilities of a reg-  
5 ulated entity in default, or in danger of de-  
6 fault, to the limited-life regulated entity in  
7 accordance with and subject to the restric-  
8 tions of paragraph (1).

9 “(ii) SUBSEQUENT TRANSFERS.—At  
10 any time after the establishment of a lim-  
11 ited-life regulated entity, the Agency, as  
12 receiver, may transfer any assets and li-  
13 abilities of the regulated entity in default,  
14 or in danger of default, as the Agency  
15 may, in its discretion, determine to be ap-  
16 propriate in accordance with and subject to  
17 the restrictions of paragraph (1).

18 “(iii) EFFECTIVE WITHOUT AP-  
19 PROVAL.—The transfer of any assets or li-  
20 abilities of a regulated entity in default or  
21 in danger of default to a limited-life regu-  
22 lated entity shall be effective without any  
23 further approval under Federal or State  
24 law, assignment, or consent with respect  
25 thereto.

1                   “(iv) EQUITABLE TREATMENT OF  
2                   SIMILARLY SITUATED CREDITORS.—The  
3                   Agency shall treat all creditors of a regu-  
4                   lated entity in default or in danger of de-  
5                   fault that are similarly situated under sub-  
6                   section (c)(1) in a similar manner in exer-  
7                   cising the authority of the Agency under  
8                   this subsection to transfer any assets or li-  
9                   abilities of the regulated entity to the lim-  
10                  ited-life regulated entity established with  
11                  respect to such regulated entity, except  
12                  that the Agency may take actions (includ-  
13                  ing making payments) that do not comply  
14                  with this clause, if—

15                         “(I) the Director determines that  
16                         such actions are necessary to maxi-  
17                         mize the value of the assets of the  
18                         regulated entity, to maximize the  
19                         present value return from the sale or  
20                         other disposition of the assets of the  
21                         regulated entity, or to minimize the  
22                         amount of any loss realized upon the  
23                         sale or other disposition of the assets  
24                         of the regulated entity; and

1                   “(II) all creditors that are simi-  
2                   larly situated under subsection (e)(1)  
3                   receive not less than the amount pro-  
4                   vided in subsection (e)(2).

5                   “(v) LIMITATION ON TRANSFER OF  
6                   LIABILITIES.—Notwithstanding any other  
7                   provision of law, the aggregate amount of  
8                   liabilities of a regulated entity that are  
9                   transferred to, or assumed by, a limited-  
10                  life regulated entity may not exceed the ag-  
11                  gregate amount of assets of the regulated  
12                  entity that are transferred to, or purchased  
13                  by, the limited-life regulated entity.

14                  “(8) REGULATIONS.—The Agency may promul-  
15                  gate such regulations as the Agency determines to  
16                  be necessary or appropriate to implement this sub-  
17                  section.

18                  “(9) POWERS OF LIMITED-LIFE REGULATED  
19                  ENTITIES.—

20                  “(A) IN GENERAL.—Each limited-life regu-  
21                  lated entity created under this subsection shall  
22                  have all corporate powers of, and be subject to  
23                  the same provisions of law as, the regulated en-  
24                  tity in default or in danger of default to which  
25                  it relates, except that—

1 “(i) the Agency may—

2 “(I) remove the directors of a  
3 limited-life regulated entity;

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

9 “(III) indemnify the representa-  
10 tives for purposes of paragraph  
11 (1)(B), and the directors, officers, em-  
12 ployees, and agents of a limited-life  
13 regulated entity on such terms as the  
14 Agency determines to be appropriate;  
15 and

16 “(ii) the board of directors of a lim-  
17 ited-life regulated entity—

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

1                   “(II) may appoint a chief execu-  
2                   tive officer who is not also the chair-  
3                   person, except that such person shall  
4                   not serve as chief executive officer  
5                   without the prior approval of the  
6                   Agency.

7                   “(B) STAY OF JUDICIAL ACTION.—Any ju-  
8                   dicial action to which a limited-life regulated  
9                   entity becomes a party by virtue of its acquisi-  
10                  tion of any assets or assumption of any liabil-  
11                  ities of a regulated entity in default shall be  
12                  stayed from further proceedings for a period of  
13                  not longer than 45 days, at the request of the  
14                  limited-life regulated entity. Such period may  
15                  be modified upon the consent of all parties.

16                  “(10) NO FEDERAL STATUS.—

17                  “(A) AGENCY STATUS.—A limited-life reg-  
18                  ulated entity is not an agency, establishment, or  
19                  instrumentality of the United States.

20                  “(B) EMPLOYEE STATUS.—Representa-  
21                  tives for purposes of paragraph (1)(B), interim  
22                  directors, directors, officers, employees, or  
23                  agents of a limited-life regulated entity are not,  
24                  solely by virtue of service in any such capacity,  
25                  officers or employees of the United States. Any

1 employee of the Agency or of any Federal in-  
2 strumentality who serves at the request of the  
3 Agency as a representative for purposes of  
4 paragraph (1)(B), interim director, director, of-  
5 ficer, employee, or agent of a limited-life regu-  
6 lated entity shall not—

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

12 “(ii) receive any salary or benefits for  
13 service in any such capacity with respect to  
14 a limited-life regulated entity in addition to  
15 such salary or benefits as are obtained  
16 through employment with the Agency or  
17 such Federal instrumentality.

18 “(11) AUTHORITY TO OBTAIN CREDIT.—

19 “(A) IN GENERAL.—A limited-life regu-  
20 lated entity may obtain unsecured credit and  
21 issue unsecured debt.

22 “(B) INABILITY TO OBTAIN CREDIT.—If a  
23 limited-life regulated entity is unable to obtain  
24 unsecured credit or issue unsecured debt, the  
25 Director may authorize the obtaining of credit

1 or the issuance of debt by the limited-life regu-  
2 lated entity—

3 “(i) with priority over any or all of  
4 the obligations of the limited-life regulated  
5 entity;

6 “(ii) secured by a lien on property of  
7 the limited-life regulated entity that is not  
8 otherwise subject to a lien; or

9 “(iii) secured by a junior lien on prop-  
10 erty of the limited-life regulated entity that  
11 is subject to a lien.

12 “(C) LIMITATIONS.—

13 “(i) IN GENERAL.—The Director,  
14 after notice and a hearing, may authorize  
15 the obtaining of credit or the issuance of  
16 debt by a limited-life regulated entity that  
17 is secured by a senior or equal lien on  
18 property of the limited-life regulated entity  
19 that is subject to a lien (other than mort-  
20 gages that collateralize the mortgage-  
21 backed securities issued or guaranteed by  
22 an enterprise) only if—

23 “(I) the limited-life regulated en-  
24 tity is unable to otherwise obtain such  
25 credit or issue such debt; and

1                   “(II) there is adequate protection  
2                   of the interest of the holder of the lien  
3                   on the property with respect to which  
4                   such senior or equal lien is proposed  
5                   to be granted.

6                   “(D) BURDEN OF PROOF.—In any hearing  
7                   under this subsection, the Director has the bur-  
8                   den of proof on the issue of adequate protec-  
9                   tion.

10                  “(12) AFFECT ON DEBTS AND LIENS.—The re-  
11                  versal or modification on appeal of an authorization  
12                  under this subsection to obtain credit or issue debt,  
13                  or of a grant under this section of a priority or a  
14                  lien, does not affect the validity of any debt so  
15                  issued, or any priority or lien so granted, to an enti-  
16                  ty that extended such credit in good faith, whether  
17                  or not such entity knew of the pendency of the ap-  
18                  peal, unless such authorization and the issuance of  
19                  such debt, or the granting of such priority or lien,  
20                  were stayed pending appeal.

21                  “(j) OTHER AGENCY EXEMPTIONS.—

22                  “(1) APPLICABILITY.—The provisions of this  
23                  subsection shall apply with respect to the Agency in  
24                  any case in which the Agency is acting as a conser-  
25                  vator or a receiver.

1           “(2) TAXATION.—The Agency, including its  
2 franchise, its capital, reserves, and surplus, and its  
3 income, shall be exempt from all taxation imposed  
4 by any State, county, municipality, or local taxing  
5 authority, except that any real property of the Agen-  
6 cy shall be subject to State, territorial, county, mu-  
7 nicipal, or local taxation to the same extent accord-  
8 ing to its value as other real property is taxed, ex-  
9 cept that, notwithstanding the failure of any person  
10 to challenge an assessment under State law of the  
11 value of such property, and the tax thereon, shall be  
12 determined as of the period for which such tax is im-  
13 posed.

14           “(3) PROPERTY PROTECTION.—No property of  
15 the Agency shall be subject to levy, attachment, gar-  
16 nishment, foreclosure, or sale without the consent of  
17 the Agency, nor shall any involuntary lien attach to  
18 the property of the Agency.

19           “(4) PENALTIES AND FINES.—The Agency  
20 shall not be liable for any amounts in the nature of  
21 penalties or fines, including those arising from the  
22 failure of any person to pay any real property, per-  
23 sonal property, probate, or recording tax or any re-  
24 cording or filing fees when due.

1           “(k) PROHIBITION OF CHARTER REVOCATION.—In  
2 no case may the receiver appointed pursuant to this sec-  
3 tion revoke, annul, or terminate the charter of an enter-  
4 prise.”.

5           (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
6 The Federal Housing Enterprises Financial Safety and  
7 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-  
8 ed—

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

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

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

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

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

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

23                   (B) in subsection (a)(1), by striking “An  
24 enterprise” and inserting “A regulated entity”;  
25 and

1 (4) by striking sections 1369, 1369A, and  
2 1369B (12 U.S.C. 4619, 4620, and 4621).

### 3 **Subtitle D—Enforcement Actions**

#### 4 **SEC. 1151. CEASE AND DESIST PROCEEDINGS.**

5 Section 1371 of the Federal Housing Enterprises Fi-  
6 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
7 4631) is amended—

8 (1) by striking subsections (a) and (b) and in-  
9 serting the following:

10 “(a) ISSUANCE FOR UNSAFE OR UNSOUND PRAC-  
11 TICES AND VIOLATIONS.—

12 “(1) AUTHORITY OF DIRECTOR.—If, in the  
13 opinion of the Director, a regulated entity or any en-  
14 tity-affiliated party is engaging or has engaged, or  
15 the Director has reasonable cause to believe that the  
16 regulated entity or any entity-affiliated party is  
17 about to engage, in an unsafe or unsound practice  
18 in conducting the business of the regulated entity or  
19 the Office of Finance, or is violating or has violated,  
20 or the Director has reasonable cause to believe is  
21 about to violate, a law, rule, regulation, or order, or  
22 any condition imposed in writing by the Director in  
23 connection with the granting of any application or  
24 other request by the regulated entity or the Office  
25 of Finance or any written agreement entered into

1 with the Director, the Director may issue and serve  
2 upon the regulated entity or entity-affiliated party a  
3 notice of charges in respect thereof.

4 “(2) LIMITATION.—The Director may not, pur-  
5 suant to this section, enforce compliance with any  
6 housing goal established under subpart B of part 2  
7 of subtitle A of this title, with section 1336 or 1337  
8 of this title, with subsection (m) or (n) of section  
9 309 of the Federal National Mortgage Association  
10 Charter Act (12 U.S.C. 1723a(m), (n)), with sub-  
11 section (e) or (f) of section 307 of the Federal Home  
12 Loan Mortgage Corporation Act (12 U.S.C. 1456(e),  
13 (f)), or with paragraph (5) of section 10(j) of the  
14 Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

15 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a  
16 regulated entity receives, in its most recent report of ex-  
17 amination, a less-than-satisfactory rating for asset quality,  
18 management, earnings, or liquidity, the Director may (if  
19 the deficiency is not corrected) deem the regulated entity  
20 to be engaging in an unsafe or unsound practice for pur-  
21 poses of subsection (a).”;

22 (2) in subsection (c)—

23 (A) in paragraph (1), by inserting before  
24 the period at the end the following: “, unless  
25 the party served with a notice of charges shall

1 appear at the hearing personally or by a duly  
2 authorized representative, the party shall be  
3 deemed to have consented to the issuance of the  
4 cease and desist order”; and

5 (B) in paragraph (2)—

6 (i) by striking “or director” and in-  
7 serting “director, or entity-affiliated  
8 party”; and

9 (ii) by inserting “or entity-affiliated  
10 party” before “consents”;

11 (3) in each of subsections (c), (d), and (e)—

12 (A) by striking “the enterprise” each place  
13 that term appears and inserting “the regulated  
14 entity”;

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

18 (C) by striking “conduct” each place that  
19 term appears and inserting “practice”;

20 (4) in subsection (d)—

21 (A) in the matter preceding paragraph

22 (1)—

23 (i) by striking “or director” and in-  
24 serting “director, or entity-affiliated  
25 party”; and

1 (ii) by inserting “to require a regu-  
2 lated entity or entity-affiliated party” after  
3 “includes the authority”;

4 (B) in paragraph (1)—

5 (i) by striking “to require an executive  
6 officer or a director to”; and

7 (ii) by striking “loss” and all that fol-  
8 lows through “person” and inserting “loss,  
9 if”;

10 (iii) in subparagraph (A), by inserting  
11 “such entity or party or finance facility”  
12 before “was”; and

13 (iv) by striking subparagraph (B) and  
14 inserting the following:

15 “(B) the violation or practice involved a  
16 reckless disregard for the law or any applicable  
17 regulations or prior order of the Director;”; and

18 (C) in paragraph (4), by inserting “loan  
19 or” before “asset”;

20 (5) in subsection (e), by inserting “or entity-af-  
21 filiated party”—

22 (A) before “or any executive”; and

23 (B) before the period at the end; and

24 (6) in subsection (f)—

1 (A) by striking “enterprise” and inserting  
2 “regulated entity, finance facility,”; and

3 (B) by striking “or director” and inserting  
4 “director, or entity-affiliated party”.

5 **SEC. 1152. TEMPORARY CEASE AND DESIST PROCEEDINGS.**

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

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

11 “(a) **GROUNDS FOR ISSUANCE.**—

12 “(1) **IN GENERAL.**—If the Director determines  
13 that the actions specified in the notice of charges  
14 served upon a regulated entity or any entity-affili-  
15 ated party pursuant to section 1371(a), or the con-  
16 tinuation thereof, is likely to cause insolvency or sig-  
17 nificant dissipation of assets or earnings of that en-  
18 tity, or is likely to weaken the condition of that enti-  
19 ty prior to the completion of the proceedings con-  
20 ducted pursuant to sections 1371 and 1373, the Di-  
21 rector may—

22 “(A) issue a temporary order requiring  
23 that regulated entity or entity-affiliated party to  
24 cease and desist from any such violation or  
25 practice; and

1           “(B) require that regulated entity or enti-  
2           ty-affiliated party to take affirmative action to  
3           prevent or remedy such insolvency, dissipation,  
4           condition, or prejudice pending completion of  
5           such proceedings.

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

9           (2) in subsection (b)—

10           (A) by striking “or director” and inserting  
11           “director, or entity-affiliated party”; and

12           (B) by striking “enterprise” each place  
13           that term appears and inserting “regulated en-  
14           tity”;

15           (3) in subsection (c), by striking “enterprise”  
16           each place that term appears and inserting “regu-  
17           lated entity”;

18           (4) in subsection (d)—

19           (A) by striking “or director” each place  
20           that term appears and inserting “director, or  
21           entity-affiliated party”; and

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

24           (5) in subsection (e)—

1 (A) by striking “request the Attorney Gen-  
2 eral of the United States to”; and

3 (B) by striking “or may, under the direc-  
4 tion and control of the Attorney General, bring  
5 such action”.

6 **SEC. 1153. REMOVAL AND PROHIBITION AUTHORITY.**

7 (a) IN GENERAL.—Part 1 of subtitle C of the Federal  
8 Housing Enterprises Financial Safety and Soundness Act  
9 of 1992 (12 U.S.C. 4631 et seq.) is amended—

10 (1) by redesignating sections 1377 through  
11 1379B (12 U.S.C. 4637–4641) as sections 1379  
12 through 1379D, respectively; and

13 (2) by inserting after section 1376 (12 U.S.C.  
14 4636) the following:

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

16 **“(a) AUTHORITY TO ISSUE ORDER.—**

17 **“(1) IN GENERAL.—**The Director may serve  
18 upon a party described in paragraph (2), or any offi-  
19 cer, director, or management of the Office of Fi-  
20 nance a written notice of the intention of the Direc-  
21 tor to suspend or remove such party from office, or  
22 prohibit any further participation by such party, in  
23 any manner, in the conduct of the affairs of the reg-  
24 ulated entity.

1           “(2) APPLICABILITY.—A party described in this  
2 paragraph is an entity-affiliated party or any officer,  
3 director, or management of the Office of Finance, if  
4 the Director determines that—

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

7           “(i) violated—

8           “(I) any law or regulation;

9           “(II) any cease and desist order  
10 which has become final;

11           “(III) any condition imposed in  
12 writing by the Director in connection  
13 with the grant of any application or  
14 other request by such regulated enti-  
15 ty; or

16           “(IV) any written agreement be-  
17 tween such regulated entity and the  
18 Director;

19           “(ii) engaged or participated in any  
20 unsafe or unsound practice in connection  
21 with any regulated entity or business insti-  
22 tution; or

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

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

3                   “(i) such regulated entity or business  
4                   institution has suffered or will probably  
5                   suffer financial loss or other damage; or

6                   “(ii) such party has received financial  
7                   gain or other benefit; and

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

10                   “(i) involves personal dishonesty on  
11                   the part of such party; or

12                   “(ii) demonstrates willful or con-  
13                   tinuing disregard by such party for the  
14                   safety or soundness of such regulated enti-  
15                   ty or business institution.

16           “(b) SUSPENSION ORDER.—

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

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

4           “(B) serves such party with written notice  
5           of the order.

6           “(2) EFFECTIVE PERIOD.—Any order issued  
7           under this subsection—

8           “(A) shall become effective upon service;  
9           and

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

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

17           “(ii) the effective date of an order  
18           issued under subsection (b).

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

24           “(c) NOTICE, HEARING, AND ORDER.—

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

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

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

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

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

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

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

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

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

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

20                 “(1) participate in any manner in the conduct  
21                 of the affairs of any regulated entity or the Office  
22                 of Finance;

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

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

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

5 “(4) vote for a director, or serve or act as an  
6 entity-affiliated party of a regulated entity or as an  
7 officer or director of the Office of Finance.

8 “(e) INDUSTRY-WIDE PROHIBITION.—

9 “(1) IN GENERAL.—Except as provided in para-  
10 graph (2), any person who, pursuant to an order  
11 issued under this section, has been removed or sus-  
12 pended from office in a regulated entity or the Of-  
13 fice of Finance, or prohibited from participating in  
14 the conduct of the affairs of a regulated entity or  
15 the Office of Finance, may not, while such order is  
16 in effect, continue or commence to hold any office in,  
17 or participate in any manner in the conduct of the  
18 affairs of, any regulated entity or the Office of Fi-  
19 nance.

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

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

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

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

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

1 of the administrative proceedings pursuant to subsection  
2 (c). The court shall have jurisdiction to stay such suspen-  
3 sion or prohibition.

4 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-  
5 ATED PARTY CHARGED WITH FELONY.—

6 “(1) SUSPENSION OR PROHIBITION.—

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

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

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

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

10                   “(2) REMOVAL OR PROHIBITION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

24          “(C) DETERMINATION.—Not later than 60  
25          days after the date of a hearing under subpara-

1 graph (B), the Director shall notify the entity-  
2 affiliated party whether the suspension or pro-  
3 hibition from participation in any manner in  
4 the conduct of the affairs of the regulated enti-  
5 ty will be continued, terminated, or otherwise  
6 modified, or whether the order removing such  
7 party from office or prohibiting such party from  
8 further participation in any manner in the con-  
9 duct of the affairs of the regulated entity will  
10 be rescinded or otherwise modified. Such notifi-  
11 cation shall contain a statement of the basis for  
12 any adverse decision of the Director.

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

16 (b) CONFORMING AMENDMENTS.—

17 (1) SAFETY AND SOUNDNESS ACT.—Subtitle C  
18 of the Federal Housing Enterprises Financial Safety  
19 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.)  
20 is amended—

21 (A) in section 1317(f), by striking “section  
22 1379B” and inserting “section 1379D”;

23 (B) in section 1373(a)—

1 (i) in paragraph (1), by striking “or  
2 1376(c)” and inserting “, 1376(c), or  
3 1377”;

4 (ii) in paragraph (2), by inserting “or  
5 1377” after “1371”; and

6 (iii) in paragraph (4), by inserting “or  
7 removal or prohibition” after “cease and  
8 desist”; and

9 (C) in section 1374(a)—

10 (i) by striking “or 1376” and insert-  
11 ing “1313B , 1376, or 1377”; and

12 (ii) by striking “such section” and in-  
13 serting “this title”.

14 (2) FANNIE MAE CHARTER ACT.—Section  
15 308(b) of the Federal National Mortgage Associa-  
16 tion Charter Act (12 U.S.C. 1723(b)) is amended in  
17 the second sentence, by striking “The” and inserting  
18 “Except to the extent that action under section  
19 1377 of the Federal Housing Enterprises Financial  
20 Safety and Soundness Act of 1992 temporarily re-  
21 sults in a lesser number, the”.

22 (3) FREDDIE MAC CHARTER ACT.—Section  
23 303(a)(2)(A) of the Federal Home Loan Mortgage  
24 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is  
25 amended, in the second sentence, by striking “The”

1 and inserting “Except to the extent action under  
2 section 1377 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 tempo-  
4 rarily results in a lesser number, the”.

5 **SEC. 1154. ENFORCEMENT AND JURISDICTION.**

6 Section 1375 of the Federal Housing Enterprises Fi-  
7 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
8 4635) is amended—

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

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

22 (2) in subsection (b), by striking “or 1376” and  
23 inserting “1313B, 1376, or 1377”.

1 **SEC. 1155. CIVIL MONEY PENALTIES.**

2 Section 1376 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
4 4636) is amended—

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

7 “(a) IN GENERAL.—The Director may impose a civil  
8 money penalty in accordance with this section on any reg-  
9 ulated entity or any entity-affiliated party. The Director  
10 shall not impose a civil penalty in accordance with this  
11 section on any regulated entity or any entity-affiliated  
12 party for any violation that is addressed under section  
13 1345(a).”;

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

16 “(b) AMOUNT OF PENALTY.—

17 “(1) FIRST TIER.—A regulated entity or entity-  
18 affiliated party shall forfeit and pay a civil penalty  
19 of not more than \$10,000 for each day during which  
20 a violation continues, if such regulated entity or  
21 party—

22 “(A) violates any provision of this title, the  
23 authorizing statutes, or any order, condition,  
24 rule, or regulation under this title or any au-  
25 thorizing statute;

1           “(B) violates any final or temporary order  
2 or notice issued pursuant to this title;

3           “(C) violates any condition imposed in  
4 writing by the Director in connection with the  
5 grant of any application or other request by  
6 such regulated entity; or

7           “(D) violates any written agreement be-  
8 tween the regulated entity and the Director.

9           “(2) SECOND TIER.—Notwithstanding para-  
10 graph (1), a regulated entity or entity-affiliated  
11 party shall forfeit and pay a civil penalty of not  
12 more than \$50,000 for each day during which a vio-  
13 lation, practice, or breach continues, if—

14           “(A) the regulated entity or entity-affili-  
15 ated party, respectively—

16           “(i) commits any violation described  
17 in any subparagraph of paragraph (1);

18           “(ii) recklessly engages in an unsafe  
19 or unsound practice in conducting the af-  
20 fairs of the regulated entity; or

21           “(iii) breaches any fiduciary duty; and

22           “(B) the violation, practice, or breach—

23           “(i) is part of a pattern of mis-  
24 conduct;

1                   “(ii) causes or is likely to cause more  
2                   than a minimal loss to the regulated entity;

3                   or

4                   “(iii) results in pecuniary gain or  
5                   other benefit to such party.

6                   “(3) THIRD TIER.—Notwithstanding para-  
7                   graphs (1) and (2), any regulated entity or entity-  
8                   affiliated party shall forfeit and pay a civil penalty  
9                   in an amount not to exceed the applicable maximum  
10                  amount determined under paragraph (4) for each  
11                  day during which such violation, practice, or breach  
12                  continues, if such regulated entity or entity-affiliated  
13                  party—

14                  “(A) knowingly—

15                         “(i) commits any violation described  
16                         in any subparagraph of paragraph (1);

17                         “(ii) engages in any unsafe or un-  
18                         sound practice in conducting the affairs of  
19                         the regulated entity; or

20                         “(iii) breaches any fiduciary duty; and

21                  “(B) knowingly or recklessly causes a sub-  
22                  stantial loss to the regulated entity or a sub-  
23                  stantial pecuniary gain or other benefit to such  
24                  party by reason of such violation, practice, or  
25                  breach.

1           “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
2           ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
3           The maximum daily amount of any civil penalty  
4           which may be assessed pursuant to paragraph (3)  
5           for any violation, practice, or breach described in  
6           paragraph (3) is—

7                   “(A) in the case of any entity-affiliated  
8                   party, an amount not to exceed \$2,000,000;  
9                   and

10                   “(B) in the case of any regulated entity,  
11                   \$2,000,000.”;

12           (3) in subsection (c)—

13                   (A) by striking “enterprise” each place  
14                   that term appears and inserting “regulated en-  
15                   tity”;

16                   (B) by inserting “or entity-affiliated  
17                   party” before “in writing”; and

18                   (C) by inserting “or entity-affiliated party”  
19                   before “has been given”;

20           (4) in subsection (d)—

21                   (A) by striking “or director” each place  
22                   such term appears and inserting “director, or  
23                   entity-affiliated party”;

24                   (B) by striking “an enterprise” and insert-  
25                   ing “a regulated entity”;

1 (C) by striking “the enterprise” and in-  
2 serting “the regulated entity”;

3 (D) by striking “request the Attorney Gen-  
4 eral of the United States to”;

5 (E) by inserting “, or the United States  
6 district court within the jurisdiction of which  
7 the headquarters of the regulated entity is lo-  
8 cated,” after “District of Columbia”;

9 (F) by striking “, or may, under the direc-  
10 tion and control of the Attorney General of the  
11 United States, bring such an action”; and

12 (G) by striking “and section 1374”; and

13 (5) in subsection (g), by striking “An enter-  
14 prise” and inserting “A regulated entity”.

15 **SEC. 1156. CRIMINAL PENALTY.**

16 (a) IN GENERAL.—Subtitle C of the Federal Housing  
17 Enterprises Financial Safety and Soundness Act of 1992  
18 (12 U.S.C. 4631 et seq.) is amended by inserting after  
19 section 1377, as added by this Act, the following:

20 **“SEC. 1378. CRIMINAL PENALTY.**

21 “Whoever, being subject to an order in effect under  
22 section 1377, without the prior written approval of the Di-  
23 rector, knowingly participates, directly or indirectly, in any  
24 manner (including by engaging in an activity specifically  
25 prohibited in such an order) in the conduct of the affairs

1 of any regulated entity shall, notwithstanding section  
2 3571 of title 18, be fined not more than \$1,000,000, im-  
3 prisoned for not more than 5 years, or both.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
5 The Federal Housing Enterprises Financial Safety and  
6 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-  
7 ed—

8 (1) in section 1379 (as so designated by this  
9 Act)—

10 (A) by striking “an enterprise” and insert-  
11 ing “a regulated entity”; and

12 (B) by striking “the enterprise” and in-  
13 serting “the regulated entity”;

14 (2) in section 1379A (as so designated by this  
15 Act), by striking “an enterprise” and inserting “a  
16 regulated entity”;

17 (3) in section 1379B(c) (as so designated by  
18 this Act), by striking “enterprise” and inserting  
19 “regulated entity”; and

20 (4) in section 1379D (as so designated by this  
21 Act), by striking “enterprise” and inserting “regu-  
22 lated entity”.

1 **SEC. 1157. NOTICE AFTER SEPARATION FROM SERVICE.**

2 Section 1379 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
4 4637), as so designated by this Act, is amended—

5 (1) by striking “2-year” and inserting “6-year”;

6 (2) by striking “a director or executive officer  
7 of an enterprise” and inserting “an entity-affiliated  
8 party”;

9 (3) by striking “director or officer” each place  
10 that term appears and inserting “entity-affiliated  
11 party”; and

12 (4) by striking “enterprise.” and inserting “reg-  
13 ulated entity.”.

14 **SEC. 1158. SUBPOENA AUTHORITY.**

15 (a) IN GENERAL.—Section 1379B of the Federal  
16 Housing Enterprises Financial Safety and Soundness Act  
17 of 1992 (12 U.S.C. 4641) is amended—

18 (1) in subsection (a)—

19 (A) in the matter preceding paragraph

20 (1)—

21 (i) by striking “administrative”;

22 (ii) by inserting “, examination, or in-  
23 vestigation” after “proceeding”;

24 (iii) by striking “subtitle” and insert-  
25 ing “title”; and

1 (iv) by inserting “or any designated  
2 representative thereof, including any per-  
3 son designated to conduct any hearing  
4 under this subtitle” after “Director”; and  
5 (B) in paragraph (4), by striking “issued  
6 by the Director”;

7 (2) in subsection (b), by inserting “or in any  
8 territory or other place subject to the jurisdiction of  
9 the United States” after “State”;

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

12 “(c) ENFORCEMENT.—

13 “(1) IN GENERAL.—The Director, or any party  
14 to proceedings under this subtitle, may apply to the  
15 United States District Court for the District of Co-  
16 lumbia, or the United States district court for the  
17 judicial district of the United States in any territory  
18 in which such proceeding is being conducted, or  
19 where the witness resides or carries on business, for  
20 enforcement of any subpoena or subpoena duces  
21 tecum issued pursuant to this section.

22 “(2) POWER OF COURT.—The courts described  
23 under paragraph (1) shall have the jurisdiction and  
24 power to order and require compliance with any sub-  
25 poena issued under paragraph (1).”;

1 (4) in subsection (d), by inserting “enterprise-  
2 affiliated party” before “may allow”; and

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

4 “(e) PENALTIES.—A person shall be guilty of a mis-  
5 demeanor, and upon conviction, shall be subject to a fine  
6 of not more than \$1,000 or to imprisonment for a term  
7 of not more than 1 year, or both, if that person willfully  
8 fails or refuses, in disobedience of a subpoena issued under  
9 subsection (c), to—

10 “(1) attend court;

11 “(2) testify in court;

12 “(3) answer any lawful inquiry; or

13 “(4) produce books, papers, correspondence,  
14 contracts, agreements, or such other records as re-  
15 quested in the subpoena.”.

## 16 **Subtitle E—General Provisions**

### 17 **SEC. 1161. CONFORMING AND TECHNICAL AMENDMENTS.**

18 (a) AMENDMENTS TO 1992 ACT.—The Federal  
19 Housing Enterprises Financial Safety and Soundness Act  
20 of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,  
21 is amended—

22 (1) in section 1315 (12 U.S.C. 4515)—

23 (A) in subsection (a)—

24 (i) by striking “(a) OFFICE PER-  
25 SONNEL.—The” and inserting “(a) IN

1           GENERAL.—Subject to title III of the Fed-  
2           eral Housing Finance Regulatory Reform  
3           Act of 2008, the”; and

4                   (ii) by striking “the Office” each place  
5           that term appears and inserting “the  
6           Agency”;

7           (B) in subsection (c), by striking “the Of-  
8           fice” and inserting “the Agency”;

9           (C) in subsection (e), by striking “the Of-  
10          fice” and inserting “the Agency”;

11          (D) by striking subsection (d) and redesign-  
12          ating subsection (e) as subsection (d); and

13          (E) by striking subsection (f);

14          (2) in section 1319A (12 U.S.C. 4520)—

15                  (A) by striking “(a) IN GENERAL.—”; and

16                  (B) by striking subsection (b);

17          (3) in section 1364(e) (12 U.S.C. 4614(e)), by  
18          striking the last sentence;

19          (4) by striking section 1383 (12 U.S.C. 1451  
20          note);

21          (5) in each of sections 1319D, 1319E, and  
22          1319F (12 U.S.C. 4523, 4524, 4525) by striking  
23          “the Office” each place that term appears and in-  
24          serting “the Agency”; and



1 (ii) in paragraph (2), by striking “to  
2 the Secretary, in a form determined by the  
3 Secretary” and inserting “to the Director  
4 of the Federal Housing Finance Agency, in  
5 a form determined by the Director”;

6 (B) in subsection (n) (12 U.S.C.  
7 1723a(n))—

8 (i) in paragraph (1), by striking “and  
9 the Secretary” and inserting “and the Di-  
10 rector of the Federal Housing Finance  
11 Agency”; and

12 (ii) in paragraph (2), by striking  
13 “Secretary” each place that term appears  
14 and inserting “Director of the Federal  
15 Housing Finance Agency”; and

16 (C) in paragraph (3)(B), by striking “Sec-  
17 retary” and inserting “Director of the Federal  
18 Housing Finance Agency”.

19 (c) AMENDMENTS TO FREDDIE MAC CHARTER  
20 ACT.—The Federal Home Loan Mortgage Corporation  
21 Act (12 U.S.C. 1451 et seq.) is amended—

22 (1) in each of sections 303(b)(2) (12 U.S.C.  
23 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and  
24 section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-  
25 ing “Director of the Office of Federal Housing En-

1       terprise Oversight of the Department of Housing  
2       and Urban Development” each place that term ap-  
3       pears, and inserting “Director of the Federal Hous-  
4       ing Finance Agency”;

5           (2) in section 306 (12 U.S.C. 1455)—

6               (A) in subsection (c)(2), by inserting “the”  
7               after “Secretary of”;

8               (B) in subsection (i)—

9                   (i) by striking “section 1316(c)” and  
10                  inserting “section 306(c)”; and

11                  (ii) by striking “section 106” and in-  
12                  serting “section 1316”; and

13               (C) in subsection (j)(2), by striking “of  
14       substantially” and inserting “or substantially”;  
15       and

16           (3) in section 307 (12 U.S.C. 1456)—

17               (A) in subsection (e)—

18                   (i) in paragraph (1), by striking “to  
19       the Secretary, in a form determined by the  
20       Secretary” and inserting “to the Director  
21       of the Federal Housing Finance Agency, in  
22       a form determined by the Director”; and

23                   (ii) in paragraph (2), by striking “to  
24       the Secretary, in a form determined by the  
25       Secretary” and inserting “to the Director

1 of the Federal Housing Finance Agency, in  
2 a form determined by the Director”; and  
3 (B) in subsection (f)—

4 (i) in paragraph (1), by striking “and  
5 the Secretary” and inserting “and the Di-  
6 rector of the Federal Housing Finance  
7 Agency”;

8 (ii) in paragraph (2), by striking “the  
9 Secretary” each place that term appears  
10 and inserting “the Director of the Federal  
11 Housing Finance Agency”; and

12 (iii) in paragraph (3)(B), by striking  
13 “Secretary” and inserting “Director of the  
14 Federal Housing Finance Agency”.

15 (d) AMENDMENT TO TITLE 18, UNITED STATES  
16 CODE.—Section 1905 of title 18, United States Code, is  
17 amended by striking “Office of Federal Housing Enter-  
18 prise Oversight” and inserting “Federal Housing Finance  
19 Agency”.

20 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION  
21 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
22 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
23 is amended by striking “Director of the Office of Federal  
24 Housing Enterprise Oversight of the Department of Hous-

1 ing and Urban Development” and inserting “Director of  
2 the Federal Housing Finance Agency”.

3 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND  
4 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
5 ment of Housing and Urban Development Act (42 U.S.C.  
6 3534) is amended by striking subsection (d).

7 (g) AMENDMENTS TO TITLE 5, UNITED STATES  
8 CODE.—Title 5, United States Code, is amended—

9 (1) in section 5313, by striking the item relat-  
10 ing to the Director of the Office of Federal Housing  
11 Enterprise Oversight, Department of Housing and  
12 Urban Development and inserting the following new  
13 item:

14 “Director of the Federal Housing Finance  
15 Agency.”; and

16 (2) in section 3132(a)(1)—

17 (A) in subparagraph (B), by striking “,,  
18 and” and inserting “, and”;

19 (B) in subparagraph (D)—

20 (i) by striking “the Federal Housing  
21 Finance Board”;

22 (ii) by striking “the Office of Federal  
23 Housing Enterprise Oversight of the De-  
24 partment of Housing and Urban Develop-

1                   ment” and inserting “the Federal Housing  
2                   Finance Agency”; and

3                   (iii) by striking “or or” at the end;

4                   (C) in subparagraph (E), as added by sec-  
5                   tion 8(d)(1)(B)(iii) of Public Law 107-123, by  
6                   adding “or” at the end; and

7                   (D) by redesignating subparagraph (E), as  
8                   added by section 10702(e)(1)(C) of Public Law  
9                   107-171, as subparagraph (F).

10           (h) AMENDMENT TO SARBANES-OXLEY ACT.—Sec-  
11           tion 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of  
12           2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by in-  
13           serting “and the Director of the Federal Housing Finance  
14           Agency,” after “Commission,”.

15           (i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE  
16           ACT.—Section 11(t)(2)(A) of the Federal Deposit Insur-  
17           ance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding  
18           at the end the following:

19                                   “(vii) Federal Housing Finance Agen-  
20                                   cy.”.

21           **SEC. 1162. PRESIDENTIALLY-APPOINTED DIRECTORS OF**  
22                                   **ENTERPRISES.**

23           (a) FANNIE MAE.—

1           (1) IN GENERAL.—Section 308(b) of the Fed-  
2           eral National Mortgage Association Charter Act (12  
3           U.S.C. 1723(b)) is amended—

4                   (A) in the first sentence, by striking  
5                   “eighteen persons, five of whom shall be ap-  
6                   pointed annually by the President of the United  
7                   States, and the remainder of whom” and insert-  
8                   ing “13 persons, or such other number that the  
9                   Director determines appropriate, who”;

10                   (B) in the second sentence, by striking  
11                   “appointed by the President”;

12                   (C) in the third sentence—

13                           (i) by striking “appointed or”; and

14                           (ii) by striking “, except that any  
15                   such appointed member may be removed  
16                   from office by the President for good  
17                   cause”;

18                   (D) in the fourth sentence, by striking  
19                   “elective”; and

20                   (E) by striking the fifth sentence.

21           (2) TRANSITIONAL PROVISION.—The amend-  
22           ments made by paragraph (1) shall not apply to any  
23           appointed position of the board of directors of the  
24           Federal National Mortgage Association until the ex-

1       piration of the annual term for such position during  
2       which the effective date under section 1163 occurs.

3       (b) FREDDIE MAC.—

4           (1) IN GENERAL.—Section 303(a)(2) of the  
5       Federal Home Loan Mortgage Corporation Act (12  
6       U.S.C. 1452(a)(2)) is amended—

7           (A) in subparagraph (A)—

8               (i) in the first sentence, by striking  
9               “18 persons, 5 of whom shall be appointed  
10              annually by the President of the United  
11              States and the remainder of whom” and  
12              inserting “13 persons, or such other num-  
13              ber as the Director determines appropriate,  
14              who”; and

15              (ii) in the second sentence, by striking  
16              “appointed by the President of the United  
17              States”;

18           (B) in subparagraph (B)—

19               (i) by striking “such or”; and

20               (ii) by striking “, except that any ap-  
21              pointed member may be removed from of-  
22              fice by the President for good cause”; and

23           (C) in subparagraph (C)—

24               (i) by striking the first sentence; and

25               (ii) by striking “elective”.

1           (2) TRANSITIONAL PROVISION.—The amend-  
2           ments made by paragraph (1) shall not apply to any  
3           appointed position of the board of directors of the  
4           Federal Home Loan Mortgage Corporation until the  
5           expiration of the annual term for such position dur-  
6           ing which the effective date under section 1163 oc-  
7           curs.

8   **SEC. 1163. EFFECTIVE DATE.**

9           Except as otherwise specifically provided in this title,  
10          this title and the amendments made by this title shall take  
11          effect on, and shall apply beginning on, the date of enact-  
12          ment of this Act.

13   **SEC. 1201. RECOGNITION OF DISTINCTIONS BETWEEN THE**  
14                   **ENTERPRISES AND THE FEDERAL HOME**  
15                   **LOAN BANKS.**

16          Section 1313 of the Federal Housing Enterprises Fi-  
17          nancial Safety and Soundness Act of 1992 (12 U.S.C.  
18          4513) is amended by adding at the end the following:

19          “(f) RECOGNITION OF DISTINCTIONS BETWEEN THE  
20          ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—  
21          Prior to promulgating any regulation or taking any other  
22          formal or informal agency action of general applicability  
23          relating to the Federal Home Loan Banks, including the  
24          issuance of an advisory document or examination guid-  
25          ance, the Director shall consider the differences between

1 the Federal Home Loan Banks and the enterprises with  
2 respect to—

3 “(1) the Banks’—

4 “(A) cooperative ownership structure;

5 “(B) the mission of providing liquidity to  
6 members;

7 “(C) affordable housing and community  
8 development mission;

9 “(D) capital structure; and

10 “(E) joint and several liability; and

11 “(2) any other differences that the Director  
12 considers appropriate.”.

13 **SEC. 1202. DIRECTORS.**

14 Section 7 of the Federal Home Loan Bank Act (12  
15 U.S.C. 1427) is amended—

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

18 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-  
19 Flicts OF INTEREST.—

20 “(1) IN GENERAL.—Subject to paragraphs (2)  
21 through (4), the management of each Federal Home  
22 Loan Bank shall be vested in a board of 13 direc-  
23 tors, or such other number as the Director deter-  
24 mines appropriate.

1           “(2) BOARD MAKEUP.—The board of directors  
2 of each Bank shall be comprised of—

3           “(A) member directors, who shall comprise  
4 at least the majority of the members of the  
5 board of directors; and

6           “(B) independent directors, who shall com-  
7 prise not fewer than  $\frac{2}{5}$  of the members of the  
8 board of directors.

9           “(3) SELECTION CRITERIA.—

10           “(A) IN GENERAL.—Each member of the  
11 board of directors shall be—

12           “(i) elected by plurality vote of the  
13 members, in accordance with procedures  
14 established under this section; and

15           “(ii) a citizen of the United States.

16           “(B) INDEPENDENT DIRECTOR CRI-  
17 TERIA.—

18           “(i) IN GENERAL.—Each independent  
19 director that is not a public interest direc-  
20 tor under clause (ii) shall have dem-  
21 onstrated knowledge of, or experience in,  
22 financial management, auditing and ac-  
23 counting, risk management practices, de-  
24 rivatives, project development, or organiza-  
25 tional management, or such other knowl-

1 edge or expertise as the Director may pro-  
2 vide by regulation.

3 “(ii) PUBLIC INTEREST.—Not fewer  
4 than 2 of the independent directors shall  
5 have more than 4 years of experience in  
6 representing consumer or community inter-  
7 ests on banking services, credit needs,  
8 housing, or financial consumer protections.

9 “(iii) CONFLICTS OF INTEREST.—No  
10 independent director may, during the term  
11 of service on the board of directors, serve  
12 as an officer of any Federal Home Loan  
13 Bank or as a director, officer, or employee  
14 of any member of a Bank, or of any person  
15 that receives advances from a Bank.

16 “(4) DEFINITIONS.—For purposes of this sec-  
17 tion, the following definitions shall apply:

18 “(A) INDEPENDENT DIRECTOR.—The  
19 terms ‘independent director’ and ‘independent  
20 directorship’ mean a member of the board of di-  
21 rectors of a Federal Home Loan Bank who is  
22 a bona fide resident of the district in which the  
23 Federal Home Loan Bank is located, or the di-  
24 rectorship held by such a person, respectively.

1           “(B) MEMBER DIRECTOR.—The terms  
2           ‘member director’ and ‘member directorship’  
3           mean a member of the board of directors of a  
4           Federal Home Loan Bank who is an officer or  
5           director of a member institution that is located  
6           in the district in which the Federal Home Loan  
7           Bank is located, or the directorship held by  
8           such a person, respectively.”;

9           (2) by striking “elective” each place that term  
10          appears, other than in subsections (d), (e), and (f),  
11          and inserting “member”;

12          (3) in subsection (b)—

13                 (A) by striking the subsection heading and  
14                 all that follows through “Each elective director-  
15                 ship” and inserting the following:

16          “(b) DIRECTORSHIPS.—

17                 “(1) MEMBER DIRECTORSHIPS.—Each member  
18                 directorship”; and

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

20          “(2) INDEPENDENT DIRECTORSHIPS.—

21                 “(A) ELECTIONS.—Each independent di-  
22                 rector—

23                         “(i) shall be elected by the members  
24                         entitled to vote, from among eligible per-  
25                         sons nominated, after consultation with the

1           Advisory Council of the Bank, by the  
2           board of directors of the Bank; and

3           “(ii) shall be elected by a plurality of  
4           the votes of the members of the Bank at  
5           large, with each member having the num-  
6           ber of votes for each such directorship as  
7           it has under paragraph (1) in an election  
8           to fill member directorships.

9           “(B) CRITERIA.—Nominees shall meet all  
10          applicable requirements prescribed in this sec-  
11          tion.

12          “(C) NOMINATION AND ELECTION PROCE-  
13          DURES.—Procedures for nomination and elec-  
14          tion of independent directors shall be prescribed  
15          by the bylaws of each Federal Home Loan  
16          Bank, in a manner consistent with the rules  
17          and regulations of the Agency.”;

18          (4) in subsection (c)—

19                 (A) by striking “elective” each place that  
20                 term appears and inserting “member”, ex-  
21                 cept—

22                         (i) in the second sentence, the second  
23                         place that term appears; and

24                         (ii) each place that term appears in  
25                         the fifth sentence; and

1 (B) in the second sentence—

2 (i) by inserting “(A) except as pro-  
3 vided in clause (B) of this sentence,” be-  
4 fore “if at any time”; and

5 (ii) by inserting before the period at  
6 the end the following: “, and (B) clause  
7 (A) of this sentence shall not apply to the  
8 directorships of any Federal Home Loan  
9 Bank resulting from the merger of any 2  
10 or more such Banks”;

11 (5) in subsection (d)—

12 (A) in the first sentence—

13 (i) by striking “, whether elected or  
14 appointed,”; and

15 (ii) by striking “3 years” and insert-  
16 ing “4 years”;

17 (B) in the second sentence—

18 (i) by striking “Federal Home Loan  
19 Bank System Modernization Act of 1999”  
20 and inserting “Federal Housing Finance  
21 Regulatory Reform Act of 2008”;

22 (ii) by striking “ $\frac{1}{3}$ ” and inserting  
23 “ $\frac{1}{4}$ ”; and

24 (iii) by striking “or appointed”; and

25 (C) in the third sentence—

1 (i) by striking “an elective” each place  
2 that term appears and inserting “a”; and

3 (ii) by striking “in any elective direc-  
4 torship or elective directorships”;

5 (6) in subsection (f)—

6 (A) by striking paragraph (2);

7 (B) by striking “appointed or” each place  
8 that term appears; and

9 (C) in paragraph (3)—

10 (i) by striking “(3) ELECTED BANK  
11 DIRECTORS.—” and inserting “(2) ELEC-  
12 TION PROCESS.—”; and

13 (ii) by striking “elective” each place  
14 that term appears;

15 (7) in subsection (i)—

16 (A) in paragraph (1), by striking “Subject  
17 to paragraph (2), each” and inserting “Each”;  
18 and

19 (B) by striking paragraph (2) and insert-  
20 ing the following:

21 “(2) ANNUAL REPORT.—The Director shall in-  
22 clude, in the annual report submitted to the Con-  
23 gress pursuant to section 1319B of the Federal  
24 Housing Enterprises Financial Safety and Sound-  
25 ness Act of 1992, information regarding the com-

1       pensation and expenses paid by the Federal Home  
2       Loan Banks to the directors on the boards of direc-  
3       tors of the Banks.”; and

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

5       “(1) **TRANSITION RULE.**—Any member of the board  
6 of directors of a Bank elected or appointed in accordance  
7 with this section prior to the date of enactment of this  
8 subsection may continue to serve as a member of that  
9 board of directors for the remainder of the existing term  
10 of service.”.

11 **SEC. 1203. DEFINITIONS.**

12       Section 2 of the Federal Home Loan Bank Act (12  
13 U.S.C. 1422) is amended—

14               (1) by striking paragraphs (1), (10), and (11);

15               (2) by redesignating paragraphs (2) through  
16 (9) as paragraphs (1) through (8), respectively;

17               (3) by redesignating paragraphs (12) and (13)  
18 as paragraphs (9) and (10), respectively; and

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

20       “(11) **DIRECTOR.**—The term ‘Director’ means  
21 the Director of the Federal Housing Finance Agen-  
22 cy.

23       “(12) **AGENCY.**—The term ‘Agency’ means the  
24 Federal Housing Finance Agency, established under

1 section 1311 of the Federal Housing Enterprises Fi-  
2 nancial Safety and Soundness Act of 1992.”.

3 **SEC. 1204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**  
4 **BANKS.**

5 The Federal Home Loan Bank Act (12 U.S.C. 1421  
6 et seq.), other than in provisions of that Act added or  
7 amended otherwise by this Act, is amended—

8 (1) by striking sections 2A and 2B (12 U.S.C.  
9 1422a, 1422b);

10 (2) by striking section 18 (12 U.S.C. 1438) and  
11 inserting the following:

12 **“SEC. 18. ADMINISTRATIVE PROVISIONS.**

13 “(a) ACQUISITION AUTHORITY.—The Director of the  
14 Office of Thrift Supervision, utilizing the services of the  
15 Administrator of General Services (hereinafter referred to  
16 as the ‘Administrator’), and subject to any limitation here-  
17 on which may hereafter be imposed in appropriation Acts,  
18 is hereby authorized—

19 “(1) to acquire, in the name of the United  
20 States, real property in the District of Columbia, for  
21 the purposes set forth in this section;

22 “(2) to construct, develop, furnish, and equip  
23 such buildings thereon and such facilities as in its  
24 judgment may be appropriate to provide, to such ex-  
25 tent as the Director of the Office of Thrift Super-

1 vision may deem advisable, suitable and adequate  
2 quarters and facilities for the Director of the Office  
3 of Thrift Supervision and the agencies under its ad-  
4 ministration or supervision;

5 “(3) to enlarge, remodel, or reconstruct any of  
6 the same; and

7 “(4) to make or enter into contracts for any of  
8 the foregoing.

9 “(b) **ADVANCES.**—The Director of the Office of  
10 Thrift Supervision may require of the respective banks,  
11 and they shall make to the Director of the Office of Thrift  
12 Supervision, such advances of funds for the purposes set  
13 out in subsection (a) as in the sole judgment of the Direc-  
14 tor of the Office of Thrift Supervision may from time to  
15 time be advisable. Such advances shall be apportioned by  
16 the Director of the Office of Thrift Supervision among the  
17 banks in proportion to the total assets of the respective  
18 banks, determined in such manner and as of such times  
19 as the Director of the Office of Thrift Supervision may  
20 prescribe. Each such advance shall bear interest at the  
21 rate of 4 ½ per centum per annum from the date of the  
22 advance and shall be repaid by the Director of the Office  
23 of Thrift Supervision in such installments and over such  
24 period, not longer than twenty-five years from the making  
25 of the advance, as the Director of the Office of Thrift Su-

1 pervision may determine. Payments of interest and prin-  
2 cipal upon such advances shall be made from receipts of  
3 the Director of the Office of Thrift Supervision or from  
4 other sources which may from time to time be available  
5 to the Director of the Office of Thrift Supervision. The  
6 obligation of the Director of the Office of Thrift Super-  
7 vision to make any such payment shall not be regarded  
8 as an obligation of the United States. To such extent as  
9 the Director of the Office of Thrift Supervision may pre-  
10 scribe any such obligation shall be regarded as a legal in-  
11 vestment for the purposes of subsections (g) and (h) of  
12 section 11 and for the purposes of section 16.

13       “(c) PLANS AND DESIGNS.—The plans and designs  
14 for such buildings and facilities and for any such enlarge-  
15 ment, remodeling, or reconstruction shall, to such extent  
16 as the chairperson of the Director of the Office of Thrift  
17 Supervision may request, be subject to the approval of the  
18 Director.

19       “(d) CUSTODY, MANAGEMENT AND CONTROL.—  
20 Upon the making of arrangements mutually agreeable to  
21 the Director of the Office of Thrift Supervision and the  
22 Administrator, which arrangements may be modified from  
23 time to time by mutual agreement between them and may  
24 include but shall not be limited to the making of payments  
25 by the Director of the Office of Thrift Supervision and

1 such agencies to the Administrator and by the Adminis-  
2 trator to the Director of the Office of Thrift Supervision,  
3 the custody, management, and control of such buildings  
4 and facilities and of such real property shall be vested in  
5 the Administrator in accordance therewith. Until the mak-  
6 ing of such arrangements, such custody, management, and  
7 control, including the assignment and allotment and the  
8 reassignment and reallocation of building and other space,  
9 shall be vested in the Director of the Office of Thrift Su-  
10 pervision.

11       “(e) PROCEEDS.—Any proceeds (including advances)  
12 received by the Director of the Office of Thrift Supervision  
13 in connection with this subsection, and any proceeds from  
14 the sale or other disposition of real or other property ac-  
15 quired by the Director of the Office of Thrift Supervision  
16 under this section, shall be considered as receipts of the  
17 Director of the Office of Thrift Supervision, and obliga-  
18 tions and expenditures of the Director of the Office of  
19 Thrift Supervision and such agencies in connection with  
20 this section shall not be considered as administrative ex-  
21 penses. As used in this section, the term ‘property’ shall  
22 include interests in property.

23       “(f) BUDGET PROGRAM.—

1           “(1) IN GENERAL.—With respect to its func-  
2           tions under this section, the Director of the Office  
3           of Thrift Supervision shall—

4                   “(A) annually prepare and submit a budg-  
5                   et program as provided in title I of the Govern-  
6                   ment Corporation Control Act with regard to  
7                   wholly owned Government corporations, and for  
8                   purposes of this paragraph, the terms ‘wholly  
9                   owned Government corporations’ and ‘Govern-  
10                  ment corporations’, wherever used in such title,  
11                  shall include the Director of the Office of Thrift  
12                  Supervision; and

13                   “(B) maintain an integral set of accounts  
14                   which shall be audited by the General Account-  
15                   ing Office in accordance with the principles and  
16                   procedures applicable to commercial corporate  
17                   transactions, as provided in such title, and no  
18                   other settlement or adjustment shall be re-  
19                   quired with respect to transactions under this  
20                   section or with respect to claims, demands, or  
21                   accounts by or against any person arising there-  
22                   under.

23           “(2) MISCELLANEOUS PROVISIONS.—The first  
24           budget program shall be for the first full fiscal year  
25           beginning on or after the date of enactment of this

1 subsection. Except as otherwise provided in this sec-  
2 tion or by the Director of the Office of Thrift Super-  
3 vision, the provisions of this section and the func-  
4 tions thereby or thereunder subsisting shall be appli-  
5 cable and exercisable notwithstanding and without  
6 regard to the Act of June 20, 1938 (D.C. Code,  
7 secs. 5-413—5-428), except that the proviso of sec-  
8 tion 16 thereof shall apply to any building con-  
9 structed under this section, and section 306 of the  
10 Act of July 30, 1947 (61 Stat. 584), or any other  
11 provision of law relating to the construction, alter-  
12 ation, repair, or furnishing of public or other build-  
13 ings or structures or the obtaining of sites therefor,  
14 but any person or body in whom any such function  
15 is vested may provide for delegation or redelegation  
16 of the exercise of such function.

17 “(g) LIMITATION.—No obligation shall be incurred  
18 and no expenditure, except in liquidation of obligation,  
19 shall be made pursuant to paragraphs (1) and (2) of sub-  
20 section (a), if the total amount of all obligations incurred  
21 pursuant thereto would thereupon exceed \$13,200,000, or  
22 such greater amount as may be provided in an appropria-  
23 tions Act or other law.”

24 (3) in section 11 (12 U.S.C. 1431)—

25 (A) in subsection (b)—

1 (i) in the first sentence—

2 (I) by striking “The Board” and  
3 inserting “The Office of Finance, as  
4 agent for the Banks,”; and

5 (II) by striking “the Board” and  
6 inserting “such Office”; and

7 (ii) in the second and fourth sen-  
8 tences, by striking “the Board” each place  
9 such term appears and inserting “the Of-  
10 fice of Finance”;

11 (B) in subsection (c)—

12 (i) by striking “the Board” the first  
13 place such term appears and inserting “the  
14 Office of Finance, as agent for the  
15 Banks,”; and

16 (ii) by striking “the Board” the sec-  
17 ond place such term appears and inserting  
18 “such Office”; and

19 (C) in subsection (f)—

20 (i) by striking the 2 commas after  
21 “permit” and inserting “or”; and

22 (ii) by striking the comma after “re-  
23 quire”;

24 (4) in section 6 (12 U.S.C. 1426)—

1 (A) in subsection (b)(1), in the matter pre-  
2 ceding subparagraph (A), by striking “Finance  
3 Board approval” and inserting “approval by the  
4 Director”; and

5 (B) in each of subsections (c)(4)(B) and  
6 (d)(2), by striking “Finance Board regulations”  
7 each place that term appears and inserting  
8 “regulations of the Director”;

9 (5) in section 10(b) (12 U.S.C. 1430(b))—

10 (A) in the subsection heading, by striking  
11 “FORMAL BOARD RESOLUTION” and inserting  
12 “APPROVAL OF DIRECTOR”; and

13 (B) by striking “by formal resolution”;

14 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),  
15 by striking “Chairperson of the Federal Housing Fi-  
16 nance Board” and inserting “Director”;

17 (7) in section 15 (12 U.S.C. 1435), by inserting  
18 “or the Director” after “the Board”;

19 (8) by striking “the Board” each place that  
20 term appears and inserting “the Director”;

21 (9) by striking “The Board” each place that  
22 term appears and inserting “The Director”;

23 (10) by striking “the Finance Board” each  
24 place that term appears and inserting “the Direc-  
25 tor”;

1           (11) by striking “The Finance Board” each  
2           place that term appears and inserting “The Direc-  
3           tor”; and

4           (12) by striking “Federal Housing Finance  
5           Board” each place that term appears and inserting  
6           “Director”.

7   **SEC. 1205. HOUSING GOALS.**

8           The Federal Home Loan Bank Act (12 U.S.C. 1421  
9   et seq.) is amended by inserting after section 10b the fol-  
10   lowing new section:

11   **“SEC. 10C. HOUSING GOALS.**

12           “(a) IN GENERAL.—The Director shall establish  
13   housing goals with respect to the purchase of mortgages,  
14   if any, by the Federal Home Loan Banks. Such goals shall  
15   be consistent with the goals established under sections  
16   1331 through 1334 of the Federal Housing Enterprises  
17   Financial Safety and Soundness Act of 1992.

18           “(b) CONSIDERATIONS.—In establishing the goals re-  
19   quired by subsection (a), the Director shall consider the  
20   unique mission and ownership structure of the Federal  
21   Home Loan Banks.

22           “(c) TRANSITION PERIOD.—To facilitate an orderly  
23   transition, the Director shall establish interim target goals  
24   for purposes of this section for each of the 2 calendar  
25   years following the date of enactment of this section.

1           “(d) MONITORING AND ENFORCEMENT OF GOALS.—  
2 The requirements of section 1336 of the Federal Housing  
3 Enterprises Safety and Soundness Act of 1992, shall  
4 apply to this section, in the same manner and to the same  
5 extent as that section applies to the Federal housing enter-  
6 prises.

7           “(e) ANNUAL REPORT.—The Director shall annually  
8 report to Congress on the performance of the Banks in  
9 meeting the goals established under this section.”.

10 **SEC. 1206. COMMUNITY DEVELOPMENT FINANCIAL INSTI-**  
11 **TUTIONS.**

12           Section 4(a)(1) of the Federal Home Loan Bank Act  
13 (12 U.S.C. 1424(a)(1)) is amended—

14           (1) by inserting after “savings bank,” the fol-  
15           lowing: “community development financial institu-  
16           tion,”; and

17           (2) in subparagraph (B), by inserting after  
18           “United States,” the following: “or, in the case of a  
19           community development financial institution, is cer-  
20           tified as a community development financial institu-  
21           tion under the Community Development Banking  
22           and Financial Institutions Act of 1994.”.

1 **SEC. 1207. SHARING OF INFORMATION AMONG FEDERAL**  
2 **HOME LOAN BANKS.**

3 The Federal Home Loan Bank Act is amended by  
4 inserting after section 20 (12 U.S.C. 1440) the following  
5 new section:

6 **“SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL**  
7 **HOME LOAN BANKS.**

8 “(a) INFORMATION ON FINANCIAL CONDITION.—In  
9 order to enable each Federal Home Loan Bank to evaluate  
10 the financial condition of one or more of the other Federal  
11 Home Loan Banks individually and the Federal Home  
12 Loan Bank System (including any risks associated with  
13 the issuance or repayment of consolidated Federal Home  
14 Loan Bank bonds and debentures or other borrowings and  
15 the joint and several liabilities of the Banks incurred due  
16 to such borrowings), as well as to comply with any of its  
17 obligations under the Securities Exchange Act of 1934 (15  
18 U.S.C. 78a et seq.), the Director shall make available to  
19 the Banks such reports, records, or other information as  
20 may be available, relating to the condition of any Federal  
21 Home Loan Bank.

22 “(b) SHARING OF INFORMATION.—

23 “(1) IN GENERAL.—The Director shall promul-  
24 gate regulations to facilitate the sharing of informa-  
25 tion made available under subsection (a) directly  
26 among the Federal Home Loan Banks.

1           “(2) LIMITATION.—Notwithstanding paragraph  
2           (1), a Federal Home Loan Bank responding to a re-  
3           quest from another Bank or from the Director for  
4           information pursuant to this section may request  
5           that the Director determine that such information is  
6           proprietary and that the public interest requires that  
7           such information not be shared.

8           “(c) LIMITATION.—Nothing in this section shall af-  
9           fect the obligations of any Federal Home Loan Bank  
10          under the Securities Exchange Act of 1934 (15 U.S.C.  
11          78a et seq.) or the regulations issued by the Securities  
12          and Exchange Commission thereunder.”.

13       **SEC. 1208. EXCLUSION FROM CERTAIN REQUIREMENTS.**

14          (a) IN GENERAL.—The Federal Home Loan Banks  
15          shall be exempt from compliance with—

16               (1) sections 13(e), 14(a), and 14(c) of the Se-  
17               curities Exchange Act of 1934, and related Commis-  
18               sion regulations;

19               (2) section 15 of the Securities Exchange Act  
20               of 1934, and related Commission regulations, with  
21               respect to transactions in the capital stock of a Fed-  
22               eral Home Loan Bank;

23               (3) section 17A of the Securities Exchange Act  
24               of 1934, and related Commission regulations, with

1       respect to the transfer of the securities of a Federal  
2       Home Loan Bank; and

3               (4) the Trust Indenture Act of 1939.

4       (b) MEMBER EXEMPTION.—The members of the  
5 Federal Home Loan Bank System shall be exempt from  
6 compliance with sections 13(d), 13(f), 13(g), 14(d), and  
7 16 of the Securities Exchange Act of 1934, and related  
8 Commission regulations, with respect to ownership of or  
9 transactions in the capital stock of the Federal Home  
10 Loan Banks by such members.

11       (c) EXEMPTED AND GOVERNMENT SECURITIES.—

12               (1) CAPITAL STOCK.—The capital stock issued  
13 by each of the Federal Home Loan Banks under  
14 section 6 of the Federal Home Loan Bank Act are—

15                       (A) exempted securities, within the mean-  
16                       ing of section 3(a)(2) of the Securities Act of  
17                       1933; and

18                       (B) exempted securities, within the mean-  
19                       ing of section 3(a)(12)(A) of the Securities Ex-  
20                       change Act of 1934, except to the extent pro-  
21                       vided in section 38 of that Act.

22               (2) OTHER OBLIGATIONS.—The debentures,  
23 bonds, and other obligations issued under section 11  
24 of the Federal Home Loan Bank Act (12 U.S.C.  
25 1431) are—

1 (A) exempted securities, within the mean-  
2 ing of section 3(a)(2) of the Securities Act of  
3 1933;

4 (B) government securities, within the  
5 meaning of section 3(a)(42) of the Securities  
6 Exchange Act of 1934; and

7 (C) government securities, within the  
8 meaning of section 2(a)(16) of the Investment  
9 Company Act of 1940.

10 (3) BROKERS AND DEALERS.—A person (other  
11 than a Federal Home Loan Bank effecting trans-  
12 actions for members of the Federal Home Loan  
13 Bank System) that effects transactions in the capital  
14 stock or other obligations of a Federal Home Loan  
15 Bank, for the account of others or for that person's  
16 own account, as applicable, is a broker or dealer, as  
17 those terms are defined in paragraphs (4) and (5),  
18 respectively, of section 3(a) of the Securities Ex-  
19 change Act of 1934, but is excluded from the defini-  
20 tion of—

21 (A) the term “government securities  
22 broker” under section 3(a)(43) of the Securities  
23 Exchange Act of 1934; and

1 (B) the term “government securities deal-  
2 er” under section 3(a)(44) of the Securities Ex-  
3 change Act of 1934.

4 (d) EXEMPTION FROM REPORTING REQUIRE-  
5 MENTS.—The Federal Home Loan Banks shall be exempt  
6 from periodic reporting requirements under the securities  
7 laws pertaining to the disclosure of—

8 (1) related party transactions that occur in the  
9 ordinary course of the business of the Banks with  
10 members; and

11 (2) the unregistered sales of equity securities.

12 (e) TENDER OFFERS.—Commission rules relating to  
13 tender offers shall not apply in connection with trans-  
14 actions in the capital stock of the Federal Home Loan  
15 Banks.

16 (f) REGULATIONS.—

17 (1) IN GENERAL.—The Commission shall pro-  
18 mulgate such rules and regulations as may be nec-  
19 essary or appropriate in the public interest or in fur-  
20 therance of this section and the exemptions provided  
21 in this section.

22 (2) CONSIDERATIONS.—In issuing regulations  
23 under this section, the Commission shall consider  
24 the distinctive characteristics of the Federal Home  
25 Loan Banks when evaluating—

1 (A) the accounting treatment with respect  
2 to the payment to the Resolution Funding Cor-  
3 poration;

4 (B) the role of the combined financial  
5 statements of the Federal Home Loan Banks;

6 (C) the accounting classification of redeem-  
7 able capital stock; and

8 (D) the accounting treatment related to  
9 the joint and several nature of the obligations  
10 of the Banks.

11 (g) DEFINITIONS.—As used in this section—

12 (1) the terms “Bank”, “Federal Home Loan  
13 Bank”, “member”, and “Federal Home Loan Bank  
14 System” have the same meanings as in section 2 of  
15 the Federal Home Loan Bank Act (12 U.S.C.  
16 1422);

17 (2) the term “Commission” means the Securi-  
18 ties and Exchange Commission; and

19 (3) the term “securities laws” has the same  
20 meaning as in section 3(a)(47) of the Securities Ex-  
21 change Act of 1934 (15 U.S.C. 78c(a)(47)).

22 **SEC. 1209. VOLUNTARY MERGERS.**

23 Section 26 of the Federal Home Loan Bank Act (12  
24 U.S.C. 1446) is amended—

1           (1) by striking “Whenever” and inserting “(a)  
2       IN GENERAL.—Whenever”; and

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

4       “(b) VOLUNTARY MERGERS AUTHORIZED.—

5           “(1) IN GENERAL.—Any Federal Home Loan  
6       Bank may, with the approval of the Director and of  
7       the boards of directors of the Banks involved, merge  
8       with another Bank.

9           “(2) REGULATIONS REQUIRED.—The Director  
10       shall promulgate regulations establishing the condi-  
11       tions and procedures for the consideration and ap-  
12       proval of any voluntary merger described in para-  
13       graph (1), including the procedures for Bank mem-  
14       ber approval.”.

15   **SEC. 1210. AUTHORITY TO REDUCE DISTRICTS.**

16       Section 3 of the Federal Home Loan Bank Act (12  
17   U.S.C. 1423) is amended—

18           (1) by striking “As soon” and inserting “(a) IN  
19       GENERAL.—As soon”; and

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

21       “(b) AUTHORITY TO REDUCE DISTRICTS.—Notwith-  
22       standing subsection (a), the number of districts may be  
23       reduced to a number less than 8—

24           “(1) pursuant to a voluntary merger between  
25       Banks, as approved pursuant to section 26(b); or

1           “(2) pursuant to a decision by the Director to  
2           liquidate a Bank pursuant to section 1367 of the  
3           Federal Housing Enterprises Financial Safety and  
4           Soundness Act of 1992.”.

5 **SEC. 1211. COMMUNITY FINANCIAL INSTITUTION MEM-**  
6 **BERS.**

7           (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)  
8 of section 2 of the Federal Home Loan Bank Act (12  
9 U.S.C. 1422(10)), as so redesignated by section 201(3)  
10 of this Act, is amended by striking “\$500,000,000” each  
11 place such term appears and inserting “\$1,000,000,000”.

12           (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-  
13 MENT ACTIVITIES.—Section 10(a) of the Federal Home  
14 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

15           (1) in paragraph (2)(B)—

16                   (A) by striking “and”; and

17                   (B) by inserting “, and community devel-  
18           opment activities” before the period at the end;

19           (2) in paragraph (3)(E), by inserting “or com-  
20           munity development activities” after “agriculture,”;  
21           and

22           (3) in paragraph (6)—

23                   (A) by striking “and”; and

24                   (B) by inserting “, and ‘community devel-  
25           opment activities’” before “shall”.

1 **SEC. 1212. PUBLIC USE DATA BASE; REPORTS TO CON-**  
2 **GRESS.**

3 Section 10 of the Federal Home Loan Bank Act (12  
4 U.S.C. 1430) is amended—

5 (1) in subsection (j)(12)—

6 (A) by striking subparagraph (C) and in-  
7 serting the following:

8 “(C) **REPORTS.**—The Director shall annu-  
9 ally report to the Committee on Banking, Hous-  
10 ing, and Urban Affairs of the Senate and the  
11 Committee on Financial Services of the House  
12 of Representatives on the collateral pledged to  
13 the Banks, including an analysis of collateral by  
14 type and by Bank district.”; and

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

16 “(D) **SUBMISSION TO CONGRESS.**—The Di-  
17 rector shall submit the reports under subpara-  
18 graphs (A) and (C) to 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, not later than 180  
22 days after the date of enactment of the Federal  
23 Housing Finance Regulatory Reform Act of  
24 2008.”; and

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

26 “(k) **PUBLIC USE DATABASE.**—

1           “(1) DATA.—Each Federal Home Loan Bank  
2 shall provide to the Director, in a form determined  
3 by the Director, census tract level data relating to  
4 mortgages purchased, if any, including—

5           “(A) data consistent with that reported  
6 under section 1323 of the Federal Housing En-  
7 terprises Financial Safety and Soundness Act  
8 of 1992;

9           “(B) data elements required to be reported  
10 under the Home Mortgage Disclosure Act of  
11 1975; and

12           “(C) any other data elements that the Di-  
13 rector considers appropriate.

14           “(2) PUBLIC USE DATABASE.—

15           “(A) IN GENERAL.—The Director shall  
16 make available to the public, in a form that is  
17 useful to the public (including forms accessible  
18 electronically), and to the extent practicable,  
19 the data provided to the Director under para-  
20 graph (1).

21           “(B) PROPRIETARY INFORMATION.—Not  
22 withstanding subparagraph (A), the Director  
23 may not provide public access to, or disclose to  
24 the public, any information required to be sub-  
25 mitted under this subsection that the Director

1 determines is proprietary or that would provide  
2 personally identifiable information and that is  
3 not otherwise publicly accessible through other  
4 forms, unless the Director determines that it is  
5 in the public interest to provide such informa-  
6 tion.”.

7 **SEC. 1213. SEMIANNUAL REPORTS.**

8 Section 21B of the Federal Home Loan Bank Act  
9 is amended in subsection (f)(2)(C), by adding at the end  
10 the following:

11 “(v) SEMIANNUAL REPORTS.—The  
12 Director shall report semiannually to the  
13 Committee on Banking, Housing, and  
14 Urban Affairs of the Senate and the Com-  
15 mittee on Financial Services of the House  
16 of Representatives on the projected date  
17 for the completion of contributions re-  
18 quired by this section.”.

19 **SEC. 1214. LIQUIDATION OR REORGANIZATION OF A FED-**  
20 **ERAL HOME LOAN BANK.**

21 Section 26 of the Federal Home Loan Bank Act (12  
22 U.S.C. 1446) is amended by adding at the end the fol-  
23 lowing: “At least 30 days prior to liquidating or reorga-  
24 nizing any Bank under this section, the Director shall no-  
25 tify the Bank of its determination and the facts and cir-

1 cumstances upon which such determination is based. The  
2 Bank may contest that determination in a hearing before  
3 the Director, in which all issues shall be determined on  
4 the record pursuant to section 554 of title 5, United  
5 States Code.”.

6 **SEC. 1215. STUDY AND REPORT TO CONGRESS ON**  
7 **SECURITIZATION OF ACQUIRED MEMBER AS-**  
8 **SETS.**

9 (a) **STUDY.**—The Director shall conduct a study on  
10 securitization of home mortgage loans purchased or to be  
11 purchased from member financial institutions under the  
12 Acquired Member Assets programs. In conducting the  
13 study, the Director shall establish a process for the formal  
14 submission of comments.

15 (b) **ELEMENTS.**—The study shall encompass—

16 (1) the benefits and risks associated with  
17 securitization of Acquired Member Assets;

18 (2) the potential impact of securitization upon  
19 liquidity in the mortgage and broader credit mar-  
20 kets;

21 (3) the ability of the Federal Home Loan Bank  
22 or Banks in question to manage the risks associated  
23 with such a program;

1           (4) the impact of such a program on the exist-  
2           ing activities of the Banks, including their mortgage  
3           portfolios and advances; and

4           (5) the joint and several liability of the Banks  
5           and the cooperative structure of the Federal Home  
6           Loan Bank System.

7           (c) CONSULTATIONS.—In conducting the study under  
8           this section, the Director shall consult with the Federal  
9           Home Loan Banks, the Banks' fiscal agent, representa-  
10          tives of the mortgage lending industry, practitioners in the  
11          structured finance field, and other experts as needed.

12          (d) REPORT.—Not later than 1 year after the date  
13          of enactment of this Act, the Director shall submit a re-  
14          port to Congress on the results of the study conducted  
15          under subsection (a), including policy recommendations  
16          based on the analysis of the Director of the feasibility of  
17          mortgage-backed securities issuance by a Federal Home  
18          Loan Bank or Banks and the risks and benefits associated  
19          with such program or programs.

20          (e) DEFINITIONS.—As used in this section, the terms  
21          “member”, “Bank”, and “Federal Home Loan Bank”  
22          have the same meanings as in section 2 of the Federal  
23          Home Loan Bank Act (12 U.S.C. 1422).

1 **SEC. 1216. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—

3 Section 1113(o) of the Right to Financial Privacy Act of  
4 1978 (12 U.S.C. 3413(o)) is amended—

5 (1) by striking “Federal Housing Finance  
6 Board” and inserting “Federal Housing Finance  
7 Agency”; and

8 (2) by striking “Federal Housing Finance  
9 Board’s” and inserting “Federal Housing Finance  
10 Agency’s”.

11 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-  
12 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of  
13 the Riegle Community Development and Regulatory Im-  
14 provement Act of 1994 (12 U.S.C. 4716(e)) is amended  
15 by striking “Federal Housing Finance Board” and insert-  
16 ing “Federal Housing Finance Agency”.

17 (c) TITLE 18, UNITED STATES CODE.—Title 18,  
18 United States Code, is amended by striking “Federal  
19 Housing Finance Board” each place such term appears  
20 in each of sections 212, 657, 1006, and 1014, and insert-  
21 ing “Federal Housing Finance Agency”.

22 (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the  
23 Multifamily Assisted Housing Reform and Affordability  
24 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-  
25 ing “Federal Housing Finance Board” and inserting  
26 “Federal Housing Finance Agency”.

1 (e) TITLE 44, UNITED STATES CODE.—Section  
2 3502(5) of title 44, United States Code, is amended by  
3 striking “Federal Housing Finance Board” and inserting  
4 “Federal Housing Finance Agency”.

5 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section  
6 1004(d)(2)(D)(iii) of the Launching Our Communities’  
7 Access to Local Television Act of 2000 (47 U.S.C.  
8 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-  
9 eral Housing Enterprise Oversight, the Federal Housing  
10 Finance Board” and inserting “Federal Housing Finance  
11 Agency”.

12 (g) FIRREA.—Section 1216 of the Financial Institu-  
13 tions Reform, Recovery, and Enhancement Act of 1989  
14 (12 U.S.C. 1833e) is amended—

15 (1) in subsection (a), by striking paragraph (3)  
16 and inserting the following:

17 “(3) the Federal Housing Finance Agency;”;

18 (2) in subsection (b), by striking “Federal Na-  
19 tional Mortgage Association” and inserting “Federal  
20 Home Loan Banks, the Federal National Mortgage  
21 Association,”; and

22 (3) in subsection (c), by striking “Finance  
23 Board” and inserting “Finance Agency”.

1 **SEC. 1217. STUDY ON FEDERAL HOME LOAN BANK AD-**  
2 **VANCES.**

3 (a) IN GENERAL.—Not later than 1 year after the  
4 date of enactment of this Act, the Director shall conduct  
5 a study and submit a report to the Committee on Banking,  
6 Housing, and Urban Affairs of the Senate and the Com-  
7 mittee on Financial Services of the House or Representa-  
8 tives on the extent to which loans and securities used as  
9 collateral to support Federal Home Loan Bank advances  
10 are consistent with the interagency guidance on nontradi-  
11 tional mortgage products.

12 (b) REQUIRED CONTENT.—The study required under  
13 subsection (a) shall—

14 (1) consider and recommend any additional reg-  
15 ulations, guidance, advisory bulletins, or other ad-  
16 ministrative actions necessary to ensure that the  
17 Federal Home Loan Banks are not supporting loans  
18 with predatory characteristics; and

19 (2) include an opportunity for the public to  
20 comment on any recommendations made under para-  
21 graph (1).

22 **SEC. 1218. FEDERAL HOME LOAN BANK REFINANCING AU-**  
23 **THORITY FOR CERTAIN RESIDENTIAL MORT-**  
24 **GAGE LOANS.**

25 Section 10(j)(2) of the Federal Home Loan Bank Act  
26 (12 U.S.C. 1430(j)(2)) is amended—

1 (1) in subparagraph (A), by striking “or” at  
2 the end;

3 (2) in subparagraph (B), by striking the period  
4 at the end and inserting “; or”; and

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

6 “(C) during the 2-year period beginning on  
7 the date of enactment of this subparagraph, re-  
8 finance loans that are secured by a first mort-  
9 gage on a primary residence of any family hav-  
10 ing an income at or below 80 percent of the me-  
11 dian income for the area.”.

12 **TITLE III—TRANSFER OF FUNC-**  
13 **TIONS, PERSONNEL, AND**  
14 **PROPERTY OF OFHEO AND**  
15 **THE FEDERAL HOUSING FI-**  
16 **NANCE BOARD**

17 **Subtitle A—OFHEO**

18 **SEC. 1301. ABOLISHMENT OF OFHEO.**

19 (a) **IN GENERAL.**—Effective at the end of the 1-year  
20 period beginning on the date of enactment of this Act, the  
21 Office of Federal Housing Enterprise Oversight of the De-  
22 partment of Housing and Urban Development and the po-  
23 sitions of the Director and Deputy Director of such Office  
24 are abolished.

1 (b) DISPOSITION OF AFFAIRS.—During the 1-year  
2 period beginning on the date of enactment of this Act, the  
3 Director of the Office of Federal Housing Enterprise  
4 Oversight, solely for the purpose of winding up the affairs  
5 of the Office of Federal Housing Enterprise Oversight—

6 (1) shall manage the employees of such Office  
7 and provide for the payment of the compensation  
8 and benefits of any such employee which accrue be-  
9 fore the effective date of the transfer of such em-  
10 ployee under section 1303; and

11 (2) may take any other action necessary for the  
12 purpose of winding up the affairs of the Office.

13 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—  
14 The amendments made by title I and the abolishment of  
15 the Office of Federal Housing Enterprise Oversight under  
16 subsection (a) of this section may not be construed to af-  
17 fect the status of any employee of such Office as an em-  
18 ployee of an agency of the United States for purposes of  
19 any other provision of law before the effective date of the  
20 transfer of any such employee under section 1303.

21 (d) USE OF PROPERTY AND SERVICES.—

22 (1) PROPERTY.—The Director may use the  
23 property of the Office of Federal Housing Enter-  
24 prise Oversight to perform functions which have  
25 been transferred to the Director for such time as is

1 reasonable to facilitate the orderly transfer of func-  
2 tions transferred under any other provision of this  
3 Act or any amendment made by this Act to any  
4 other provision of law.

5 (2) AGENCY SERVICES.—Any agency, depart-  
6 ment, or other instrumentality of the United States,  
7 and any successor to any such agency, department,  
8 or instrumentality, which was providing supporting  
9 services to the Office of Federal Housing Enterprise  
10 Oversight before the expiration of the period under  
11 subsection (a) in connection with functions that are  
12 transferred to the Director shall—

13 (A) continue to provide such services, on a  
14 reimbursable basis, until the transfer of such  
15 functions is complete; and

16 (B) consult with any such agency to co-  
17 ordinate and facilitate a prompt and reasonable  
18 transition.

19 (e) CONTINUATION OF SERVICES.—The Director may  
20 use the services of employees and other personnel of the  
21 Office of Federal Housing Enterprise Oversight, on a re-  
22 imburseable basis, to perform functions which have been  
23 transferred to the Director for such time as is reasonable  
24 to facilitate the orderly transfer of functions pursuant to

1 any other provision of this Act or any amendment made  
2 by this Act to any other provision of law.

3 (f) SAVINGS PROVISIONS.—

4 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
5 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
6 fect the validity of any right, duty, or obligation of  
7 the United States, the Director of the Office of Fed-  
8 eral Housing Enterprise Oversight, or any other per-  
9 son, which—

10 (A) arises under—

11 (i) the Federal Housing Enterprises  
12 Financial Safety and Soundness Act of  
13 1992;

14 (ii) the Federal National Mortgage  
15 Association Charter Act;

16 (iii) the Federal Home Loan Mort-  
17 gage Corporation Act; or

18 (iv) any other provision of law appli-  
19 cable with respect to such Office; and

20 (B) existed on the day before the date of  
21 abolishment under subsection (a).

22 (2) CONTINUATION OF SUITS.—No action or  
23 other proceeding commenced by or against the Di-  
24 rector of the Office of Federal Housing Enterprise  
25 Oversight in connection with functions that are

1 transferred to the Director of the Federal Housing  
2 Finance Agency shall abate by reason of the enact-  
3 ment of this Act, except that the Director of the  
4 Federal Housing Finance Agency shall be sub-  
5 stituted for the Director of the Office of Federal  
6 Housing Enterprise Oversight as a party to any  
7 such action or proceeding.

8 **SEC. 1302. CONTINUATION AND COORDINATION OF CER-**  
9 **TAIN REGULATIONS.**

10 (a) IN GENERAL.—All regulations, orders, and deter-  
11 minations described in subsection (b) shall remain in ef-  
12 fect according to the terms of such regulations, orders,  
13 and determinations, and shall be enforceable by or against  
14 the Director or the Secretary of Housing and Urban De-  
15 velopment, as the case may be, until modified, terminated,  
16 set aside, or superseded in accordance with applicable law  
17 by the Director or the Secretary, as the case may be, any  
18 court of competent jurisdiction, or operation of law.

19 (b) APPLICABILITY.—A regulation, order, or deter-  
20 mination is described in this subsection if it—

21 (1) was issued, made, prescribed, or allowed to  
22 become effective by—

23 (A) the Office of Federal Housing Enter-  
24 prise Oversight;

1 (B) the Secretary of Housing and Urban  
2 Development, and relates to the authority of  
3 the Secretary under—

4 (i) the Federal Housing Enterprises  
5 Financial Safety and Soundness Act of  
6 1992;

7 (ii) the Federal National Mortgage  
8 Association Charter Act, with respect to  
9 the Federal National Mortgage Associa-  
10 tion; or

11 (iii) the Federal Home Loan Mort-  
12 gage Corporation Act, with respect to the  
13 Federal Home Loan Mortgage Corpora-  
14 tion; or

15 (C) a court of competent jurisdiction, and  
16 relates to functions transferred by this Act; and

17 (2) is in effect on the effective date of the abol-  
18 ishment under section 1301(a).

19 **SEC. 1303. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
20 **OFHEO.**

21 (a) TRANSFER.—Each employee of the Office of Fed-  
22 eral Housing Enterprise Oversight shall be transferred to  
23 the Agency for employment, not later than the effective  
24 date of the abolishment under section 1301(a), and such

1 transfer shall be deemed a transfer of function for pur-  
2 poses of section 3503 of title 5, United States Code.

3 (b) GUARANTEED POSITIONS.—

4 (1) IN GENERAL.—Each employee transferred  
5 under subsection (a) shall be guaranteed a position  
6 with the same status, tenure, grade, and pay as that  
7 held on the day immediately preceding the transfer.

8 (2) NO INVOLUNTARY SEPARATION OR REDUC-  
9 TION.—An employee transferred under subsection  
10 (a) holding a permanent position on the day imme-  
11 diately preceding the transfer may not be involun-  
12 tarily separated or reduced in grade or compensation  
13 during the 12-month period beginning on the date of  
14 transfer, except for cause, or, in the case of a tem-  
15 porary employee, separated in accordance with the  
16 terms of the appointment of the employee.

17 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
18 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

19 (1) IN GENERAL.—In the case of an employee  
20 occupying a position in the excepted service or the  
21 Senior Executive Service, any appointment authority  
22 established under law or by regulations of the Office  
23 of Personnel Management for filling such position  
24 shall be transferred, subject to paragraph (2).

1           (2) **DECLINE OF TRANSFER.**—The Director  
2           may decline a transfer of authority under paragraph  
3           (1) to the extent that such authority relates to—

4                   (A) a position excepted from the competi-  
5                   tive service because of its confidential, policy-  
6                   making, policy-determining, or policy-advocating  
7                   character; or

8                   (B) a noncareer position in the Senior Ex-  
9                   ecutive Service (within the meaning of section  
10                  3132(a)(7) of title 5, United States Code).

11          (d) **REORGANIZATION.**—If the Director determines,  
12          after the end of the 1-year period beginning on the effec-  
13          tive date of the abolishment under section 1301(a), that  
14          a reorganization of the combined workforce is required,  
15          that reorganization shall be deemed a major reorganiza-  
16          tion for purposes of affording affected employee retire-  
17          ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
18          5, United States Code.

19          (e) **EMPLOYEE BENEFIT PROGRAMS.**—

20                  (1) **IN GENERAL.**—Any employee of the Office  
21                  of Federal Housing Enterprise Oversight accepting  
22                  employment with the Agency as a result of a trans-  
23                  fer under subsection (a) may retain, for 12 months  
24                  after the date on which such transfer occurs, mem-  
25                  bership in any employee benefit program of the

1 Agency or the Office of Federal Housing Enterprise  
2 Oversight of the Department of Housing and Urban  
3 Development, as applicable, including insurance, to  
4 which such employee belongs on the date of the abol-  
5 ishment under section 1301(a), if—

6 (A) the employee does not elect to give up  
7 the benefit or membership in the program; and

8 (B) the benefit or program is continued by  
9 the Director of the Federal Housing Finance  
10 Agency.

11 (2) COST DIFFERENTIAL.—

12 (A) IN GENERAL.—The difference in the  
13 costs between the benefits which would have  
14 been provided by the Office of Federal Housing  
15 Enterprise Oversight and those provided by this  
16 section shall be paid by the Director.

17 (B) HEALTH INSURANCE.—If any em-  
18 ployee elects to give up membership in a health  
19 insurance program or the health insurance pro-  
20 gram is not continued by the Director, the em-  
21 ployee shall be permitted to select an alternate  
22 Federal health insurance program not later  
23 than 30 days after the date of such election or  
24 notice, without regard to any other regularly  
25 scheduled open season.

1 **SEC. 1304. TRANSFER OF PROPERTY AND FACILITIES.**

2       Upon the effective date of its abolishment under sec-  
3 tion 1301(a), all property of the Office of Federal Housing  
4 Enterprise Oversight shall transfer to the Agency.

5                   **Subtitle B—Federal Housing**  
6                   **Finance Board**

7 **SEC. 1311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**  
8                   **NANCE BOARD.**

9       (a) **IN GENERAL.**—Effective at the end of the 1-year  
10 period beginning on the date of enactment of this Act, the  
11 Federal Housing Finance Board (in this subtitle referred  
12 to as the “Board”) is abolished.

13       (b) **DISPOSITION OF AFFAIRS.**—During the 1-year  
14 period beginning on the date of enactment of this Act, the  
15 Board, solely for the purpose of winding up the affairs  
16 of the Board—

17               (1) shall manage the employees of the Board  
18               and provide for the payment of the compensation  
19               and benefits of any such employee which accrue be-  
20               fore the effective date of the transfer of such em-  
21               ployee under section 1313; and

22               (2) may take any other action necessary for the  
23               purpose of winding up the affairs of the Board.

24       (c) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—  
25 The amendments made by titles I and II and the abolish-  
26 ment of the Board under subsection (a) may not be con-

1 strued to affect the status of any employee of the Board  
2 as an employee of an agency of the United States for pur-  
3 poses of any other provision of law before the effective  
4 date of the transfer of any such employee under section  
5 1313.

6 (d) USE OF PROPERTY AND SERVICES.—

7 (1) PROPERTY.—The Director may use the  
8 property of the Board to perform functions which  
9 have been transferred to the Director, for such time  
10 as is reasonable to facilitate the orderly transfer of  
11 functions transferred under any other provision of  
12 this Act or any amendment made by this Act to any  
13 other provision of law.

14 (2) AGENCY SERVICES.—Any agency, depart-  
15 ment, or other instrumentality of the United States,  
16 and any successor to any such agency, department,  
17 or instrumentality, which was providing supporting  
18 services to the Board before the expiration of the 1-  
19 year period under subsection (a) in connection with  
20 functions that are transferred to the Director  
21 shall—

22 (A) continue to provide such services, on a  
23 reimbursable basis, until the transfer of such  
24 functions is complete; and

1                   (B) consult with any such agency to co-  
2                   ordinate and facilitate a prompt and reasonable  
3                   transition.

4           (e) CONTINUATION OF SERVICES.—The Director may  
5 use the services of employees and other personnel of the  
6 Board, on a reimbursable basis, to perform functions  
7 which have been transferred to the Director for such time  
8 as is reasonable to facilitate the orderly transfer of func-  
9 tions pursuant to any other provision of this Act or any  
10 amendment made by this Act to any other provision of  
11 law.

12           (f) SAVINGS PROVISIONS.—

13                   (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
14                   TIONS NOT AFFECTED.—Subsection (a) shall not af-  
15                   fect the validity of any right, duty, or obligation of  
16                   the United States, a member of the Board, or any  
17                   other person, which—

18                           (A) arises under the Federal Home Loan  
19                   Bank Act, or any other provision of law applica-  
20                   ble with respect to the Board; and

21                           (B) existed on the day before the effective  
22                   date of the abolishment under subsection (a).

23                   (2) CONTINUATION OF SUITS.—No action or  
24                   other proceeding commenced by or against the  
25                   Board in connection with functions that are trans-

1       ferred under this Act to the Director shall abate by  
2       reason of the enactment of this Act, except that the  
3       Director shall be substituted for the Board or any  
4       member thereof as a party to any such action or  
5       proceeding.

6       **SEC. 1312. CONTINUATION AND COORDINATION OF CER-**  
7                                   **TAIN ACTIONS.**

8       (a) IN GENERAL.—All regulations, orders, deter-  
9       minations, and resolutions described under subsection (b)  
10      shall remain in effect according to the terms of such regu-  
11      lations, orders, determinations, and resolutions, and shall  
12      be enforceable by or against the Director until modified,  
13      terminated, set aside, or superseded in accordance with  
14      applicable law by the Director, any court of competent ju-  
15      risdiction, or operation of law.

16      (b) APPLICABILITY.—A regulation, order, determina-  
17      tion, or resolution is described under this subsection if it—

18                   (1) was issued, made, prescribed, or allowed to  
19      become effective by—

20                           (A) the Board; or

21                           (B) 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 1311(a).

1 **SEC. 1313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
2 **FEDERAL HOUSING FINANCE BOARD.**

3 (a) TRANSFER.—Each employee of the Board shall  
4 be transferred to the Agency for employment, not later  
5 than the effective date of the abolishment under section  
6 1311(a), and such transfer shall be deemed a transfer of  
7 function for purposes of section 3503 of title 5, United  
8 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 holding a permanent position  
16 on the day immediately preceding the transfer may  
17 not be involuntarily separated or reduced in grade or  
18 compensation during the 12-month period beginning  
19 on the date of transfer, except for cause, or, if the  
20 employee is a temporary employee, separated in ac-  
21 cordance with the terms of the appointment of the  
22 employee.

23 (c) APPOINTMENT AUTHORITY FOR EXCEPTED EM-  
24 PLOYEES.—

25 (1) IN GENERAL.—In the case of an employee  
26 occupying a position in the excepted service, any ap-

1 pointment authority established under law or by reg-  
2 ulations of the Office of Personnel Management for  
3 filling such position shall be transferred, subject to  
4 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 a po-  
8 sition excepted from the competitive service because  
9 of its confidential, policymaking, policy-determining,  
10 or policy-advocating character.

11 (d) REORGANIZATION.—If the Director determines,  
12 after the end of the 1-year period beginning on the effec-  
13 tive date of the abolishment under section 1311(a), that  
14 a reorganization of the combined workforce is required,  
15 that reorganization shall be deemed a major reorganiza-  
16 tion for purposes of affording affected employee retire-  
17 ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
18 5, United States Code.

19 (e) EMPLOYEE BENEFIT PROGRAMS.—

20 (1) IN GENERAL.—Any employee of the Board  
21 accepting employment with the Agency as a result of  
22 a transfer under subsection (a) may retain, for 12  
23 months after the date on which such transfer occurs,  
24 membership in any employee benefit program of the  
25 Agency or the Board, as applicable, including insur-

1           ance, to which such employee belongs on the effec-  
2           tive date of the abolishment under section 1311(a)  
3           if—

4                   (A) the employee does not elect to give up  
5           the benefit or membership in the program; and

6                   (B) the benefit or program is continued by  
7           the Director.

8           (2) COST DIFFERENTIAL.—

9                   (A) IN GENERAL.—The difference in the  
10          costs between the benefits which would have  
11          been provided by the Board and those provided  
12          by this section shall be paid by the Director.

13                   (B) HEALTH INSURANCE.—If any em-  
14          ployee elects to give up membership in a health  
15          insurance program or the health insurance pro-  
16          gram is not continued by the Director, the em-  
17          ployee shall be permitted to select an alternate  
18          Federal health insurance program not later  
19          than 30 days after the date of such election or  
20          notice, without regard to any other regularly  
21          scheduled open season.

22   **SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.**

23           Upon the effective date of the abolishment under sec-  
24          tion 1311(a), all property of the Board shall transfer to  
25          the Agency.

1                   **TITLE IV—HOPE FOR**  
2                   **HOMEOWNERS**

3 **SEC. 1401. SHORT TITLE.**

4           This title may be cited as the “HOPE for Home-  
5 owners Act of 2008”.

6 **SEC. 1402. ESTABLISHMENT OF HOPE FOR HOMEOWNERS**  
7                   **PROGRAM.**

8           (a) ESTABLISHMENT.—Title II of the National Hous-  
9 ing Act (12 U.S.C. 1707 et seq.) is amended by adding  
10 at the end the following:

11 **“SEC. 257. HOPE FOR HOMEOWNERS PROGRAM.**

12           “(a) ESTABLISHMENT.—There is established in the  
13 Federal Housing Administration a HOPE for Home-  
14 owners Program.

15           “(b) PURPOSE.—The purpose of the HOPE for  
16 Homeowners Program is—

17                   “(1) to create an FHA program, participation  
18 in which is voluntary on the part of homeowners and  
19 existing loan holders to insure refinanced loans for  
20 distressed borrowers to support long-term, sustain-  
21 able homeownership;

22                   “(2) to allow homeowners to avoid foreclosure  
23 by reducing the principle balance outstanding, and  
24 interest rate charged, on their mortgages;

1           “(3) to help stabilize and provide confidence in  
2 mortgage markets by bringing transparency to the  
3 value of assets based on mortgage assets;

4           “(4) to target mortgage assistance under this  
5 section to homeowners for their principal residence;

6           “(5) to enhance the administrative capacity of  
7 the FHA to carry out its expanded role under the  
8 HOPE for Homeowners Program;

9           “(6) to ensure the HOPE for Homeowners Pro-  
10 gram remains in effect only for as long as is nec-  
11 essary to provide stability to the housing market;  
12 and

13           “(7) to provide servicers of delinquent mort-  
14 gages with additional methods and approaches to  
15 avoid foreclosure.

16           “(c) ESTABLISHMENT AND IMPLEMENTATION OF  
17 PROGRAM REQUIREMENTS.—

18           “(1) DUTIES OF THE BOARD.—In order to  
19 carry out the purposes of the HOPE for Home-  
20 owners Program, the Board shall—

21           “(A) establish requirements and standards  
22 for the program; and

23           “(B) prescribe such regulations and pro-  
24 vide such guidance as may be necessary or ap-





1           “(B) CURRENT BORROWER DEBT-TO-IN-  
2           COME RATIO.—As of March 1, 2008, the mort-  
3           gagor shall have had a ratio of mortgage debt  
4           to income, taking into consideration all existing  
5           mortgages of that mortgagor at such time,  
6           greater than 31 percent (or such higher amount  
7           as the Board determines appropriate).

8           “(2) DETERMINATION OF PRINCIPAL OBLIGA-  
9           TION AMOUNT.—The principal obligation amount of  
10          the refinanced eligible mortgage to be insured  
11          shall—

12                 “(A) be determined by the reasonable abil-  
13                 ity of the mortgagor to make his or her mort-  
14                 gage payments, as such ability is determined by  
15                 the Secretary pursuant to section 203(b)(4) or  
16                 by any other underwriting standards established  
17                 by the Board; and

18                 “(B) not exceed 90 percent of the ap-  
19                 praised value of the property to which such  
20                 mortgage relates.

21           “(3) REQUIRED WAIVER OF PREPAYMENT PEN-  
22           ALTIES AND FEES.—All penalties for prepayment or  
23           refinancing of the eligible mortgage, and all fees and  
24           penalties related to default or delinquency on the eli-  
25           gible mortgage, shall be waived or forgiven.

1           “(4)   EXTINGUISHMENT   OF   SUBORDINATE  
2   LIENS.—

3           “(A)   REQUIRED AGREEMENT.—All holders  
4   of outstanding mortgage liens on the property  
5   to which the eligible mortgage relates shall  
6   agree to accept the proceeds of the insured loan  
7   as payment in full of all indebtedness under the  
8   eligible mortgage, and all encumbrances related  
9   to such eligible mortgage shall be removed. The  
10   Secretary may take such actions, subject to  
11   standards established by the Board under sub-  
12   paragraph (B), as may be necessary and appro-  
13   priate to facilitate coordination and agreement  
14   between the holders of the existing senior mort-  
15   gage and any existing subordinate mortgages,  
16   taking into consideration the subordinate lien  
17   status of such subordinate mortgages.

18           “(B)   SHARED APPRECIATION.—

19           “(i)   IN GENERAL.—The Board shall  
20   establish standards and policies that will  
21   allow for the payment to the holder of any  
22   existing subordinate mortgage of a portion  
23   of any future appreciation in the property  
24   secured by such eligible mortgage that is

1                   owed to the Secretary pursuant to sub-  
2                   section (k).

3                   “(ii) FACTORS.—In establishing the  
4                   standards and policies required under  
5                   clause (i), the Board shall take into consid-  
6                   eration—

7                   “(I) the status of any subordi-  
8                   nate mortgage;

9                   “(II) the outstanding principal  
10                  balance of and accrued interest on the  
11                  existing senior mortgage and any out-  
12                  standing subordinate mortgages;

13                  “(III) the extent to which the  
14                  current appraised value of the prop-  
15                  erty securing a subordinate mortgage  
16                  is less than the outstanding principal  
17                  balance and accrued interest on any  
18                  other liens that are senior to such  
19                  subordinate mortgage; and

20                  “(IV) such other factors as the  
21                  Board determines to be appropriate.

22                  “(C) VOLUNTARY PROGRAM.—This para-  
23                  graph may not be construed to require any  
24                  holder of any existing mortgage to participate

1           in the program under this section generally, or  
2           with respect to any particular loan.

3           “(5) TERM OF MORTGAGE.—The refinanced eli-  
4           gible mortgage to be insured shall—

5                   “(A) bear interest at a single rate that is  
6                   fixed for the entire term of the mortgage; and

7                   “(B) have a maturity of not less than 30  
8                   years from the date of the beginning of amorti-  
9                   zation of such refinanced eligible mortgage.

10           “(6) MAXIMUM LOAN AMOUNT.—The principal  
11           obligation amount of the eligible mortgage to be in-  
12           sured shall not exceed 132 percent of the dollar  
13           amount limitation in effect for 2007 under section  
14           305(a)(2) of the Federal Home Loan Mortgage Cor-  
15           poration Act (12 U.S.C. 1454(a)(2)) for a property  
16           of the applicable size.

17           “(7) PROHIBITION ON SECOND LIENS.—A  
18           mortgagor may not grant a new second lien on the  
19           mortgaged property during the first 5 years of the  
20           term of the mortgage insured under this section.

21           “(8) APPRAISALS.—Any appraisal conducted in  
22           connection with a mortgage insured under this sec-  
23           tion shall—

24                   “(A) be based on the current value of the  
25                   property;

1           “(B) be conducted in accordance with title  
2           XI of the Financial Institutions Reform, Recov-  
3           ery, and Enforcement Act of 1989 (12 U.S.C.  
4           3331 et seq.);

5           “(C) be completed by an appraiser who  
6           meets the competency requirements of the Uni-  
7           form Standards of Professional Appraisal Prac-  
8           tice;

9           “(D) be wholly consistent with the ap-  
10          praisal standards, practices, and procedures  
11          under section 202(e) of this Act that apply to  
12          all loans insured under this Act; and

13          “(E) comply with the requirements of sub-  
14          section (g) of this section (relating to appraisal  
15          independence).

16          “(9) DOCUMENTATION AND VERIFICATION OF  
17          INCOME.—In complying with the FHA underwriting  
18          requirements under the HOPE for Homeowners  
19          Program under this section, the mortgagee under  
20          the mortgage shall document and verify the income  
21          of the mortgagor by procuring an Internal Revenue  
22          Service transcript of the income tax returns of the  
23          mortgagor for the 2 most recent years for which the  
24          filing deadline for such years has passed and by any  
25          other method, in accordance with procedures and

1 standards that the Board or the Secretary shall es-  
2 tablish.

3 “(10) MORTGAGE FRAUD.—The mortgagor  
4 shall not have been convicted under any provision of  
5 Federal or State law for fraud, including mortgage  
6 fraud.

7 “(11) PRIMARY RESIDENCE.—The mortgagor  
8 shall provide documentation satisfactory in the de-  
9 termination of the Secretary to prove that the resi-  
10 dence covered by the mortgage to be insured under  
11 this section is occupied by the mortgagor as the pri-  
12 mary residence of the mortgagor, and that such resi-  
13 dence is the only residence in which the mortgagor  
14 has any present ownership interest.

15 “(f) STUDY OF AUCTION OR BULK REFINANCE PRO-  
16 GRAM.—

17 “(1) STUDY.—The Board shall conduct a study  
18 of the need for and efficacy of an auction or bulk  
19 refinancing mechanism to facilitate refinancing of  
20 existing residential mortgages that are at risk for  
21 foreclosure into mortgages insured under this sec-  
22 tion. The study shall identify and examine various  
23 options for mechanisms under which lenders and  
24 servicers of such mortgages may make bids for for-

1       ward commitments for such insurance in an expe-  
2       dited manner.

3               “(2) CONTENT.—

4                       “(A) ANALYSIS.—The study required  
5       under paragraph (1) shall analyze—

6                       “(i) the feasibility of establishing a  
7                       mechanism that would facilitate the more  
8                       rapid refinancing of borrowers at risk of  
9                       foreclosure into performing mortgages in-  
10                      sured under this section;

11                     “(ii) whether such a mechanism would  
12                     provide an effective and efficient mecha-  
13                     nism to reduce foreclosures on qualified ex-  
14                     isting mortgages;

15                     “(iii) whether the use of an auction or  
16                     bulk refinance program is necessary to sta-  
17                     bilize the housing market and reduce the  
18                     impact of turmoil in that market on the  
19                     economy of the United States;

20                     “(iv) whether there are other mecha-  
21                     nisms or authority that would be useful to  
22                     reduce foreclosure; and

23                     “(v) and any other factors that the  
24                     Board considers relevant.

1           “(B) DETERMINATIONS.—To the extent  
2           that the Board finds that a facility of the type  
3           described in subparagraph (A) is feasible and  
4           useful, the study shall—

5                   “(i) determine and identify any addi-  
6                   tional authority or resources needed to es-  
7                   tablish and operate such a mechanism;

8                   “(ii) determine whether there is a  
9                   need for additional authority with respect  
10                  to the loan underwriting criteria estab-  
11                  lished in this section or with respect to eli-  
12                  gibility of participating borrowers, lenders,  
13                  or holders of liens;

14                  “(iii) determine whether such under-  
15                  writing criteria should be established on  
16                  the basis of individual loans, in the aggre-  
17                  gate, or otherwise to facilitate the goal of  
18                  refinancing borrowers at risk of foreclosure  
19                  into viable loans insured under this sec-  
20                  tion.

21           “(3) REPORT.—Not later than the expiration of  
22           the 60-day period beginning on the date of the en-  
23           actment of this section, the Board shall submit a re-  
24           port regarding the results of the study conducted  
25           under this subsection to the Committee on Financial

1 Services of the House of Representatives and the  
2 Committee on Banking, Housing, and Urban Affairs  
3 of the Senate. The report shall include a detailed de-  
4 scription of the analysis required under paragraph  
5 (2)(A) and of the determinations made pursuant to  
6 paragraph (2)(B), and shall include any other find-  
7 ings and recommendations of the Board pursuant to  
8 the study, including identifying various options for  
9 mechanisms described in paragraph (1).

10 “(g) APPRAISAL INDEPENDENCE.—

11 “(1) PROHIBITIONS ON INTERESTED PARTIES  
12 IN A REAL ESTATE TRANSACTION.—No mortgage  
13 lender, mortgage broker, mortgage banker, real es-  
14 tate broker, appraisal management company, em-  
15 ployee of an appraisal management company, nor  
16 any other person with an interest in a real estate  
17 transaction involving an appraisal in connection with  
18 a mortgage insured under this section shall improv-  
19 erly influence, or attempt to improperly influence,  
20 through coercion, extortion, collusion, compensation,  
21 instruction, inducement, intimidation, nonpayment  
22 for services rendered, or bribery, the development,  
23 reporting, result, or review of a real estate appraisal  
24 sought in connection with the mortgage.

1           “(2) CIVIL MONETARY PENALTIES.—The Sec-  
2           retary may impose a civil money penalty for any  
3           knowing and material violation of paragraph (1)  
4           under the same terms and conditions as are author-  
5           ized in section 536(a) of this Act.

6           “(h) STANDARDS TO PROTECT AGAINST ADVERSE  
7           SELECTION.—

8           “(1) IN GENERAL.—The Board shall, by rule or  
9           order, establish standards and policies to require the  
10          underwriter of the insured loan to provide such rep-  
11          resentations and warranties as the Board considers  
12          necessary or appropriate to enforce compliance with  
13          all underwriting and appraisal standards of the  
14          HOPE for Homeowners Program.

15          “(2) EXCLUSION FOR VIOLATIONS.—The Board  
16          shall prohibit the Secretary from paying insurance  
17          benefits to a mortgagee who violates the representa-  
18          tions and warranties, as established under para-  
19          graph (1), or in any case in which a mortgagor fails  
20          to make the first payment on a refinanced eligible  
21          mortgage.

22          “(3) OTHER AUTHORITY.—The Board may es-  
23          tablish such other standards or policies as necessary  
24          to protect against adverse selection, including requir-  
25          ing loans identified by the Secretary as higher risk

1 loans to demonstrate payment performance for a  
2 reasonable period of time prior to being insured  
3 under the program.

4 “(i) PREMIUMS.—For each refinanced eligible mort-  
5 gage insured under this section, the Secretary shall estab-  
6 lish and collect—

7 “(1) at the time of insurance, a single premium  
8 payment in an amount equal to 3 percent of the  
9 amount of the original insured principal obligation of  
10 the refinanced eligible mortgage, which shall be paid  
11 from the proceeds of the mortgage being insured  
12 under this section, through the reduction of the  
13 amount of indebtedness that existed on the eligible  
14 mortgage prior to refinancing; and

15 “(2) in addition to the premium required under  
16 paragraph (1), an annual premium in an amount  
17 equal to 1.5 percent of the amount of the remaining  
18 insured principal balance of the mortgage.

19 “(j) ORIGINATION FEES AND INTEREST RATE.—The  
20 Board shall establish—

21 “(1) a reasonable limitation on origination fees  
22 for refinanced eligible mortgages insured under this  
23 section; and

1           “(2) procedures to ensure that interest rates on  
2 such mortgages shall be commensurate with market  
3 rate interest rates on such types of loans.

4           “(k) EQUITY AND APPRECIATION.—

5           “(1) FIVE-YEAR PHASE-IN FOR EQUITY AS A  
6 RESULT OF SALE OR REFINANCING.—For each eligi-  
7 ble mortgage insured under this section, the Sec-  
8 retary and the mortgagor of such mortgage shall,  
9 upon any sale or disposition of the property to which  
10 such mortgage relates, or upon the subsequent refi-  
11 nancing of such mortgage, be entitled to the fol-  
12 lowing with respect to any equity created as a direct  
13 result of such sale or refinancing:

14           “(A) If such sale or refinancing occurs  
15 during the period that begins on the date that  
16 such mortgage is insured and ends 1 year after  
17 such date of insurance, the Secretary shall be  
18 entitled to 100 percent of such equity.

19           “(B) If such sale or refinancing occurs  
20 during the period that begins 1 year after such  
21 date of insurance and ends 2 years after such  
22 date of insurance, the Secretary shall be enti-  
23 tled to 90 percent of such equity and the mort-  
24 gagor shall be entitled to 10 percent of such eq-  
25 uity.

1           “(C) If such sale or refinancing occurs  
2 during the period that begins 2 years after such  
3 date of insurance and ends 3 years after such  
4 date of insurance, the Secretary shall be enti-  
5 tled to 80 percent of such equity and the mort-  
6 gator shall be entitled to 20 percent of such eq-  
7 uity.

8           “(D) If such sale or refinancing occurs  
9 during the period that begins 3 years after such  
10 date of insurance and ends 4 years after such  
11 date of insurance, the Secretary shall be enti-  
12 tled to 70 percent of such equity and the mort-  
13 gator shall be entitled to 30 percent of such eq-  
14 uity.

15           “(E) If such sale or refinancing occurs  
16 during the period that begins 4 years after such  
17 date of insurance and ends 5 years after such  
18 date of insurance, the Secretary shall be enti-  
19 tled to 60 percent of such equity and the mort-  
20 gator shall be entitled to 40 percent of such eq-  
21 uity.

22           “(F) If such sale or refinancing occurs  
23 during any period that begins 5 years after  
24 such date of insurance, the Secretary shall be  
25 entitled to 50 percent of such equity and the

1           mortgagor shall be entitled to 50 percent of  
2           such equity.

3           “(2) APPRECIATION IN VALUE.—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, each be entitled to 50 percent  
8           of any appreciation in value of the appraised value  
9           of such property that has occurred since the date  
10          that such mortgage was insured under this section.

11          “(1) ESTABLISHMENT OF HOPE FUND.—

12                 “(1) IN GENERAL.—There is established in the  
13                 Federal Housing Administration a revolving fund to  
14                 be known as the Home Ownership Preservation En-  
15                 tity Fund, which shall be used by the Board for car-  
16                 rying out the mortgage insurance obligations under  
17                 this section.

18                 “(2) MANAGEMENT OF FUND.—The HOPE  
19                 Fund shall be administered and managed by the  
20                 Secretary, who shall establish reasonable and pru-  
21                 dent criteria for the management and operation of  
22                 any amounts in the HOPE Fund.

23                 “(m) LIMITATION ON AGGREGATE INSURANCE AU-  
24                 THORITY.—The aggregate original principal obligation of

1 all mortgages insured under this section may not exceed  
2 \$300,000,000,000.

3 “(n) REPORTS BY THE BOARD.—The Board shall  
4 submit monthly reports to the Congress identifying the  
5 progress of the HOPE for Homeowners Program, which  
6 shall contain the following information for each month:

7 “(1) The number of new mortgages insured  
8 under this section, including the location of the  
9 properties subject to such mortgages by census  
10 tract.

11 “(2) The aggregate principal obligation of new  
12 mortgages insured under this section.

13 “(3) The average amount by which the principle  
14 balance outstanding on mortgages insured this sec-  
15 tion was reduced.

16 “(4) The amount of premiums collected for in-  
17 surance of mortgages under this section.

18 “(5) The claim and loss rates for mortgages in-  
19 sured under this section.

20 “(6) Any other information that the Board con-  
21 siders appropriate.

22 “(o) REQUIRED OUTREACH EFFORTS.—The Sec-  
23 retary shall carry out outreach efforts to ensure that  
24 homeowners, lenders, and the general public are aware of

1 the opportunities for assistance available under this sec-  
2 tion.

3 “(p) ENHANCEMENT OF FHA CAPACITY.—Under  
4 the direction of the Board, the Secretary shall take such  
5 actions as may be necessary to—

6 “(1) contract for the establishment of under-  
7 writing criteria, automated underwriting systems,  
8 pricing standards, and other factors relating to eligi-  
9 bility for mortgages insured under this section;

10 “(2) contract for independent quality reviews of  
11 underwriting, including appraisal reviews and fraud  
12 detection, of mortgages insured under this section or  
13 pools of such mortgages; and

14 “(3) increase personnel of the Department as  
15 necessary to process or monitor the processing of  
16 mortgages insured under this section.

17 “(q) GNMA COMMITMENT AUTHORITY.—

18 “(1) GUARANTEES.—The Secretary shall take  
19 such actions as may be necessary to ensure that se-  
20 curities based on and backed by a trust or pool com-  
21 posed of mortgages insured under this section are  
22 available to be guaranteed by the Government Na-  
23 tional Mortgage Association as to the timely pay-  
24 ment of principal and interest.

1           “(2) GUARANTEE AUTHORITY.—To carry out  
2           the purposes of section 306 of the National Housing  
3           Act (12 U.S.C. 1721), the Government National  
4           Mortgage Association may enter into new commit-  
5           ments to issue guarantees of securities based on or  
6           backed by mortgages insured under this section, not  
7           exceeding \$300,000,000,000. The amount of author-  
8           ity provided under the preceding sentence to enter  
9           into new commitments to issue guarantees is in ad-  
10          dition to any amount of authority to make new com-  
11          mitments to issue guarantees that is provided to the  
12          Association under any other provision of law.

13          “(r) SUNSET.—The Secretary may not enter into any  
14          new commitment to insure any refinanced eligible mort-  
15          gage, or newly insure any refinanced eligible mortgage  
16          pursuant to this section before October 1, 2008 or after  
17          September 30, 2011.

18          “(s) DEFINITIONS.—For purposes of this section, the  
19          following definitions shall apply:

20                 “(1) APPROVED FINANCIAL INSTITUTION OR  
21                 MORTGAGEE.—The term ‘approved financial institu-  
22                 tion or mortgagee’ means a financial institution or  
23                 mortgagee approved by the Secretary under section  
24                 203 as responsible and able to service mortgages re-  
25                 sponsibly.

1           “(2) BOARD.—The term ‘Board’ means the  
2 Board of Directors of the HOPE for Homeowners  
3 Program. The Board shall be composed of the Sec-  
4 retary, the Secretary of the Treasury, the Chair-  
5 person of the Board of Governors of the Federal Re-  
6 serve System, and the Chairperson of the Board of  
7 Directors of the Federal Deposit Insurance Corpora-  
8 tion.

9           “(3) ELIGIBLE MORTGAGE.—The term ‘eligible  
10 mortgage’ means a mortgage—

11           “(A) the mortgagor of which—

12           “(i) occupies such property as his or  
13 her principal residence; and

14           “(ii) cannot, subject to subsection  
15 (e)(1)(B) and such other standards estab-  
16 lished by the Board, afford his or her  
17 mortgage payments; and

18           “(B) originated on or before January 1,  
19 2008.

20           “(4) EXISTING SENIOR MORTGAGE.—The term  
21 ‘existing senior mortgage’ means, with respect to a  
22 mortgage insured under this section, the existing  
23 mortgage that has superior priority.

24           “(5) EXISTING SUBORDINATE MORTGAGE.—The  
25 term ‘existing subordinate mortgage’ means, with re-

1       spect to a mortgage insured under this section, an  
2       existing mortgage that has subordinate priority to  
3       the existing senior mortgage.

4           “(6) HOPE FOR HOMEOWNERS PROGRAM.—  
5       The term ‘HOPE for Homeowners Program’ means  
6       the program established under this section.

7           “(7) SECRETARY.—The term ‘Secretary’ means  
8       the Secretary of Housing and Urban Development,  
9       except where specifically provided otherwise.

10       “(t) REQUIREMENTS RELATED TO THE BOARD.—

11           “(1) COMPENSATION, ACTUAL, NECESSARY,  
12       AND TRANSPORTATION EXPENSES.—

13           “(A) FEDERAL EMPLOYEES.—A member  
14       of the Board who is an officer or employee of  
15       the Federal Government shall serve without ad-  
16       ditional pay (or benefits in the nature of com-  
17       pensation) for service as a member of the  
18       Board.

19           “(B) TRAVEL EXPENSES.—Members of the  
20       Board shall be entitled to receive travel ex-  
21       penses, including per diem in lieu of subsist-  
22       ence, equivalent to those set forth in subchapter  
23       I of chapter 57 of title 5, United States Code.

1           “(2) BYLAWS.—The Board may prescribe,  
2           amend, and repeal such bylaws as may be necessary  
3           for carrying out the functions of the Board.

4           “(3) QUORUM.—A majority of the Board shall  
5           constitute a quorum.

6           “(4) STAFF; EXPERTS AND CONSULTANTS.—

7                   “(A) DETAIL OF GOVERNMENT EMPLOY-  
8                   EES.—Upon request of the Board, any Federal  
9                   Government employee may be detailed to the  
10                  Board without reimbursement, and such detail  
11                  shall be without interruption or loss of civil  
12                  service status or privilege.

13                   “(B) EXPERTS AND CONSULTANTS.—The  
14                  Board shall procure the services of experts and  
15                  consultants as the Board considers appropriate.

16           “(u) RULE OF CONSTRUCTION RELATED TO VOL-  
17           UNTARY NATURE OF THE PROGRAM.—This section shall  
18           not be construed to require that any approved financial  
19           institution or mortgagee participate in any activity author-  
20           ized under this section, including any activity related to  
21           the refinancing of an eligible mortgage.

22           “(v) RULE OF CONSTRUCTION RELATED TO INSUR-  
23           ANCE OF MORTGAGES.—Except as otherwise provided for  
24           in this section or by action of the Board, the provisions  
25           and requirements of section 203(b) shall apply with re-

1 spect to the insurance of any eligible mortgage under this  
2 section.

3 “(w) HOPE BONDS.—

4 “(1) ISSUANCE AND REPAYMENT OF BONDS.—

5 Notwithstanding section 504(b) of the Federal Credit  
6 Reform Act of 1990 (2 U.S.C. 661d(b)), the Sec-  
7 retary of the Treasury shall—

8 “(A) subject to such terms and conditions  
9 as the Secretary of the Treasury deems nec-  
10 essary, issue Federal credit instruments, to be  
11 known as ‘HOPE Bonds’, that are callable at  
12 the discretion of the Secretary of the Treasury  
13 and do not, in the aggregate, exceed the  
14 amount specified in subsection (m);

15 “(B) provide the subsidy amounts nec-  
16 essary for loan guarantees under the HOPE for  
17 Homeowners Program, not to exceed the  
18 amount specified in subsection (m), in accord-  
19 ance with the provisions of the Federal Credit  
20 Reform Act of 1990 (2 U.S.C. 661 et seq.), ex-  
21 cept as provided in this paragraph; and

22 “(C) use the proceeds from HOPE Bonds  
23 only to pay for the net costs to the Federal  
24 Government of the HOPE for Homeowners  
25 Program, including administrative costs.

1           “(2) REIMBURSEMENTS TO TREASURY.—Funds  
2           received pursuant to section 1338(b) of the Federal  
3           Housing Enterprises Regulatory Reform Act of  
4           1992 shall be used to reimburse the Secretary of the  
5           Treasury for amounts borrowed under paragraph  
6           (1).

7           “(3) USE OF RESERVE FUND.—If the net cost  
8           to the Federal Government for the HOPE for  
9           Homeowners Program exceeds the amount of funds  
10          received under paragraph (2), remaining debts of  
11          the HOPE for Homeowners Program shall be paid  
12          from amounts deposited into the fund established by  
13          the Secretary under section 1337(e) of the Federal  
14          Housing Enterprises Financial Safety and Sound-  
15          ness Act of 1992, remaining amounts in such fund  
16          to be used to reduce the National debt.

17          “(4) REDUCTION OF NATIONAL DEBT.—  
18          Amounts collected under the HOPE for Home-  
19          owners Program in accordance with subsections (i)  
20          and (k) in excess of the net cost to the Federal Gov-  
21          ernment for such Program shall be used to reduce  
22          the National debt.”.

1 **SEC. 1403. FIDUCIARY DUTY OF SERVICERS OF POOLED**  
2 **RESIDENTIAL MORTGAGE LOANS.**

3 The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
4 is amended by inserting after section 129 the following  
5 new section:

6 **“SEC. 129A. FIDUCIARY DUTY OF SERVICERS OF POOLED**  
7 **RESIDENTIAL MORTGAGES.**

8 “(a) IN GENERAL.—Except as may be established in  
9 any investment contract between a servicer of pooled resi-  
10 dential mortgages and an investor, a servicer of pooled res-  
11 idential mortgages—

12 “(1) owes any duty to maximize the net present  
13 value of the pooled mortgages in an investment to all  
14 investors and parties having a direct or indirect in-  
15 terest in such investment, not to any individual  
16 party or group of parties; and

17 “(2) shall be deemed to act in the best interests  
18 of all such investors and parties if the servicer  
19 agrees to or implements a modification or workout  
20 plan, including any modification or refinancing un-  
21 dertaken pursuant to the HOPE for Homeowners  
22 Act of 2008, for a residential mortgage or a class of  
23 residential mortgages that constitute a part or all of  
24 the pooled mortgages in such investment, provided  
25 that any mortgage so modified meets the following  
26 criteria:

1           “(A) Default on the payment of such mort-  
2           gage has occurred or is reasonably foreseeable.

3           “(B) The property securing such mortgage  
4           is occupied by the mortgagor of such mortgage.

5           “(C) The anticipated recovery on the prin-  
6           cipal outstanding obligation of the mortgage  
7           under the modification or workout plan exceeds,  
8           on a net present value basis, the anticipated re-  
9           covery on the principal outstanding obligation  
10          of the mortgage through foreclosure.

11          “(b) DEFINITION.—As used in this section, the term  
12          ‘servicer’ has the same meaning as in section 6(i)(2) of  
13          the Real Estate Settlement Procedures Act of 1974 (12  
14          U.S.C. 2605(i)(2)).”.

15          **SEC. 1404. REVISED STANDARDS FOR FHA APPRAISERS.**

16          Section 202(e) of the National Housing Act (12  
17          U.S.C. 1708(e)) is amended by adding at the end the fol-  
18          lowing:

19                 “(5) ADDITIONAL APPRAISER STANDARDS.—  
20                 Beginning on the date of enactment of the Federal  
21                 Housing Finance Regulatory Reform Act of 2008,  
22                 any appraiser chosen or approved to conduct ap-  
23                 praisals for mortgages under this title shall—

24                         “(A) be certified—

1 “(i) by the State in which the prop-  
2 erty to be appraised is located; or

3 “(ii) by a nationally recognized profes-  
4 sional appraisal organization; and

5 “(B) have demonstrated verifiable edu-  
6 cation in the appraisal requirements established  
7 by the Federal Housing Administration under  
8 this subsection.”.

9 **TITLE V—S.A.F.E. MORTGAGE**  
10 **LICENSING ACT**

11 **SEC. 1501. SHORT TITLE.**

12 This title may be cited as the “Secure and Fair En-  
13 forcement for Mortgage Licensing Act of 2008” or  
14 “S.A.F.E. Mortgage Licensing Act of 2008”.

15 **SEC. 1502. PURPOSES AND METHODS FOR ESTABLISHING A**  
16 **MORTGAGE LICENSING SYSTEM AND REG-**  
17 **ISTRY.**

18 In order to increase uniformity, reduce regulatory  
19 burden, enhance consumer protection, and reduce fraud,  
20 the States, through the Conference of State Bank Super-  
21 visors and the American Association of Residential Mort-  
22 gage Regulators, are hereby encouraged to establish a Na-  
23 tionwide Mortgage Licensing System and Registry for the  
24 residential mortgage industry that accomplishes all of the  
25 following objectives:

1           (1) Provides uniform license applications and  
2 reporting requirements for State-licensed loan origi-  
3 nators.

4           (2) Provides a comprehensive licensing and su-  
5 pervisory database.

6           (3) Aggregates and improves the flow of infor-  
7 mation to and between regulators.

8           (4) Provides increased accountability and track-  
9 ing of loan originators.

10          (5) Streamlines the licensing process and re-  
11 duces the regulatory burden.

12          (6) Enhances consumer protections and sup-  
13 ports anti-fraud measures.

14          (7) Provides consumers with easily accessible  
15 information, offered at no charge, utilizing electronic  
16 media, including the Internet, regarding the employ-  
17 ment history of, and publicly adjudicated discipli-  
18 nary and enforcement actions against, loan origina-  
19 tors.

20          (8) Establishes a means by which residential  
21 mortgage loan originators would, to the greatest ex-  
22 tent possible, be required to act in the best interests  
23 of the consumer.

24          (9) Facilitates responsible behavior in the  
25 subprime mortgage market place and provides com-

1       prehensive training and examination requirements  
2       related to subprime mortgage lending.

3           (10) Facilitates the collection and disbursement  
4       of consumer complaints on behalf of State and Fed-  
5       eral mortgage regulators.

6   **SEC. 1503. DEFINITIONS.**

7       For purposes of this title, the following definitions  
8       shall apply:

9           (1) **FEDERAL BANKING AGENCIES.**—The term  
10       “Federal banking agencies” means the Board of  
11       Governors of the Federal Reserve System, the  
12       Comptroller of the Currency, the Director of the Of-  
13       fice of Thrift Supervision, the National Credit Union  
14       Administration, and the Federal Deposit Insurance  
15       Corporation.

16          (2) **DEPOSITORY INSTITUTION.**—The term “de-  
17       pository institution” has the same meaning as in  
18       section 3 of the Federal Deposit Insurance Act, and  
19       includes any credit union.

20          (3) **LOAN ORIGINATOR.**—

21            (A) **IN GENERAL.**—The term “loan origi-  
22       nator”—

23               (i) means an individual who—

24                       (I) takes a residential mortgage  
25                       loan application; and

1 (II) offers or negotiates terms of  
2 a residential mortgage loan for com-  
3 pensation or gain;

4 (ii) does not include any individual  
5 who is not otherwise described in clause (i)  
6 and who performs purely administrative or  
7 clerical tasks on behalf of a person who is  
8 described in any such clause;

9 (iii) does not include a person or enti-  
10 ty that only performs real estate brokerage  
11 activities and is licensed or registered in  
12 accordance with applicable State law, un-  
13 less the person or entity is compensated by  
14 a lender, a mortgage broker, or other loan  
15 originator or by any agent of such lender,  
16 mortgage broker, or other loan originator;  
17 and

18 (iv) does not include a person or enti-  
19 ty solely involved in extensions of credit re-  
20 lating to timeshare plans, as that term is  
21 defined in section 101(53D) of title 11,  
22 United States Code.

23 (B) OTHER DEFINITIONS RELATING TO  
24 LOAN ORIGINATOR.—For purposes of this sub-  
25 section, an individual “assists a consumer in

1 obtaining or applying to obtain a residential  
2 mortgage loan” by, among other things, advis-  
3 ing on loan terms (including rates, fees, other  
4 costs), preparing loan packages, or collecting in-  
5 formation on behalf of the consumer with re-  
6 gard to a residential mortgage loan.

7 (C) ADMINISTRATIVE OR CLERICAL  
8 TASKS.—The term “administrative or clerical  
9 tasks” means the receipt, collection, and dis-  
10 tribution of information common for the proc-  
11 essing or underwriting of a loan in the mort-  
12 gage industry and communication with a con-  
13 sumer to obtain information necessary for the  
14 processing or underwriting of a residential  
15 mortgage loan.

16 (D) REAL ESTATE BROKERAGE ACTIVITY  
17 DEFINED.—The term “real estate brokerage ac-  
18 tivity” means any activity that involves offering  
19 or providing real estate brokerage services to  
20 the public, including—

21 (i) acting as a real estate agent or  
22 real estate broker for a buyer, seller, les-  
23 sor, or lessee of real property;

1 (ii) bringing together parties inter-  
2 ested in the sale, purchase, lease, rental, or  
3 exchange of real property;

4 (iii) negotiating, on behalf of any  
5 party, any portion of a contract relating to  
6 the sale, purchase, lease, rental, or ex-  
7 change of real property (other than in con-  
8 nection with providing financing with re-  
9 spect to any such transaction);

10 (iv) engaging in any activity for which  
11 a person engaged in the activity is required  
12 to be registered or licensed as a real estate  
13 agent or real estate broker under any ap-  
14 plicable law; and

15 (v) offering to engage in any activity,  
16 or act in any capacity, described in clause  
17 (i), (ii), (iii), or (iv).

18 (4) LOAN PROCESSOR OR UNDERWRITER.—

19 (A) IN GENERAL.—The term “loan proc-  
20 essor or underwriter” means an individual who  
21 performs clerical or support duties at the direc-  
22 tion of and subject to the supervision and in-  
23 struction of—

24 (i) a State-licensed loan originator; or

25 (ii) a registered loan originator.

1 (B) CLERICAL OR SUPPORT DUTIES.—For  
2 purposes of subparagraph (A), the term “cler-  
3 ical or support duties” may include—

4 (i) the receipt, collection, distribution,  
5 and analysis of information common for  
6 the processing or underwriting of a resi-  
7 dential mortgage loan; and

8 (ii) communicating with a consumer  
9 to obtain the information necessary for the  
10 processing or underwriting of a loan, to the  
11 extent that such communication does not  
12 include offering or negotiating loan rates  
13 or terms, or counseling consumers about  
14 residential mortgage loan rates or terms.

15 (5) NATIONWIDE MORTGAGE LICENSING SYS-  
16 TEM AND REGISTRY.—The term “Nationwide Mort-  
17 gage Licensing System and Registry” means a mort-  
18 gage licensing system developed and maintained by  
19 the Conference of State Bank Supervisors and the  
20 American Association of Residential Mortgage Regu-  
21 lators for the State licensing and registration of  
22 State-licensed loan originators and the registration  
23 of registered loan originators or any system estab-  
24 lished by the Secretary under section 1509.

1           (6) NONTRADITIONAL MORTGAGE PRODUCT.—

2           The term “nontraditional mortgage product” means  
3           any mortgage product other than a 30-year fixed  
4           rate mortgage.

5           (7) REGISTERED LOAN ORIGINATOR.—The term  
6           “registered loan originator” means any individual  
7           who—

8                   (A) meets the definition of loan originator  
9                   and is an employee of—

10                           (i) a depository institution;

11                           (ii) a subsidiary that is—

12                                   (I) owned and controlled by a de-  
13                                   pository institution; and

14                                   (II) regulated by a Federal bank-  
15                                   ing agency; or

16                           (iii) an institution regulated by the  
17                           Farm Credit Administration; and

18                   (B) is registered with, and maintains a  
19                   unique identifier through, the Nationwide Mort-  
20                   gage Licensing System and Registry.

21           (8) RESIDENTIAL MORTGAGE LOAN.—The term  
22           “residential mortgage loan” means any loan pri-  
23           marily for personal, family, or household use that is  
24           secured by a mortgage, deed of trust, or other equiv-  
25           alent consensual security interest on a dwelling (as

1 defined in section 103(v) of the Truth in Lending  
2 Act) or residential real estate upon which is con-  
3 structed or intended to be constructed a dwelling (as  
4 so defined).

5 (9) SECRETARY.—The term “Secretary” means  
6 the Secretary of Housing and Urban Development.

7 (10) STATE-LICENSED LOAN ORIGINATOR.—  
8 The term “State-licensed loan originator” means  
9 any individual who—

10 (A) is a loan originator;

11 (B) is not an employee of—

12 (i) a depository institution;

13 (ii) a subsidiary that is—

14 (I) owned and controlled by a de-  
15 pository institution; and

16 (II) regulated by a Federal bank-  
17 ing agency; or

18 (iii) an institution regulated by the  
19 Farm Credit Administration; and

20 (C) is licensed by a State or by the Sec-  
21 retary under section 1508 and registered as a  
22 loan originator with, and maintains a unique  
23 identifier through, the Nationwide Mortgage Li-  
24 censing System and Registry.

25 (11) UNIQUE IDENTIFIER.—

1 (A) IN GENERAL.—The term “unique iden-  
2 tifier” means a number or other identifier  
3 that—

4 (i) permanently identifies a loan origi-  
5 nator;

6 (ii) is assigned by protocols estab-  
7 lished by the Nationwide Mortgage Licens-  
8 ing System and Registry and the Federal  
9 banking agencies to facilitate electronic  
10 tracking of loan originators and uniform  
11 identification of, and public access to, the  
12 employment history of and the publicly ad-  
13 judicated disciplinary and enforcement ac-  
14 tions against loan originators; and

15 (iii) shall not be used for purposes  
16 other than those set forth under this title.

17 (B) RESPONSIBILITY OF STATES.—To the  
18 greatest extent possible and to accomplish the  
19 purpose of this title, States shall use unique  
20 identifiers in lieu of social security numbers.

21 **SEC. 1504. 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 origi-  
16 nator.

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.

22 **SEC. 1505. STATE LICENSE AND REGISTRATION APPLICA-**  
23 **TION AND ISSUANCE.**

24 (a) BACKGROUND CHECKS.—In connection with an  
25 application to any State for licensing and registration as

1 a State-licensed loan originator, the applicant shall, at a  
2 minimum, furnish to the Nationwide Mortgage Licensing  
3 System and Registry information concerning the appli-  
4 cant's identity, including—

5 (1) fingerprints for submission to the Federal  
6 Bureau of Investigation, and any governmental  
7 agency or entity authorized to receive such informa-  
8 tion for a State and national criminal history back-  
9 ground check; and

10 (2) personal history and experience, including  
11 authorization for the System to obtain—

12 (A) an independent credit report obtained  
13 from a consumer reporting agency described in  
14 section 603(p) of the Fair Credit Reporting  
15 Act; and

16 (B) information related to any administra-  
17 tive, civil or criminal findings by any govern-  
18 mental jurisdiction.

19 (b) **ISSUANCE OF LICENSE.**—The minimum stand-  
20 ards for licensing and registration as a State-licensed loan  
21 originator shall include the following:

22 (1) The applicant has never had a loan origi-  
23 nator license revoked in any governmental jurisdic-  
24 tion.

1           (2) The applicant has not been convicted of, or  
2           pled guilty or nolo contendere to, a felony in a do-  
3           mestic, foreign, or military court—

4                   (A) during the 7-year period preceding the  
5           date of the application for licensing and reg-  
6           istration; or

7                   (B) at any time preceding such date of ap-  
8           plication, if such felony involved an act of  
9           fraud, dishonesty, or a breach of trust, or  
10          money laundering.

11          (3) The applicant has demonstrated financial  
12          responsibility, character, and general fitness such as  
13          to command the confidence of the community and to  
14          warrant a determination that the loan originator will  
15          operate honestly, fairly, and efficiently within the  
16          purposes of this title.

17          (4) The applicant has completed the pre-licens-  
18          ing education requirement described in subsection  
19          (c).

20          (5) The applicant has passed a written test that  
21          meets the test requirement described in subsection  
22          (d).

23          (6) The applicant has met either a net worth or  
24          surety bond requirement, as required by the State  
25          pursuant to section 1508(d)(6).

1 (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-  
2 TORS.—

3 (1) MINIMUM EDUCATIONAL REQUIREMENTS.—

4 In order to meet the pre-licensing education require-  
5 ment referred to in subsection (b)(4), a person shall  
6 complete at least 20 hours of education approved in  
7 accordance with paragraph (2), which shall include  
8 at least—

9 (A) 3 hours of Federal law and regula-  
10 tions;

11 (B) 3 hours of ethics, which shall include  
12 instruction on fraud, consumer protection, and  
13 fair lending issues; and

14 (C) 2 hours of training related to lending  
15 standards for the nontraditional mortgage prod-  
16 uct marketplace.

17 (2) APPROVED EDUCATIONAL COURSES.—For  
18 purposes of paragraph (1), pre-licensing education  
19 courses shall be reviewed, and approved by the Na-  
20 tionwide Mortgage Licensing System and Registry.

21 (3) LIMITATION AND STANDARDS.—

22 (A) LIMITATION.—To maintain the inde-  
23 pendence of the approval process, the Nation-  
24 wide Mortgage Licensing System and Registry

1 shall not directly or indirectly offer pre-licen-  
2 sure educational courses for loan originators.

3 (B) STANDARDS.—In approving courses  
4 under this section, the Nationwide Mortgage Li-  
5 censing System and Registry shall apply rea-  
6 sonable standards in the review and approval of  
7 courses.

8 (d) TESTING OF LOAN ORIGINATORS.—

9 (1) IN GENERAL.—In order to meet the written  
10 test requirement referred to in subsection (b)(5), an  
11 individual shall pass, in accordance with the stand-  
12 ards established under this subsection, a qualified  
13 written test developed by the Nationwide Mortgage  
14 Licensing System and Registry and administered by  
15 an approved test provider.

16 (2) QUALIFIED TEST.—A written test shall not  
17 be treated as a qualified written test for purposes of  
18 paragraph (1) unless the test adequately measures  
19 the applicant's knowledge and comprehension in ap-  
20 propriate subject areas, including—

21 (A) ethics;

22 (B) Federal law and regulation pertaining  
23 to mortgage origination;

24 (C) State law and regulation pertaining to  
25 mortgage origination;

1 (D) Federal and State law and regulation,  
2 including instruction on fraud, consumer pro-  
3 tection, the nontraditional mortgage market-  
4 place, and fair lending issues.

5 (3) MINIMUM COMPETENCE.—

6 (A) PASSING SCORE.—An individual shall  
7 not be considered to have passed a qualified  
8 written test unless the individual achieves a test  
9 score of not less than 75 percent correct an-  
10 swers to questions.

11 (B) INITIAL RETESTS.—An individual may  
12 retake a test 3 consecutive times with each con-  
13 secutive taking occurring at least 30 days after  
14 the preceding test.

15 (C) SUBSEQUENT RETESTS.—After failing  
16 3 consecutive tests, an individual shall wait at  
17 least 6 months before taking the test again.

18 (D) RETEST AFTER LAPSE OF LICENSE.—  
19 A State-licensed loan originator who fails to  
20 maintain a valid license for a period of 5 years  
21 or longer shall retake the test, not taking into  
22 account any time during which such individual  
23 is a registered loan originator.

24 (e) MORTGAGE CALL REPORTS.—Each mortgage li-  
25 censee shall submit to the Nationwide Mortgage Licensing

1 System and Registry reports of condition, which shall be  
2 in such form and shall contain such information as the  
3 Nationwide Mortgage Licensing System and Registry may  
4 require.

5 **SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.**

6 (a) IN GENERAL.—The minimum standards for li-  
7 cense renewal for State-licensed loan originators shall in-  
8 clude the following:

9 (1) The loan originator continues to meet the  
10 minimum standards for license issuance.

11 (2) The loan originator has satisfied the annual  
12 continuing education requirements described in sub-  
13 section (b).

14 (b) CONTINUING EDUCATION FOR STATE-LICENSED  
15 LOAN ORIGINATORS.—

16 (1) IN GENERAL.—In order to meet the annual  
17 continuing education requirements referred to in  
18 subsection (a)(2), a State-licensed loan originator  
19 shall complete at least 8 hours of education ap-  
20 proved in accordance with paragraph (2), which  
21 shall include at least—

22 (A) 3 hours of Federal law and regula-  
23 tions;

1           (B) 2 hours of ethics, which shall include  
2           instruction on fraud, consumer protection, and  
3           fair lending issues; and

4           (C) 2 hours of training related to lending  
5           standards for the nontraditional mortgage prod-  
6           uct marketplace.

7           (2) APPROVED EDUCATIONAL COURSES.—For  
8           purposes of paragraph (1), continuing education  
9           courses shall be reviewed, and approved by the Na-  
10          tionwide Mortgage Licensing System and Registry.

11          (3) CALCULATION OF CONTINUING EDUCATION  
12          CREDITS.—A State-licensed loan originator—

13               (A) may only receive credit for a con-  
14               tinuing education course in the year in which  
15               the course is taken; and

16               (B) may not take the same approved  
17               course in the same or successive years to meet  
18               the annual requirements for continuing edu-  
19               cation.

20          (4) INSTRUCTOR CREDIT.—A State-licensed  
21          loan originator who is approved as an instructor of  
22          an approved continuing education course may receive  
23          credit for the originator's own annual continuing  
24          education requirement at the rate of 2 hours credit  
25          for every 1 hour taught.

1 (5) LIMITATION AND STANDARDS.—

2 (A) LIMITATION.—To maintain the inde-  
3 pendence of the approval process, the Nation-  
4 wide Mortgage Licensing System and Registry  
5 shall not directly or indirectly offer any con-  
6 tinuing education courses for loan originators.

7 (B) STANDARDS.—In approving courses  
8 under this section, the Nationwide Mortgage Li-  
9 censing System and Registry shall apply rea-  
10 sonable standards in the review and approval of  
11 courses.

12 **SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY**  
13 **FEDERAL AGENCIES.**

14 (a) DEVELOPMENT.—

15 (1) IN GENERAL.—The Federal banking agen-  
16 cies shall jointly, through the Federal Financial In-  
17 stitutions Examination Council, and together with  
18 the Farm Credit Administration, develop and main-  
19 tain a system for registering employees of a deposi-  
20 tory institution, employees of a subsidiary that is  
21 owned and controlled by a depository institution and  
22 regulated by a Federal banking agency, or employees  
23 of an institution regulated by the Farm Credit Ad-  
24 ministration, as registered loan originators with the  
25 Nationwide Mortgage Licensing System and Reg-

1        istry. The system shall be implemented before the  
2        end of the 1-year period beginning on the date of en-  
3        actment of this title.

4            (2) REGISTRATION REQUIREMENTS.—In con-  
5        nection with the registration of any loan originator  
6        under this subsection, the appropriate Federal bank-  
7        ing agency and the Farm Credit Administration  
8        shall, at a minimum, furnish or cause to be fur-  
9        nished to the Nationwide Mortgage Licensing Sys-  
10       tem and Registry information concerning the  
11       employees’s identity, including—

12            (A) fingerprints for submission to the Fed-  
13        eral Bureau of Investigation, and any govern-  
14        mental agency or entity authorized to receive  
15        such information for a State and national  
16        criminal history background check; and

17            (B) personal history and experience, in-  
18        cluding authorization for the Nationwide Mort-  
19        gage Licensing System and Registry to obtain  
20        information related to any administrative, civil  
21        or criminal findings by any governmental juris-  
22        diction.

23        (b) COORDINATION.—

24            (1) UNIQUE IDENTIFIER.—The Federal bank-  
25        ing agencies, through the Financial Institutions Ex-

1           amination Council, and the Farm Credit Administra-  
2           tion shall coordinate with the Nationwide Mortgage  
3           Licensing System and Registry to establish protocols  
4           for assigning a unique identifier to each registered  
5           loan originator that will facilitate electronic tracking  
6           and uniform identification of, and public access to,  
7           the employment history of and publicly adjudicated  
8           disciplinary and enforcement actions against loan  
9           originators.

10           (2) NATIONWIDE MORTGAGE LICENSING SYS-  
11           TEM AND REGISTRY DEVELOPMENT.—To facilitate  
12           the transfer of information required by subsection  
13           (a)(2), the Nationwide Mortgage Licensing System  
14           and Registry shall coordinate with the Federal bank-  
15           ing agencies, through the Financial Institutions Ex-  
16           amination Council, and the Farm Credit Administra-  
17           tion concerning the development and operation, by  
18           such System and Registry, of the registration  
19           functionality and data requirements for loan origina-  
20           tors.

21           (c) CONSIDERATION OF FACTORS AND PROCE-  
22           DURES.—In establishing the registration procedures under  
23           subsection (a) and the protocols for assigning a unique  
24           identifier to a registered loan originator, the Federal bank-  
25           ing agencies shall make such de minimis exceptions as

1 may be appropriate to paragraphs (1)(A) and (2) of sec-  
2 tion 1504(a), shall make reasonable efforts to utilize exist-  
3 ing information to minimize the burden of registering loan  
4 originators, and shall consider methods for automating the  
5 process to the greatest extent practicable consistent with  
6 the purposes of this title.

7 **SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOP-**  
8 **MENT BACKUP AUTHORITY TO ESTABLISH A**  
9 **LOAN ORIGINATOR LICENSING SYSTEM.**

10 (a) **BACKUP LICENSING SYSTEM.**—If, by the end of  
11 the 1-year period, or the 2-year period in the case of a  
12 State whose legislature meets only biennially, beginning  
13 on the date of the enactment of this title or at any time  
14 thereafter, the Secretary determines that a State does not  
15 have in place by law or regulation a system for licensing  
16 and registering loan originators that meets the require-  
17 ments of sections 1505 and 1506 and subsection (d) of  
18 this section, or does not participate in the Nationwide  
19 Mortgage Licensing System and Registry, the Secretary  
20 shall provide for the establishment and maintenance of a  
21 system for the licensing and registration by the Secretary  
22 of loan originators operating in such State as State-li-  
23 censed loan originators.

24 (b) **LICENSING AND REGISTRATION REQUIRE-**  
25 **MENTS.**—The system established by the Secretary under

1 subsection (a) for any State shall meet the requirements  
2 of sections 1505 and 1506 for State-licensed loan origina-  
3 tors.

4 (c) UNIQUE IDENTIFIER.—The Secretary shall co-  
5 ordinate with the Nationwide Mortgage Licensing System  
6 and Registry to establish protocols for assigning a unique  
7 identifier to each loan originator licensed by the Secretary  
8 as a State-licensed loan originator that will facilitate elec-  
9 tronic tracking and uniform identification of, and public  
10 access to, the employment history of and the publicly adju-  
11 dicated disciplinary and enforcement actions against loan  
12 originators.

13 (d) STATE LICENSING LAW REQUIREMENTS.—For  
14 purposes of this section, the law in effect in a State meets  
15 the requirements of this subsection if the Secretary deter-  
16 mines the law satisfies the following minimum require-  
17 ments:

18 (1) A State loan originator supervisory author-  
19 ity is maintained to provide effective supervision and  
20 enforcement of such law, including the suspension,  
21 termination, or nonrenewal of a license for a viola-  
22 tion of State or Federal law.

23 (2) The State loan originator supervisory au-  
24 thority ensures that all State-licensed loan origina-

1       tors operating in the State are registered with Na-  
2       tionwide Mortgage Licensing System and Registry.

3           (3) The State loan originator supervisory au-  
4       thority is required to regularly report violations of  
5       such law, as well as enforcement actions and other  
6       relevant information, to the Nationwide Mortgage  
7       Licensing System and Registry.

8           (4) The State loan originator supervisory au-  
9       thority has a process in place for challenging infor-  
10      mation contained in the Nationwide Mortgage Li-  
11      censing System and Registry.

12          (5) The State loan originator supervisory au-  
13      thority has established a mechanism to assess civil  
14      money penalties for individuals acting as mortgage  
15      originators in their State without a valid license or  
16      registration.

17          (6) The State loan originator supervisory au-  
18      thority has established minimum net worth or surety  
19      bonding requirements that reflect the dollar amount  
20      of loans originated by a residential mortgage loan  
21      originator.

22          (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-  
23      retary may extend, by not more than 24 months, the 1-  
24      year or 2-year period, as the case may be, referred to in  
25      subsection (a) for the licensing of loan originators in any

1 State under a State licensing law that meets the require-  
2 ments of sections 1505 and 1506 and subsection (d) if  
3 the Secretary determines that such State is making a good  
4 faith effort to establish a State licensing law that meets  
5 such requirements, license mortgage originators under  
6 such law, and register such originators with the Nation-  
7 wide Mortgage Licensing System and Registry.

8 (f) CONTRACTING AUTHORITY.—The Secretary may  
9 enter into contracts with qualified independent parties, as  
10 necessary to efficiently fulfill the obligations of the Sec-  
11 retary under this section.

12 **SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATION-**  
13 **WIDE MORTGAGE LICENSING AND REGISTRY**  
14 **SYSTEM.**

15 If at any time the Secretary determines that the Na-  
16 tionwide Mortgage Licensing System and Registry is fail-  
17 ing to meet the requirements and purposes of this title  
18 for a comprehensive licensing, supervisory, and tracking  
19 system for loan originators, the Secretary shall establish  
20 and maintain such a system to carry out the purposes of  
21 this title and the effective registration and regulation of  
22 loan originators.

23 **SEC. 1510. FEES.**

24 The Federal banking agencies, the Secretary, and the  
25 Nationwide Mortgage Licensing System and Registry may

1 charge reasonable fees to cover the costs of maintaining  
2 and providing access to information from the Nationwide  
3 Mortgage Licensing System and Registry, to the extent  
4 that such fees are not charged to consumers for access  
5 to such system and registry.

6 **SEC. 1511. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

7 (a) ACCESS TO RECORDS.—Notwithstanding any  
8 other provision of law, in providing identification and  
9 processing functions, the Attorney General shall provide  
10 access to all criminal history information to the appro-  
11 priate State officials responsible for regulating State-li-  
12 censed loan originators to the extent criminal history  
13 background checks are required under the laws of the  
14 State for the licensing of such loan originators.

15 (b) AGENT.—For the purposes of this section and in  
16 order to reduce the points of contact which the Federal  
17 Bureau of Investigation may have to maintain for pur-  
18 poses of subsection (a), the Conference of State Bank Su-  
19 pervisors or a wholly owned subsidiary may be used as  
20 a channeling agent of the States for requesting and dis-  
21 tributing information between the Department of Justice  
22 and the appropriate State agencies.

23 **SEC. 1512. CONFIDENTIALITY OF INFORMATION.**

24 (a) SYSTEM CONFIDENTIALITY.—Except as other-  
25 wise provided in this section, any requirement under Fed-

1 eral or State law regarding the privacy or confidentiality  
2 of any information or material provided to the Nationwide  
3 Mortgage Licensing System and Registry or a system es-  
4 tablished by the Secretary under section 1509, and any  
5 privilege arising under Federal or State law (including the  
6 rules of any Federal or State court) with respect to such  
7 information or material, shall continue to apply to such  
8 information or material after the information or material  
9 has been disclosed to the system. Such information and  
10 material may be shared with all State and Federal regu-  
11 latory officials with mortgage industry oversight authority  
12 without the loss of privilege or the loss of confidentiality  
13 protections provided by Federal and State laws.

14 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-  
15 MENTS.—Information or material that is subject to a  
16 privilege or confidentiality under subsection (a) shall not  
17 be subject to—

18 (1) disclosure under any Federal or State law  
19 governing the disclosure to the public of information  
20 held by an officer or an agency of the Federal Gov-  
21 ernment or the respective State; or

22 (2) subpoena or discovery, or admission into  
23 evidence, in any private civil action or administrative  
24 process, unless with respect to any privilege held by  
25 the Nationwide Mortgage Licensing System and

1 Registry or the Secretary with respect to such infor-  
2 mation or material, the person to whom such infor-  
3 mation or material pertains waives, in whole or in  
4 part, in the discretion of such person, that privilege.

5 (c) COORDINATION WITH OTHER LAW.—Any State  
6 law, including any State open record law, relating to the  
7 disclosure of confidential supervisory information or any  
8 information or material described in subsection (a) that  
9 is inconsistent with subsection (a) shall be superseded by  
10 the requirements of such provision to the extent State law  
11 provides less confidentiality or a weaker privilege.

12 (d) PUBLIC ACCESS TO INFORMATION.—This section  
13 shall not apply with respect to the information or material  
14 relating to the employment history of, and publicly adju-  
15 dicated disciplinary and enforcement actions against, loan  
16 originators that is included in Nationwide Mortgage Li-  
17 censing System and Registry for access by the public.

18 **SEC. 1513. LIABILITY PROVISIONS.**

19 The Secretary, any State official or agency, any Fed-  
20 eral banking agency, or any organization serving as the  
21 administrator of the Nationwide Mortgage Licensing Sys-  
22 tem and Registry or a system established by the Secretary  
23 under section 1509, or any officer or employee of any such  
24 entity, shall not be subject to any civil action or proceeding  
25 for monetary damages by reason of the good faith action

1 or omission of any officer or employee of any such entity,  
2 while acting within the scope of office or employment, re-  
3 lating to the collection, furnishing, or dissemination of in-  
4 formation concerning persons who are loan originators or  
5 are applying for licensing or registration as loan origina-  
6 tors.

7 **SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING**  
8 **SYSTEM.**

9 (a) **SUMMONS AUTHORITY.**—The Secretary may—

10 (1) examine any books, papers, records, or  
11 other data of any loan originator operating in any  
12 State which is subject to a licensing system estab-  
13 lished by the Secretary under section 1508; and

14 (2) summon any loan originator referred to in  
15 paragraph (1) or any person having possession, cus-  
16 tody, or care of the reports and records relating to  
17 such loan originator, to appear before the Secretary  
18 or any delegate of the Secretary at a time and place  
19 named in the summons and to produce such books,  
20 papers, records, or other data, and to give testi-  
21 mony, under oath, as may be relevant or material to  
22 an investigation of such loan originator for compli-  
23 ance with the requirements of this title.

24 (b) **EXAMINATION AUTHORITY.**—

1           (1) IN GENERAL.—If the Secretary establishes  
2           a licensing system under section 1508 for any State,  
3           the Secretary shall appoint examiners for the pur-  
4           poses of administering such section.

5           (2) POWER TO EXAMINE.—Any examiner ap-  
6           pointed under paragraph (1) shall have power, on  
7           behalf of the Secretary, to make any examination of  
8           any loan originator operating in any State which is  
9           subject to a licensing system established by the Sec-  
10          retary under section 1508 whenever the Secretary  
11          determines an examination of any loan originator is  
12          necessary to determine the compliance by the origi-  
13          nator with this title.

14          (3) REPORT OF EXAMINATION.—Each examiner  
15          appointed under paragraph (1) shall make a full and  
16          detailed report of examination of any loan originator  
17          examined to the Secretary.

18          (4) ADMINISTRATION OF OATHS AND AFFIRMA-  
19          TIONS; EVIDENCE.—In connection with examinations  
20          of loan originators operating in any State which is  
21          subject to a licensing system established by the Sec-  
22          retary under section 1508, or with other types of in-  
23          vestigations to determine compliance with applicable  
24          law and regulations, the Secretary and examiners  
25          appointed by the Secretary may administer oaths

1 and affirmations and examine and take and preserve  
2 testimony under oath as to any matter in respect to  
3 the affairs of any such loan originator.

4 (5) ASSESSMENTS.—The cost of conducting any  
5 examination of any loan originator operating in any  
6 State which is subject to a licensing system estab-  
7 lished by the Secretary under section 1508 shall be  
8 assessed by the Secretary against the loan originator  
9 to meet the Secretary's expenses in carrying out  
10 such examination.

11 (c) CEASE AND DESIST PROCEEDING.—

12 (1) AUTHORITY OF SECRETARY.—If the Sec-  
13 retary finds, after notice and opportunity for hear-  
14 ing, that any person is violating, has violated, or is  
15 about to violate any provision of this title, or any  
16 regulation thereunder, with respect to a State which  
17 is subject to a licensing system established by the  
18 Secretary under section 1508, the Secretary may  
19 publish such findings and enter an order requiring  
20 such person, and any other person that is, was, or  
21 would be a cause of the violation, due to an act or  
22 omission the person knew or should have known  
23 would contribute to such violation, to cease and de-  
24 sist from committing or causing such violation and  
25 any future violation of the same provision, rule, or

1 regulation. Such order may, in addition to requiring  
2 a person to cease and desist from committing or  
3 causing a violation, require such person to comply,  
4 or to take steps to effect compliance, with such pro-  
5 vision or regulation, upon such terms and conditions  
6 and within such time as the Secretary may specify  
7 in such order. Any such order may, as the Secretary  
8 deems appropriate, require future compliance or  
9 steps to effect future compliance, either permanently  
10 or for such period of time as the Secretary may  
11 specify, with such provision or regulation with re-  
12 spect to any loan originator.

13 (2) HEARING.—The notice instituting pro-  
14 ceedings pursuant to paragraph (1) shall fix a hear-  
15 ing date not earlier than 30 days nor later than 60  
16 days after service of the notice unless an earlier or  
17 a later date is set by the Secretary with the consent  
18 of any respondent so served.

19 (3) TEMPORARY ORDER.—Whenever the Sec-  
20 retary determines that the alleged violation or  
21 threatened violation specified in the notice insti-  
22 tuting proceedings pursuant to paragraph (1), or the  
23 continuation thereof, is likely to result in significant  
24 dissipation or conversion of assets, significant harm  
25 to consumers, or substantial harm to the public in-

1       terest prior to the completion of the proceedings, the  
2       Secretary may enter a temporary order requiring the  
3       respondent to cease and desist from the violation or  
4       threatened violation and to take such action to pre-  
5       vent the violation or threatened violation and to pre-  
6       vent dissipation or conversion of assets, significant  
7       harm to consumers, or substantial harm to the pub-  
8       lic interest as the Secretary deems appropriate pend-  
9       ing completion of such proceedings. Such an order  
10      shall be entered only after notice and opportunity for  
11      a hearing, unless the Secretary determines that no-  
12      tice and hearing prior to entry would be impracti-  
13      cable or contrary to the public interest. A temporary  
14      order shall become effective upon service upon the  
15      respondent and, unless set aside, limited, or sus-  
16      pended by the Secretary or a court of competent ju-  
17      risdiction, shall remain effective and enforceable  
18      pending the completion of the proceedings.

19                   (4) REVIEW OF TEMPORARY ORDERS.—

20                   (A) REVIEW BY SECRETARY.—At any time  
21                   after the respondent has been served with a  
22                   temporary cease and desist order pursuant to  
23                   paragraph (3), the respondent may apply to the  
24                   Secretary to have the order set aside, limited,  
25                   or suspended. If the respondent has been served

1 with a temporary cease and desist order entered  
2 without a prior hearing before the Secretary,  
3 the respondent may, within 10 days after the  
4 date on which the order was served, request a  
5 hearing on such application and the Secretary  
6 shall hold a hearing and render a decision on  
7 such application at the earliest possible time.

8 (B) JUDICIAL REVIEW.—Within—

9 (i) 10 days after the date the respond-  
10 ent was served with a temporary cease and  
11 desist order entered with a prior hearing  
12 before the Secretary; or

13 (ii) 10 days after the Secretary ren-  
14 ders a decision on an application and hear-  
15 ing under paragraph (1), with respect to  
16 any temporary cease and desist order en-  
17 tered without a prior hearing before the  
18 Secretary,

19 the respondent may apply to the United States  
20 district court for the district in which the re-  
21 spondent resides or has its principal place of  
22 business, or for the District of Columbia, for an  
23 order setting aside, limiting, or suspending the  
24 effectiveness or enforcement of the order, and  
25 the court shall have jurisdiction to enter such

1 an order. A respondent served with a temporary  
2 cease and desist order entered without a prior  
3 hearing before the Secretary may not apply to  
4 the court except after hearing and decision by  
5 the Secretary on the respondent's application  
6 under subparagraph (A).

7 (C) NO AUTOMATIC STAY OF TEMPORARY  
8 ORDER.—The commencement of proceedings  
9 under subparagraph (B) shall not, unless spe-  
10 cifically ordered by the court, operate as a stay  
11 of the Secretary's order.

12 (5) AUTHORITY OF THE SECRETARY TO PRO-  
13 HIBIT PERSONS FROM SERVING AS LOAN ORIGINA-  
14 TORS.—In any cease and desist proceeding under  
15 paragraph (1), the Secretary may issue an order to  
16 prohibit, conditionally or unconditionally, and per-  
17 manently or for such period of time as the Secretary  
18 shall determine, any person who has violated this  
19 title or regulations thereunder, from acting as a loan  
20 originator if the conduct of that person dem-  
21 onstrates unfitness to serve as a loan originator.

22 (d) AUTHORITY OF THE SECRETARY TO ASSESS  
23 MONEY PENALTIES.—

24 (1) IN GENERAL.—The Secretary may impose a  
25 civil penalty on a loan originator operating in any

1 State which is subject to a licensing system estab-  
2 lished by the Secretary under section 1508, if the  
3 Secretary finds, on the record after notice and op-  
4 portunity for hearing, that such loan originator has  
5 violated or failed to comply with any requirement of  
6 this title or any regulation prescribed by the Sec-  
7 retary under this title or order issued under sub-  
8 section (c).

9 (2) MAXIMUM AMOUNT OF PENALTY.—The  
10 maximum amount of penalty for each act or omis-  
11 sion described in paragraph (1) shall be \$25,000.

12 **SEC. 1515. STATE EXAMINATION AUTHORITY.**

13 In addition to any authority allowed under State law  
14 a State licensing agency shall have the authority to con-  
15 duct investigations and examinations as follows:

16 (1) For the purposes of investigating violations  
17 or complaints arising under this title, or for the pur-  
18 poses of examination, the State licensing agency may  
19 review, investigate, or examine any loan originator  
20 licensed or required to be licensed under this title,  
21 as often as necessary in order to carry out the pur-  
22 poses of this title.

23 (2) Each such loan originator shall make avail-  
24 able upon request to the State licensing agency the  
25 books and records relating to the operations of such

1       originator. The State licensing agency may have ac-  
2       cess to such books and records and interview the of-  
3       ficers, principals, loan originators, employees, inde-  
4       pendent contractors, agents, and customers of the li-  
5       censee concerning their business.

6               (3) The authority of this section shall remain in  
7       effect, whether such a loan originator acts or claims  
8       to act under any licensing or registration law of such  
9       State, or claims to act without such authority.

10              (4) No person subject to investigation or exam-  
11       ination under this section may knowingly withhold,  
12       abstract, remove, mutilate, destroy, or secrete any  
13       books, records, computer records, or other informa-  
14       tion.

15   **SEC. 1516. REPORTS AND RECOMMENDATIONS TO CON-**  
16                                   **GRESS.**

17       (a) ANNUAL REPORTS.—Not later than 1 year after  
18       the date of enactment of this title, and annually there-  
19       after, the Secretary shall submit a report to Congress on  
20       the effectiveness of the provisions of this title, including  
21       legislative recommendations, if any, for strengthening con-  
22       sumer protections, enhancing examination standards,  
23       streamlining communication between all stakeholders in-  
24       volved in residential mortgage loan origination and proc-  
25       essing, and establishing performance based bonding re-

1 requirements for mortgage originators or institutions that  
2 employ such brokers.

3 (b) LEGISLATIVE RECOMMENDATIONS.—Not later  
4 than 6 months after the date of enactment of this title,  
5 the Secretary shall make recommendations to Congress on  
6 legislative reforms to the Real Estate Settlement Proce-  
7 dures Act of 1974, that the Secretary deems appropriate  
8 to promote more transparent disclosures, allowing con-  
9 sumers to better shop and compare mortgage loan terms  
10 and settlement costs.

11 **SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORE-**  
12 **CLOSURES.**

13 (a) STUDY REQUIRED.—The Secretary shall conduct  
14 an extensive study of the root causes of default and fore-  
15 closure of home loans, using as much empirical data as  
16 is available.

17 (b) PRELIMINARY REPORT TO CONGRESS.—Not later  
18 than 6 months after the date of enactment of this title,  
19 the Secretary shall submit to Congress a preliminary re-  
20 port regarding the study required by this section.

21 (c) FINAL REPORT TO CONGRESS.—Not later than  
22 12 months after the date of enactment of this title, the  
23 Secretary shall submit to Congress a final report regard-  
24 ing the results of the study required by this section, which  
25 shall include any recommended legislation relating to the

1 study, and recommendations for best practices and for a  
2 process to provide targeted assistance to populations with  
3 the highest risk of potential default or foreclosure.

## 4 **TITLE VI—MISCELLANEOUS**

### 5 **SEC. 1601. STUDY AND REPORTS ON GUARANTEE FEES.**

6 (a) ONGOING STUDY OF FEES.—The Director shall  
7 conduct an ongoing study of fees charged by enterprises  
8 for guaranteeing a mortgage.

9 (b) COLLECTION OF DATA.—The Director shall, by  
10 regulation or order, establish procedures for the collection  
11 of data from enterprises for purposes of this subsection,  
12 including the format and the process for collection of such  
13 data.

14 (c) REPORTS TO CONGRESS.—The Director shall an-  
15 nually submit a report to Congress on the results of the  
16 study conducted under subsection (a), based on the aggre-  
17 gated data collected under subsection (a) for the subject  
18 year, regarding the amount of such fees and the criteria  
19 used by the enterprises to determine such fees.

20 (d) CONTENTS OF REPORTS.—The reports required  
21 under subsection (c) shall identify and analyze—

22 (1) the factors considered in determining the  
23 amount of the guarantee fees charged;

24 (2) the total revenue earned by the enterprises  
25 from guarantee fees;



1 (b) REPORT.—The Director shall submit a report on  
2 the study conducted under this section to the Committee  
3 on Banking, Housing, and Urban Affairs of the Senate  
4 and the Committee on Financial Services of the House of  
5 Representatives, not later than 1 year after the date of  
6 enactment of this Act.

7 **SEC. 1603. CONVERSION OF HUD CONTRACTS.**

8 (a) IN GENERAL.—Notwithstanding any other provi-  
9 sion of law, the Secretary may, at the request of an owner  
10 of a multifamily housing project that exceeds 5,000 units  
11 to which a contract for project-based rental assistance  
12 under section 8 of the United States Housing Act of 1937  
13 (“Act”) (42 U.S.C. 1437f) and a Rental Assistance Pay-  
14 ment contract is subject, convert such contracts to a con-  
15 tract for project-based rental assistance under section 8  
16 of the Act.

17 (b) INITIAL RENEWAL.—

18 (1) At the request of an owner under subsection  
19 (a) made no later than 90 days prior to a conver-  
20 sion, the Secretary may, to the extent sufficient  
21 amounts are made available in appropriation Acts  
22 and notwithstanding any other law, treat the con-  
23 templated resulting contract as if such contract were  
24 eligible for initial renewal under section 524(a) of  
25 the MultiFamily Assisted Housing Reform and Af-

1       fordability Act of 1997 (42 U.S.C. 1437f note)  
2       (“MAHRA”) (42 U.S.C. 1437f note).

3           (2) A request by an owner pursuant to para-  
4       graph (1) shall be upon such terms and conditions  
5       as the Secretary may require.

6       (c) RESULTING CONTRACT.—The resulting contract  
7       shall—

8           (1) be subject to section 524(a) of MAHRA (42  
9       U.S.C. 1437f note);

10          (2) be considered for all purposes a contract  
11       that has been renewed under section 524(a) of  
12       MAHRA (42 U.S.C. 1437f note) for a term not to  
13       exceed 20 years;

14          (3) be subsequently renewable at the request of  
15       an owner, under any renewal option for which the  
16       project is eligible under MAHRA (42 U.S.C. 1437f  
17       note);

18          (4) contain provisions limiting distributions, as  
19       the Secretary determines appropriate, not to exceed  
20       10 percent of the initial investment of the owner;

21          (5) be subject to the availability of sufficient  
22       amounts in appropriation Acts; and

23          (6) be subject to such other terms and condi-  
24       tions as the Secretary considers appropriate.

1 (d) INCOME TARGETING.—To the extent that as-  
2 sisted dwelling units, subject to the resulting contract  
3 under subsection (a), serve low-income families, as defined  
4 in section 3(b)(2) of the Act (42 U.S.C. 1437a(b)(2)) the  
5 units shall be considered to be in compliance with all in-  
6 come targeting requirements under the Act (42 U.S.C.  
7 1437 et seq).

8 (e) TENANT ELIGIBILITY.—Notwithstanding any  
9 other provision of law, each family residing in an assisted  
10 dwelling unit on the date of conversion of a contract under  
11 this section, subject to the resulting contract under sub-  
12 section (a), shall be considered to meet the applicable re-  
13 quirements for income eligibility and occupancy.

14 (f) DEFINITIONS.—As used in this section—

15 (1) the term “Secretary” means the Secretary  
16 of Housing and Urban Development;

17 (2) the term “conversion” means the action  
18 under which a contract for project-based rental as-  
19 sistance under section 8 of the Act and a Rental As-  
20 sistance Payment contract become a contract for  
21 project-based rental assistance under section 8 of  
22 the Act (42 U.S.C. 1437f) pursuant to subsection  
23 (a);

1           (3) the term “resulting contract” means the  
2 new contract after a conversion pursuant to sub-  
3 section (a); and

4           (4) the term “assisted dwelling unit” means a  
5 dwelling unit in a multifamily housing project that  
6 exceeds 5,000 units that, on the date of conversion  
7 of a contract under this section, is subject to a con-  
8 tract for project-based rental assistance under sec-  
9 tion 8 of the Act (42 U.S.C. 1437f) or a Rental As-  
10 sistance Payment contract.

11 **SEC. 1604. BRIDGE DEPOSITORY INSTITUTIONS.**

12           (a) IN GENERAL.—Section 11 of the Federal Deposit  
13 Insurance Act (12 U.S.C. 1821) is amended—

14           (1) in subsection (d)(2)—

15           (A) in subsection (F), by striking “as re-  
16 ceiver” and all that follows through clause (ii)  
17 and inserting the following: “as receiver, with  
18 respect to any insured depository institution,  
19 organize a new depository institution under  
20 subsection (m) or a bridge depository institu-  
21 tion under subsection (n).”;

22           (B) in subparagraph (G), by striking “new  
23 bank or a bridge bank” and inserting “new de-  
24 pository institution or a bridge depository insti-  
25 tution”;

1           (2) in subsection (e)(10)(C), by striking “bridge  
2           bank” each place that term appears and inserting  
3           “bridge depository institution”;

4           (3) in subsection (m)—

5                 (A) in the subsection heading, by striking  
6                 “BANKS” and inserting “DEPOSITORY INSTITU-  
7                 TIONS”;

8                 (B) by striking “new bank” each place  
9                 that term appears and inserting “new depository  
10                institution”;

11                (C) by striking “such bank” each place  
12                that term appears and inserting “such depository  
13                institution”;

14                (D) in paragraph (1), by inserting “or  
15                Federal savings association” after “national  
16                bank”;

17                (E) in paragraph (6), by striking “only  
18                bank” and inserting “only depository institu-  
19                tion”;

20                (F) in paragraph (9), by inserting “or the  
21                Director of the Office of Thrift Supervision, as  
22                appropriate” after “Comptroller of the Cur-  
23                rency”;

1 (G) in paragraph (15), by striking “, but  
2 in no event” and all that follows through “lo-  
3 cated”;

4 (H) in paragraph (16)—

5 (i) by inserting “or the Director of the  
6 Office of Thrift Supervision, as appro-  
7 priate,” after “Comptroller of the Cur-  
8 rency” each place that term appears;

9 (ii) by striking “the bank” each place  
10 that term appears and inserting “the de-  
11 pository institution”;

12 (iii) by inserting “or Federal savings  
13 association” after “national bank” each  
14 place that term appears;

15 (iv) by inserting “or Federal savings  
16 associations” after “national banks”; and

17 (v) by striking “Such bank” and in-  
18 serting “Such depository institution”; and

19 (I) in paragraph (18), by inserting “or the  
20 Director of the Office of Thrift Supervision, as  
21 appropriate,” after “Comptroller of the Cur-  
22 rency” each place that term appears;

23 (4) in subsection (n)—

1 (A) in the subsection heading, by striking  
2 “BANKS” and inserting “DEPOSITORY INSTITU-  
3 TIONS”;

4 (B) by striking “bridge bank” each place  
5 that term appears and inserting “bridge deposi-  
6 tory institution”;

7 (C) by striking “bridge banks” each place  
8 that term appears (other than in paragraph  
9 (1)(A) and inserting “bridge depository institu-  
10 tions”;

11 (D) by striking “bridge bank’s” each place  
12 that term appears and inserting “bridge deposi-  
13 tory institutions”;

14 (E) by striking “insured bank” each place  
15 that term appears and inserting “insured de-  
16 pository institution”;

17 (F) by striking “insured banks” each place  
18 that term appears and inserting “insured de-  
19 pository institutions”;

20 (G) by striking “such bank” each place  
21 that term appears (other than in paragraph  
22 (4)(J)) and inserting “such depository institu-  
23 tion”;

1 (H) by striking “the bank” each place that  
2 term appears and inserting “the depository in-  
3 stitution”;

4 (I) in paragraph (1)(A)—

5 (i) by inserting “, with respect to 1 or  
6 more insured banks, or the Director of the  
7 Office of Thrift Supervision, with respect  
8 to 1 or more insured savings associations,”  
9 after “Comptroller of the Currency”;

10 (ii) by inserting “or Federal savings  
11 associations, as appropriate,” after “na-  
12 tional banks”;

13 (iii) by inserting “or Federal savings  
14 associations, as applicable,” after “banking  
15 associations”; and

16 (iv) by striking “as bridge banks” and  
17 inserting “as ‘bridge depository institu-  
18 tions’ ”;

19 (J) in paragraph (1)(B)—

20 (i) by striking “bank or banks” each  
21 place that term appears and inserting “de-  
22 pository institution or institutions”;

23 (ii) by striking “of a bank”; and

24 (iii) by striking “of that bank”;

1           (K) in paragraph (1)(E), by inserting be-  
2 fore the period “, in the case of 1 or more in-  
3 sured banks, and as a Federal savings associa-  
4 tion, in the case of 1 or more insured savings  
5 associations”;

6           (L) in paragraph (2)—

7           (i) in subparagraph by inserting “or  
8 Federal savings association” after “na-  
9 tional bank” each place that term appears;  
10 and

11           (ii) by inserting “or the Director of  
12 the Office of Thrift Supervision” after  
13 “Comptroller of the Currency”;

14           (M) in paragraph (4)—

15           (i) in subparagraph (C), by striking  
16 “under section 5138 of the Revised Stat-  
17 utes or any other” and inserting “under  
18 any”;

19           (ii) by inserting “and the Director of  
20 the Office of Thrift Supervision, as appro-  
21 priate,” after “Comptroller of the Cur-  
22 rency” each place that term appears;

23           (iii) in subparagraph (D), by striking  
24 “bank’s” and inserting “depository institu-  
25 tion’s”; and

1 (iv) in subparagraph (F), by inserting  
2 before the period “or Federal home loan  
3 bank”;

4 (N) in paragraph (8)—

5 (i) in subparagraph (A), by striking  
6 “the banks” and inserting “the depository  
7 institutions”;

8 (ii) in subparagraph (B), by striking  
9 “bank’s” and inserting “depository institu-  
10 tion’s”;

11 (O) in paragraph (11), by inserting “or a  
12 Federal savings association, as the case may  
13 be,” after “national bank” each place that term  
14 appears;

15 (P) in paragraph (12)—

16 (i) by inserting “or the Director of the  
17 Office of Thrift Supervision, as appro-  
18 priate,” after “Comptroller of the Cur-  
19 rency” each place that term appears; and

20 (ii) by inserting “or Federal savings  
21 associations, as appropriate” after “na-  
22 tional banks”; and

23 (Q) in paragraph (13), by striking “single  
24 bank” and inserting “single depository institu-  
25 tion”.

1 (b) OTHER CONFORMING AMENDMENTS.—

2 (1) FEDERAL DEPOSIT INSURANCE ACT.—The  
3 Federal Deposit Insurance Act (12 U.S.C. 1811 et  
4 seq.) is amended—

5 (A) in section 3 (12 U.S.C. 1813), by  
6 striking subsection (i) and inserting the fol-  
7 lowing:

8 “(i) NEW DEPOSITORY INSTITUTION AND BRIDGE  
9 DEPOSITORY INSTITUTION DEFINED.—

10 “(1) NEW DEPOSITORY INSTITUTION.—The  
11 term ‘new depository institution’ means a new na-  
12 tional bank, other than a bridge bank, organized by  
13 the Corporation in accordance with section 11(m).

14 “(2) BRIDGE DEPOSITORY INSTITUTION.—The  
15 term ‘bridge depository institution’ means a new na-  
16 tional bank organized by the Corporation in accord-  
17 ance with section 11(n).”;

18 (B) in section 10(d)(5)(B) (12 U.S.C.  
19 1820(d)(5)(B)), by striking “bridge bank” and  
20 inserting “bridge depository institution”; and

21 (C) in section 38(j)(2) (12 U.S.C.  
22 1831o(j)(2)), by striking “bridge bank” and in-  
23 sserting “bridge depository institution”.

24 (2) FEDERAL CREDIT UNION ACT.—Section  
25 207(c)(10)(C)(i) of the Federal Credit Union Act

1 (12 U.S.C. 1787(c)(10)(C)(i)) is amended by strik-  
2 ing “bridge bank” and inserting “bridge depository  
3 institution”.

4 (3) TITLE 11.—Section 783 of title 11, United  
5 States Code, is amended by striking “bridge bank”  
6 and inserting “bridge depository institution”.

7 (4) TITLE 26.—Section 414(l)(2)(G) of the In-  
8 ternal Revenue Code of 1986, is amended by strik-  
9 ing “bridge bank” and inserting “bridge depository  
10 institution”.

11 **SEC. 1605. SENSE OF THE SENATE.**

12 It is the sense of the Senate that in implementing  
13 or carrying out any provision of this Act, or any amend-  
14 ment made by this Act, the Senate supports a policy of  
15 noninterference regarding local government requirements  
16 that the holder of a foreclosed property maintain that  
17 property.

18 **DIVISION B—FORECLOSURE**  
19 **PREVENTION**

20 **SECTION 2001. SHORT TITLE.**

21 This division may be cited as the “Foreclosure Pre-  
22 vention Act of 2008”.

23 **SEC. 2002. EMERGENCY DESIGNATION.**

24 For purposes of Senate enforcement, all provisions of  
25 this division are designated as emergency requirements

1 and necessary to meet emergency needs pursuant to sec-  
2 tion 204 of S. Con. Res. 21 (110th Congress), the concur-  
3 rent resolution on the budget for fiscal year 2008.

4 **TITLE I—FHA MODERNIZATION**  
5 **ACT OF 2008**

6 **SEC. 2101. SHORT TITLE.**

7 This title may be cited as the “FHA Modernization  
8 Act of 2008”.

9 **Subtitle A—Building American**  
10 **Homeownership**

11 **SEC. 2111. SHORT TITLE.**

12 This subtitle may be cited as the “Building American  
13 Homeownership Act of 2008”.

14 **SEC. 2112. MAXIMUM PRINCIPAL LOAN OBLIGATION.**

15 (a) IN GENERAL.—Paragraph (2) of section  
16 203(b)(2) of the National Housing Act (12 U.S.C.  
17 1709(b)(2)) is amended—

18 (1) by amending subparagraphs (A) and (B) to  
19 read as follows:

20 “(A) not to exceed the lesser of—

21 “(i) in the case of a 1-family resi-  
22 dence, 110 percent of the median 1-family  
23 house price in the area, as determined by  
24 the Secretary; and in the case of a 2-, 3-  
25 , or 4-family residence, the percentage of

1           such median price that bears the same  
2           ratio to such median price as the dollar  
3           amount limitation in effect for 2007 under  
4           section 305(a)(2) of the Federal Home  
5           Loan Mortgage Corporation Act (12  
6           U.S.C. 1454(a)(2)) for a 2-, 3-, or 4-family  
7           residence, respectively, bears to the dollar  
8           amount limitation in effect for 2007 under  
9           such section for a 1-family residence; or

10                   “(ii) 150 percent of the dollar amount  
11           limitation determined under section  
12           305(a)(2) of the Federal Home Loan  
13           Mortgage Corporation Act for a residence  
14           of applicable size,

15           except that the dollar amount limitation in ef-  
16           fect under this subparagraph for any size resi-  
17           dence for any area may not be less than the  
18           greater of: (I) the dollar amount limitation in  
19           effect under this section for the area on October  
20           21, 1998; or (II) 65 percent of the dollar  
21           amount limitation in effect for 2007 under such  
22           section 305(a)(2) for a residence of the applica-  
23           ble size, as such limitation is adjusted by any  
24           subsequent percentage adjustments determined  
25           under clause (ii) of this subparagraph; and



1           “(B) FAMILY MEMBERS.—For purposes of  
2 this paragraph, the Secretary shall consider as  
3 cash or its equivalent any amounts borrowed  
4 from a family member (as such term is defined  
5 in section 201), subject only to the require-  
6 ments that, in any case in which the repayment  
7 of such borrowed amounts is secured by a lien  
8 against the property, that—

9                   “(i) such lien shall be subordinate to  
10 the mortgage; and

11                   “(ii) the sum of the principal obliga-  
12 tion of the mortgage and the obligation se-  
13 cured by such lien may not exceed 100  
14 percent of the appraised value of the prop-  
15 erty.

16           “(C) PROHIBITED SOURCES.—In no case  
17 shall the funds required by subparagraph (A)  
18 consist, in whole or in part, of funds provided  
19 by any of the following parties before, during,  
20 or after closing of the property sale:

21                   “(i) The seller or any other person or  
22 entity that financially benefits from the  
23 transaction.

1                   “(ii) Any third party or entity that is  
2                   reimbursed, directly or indirectly, by any of  
3                   the parties described in clause (i).”.

4 **SEC. 2114. MORTGAGE INSURANCE PREMIUMS.**

5           Section 203(c)(2) of the National Housing Act (12  
6 U.S.C. 1709(c)(2)) is amended—

7           (1) in the matter preceding subparagraph (A),  
8           by striking “or of the General Insurance Fund” and  
9           all that follows through “section 234(c),,”; and

10           (2) in subparagraph (A)—

11           (A) by striking “2.25 percent” and insert-  
12           ing “3 percent”; and

13           (B) by striking “2.0 percent” and inserting  
14           “2.75 percent”.

15 **SEC. 2115. REHABILITATION LOANS.**

16           Subsection (k) of section 203 of the National Hous-  
17 ing Act (12 U.S.C. 1709(k)) is amended—

18           (1) in paragraph (1), by striking “on” and all  
19           that follows through “1978”; and

20           (2) in paragraph (5)—

21           (A) by striking “General Insurance Fund”  
22           the first place it appears and inserting “Mutual  
23           Mortgage Insurance Fund”; and

1 (B) in the second sentence, by striking the  
2 comma and all that follows through “General  
3 Insurance Fund”.

4 **SEC. 2116. DISCRETIONARY ACTION.**

5 The National Housing Act is amended—

6 (1) in subsection (e) of section 202 (12 U.S.C.  
7 1708(e))—

8 (A) in paragraph (3)(B), by striking “sec-  
9 tion 202(e) of the National Housing Act” and  
10 inserting “this subsection”; and

11 (B) by redesignating such subsection as  
12 subsection (f);

13 (2) by striking paragraph (4) of section 203(s)  
14 (12 U.S.C. 1709(s)(4)) and inserting the following  
15 new paragraph:

16 “(4) the Secretary of Agriculture;” and

17 (3) by transferring subsection (s) of section 203  
18 (as amended by paragraph (2) of this section) to  
19 section 202, inserting such subsection after sub-  
20 section (d) of section 202, and redesignating such  
21 subsection as subsection (e).

22 **SEC. 2117. INSURANCE OF CONDOMINIUMS.**

23 (a) IN GENERAL.—Section 234 of the National  
24 Housing Act (12 U.S.C. 1715y) is amended—

25 (1) in subsection (c), in the first sentence—

1 (A) by striking “and” before “(2)”; and

2 (B) by inserting before the period at the  
3 end the following: “, and (3) the project has a  
4 blanket mortgage insured by the Secretary  
5 under subsection (d)”; and

6 (2) in subsection (g), by striking “, except  
7 that” and all that follows and inserting a period.

8 (b) DEFINITION OF MORTGAGE.—Section 201(a) of  
9 the National Housing Act (12 U.S.C. 1707(a)) is amend-  
10 ed—

11 (1) before “a first mortgage” insert “(A)”;

12 (2) by striking “or on a leasehold (1)” and in-  
13 serting “(B) a first mortgage on a leasehold on real  
14 estate (i)”;

15 (3) by striking “or (2)” and inserting “, or  
16 (ii)”; and

17 (4) by inserting before the semicolon the fol-  
18 lowing: “, or (C) a first mortgage given to secure the  
19 unpaid purchase price of a fee interest in, or long-  
20 term leasehold interest in, real estate consisting of  
21 a one-family unit in a multifamily project, including  
22 a project in which the dwelling units are attached,  
23 or are manufactured housing units, semi-detached,  
24 or detached, and an undivided interest in the com-  
25 mon areas and facilities which serve the project”.

1 (c) DEFINITION OF REAL ESTATE.—Section 201 of  
2 the National Housing Act (12 U.S.C. 1707) is amended  
3 by adding at the end the following new subsection:

4 “(g) The term ‘real estate’ means land and all nat-  
5 ural resources and structures permanently affixed to the  
6 land, including residential buildings and stationary manu-  
7 factured housing. The Secretary may not require, for  
8 treatment of any land or other property as real estate for  
9 purposes of this title, that such land or property be treated  
10 as real estate for purposes of State taxation.”.

11 **SEC. 2118. MUTUAL MORTGAGE INSURANCE FUND.**

12 (a) IN GENERAL.—Subsection (a) of section 202 of  
13 the National Housing Act (12 U.S.C. 1708(a)) is amended  
14 to read as follows:

15 “(a) MUTUAL MORTGAGE INSURANCE FUND.—

16 “(1) ESTABLISHMENT.—Subject to the provi-  
17 sions of the Federal Credit Reform Act of 1990,  
18 there is hereby created a Mutual Mortgage Insur-  
19 ance Fund (in this title referred to as the ‘Fund’),  
20 which shall be used by the Secretary to carry out the  
21 provisions of this title with respect to mortgages in-  
22 sured under section 203. The Secretary may enter  
23 into commitments to guarantee, and may guarantee,  
24 such insured mortgages.

1           “(2) LIMIT ON LOAN GUARANTEES.—The au-  
2           thority of the Secretary to enter into commitments  
3           to guarantee such insured mortgages shall be effec-  
4           tive for any fiscal year only to the extent that the  
5           aggregate original principal loan amount under such  
6           mortgages, any part of which is guaranteed, does  
7           not exceed the amount specified in appropriations  
8           Acts for such fiscal year.

9           “(3) FIDUCIARY RESPONSIBILITY.—The Sec-  
10          retary has a responsibility to ensure that the Mutual  
11          Mortgage Insurance Fund remains financially sound.

12          “(4) ANNUAL INDEPENDENT ACTUARIAL  
13          STUDY.—The Secretary shall provide for an inde-  
14          pendent actuarial study of the Fund to be conducted  
15          annually, which shall analyze the financial position  
16          of the Fund. The Secretary shall submit a report  
17          annually to the Congress describing the results of  
18          such study and assessing the financial status of the  
19          Fund. The report shall recommend adjustments to  
20          underwriting standards, program participation, or  
21          premiums, if necessary, to ensure that the Fund re-  
22          mains financially sound. The report shall also in-  
23          clude an evaluation of the quality control procedures  
24          and accuracy of information utilized in the process  
25          of underwriting loans guaranteed by the Fund. Such

1 evaluation shall include a review of the risk charac-  
2 teristics of loans based not only on borrower infor-  
3 mation and performance, but on risks associated  
4 with loans originated or funded by various entities  
5 or financial institutions.

6 “(5) QUARTERLY REPORTS.—During each fiscal  
7 year, the Secretary shall submit a report to the Con-  
8 gress for each calendar quarter, which shall specify  
9 for mortgages that are obligations of the Fund—

10 “(A) the cumulative volume of loan guar-  
11 antee commitments that have been made during  
12 such fiscal year through the end of the quarter  
13 for which the report is submitted;

14 “(B) the types of loans insured, cat-  
15 egorized by risk;

16 “(C) any significant changes between ac-  
17 tual and projected claim and prepayment activ-  
18 ity;

19 “(D) projected versus actual loss rates;  
20 and

21 “(E) updated projections of the annual  
22 subsidy rates to ensure that increases in risk to  
23 the Fund are identified and mitigated by ad-  
24 justments to underwriting standards, program

1 participation, or premiums, and the financial  
2 soundness of the Fund is maintained.

3 The first quarterly report under this paragraph shall  
4 be submitted on the last day of the first quarter of  
5 fiscal year 2008, or on the last day of the first full  
6 calendar quarter following the enactment of the  
7 Building American Homeownership Act of 2008,  
8 whichever is later.

9 “(6) ADJUSTMENT OF PREMIUMS.—If, pursu-  
10 ant to the independent actuarial study of the Fund  
11 required under paragraph (4), the Secretary deter-  
12 mines that the Fund is not meeting the operational  
13 goals established under paragraph (7) or there is a  
14 substantial probability that the Fund will not main-  
15 tain its established target subsidy rate, the Secretary  
16 may either make programmatic adjustments under  
17 this title as necessary to reduce the risk to the  
18 Fund, or make appropriate premium adjustments.

19 “(7) OPERATIONAL GOALS.—The operational  
20 goals for the Fund are—

21 “(A) to minimize the default risk to the  
22 Fund and to homeowners by among other ac-  
23 tions instituting fraud prevention quality con-  
24 trol screening not later than 18 months after

1 the date of enactment of the Building American  
2 Homeownership Act of 2008; and

3 “(B) to meet the housing needs of the bor-  
4 rowers that the single family mortgage insur-  
5 ance program under this title is designed to  
6 serve.”.

7 (b) OBLIGATIONS OF FUND.—The National Housing  
8 Act is amended as follows:

9 (1) HOMEOWNERSHIP VOUCHER PROGRAM  
10 MORTGAGES.—In section 203(v) (12 U.S.C.  
11 1709(v))—

12 (A) by striking “Notwithstanding section  
13 202 of this title, the” and inserting “The”; and

14 (B) by striking “General Insurance Fund”  
15 the first place such term appears and all that  
16 follows through the end of the subsection and  
17 inserting “Mutual Mortgage Insurance Fund”.

18 (2) HOME EQUITY CONVERSION MORTGAGES.—  
19 Section 255(i)(2)(A) of the National Housing Act  
20 (12 U.S.C. 1715z–20(i)(2)(A)) is amended by strik-  
21 ing “General Insurance Fund” and inserting “Mu-  
22 tual Mortgage Insurance Fund”.

23 (c) CONFORMING AMENDMENTS.—The National  
24 Housing Act is amended—

1           (1) in section 205 (12 U.S.C. 1711), by striking  
2 subsections (g) and (h); and

3           (2) in section 519(e) (12 U.S.C. 1735e(e)), by  
4 striking “203(b)” and all that follows through  
5 “203(i)” and inserting “203, except as determined  
6 by the Secretary”.

7 **SEC. 2119. HAWAIIAN HOME LANDS AND INDIAN RESERVA-**  
8 **TIONS.**

9           (a) HAWAIIAN HOME LANDS.—Section 247(c) of the  
10 National Housing Act (12 U.S.C. 1715z–12(c)) is amend-  
11 ed—

12           (1) by striking “General Insurance Fund estab-  
13 lished in section 519” and inserting “Mutual Mort-  
14 gage Insurance Fund”; and

15           (2) in the second sentence, by striking “(1) all  
16 references” and all that follows through “and (2)”.

17           (b) INDIAN RESERVATIONS.—Section 248(f) of the  
18 National Housing Act (12 U.S.C. 1715z–13(f)) is amend-  
19 ed—

20           (1) by striking “General Insurance Fund” the  
21 first place it appears through “519” and inserting  
22 “Mutual Mortgage Insurance Fund”; and

23           (2) in the second sentence, by striking “(1) all  
24 references” and all that follows through “and (2)”.

1 **SEC. 2120. CONFORMING AND TECHNICAL AMENDMENTS.**

2 (a) REPEALS.—The following provisions of the Na-  
3 tional Housing Act are repealed:

4 (1) Subsection (i) of section 203 (12 U.S.C.  
5 1709(i)).

6 (2) Subsection (o) of section 203 (12 U.S.C.  
7 1709(o)).

8 (3) Subsection (p) of section 203 (12 U.S.C.  
9 1709(p)).

10 (4) Subsection (q) of section 203 (12 U.S.C.  
11 1709(q)).

12 (5) Section 222 (12 U.S.C. 1715m).

13 (6) Section 237 (12 U.S.C. 1715z–2).

14 (7) Section 245 (12 U.S.C. 1715z–10).

15 (b) DEFINITION OF AREA.—Section 203(u)(2)(A) of  
16 the National Housing Act (12 U.S.C. 1709(u)(2)(A)) is  
17 amended by striking “shall” and all that follows and in-  
18 serting “means a metropolitan statistical area as estab-  
19 lished by the Office of Management and Budget;”.

20 (c) DEFINITION OF STATE.—Section 201(d) of the  
21 National Housing Act (12 U.S.C. 1707(d)) is amended by  
22 striking “the Trust Territory of the Pacific Islands” and  
23 inserting “the Commonwealth of the Northern Mariana  
24 Islands”.

1 **SEC. 2121. INSURANCE OF MORTGAGES.**

2 Subsection (n)(2) of section 203 of the National  
3 Housing Act (12 U.S.C. 1709(n)(2)) is amended—

4 (1) in subparagraph (A), by inserting “or sub-  
5 ordinate mortgage or” before “lien given”; and

6 (2) in subparagraph (C), by inserting “or sub-  
7 ordinate mortgage or” before “lien”.

8 **SEC. 2122. HOME EQUITY CONVERSION MORTGAGES.**

9 (a) IN GENERAL.—Section 255 of the National  
10 Housing Act (12 U.S.C. 1715z–20) is amended—

11 (1) in subsection (b)(2), insert “‘real estate,’”  
12 after “‘mortgagor,’”;

13 (2) by amending subsection (d)(1) to read as  
14 follows:

15 “(1) have been originated by a mortgagee ap-  
16 proved by the Secretary;”;

17 (3) by amending subsection (d)(2)(B) to read  
18 as follows:

19 “(B) has received adequate counseling, as  
20 provided in subsection (f), by an independent  
21 third party that is not, either directly or indi-  
22 rectly, associated with or compensated by a  
23 party involved in—

24 “(i) originating or servicing the mort-  
25 gage;

1                   “(ii) funding the loan underlying the  
2                   mortgage; or

3                   “(iii) the sale of annuities, invest-  
4                   ments, long-term care insurance, or any  
5                   other type of financial or insurance prod-  
6                   uct;”;

7                   (4) in subsection (f)—

8                   (A) by striking “(f) INFORMATION SERV-  
9                   ICES FOR MORTGAGORS.—” and inserting “(f)  
10                  COUNSELING SERVICES AND INFORMATION FOR  
11                  MORTGAGORS.—”; and

12                  (B) by amending the matter preceding  
13                  paragraph (1) to read as follows: “The Sec-  
14                  retary shall provide or cause to be provided ade-  
15                  quate counseling for the mortgagor, as de-  
16                  scribed in subsection (d)(2)(B). Such counseling  
17                  shall be provided by counselors that meet quali-  
18                  fication standards and follow uniform coun-  
19                  seling protocols. The qualification standards  
20                  and counseling protocols shall be established by  
21                  the Secretary within 12 months of the date of  
22                  enactment of the Building American Home-  
23                  ownership Act of 2008. The protocols shall re-  
24                  quire a qualified counselor to discuss with each  
25                  mortgagor information which shall include—”

1           (5) in subsection (g), by striking “established  
2           under section 203(b)(2)” and all that follows  
3           through “located” and inserting “limitation estab-  
4           lished under section 305(a)(2) of the Federal Home  
5           Loan Mortgage Corporation Act for a 1-family resi-  
6           dence”;

7           (6) by striking subsection (l);

8           (7) by redesignating subsection (m) as sub-  
9           section (l);

10          (8) by amending subsection (l), as so redesign-  
11          nated, to read as follows:

12          “(l) FUNDING FOR COUNSELING.—The Secretary  
13          may use a portion of the mortgage insurance premiums  
14          collected under the program under this section to ade-  
15          quately fund the counseling and disclosure activities re-  
16          quired under subsection (f), including counseling for those  
17          homeowners who elect not to take out a home equity con-  
18          version mortgage, provided that the use of such funds is  
19          based upon accepted actuarial principles.”; and

20          (9) by adding at the end the following new sub-  
21          section:

22          “(m) AUTHORITY TO INSURE HOME PURCHASE  
23          MORTGAGE.—

24          “(1) IN GENERAL.—Notwithstanding any other  
25          provision of this section, the Secretary may insure,

1       upon application by a mortgagee, a home equity con-  
2       version mortgage upon such terms and conditions as  
3       the Secretary may prescribe, when the home equity  
4       conversion mortgage will be used to purchase a 1- to  
5       4-family dwelling unit, one unit of which the mort-  
6       gagor will occupy as a primary residence, and to  
7       provide for any future payments to the mortgagor,  
8       based on available equity, as authorized under sub-  
9       section (d)(9).

10               “(2) LIMITATION ON PRINCIPAL OBLIGATION.—

11       A home equity conversion mortgage insured pursu-  
12       ant to paragraph (1) shall involve a principal obliga-  
13       tion that does not exceed the dollar amount limita-  
14       tion determined under section 305(a)(2) of the Fed-  
15       eral Home Loan Mortgage Corporation Act for a 1-  
16       family residence.

17               “(n) REQUIREMENTS ON MORTGAGE ORIGINA-  
18       TORS.—

19               “(1) IN GENERAL.—The mortgagee and any  
20       other party that participates in the origination of a  
21       mortgage to be insured under this section shall—

22                       “(A) not participate in, be associated with,  
23                       or employ any party that participates in or is  
24                       associated with any other financial or insurance  
25                       activity; or

1           “(B) demonstrate to the Secretary that the  
2 mortgagee or other party maintains, or will  
3 maintain, firewalls and other safeguards de-  
4 signed to ensure that—

5           “(i) individuals participating in the  
6 origination of the mortgage shall have no  
7 involvement with, or incentive to provide  
8 the mortgagor with, any other financial or  
9 insurance product; and

10           “(ii) the mortgagor shall not be re-  
11 quired, directly or indirectly, as a condition  
12 of obtaining a mortgage under this section,  
13 to purchase any other financial or insur-  
14 ance product.

15           “(2) APPROVAL OF OTHER PARTIES.—All par-  
16 ties that participate in the origination of a mortgage  
17 to be insured under this section shall be approved by  
18 the Secretary.

19           “(o) PROHIBITION AGAINST REQUIREMENTS TO  
20 PURCHASE ADDITIONAL PRODUCTS.—The mortgagee or  
21 any other party shall not be required by the mortgagor  
22 or any other party to purchase an insurance, annuity, or  
23 other additional product as a requirement or condition of  
24 eligibility for insurance under subsection (c).

1           “(p) STUDY TO DETERMINE CONSUMER PROTEC-  
2 TIONS AND UNDERWRITING STANDARDS.—The Secretary  
3 shall conduct a study to examine and determine appro-  
4 priate consumer protections and underwriting standards  
5 to ensure that the purchase of products referred to in sub-  
6 section (o) is appropriate for the consumer. In conducting  
7 such study, the Secretary shall consult with consumer ad-  
8 vocates (including recognized experts in consumer protec-  
9 tion), industry representatives, representatives of coun-  
10 seling organizations, and other interested parties.”.

11           (b) MORTGAGES FOR COOPERATIVES.—Subsection  
12 (b) of section 255 of the National Housing Act (12 U.S.C.  
13 1715z–20(b)) is amended—

14           (1) in paragraph (4)—

15           (A) by inserting “a first or subordinate  
16 mortgage or lien” before “on all stock”;

17           (B) by inserting “unit” after “dwelling”;

18           and

19           (C) by inserting “a first mortgage or first  
20 lien” before “on a leasehold”; and

21           (2) in paragraph (5), by inserting “a first or  
22 subordinate lien on” before “all stock”.

23           (c) LIMITATION ON ORIGINATION FEES.—Section  
24 255 of the National Housing Act (12 U.S.C. 1715z–20),  
25 as amended by the preceding provisions of this section,

1 is further amended by adding at the end the following new  
2 subsection:

3 “(r) LIMITATION ON ORIGINATION FEES.—The Sec-  
4 retary shall establish limits on the origination fee that may  
5 be charged to a mortgagor under a mortgage insured  
6 under this section, which limitations shall—

7 “(1) equal 1.5 percent of the maximum claim  
8 amount of the mortgage unless adjusted thereafter  
9 on the basis of—

10 “(A) the costs to the mortgagor; and

11 “(B) the impact of such fees on the reverse  
12 mortgage market;

13 “(2) be subject to a minimum allowable  
14 amount;

15 “(3) provide that the origination fee may be  
16 fully financed with the mortgage;

17 “(4) include any fees paid to correspondent  
18 mortgagees approved by the Secretary; and

19 “(5) have the same effective date as subsection  
20 (m)(2) regarding the limitation on principal obliga-  
21 tion.”.

22 (d) STUDY REGARDING PROGRAM COSTS AND CRED-  
23 IT AVAILABILITY.—

24 (1) IN GENERAL.—The Comptroller General of  
25 the United States shall conduct a study regarding

1 the costs and availability of credit under the home  
2 equity conversion mortgages for elderly homeowners  
3 program under section 255 of the National Housing  
4 Act (12 U.S.C. 1715z-20) (in this subsection re-  
5 ferred to as the “program”).

6 (2) PURPOSE.—The purpose of the study re-  
7 quired under paragraph (1) is to help Congress ana-  
8 lyze and determine the effects of limiting the  
9 amounts of the costs or fees under the program  
10 from the amounts charged under the program as of  
11 the date of the enactment of this title.

12 (3) CONTENT OF REPORT.—The study required  
13 under paragraph (1) should focus on—

14 (A) the cost to mortgagors of participating  
15 in the program;

16 (B) the financial soundness of the pro-  
17 gram;

18 (C) the availability of credit under the pro-  
19 gram; and

20 (D) the costs to elderly homeowners par-  
21 ticipating in the program, including—

22 (i) mortgage insurance premiums  
23 charged under the program;

24 (ii) up-front fees charged under the  
25 program; and

1 (iii) margin rates charged under the  
2 program.

3 (4) TIMING OF REPORT.—Not later than 12  
4 months after the date of the enactment of this title,  
5 the Comptroller General shall submit a report to the  
6 Committee on Banking, Housing, and Urban Affairs  
7 of the Senate and the Committee on Financial Serv-  
8 ices of the House of Representatives setting forth  
9 the results and conclusions of the study required  
10 under paragraph (1).

11 **SEC. 2123. ENERGY EFFICIENT MORTGAGES PROGRAM.**

12 Section 106(a)(2) of the Energy Policy Act of 1992  
13 (42 U.S.C. 12712 note) is amended—

14 (1) by amending subparagraph (C) to read as  
15 follows:

16 “(C) COSTS OF IMPROVEMENTS.—The cost  
17 of cost-effective energy efficiency improvements  
18 shall not exceed the greater of—

19 “(i) 5 percent of the property value  
20 (not to exceed 5 percent of the limit estab-  
21 lished under section 203(b)(2)(A)) of the  
22 National Housing Act (12 U.S.C.  
23 1709(b)(2)(A); or

1 “(ii) 2 percent of the limit established  
2 under section 203(b)(2)(B) of such Act.”;  
3 and

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

5 “(D) LIMITATION.—In any fiscal year, the  
6 aggregate number of mortgages insured pursu-  
7 ant to this section may not exceed 5 percent of  
8 the aggregate number of mortgages for 1- to 4-  
9 family residences insured by the Secretary of  
10 Housing and Urban Development under title II  
11 of the National Housing Act (12 U.S.C. 1707  
12 et seq.) during the preceding fiscal year.”.

13 **SEC. 2124. PILOT PROGRAM FOR AUTOMATED PROCESS**  
14 **FOR BORROWERS WITHOUT SUFFICIENT**  
15 **CREDIT HISTORY.**

16 (a) ESTABLISHMENT.—Title II of the National Hous-  
17 ing Act (12 U.S.C. 1707 et seq.) is amended by adding  
18 at the end the following new section:

19 **“SEC. 257. PILOT PROGRAM FOR AUTOMATED PROCESS**  
20 **FOR BORROWERS WITHOUT SUFFICIENT**  
21 **CREDIT HISTORY.**

22 “(a) ESTABLISHMENT.—The Secretary shall carry  
23 out a pilot program to establish, and make available to  
24 mortgagees, an automated process for providing alter-  
25 native credit rating information for mortgagors and pro-

1 spective mortgagors under mortgages on 1- to 4-family  
2 residences to be insured under this title who have insuffi-  
3 cient credit histories for determining their creditworthi-  
4 ness. Such alternative credit rating information may in-  
5 clude rent, utilities, and insurance payment histories, and  
6 such other information as the Secretary considers appro-  
7 priate.

8       “(b) SCOPE.—The Secretary may carry out the pilot  
9 program under this section on a limited basis or scope,  
10 and may consider limiting the program to first-time home-  
11 buyers.

12       “(c) LIMITATION.—In any fiscal year, the aggregate  
13 number of mortgages insured pursuant to the automated  
14 process established under this section may not exceed 5  
15 percent of the aggregate number of mortgages for 1- to  
16 4-family residences insured by the Secretary under this  
17 title during the preceding fiscal year.

18       “(d) SUNSET.—After the expiration of the 5-year pe-  
19 riod beginning on the date of the enactment of the Build-  
20 ing American Homeownership Act of 2008, the Secretary  
21 may not enter into any new commitment to insure any  
22 mortgage, or newly insure any mortgage, pursuant to the  
23 automated process established under this section.”.

24       (b) GAO REPORT.—Not later than the expiration of  
25 the two-year period beginning on the date of the enact-

1 ment of this subtitle, the Comptroller General of the  
2 United States shall submit to the Congress a report identi-  
3 fying the number of additional mortgagors served using  
4 the automated process established pursuant to section 257  
5 of the National Housing Act (as added by the amendment  
6 made by subsection (a) of this section) and the impact  
7 of such process and the insurance of mortgages pursuant  
8 to such process on the safety and soundness of the insur-  
9 ance funds under the National Housing Act of which such  
10 mortgages are obligations.

11 **SEC. 2125. HOMEOWNERSHIP PRESERVATION.**

12 The Secretary of Housing and Urban Development  
13 and the Commissioner of the Federal Housing Adminis-  
14 tration, in consultation with industry, the Neighborhood  
15 Reinvestment Corporation, and other entities involved in  
16 foreclosure prevention activities, shall—

17 (1) develop and implement a plan to improve  
18 the Federal Housing Administration's loss mitiga-  
19 tion process; and

20 (2) report such plan to the Committee on  
21 Banking, Housing, and Urban Affairs of the Senate  
22 and the Committee on Financial Services of the  
23 House of Representatives.

1 **SEC. 2126. USE OF FHA SAVINGS FOR IMPROVEMENTS IN**  
2 **FHA TECHNOLOGIES, PROCEDURES, PROC-**  
3 **ESSES, PROGRAM PERFORMANCE, STAFFING,**  
4 **AND SALARIES.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—There is  
6 authorized to be appropriated for each of fiscal years 2009  
7 through 2013, \$25,000,000, from negative credit subsidy  
8 for the mortgage insurance programs under title II of the  
9 National Housing Act, to the Secretary of Housing and  
10 Urban Development for increasing funding for the purpose  
11 of improving technology, processes, program performance,  
12 eliminating fraud, and for providing appropriate staffing  
13 in connection with the mortgage insurance programs  
14 under title II of the National Housing Act.

15 (b) CERTIFICATION.—The authorization under sub-  
16 section (a) shall not be effective for a fiscal year unless  
17 the Secretary of Housing and Urban Development has, by  
18 rulemaking in accordance with section 553 of title 5,  
19 United States Code (notwithstanding subsections (a)(2),  
20 (b)(B), and (d)(3) of such section), made a determination  
21 that—

22 (1) premiums being, or to be, charged during  
23 such fiscal year for mortgage insurance under title  
24 II of the National Housing Act are established at  
25 the minimum amount sufficient to—

1           (A) comply with the requirements of sec-  
2           tion 205(f) of such Act (relating to required  
3           capital ratio for the Mutual Mortgage Insur-  
4           ance Fund); and

5           (B) ensure the safety and soundness of the  
6           other mortgage insurance funds under such  
7           Act; and

8           (2) any negative credit subsidy for such fiscal  
9           year resulting from such mortgage insurance pro-  
10          grams adequately ensures the efficient delivery and  
11          availability of such programs.

12          (c) STUDY AND REPORT.—The Secretary of Housing  
13          and Urban Development shall conduct a study to obtain  
14          recommendations from participants in the private residen-  
15          tial (both single family and multifamily) mortgage lending  
16          business and the secondary market for such mortgages on  
17          how best to update and upgrade processes and tech-  
18          nologies for the mortgage insurance programs under title  
19          II of the National Housing Act so that the procedures for  
20          originating, insuring, and servicing of such mortgages con-  
21          form with those customarily used by secondary market  
22          purchasers of residential mortgage loans. Not later than  
23          the expiration of the 12-month period beginning on the  
24          date of the enactment of this title, the Secretary shall sub-  
25          mit a report to the Congress describing the progress made

1 and to be made toward updating and upgrading such pro-  
2 cesses and technology, and providing appropriate staffing  
3 for such mortgage insurance programs.

4 **SEC. 2127. POST-PURCHASE HOUSING COUNSELING ELIGI-**  
5 **BILITY IMPROVEMENTS.**

6 Section 106(c)(4) of the Housing and Urban Devel-  
7 opment Act of 1968 (12 U.S.C. 1701x(c)(4)) is amended:

8 (1) in subparagraph (C)—

9 (A) in clause (i), by striking “; or” and in-  
10 sserting a semicolon;

11 (B) in clause (ii), by striking the period at  
12 the end and inserting a semicolon; and

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

14 “(iii) a significant reduction in the in-  
15 come of the household due to divorce or  
16 death; or

17 “(iv) a significant increase in basic ex-  
18 penses of the homeowner or an immediate  
19 family member of the homeowner (includ-  
20 ing the spouse, child, or parent for whom  
21 the homeowner provides substantial care or  
22 financial assistance) due to—

23 “(I) an unexpected or significant  
24 increase in medical expenses;

25 “(II) a divorce;

1                   “(III) unexpected and significant  
2                   damage to the property, the repair of  
3                   which will not be covered by private or  
4                   public insurance; or

5                   “(IV) a large property-tax in-  
6                   crease; or”;

7                   (2) by striking the matter that follows subpara-  
8                   graph (C); and

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

10                   “(D) the Secretary of Housing and Urban  
11                   Development determines that the annual in-  
12                   come of the homeowner is no greater than the  
13                   annual income established by the Secretary as  
14                   being of low- or moderate-income.”.

15 **SEC. 2128. PRE-PURCHASE HOMEOWNERSHIP COUNSELING**  
16 **DEMONSTRATION.**

17                   (a) **ESTABLISHMENT OF PROGRAM.**—For the period  
18 beginning on the date of enactment of this title and ending  
19 on the date that is 3 years after such date of enactment,  
20 the Secretary of Housing and Urban Development shall  
21 establish and conduct a demonstration program to test the  
22 effectiveness of alternative forms of pre-purchase home-  
23 ownership counseling for eligible homebuyers.

24                   (b) **FORMS OF COUNSELING.**—The Secretary of  
25 Housing and Urban Development shall provide to eligible

1 homebuyers pre-purchase homeownership counseling  
2 under this section in the form of—

3 (1) telephone counseling;

4 (2) individualized in-person counseling;

5 (3) web-based counseling;

6 (4) counseling classes; or

7 (5) any other form or type of counseling that  
8 the Secretary may, in his discretion, determine ap-  
9 propriate.

10 (c) SIZE OF PROGRAM.—The Secretary shall make  
11 available the pre-purchase homeownership counseling de-  
12 scribed in subsection (b) to not more than 3,000 eligible  
13 homebuyers in any given year.

14 (d) INCENTIVE TO PARTICIPATE.—The Secretary of  
15 Housing and Urban Development may provide incentives  
16 to eligible homebuyers to participate in the demonstration  
17 program established under subsection (a). Such incentives  
18 may include the reduction of any insurance premium  
19 charges owed by the eligible homebuyer to the Secretary.

20 (e) ELIGIBLE HOMEBUYER DEFINED.—For purposes  
21 of this section an “eligible homebuyer” means a first-time  
22 homebuyer who has been approved for a home loan with  
23 a loan-to-value ratio between 97 percent and 98.5 percent.

24 (f) REPORT TO CONGRESS.—The Secretary of Hous-  
25 ing and Urban Development shall report to the Committee

1 on Banking, Housing, and Urban Affairs of the Senate  
2 and the Committee on Financial Services of the House of  
3 Representative—

4 (1) on an annual basis, on the progress and re-  
5 sults of the demonstration program established  
6 under subsection (a); and

7 (2) for the period beginning on the date of en-  
8 actment of this title and ending on the date that is  
9 5 years after such date of enactment, on the pay-  
10 ment history and delinquency rates of eligible home-  
11 buyers who participated in the demonstration pro-  
12 gram.

13 **SEC. 2129. FRAUD PREVENTION.**

14 Section 1014 of title 18, United States Code, is  
15 amended in the first sentence—

16 (1) by inserting “the Federal Housing Adminis-  
17 tration,” before “the Farm Credit Administration”;  
18 and

19 (2) by striking “commitment, or loan” and in-  
20 sserting “commitment, loan, or insurance agreement  
21 or application for insurance or a guarantee”.

1 **SEC. 2130. LIMITATION ON MORTGAGE INSURANCE PRE-**  
2 **MIUM INCREASES.**

3 (a) IN GENERAL.—Notwithstanding any other provi-  
4 sion of law, including any provision of this title and any  
5 amendment made by this title—

6 (1) for the period beginning on the date of the  
7 enactment of this title and ending on October 1,  
8 2009, the premiums charged for mortgage insurance  
9 under multifamily housing programs under the Na-  
10 tional Housing Act may not be increased above the  
11 premium amounts in effect under such program on  
12 October 1, 2006, unless the Secretary of Housing  
13 and Urban Development determines that, absent  
14 such increase, insurance of additional mortgages  
15 under such program would, under the Federal Credit  
16 Reform Act of 1990, require the appropriation of  
17 new budget authority to cover the costs (as such  
18 term is defined in section 502 of the Federal Credit  
19 Reform Act of 1990 (2 U.S.C. 661a) of such insur-  
20 ance; and

21 (2) a premium increase pursuant to paragraph  
22 (1) may be made only if not less than 30 days prior  
23 to such increase taking effect, the Secretary of  
24 Housing and Urban Development—

25 (A) notifies the Committee on Banking,  
26 Housing, and Urban Affairs of the Senate and

1           the Committee on Financial Services of the  
2           House of Representatives of such increase; and  
3                   (B) publishes notice of such increase in the  
4           Federal Register.

5           (b) WAIVER.—The Secretary of Housing and Urban  
6 Development may waive the 30-day notice requirement  
7 under subsection (a)(2), if the Secretary determines that  
8 waiting 30-days before increasing premiums would cause  
9 substantial damage to the solvency of multifamily housing  
10 programs under the National Housing Act.

11 **SEC. 2131. SAVINGS PROVISION.**

12           Any mortgage insured under title II of the National  
13 Housing Act before the date of enactment of this subtitle  
14 shall continue to be governed by the laws, regulations, or-  
15 ders, and terms and conditions to which it was subject  
16 on the day before the date of the enactment of this sub-  
17 title.

18 **SEC. 2132. IMPLEMENTATION.**

19           The Secretary of Housing and Urban Development  
20 shall by notice establish any additional requirements that  
21 may be necessary to immediately carry out the provisions  
22 of this subtitle. The notice shall take effect upon issuance.

1 **SEC. 2133. MORATORIUM ON IMPLEMENTATION OF RISK-**  
2 **BASED PREMIUMS.**

3 (a) IN GENERAL.—During the 12-month period be-  
4 ginning on the date of enactment of this Act, the Secretary  
5 of Housing and Urban Development shall not enact, exe-  
6 cute, or take any action to make effective the planned im-  
7 plementation of risk-based premiums, which are designed  
8 for mortgage lenders to offer borrowers an FHA-insured  
9 product that provides a range of mortgage insurance pre-  
10 mium pricing, based on the risk that the insurance con-  
11 tract represents, as such planned implementation was set  
12 forth in the Notice published in the Federal Register on  
13 May 13, 2008 (Vol. 73, No. 93, Pages 27703 through  
14 27711)(effective July 14, 2008).

15 (b) INSURANCE OF MORTGAGES UNDER THE NA-  
16 TIONAL HOUSING ACT.—During the 12-month period be-  
17 ginning on the date of enactment of this Act, the Secretary  
18 of Housing and Urban Development shall not enact, exe-  
19 cute, or take any action to make effective the implementa-  
20 tion of any other new risk-based premium product related  
21 to the insurance of any mortgage on a single family resi-  
22 dence under title II of the National Housing Act, where  
23 the premium price for such new product is based in whole  
24 or in part on a borrower's Decision Credit Score, as that  
25 term is defined in the Notice described under subsection  
26 (a), or any successor thereto.

1 **Subtitle B—Manufactured Housing**  
2 **Loan Modernization**

3 **SEC. 2141. SHORT TITLE.**

4 This subtitle may be cited as the “FHA Manufac-  
5 tured Housing Loan Modernization Act of 2008”.

6 **SEC. 2142. PURPOSES.**

7 The purposes of this subtitle are—

8 (1) to provide adequate funding for FHA-in-  
9 sured manufactured housing loans for low- and mod-  
10 erate-income homebuyers during all economic cycles  
11 in the manufactured housing industry;

12 (2) to modernize the FHA title I insurance pro-  
13 gram for manufactured housing loans to enhance  
14 participation by Ginnie Mae and the private lending  
15 markets; and

16 (3) to adjust the low loan limits for title I man-  
17 ufactured home loan insurance to reflect the increase  
18 in costs since such limits were last increased in 1992  
19 and to index the limits to inflation.

20 **SEC. 2143. EXCEPTION TO LIMITATION ON FINANCIAL IN-**  
21 **STITUTION PORTFOLIO.**

22 The second sentence of section 2(a) of the National  
23 Housing Act (12 U.S.C. 1703(a)) is amended—

24 (1) by striking “In no case” and inserting  
25 “Other than in connection with a manufactured

1 home or a lot on which to place such a home (or  
2 both), in no case”; and

3 (2) by striking “: *Provided*, That with” and in-  
4 serting “. With”.

5 **SEC. 2144. INSURANCE BENEFITS.**

6 (a) IN GENERAL.—Subsection (b) of section 2 of the  
7 National Housing Act (12 U.S.C. 1703(b)), is amended  
8 by adding at the end the following new paragraph:

9 “(8) INSURANCE BENEFITS FOR MANUFAC-  
10 TURED HOUSING LOANS.—Any contract of insurance  
11 with respect to loans, advances of credit, or pur-  
12 chases in connection with a manufactured home or  
13 a lot on which to place a manufactured home (or  
14 both) for a financial institution that is executed  
15 under this title after the date of the enactment of  
16 the FHA Manufactured Housing Loan Moderniza-  
17 tion Act of 2008 by the Secretary shall be conclusive  
18 evidence of the eligibility of such financial institution  
19 for insurance, and the validity of any contract of in-  
20 surance so executed shall be incontestable in the  
21 hands of the bearer from the date of the execution  
22 of such contract, except for fraud or misrepresenta-  
23 tion on the part of such institution.”.

24 (b) APPLICABILITY.—The amendment made by sub-  
25 section (a) shall only apply to loans that are registered

1 or endorsed for insurance after the date of the enactment  
2 of this title.

3 **SEC. 2145. MAXIMUM LOAN LIMITS.**

4 (a) DOLLAR AMOUNTS.—Paragraph (1) of section  
5 2(b) of the National Housing Act (12 U.S.C. 1703(b)(1))  
6 is amended—

7 (1) in clause (ii) of subparagraph (A), by strik-  
8 ing “\$17,500” and inserting “\$25,090”;

9 (2) in subparagraph (C) by striking “\$48,600”  
10 and inserting “\$69,678”;

11 (3) in subparagraph (D) by striking “\$64,800”  
12 and inserting “\$92,904”;

13 (4) in subparagraph (E) by striking “\$16,200”  
14 and inserting “\$23,226”; and

15 (5) by realigning subparagraphs (C), (D), and  
16 (E) 2 ems to the left so that the left margins of  
17 such subparagraphs are aligned with the margins of  
18 subparagraphs (A) and (B).

19 (b) ANNUAL INDEXING.—Subsection (b) of section 2  
20 of the National Housing Act (12 U.S.C. 1703(b)), as  
21 amended by the preceding provisions of this title, is fur-  
22 ther amended by adding at the end the following new para-  
23 graph:

24 “(9) ANNUAL INDEXING OF MANUFACTURED  
25 HOUSING LOANS.—The Secretary shall develop a

1 method of indexing in order to annually adjust the  
2 loan limits established in subparagraphs (A)(ii), (C),  
3 (D), and (E) of this subsection. Such index shall be  
4 based on the manufactured housing price data col-  
5 lected by the United States Census Bureau. The  
6 Secretary shall establish such index no later than 1  
7 year after the date of the enactment of the FHA  
8 Manufactured Housing Loan Modernization Act of  
9 2008.”

10 (c) TECHNICAL AND CONFORMING CHANGES.—Para-  
11 graph (1) of section 2(b) of the National Housing Act (12  
12 U.S.C. 1703(b)(1)) is amended—

13 (1) by striking “No” and inserting “Except as  
14 provided in the last sentence of this paragraph, no”;  
15 and

16 (2) by adding after and below subparagraph  
17 (G) the following:

18 “The Secretary shall, by regulation, annually increase  
19 the dollar amount limitations in subparagraphs (A)(ii),  
20 (C), (D), and (E) (as such limitations may have been pre-  
21 viously adjusted under this sentence) in accordance with  
22 the index established pursuant to paragraph (9).”.

23 **SEC. 2146. INSURANCE PREMIUMS.**

24 Subsection (f) of section 2 of the National Housing  
25 Act (12 U.S.C. 1703(f)) is amended—

1           (1) by inserting “(1) PREMIUM CHARGES.—”  
2           after “(f)”; and

3           (2) by adding at the end the following new  
4           paragraph:

5           “(2) MANUFACTURED HOME LOANS.—Notwith-  
6           standing paragraph (1), in the case of a loan, advance of  
7           credit, or purchase in connection with a manufactured  
8           home or a lot on which to place such a home (or both),  
9           the premium charge for the insurance granted under this  
10          section shall be paid by the borrower under the loan or  
11          advance of credit, as follows:

12           “(A) At the time of the making of the loan, ad-  
13          vance of credit, or purchase, a single premium pay-  
14          ment in an amount not to exceed 2.25 percent of the  
15          amount of the original insured principal obligation.

16           “(B) In addition to the premium under sub-  
17          paragraph (A), annual premium payments during  
18          the term of the loan, advance, or obligation pur-  
19          chased in an amount not exceeding 1.0 percent of  
20          the remaining insured principal balance (excluding  
21          the portion of the remaining balance attributable to  
22          the premium collected under subparagraph (A) and  
23          without taking into account delinquent payments or  
24          prepayments).

1           “(C) Premium charges under this paragraph  
2 shall be established in amounts that are sufficient,  
3 but do not exceed the minimum amounts necessary,  
4 to maintain a negative credit subsidy for the pro-  
5 gram under this section for insurance of loans, ad-  
6 vances of credit, or purchases in connection with a  
7 manufactured home or a lot on which to place such  
8 a home (or both), as determined based upon risk to  
9 the Federal Government under existing underwriting  
10 requirements.

11           “(D) The Secretary may increase the limita-  
12 tions on premium payments to percentages above  
13 those set forth in subparagraphs (A) and (B), but  
14 only if necessary, and not in excess of the minimum  
15 increase necessary, to maintain a negative credit  
16 subsidy as described in subparagraph (C).”.

17 **SEC. 2147. TECHNICAL CORRECTIONS.**

18           (a) DATES.—Subsection (a) of section 2 of the Na-  
19 tional Housing Act (12 U.S.C. 1703(a)) is amended—

20           (1) by striking “on and after July 1, 1939,”  
21 each place such term appears; and

22           (2) by striking “made after the effective date of  
23 the Housing Act of 1954”.

1 (b) AUTHORITY OF SECRETARY.—Subsection (c) of  
2 section 2 of the National Housing Act (12 U.S.C. 1703(e))  
3 is amended to read as follows:

4 “(c) HANDLING AND DISPOSAL OF PROPERTY.—

5 “(1) AUTHORITY OF SECRETARY.—Notwith-  
6 standing any other provision of law, the Secretary  
7 may—

8 “(A) deal with, complete, rent, renovate,  
9 modernize, insure, or assign or sell at public or  
10 private sale, or otherwise dispose of, for cash or  
11 credit in the Secretary’s discretion, and upon  
12 such terms and conditions and for such consid-  
13 eration as the Secretary shall determine to be  
14 reasonable, any real or personal property con-  
15 veyed to or otherwise acquired by the Secretary,  
16 in connection with the payment of insurance  
17 heretofore or hereafter granted under this title,  
18 including any evidence of debt, contract, claim,  
19 personal property, or security assigned to or  
20 held by him in connection with the payment of  
21 insurance heretofore or hereafter granted under  
22 this section; and

23 “(B) pursue to final collection, by way of  
24 compromise or otherwise, all claims assigned to  
25 or held by the Secretary and all legal or equi-

1           table rights accruing to the Secretary in con-  
2           nection with the payment of such insurance, in-  
3           cluding unpaid insurance premiums owed in  
4           connection with insurance made available by  
5           this title.

6           “(2) ADVERTISEMENTS FOR PROPOSALS.—Sec-  
7           tion 3709 of the Revised Statutes shall not be con-  
8           strued to apply to any contract of hazard insurance  
9           or to any purchase or contract for services or sup-  
10          plies on account of such property if the amount  
11          thereof does not exceed \$25,000.

12          “(3) DELEGATION OF AUTHORITY.—The power  
13          to convey and to execute in the name of the Sec-  
14          retary, deeds of conveyance, deeds of release, assign-  
15          ments and satisfactions of mortgages, and any other  
16          written instrument relating to real or personal prop-  
17          erty or any interest therein heretofore or hereafter  
18          acquired by the Secretary pursuant to the provisions  
19          of this title may be exercised by an officer appointed  
20          by the Secretary without the execution of any ex-  
21          press delegation of power or power of attorney.  
22          Nothing in this subsection shall be construed to pre-  
23          vent the Secretary from delegating such power by  
24          order or by power of attorney, in the Secretary’s dis-

1           cretion, to any officer or agent the Secretary may  
2           appoint.”.

3 **SEC. 2148. REVISION OF UNDERWRITING CRITERIA.**

4           (a) IN GENERAL.—Subsection (b) of section 2 of the  
5 National Housing Act (12 U.S.C. 1703(b)), as amended  
6 by the preceding provisions of this title, is further amend-  
7 ed by adding at the end the following new paragraph:

8                   “(10) FINANCIAL SOUNDNESS OF MANUFAC-  
9           TURED HOUSING PROGRAM.—The Secretary shall es-  
10           tablish such underwriting criteria for loans and ad-  
11           vances of credit in connection with a manufactured  
12           home or a lot on which to place a manufactured  
13           home (or both), including such loans and advances  
14           represented by obligations purchased by financial in-  
15           stitutions, as may be necessary to ensure that the  
16           program under this title for insurance for financial  
17           institutions against losses from such loans, advances  
18           of credit, and purchases is financially sound.”.

19           (b) TIMING.—Not later than the expiration of the 6-  
20 month period beginning on the date of the enactment of  
21 this title, the Secretary of Housing and Urban Develop-  
22 ment shall revise the existing underwriting criteria for the  
23 program referred to in paragraph (10) of section 2(b) of  
24 the National Housing Act (as added by subsection (a) of

1 this section) in accordance with the requirements of such  
2 paragraph.

3 **SEC. 2149. PROHIBITION AGAINST KICKBACKS AND UN-**  
4 **EARNED FEES.**

5 Title I of the National Housing Act is amended by  
6 adding at the end of section 9 the following new section:

7 **“SEC. 10. PROHIBITION AGAINST KICKBACKS AND UN-**  
8 **EARNED FEES.**

9 “(a) IN GENERAL.—Except as provided in subsection  
10 (b), the provisions of sections 3, 8, 16, 17, 18, and 19  
11 of the Real Estate Settlement Procedures Act of 1974 (12  
12 U.S.C. 2601 et seq.) shall apply to each sale of a manufac-  
13 tured home financed with an FHA-insured loan or exten-  
14 sion of credit, as well as to services rendered in connection  
15 with such transactions.

16 “(b) AUTHORITY OF THE SECRETARY.—The Sec-  
17 retary is authorized to determine the manner and extent  
18 to which the provisions of sections 3, 8, 16, 17, 18, and  
19 19 of the Real Estate Settlement Procedures Act of 1974  
20 (12 U.S.C. 2601 et seq.) may reasonably be applied to  
21 the transactions described in subsection (a), and to grant  
22 such exemptions as may be necessary to achieve the pur-  
23 poses of this section.

24 “(c) DEFINITIONS.—For purposes of this section—

1           “(1) the term ‘federally related mortgage loan’  
2           as used in sections 3, 8, 16, 17, 18, and 19 of the  
3           Real Estate Settlement Procedures Act of 1974 (12  
4           U.S.C. 2601 et seq.) shall include an FHA-insured  
5           loan or extension of credit made to a borrower for  
6           the purpose of purchasing a manufactured home  
7           that the borrower intends to occupy as a personal  
8           residence; and

9           “(2) the term ‘real estate settlement service’ as  
10          used in sections 3, 8, 16, 17, 18, and 19 of the Real  
11          Estate Settlement Procedures Act of 1974 (12  
12          U.S.C. 2601 et seq.) shall include any service ren-  
13          dered in connection with a loan or extension of cred-  
14          it insured by the Federal Housing Administration  
15          for the purchase of a manufactured home.

16          “(d) UNFAIR AND DECEPTIVE PRACTICES.—In con-  
17          nection with the purchase of a manufactured home fi-  
18          nanced with a loan or extension of credit insured by the  
19          Federal Housing Administration under this title, the Sec-  
20          retary shall prohibit acts or practices in connection with  
21          loans or extensions of credit that the Secretary finds to  
22          be unfair, deceptive, or otherwise not in the interests of  
23          the borrower.”.

1 **SEC. 2150. LEASEHOLD REQUIREMENTS.**

2 Subsection (b) of section 2 of the National Housing  
3 Act (12 U.S.C. 1703(b)), as amended by the preceding  
4 provisions of this title, is further amended by adding at  
5 the end the following new paragraph:

6 “(11) LEASEHOLD REQUIREMENTS.—No insur-  
7 ance shall be granted under this section to any such  
8 financial institution with respect to any obligation  
9 representing any such loan, advance of credit, or  
10 purchase by it, made for the purposes of financing  
11 a manufactured home which is intended to be situ-  
12 ated in a manufactured home community pursuant  
13 to a lease, unless such lease—

14 “(A) expires not less than 3 years after the  
15 origination date of the obligation;

16 “(B) is renewable upon the expiration of  
17 the original 3 year term by successive 1 year  
18 terms; and

19 “(C) requires the lessor to provide the les-  
20 see written notice of termination of the lease  
21 not less than 180 days prior to the expiration  
22 of the current lease term in the event the lessee  
23 is required to move due to the closing of the  
24 manufactured home community, and further  
25 provides that failure to provide such notice to  
26 the mortgagor in a timely manner will cause the

1 lease term, at its expiration, to automatically  
2 renew for an additional 1 year term.”.

3 **TITLE II—MORTGAGE FORE-**  
4 **CLOSURE PROTECTIONS FOR**  
5 **SERVICEMEMBERS**

6 **SEC. 2201. TEMPORARY INCREASE IN MAXIMUM LOAN**  
7 **GUARANTY AMOUNT FOR CERTAIN HOUSING**  
8 **LOANS GUARANTEED BY THE SECRETARY OF**  
9 **VETERANS AFFAIRS.**

10 Notwithstanding subparagraph (C) of section  
11 3703(a)(1) of title 38, United States Code, for purposes  
12 of any loan described in subparagraph (A)(i)(IV) of such  
13 section that is originated during the period beginning on  
14 the date of the enactment of this Act and ending on De-  
15 cember 31, 2008, the term “maximum guaranty amount”  
16 shall mean an amount equal to 25 percent of the higher  
17 of—

18 (1) the limitation determined under section  
19 305(a)(2) of the Federal Home Loan Mortgage Cor-  
20 poration Act (12 U.S.C. 1454(a)(2)) for the cal-  
21 endar year in which the loan is originated for a sin-  
22 gle-family residence; or

23 (2) 125 percent of the area median price for a  
24 single-family residence, but in no case to exceed 175  
25 percent of the limitation determined under such sec-

1           tion 305(a)(2) for the calendar year in which the  
2           loan is originated for a single-family residence.

3 **SEC. 2202. COUNSELING ON MORTGAGE FORECLOSURES**  
4                           **FOR MEMBERS OF THE ARMED FORCES RE-**  
5                           **TURNING FROM SERVICE ABROAD.**

6           (a) IN GENERAL.—The Secretary of Defense shall  
7 develop and implement a program to advise members of  
8 the Armed Forces (including members of the National  
9 Guard and Reserve) who are returning from service on  
10 active duty abroad (including service in Operation Iraqi  
11 Freedom and Operation Enduring Freedom) on actions to  
12 be taken by such members to prevent or forestall mortgage  
13 foreclosures.

14           (b) ELEMENTS.—The program required by sub-  
15 section (a) shall include the following:

16                   (1) Credit counseling.

17                   (2) Home mortgage counseling.

18                   (3) Such other counseling and information as  
19 the Secretary considers appropriate for purposes of  
20 the program.

21           (c) TIMING OF PROVISION OF COUNSELING.—Coun-  
22 seling and other information under the program required  
23 by subsection (a) shall be provided to a member of the  
24 Armed Forces covered by the program as soon as prac-

1 ticable after the return of the member from service as de-  
2 scribed in subsection (a).

3 **SEC. 2203. ENHANCEMENT OF PROTECTIONS FOR**  
4 **SERVICEMEMBERS RELATING TO MORT-**  
5 **GAGES AND MORTGAGE FORECLOSURES.**

6 (a) EXTENSION OF PERIOD OF PROTECTIONS  
7 AGAINST MORTGAGE FORECLOSURES.—

8 (1) EXTENSION OF PROTECTION PERIOD.—Sub-  
9 section (c) of section 303 of the Servicemembers  
10 Civil Relief Act (50 U.S.C. App. 533) is amended by  
11 striking “90 days” and inserting “9 months”.

12 (2) EXTENSION OF STAY OF PROCEEDINGS PE-  
13 RIOD.—Subsection (b) of such section is amended by  
14 striking “90 days” and inserting “9 months”.

15 (b) TREATMENT OF MORTGAGES AS OBLIGATIONS  
16 SUBJECT TO INTEREST RATE LIMITATION.—Section 207  
17 of the Servicemembers Civil Relief Act (50 U.S.C. App.  
18 527) is amended—

19 (1) in subsection (a)(1), by striking “in excess  
20 of 6 percent” the second place it appears and all  
21 that follows and inserting “in excess of 6 percent—

22 “(A) during the period of military service  
23 and one year thereafter, in the case of an obli-  
24 gation or liability consisting of a mortgage,

1 trust deed, or other security in the nature of a  
2 mortgage; or

3 “(B) during the period of military service,  
4 in the case of any other obligation or liability.”;  
5 and

6 (2) by striking subsection (d) and inserting the  
7 following new subsection:

8 “(d) DEFINITIONS.—In this section:

9 “(1) INTEREST.—The term ‘interest’ includes  
10 service charges, renewal charges, fees, or any other  
11 charges (except bona fide insurance) with respect to  
12 an obligation or liability.

13 “(2) OBLIGATION OR LIABILITY.—The term  
14 ‘obligation or liability’ includes an obligation or li-  
15 ability consisting of a mortgage, trust deed, or other  
16 security in the nature of a mortgage.”.

17 (c) EFFECTIVE DATE; SUNSET.—

18 (1) EFFECTIVE DATE.—The amendment made  
19 by subsection (a) shall take effect on the date of en-  
20 actment of this Act.

21 (2) SUNSET.—The amendments made by sub-  
22 section (a) shall expire on December 31, 2010. Ef-  
23 fective January 1, 2011, the provisions of sub-  
24 sections (b) and (c) of section 303 of the  
25 Servicemembers Civil Relief Act, as in effect on the

1 day before the date of the enactment of this Act, are  
2 hereby revived.

3 **TITLE III—EMERGENCY ASSIST-**  
4 **ANCE FOR THE REDEVELOP-**  
5 **MENT OF ABANDONED AND**  
6 **FORECLOSED HOMES**

7 **SEC. 2301. EMERGENCY ASSISTANCE FOR THE REDEVELOP-**  
8 **MENT OF ABANDONED AND FORECLOSED**  
9 **HOMES.**

10 (a) DIRECT APPROPRIATIONS.—There are appro-  
11 priated out of any money in the Treasury not otherwise  
12 appropriated for the fiscal year 2008, \$4,000,000,000, to  
13 remain available until expended, for assistance to States  
14 and units of general local government (as such terms are  
15 defined in section 102 of the Housing and Community De-  
16 velopment Act of 1974 (42 U.S.C. 5302)) for the redevel-  
17 opment of abandoned and foreclosed upon homes and resi-  
18 dential properties.

19 (b) ALLOCATION OF APPROPRIATED AMOUNTS.—

20 (1) IN GENERAL.—The amounts appropriated  
21 or otherwise made available to States and units of  
22 general local government under this section shall be  
23 allocated based on a funding formula established by  
24 the Secretary of Housing and Urban Development  
25 (in this title referred to as the “Secretary”).

1           (2) FORMULA TO BE DEVISED SWIFTLY.—The  
2 funding formula required under paragraph (1) shall  
3 be established not later than 60 days after the date  
4 of enactment of this section.

5           (3) CRITERIA.—The funding formula required  
6 under paragraph (1) shall ensure that any amounts  
7 appropriated or otherwise made available under this  
8 section are allocated to States and units of general  
9 local government with the greatest need, as such  
10 need is determined in the discretion of the Secretary  
11 based on—

12                   (A) the number and percentage of home  
13 foreclosures in each State or unit of general  
14 local government;

15                   (B) the number and percentage of homes  
16 financed by a subprime mortgage related loan  
17 in each State or unit of general local govern-  
18 ment; and

19                   (C) the number and percentage of homes  
20 in default or delinquency in each State or unit  
21 of general local government.

22           (4) DISTRIBUTION.—Amounts appropriated or  
23 otherwise made available under this section shall be  
24 distributed according to the funding formula estab-  
25 lished by the Secretary under paragraph (1) not

1 later than 30 days after the establishment of such  
2 formula.

3 (c) USE OF FUNDS.—

4 (1) IN GENERAL.—Any State or unit of general  
5 local government that receives amounts pursuant to  
6 this section shall, not later than 18 months after the  
7 receipt of such amounts, use such amounts to pur-  
8 chase and redevelop abandoned and foreclosed  
9 homes and residential properties.

10 (2) PRIORITY.—Any State or unit of general  
11 local government that receives amounts pursuant to  
12 this section shall in distributing such amounts give  
13 priority emphasis and consideration to those metro-  
14 politan areas, metropolitan cities, urban areas, rural  
15 areas, low- and moderate-income areas, and other  
16 areas with the greatest need, including those—

17 (A) with the greatest percentage of home  
18 foreclosures;

19 (B) with the highest percentage of homes  
20 financed by a subprime mortgage related loan;  
21 and

22 (C) identified by the State or unit of gen-  
23 eral local government as likely to face a signifi-  
24 cant rise in the rate of home foreclosures.

1           (3) ELIGIBLE USES.—Amounts made available  
2 under this section may be used to—

3           (A) establish financing mechanisms for  
4 purchase and redevelopment of foreclosed upon  
5 homes and residential properties, including such  
6 mechanisms as soft-seconds, loan loss reserves,  
7 and shared-equity loans for low- and moderate-  
8 income homebuyers;

9           (B) purchase and rehabilitate homes and  
10 residential properties that have been abandoned  
11 or foreclosed upon, in order to sell, rent, or re-  
12 develop such homes and properties;

13           (C) establish land banks for homes that  
14 have been foreclosed upon;

15           (D) demolish blighted structures; and

16           (E) redevelop demolished or vacant prop-  
17 erties.

18       (d) LIMITATIONS.—

19           (1) ON PURCHASES.—Any purchase of a fore-  
20 closed upon home or residential property under this  
21 section shall be at a discount from the current mar-  
22 ket appraised value of the home or property, taking  
23 into account its current condition, and such discount  
24 shall ensure that purchasers are paying below-mar-  
25 ket value for the home or property.

1           (2) SALE OF HOMES.—If an abandoned or fore-  
2           closed upon home or residential property is pur-  
3           chased, redeveloped, or otherwise sold to an indi-  
4           vidual as a primary residence, then such sale shall  
5           be in an amount equal to or less than the cost to  
6           acquire and redevelop or rehabilitate such home or  
7           property up to a decent, safe, and habitable condi-  
8           tion.

9           (3) REINVESTMENT OF PROFITS.—

10           (A) PROFITS FROM SALES, RENTALS, AND  
11           REDEVELOPMENT.—

12           (i) 5-YEAR REINVESTMENT PERIOD.—

13           During the 5-year period following the  
14           date of enactment of this Act, any revenue  
15           generated from the sale, rental, redevelop-  
16           ment, rehabilitation, or any other eligible  
17           use that is in excess of the cost to acquire  
18           and redevelop (including reasonable devel-  
19           opment fees) or rehabilitate an abandoned  
20           or foreclosed upon home or residential  
21           property shall be provided to and used by  
22           the State or unit of general local govern-  
23           ment in accordance with, and in further-  
24           ance of, the intent and provisions of this  
25           section.

1 (ii) DEPOSITS IN THE TREASURY.—

2 (I) PROFITS.—Upon the expira-  
3 tion of the 5-year period set forth  
4 under clause (i), any revenue gen-  
5 erated from the sale, rental, redevelop-  
6 ment, rehabilitation, or any other  
7 eligible use that is in excess of the  
8 cost to acquire and redevelop (includ-  
9 ing reasonable development fees) or  
10 rehabilitate an abandoned or fore-  
11 closed upon home or residential prop-  
12 erty shall be deposited in the Treas-  
13 ury of the United States as miscella-  
14 neous receipts, unless the Secretary  
15 approves a request to use the funds  
16 for purposes under this Act.

17 (II) OTHER AMOUNTS.—Upon  
18 the expiration of the 5-year period set  
19 forth under clause (i), any other rev-  
20 enue not described under subclause  
21 (I) generated from the sale, rental, re-  
22 development, rehabilitation, or any  
23 other eligible use of an abandoned or  
24 foreclosed upon home or residential  
25 property shall be deposited in the

1 Treasury of the United States as mis-  
2 cellaneous receipts.

3 (B) OTHER REVENUES.—Any revenue gen-  
4 erated under subparagraphs (A), (C) or (D) of  
5 subsection (c)(3) shall be provided to and used  
6 by the State or unit of general local government  
7 in accordance with, and in furtherance of, the  
8 intent and provisions of this section.

9 (e) RULES OF CONSTRUCTION.—

10 (1) IN GENERAL.—Except as otherwise pro-  
11 vided by this section, amounts appropriated, reve-  
12 nues generated, or amounts otherwise made avail-  
13 able to States and units of general local government  
14 under this section shall be treated as though such  
15 funds were community development block grant  
16 funds under title I of the Housing and Community  
17 Development Act of 1974 (42 U.S.C. 5301 et seq.).

18 (2) NO MATCH.—No matching funds shall be  
19 required in order for a State or unit of general local  
20 government to receive any amounts under this sec-  
21 tion.

22 (f) AUTHORITY TO SPECIFY ALTERNATIVE REQUIRE-  
23 MENTS.—

24 (1) IN GENERAL.—In administering any  
25 amounts appropriated or otherwise made available

1       under this section, the Secretary may specify alter-  
2       native requirements to any provision under title I of  
3       the Housing and Community Development Act of  
4       1974 (except for those related to fair housing, non-  
5       discrimination, labor standards, and the environ-  
6       ment) in accordance with the terms of this section  
7       and for the sole purpose of expediting the use of  
8       such funds.

9           (2) NOTICE.—The Secretary shall provide writ-  
10       ten notice of its intent to exercise the authority to  
11       specify alternative requirements under paragraph (1)  
12       to the Committee on Banking, Housing and Urban  
13       Affairs of the Senate and the Committee on Finan-  
14       cial Services of the House of Representatives not  
15       later than 10 business days before such exercise of  
16       authority is to occur.

17           (3) LOW AND MODERATE INCOME REQUIRE-  
18       MENT.—

19           (A) IN GENERAL.—Notwithstanding the  
20       authority of the Secretary under paragraph

21       (1)—

22           (i) all of the funds appropriated or  
23       otherwise made available under this section  
24       shall be used with respect to individuals

1 and families whose income does not exceed  
2 120 percent of area median income; and

3 (ii) not less than 25 percent of the  
4 funds appropriated or otherwise made  
5 available under this section shall be used  
6 for the purchase and redevelopment of  
7 abandoned or foreclosed upon homes or  
8 residential properties that will be used to  
9 house individuals or families whose in-  
10 comes do not exceed 50 percent of area  
11 median income.

12 (B) RECURRENT REQUIREMENT.—The  
13 Secretary shall, by rule or order, ensure, to the  
14 maximum extent practicable and for the longest  
15 feasible term, that the sale, rental, or redevel-  
16 opment of abandoned and foreclosed upon homes  
17 and residential properties under this section re-  
18 main affordable to individuals or families de-  
19 scribed in subparagraph (A).

20 (g) PERIODIC AUDITS.—In consultation with the Sec-  
21 retary of Housing and Urban Development, the Comp-  
22 troller General of the United States shall conduct periodic  
23 audits to ensure that funds appropriated, made available,  
24 or otherwise distributed under this section are being used

1 in a manner consistent with the criteria provided in this  
2 section.

3 **SEC. 2302. NATIONWIDE DISTRIBUTION OF RESOURCES.**

4 Notwithstanding any other provision of this Act or  
5 the amendments made by this Act, each State shall receive  
6 not less than 0.5 percent of funds made available under  
7 section 2301 (relating to emergency assistance for the re-  
8 development of abandoned and foreclosed homes).

9 **SEC. 2303. LIMITATION ON USE OF FUNDS WITH RESPECT**  
10 **TO EMINENT DOMAIN.**

11 No State or unit of general local government may use  
12 any amounts received pursuant to section 2301 to fund  
13 any project that seeks to use the power of eminent domain,  
14 unless eminent domain is employed only for a public use:  
15 *Provided*, That for purposes of this section, public use  
16 shall not be construed to include economic development  
17 that primarily benefits private entities.

18 **SEC. 2304. LIMITATION ON DISTRIBUTION OF FUNDS.**

19 (a) IN GENERAL.—None of the funds made available  
20 under this title or title IV shall be distributed to—

21 (1) an organization which has been indicted for  
22 a violation under Federal law relating to an election  
23 for Federal office; or

24 (2) an organization which employs applicable  
25 individuals.

1 (b) APPLICABLE INDIVIDUALS DEFINED.—In this  
2 section, the term “applicable individual” means an indi-  
3 vidual who—

4 (1) is—

5 (A) employed by the organization in a per-  
6 manent or temporary capacity;

7 (B) contracted or retained by the organiza-  
8 tion; or

9 (C) acting on behalf of, or with the express  
10 or apparent authority of, the organization; and

11 (2) has been indicted for a violation under Fed-  
12 eral law relating to an election for Federal office.

13 **SEC. 2305. COUNSELING INTERMEDIARIES.**

14 Notwithstanding any other provision of this Act, the  
15 amount appropriated under section 2301(a) of this Act  
16 shall be \$3,920,000,000 and the amount appropriated  
17 under section 2401 of this Act shall be \$180,000,000: *Pro-*  
18 *vided*, That of amounts appropriated under such section  
19 2401 \$30,000,000 shall be used by the Neighborhood Re-  
20 investment Corporation (referred to in this section as the  
21 “NRC”) to make grants to counseling intermediaries ap-  
22 proved by the Department of Housing and Urban Devel-  
23 opment or the NRC to hire attorneys to assist homeowners  
24 who have legal issues directly related to the homeowner’s  
25 foreclosure, delinquency or short sale. Such attorneys shall

1 be capable of assisting homeowners of owner-occupied  
2 homes with mortgages in default, in danger of default, or  
3 subject to or at risk of foreclosure and who have legal  
4 issues that cannot be handled by counselors already em-  
5 ployed by such intermediaries: *Provided*, That of the  
6 amounts provided for in the prior provisos the NRC shall  
7 give priority consideration to counseling intermediaries  
8 and legal organizations that (1) provide legal assistance  
9 in the 100 metropolitan statistical areas (as defined by  
10 the Director of the Office of Management and Budget)  
11 with the highest home foreclosure rates, and (2) have the  
12 capacity to begin using the financial assistance within 90  
13 days after receipt of the assistance: *Provided further*, That  
14 no funds provided under this Act shall be used to provide,  
15 obtain, or arrange on behalf of a homeowner, legal rep-  
16 resentation involving or for the purposes of civil litigation.

## 17 **TITLE IV—HOUSING**

### 18 **COUNSELING RESOURCES**

#### 19 **SEC. 2401. HOUSING COUNSELING RESOURCES.**

20 There are appropriated out of any money in the  
21 Treasury not otherwise appropriated for the fiscal year  
22 2008, for an additional amount for the “Neighborhood Re-  
23 investment Corporation—Payment to the Neighborhood  
24 Reinvestment Corporation” \$100,000,000, to remain  
25 available until September 30, 2008, for foreclosure mitiga-

1 tion activities under the terms and conditions contained  
2 in the second undesignated paragraph (beginning with the  
3 phrase “For an additional amount”) under the heading  
4 “Neighborhood Reinvestment Corporation—Payment to  
5 the Neighborhood Reinvestment Corporation” of Public  
6 Law 110–161.

7 **SEC. 2402. CREDIT COUNSELING.**

8 (a) IN GENERAL.—Entities approved by the Neigh-  
9 borhood Reinvestment Corporation or the Secretary and  
10 State housing finance entities receiving funds under this  
11 title shall work to identify and coordinate with non-profit  
12 organizations operating national or statewide toll-free  
13 foreclosure prevention hotlines, including those that—

14 (1) serve as a consumer referral source and  
15 data repository for borrowers experiencing some  
16 form of delinquency or foreclosure;

17 (2) connect callers with local housing counseling  
18 agencies approved by the Neighborhood Reinvest-  
19 ment Corporation or the Secretary to assist with  
20 working out a positive resolution to their mortgage  
21 delinquency or foreclosure; or

22 (3) facilitate or offer free assistance to help  
23 homeowners to understand their options, negotiate  
24 solutions, and find the best resolution for their par-  
25 ticular circumstances.

1 **TITLE V—MORTGAGE DISCLO-**  
2 **SURE IMPROVEMENT ACT**

3 **SEC. 2501. SHORT TITLE.**

4 This title may be cited as the “Mortgage Disclosure  
5 Improvement Act of 2008”.

6 **SEC. 2502. ENHANCED MORTGAGE LOAN DISCLOSURES.**

7 (a) TRUTH IN LENDING ACT DISCLOSURES.—Sec-  
8 tion 128(b)(2) of the Truth in Lending Act (15 U.S.C.  
9 1638(b)(2)) is amended—

10 (1) by inserting “(A)” before “In the”;

11 (2) by striking “a residential mortgage trans-  
12 action, as defined in section 103(w)” and inserting  
13 “any extension of credit that is secured by the dwell-  
14 ing of a consumer”;

15 (3) by striking “before the credit is extended,  
16 or”;

17 (4) by inserting “, which shall be at least 7  
18 business days before consummation of the trans-  
19 action” after “written application”;

20 (5) by striking “, whichever is earlier”; and

21 (6) by striking “If the” and all that follows  
22 through the end of the paragraph and inserting the  
23 following:

24 “(B) In the case of an extension of credit that  
25 is secured by the dwelling of a consumer, the dislo-

1       sures provided under subparagraph (A), shall be in  
2       addition to the other disclosures required by sub-  
3       section (a), and shall—

4               “(i) state in conspicuous type size and for-  
5               mat, the following: ‘You are not required to  
6               complete this agreement merely because you  
7               have received these disclosures or signed a loan  
8               application.’; and

9               “(ii) be provided in the form of final dis-  
10              losures at the time of consummation of the  
11              transaction, in the form and manner prescribed  
12              by this section.

13             “(C) In the case of an extension of credit that  
14             is secured by the dwelling of a consumer, under  
15             which the annual rate of interest is variable, or with  
16             respect to which the regular payments may other-  
17             wise be variable, in addition to the other disclosures  
18             required by subsection (a), the disclosures provided  
19             under this subsection shall do the following:

20               “(i) Label the payment schedule as follows:  
21               ‘Payment Schedule: Payments Will Vary Based  
22               on Interest Rate Changes’.

23               “(ii) State in conspicuous type size and  
24               format examples of adjustments to the regular  
25               required payment on the extension of credit

1 based on the change in the interest rates speci-  
2 fied by the contract for such extension of credit.  
3 Among the examples required to be provided  
4 under this clause is an example that reflects the  
5 maximum payment amount of the regular re-  
6 quired payments on the extension of credit,  
7 based on the maximum interest rate allowed  
8 under the contract, in accordance with the rules  
9 of the Board. Prior to issuing any rules pursu-  
10 ant to this clause, the Board shall conduct con-  
11 sumer testing to determine the appropriate for-  
12 mat for providing the disclosures required  
13 under this subparagraph to consumers so that  
14 such disclosures can be easily understood.

15 “(D) In any case in which the disclosure state-  
16 ment under subparagraph (A) contains an annual  
17 percentage rate of interest that is no longer accu-  
18 rate, as determined under section 107(c), the cred-  
19 itor shall furnish an additional, corrected statement  
20 to the borrower, not later than 3 business days be-  
21 fore the date of consummation of the transaction.

22 “(E) The consumer shall receive the disclosures  
23 required under this paragraph before paying any fee  
24 to the creditor or other person in connection with  
25 the consumer’s application for an extension of credit

1 that is secured by the dwelling of a consumer. If the  
2 disclosures are mailed to the consumer, the con-  
3 sumer is considered to have received them 3 busi-  
4 ness days after they are mailed. A creditor or other  
5 person may impose a fee for obtaining the con-  
6 sumer's credit report before the consumer has re-  
7 ceived the disclosures under this paragraph, provided  
8 the fee is bona fide and reasonable in amount.

9 “(F) WAIVER OF TIMELINESS OF DISCLO-  
10 SURES.—To expedite consummation of a trans-  
11 action, if the consumer determines that the exten-  
12 sion of credit is needed to meet a bona fide personal  
13 financial emergency, the consumer may waive or  
14 modify the timing requirements for disclosures  
15 under subparagraph (A), provided that—

16 “(i) the term ‘bona fide personal emer-  
17 gency’ may be further defined in regulations  
18 issued by the Board;

19 “(ii) the consumer provides to the creditor  
20 a dated, written statement describing the emer-  
21 gency and specifically waiving or modifying  
22 those timing requirements, which statement  
23 shall bear the signature of all consumers enti-  
24 tled to receive the disclosures required by this  
25 paragraph; and

1           “(iii) the creditor provides to the con-  
2           sumers at or before the time of such waiver or  
3           modification, the final disclosures required by  
4           paragraph (1).

5           “(G) The requirements of subparagraphs (B),  
6           (C), (D) and (E) shall not apply to extensions of  
7           credit relating to plans described in section  
8           101(53D) of title 11, United States Code.”.

9           (b) CIVIL LIABILITY.—Section 130(a) of the Truth  
10          in Lending Act (15 U.S.C. 1640(a)) is amended—

11           (1) in paragraph (2)(A)(iii), by striking “not  
12           less than \$200 or greater than \$2,000” and insert-  
13           ing “not less than \$400 or greater than \$4,000”;  
14           and

15           (2) in the penultimate sentence of the undesignated  
16           matter following paragraph (4)—

17           (A) by inserting “or section  
18           128(b)(2)(C)(ii),” after “128(a),”; and

19           (B) by inserting “or section  
20           128(b)(2)(C)(ii)” before the period.

21          (c) EFFECTIVE DATES.—

22           (1) GENERAL DISCLOSURES.—Except as pro-  
23           vided in paragraph (2), the amendments made by  
24           subsection (a) shall become effective 12 months after  
25           the date of enactment of this Act.

1           (2) VARIABLE INTEREST RATES.—Subpara-  
2           graph (C) of section 128(b)(2) of the Truth in  
3           Lending Act (15 U.S.C. 1638(b)(2)(C)), as added by  
4           subsection (a) of this section, shall become effective  
5           on the earlier of—

6                   (A) the compliance date established by the  
7           Board for such purpose, by regulation; or

8                   (B) 30 months after the date of enactment  
9           of this Act.

10 **SEC. 2503. COMMUNITY DEVELOPMENT INVESTMENT AU-**  
11 **THORITY FOR DEPOSITORY INSTITUTIONS.**

12           (a) NATIONAL BANKS.—The first sentence of the  
13           paragraph designated as the “Eleventh” of section 5136  
14           of the Revised Statutes of the United States (12 U.S.C.  
15           24) is amended by striking “promotes the public welfare  
16           by benefitting primarily” and inserting “is designed pri-  
17           marily to promote the public welfare, including the welfare  
18           of”.

19           (b) STATE MEMBER BANKS.—The first sentence of  
20           the 23rd paragraph of section 9 of the Federal Reserve  
21           Act (12 U.S.C. 338a) is amended by striking “promotes  
22           the public welfare by benefitting primarily” and inserting  
23           “is designed primarily to promote the public welfare, in-  
24           cluding the welfare of”.

1     **TITLE VI—VETERANS HOUSING**  
2                                   **MATTERS**

3     **SEC. 2601. HOME IMPROVEMENTS AND STRUCTURAL AL-**  
4                                   **TERATIONS FOR TOTALLY DISABLED MEM-**  
5                                   **BERS OF THE ARMED FORCES BEFORE DIS-**  
6                                   **CHARGE OR RELEASE FROM THE ARMED**  
7                                   **FORCES.**

8             Section 1717 of title 38, United States Code, is  
9 amended by adding at the end the following new sub-  
10 section:

11            “(d)(1) In the case of a member of the Armed Forces  
12 who, as determined by the Secretary, has a disability per-  
13 manent in nature incurred or aggravated in the line of  
14 duty in the active military, naval, or air service, the Sec-  
15 retary may furnish improvements and structural alter-  
16 ations for such member for such disability or as otherwise  
17 described in subsection (a)(2) while such member is hos-  
18 pitalized or receiving outpatient medical care, services, or  
19 treatment for such disability if the Secretary determines  
20 that such member is likely to be discharged or released  
21 from the Armed Forces for such disability.

22            “(2) The furnishing of improvements and alterations  
23 under paragraph (1) in connection with the furnishing of  
24 medical services described in subparagraph (A) or (B) of

1 subsection (a)(2) shall be subject to the limitation speci-  
2 fied in the applicable subparagraph.”.

3 **SEC. 2602. ELIGIBILITY FOR SPECIALLY ADAPTED HOUSING**  
4 **BENEFITS AND ASSISTANCE FOR MEMBERS**  
5 **OF THE ARMED FORCES WITH SERVICE-CON-**  
6 **NECTED DISABILITIES AND INDIVIDUALS RE-**  
7 **SIDING OUTSIDE THE UNITED STATES.**

8 (a) ELIGIBILITY.—Chapter 21 of title 38, United  
9 States Code, is amended by inserting after section 2101  
10 the following new section:

11 **“§ 2101A. Eligibility for benefits and assistance: mem-**  
12 **bers of the Armed Forces with service-**  
13 **connected disabilities; individuals resid-**  
14 **ing outside the United States**

15 “(a) MEMBERS WITH SERVICE-CONNECTED DIS-  
16 ABILITIES.—(1) The Secretary may provide assistance  
17 under this chapter to a member of the Armed Forces serv-  
18 ing on active duty who is suffering from a disability that  
19 meets applicable criteria for benefits under this chapter  
20 if the disability is incurred or aggravated in line of duty  
21 in the active military, naval, or air service. Such assistance  
22 shall be provided to the same extent as assistance is pro-  
23 vided under this chapter to veterans eligible for assistance  
24 under this chapter and subject to the same requirements  
25 as veterans under this chapter.

1           “(2) For purposes of this chapter, any reference to  
2 a veteran or eligible individual shall be treated as a ref-  
3 erence to a member of the Armed Forces described in sub-  
4 section (a) who is similarly situated to the veteran or other  
5 eligible individual so referred to.

6           “(b) BENEFITS AND ASSISTANCE FOR INDIVIDUALS  
7 RESIDING OUTSIDE THE UNITED STATES.—(1) Subject  
8 to paragraph (2), the Secretary may, at the Secretary’s  
9 discretion, provide benefits and assistance under this  
10 chapter (other than benefits under section 2106 of this  
11 title) to any individual otherwise eligible for such benefits  
12 and assistance who resides outside the United States.

13           “(2) The Secretary may provide benefits and assist-  
14 ance to an individual under paragraph (1) only if—

15                 “(A) the country or political subdivision in  
16 which the housing or residence involved is or will be  
17 located permits the individual to have or acquire a  
18 beneficial property interest (as determined by the  
19 Secretary) in such housing or residence; and

20                 “(B) the individual has or will acquire a bene-  
21 ficial property interest (as so determined) in such  
22 housing or residence.

23           “(c) REGULATIONS.—Benefits and assistance under  
24 this chapter by reason of this section shall be provided

1 in accordance with such regulations as the Secretary may  
2 prescribe.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) REPEAL OF SUPERSEDED AUTHORITY.—  
5 Section 2101 of title 38, United States Code, is  
6 amended—

7 (A) by striking subsection (c); and

8 (B) by redesignating subsection (d) as sub-  
9 section (c).

10 (2) LIMITATIONS ON ASSISTANCE.—Section  
11 2102 of title 38, United States Code, is amended—

12 (A) in subsection (a)—

13 (i) by striking “veteran” each place it  
14 appears and inserting “individual”; and

15 (ii) in paragraph (3), by striking “vet-  
16 eran’s” and inserting “individual’s”;

17 (B) in subsection (b)(1), by striking “a  
18 veteran” and inserting “an individual”;

19 (C) in subsection (c)—

20 (i) by striking “a veteran” and insert-  
21 ing “an individual”; and

22 (ii) by striking “the veteran” each  
23 place it appears and inserting “the indi-  
24 vidual”; and

1 (D) in subsection (d), by striking “a vet-  
2 eran” each place it appears and inserting “an  
3 individual”.

4 (3) ASSISTANCE FOR INDIVIDUALS TEMPO-  
5 RARILY RESIDING IN HOUSING OF FAMILY MEM-  
6 BER.—Section 2102A of title 38, United States  
7 Code, is amended—

8 (A) by striking “veteran” each place it ap-  
9 pears (other than in subsection (b)) and insert-  
10 ing “individual”;

11 (B) in subsection (a), by striking “vet-  
12 eran’s” each place it appears and inserting “in-  
13 dividual’s”; and

14 (C) in subsection (b), by striking “a vet-  
15 eran” each place it appears and inserting “an  
16 individual”.

17 (4) FURNISHING OF PLANS AND SPECIFICA-  
18 TIONS.—Section 2103 of title 38, United States  
19 Code, is amended by striking “veterans” both places  
20 it appears and inserting “individuals”.

21 (5) CONSTRUCTION OF BENEFITS.—Section  
22 2104 of title 38, United States Code, is amended—

23 (A) in subsection (a), by striking “veteran”  
24 each place it appears and inserting “indi-  
25 vidual”; and

- 1 (B) in subsection (b)—  
2 (i) in the first sentence, by striking  
3 “A veteran” and inserting “An individual”;  
4 (ii) in the second sentence, by striking  
5 “a veteran” and inserting “an individual”;  
6 and  
7 (iii) by striking “such veteran” each  
8 place it appears and inserting “such indi-  
9 vidual”.

10 (6) VETERANS’ MORTGAGE LIFE INSURANCE.—  
11 Section 2106 of title 38, United States Code, is  
12 amended—

- 13 (A) in subsection (a)—  
14 (i) by striking “any eligible veteran”  
15 and inserting “any eligible individual”; and  
16 (ii) by striking “the veterans’” and  
17 inserting “the individual’s”;  
18 (B) in subsection (b), by striking “an eligi-  
19 ble veteran” and inserting “an eligible indi-  
20 vidual”;  
21 (C) in subsection (e), by striking “an eligi-  
22 ble veteran” and inserting “an individual”;  
23 (D) in subsection (h), by striking “each  
24 veteran” and inserting “each individual”;

1 (E) in subsection (i), by striking “the vet-  
2 eran’s” each place it appears and inserting “the  
3 individual’s”;

4 (F) by striking “the veteran” each place it  
5 appears and inserting “the individual”; and

6 (G) by striking “a veteran” each place it  
7 appears and inserting “an individual”.

8 (7) HEADING AMENDMENTS.—(A) The heading  
9 of section 2101 of title 38, United States Code, is  
10 amended to read as follows:

11 **“§ 2101. Acquisition and adaptation of housing: eligi-  
12 ble veterans”.**

13 (B) The heading of section 2102A of such title  
14 is amended to read as follows:

15 **“§ 2102A. Assistance for individuals residing tempo-  
16 rarily in housing owned by a family mem-  
17 ber”.**

18 (8) CLERICAL AMENDMENTS.—The table of sec-  
19 tions at the beginning of chapter 21 of title 38,  
20 United States Code, is amended—

21 (A) by striking the item relating to section  
22 2101 and inserting the following new item:

“2101. Acquisition and adaptation of housing: eligible veterans.”;

23 (B) by inserting after the item relating to  
24 section 2101, as so amended, the following new  
25 item:

“2101A. Eligibility for benefits and assistance: members of the Armed Forces with service-connected disabilities; individuals residing outside the United States.”;

1           and

2                   (C) by striking the item relating to section  
3           2102A and inserting the following new item:

“2102A. Assistance for individuals residing temporarily in housing owned by a family member.”.

4   **SEC. 2603. SPECIALLY ADAPTED HOUSING ASSISTANCE FOR**  
5                   **INDIVIDUALS WITH SEVERE BURN INJURIES.**

6       Section 2101 of title 38, United States Code, is  
7 amended—

8           (1) in subsection (a)(2), by adding at the end  
9       the following new subparagraph:

10           “(E) The disability is due to a severe burn in-  
11       jury (as determined pursuant to regulations pre-  
12       scribed by the Secretary).”; and

13           (2) in subsection (b)(2)—

14                   (A) by striking “either” and inserting  
15       “any”; and

16                   (B) by adding at the end the following new  
17       subparagraph:

18           “(C) The disability is due to a severe burn in-  
19       jury (as so determined).”.

1 **SEC. 2604. EXTENSION OF ASSISTANCE FOR INDIVIDUALS**  
2 **RESIDING TEMPORARILY IN HOUSING**  
3 **OWNED BY A FAMILY MEMBER.**

4 Section 2102A(e) of title 38, United States Code, is  
5 amended by striking “after the end of the five-year period  
6 that begins on the date of the enactment of the Veterans’  
7 Housing Opportunity and Benefits Improvement Act of  
8 2006” and inserting “after December 31, 2011”.

9 **SEC. 2605. INCREASE IN SPECIALLY ADAPTED HOUSING**  
10 **BENEFITS FOR DISABLED VETERANS.**

11 (a) IN GENERAL.—Section 2102 of title 38, United  
12 States Code, is amended—

13 (1) in subsection (b)(2), by striking “\$10,000”  
14 and inserting “\$12,000”;

15 (2) in subsection (d)—

16 (A) in paragraph (1), by striking  
17 “\$50,000” and inserting “\$60,000”; and

18 (B) in paragraph (2), by striking  
19 “\$10,000” and inserting “\$12,000”; and

20 (3) by adding at the end the following new sub-  
21 section:

22 “(e)(1) Effective on October 1 of each year (begin-  
23 ning in 2009), the Secretary shall increase the amounts  
24 described in subsection (b)(2) and paragraphs (1) and (2)  
25 of subsection (d) in accordance with this subsection.

1           “(2) The increase in amounts under paragraph (1)  
2 to take effect on October 1 of a year shall be by an amount  
3 of such amounts equal to the percentage by which—

4           “(A) the residential home cost-of-construction  
5 index for the preceding calendar year, exceeds

6           “(B) the residential home cost-of-construction  
7 index for the year preceding the year described in  
8 subparagraph (A).

9           “(3) The Secretary shall establish a residential home  
10 cost-of-construction index for the purposes of this sub-  
11 section. The index shall reflect a uniform, national average  
12 change in the cost of residential home construction, deter-  
13 mined on a calendar year basis. The Secretary may use  
14 an index developed in the private sector that the Secretary  
15 determines is appropriate for purposes of this sub-  
16 section.”.

17           (b) **EFFECTIVE DATE.**—The amendments made by  
18 this section shall take effect on July 1, 2008, and shall  
19 apply with respect to payments made in accordance with  
20 section 2102 of title 38, United States Code, on or after  
21 that date.

22 **SEC. 2606. REPORT ON SPECIALLY ADAPTED HOUSING FOR**  
23 **DISABLED INDIVIDUALS.**

24           (a) **IN GENERAL.**—Not later than December 31,  
25 2008, the Secretary of Veterans Affairs shall submit to

1 the Committee on Veterans' Affairs of the Senate and the  
2 Committee on Veterans' Affairs of the House of Rep-  
3 resentatives a report that contains an assessment of the  
4 adequacy of the authorities available to the Secretary  
5 under law to assist eligible disabled individuals in acquir-  
6 ing—

7 (1) suitable housing units with special fixtures  
8 or movable facilities required for their disabilities,  
9 and necessary land therefor;

10 (2) such adaptations to their residences as are  
11 reasonably necessary because of their disabilities;  
12 and

13 (3) residences already adapted with special fea-  
14 tures determined by the Secretary to be reasonably  
15 necessary as a result of their disabilities.

16 (b) FOCUS ON PARTICULAR DISABILITIES.—The re-  
17 port required by subsection (a) shall set forth a specific  
18 assessment of the needs of—

19 (1) veterans who have disabilities that are not  
20 described in subsections (a)(2) and (b)(2) of section  
21 2101 of title 38, United States Code; and

22 (2) other disabled individuals eligible for spe-  
23 cially adapted housing under chapter 21 of such title  
24 by reason of section 2101A of such title (as added

1 by section 2602(a) of this Act) who have disabilities  
2 that are not described in such subsections.

3 **SEC. 2607. REPORT ON SPECIALLY ADAPTED HOUSING AS-**  
4 **SISTANCE FOR INDIVIDUALS WHO RESIDE IN**  
5 **HOUSING OWNED BY A FAMILY MEMBER ON**  
6 **PERMANENT BASIS.**

7 Not later than December 31, 2008, the Secretary of  
8 Veterans Affairs shall submit to the Committee on Vet-  
9 erans' Affairs of the Senate and the Committee on Vet-  
10 erans' Affairs of the House of Representatives a report  
11 on the advisability of providing assistance under section  
12 2102A of title 38, United States Code, to veterans de-  
13 scribed in subsection (a) of such section, and to members  
14 of the Armed Forces covered by such section 2102A by  
15 reason of section 2101A of title 38, United States Code  
16 (as added by section 2602(a) of this Act), who reside with  
17 family members on a permanent basis.

18 **SEC. 2608. DEFINITION OF ANNUAL INCOME FOR PUR-**  
19 **POSES OF SECTION 8 AND OTHER PUBLIC**  
20 **HOUSING PROGRAMS.**

21 Section 3(b)(4) of the United States Housing Act of  
22 1937 (42 U.S.C. 1437a(3)(b)(4)) is amended by inserting  
23 "or any deferred Department of Veterans Affairs dis-  
24 ability benefits that are received in a lump sum amount

1 or in prospective monthly amounts” before “may not be  
2 considered”.

3 **SEC. 2609. PAYMENT OF TRANSPORTATION OF BAGGAGE**  
4 **AND HOUSEHOLD EFFECTS FOR MEMBERS**  
5 **OF THE ARMED FORCES WHO RELOCATE DUE**  
6 **TO FORECLOSURE OF LEASED HOUSING.**

7 Section 406 of title 37, United States Code, is  
8 amended—

9 (1) by redesignating subsections (k) and (l) as  
10 subsections (l) and (m), respectively; and

11 (2) by inserting after subsection (j) the fol-  
12 lowing new subsection (k):

13 “(k) A member of the armed forces who relocates  
14 from leased or rental housing by reason of the foreclosure  
15 of such housing is entitled to transportation of baggage  
16 and household effects under subsection (b)(1) in the same  
17 manner, and subject to the same conditions and limita-  
18 tions, as similarly circumstanced members entitled to  
19 transportation of baggage and household effects under  
20 that subsection.”.

Amend the title so as to read: “An Act to provide needed housing reform and for other purposes.”.