

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

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

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

Sec. 1. Short title; table of contents.

DIVISION A—HOUSING FINANCE REFORM

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 regu-
lated 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.

Sec. 1116. Inclusion of minorities and women; diversity in Agency workforce.

Sec. 1117. Temporary authority for purchase of obligations of regulated entities
by Secretary of Treasury.

Sec. 1118. Consultation between the Director of the Federal Housing Finance
Agency and the Board of Governors of the Federal Reserve Sys-
tem to ensure financial market stability .

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.

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.

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

5 ***SEC. 1101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-***
 6 ***NANCE AGENCY.***

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

1 *“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING FI-*
2 *NANCE AGENCY.*

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

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

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

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

20 *“(c) SAVINGS PROVISION.—The authority of the Direc-*
21 *tor to take actions under subtitles B and C shall not in*
22 *any way limit the general supervisory and regulatory au-*
23 *thority granted to the Director under subsection (b).*

1 **“SEC. 1312. DIRECTOR.**

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

5 “(b) *APPOINTMENT; TERM.—*

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

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

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

23 “(4) *SERVICE AFTER END OF TERM.—An indi-*
24 *vidual may serve as the Director after the expiration*
25 *of the term for which appointed until a successor has*
26 *been appointed.*

1 “(5) *TRANSITIONAL PROVISION.*—*Notwith-*
2 *standing paragraphs (1) and (2), during the period*
3 *beginning on the effective date of the Federal Housing*
4 *Finance Regulatory Reform Act of 2008, and ending*
5 *on the date on which the Director is appointed and*
6 *confirmed, the person serving as the Director of the*
7 *Office of Federal Housing Enterprise Oversight of the*
8 *Department of Housing and Urban Development on*
9 *that effective date shall act for all purposes as, and*
10 *with the full powers of, the Director.*

11 “(c) *DEPUTY DIRECTOR OF THE DIVISION OF ENTER-*
12 *PRISE REGULATION.*—

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

21 “(2) *FUNCTIONS.*—*The Deputy Director of the*
22 *Division of Enterprise Regulation shall have such*
23 *functions, powers, and duties with respect to the over-*
24 *sight of the enterprises as the Director shall prescribe.*

1 “(d) *DEPUTY DIRECTOR OF THE DIVISION OF FED-*
2 *ERAL HOME LOAN BANK REGULATION.*—

3 “(1) *IN GENERAL.*—*The Agency shall have a*
4 *Deputy Director of the Division of Federal Home*
5 *Loan Bank Regulation, who shall be designated by*
6 *the Director from among individuals who are citizens*
7 *of the United States, have a demonstrated under-*
8 *standing of financial management or oversight, and*
9 *have a demonstrated understanding of the Federal*
10 *Home Loan Bank System and housing finance.*

11 “(2) *FUNCTIONS.*—*The Deputy Director of the*
12 *Division of Federal Home Loan Bank Regulation*
13 *shall have such functions, powers, and duties with re-*
14 *spect to the oversight of the Federal Home Loan*
15 *Banks as the Director shall prescribe.*

16 “(e) *DEPUTY DIRECTOR FOR HOUSING MISSION AND*
17 *GOALS.*—

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

24 “(2) *FUNCTIONS.*—*The Deputy Director for*
25 *Housing Mission and Goals shall have such functions,*

1 *powers, and duties with respect to the oversight of the*
2 *housing mission and goals of the enterprises, and*
3 *with respect to oversight of the housing finance and*
4 *community and economic development mission of the*
5 *Federal Home Loan Banks, as the Director shall pre-*
6 *scribe.*

7 “(3) *CONSIDERATIONS.—In exercising such func-*
8 *tions, powers, and duties, the Deputy Director for*
9 *Housing Mission and Goals shall consider the dif-*
10 *ferences between the enterprises and the Federal Home*
11 *Loan Banks, including those described in section*
12 *1313(d).*

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

21 “(g) *LIMITATIONS.—The Director and each of the Dep-*
22 *uty Directors may not—*

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

1 “(2) hold any office, position, or employment in
2 any regulated entity or entity-affiliated party; or
3 “(3) have served as an executive officer or direc-
4 tor of any regulated entity or entity-affiliated party
5 at any time during the 3-year period preceding the
6 date of appointment or designation of such individual
7 as Director or Deputy Director, as applicable.”.

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

9 (a) *IN GENERAL.*—Section 1313 of the Federal Hous-
10 ing Enterprises Financial Safety and Soundness Act of
11 1992 (12 U.S.C. 4513) is amended to read as follows:

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

13 “(a) *DUTIES.*—

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

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

18 “(B) to ensure that—

19 “(i) each regulated entity operates in a
20 safe and sound manner, including mainte-
21 nance of adequate capital and internal con-
22 trols;

23 “(ii) the operations and activities of
24 each regulated entity foster liquid, efficient,
25 competitive, and resilient national housing

1 *finance markets (including activities relat-*
2 *ing to mortgages on housing for low- and*
3 *moderate-income families involving a rea-*
4 *sonable economic return that may be less*
5 *than the return earned on other activities);*

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

10 *“(iv) each regulated entity carries out*
11 *its statutory mission only through activities*
12 *that are authorized under and consistent*
13 *with this title and the authorizing statutes;*

14 *and*

15 *“(v) the activities of each regulated en-*
16 *tity 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 controlling*
24 *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 may
7 delegate to officers and employees of the Agency any of the
8 functions, powers, or duties of the Director, as the Director
9 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 a
23 regulated entity with respect to any matter under this
24 title or any other applicable provision of law, rule,
25 order, or regulation under this title, in the United

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

7 *(b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY*
8 *AND RECOMMENDATIONS.—Section 111 of Public Law 93–*
9 *495 (12 U.S.C. 250) is amended by striking ‘‘the Federal*
10 *Housing Finance Board’’ and inserting ‘‘the Director of the*
11 *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 Di-*
2 *rector.*

3 “(c) *COMPOSITION.—The Board shall be comprised of*
4 *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 Housing*
8 *and Urban Development;*

9 “(3) *1 member shall be the Chairman of the Se-*
10 *curities 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 Board*
16 *meet less frequently than once every 3 months.*

17 “(2) *SPECIAL MEETINGS.—Either the Secretary*
18 *of the Treasury, the Secretary of Housing and Urban*
19 *Development, or the Chairman of the Securities and*
20 *Exchange Commission may, upon giving written no-*
21 *tice to the Director, require a special meeting of the*
22 *Board.*

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

1 “(1) the safety and soundness of the regulated en-
2 tities;

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 reg-
8 ulated entities in carrying out their respective mis-
9 sions;

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)) is
18 amended—

19 (1) by striking “enterprise” each place that term
20 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”;

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 Hous-
22 ing Enterprises Financial Safety and Soundness Act of
23 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 re-
11 quire, by general or specific orders, a regulated entity
12 to submit regular reports, including financial state-
13 ments determined on a fair value basis, on the condi-
14 tion (including financial condition), management, ac-
15 tivities, or operations of the regulated entity, as the
16 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:

25 “(c) *PENALTIES FOR FAILURE TO MAKE REPORTS.*—

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

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

12 “(B) to submit or publish any false or mis-
13 leading report or information under this section.

14 “(2) PENALTIES.—

15 “(A) FIRST TIER.—

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

21 “(I) the subject regulated entity
22 maintains procedures reasonably
23 adapted to avoid any inadvertent error
24 and the violation was unintentional
25 and a result of such an error; or

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

4 “(ii) *BURDEN OF PROOF.—For pur-*
5 *poses of this subparagraph, the regulated*
6 *entity shall have the burden of proving that*
7 *the error was inadvertent or that a report*
8 *was inadvertently transmitted or published*
9 *late.*

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

17 “(C) *THIRD TIER.—A violation described in*
18 *paragraph (1) shall be subject to a penalty of not*
19 *more than \$1,000,000 per day for each day dur-*
20 *ing which such violation continues or such false*
21 *or misleading information is not corrected, in*
22 *any case in which the subject regulated entity*
23 *committed such violation knowingly or with*
24 *reckless disregard for the accuracy of any such*
25 *information or report.*

1 “(3) *ASSESSMENTS.*—Any penalty imposed
2 under this subsection shall be in lieu of a penalty
3 under section 1376, but shall be assessed and collected
4 by the Director in the manner provided in section
5 1376 for penalties imposed under that section, and
6 any such assessment (including the determination of
7 the amount of the penalty) shall be otherwise subject
8 to the provisions of section 1376.

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

16 (b) *CONFORMING AMENDMENT.*—The Federal Housing
17 Enterprises Financial Safety and Soundness Act of 1992
18 (12 U.S.C. 4501 et seq.) is amended by striking sections
19 1327 and 1328.

20 **SEC. 1105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**
21 **CONTRACT FOR REVIEWS OF REGULATED EN-**
22 **TITIES; OMBUDSMAN.**

23 (a) *IN GENERAL.*—Section 1317 of the Federal Hous-
24 ing Enterprises Financial Safety and Soundness Act of
25 1992 (12 U.S.C. 4517) is amended—

1 (1) *in subsection (a), by striking “enterprise”*
2 *each place that term appears and inserting “regulated*
3 *entity”;*

4 (2) *in subsection (b)—*

5 (A) *by inserting “of a regulated entity”*
6 *after “under this section”; and*

7 (B) *by striking “to determine the condition*
8 *of an enterprise for the purpose of ensuring its*
9 *financial safety and soundness” and inserting*
10 *“or appropriate”;*

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

14 (4) *by redesignating subsections (d) through (f)*
15 *as subsections (e) through (g), respectively; and*

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

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

22 (b) *DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-*
23 *ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of the*
24 *Federal Housing Enterprises Financial Safety and Sound-*

1 *ness Act of 1992 (12 U.S.C. 4517) is amended by adding*
2 *at the end the following:*

3 “(h) *APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,*
4 *AND EXAMINERS.—*

5 “(1) *APPLICABILITY.—This section shall apply*
6 *with respect to any position of examiner, accountant,*
7 *economist, and specialist in financial markets and in*
8 *technology at the Agency, with respect to supervision*
9 *and regulation of the regulated entities, that is in the*
10 *competitive service.*

11 “(2) *APPOINTMENT AUTHORITY.—The Director*
12 *may appoint candidates to any position described in*
13 *paragraph (1)—*

14 “(A) *in accordance with the statutes, rules,*
15 *and regulations governing appointments in the*
16 *excepted service; and*

17 “(B) *notwithstanding any statutes, rules,*
18 *and regulations governing appointments in the*
19 *competitive service.’’.*

20 “(c) *AMENDMENTS TO INSPECTOR GENERAL ACT.—Sec-*
21 *tion 11 of the Inspector General Act of 1978 (5 U.S.C. App.)*
22 *is amended—*

23 “(1) *in paragraph (1), by inserting ‘; the Direc-*
24 *tor of the Federal Housing Finance Agency’’ after*
25 *‘‘Social Security Administration’’; and*

1 (2) in paragraph (2), by inserting “, the Federal
2 Housing Finance Agency” after “Social Security Ad-
3 ministration”.

4 (d) *AUTHORITY TO CONTRACT FOR REVIEWS OF REG-*
5 *ULATED ENTITIES.*—Section 1319 of the Federal Housing
6 Enterprises Financial Safety and Soundness Act of 1992
7 (12 U.S.C. 4519) is amended—

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

11 (2) by striking “enterprises” and inserting “reg-
12 ulated entities”.

13 (e) *OFFICE OF THE OMBUDSMAN.*—Section 1317 of the
14 Federal Housing Enterprises Financial Safety and Sound-
15 ness Act of 1992 (12 U.S.C. 4517) is amended by adding
16 at the end the following:

17 “(i) *OMBUDSMAN.*—The Director shall establish, by
18 regulation, an Office of the Ombudsman within the Agency,
19 which shall be responsible for considering complaints and
20 appeals, from any regulated entity and any person that has
21 a business relationship with a regulated entity, regarding
22 any matter relating to the regulation and supervision of
23 such regulated entity by the Agency. The regulation issued
24 by the Director under this subsection shall specify the au-
25 thority and duties of the Office of the Ombudsman.”.

1 *SEC. 1106. ASSESSMENTS.*

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

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

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

12 *“(1) the expenses of any examinations under sec-*
13 *tion 1317 of this Act and under section 20 of the Fed-*
14 *eral Home Loan Bank Act;*

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

17 *“(3) such amounts in excess of actual expenses*
18 *for any given year as deemed necessary by the Direc-*
19 *tor to maintain a working capital fund in accordance*
20 *with subsection (e); and*

21 *“(4) the windup of the affairs of the Office of*
22 *Federal Housing Enterprise Oversight and the Fed-*
23 *eral Housing Finance Board under title III of the*
24 *Federal Housing Finance Regulatory Reform Act of*
25 *2008.”;*

26 *(2) in subsection (b)—*

1 (A) by realigning the margins of paragraph
2 (2) two ems from the left, so as to align the left
3 margin of such paragraph with the left margins
4 of paragraph (1);

5 (B) by redesignating paragraphs (2) and
6 (3) as paragraphs (3) and (4), respectively; and

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

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

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

21 “(c) INCREASED COSTS OF REGULATION.—

22 “(1) INCREASE FOR INADEQUATE CAPITALIZA-
23 TION.—The semiannual payments made pursuant to
24 subsection (b) by any regulated entity that is not
25 classified (for purposes of subtitle B) as adequately

1 *capitalized may be increased, as necessary, in the dis-*
2 *cretion of the Director to pay additional estimated*
3 *costs of regulation of the regulated entity.*

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

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

1 *made, any amount remains from such assessment,*
2 *such remaining amount shall be deducted from the as-*
3 *essment for such regulated entity for the following*
4 *semiannual period.’’;*

5 (4) *in subsection (d), by striking ‘‘If’’ and insert-*
6 *ing ‘‘Except with respect to amounts collected pursu-*
7 *ant to subsection (a)(3), if’’; and*

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

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

17 ‘‘(f) *TREATMENT OF ASSESSMENTS.—*

18 ‘‘(1) *DEPOSIT.—Amounts received by the Direc-*
19 *tor from assessments under this section may be depos-*
20 *ited by the Director in the manner provided in sec-*
21 *tion 5234 of the Revised Statutes of the United States*
22 *(12 U.S.C. 192) for monies deposited by the Comp-*
23 *troller of the Currency.*

24 ‘‘(2) *NOT GOVERNMENT FUNDS.—The amounts*
25 *received by the Director from any assessment under*

1 *this section shall not be construed to be Government*
2 *or public funds or appropriated money.*

3 *“(3) NO APPORTIONMENT OF FUNDS.—Notwith-*
4 *standing any other provision of law, the amounts re-*
5 *ceived by the Director from any assessment under this*
6 *section shall not be subject to apportionment for the*
7 *purpose of chapter 15 of title 31, United States Code,*
8 *or under any other authority.*

9 *“(4) USE OF FUNDS.—The Director may use any*
10 *amounts received by the Director from assessments*
11 *under this section for compensation of the Director*
12 *and other employees of the Agency and for all other*
13 *expenses of the Director and the Agency.*

14 *“(5) AVAILABILITY OF OVERSIGHT FUND*
15 *AMOUNTS.—Notwithstanding any other provision of*
16 *law, any amounts remaining in the Federal Housing*
17 *Enterprises Oversight Fund established under this*
18 *section (as in effect before the effective date of the Fed-*
19 *eral Housing Finance Regulatory Reform Act*
20 *of*
21 *2008, and any amounts remaining from assessments*
22 *on the Federal Home Loan Banks pursuant to section*
23 *18(b) of the Federal Home Loan Bank Act (12 U.S.C.*
24 *1438(b)), shall, upon such effective date, be treated for*
25 *purposes of this subsection as amounts received from*
 assessments under this section.

1 “(6) *TREASURY INVESTMENTS.*—

2 “(A) *AUTHORITY.*—*The Director may re-*
3 *quest the Secretary of the Treasury to invest such*
4 *portions of amounts received by the Director*
5 *from assessments paid under this section that, in*
6 *the Director’s discretion, are not required to meet*
7 *the current working needs of the Agency.*

8 “(B) *GOVERNMENT OBLIGATIONS.*—*Pursu-*
9 *ant to a request under subparagraph (A), the*
10 *Secretary of the Treasury shall invest such*
11 *amounts in Government obligations guaranteed*
12 *as to principal and interest by the United States*
13 *with maturities suitable to the needs of the Agen-*
14 *cy and bearing interest at a rate determined by*
15 *the Secretary of the Treasury taking into consid-*
16 *eration current market yields on outstanding*
17 *marketable obligations of the United States of*
18 *comparable maturity.*

19 “(g) *BUDGET AND FINANCIAL MANAGEMENT.*—

20 “(1) *FINANCIAL OPERATING PLANS AND FORE-*
21 *CASTS.*—*The Director shall provide to the Director of*
22 *the Office of Management and Budget copies of the*
23 *Director’s financial operating plans and forecasts, as*
24 *prepared by the Director in the ordinary course of the*
25 *Agency’s operations, and copies of the quarterly re-*

1 *ports of the Agency’s financial condition and results*
2 *of operations, as prepared by the Director in the ordi-*
3 *nary course of the Agency’s operations.*

4 *“(2) FINANCIAL STATEMENTS.—The Agency shall*
5 *prepare annually a statement of—*

6 *“(A) assets and liabilities and surplus or*
7 *deficit;*

8 *“(B) income and expenses; and*

9 *“(C) sources and application of funds.*

10 *“(3) FINANCIAL MANAGEMENT SYSTEMS.—The*
11 *Agency shall implement and maintain financial*
12 *management systems that—*

13 *“(A) comply substantially with Federal fi-*
14 *nancial management systems requirements and*
15 *applicable Federal accounting standards; and*

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

18 *“(4) ASSERTION OF INTERNAL CONTROLS.—The*
19 *Director shall provide to the Comptroller General of*
20 *the United States an assertion as to the effectiveness*
21 *of the internal controls that apply to financial report-*
22 *ing by the Agency, using the standards established in*
23 *section 3512(c) of title 31, United States Code.*

24 *“(5) RULE OF CONSTRUCTION.—This subsection*
25 *may not be construed as implying any obligation on*

1 *the part of the Director to consult with or obtain the*
2 *consent or approval of the Director of the Office of*
3 *Management and Budget with respect to any report,*
4 *plan, forecast, or other information referred to in*
5 *paragraph (1) or any jurisdiction or oversight over*
6 *the affairs or operations of the Agency.*

7 “(h) *AUDIT OF AGENCY.—*

8 “(1) *IN GENERAL.—The Comptroller General*
9 *shall annually audit the financial transactions of the*
10 *Agency in accordance with the United States gen-*
11 *erally accepted government auditing standards as*
12 *may be prescribed by the Comptroller General of the*
13 *United States. The audit shall be conducted at the*
14 *place or places where accounts of the Agency are nor-*
15 *mally kept. The representatives of the Government Ac-*
16 *countability Office shall have access to the personnel*
17 *and to all books, accounts, documents, papers, records*
18 *(including electronic records), reports, files, and all*
19 *other papers, automated data, things, or property be-*
20 *longing to or under the control of or used or employed*
21 *by the Agency pertaining to its financial transactions*
22 *and necessary to facilitate the audit, and such rep-*
23 *resentatives shall be afforded full*
24 *facilities for*
25 *verifying transactions with the balances or securities*
 held by depositories, fiscal agents, and custodians. All

1 *such books, accounts, documents, records,*
 reports,
2 *files, papers, and property of the Agency shall remain*
3 *in possession and custody of the Agency. The Comp-*
4 *troller General may obtain and duplicate any such*
5 *books, accounts, documents, records, working papers,*
6 *automated data and files, or other information rel-*
7 *evant to such audit without cost to the Comptroller*
8 *General and the Comptroller General's right of access*
9 *to such information shall be enforceable pursuant to*
10 *section 716(c) of title 31, United States Code.*

11 “(2) *REPORT.—The Comptroller General shall*
12 *submit to the Congress a report of each annual audit*
13 *conducted under this subsection. The report to the*
14 *Congress shall set forth the scope of the audit and*
15 *shall include the statement of assets and liabilities*
16 *and surplus or deficit, the statement of income and*
17 *expenses, the statement of sources and application of*
18 *funds, and such comments and information as may*
19 *be deemed necessary to inform Congress of the finan-*
20 *cial operations and condition of the Agency, together*
21 *with such recommendations with respect thereto as the*
22 *Comptroller General may deem advisable. A copy of*
23 *each report shall be furnished to the President and to*
24 *the Agency at the time submitted to the Congress.*

1 “(3) ASSISTANCE AND COSTS.—For the purpose
2 of conducting an audit under this subsection, the
3 Comptroller General may, in the discretion of the
4 Comptroller General, employ by contract, without re-
5 gard to section 3709 of the Revised Statutes of the
6 United States (41 U.S.C. 5), professional services of
7 firms and organizations of certified public account-
8 ants for temporary periods or for special purposes.
9 Upon the request of the Comptroller General, the Di-
10 rector of the Agency shall transfer to the Government
11 Accountability Office from funds available,
12 the
13 amount requested by the Comptroller General to cover
14 the full costs of any audit and report conducted by
15 the Comptroller General. The Comptroller General
16 shall credit funds transferred to the account estab-
17 lished for salaries and expenses of the Government Ac-
18 countability Office, and such amount shall be avail-
19 able upon receipt and without fiscal year limitation
20 to cover the full costs of the audit and report.’’.

20 **SEC. 1107. REGULATIONS AND ORDERS.**

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

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

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

6 (2) *by striking subsection (c).*

7 ***SEC. 1108. PRUDENTIAL MANAGEMENT AND OPERATIONS***
8 ***STANDARDS.***

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

13 ***“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS***
14 ***STANDARDS.***

15 “(a) *STANDARDS.*—*The Director shall establish stand-*
16 *ards, by regulation or guideline, for each regulated entity*
17 *relating to—*

18 “(1) *adequacy of internal controls and informa-*
19 *tion systems taking into account the nature and scale*
20 *of business operations;*

21 “(2) *independence and adequacy of internal*
22 *audit systems;*

23 “(3) *management of interest rate risk exposure;*

24 “(4) *management of market risk, including*
25 *standards that provide for systems that accurately*

1 *measure, monitor, and control market risks and, as*
2 *warranted, that establish limitations on market risk;*
3 *“(5) adequacy and maintenance of liquidity and*
4 *reserves;*
5 *“(6) management of asset and investment port-*
6 *folio growth;*
7 *“(7) investments and acquisitions of assets by a*
8 *regulated entity, to ensure that they are consistent*
9 *with the purposes of this title and the authorizing*
10 *statutes;*
11 *“(8) overall risk management processes, includ-*
12 *ing adequacy of oversight by senior management and*
13 *the board of directors and of processes and policies to*
14 *identify, measure, monitor, and control*
15 *material*
16 *risks, including reputational risks, and for adequate,*
17 *well-tested business resumption plans for all major*
18 *systems with remote site facilities to protect against*
19 *disruptive events;*
20 *“(9) management of credit and counterparty*
21 *risk, including systems to identify concentrations of*
22 *credit risk and prudential limits to restrict exposure*
23 *of the regulated entity to a single counterparty or*
24 *groups of related counterparties;*
25 *“(10) maintenance of adequate records, in ac-*
 cordance with consistent accounting policies
 and

1 *practices that enable the Director to evaluate the fi-*
2 *nancial condition of the regulated entity; and*

3 *“(11) such other operational and management*
4 *standards as the Director determines to be appro-*
5 *priate.*

6 *“(b) FAILURE TO MEET STANDARDS.—*

7 *“(1) PLAN REQUIREMENT.—*

8 *“(A) IN GENERAL.—If the Director deter-*
9 *mines that a regulated entity fails to meet any*
10 *standard established under subsection (a)—*

11 *“(i) if such standard is established by*
12 *regulation, the Director shall require the*
13 *regulated entity to submit an acceptable*
14 *plan to the Director within the time allowed*
15 *under subparagraph (C); and*

16 *“(ii) if such standard is established by*
17 *guideline, the Director may require the reg-*
18 *ulated entity to submit a plan described in*
19 *clause (i).*

20 *“(B) CONTENTS.—Any plan required under*
21 *subparagraph (A) shall specify the actions that*
22 *the regulated entity will take to correct the defi-*
23 *ciency. If the regulated entity is undercapital-*
24 *ized, the plan may be a part of the capital res-*

1 *toration plan for the regulated entity under sec-*
2 *tion 1369C.*

3 “(C) *DEADLINES FOR SUBMISSION AND RE-*
4 *VIEW.—The Director shall by regulation establish*
5 *deadlines that—*

6 “(i) *provide the regulated entities with*
7 *reasonable time to submit plans required*
8 *under subparagraph (A), and generally re-*
9 *quire a regulated entity to submit a plan*
10 *not later than 30 days after the Director de-*
11 *termines that the entity fails to meet any*
12 *standard established under subsection (a);*

13 *and*

14 “(ii) *require the Director to act on*
15 *plans expeditiously, and generally not later*
16 *than 30 days after the plan is submitted.*

17 “(2) *REQUIRED ORDER UPON FAILURE TO SUB-*
18 *MIT OR IMPLEMENT PLAN.—If a regulated entity fails*
19 *to submit an acceptable plan within the time allowed*
20 *under paragraph (1)(C), or fails in any material re-*
21 *spect to implement a plan accepted by the Director,*
22 *the following shall apply:*

23 “(A) *REQUIRED CORRECTION OF DEFICI-*
24 *ENCY.—The Director shall, by order, require*
25 *the regulated entity to correct the deficiency.*

1 “(B) *OTHER AUTHORITY.*—*The Director*
2 *may, by order, take one or more of the following*
3 *actions until the deficiency is corrected:*

4 “(i) *Prohibit the regulated entity from*
5 *permitting its average total assets (as such*
6 *term is defined in section 1316(b)) during*
7 *any calendar quarter to exceed its average*
8 *total assets during the preceding calendar*
9 *quarter, or restrict the rate at which the av-*
10 *erage total assets of the entity may increase*
11 *from one calendar quarter to another.*

12 “(ii) *Require the regulated entity—*

13 “(I) *in the case of an enterprise,*
14 *to increase its ratio of core capital to*
15 *assets.*

16 “(II) *in the case of a Federal*
17 *Home Loan Bank, to increase its ratio*
18 *of total capital (as such term is defined*
19 *in section 6(a)(5) of the Federal Home*
20 *Loan Bank Act (12 U.S.C. 1426(a)(5))*
21 *to assets.*

22 “(iii) *Require the regulated entity to*
23 *take any other action that the Director de-*
24 *termines will better carry out the purposes*

1 of this section than any of the actions de-
2 scribed in this subparagraph.

3 “(3) **MANDATORY RESTRICTIONS.**—In complying
4 with paragraph (2), the Director shall take one or
5 more of the actions described in clauses (i) through
6 (iii) of paragraph (2)(B) if—

7 “(A) the Director determines that the regu-
8 lated entity fails to meet any standard pre-
9 scribed under subsection (a);

10 “(B) the regulated entity has not corrected
11 the deficiency; and

12 “(C) during the 18-month period before the
13 date on which the regulated entity first failed to
14 meet the standard, the entity underwent extraor-
15 dinary growth, as defined by the Director.

16 “(c) **OTHER ENFORCEMENT AUTHORITY NOT AF-**
17 **FFECTED.**—The authority of the Director under this section
18 **is in addition to any other authority of the Director.’’.**

19 **SEC. 1109. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
20 **ASSETS AND LIABILITIES.**

21 (a) **IN GENERAL.**—Subtitle B of the Federal Housing
22 **Enterprises Financial Safety and Soundness Act of 1992**
23 **(12 U.S.C. 4611 et seq.) is amended—**

24 (1) by striking the subtitle designation and head-
25 ing and inserting the following:

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

8 *and*

9 (2) by adding at the end the following new sec-
 10 tion:

11 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**
 12 **ITIES.**

13 *“(a) IN GENERAL.—The Director shall, by regulation,*
 14 *establish criteria governing the portfolio holdings of the en-*
 15 *terprises, to ensure that the holdings are backed by sufficient*
 16 *capital and consistent with the mission and the safe and*
 17 *sound operations of the enterprises. In establishing such cri-*
 18 *teria, the Director shall consider the ability of the enter-*
 19 *prises to provide a liquid secondary market*
 20 *through securitization activities, the portfolio holdings in relation*
 21 *to the overall mortgage market, and adherence to the stand-*
 22 *ards specified in section 1313B.*

23 *“(b) TEMPORARY ADJUSTMENTS.—The Director may,*
 24 *by order, make temporary adjustments to the established*
standards for an enterprise or both enterprises, such as dur-
ing times of economic distress or market disruption.

1 “(c) *AUTHORITY TO REQUIRE DISPOSITION OR ACQUI-*
2 *SITION.—The Director shall monitor the portfolio of each*
3 *enterprise. Pursuant to subsection (a) and notwithstanding*
4 *the capital classifications of the enterprises, the Director*
5 *may, by order, require an enterprise, under such terms and*
6 *conditions as the Director determines to be appropriate, to*
7 *dispose of or acquire any asset, if the Director determines*
8 *that such action is consistent with the purposes of this Act*
9 *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 section*
13 *1369E(a) of the Federal Housing Enterprises Financial*
14 *Safety and Soundness Act of 1992 (as added by subsection*
15 *(a) of this section) establishing the portfolio holdings stand-*
16 *ards under such section.*

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

18 (a) *IN GENERAL.—Section 1361 of the Federal Hous-*
19 *ing Enterprises Financial Safety and Soundness Act of*
20 *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 reg-*
25 *ulation, establish risk-based capital requirements for*

1 *the enterprises to ensure that the enterprises operate*
2 *in a safe and sound manner, maintaining sufficient*
3 *capital and reserves to support the risks that arise in*
4 *the operations and management of the enterprises.*

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

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

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

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

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

1 *ations 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 *ancial Safety and Soundness Act of 1992 (12 U.S.C. 4612)*
8 *is amended—*
9 (1) *in subsection (a), by striking ‘‘IN GENERAL’’*
10 *and inserting ‘‘ENTERPRISES’’; and*
11 (2) *by striking subsection (b) and inserting the*
12 *following:*

13 *‘‘(b) FEDERAL HOME LOAN BANKS.—For purposes of*
14 *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 Federal*
18 *Home Loan Bank Act (12 U.S.C. 1426(a)(2)).*

19 *‘‘(c) ESTABLISHMENT OF REVISED MINIMUM CAPITAL*
20 *LEVELS.—Notwithstanding subsections (a) and (b) and*
21 *notwithstanding the capital classifications of the regulated*
22 *entities, the Director may, by regulations issued under sec-*
23 *tion 1319G, establish a minimum capital level for the enter-*
24 *prises, for the Federal Home Loan Banks, or for both the*
25 *enterprises and the banks, that is higher than the level speci-*

1 *fied in subsection (a) for the enterprises or the level specified*
 2 *in subsection (b) for the Federal Home Loan Banks, to the*
 3 *extent needed to ensure that the regulated entities operate*
 4 *in a safe and sound manner.*

5 “(d) *AUTHORITY TO REQUIRE*
 TEMPORARY IN-

6 *CREASE.—*

7 “(1) *IN GENERAL.—Notwithstanding subsections*
 8 *(a) and (b) and any minimum capital level estab-*
 9 *lished pursuant to subsection (c), the Director may,*
 10 *by order, increase the minimum capital level for a*
 11 *regulated entity on a temporary basis, when the Di-*
 12 *rector determines that such an increase is necessary*
 13 *and consistent with the prudential regulation and the*
 14 *safe and sound operations of a regulated entity.*

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

20 “(3) *REGULATIONS REQUIRED.—The Director*
 21 *shall issue regulations establishing—*

22 “(A) *standards for the imposition of a tem-*
 23 *porary increase in minimum capital under*
 24 *paragraph (1);*

1 “(B) the standards and procedures that the
2 Director will use to make the determination re-
3 ferred to in paragraph (2); and

4 “(C) a reasonable time frame for periodic
5 review of any temporary increase in minimum
6 capital for the purpose of making the determina-
7 tion referred to in paragraph (2).

8 “(e) **AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL**
9 **AND RESERVE REQUIREMENTS FOR PARTICULAR PUR-**
10 **POSES.**—*The Director may, at any time by order or regula-*
11 *tion, establish such capital or reserve requirements with re-*
12 *spect to any product or activity of a regulated entity, as*
13 *the Director considers appropriate to ensure that the regu-*
14 *lated entity operates in a safe and sound manner, with suf-*
15 *ficient capital and reserves to support the risks that arise*
16 *in the operations and management of the regulated entity.*

17 “(f) **PERIODIC REVIEW.**—*The Director shall periodi-*
18 *cally review the amount of core capital maintained by the*
19 *enterprises, the amount of capital retained by the Federal*
20 *Home Loan Banks, and the minimum capital levels estab-*
21 *lished for such regulated entities pursuant to this section.’’.*

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

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

1 *“SEC. 38. FEDERAL NATIONAL MORTGAGE ASSOCIATION,*
2 *FEDERAL HOME LOAN MORTGAGE CORPORA-*
3 *TION, FEDERAL HOME LOAN BANKS.*

4 *“(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION*
5 *AND FEDERAL HOME LOAN MORTGAGE CORPORATION.—*
6 *No class of equity securities of the Federal National Mort-*
7 *gage Association or the Federal Home Loan Mortgage Cor-*
8 *poration shall be treated as an exempted security for pur-*
9 *poses of section 12, 13, 14, or 16.*

10 *“(b) FEDERAL HOME LOAN BANKS.—*

11 *“(1) REGISTRATION.—Each Federal Home Loan*
12 *Bank shall register a class of its common stock under*
13 *section 12(g), not later than 120 days after the date*
14 *of enactment of the Federal Housing Finance Regu-*
15 *latory Reform Act of 2008, and shall thereafter main-*
16 *tain such registration and be treated for purposes of*
17 *this title as an ‘issuer’, the securities of which are re-*
18 *quired to be registered under section 12, regardless of*
19 *the number of members holding such stock at any*
20 *given time.*

21 *“(2) STANDARDS RELATING TO AUDIT COMMIT-*
22 *TEES.—Each Federal Home Loan Bank shall comply*
23 *with the rules issued by the Commission under section*
24 *10A(m).*

25 *“(c) DEFINITIONS.—For purposes of this section, the*
26 *following definitions shall apply:*

1 “(1) *FEDERAL HOME LOAN BANK; MEMBER.*—
2 *The terms ‘Federal Home Loan Bank’ and ‘member’,*
3 *have the same meanings as in section 2 of the Federal*
4 *Home Loan Bank Act.*

5 “(2) *FEDERAL NATIONAL MORTGAGE ASSOCIA-*
6 *TION.*—*The term ‘Federal National Mortgage Associa-*
7 *tion’ means the corporation created by the Federal*
8 *National Mortgage Association Charter Act.*

9 “(3) *FEDERAL HOME LOAN MORTGAGE CORPORA-*
10 *TION.*—*The term ‘Federal Home Loan Mortgage Cor-*
11 *poration’ means the corporation created by the Fed-*
12 *eral Home Loan Mortgage Corporation Act.’.*”

13 ***SEC. 1113. PROHIBITION AND WITHHOLDING OF EXECUTIVE***
14 ***COMPENSATION.***

15 (a) *IN GENERAL.*—*Section 1318 of the Federal Hous-*
16 *ing Enterprises Financial Safety and Soundness Act of*
17 *1992 (12 U.S.C. 4518) is amended—*

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

21 (2) *in subsection (a)—*

22 (A) *by striking “enterprise” and inserting*
23 *“regulated entity”;* and

24 (B) *by striking “enterprises” and inserting*
25 *“regulated entities”;*

1 (3) by redesignating subsection (b) as subsection

2 (d); and

3 (4) by inserting after subsection (a) the fol-

4 lowing:

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

19 “(c) *WITHHOLDING OF COMPENSATION.*—In carrying
20 out subsection (a), the Director may require a regulated en-
21 tity to withhold any payment, transfer, or disbursement of
22 compensation to an executive officer, or to place such com-
23 pensation in an escrow account, during the review of the
24 reasonableness and comparability of compensation.”.

25 (b) *CONFORMING AMENDMENTS.*—

1 (1) *FANNIE MAE.—Section 309(d) of the Federal*
2 *National Mortgage Association Charter Act*
3 (12

4 *U.S.C. 1723a(d)) is amended by adding at the end*
5 *the following new paragraph:*

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

13 (2) *FREDDIE MAC.—Section 303(h) of the Fed-*
14 *eral Home Loan Mortgage Corporation Act*
15 (12

16 *U.S.C. 1452(h)) is amended by adding at the end the*
17 *following new paragraph:*

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

25 (3) *FEDERAL HOME LOAN BANKS.—Section 7 of*
26 *the Federal Home Loan Bank Act (12 U.S.C. 1427)*

1 *is amended by adding at the end the following new*
2 *subsection:*

3 “(l) WITHHOLDING OF COMPENSATION.—
4 *Notwith-*

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

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

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

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

17 “(1) *GOLDEN PARACHUTES AND INDEMNIFICA-*
18 *TION PAYMENTS.—The Director may*
19 *prohibit or*

20 *limit, by regulation or order, any golden parachute*
21 *payment or indemnification payment.*

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

23 *The Director shall prescribe, by regulation, the factors*
24 *to be considered by the Director in taking any action*
25 *pursuant to paragraph (1), which may include such*
 factors as—

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

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

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

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

1 “(E) the length of time that the party was
2 affiliated with the regulated entity, and the de-
3 gree to which—

4 “(i) the payment reasonably reflects
5 compensation earned over the period of em-
6 ployment; and

7 “(ii) the compensation involved rep-
8 resents a reasonable payment for services
9 rendered.

10 “(3) CERTAIN PAYMENTS PROHIBITED.—No reg-
11 ulated entity may prepay the salary or any liability
12 or legal expense of any affiliated party if such pay-
13 ment is made—

14 “(A) in contemplation of the insolvency of
15 such regulated entity, or after the commission of
16 an act of insolvency; and

17 “(B) with a view to, or having the result
18 of—

19 “(i) preventing the proper application
20 of the assets of the regulated entity to credi-
21 tors; or

22 “(ii) preferring one creditor over an-
23 other.

24 “(4) GOLDEN PARACHUTE PAYMENT DEFINED.—

1 “(A) *IN GENERAL.*—*For purposes of this*
2 *subsection, the term ‘golden parachute payment’*
3 *means any payment (or any agreement to make*
4 *any payment) in the nature of compensation by*
5 *any regulated entity for the benefit of any affili-*
6 *ated party pursuant to an obligation of such reg-*
7 *ulated entity that—*

8 “(i) *is contingent on the termination of*
9 *such party’s affiliation with the regulated*
10 *entity; and*

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

13 “(I) *the regulated entity became*
14 *insolvent;*

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

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

22 “(B) *CERTAIN PAYMENTS IN CONTEMPLA-*
23 *TION OF AN EVENT.*—*Any payment which would*
24 *be a golden parachute payment but for the fact*
25 *that such payment was made before the date re-*

1 *ferred to in subparagraph (A)(ii) shall be treated*
2 *as a golden parachute payment if the payment*
3 *was made in contemplation of the occurrence of*
4 *an event described in any subclause of such sub-*
5 *paragraph.*

6 *“(C) CERTAIN PAYMENTS NOT INCLUDED.—*
7 *For purposes of this subsection, the term ‘golden*
8 *parachute payment’ shall not include—*

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

14 *“(ii) any payment made pursuant to a*
15 *bona fide deferred compensation plan or ar-*
16 *rangement which the Director determines,*
17 *by regulation or order, to be permissible; or*

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

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

23 *“(A) INDEMNIFICATION PAYMENT.—Subject*
24 *to paragraph (6), the term ‘indemnification pay-*
25 *ment’ means any payment (or any agreement to*

1 *make any payment) by any regulated entity for*
2 *the benefit of any person who is or was an affili-*
3 *ated party, to pay or reimburse such person for*
4 *any liability or legal expense with regard to any*
5 *administrative proceeding or civil action insti-*
6 *tuted by the Agency which results in a final*
7 *order under which such person—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **“(a) REQUIREMENT TO REPORT.—***The Director shall*
11 *require a regulated entity to submit to the Director a timely*
12 *report upon discovery by the regulated entity that it has*
13 *purchased or sold a fraudulent loan or financial instru-*
14 *ment, or suspects a possible fraud relating to the purchase*
15 *or sale of any loan or financial instrument. The Director*
16 *shall require each regulated entity to establish and main-*
17 *tain procedures designed to discover any such transactions.*

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

1 *agreement (including any arbitration agreement) for such*
 2 *report or for any failure to provide notice of such report*
 3 *to the person who is the subject of such report or any other*
 4 *persons identified in the report.’’.*

5 **SEC. 1116. INCLUSION OF MINORITIES AND WOMEN; DIVER-**
 6 **SITY IN AGENCY WORKFORCE.**

7 *Section 1319A of the Housing and Community Devel-*
 8 *opment Act of 1992 (12 U.S.C. 4520) is amended—*

9 *(1) in the section heading, by striking ‘‘EQUAL*

10 **OPPORTUNITY IN SOLICITATION OF**
 11 **CON-**

12 **TRACTS’’ and inserting ‘‘MINORITY AND WOMEN**
 13 **INCLUSION; DIVERSITY REQUIREMENTS’’;**

14 *(2) in subsection (a), by striking ‘‘(a) IN GEN-*
 15 *ERAL.—Each enterprise’’ and inserting ‘‘(e) OUT-*
 16 *REACH.—Each regulated entity’’; and*

17 *(3) by striking subsection (b);*

18 *(4) by inserting before subsection (e), as so redes-*
 19 *ignated by paragraph (2) of this section, the following*
 20 *new subsections:*

21 **‘‘(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—**
 22 *Each regulated entity shall establish an Office of Minority*
 23 *and Women Inclusion, or designate an office of the entity,*
 24 *that shall be responsible for carrying out this section and*
 25 *all matters of the entity relating to diversity in manage-*
ment, employment, and business activities in accordance

1 *with such standards and requirements as the Director shall*
2 *establish.*

3 “(b) *INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-*
4 *TIES.—Each regulated entity shall develop and implement*
5 *standards and procedures to ensure, to the maximum extent*
6 *possible, the inclusion and utilization of minorities (as such*
7 *term is defined in section 1204(c) of the Financial Institu-*
8 *tions Reform, Recovery, and Enforcement Act of 1989 (12*
9 *U.S.C. 1811 note)) and women, and minority- and women-*
10 *owned businesses (as such terms are defined in section*
11 *21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C.*
12 *1441a(r)(4)) (including financial institutions, investment*
13 *banking firms, mortgage banking firms, asset management*
14 *firms, broker-dealers, financial services firms, underwriters,*
15 *accountants, brokers, investment consultants, and providers*
16 *of legal services) in all business and activities of the regu-*
17 *lated entity at all levels, including in procurement, insur-*
18 *ance, and all types of contracts (including contracts for the*
19 *issuance or guarantee of any debt, equity, or mortgage-re-*
20 *lated securities, the management of its mortgage and securi-*
21 *ties portfolios, the making of its equity investments, the*
22 *purchase, sale and servicing of single- and multi-family*
23 *mortgage loans, and the implementation of its affordable*
24 *housing program and initiatives). The processes established*
25 *by each regulated entity for review and evaluation for con-*

1 tract proposals and to hire service providers shall include
2 a component that gives consideration to the diversity of the
3 applicant.

4 “(c) *APPLICABILITY.*—This section shall apply to all
5 contracts of a regulated entity for services of any kind, in-
6 cluding services that require the services of investment bank-
7 ing, asset management entities, broker-dealers, financial
8 services entities, underwriters, accountants, investment con-
9 sultants, and providers of legal services.

10 “(d) *INCLUSION IN ANNUAL REPORTS.*—Each regu-
11 lated entity shall include, in the annual report submitted
12 by the entity to the Director pursuant to section 309(k) of
13 the Federal National Mortgage Association Charter Act (12
14 U.S.C. 1723a(k)), section 307(c) of the Federal Home Loan
15 Mortgage Corporation Act (12 U.S.C. 1456(c)), and section
16 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440),
17 as applicable, detailed information describing the actions
18 taken by the entity pursuant to this section, which shall
19 include a statement of the total amounts paid by the entity
20 to third party contractors since the last such report and
21 the percentage of such amounts paid to businesses described
22 in subsection (b) of this section.’; and

23 (5) by adding at the end the following new sub-
24 section:

1 “(f) *DIVERSITY IN AGENCY WORKFORCE.*—*The Agency*
2 *shall take affirmative steps to seek diversity in its workforce*
3 *at all levels of the agency consistent with the demographic*
4 *diversity of the United States, which shall include—*

5 “(1) *heavily recruiting at historically Black col-*
6 *leges and universities, Hispanic-serving institutions,*
7 *women’s colleges, and colleges that typically serve ma-*
8 *ajority minority populations;*

9 “(2) *sponsoring and recruiting at job fairs in*
10 *urban communities, and placing employment adver-*
11 *tisements in newspapers and magazines oriented to-*
12 *ward women and people of color;*

13 “(3) *partnering with organizations that are fo-*
14 *cused on developing opportunities for minorities and*
15 *women to place talented young minorities and women*
16 *in industry internships, summer employment, and*
17 *full-time positions; and*

18 “(4) *where feasible, partnering with inner-city*
19 *high schools, girls’ high schools, and high schools with*
20 *majority minority populations to establish or enhance*
21 *financial literacy programs and provide mentoring.’’.*

1 *SEC. 1117. TEMPORARY AUTHORITY FOR PURCHASE OF OB-*
2 *LIGATIONS OF REGULATED ENTITIES BY SEC-*
3 *RETARY OF TREASURY.*

4 (a) *FANNIE MAE.*—Section 304 of the Federal Na-
5 tional Mortgage Association Charter Act (12 U.S.C. 1719)
6 is amended by adding at the end the following new sub-
7 section:

8 “(g) *TEMPORARY AUTHORITY OF TREASURY TO PUR-*
9 *CHASE OBLIGATIONS AND SECURITIES; CONDITIONS.*—

10 “(1) *AUTHORITY TO PURCHASE.*—

11 “(A) *GENERAL AUTHORITY.*—In addition to
12 the authority under subsection (c) of this section,
13 the Secretary of the Treasury is authorized to
14 purchase any obligations and other securities
15 issued by the corporation under any section of
16 this Act, on such terms and conditions as the
17 Secretary may determine and in such amounts
18 as the Secretary may determine. Nothing in this
19 subsection requires the corporation to issue obli-
20 gations or securities to the Secretary without
21 mutual agreement between the Secretary and the
22 corporation. Nothing in this subsection permits
23 or authorizes the Secretary, without the agree-
24 ment of the corporation, to engage in open mar-
25 ket purchases of the common securities of the cor-
26 poration.

1 “(B) *EMERGENCY DETERMINATION RE-*
2 *QUIRED.—In connection with any use of this au-*
3 *thority, the Secretary must determine that such*
4 *actions are necessary to—*

5 “(i) *provide stability to the financial*
6 *markets;*

7 “(ii) *prevent disruptions in the avail-*
8 *ability of mortgage finance; and*

9 “(iii) *protect the taxpayer.*

10 “(C) *CONSIDERATIONS.—To protect the tax-*
11 *payers, the Secretary of the Treasury shall take*
12 *into consideration the following in connection*
13 *with exercising the authority contained in this*
14 *paragraph:*

15 “(i) *The need for preferences or prior-*
16 *ities regarding payments to the Govern-*
17 *ment.*

18 “(ii) *Limits on maturity or disposi-*
19 *tion of obligations or securities to be pur-*
20 *chased.*

21 “(iii) *The corporation’s plan for the*
22 *orderly resumption of private market fund-*
23 *ing or capital market access.*

1 “(iv) *The probability of the corpora-*
2 *tion fulfilling the terms of any such obliga-*
3 *tion or other security, including repayment.*

4 “(v) *The need to maintain the corpora-*
5 *tion’s status as a private shareholder-owned*
6 *company.*

7 “(vi) *Restrictions on the use of cor-*
8 *poration resources, including limitations on*
9 *the payment of dividends and executive*
10 *compensation and any such other terms and*
11 *conditions as appropriate for those pur-*
12 *poses.*

13 “(D) *REPORTS TO CONGRESS.—Upon exer-*
14 *cise of this authority, the Secretary shall report*
15 *to the Committees on the Budget, Financial*
16 *Services, and Ways and Means of the House of*
17 *Representatives and the Committees on the*
18 *Budget, Finance, and Banking, Housing, and*
19 *Urban Affairs of the Senate as to the necessity*
20 *for the purchase and the determinations made by*
21 *the Secretary under subparagraph (B) and with*
22 *respect to the considerations required under sub-*
23 *paragraph (C), and the size, terms, and prob-*
24 *ability of repayment or fulfillment of other terms*
25 *of such purchase.*

1 “(2) *RIGHTS; SALE OF OBLIGATIONS AND SECURITIES.—*
2 *RITIES.—*

3 “(A) *EXERCISE OF RIGHTS.—The Secretary*
4 *of the Treasury may, at any time, exercise any*
5 *rights received in connection with such pur-*
6 *chases.*

7 “(B) *SALE OF OBLIGATION AND SECURITIES.—The Secretary of the Treasury may, at*
8 *any time, subject to the terms of the security or*
9 *otherwise upon terms and conditions and at*
10 *prices determined by the Secretary, sell any obli-*
11 *gation or security acquired by the Secretary*
12 *under this subsection.*

13 “(C) *APPLICATION OF SUNSET TO PUR-*
14 *CHASED OBLIGATIONS OR SECURITIES.—The au-*
15 *thority of the Secretary of the Treasury to hold,*
16 *exercise any rights received in connection with,*
17 *or sell, any obligations or securities purchased is*
18 *not subject to the provisions of paragraph (4).*

19 “(3) *FUNDING.—For the purpose of the authori-*
20 *ties granted in this subsection, the Secretary of the*
21 *Treasury may use the proceeds of the sale of any secu-*
22 *rities issued under chapter 31 of Title 31, and the*
23 *purposes for which securities may be issued under*
24 *chapter 31 of Title 31 are extended to include such*
25

1 purchases and the exercise of any rights in connection
2 with such purchases. Any funds expended for the pur-
3 chase of, or modifications to, obligations and securi-
4 ties, or the exercise of any rights received in connec-
5 tion with such purchases under this subsection shall
6 be deemed appropriated at the time of such purchase,
7 modification, or exercise.

8 “(4) *TERMINATION OF AUTHORITY.*—*The author-*
9 *ity under this subsection (g), with the exception of*
10 *paragraphs (2) and (3) of this subsection, shall expire*
11 *December 31, 2009.*

12 “(5) *AUTHORITY OF THE DIRECTOR WITH RE-*
13 *SPECT TO EXECUTIVE COMPENSATION.*—*The Director*
14 *shall have the power to approve, disapprove, or mod-*
15 *ify the executive compensation of the corporation, as*
16 *defined under Regulation S-K, 17 C.F.R. 229.’’.*

17 (b) *FREDDIE MAC.*—*Section 306 of the Federal Home*
18 *Loan Mortgage Corporation Act (12 U.S.C.*
19 *1455) is*

19 *amended by adding at the end the following new subsection:*

20 “(l) *TEMPORARY AUTHORITY OF TREASURY TO PUR-*
21 *CHASE OBLIGATIONS AND SECURITIES; CONDITIONS.*—

22 “(1) *AUTHORITY TO PURCHASE.*—

23 “(A) *GENERAL AUTHORITY.*—*In addition to*
24 *the authority under subsection (c) of this section,*
25 *the Secretary of the Treasury is authorized to*

1 purchase any obligations and other securities
2 issued by the Corporation under any section of
3 this Act, on such terms and conditions as the
4 Secretary may determine and in such amounts
5 as the Secretary may determine. Nothing in this
6 subsection requires the Corporation to issue obli-
7 gations or securities to the Secretary without
8 mutual agreement between the Secretary and the
9 Corporation. Nothing in this subsection permits
10 or authorizes the Secretary, without the agree-
11 ment of the Corporation, to engage in open mar-
12 ket purchases of the common securities of the
13 Corporation.

14 “(B) EMERGENCY DETERMINATION RE-
15 QUIRED.—In connection with any use of this au-
16 thority, the Secretary must determine that such
17 actions are necessary to—

18 “(i) provide stability to the financial
19 markets;

20 “(ii) prevent disruptions in the avail-
21 ability of mortgage finance; and

22 “(iii) protect the taxpayer.

23 “(C) CONSIDERATIONS.—To protect the tax-
24 payers, the Secretary of the Treasury shall take
25 into consideration the following in connection

1 *with exercising the authority contained in this*
2 *paragraph:*

3 *“(i) The need for preferences or prior-*
4 *ities regarding payments to the Govern-*
5 *ment.*

6 *“(ii) Limits on maturity or disposi-*
7 *tion of obligations or securities to be pur-*
8 *chased.*

9 *“(iii) The Corporation’s plan for the*
10 *orderly resumption of private market fund-*
11 *ing or capital market access.*

12 *“(iv) The probability of the Corpora-*
13 *tion fulfilling the terms of any such obliga-*
14 *tion or other security, including repayment.*

15 *“(v) The need to maintain the Cor-*
16 *poration’s status as a private shareholder-*
17 *owned company.*

18 *“(vi) Restrictions on the use of Cor-*
19 *poration resources, including limitations on*
20 *the payment of dividends and executive*
21 *compensation and any such other terms and*
22 *conditions as appropriate for those pur-*
23 *poses.*

24 *“(D) REPORTS TO CONGRESS.—Upon exer-*
25 *cise of this authority, the Secretary shall report*

1 to the Committees on the Budget, Financial
2 Services, and Ways and Means of the House of
3 Representatives and the Committees on the
4 Budget, Finance, and Banking, Housing, and
5 Urban Affairs of the Senate as to the necessity
6 for the purchase and the determinations made by
7 the Secretary under subparagraph (B) and with
8 respect to the considerations required under sub-
9 paragraph (C), and the size, terms, and prob-
10 ability of repayment or fulfillment of other terms
11 of such purchase.

12 “(2) RIGHTS; SALE OF OBLIGATIONS AND SECURI-
13 RITIES.—

14 “(A) EXERCISE OF RIGHTS.—The Secretary
15 of the Treasury may, at any time, exercise any
16 rights received in connection with such pur-
17 chases.

18 “(B) SALE OF OBLIGATION AND SECURI-
19 TIES.—The Secretary of the Treasury may, at
20 any time, subject to the terms of the security or
21 otherwise upon terms and conditions and at
22 prices determined by the Secretary, sell any obli-
23 gation or security acquired by the Secretary
24 under this subsection.

1 “(C) *APPLICATION OF SUNSET TO PUR-*
2 *CHASED OBLIGATIONS OR SECURITIES.—The au-*
3 *thority of the Secretary of the Treasury to hold,*
4 *exercise any rights received in connection with,*
5 *or sell, any obligations or securities purchased is*
6 *not subject to the provisions of paragraph (4).*

7 “(3) *FUNDING.—For the purpose of the authori-*
8 *ties granted in this subsection, the Secretary of the*
9 *Treasury may use the proceeds of the sale of any secu-*
10 *rities issued under chapter 31 of Title 31, and the*
11 *purposes for which securities may be issued under*
12 *chapter 31 of Title 31 are extended to include such*
13 *purchases and the exercise of any rights in connection*
14 *with such purchases. Any funds expended for the pur-*
15 *chase of, or modifications to, obligations and securi-*
16 *ties, or the exercise of any rights received in connec-*
17 *tion with such purchases under this subsection shall*
18 *be deemed appropriated at the time of such purchase,*
19 *modification, or exercise.*

20 “(4) *TERMINATION OF AUTHORITY.—The author-*
21 *ity under this subsection (1), with the exception of*
22 *paragraphs (2) and (3) of this subsection, shall expire*
23 *December 31, 2009.*

24 “(5) *AUTHORITY OF THE DIRECTOR WITH RE-*
25 *SPECT TO EXECUTIVE COMPENSATION.—The Director*

1 *shall have the power to approve, disapprove, or mod-*
2 *ify the executive compensation of the Corporation, as*
3 *defined under Regulation S-K, 17 C.F.R. 229.’’.*

4 (c) *FEDERAL HOME LOAN BANKS.—Section 11 of the*
5 *Federal Home Loan Bank Act (12 U.S.C. 1431) is amended*
6 *by adding at the end the following new subsection:*

7 “(l) *TEMPORARY AUTHORITY OF TREASURY TO PUR-*
8 *CHASE OBLIGATIONS; CONDITIONS.—*

9 “(I) *AUTHORITY TO PURCHASE.—*

10 “(A) *GENERAL AUTHORITY.—In addition to*
11 *the authority under subsection (i) of this section,*
12 *the Secretary of the Treasury is authorized to*
13 *purchase any obligations issued by any Federal*
14 *Home Loan Bank under any section of this Act,*
15 *on such terms and conditions as the Secretary*
16 *may determine and in such amounts as the Sec-*
17 *retary may determine. Nothing in this subsection*
18 *requires a Federal Home Loan Bank to issue ob-*
19 *ligations or securities to the Secretary without*
20 *mutual agreement between the Secretary and the*
21 *Federal Home Loan Bank. Nothing in this sub-*
22 *section permits or authorizes the Secretary, with-*
23 *out the agreement of the Federal Home Loan*
24 *Bank, to engage in open market purchases of the*

1 *common securities of any Federal Home Loan*
2 *Bank.*

3 “(B) *EMERGENCY DETERMINATION RE-*
4 *QUIRED.—In connection with any use of this au-*
5 *thority, the Secretary must determine that such*
6 *actions are necessary to—*

7 “(i) *provide stability to the financial*
8 *markets;*

9 “(ii) *prevent disruptions in the avail-*
10 *ability of mortgage finance; and*

11 “(iii) *protect the taxpayer.*

12 “(C) *CONSIDERATIONS.—To protect the tax-*
13 *payers, the Secretary of the Treasury shall take*
14 *into consideration the following in connection*
15 *with exercising the authority contained in this*
16 *paragraph:*

17 “(i) *The need for preferences or prior-*
18 *ities regarding payments to the Govern-*
19 *ment.*

20 “(ii) *Limits on maturity or disposi-*
21 *tion of obligations or securities to be pur-*
22 *chased.*

23 “(iii) *The Federal Home Loan Bank’s*
24 *plan for the orderly resumption of private*
25 *market funding or capital market access.*

1 “(iv) *The probability of the Federal*
2 *Home Loan Bank fulfilling the terms of any*
3 *such obligation or other security, including*
4 *repayment.*

5 “(v) *The need to maintain the Federal*
6 *Home Loan Bank’s status as a private*
7 *shareholder-owned company.*

8 “(vi) *Restrictions on the use of Federal*
9 *Home Loan Bank resources, including limi-*
10 *tations on the payment of dividends and ex-*
11 *ecutive compensation and any such other*
12 *terms and conditions as appropriate for*
13 *those purposes.*

14 “(D) *REPORTS TO CONGRESS.—Upon exer-*
15 *cise of this authority, the Secretary shall report*
16 *to the Committees on the Budget, Financial*
17 *Services, and Ways and Means of the House of*
18 *Representatives and the Committees on the*
19 *Budget, Finance, and Banking, Housing, and*
20 *Urban Affairs of the Senate as to the necessity*
21 *for the purchase and the determinations made by*
22 *the Secretary under subparagraph (B) and with*
23 *respect to the considerations required under sub-*
24 *paragraph (C), and the size, terms, and prob-*

1 *ability of repayment or fulfillment of other terms*
2 *of such purchase.*

3 *“(2) RIGHTS; SALE OF OBLIGATIONS AND SECUR-*
4 *ITIES.—*

5 *“(A) EXERCISE OF RIGHTS.—The Secretary*
6 *of the Treasury may, at any time, exercise any*
7 *rights received in connection with such pur-*
8 *chases.*

9 *“(B) SALE OF OBLIGATIONS.—The Sec-*
10 *retary of the Treasury may, at any time, subject*
11 *to the terms of the security or otherwise upon*
12 *terms and conditions and at prices determined*
13 *by the Secretary, sell any obligation acquired by*
14 *the Secretary under this subsection.*

15 *“(C) APPLICATION OF SUNSET TO PUR-*
16 *CHASED OBLIGATIONS.—The authority of the*
17 *Secretary of the Treasury to hold, exercise any*
18 *rights received in connection with, or sell, any*
19 *obligations purchased is not subject to the provi-*
20 *sions of paragraph (4).*

21 *“(3) FUNDING.—For the purpose of the authori-*
22 *ties granted in this subsection, the Secretary of the*
23 *Treasury may use the proceeds of the sale of any secu-*
24 *rities issued under chapter 31 of Title 31, and the*
25 *purposes for which securities may be issued under*

1 *chapter 31 of Title 31 are extended to include such*
2 *purchases and the exercise of any rights in connection*
3 *with such purchases. Any funds expended for the pur-*
4 *chase of, or modifications to, obligations and securi-*
5 *ties, or the exercise of any rights received in connec-*
6 *tion with such purchases under this subsection shall*
7 *be deemed appropriated at the time of such purchase,*
8 *modification, or exercise.*

9 “(4) *TERMINATION OF AUTHORITY.—The author-*
10 *ity under this subsection (1), with the exception of*
11 *paragraphs (2) and (3) of this subsection, shall expire*
12 *December 31, 2009.*

13 “(5) *AUTHORITY OF THE DIRECTOR WITH RE-*
14 *SPECT TO EXECUTIVE COMPENSATION.—The Director*
15 *shall have the power to approve, disapprove, or mod-*
16 *ify the executive compensation of the Federal Home*
17 *Loan Bank, as defined under Regulation S-K, 17*
18 *C.F.R. 229.’’.*

19 ***SEC. 1118. CONSULTATION BETWEEN THE DIRECTOR OF***
20 ***THE FEDERAL HOUSING FINANCE AGENCY***
21 ***AND THE BOARD OF GOVERNORS OF THE***
22 ***FEDERAL RESERVE SYSTEM TO ENSURE FI-***
23 ***NANCIAL MARKET STABILITY.***

24 *Subsection (a) of section 1313 of the Federal Housing*
25 *Enterprises Financial Safety and Soundness Act of 1992*

1 (12 U.S.C. 4513), as amended by the preceding provisions
2 of this Act, is further amended by adding at the end the
3 following new paragraph:

4 “(3) COORDINATION WITH THE CHAIRMAN OF
5 THE BOARD OF GOVERNORS OF THE FEDERAL RE-
6 SERVE SYSTEM.—

7 “(A) CONSULTATION.— The Director shall
8 consult with, and consider the views of, the
9 Chairman of the Board of Governors of the Fed-
10 eral Reserve System, with respect to the risks
11 posed by the regulated entities to the financial
12 system, prior to issuing any proposed or final
13 regulations, orders, and guidelines with respect
14 to the exercise of the additional authority pro-
15 vided in this Act regarding prudential manage-
16 ment and operations standards, safe and sound
17 operations of, and capital requirements and
18 portfolio standards applicable to the regulated
19 entities (as such term is defined in section 1303).

20 The Director also shall consult with the Chair-
21 man regarding any decision to place a regulated
22 entity into conservatorship or receivership.

23 “(B) INFORMATION SHARING.—To facilitate
24 the consultative process, the Director shall share
25 information with the Board of Governors of the

1 *Federal Reserve System on a regular, periodic*
2 *basis as determined by the Director and the*
3 *Board regarding the capital, asset and liabil-*
4 *ities, financial condition, and risk management*
5 *practices of the regulated entities as well as any*
6 *information related to financial market stability.*

7 “(C) *TERMINATION OF CONSULTATION RE-*
8 *QUIREMENT.—The requirement of the Director to*
9 *consult with the Board of Governors of the Fed-*
10 *eral Reserve System under this paragraph shall*
11 *expire at the conclusion of December 31, 2009.’’.*

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

14 ***SEC. 1121. TRANSFER OF PROGRAM APPROVAL AND HOUS-***
15 ***ING GOAL OVERSIGHT.***

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

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

21 ***“PART 2—ADDITIONAL AUTHORITIES OF THE***
22 ***DIRECTOR’’;***

23 *and*

24 *(2) by striking sections 1321 and 1322.*

1 **SEC. 1122. ASSUMPTION BY THE DIRECTOR OF CERTAIN**
2 **OTHER HUD RESPONSIBILITIES.**

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

6 (1) by striking “Secretary” each place that term
7 appears and inserting “Director” in each of sections
8 1323, 1326, 1327, 1328, and 1336; and

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

11 (b) **RETENTION OF FAIR HOUSING**
RESPONSIBILITIES.

12 *ITIES.*—Section 1325 of the Federal Housing Enterprises
13 Financial Safety and Soundness Act of 1992 (12 U.S.C.
14 4545) is amended in the matter preceding paragraph (1),
15 by inserting “of Housing and Urban Development” after
16 “The Secretary”.

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

18 Part 2 of subtitle A of the Federal Housing Enterprises
19 Financial Safety and Soundness Act of 1992 (12 U.S.C.
20 4541 et seq.) is amended by inserting before section 1323
21 the following:

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

23 “(a) *IN GENERAL.*—The Director shall require each
24 enterprise to obtain the approval of the Director for any
25 product of the enterprise before initially offering the prod-
26 uct.

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

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

9 “(2) *in the case of a product of the Federal*
10 *Home Loan Mortgage Corporation, the product is au-*
11 *thorized under paragraph (1), (4), or (5) of section*
12 *305(a) of the Federal Home Loan Mortgage Corpora-*
13 *tion Act (12 U.S.C. 1454(a));*

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

15 “(4) *the product is consistent with the safety and*
16 *soundness of the enterprise or the mortgage finance*
17 *system.*

18 “(c) *PROCEDURE FOR APPROVAL.—*

19 “(1) *SUBMISSION OF REQUEST.—An enterprise*
20 *shall submit to the Director a written request for ap-*
21 *proval of a product that describes the product in such*
22 *form as prescribed by order or regulation of the Di-*
23 *rector.*

24 “(2) *REQUEST FOR PUBLIC COMMENT.—Imme-*
25 *diately upon receipt of a request for approval of a*

1 *product, as required under paragraph (1), the Direc-*
2 *tor shall publish notice of such request and of the pe-*
3 *riod for public comment pursuant to paragraph (3)*
4 *regarding the product, and a description of the prod-*
5 *uct proposed by the request. The Director shall give*
6 *interested parties the opportunity to respond in writ-*
7 *ing to the proposed product.*

8 *“(3) PUBLIC COMMENT PERIOD.—During the 30-*
9 *day period beginning on the date of publication pur-*
10 *suant to paragraph (2) of a request for approval of*
11 *a product, the Director shall receive public comments*
12 *regarding the proposed product.*

13 *“(4) OFFERING OF PRODUCT.—*

14 *“(A) IN GENERAL.—Not later than 30 days*
15 *after the close of the public comment period de-*
16 *scribed in paragraph (3), the Director shall ap-*
17 *prove or deny the product, specifying the*
18 *grounds for such decision in writing.*

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

23 *“(C) TEMPORARY APPROVAL.—The Director*
24 *may, subject to the rules of the Director, provide*
25 *for temporary approval of the offering of a prod-*

1 *uct without a public comment period, if the Di-*
2 *rector finds that the existence of exigent cir-*
3 *cumstances makes such delay contrary to the*
4 *public interest.*

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

10 “(e) *EXCLUSIONS.—*

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

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

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

1 *nancing, other than residential mortgage financ-*
2 *ing; or*

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

6 *“(i) the activities described in subpara-*
7 *graphs (A) and (B); and*

8 *“(ii) other activities that have been ap-*
9 *proved by the Director in accordance with*
10 *this section.*

11 *“(2) EXPEDITED REVIEW.—*

12 *“(A) ENTERPRISE NOTICE.—For any new*
13 *activity that an enterprise considers not to be a*
14 *product, the enterprise shall provide written no-*
15 *tice to the Director of such activity, and may not*
16 *commence such activity until the date of receipt*
17 *of a notice under subparagraph (B) or the expi-*
18 *ration of the period described in subparagraph*
19 *(C). The Director shall establish, by regulation,*
20 *the form and content of such written notice.*

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

1 *Director shall, immediately upon so determining,*
2 *notify the enterprise.*

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

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

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

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

17 **SEC. 1124. CONFORMING LOAN LIMITS.**

18 (a) *FANNIE MAE.*—

19 (1) *GENERAL LIMIT.*—*Section 302(b)(2) of the*
20 *Federal National Mortgage Association Charter Act*
21 *(12 U.S.C. 1717(b)(2)) is amended by striking the 7th*
22 *and 8th sentences and inserting the following new*
23 *sentences: “Such limitations shall not exceed \$417,000*
24 *for a mortgage secured by a single-family residence,*
25 *\$533,850 for a mortgage secured by a 2-family resi-*

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

1 *accumulated and then reduce increases until subse-*
2 *quent increases exceed prior declines.’’.*

3 (2) *HIGH-COST AREA LIMIT.*—Section 302(b)(2)
4 *of the Federal National Mortgage Association Charter*
5 *Act (12 U.S.C. 1717(b)(2)) is amended by adding*
6 *after the period at the end the following: ‘‘Such fore-*
7 *going limitations shall also be increased, with respect*
8 *to properties of a particular size located in any area*
9 *for which 115 percent of the median house price for*
10 *such size residence exceeds the foregoing limitation for*
11 *such size residence, to the lesser of 150 percent of such*
12 *limitation for such size residence or the amount that*
13 *is equal to 115 percent of the median house price in*
14 *such area for such size residence.’’.*

15 (3) *EFFECTIVE DATE.*—*The amendments made*
16 *by paragraphs (1) and (2) of this subsection shall*
17 *take effect upon the expiration of the date described*
18 *in section 201(a) of the Economic Stimulus Act of*
19 *2008 (Public Law 110–185).*

20 (b) *FREDDIE MAC.*—

21 (1) *GENERAL LIMIT.*—Section 305(a)(2) of the
22 *Federal Home Loan Mortgage Corporation Act (12*
23 *U.S.C. 1454(a)(2)) is amended by striking the 6th*
24 *and 7th sentences and inserting the following new*
25 *sentences: ‘‘Such limitations shall not exceed \$417,000*

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

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

5 (2) *HIGH-COST AREA LIMIT.—Section 305(a)(2)*
6 *of the Federal Home Loan Mortgage Corporation Act*
7 *(12 U.S.C. 1454(a)(2)) is amended by adding after*
8 *the period at the end the following: ‘‘Such foregoing*
9 *limitations shall also be increased, with respect to*
10 *properties of a particular size located in any area for*
11 *which 115 percent of the median house price for such*
12 *size residence exceeds the foregoing limitation for such*
13 *size residence, to the lesser of 150 percent of such lim-*
14 *itation for such size residence or the amount that is*
15 *equal to 115 percent of the median house price in*
16 *such area for such size residence.’’.*

17 (3) *EFFECTIVE DATE.—The amendments made*
18 *by paragraphs (1) and (2) of this subsection shall*
19 *take effect upon the expiration of the date described*
20 *in section 201(a) of the Economic Stimulus Act of*
21 *2008 (Public Law 110–185).*

22 (c) *SENSE OF CONGRESS.—It is the sense of the Con-*
23 *gress that the securitization of mortgages by the Federal Na-*
24 *tional Mortgage Association and the Federal Home Loan*
25 *Mortgage Corporation plays an important role in providing*

1 *liquidity to the United States housing markets. Therefore,*
2 *the Congress encourages the Federal National Mortgage As-*
3 *sociation and the Federal Home Loan Mortgage Corpora-*
4 *tion to securitize mortgages acquired under the increased*
5 *conforming loan limits established under this Act.*

6 *(d) HOUSING PRICE INDEX.—Part 2 of subtitle A of*
7 *the Federal Housing Enterprises Financial Safety and*
8 *Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amended*
9 *by inserting after section 1321 (as added by section 1123*
10 *of this Act) the following new section:*

11 *“SEC. 1322. HOUSING PRICE INDEX.*

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

1 **SEC. 1125. ANNUAL HOUSING REPORT.**

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

5 (b) *ANNUAL HOUSING REPORT.*—The Federal Housing
6 Enterprises Financial Safety and Soundness Act of 1992
7 is amended by inserting after section 1323 the following:

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

9 “(a) *IN GENERAL.*—After reviewing and analyzing the
10 reports submitted under section 309(n) of the Federal Na-
11 tional Mortgage Association Charter Act and section 307(f)
12 of the Federal Home Loan Mortgage Corporation Act, the
13 Director shall submit a report, not later than October 30
14 of each year, to the Committee on Banking, Housing, and
15 Urban Affairs of the Senate and the Committee on Finan-
16 cial Services of the House of Representatives, on the activi-
17 ties of each enterprise.

18 “(b) *CONTENTS.*—The report required under
sub-

19 section (a) shall—

20 “(1) discuss—

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

22 “(i) each enterprise is achieving the
23 annual housing goals established under sub-
24 part B;

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

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

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

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

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

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

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

23 “(4) identify the extent to which each enterprise
24 is involved in mortgage purchases and secondary

1 *market activities involving subprime and nontradi-*
2 *tional loans;*

3 “(5) *compare the characteristics of subprime and*
4 *nontraditional loans both purchased and securitized*
5 *by each enterprise to other loans*
6 *purchased and*
7 *securitized by each enterprise; and*

8 “(6) *compare the characteristics of high-cost*
9 *loans purchased and securitized, where such securities*
10 *are not held on portfolio to loans purchased and*
11 *securitized, where such securities are either retained*
12 *on portfolio or repurchased by the enterprise, includ-*
13 *ing such characteristics as—*

14 “(A) *the purchase price of the property that*
15 *secures the mortgage;*

16 “(B) *the loan-to-value ratio of the mortgage,*
17 *which shall reflect any secondary liens on the*
18 *relevant property;*

19 “(C) *the terms of the mortgage;*

20 “(D) *the creditworthiness of the borrower;*
21 *and*

22 “(E) *any other relevant data, as determined*
23 *by the Director.*

24 “(c) *DATA COLLECTION AND REPORTING.—*

25 “(1) *IN GENERAL.—To assist the Director in*
analyzing the matters described in subsection (b), the

1 *Director shall conduct, on a monthly basis, a survey*
2 *of mortgage markets in accordance with this sub-*
3 *section.*

4 *“(2) DATA POINTS.—Each monthly survey con-*
5 *ducted by the Director under paragraph (1) shall col-*
6 *lect data on—*

7 *“(A) the characteristics of individual mort-*
8 *gages that are eligible for purchase by the enter-*
9 *prises and the characteristics of individual mort-*
10 *gages that are not eligible for purchase by the en-*
11 *terprises including, in both cases, information*
12 *concerning—*

13 *“(i) the price of the house that secures*
14 *the mortgage;*

15 *“(ii) the loan-to-value ratio of the*
16 *mortgage, which shall reflect any secondary*
17 *liens on the relevant property;*

18 *“(iii) the terms of the mortgage;*

19 *“(iv) the creditworthiness of the bor-*
20 *rower or borrowers; and*

21 *“(v) whether the mortgage, in the case*
22 *of a conforming mortgage, was purchased*
23 *by an enterprise;*

24 *“(B) the characteristics of individual*
25 *subprime and nontraditional mortgages that are*

1 *eligible for purchase by the enterprises and the*
2 *characteristics of borrowers under such mort-*
3 *gages, including the creditworthiness of such bor-*
4 *rowers and determination whether such bor-*
5 *rowers would qualify for prime lending; and*
6 *“(C) such other matters as the Director de-*
7 *termines to be appropriate.*

8 *“(3) PUBLIC AVAILABILITY.—The Director shall*
9 *make any data collected by the Director in connection*
10 *with the conduct of a monthly survey available to the*
11 *public in a timely manner, provided that the Director*
12 *may modify the data released to the public to ensure*
13 *that the data—*

14 *“(A) is not released in an identifiable form;*
15 *and*

16 *“(B) is not otherwise obtainable from other*
17 *publicly available data sets.*

18 *“(4) DEFINITION.—For purposes of this sub-*
19 *section, the term ‘identifiable form’ means any rep-*
20 *resentation of information that permits the identity of*
21 *a borrower to which the information relates to be rea-*
22 *sonably inferred by either direct or indirect means.’’.*

1 *SEC. 1126. PUBLIC USE DATABASE.*

2 *Section 1323 of the Federal Housing Enterprises Fi-*
3 *nancial Safety and Soundness Act of 1992 (42 U.S.C. 4543)*
4 *is amended—*

5 *(1) in subsection (a)—*

6 *(A) by striking “(a) IN GENERAL.—The*
7 *Secretary” and inserting the following:*

8 *“(a) AVAILABILITY.—*

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

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

12 *“(2) CENSUS TRACT LEVEL REPORTING.—Such*
13 *data shall include the data elements required to be re-*
14 *ported under the Home Mortgage Disclosure Act of*
15 *1975, at the census tract level.”;*

16 *(2) in subsection (b)(2), by inserting before the*
17 *period at the end the following: “or with subsection*
18 *(a)(2)”;* and

19 *(3) by adding at the end the following new sub-*
20 *section:*

21 *“(d) TIMING.—Data submitted under this section by*
22 *an enterprise in connection with a provision referred to in*
23 *subsection (a) shall be made publicly available in accord-*
24 *ance with this section not later than September 30 of the*
25 *year following the year to which the data relates.”.*

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

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

5 *(1) in subsection (a), by striking “The Director”*
6 *and inserting “Subject to subsection (d), the Direc-*
7 *tor”;* and

8 *(2) by adding at the end the following:*

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

16 *“(1) the same data from the enterprises that is*
17 *required of insured depository institutions under the*
18 *Home Mortgage Disclosure Act of 1975; and*

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

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

22 *(a) REPEAL.—Sections 1331 through 1334 of the Fed-*
23 *eral Housing Enterprises Financial Safety and Soundness*
24 *Act of 1992 (12 U.S.C. 4561 through 4564) are hereby re-*
25 *pealed.*

1 **(b) HOUSING GOALS.**—*The Federal Housing Enter-*
2 *prises Financial Safety and Soundness Act of 1992 is*
3 *amended by inserting before section 1335 the following:*

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

5 **“(a) IN GENERAL.**—*The Director shall, by regulation,*
6 *establish effective for 2010 and each year thereafter, annual*
7 *housing goals, with respect to the mortgage purchases by*
8 *the enterprises, as follows:*

9 **“(1) SINGLE-FAMILY HOUSING GOALS.**—*Four*
10 *single-family housing goals under section 1332.*

11 **“(2) MULTIFAMILY SPECIAL AFFORDABLE HOUS-**
12 *ING GOAL.*—*One multifamily special affordable hous-*
13 *ing goal under section 1333.*

14 **“(b) TIMING.**—*The Director shall, by regulation, estab-*
15 *lish an annual deadline by which the Director shall estab-*
16 *lish the annual housing goals under this subpart for each*
17 *year, taking into consideration the need for the enterprises*
18 *to reasonably and sufficiently plan their operations and ac-*
19 *tivities in advance, including operations and activities nec-*
20 *essary to meet such annual goals.*

21 **“(c) TRANSITION.**—*The annual housing goals effective*
22 *for 2008 pursuant to this subpart, as in effect before the*
23 *enactment of the Federal Housing Finance Regulatory Re-*
24 *form Act of 2008, shall remain in effect for 2009, except*
25 *that not later than the expiration of the 270-day period be-*

1 *ginning on the date of the enactment of such Act, the Direc-*
2 *tor shall review such goals applicable for 2009 to determine*
3 *the feasibility of such goals given the market conditions cur-*
4 *rent at such time and, after seeking public comment for a*
5 *period not to exceed 30 days, may make appropriate adjust-*
6 *ments consistent with such market conditions.*

7 “(d) *ELIMINATING INTEREST RATE DISPARITIES.*—

8 “(1) *IN GENERAL.*—Upon request by the Direc-
9 *tor, an enterprise shall provide to the Director, in a*
10 *form determined by the Director, data the Director*
11 *may review to determine whether there exist dispari-*
12 *ties in interest rates charged on mortgages to bor-*
13 *rowers who are minorities as compared with com-*
14 *parable mortgages to borrowers of similar credit-*
15 *worthiness who are not minorities.*

16 “(2) *REMEDIAL ACTIONS UPON PRELIMINARY*
17 *FINDING.*—Upon a preliminary finding by the Direc-
18 *tor that a pattern of disparities in interest rates with*
19 *respect to any lender or lenders exists pursuant to the*
20 *data provided by an enterprise in paragraph (1), the*
21 *Director shall*

22 “(A) *refer the preliminary finding to the*
23 *appropriate regulatory or enforcement agency for*
24 *further review; and*

1 “(B) require the enterprise to submit addi-
2 tional data with respect to any lender or lenders,
3 as appropriate and to the extent practicable, to
4 the Director who shall submit any such addi-
5 tional data to the regulatory or enforcement
6 agency for appropriate action.

7 “(3) ANNUAL REPORT TO CONGRESS.—The Di-
8 rector shall submit to the Committee on Financial
9 Services of the House of Representatives and the Com-
10 mittee on Banking, Housing, and Urban Affairs of
11 the Senate a report describing the actions taken, and
12 being taken, by the Director to carry out this sub-
13 section. No such report shall identify any lender or
14 lenders who have not been found to have engaged in
15 discriminatory lending practices pursuant to a final
16 adjudication on the record, and after opportunity for
17 an administrative hearing, in accordance with sub-
18 chapter II of chapter 5 of title 5, United States Code.

19 “(4) PROTECTION OF IDENTITY OF INDIVID-
20 UALS.—In carrying out this subsection, the Director
21 shall ensure that no property-related or financial in-
22 formation that would enable a borrower to be identi-
23 fied shall be made public.

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

2 *“(a) IN GENERAL.—The Director shall, by regulation,*
3 *establish annual goals for the purchase by each enterprise*
4 *of the following types of mortgages for the following cat-*
5 *egories of families:*

6 *“(1) PURCHASE-MONEY MORTGAGES.—A goal for*
7 *purchase of conventional, conforming, single-family,*
8 *purchase money mortgages financing owner-occupied*
9 *housing for each of the following categories of fami-*
10 *lies:*

11 *“(A) Low-income families.*

12 *“(B) Families that reside in low-income*
13 *areas.*

14 *“(C) Very low-income families.*

15 *“(2) REFINANCING MORTGAGES.—A goal for pur-*
16 *chase of conventional, conforming*
17 *owner-occupied, single-family housing for low-income*
18 *families that are given to pay off or prepay an exist-*
19 *ing loan secured by the same property.*

20 *“(b) GOALS AS A PERCENTAGE OF TOTAL MORTGAGE*
21 *PURCHASES.—The goals established under paragraphs (1)*
22 *and (2) of subsection (a) shall be established as a percentage*
23 *of the total number of conventional, conforming, single-fam-*
24 *ily, owner-occupied, purchase money mortgages purchased*
25 *by the enterprise, or as percentage of the total number of*
26 *conventional, single-family, owner-occupied refinance mort-*

1 gages purchased by the enterprise, as applicable, that are
 2 mortgages for the types of families specified in paragraphs
 3 (1) and (2) of subsection (a).

4 “(c) SINGLE-FAMILY, OWNER-OCCUPIED
 RENTAL

5 HOUSING UNITS.—The Director shall require each enter-
 6 prise to report the number of rental housing units affordable
 7 to low-income families each year which are contained in
 8 mortgages purchased by the enterprise financing 2- to 4-
 9 unit single-family, owner-occupied properties and may, by
 10 regulation, establish additional requirements relating to
 11 such units.

12 “(d) DETERMINATION OF COMPLIANCE.—

13 “(1) IN GENERAL.—The Director shall deter-
 14 mine, for each year that the housing goals under this
 15 section are in effect pursuant to section 1331(a),
 16 whether each enterprise has complied with each such
 17 goal established under subsection (a) of this section
 18 and any additional requirements which may be estab-
 19 lished under subsection (c) of this section.

20 “(2) PURCHASE-MONEY MORTGAGE GOALS.—An
 21 enterprise shall be considered to be in compliance
 22 with a housing goal under subparagraph (A), (B), or
 23 (C) of subsection (a)(1) for a year only if, for the type
 24 of family described in such subparagraph, the per-
 25 centage of the number of conventional, conforming,

1 *single-family, owner-occupied, purchase money mort-*
2 *gages purchased by the enterprise in such year that*
3 *serve such families, meets or exceeds the target for the*
4 *year for such type of family that is established under*
5 *subsection (e).*

6 “(3) *REFINANCE GOAL.*—*An enterprise shall be*
7 *considered to be in compliance with the refinance goal*
8 *under subsection (a)(2) for a year only if the percent-*
9 *age of the number of conventional, conforming, single-*
10 *family, owner-occupied refinance*
 mortgages pur-
11 *chased by the enterprise in such year that serve low-*
12 *income families meets or exceeds the target for the*
13 *year that is established under subsection (e).*

14 “(e) *ANNUAL TARGETS.*—

15 “(1) *IN GENERAL.*—*The Director shall, by regu-*
16 *lation, establish annual targets for each goal and*
17 *subgoal under this section, provided that the Director*
18 *shall not set prospective targets longer than three*
19 *years. In establishing such targets, the Director shall*
20 *not consider segments of the market determined to be*
21 *unacceptable or contrary to good lending practices,*
22 *inconsistent with safety and soundness, or unauthor-*
23 *ized for purchase by the enterprises.*

24 “(2) *GOALS TARGETS.*—

1 “(A) *CALCULATION.*—*The Director shall*
2 *calculate, for each of the types of families de-*
3 *scribed in subsection (a), the percentage, for each*
4 *of the three years that most recently precede such*
5 *year and for which information under the Home*
6 *Mortgage Disclosure Act of 1975 is publicly*
7 *available—*

8 “(i) *of the number of conventional,*
9 *conforming, single-family, owner-occupied*
10 *purchase money mortgages originated in*
11 *such year that serve such type of family, or*

12 “(ii) *the number of conventional, con-*
13 *forming, single-family, owner-occupied refi-*
14 *nance mortgages originated in such year*
15 *that serve low-income families,*

16 *as applicable, as determined by the Director*
17 *using the information obtained and determined*
18 *pursuant to paragraphs (4) and (5).*

19 “(B) *ESTABLISHMENT OF GOAL TARGETS.*—
20 *The Director shall, by regulation, establish tar-*
21 *gets for each of the goal categories, taking into*
22 *consideration the calculations under subpara-*
23 *graph (A) and the following factors:*

24 “(i) *National housing needs.*

1 “(ii) *Economic, housing, and demo-*
2 *graphic conditions, including expected mar-*
3 *ket developments.*

4 “(iii) *The performance and effort of the*
5 *enterprises toward achieving the housing*
6 *goals under this section in previous years.*

7 “(iv) *The ability of the enterprise to*
8 *lead the industry in making mortgage cred-*
9 *it available.*

10 “(v) *Such other reliable mortgage data*
11 *as may be available.*

12 “(vi) *The size of the purchase money*
13 *conventional mortgage market, or refinance*
14 *conventional mortgage market, as applica-*
15 *ble, serving each of the types of families de-*
16 *scribed in subsection (a), relative to the size*
17 *of the overall purchase money mortgage*
18 *market or the overall refinance mortgage*
19 *market, respectively.*

20 “(vii) *The need to maintain the sound*
21 *financial condition of the enterprises.*

22 “(3) *AUTHORITY TO ADJUST TARGETS.—The Di-*
23 *rector may, by regulation, adjust the percentage tar-*
24 *gets previously established by regulation pursuant to*

1 *paragraph (2)(B) for any year, to reflect subsequent*
2 *available data and market developments.*

3 “(4) *HMDA INFORMATION.—The Director shall*
4 *annually obtain information submitted in compliance*
5 *with the Home Mortgage Disclosure Act of 1975 re-*
6 *garding conventional, conforming, single-family,*
7 *owner-occupied, purchase money and refinance mort-*
8 *gages originated and purchased for the previous year.*

9 “(5) *CONFORMING MORTGAGES.—In determining*
10 *whether a mortgage is a conforming mortgage for*
11 *purposes of this paragraph, the Director shall con-*
12 *sider the original principal balance of the mortgage*
13 *loan to be the principal balance as reported in the in-*
14 *formation referred to in paragraph (4), as rounded to*
15 *the nearest thousand dollars.*

16 “(f) *NOTICE OF DETERMINATION AND ENTERPRISE*
17 *COMMENT.—*

18 “(1) *NOTICE.—Within 30 days of making a de-*
19 *termination under subsection (d) regarding compli-*
20 *ance of an enterprise for a year with a housing goal*
21 *established under this section and before any public*
22 *disclosure thereof, the Director shall provide notice of*
23 *the determination to the enterprise, which shall in-*
24 *clude an analysis and comparison, by the Director, of*

1 *the performance of the enterprise for the year and the*
2 *targets for the year under subsection (e).*

3 *“(2) COMMENT PERIOD.—The Director shall pro-*
4 *vide each enterprise an opportunity to comment on*
5 *the determination during the 30-day period beginning*
6 *upon receipt by the enterprise of the notice.*

7 *“(g) USE OF BORROWER INCOME.—In monitoring the*
8 *performance of each enterprise pursuant to the housing*
9 *goals under this section and evaluating such performance*
10 *(for purposes of section 1336), the Director shall consider*
11 *a mortgagor’s income to be such income at the time of origi-*
12 *nation of the mortgage.*

13 *“(h) CONSIDERATION OF PROPERTIES WITH RENTAL*
14 *UNITS.—Mortgages financing two- to four-unit owner-occu-*
15 *pled properties shall count toward the achievement of the*
16 *single-family housing goals under this section, if such prop-*
17 *erties otherwise meet the requirements under this section,*
18 *notwithstanding the use of one or more units for rental pur-*
19 *poses.*

20 *“(i) GOALS CREDIT.—The Director shall determine*
21 *whether an enterprise shall receive full, partial, or no credit*
22 *for a transaction toward achievement of any of the housing*
23 *goals established pursuant to section 1332 and 1333. In*
24 *making any such determination, the Director shall consider*
25 *whether a transaction or activity of an enterprise is sub-*

1 *stantially equivalent to a mortgage purchase and either (1)*
2 *creates a new market, or (2) adds liquidity to an existing*
3 *market. No credit toward the achievement of the housing*
4 *goals and subgoals established under this section may be*
5 *given to the purchase of mortgages, including any trans-*
6 *action or activity of an enterprise determined to be substan-*
7 *tially equivalent to a mortgage purchase, that is determined*
8 *to be unacceptable or contrary to good lending practices,*
9 *inconsistent with safety and soundness, or unauthorized for*
10 *purchase by the enterprises, pursuant to regulations issued*
11 *by the Director.*

12 **“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING**

13 **GOAL.**

14 **“(a) ESTABLISHMENT OF GOAL.—**

15 **“(1) IN GENERAL.—***The Director shall, by regu-*
16 *lation, establish a single annual goal, by either unit*
17 *or dollar volume, of purchases by each enterprise of*
18 *mortgages on multifamily housing that finance dwell-*
19 *ing units affordable to low-income families.*

20 **“(2) ADDITIONAL REQUIREMENTS FOR UNITS AF-**

21 **FORDABLE TO VERY LOW-INCOME FAMILIES.—***When*
22 *establishing the goal under this section, the Director*
23 *shall establish additional requirements for the pur-*
24 *chase by each enterprise of mortgages on multifamily*

1 *housing that finance dwelling units affordable to very*
2 *low-income families.*

3 “(3) *REPORTING ON SMALLER PROPERTIES.—*

4 *The Director shall require each enterprise to report on*
5 *the purchase by each enterprise of multifamily hous-*
6 *ing of a smaller or limited size that is affordable to*
7 *low-income families, which may be based on multi-*
8 *family projects of 5 to 50 units (as such numbers may*
9 *be adjusted by the Director) or on mortgages of up to*
10 *\$5,000,000 (as such amount may be adjusted by the*
11 *Director), and may, by regulation, establish such*
12 *additional requirements related to such units.*

13 “(4) *FACTORS.—In establishing the goal and ad-*
14 *ditional requirements under this section, the Director*
15 *shall not consider segments of the market determined*
16 *to be inconsistent with safety and soundness or unau-*
17 *thorized for purchase by the enterprises, and shall*
18 *take into consideration—*

19 “(A) *national multifamily mortgage credit*
20 *needs and the ability of the enterprise to provide*
21 *additional liquidity and stability for the multi-*
22 *family mortgage market;*

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

1 “(C) *the size of the multifamily mortgage*
2 *market for housing affordable to low-income and*
3 *very low-income families, including the size of*
4 *the multifamily markets for housing of a smaller*
5 *or limited size;*

6 “(D) *the ability of the enterprise to lead the*
7 *market in making multifamily mortgage credit*
8 *available, especially for multifamily housing de-*
9 *scribed in paragraphs (1) and (2);*

10 “(E) *the availability of public subsidies;*
11 *and*

12 “(F) *the need to maintain the sound finan-*
13 *cial condition of the enterprise.*

14 “(b) *UNITS FINANCED BY HOUSING FINANCE AGENCY*
15 *BONDS.—The Director shall give full credit toward the*
16 *achievement of the multifamily special affordable housing*
17 *goal under this section (for purposes of section 1336) to*
18 *dwelling units in multifamily housing that otherwise quali-*
19 *fies under such goal and that is financed by tax-exempt or*
20 *taxable bonds issued by a State or local housing finance*
21 *agency, if such bonds, in whole or in part—*

22 “(1) *are secured by a guarantee of the enterprise;*
23 *or*

24 “(2) *are purchased by the enterprise, except that*
25 *the Director may give less than full credit for pur-*

1 “(b) *STANDARD FOR REDUCTION.*—*The Director may*
2 *reduce the level for a goal or subgoal pursuant to such a*
3 *petition only if—*

4 “(1) *market and economic conditions or the fi-*
5 *nancial condition of the enterprise require such ac-*
6 *tion; or*

7 “(2) *efforts to meet the goal or subgoal would re-*
8 *sult in the constraint of liquidity, over-investment in*
9 *certain market segments, or other consequences con-*
10 *trary to the intent of this subpart, or section 301(3)*
11 *of the Federal National Mortgage Association Charter*
12 *Act (12 U.S.C. 1716(3)) or section 301(b)(3) of the*
13 *Federal Home Loan Mortgage Corporation Act (12*
14 *U.S.C. 1451 note), as applicable.*

15 “(c) *DETERMINATION.*—*The Director shall, promptly*
16 *upon receipt of a petition regarding a reduction, seek public*
17 *comment on the reduction for a period of 30 days. The Di-*
18 *rector shall make a determination regarding any proposed*
19 *reduction within 30 days after the expiration of such public*
20 *comment period. The Director may extend such determina-*
21 *tion period for a single additional 15-day period, but only*
22 *if the Director requests additional information from the en-*
23 *terprise.’’.*

24 (c) *CONFORMING AMENDMENTS.*—*The Housing and*
25 *Community Development Act of 1992 is amended*

1 *justments for smaller and larger families, as*
2 *determined by the Director.*

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

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

10 “(ii) *in the case of rental units, income*
11 *in excess of 30 percent but not greater than*
12 *50 percent of the area median income, with*
13 *adjustments for smaller and larger families,*
14 *as determined by the Director.’”; and*

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

16 “(26) *CONFORMING MORTGAGE.—The term ‘con-*
17 *forming mortgage’ means, with respect to an enter-*
18 *prise, a conventional mortgage having an original*
19 *principal obligation that does not exceed the dollar*
20 *amount limitation in effect at the time of such origi-*
21 *nation and applicable to such mortgage, under, as*
22 *applicable—*

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

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

3 “(27) *EXTREMELY LOW-INCOME*.—The term ‘ex-
4 tremely low-income’ means—

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

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

12 “(28) *LOW-INCOME AREA*.—The term ‘low-in-
13 come area’ means a census tract or block numbering
14 area in which the median income does not exceed 80
15 percent of the median income for the area in which
16 such census tract or block numbering area is located,
17 and, for the purposes of section 1332(a)(1)(B), shall
18 include families having incomes not greater than 100
19 percent of the area median income who reside in mi-
20 nority census tracts and shall include families having
21 incomes not greater than 100 percent of the area me-
22 dian income who reside in designated disaster areas.

23 “(29) *MINORITY CENSUS TRACT*.—The term ‘mi-
24 nority census tract’ means a census tract that has a
25 minority population of at least 30 percent and a me-

1 *dian family income of less than 100 percent of the*
2 *area family median income.*

3 “(30) *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 the gap between—*

10 “(i) *the number of units with complete*
11 *plumbing and kitchen facilities with a rent*
12 *that is 30 percent or less of 30 percent of*
13 *the adjusted area median income as deter-*
14 *mined by the Director that are occupied by*
15 *extremely low-income renter households or*
16 *are vacant for rent; and*

17 “(ii) *the number of extremely low-in-*
18 *come renter households.*

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

1 “(31) *SHORTAGE OF STANDARD RENTAL UNITS*
2 *BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-IN-*
3 *COME 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’ means*
7 *the gap between—*

8 “(i) *the number of units with complete*
9 *plumbing and kitchen facilities with a rent*
10 *that is 30 percent or less of 50 percent of*
11 *the adjusted area median income as deter-*
12 *mined by the Director that are occupied by*
13 *either extremely low- or very low-income*
14 *renter households or are vacant for rent;*
15 *and*

16 “(ii) *the number of extremely low- and*
17 *very low-income renter households.*

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

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

24 (a) *ESTABLISHMENT AND EVALUATION OF PERFORM-*
25 *ANCE.—Section 1335 of the Federal Housing Enterprises*

1 *Financial Safety and Soundness Act of 1992 (12 U.S.C.*
2 *4565) is amended—*

3 *(1) in the section heading, by inserting “DUTY*
4 *TO SERVE UNDERSERVED MARKETS AND” before*
5 *“OTHER”;*

6 *(2) by striking subsection (b);*

7 *(3) in subsection (a)—*

8 *(A) in the matter preceding paragraph (1),*

9 *by inserting “and to carry out the duty under*
10 *subsection (a) of this section” before “, each en-*
11 *terprise shall”;*

12 *(B) in paragraph (3), by inserting “and”*
13 *after the semicolon at the end;*

14 *(C) in paragraph (4), by striking “; and”*
15 *and inserting a period;*

16 *(D) by striking paragraph (5); and*

17 *(E) by redesignating such subsection as sub-*
18 *section (b);*

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

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

23 *“(1) DUTY.—To increase the liquidity of mort-*
24 *gage investments and improve the distribution of in-*
25 *vestment capital available for mortgage financing for*

1 *underserved markets, each enterprise shall provide*
2 *leadership to the market in developing loan products*
3 *and flexible underwriting guidelines to facilitate a*
4 *secondary market for mortgages for very low-, low-,*
5 *and moderate-income families with respect to the fol-*
6 *lowing underserved markets:*

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

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

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

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

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

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

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

11 “(vi) the programs under title IV of the
12 McKinney-Vento Homeless Assistance Act
13 (42 U.S.C. 11361 et seq.), but only perma-
14 nent supportive housing projects subsidized
15 under such programs;

16 “(vii) the rural rental housing pro-
17 gram under section 515 of the Housing Act
18 of 1949;

19 “(viii) the low-income housing tax
20 credit under section 42 of the Internal Rev-
21 enue Code of 1986; and

22 “(ix) comparable state and local af-
23 fordable housing programs.

24 “(C) RURAL MARKETS.—The enterprise
25 shall develop loan products and flexible under-

1 *writing guidelines to facilitate a secondary mar-*
2 *ket for mortgages on housing for very low-, and*
3 *low-, and moderate-income families in rural*
4 *areas.’’; and*

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

7 *“(c) ADDITIONAL CATEGORIES.—The Director may*
8 *submit recommendations to the Committee on Financial*
9 *Services of the House of Representatives and the Committee*
10 *on Banking, Housing, and Urban Affairs of the Senate for*
11 *the establishment of additional categories under subsection*
12 *(a), provided that the Director makes a preliminary deter-*
13 *mination that any such category is important to the mis-*
14 *sion of the enterprises, that the category is an underserved*
15 *market, and that the establishment of such category is war-*
16 *ranted.*

17 *“(d) EVALUATION AND REPORTING OF COMPLIANCE.—*
18 *“(1) IN GENERAL.—The Director shall, by regu-*
19 *lation, establish effective for 2010 and thereafter a*
20 *manner for evaluating whether, and the extent to*
21 *which, the enterprises have complied with the duty*
22 *under subsection (a) to serve underserved markets and*
23 *for rating the extent of such compliance. Using such*
24 *method, the Director shall, for 2010 and each year*
25 *thereafter, evaluate such compliance and rate the per-*

1 *formance of each enterprise as to extent of compli-*
2 *ance. The Director shall include such evaluation and*
3 *rating for each enterprise for a year in the report for*
4 *that year submitted pursuant to section 1319B(a).*

5 *“(2) SEPARATE EVALUATIONS.—In determining*
6 *whether an enterprise has complied with the duty re-*
7 *ferred to in paragraph (1), the Director shall sepa-*
8 *rately evaluate whether the enterprise has complied*
9 *with such duty with respect to each of the underserved*
10 *markets identified in subsection (a), taking into con-*
11 *sideration*

12 *“(A) the development of loan products, more*
13 *flexible underwriting guidelines, and other inno-*
14 *vative approaches to providing financing to each*
15 *of such underserved markets;*

16 *“(B) the extent of outreach to qualified loan*
17 *sellers and other market participants in each of*
18 *such underserved markets;*

19 *“(C) the volume of loans purchased in each*
20 *of such underserved markets relative to the mar-*
21 *ket opportunities available to the enterprise, ex-*
22 *cept that the Director shall not establish specific*
23 *quantitative targets nor evaluate the enterprises*
24 *based solely on the volume of loans purchased;*
25 *and*

1 “(D) the amount of investments and grants
2 in projects which assist in meeting the needs of
3 such underserved markets.

4 “(3) *MANUFACTURED HOUSING MARKET.*—*In de-*
5 *termining whether an enterprise has complied with*
6 *the duty under subparagraph (A) of subsection (a)(1),*
7 *the Director may consider loans secured by both real*
8 *and personal property.*

9 “(4) *PROHIBITION OF CONSIDERATION OF AF-*
10 *FORDABLE HOUSING FUNDGRANTS FOR*
11 *MEETING*
12 *DUTY TO SERVE.*—*In determining whether an enter-*
13 *prise has complied with the duty referred to in para-*
14 *graph (1), the Director may not consider any afford-*
15 *able housing fund grant amounts used under section*
16 *1337 for eligible activities under subsection (g) of*
17 *such section.’’.*

18 (b) *ENFORCEMENT.*—*Subsection (a) of section 1336 of*
19 *the Housing and Community Development Act of 1992 (12*
20 *U.S.C. 4566(a)) is amended—*

21 (1) *in paragraph (1), by inserting ‘‘and with the*
22 *duty under section 1335(a) of each enterprise with re-*
23 *spect to underserved markets,’’ before ‘‘as provided in*
 this section’’; and

1 (2) by adding at the end of such subsection, as
2 amended by the preceding provisions of this title, the
3 following new paragraph:

4 “(4) *ENFORCEMENT OF DUTY TO PROVIDE MORT-*
5 *GAGE CREDIT TO UNDERSERVED MARKETS.*—*The duty*
6 *under section 1335(a) of each enterprise to serve un-*
7 *derserved markets (as determined in accordance with*
8 *section 1335(c)) shall be enforceable under this section*
9 *to the same extent and under the same provisions that*
10 *the housing goals established under this subpart are*
11 *enforceable. Such duty shall be enforceable only under*
12 *this section, except that such duty shall not be subject*
13 *to subsection (c)(7) of this section and shall not be en-*
14 *forceable under any other provision of this title (in-*
15 *cluding subpart C of this part) or under any provi-*
16 *sion of the Federal National Mortgage Association*
17 *Charter Act or the Federal Home Loan Mortgage Cor-*
18 *poration Act.’’.*

19 (c) *ADDITIONAL CREDIT FOR CERTAIN MORTGAGES.*—
20 *Section 1336(a) of the Housing and Community Develop-*
21 *ment Act of 1992 (12 U.S.C. 4566(a)) is amended*

22 (1) in paragraph (2), by inserting “, except as
23 provided in paragraph (5),” after “which”; and
24 (2) by adding at the end the following new para-
25 graph:

1 “(5) *ADDITIONAL CREDIT.*—*The Director may*
2 *assign additional credit toward achievement, under*
3 *this section, of the housing goals for mortgage pur-*
4 *chase activities of the enterprises that comply with the*
5 *requirements of such goals and support housing that*
6 *includes a licensed childcare center. The availability*
7 *of additional credit under this paragraph shall not be*
8 *used to increase any housing goal, subgoal, or target*
9 *established under this subpart.’’.*

10 ***SEC. 1130. MONITORING AND ENFORCING COMPLIANCE***
11 ***WITH HOUSING GOALS.***

12 (a) *IN GENERAL.*—*Section 1336 of the Federal Hous-*
13 *ing Enterprises Financial Safety and Soundness Act of*
14 *1992 (12 U.S.C. 4566) is amended by striking subsections*
15 *(b) and (c) and inserting the following:*

16 “(b) *NOTICE AND PRELIMINARY DETERMINATION OF*
17 *FAILURE TO MEET GOALS.*—

18 “(1) *NOTICE.*—*If the Director preliminarily de-*
19 *termines that an enterprise has failed, or that there*
20 *is a substantial probability that an enterprise will*
21 *fail, to meet any housing goal under this subpart, the*
22 *Director shall provide written notice to the enterprise*
23 *of such a preliminary determination, the reasons for*
24 *such determination, and the information on which the*
25 *Director based the determination.*

1 “(2) *RESPONSE PERIOD.*—

2 “(A) *IN GENERAL.*—During the 30-day pe-
3 riod beginning on the date on which an enter-
4 prise is provided notice under paragraph (1), the
5 enterprise may submit to the Director any writ-
6 ten information that the enterprise considers ap-
7 propriate for consideration by the Director in fi-
8 nally determining whether such failure has oc-
9 curred or whether the achievement of such goal
10 was or is feasible.

11 “(B) *EXTENDED PERIOD.*—The Director
12 may extend the period under subparagraph (A)
13 for good cause for not more than 30 additional
14 days.

15 “(C) *SHORTENED PERIOD.*—The Director
16 may shorten the period under subparagraph (A)
17 for good cause.

18 “(D) *FAILURE TO RESPOND.*—The failure of
19 an enterprise to provide information during the
20 30-day period under this paragraph (as extended
21 or shortened) shall waive any right of the enter-
22 prise to comment on the proposed determination
23 or action of the Director.

24 “(3) *CONSIDERATION OF INFORMATION AND*
25 *FINAL DETERMINATION.*—

1 “(A) *IN GENERAL.*—After the expiration of
2 the response period under paragraph (2), or
3 upon receipt of information provided during
4 such period by the enterprise, whichever occurs
5 earlier, the Director shall issue a final deter-
6 mination on—

7 “(i) whether the enterprise has failed,
8 or there is a substantial probability that the
9 enterprise will fail, to meet the housing
10 goal; and

11 “(ii) whether (taking into consider-
12 ation market and economic conditions and
13 the financial condition of the enterprise) the
14 achievement of the housing goal was or is
15 feasible.

16 “(B) *CONSIDERATIONS.*—In making a final
17 determination under subparagraph (A), the Di-
18 rector shall take into consideration any relevant
19 information submitted by the enterprise during
20 the response period.

21 “(C) *NOTICE.*—The Director shall provide
22 written notice, including a response to any in-
23 formation submitted during the response period,
24 to the enterprise, the Committee on Banking,
25 Housing, and Urban Affairs of the Senate, and

1 *the Committee on Financial Services of the*
2 *House of Representatives, of—*

3 *“(i) each final determination under*
4 *this paragraph that an enterprise has*
5 *failed, or that there is a substantial prob-*
6 *ability that the enterprise will fail, to meet*
7 *a housing goal;*

8 *“(ii) each final determination that the*
9 *achievement of a housing goal was or is fea-*
10 *sible; and*

11 *“(iii) the reasons for each such final*
12 *determination.*

13 *“(c) CEASE AND DESIST, CIVIL MONEY PENALTIES,*
14 *AND REMEDIES INCLUDING HOUSING PLANS.—*

15 *“(1) REQUIREMENT.—If the Director finds, pur-*
16 *suant to subsection (b), that there is a substantial*
17 *probability that an enterprise will fail, or has actu-*
18 *ally failed, to meet any housing goal under this sub-*
19 *part, and that the achievement of the housing goal*
20 *was or is feasible, the Director may require that the*
21 *enterprise submit a housing plan under this sub-*
22 *section. If the Director makes such a finding and the*
23 *enterprise refuses to submit such a plan, submits an*
24 *unacceptable plan, or fails to comply with the plan,*
25 *the Director may issue a cease and desist order in ac-*

1 *cordance with section 1341 and impose civil money*
2 *penalties in accordance with section 1345.*

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

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

8 “(i) *to achieve the goal for the next cal-*
9 *endar 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 reason-*
15 *able 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 Director*
19 *shall establish a deadline for an enterprise to submit*
20 *a housing plan to the Director, which may not be*
21 *more than 45 days after the enterprise is provided no-*
22 *tice. The Director may extend the deadline to the ex-*
23 *tent that the Director determines necessary. Any ex-*
24 *ension of the deadline shall be in writing and for a*
25 *time certain.*

1 “(4) APPROVAL.—The Director shall review each
2 submission by an enterprise, including a housing
3 plan submitted under this subsection, and, not later
4 than 30 days after submission, approve or disapprove
5 the plan or other action. The Director may extend the
6 period for approval or disapproval for a single addi-
7 tional 30-day period if the Director determines it nec-
8 essary. The Director shall approve any plan that the
9 Director determines is likely to succeed, and conforms
10 with the Federal National Mortgage Association
11 Charter Act or the Federal Home Loan Mortgage Cor-
12 poration Act (as applicable), this title, and any other
13 applicable provision of law.

14 “(5) NOTICE OF APPROVAL AND DISAPPROVAL.—
15 The Director shall provide written notice to any en-
16 terprise submitting a housing plan of the approval or
17 disapproval of the plan (which shall include the rea-
18 sons for any disapproval of the plan) and of any ex-
19 tension of the period for approval or disapproval.

20 “(6) RESUBMISSION.—If the initial housing plan
21 submitted by an enterprise under this section is dis-
22 approved, the enterprise shall submit an amended
23 plan acceptable to the Director not later than 15 days
24 after such disapproval, or such longer period that the
25 Director determines is in the public interest.

1 “(7) *CEASE AND DESIST ORDERS; CIVIL MONEY*
2 *PENALTIES.*—Solely with respect to the housing goals
3 established under sections 1332(a) and 1333(a)(1), if
4 the Director requires an enterprise to submit a hous-
5 ing plan under this subsection and the enterprise re-
6 fuses to submit such a plan, submits an unacceptable
7 plan, or fails to comply with the plan, the Director
8 may issue a cease and desist order in accordance with
9 section 1341, impose civil money penalties in accord-
10 ance with section 1345, exercise other appropriate en-
11 forcement authority or seek other appropriate ac-
12 tions.’’.

13 (b) *CONFORMING AMENDMENT.*—The heading for sub-
14 part C of part 2 of subtitle A of the Federal Housing Enter-
15 prises Financial Safety and Soundness Act of 1992 is
16 amended to read as follows:

17 **“Subpart C—Enforcement”**.

18 (c) *CEASE AND DESIST PROCEEDINGS.*—

19 (1) *REPEAL.*—Section 1341 of the Federal Hous-
20 ing Enterprises Financial Safety and Soundness Act
21 of 1992 (12 U.S.C. 4581) is hereby repealed.

22 (2) *CEASE AND DESIST PROCEEDINGS.*—The
23 Federal Housing Enterprises Financial Safety and
24 Soundness Act of 1992 is amended by inserting before
25 section 1342 the following:

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

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

5 *“(1) the enterprise has failed to submit a report*
6 *under section 1327, following a notice of such failure,*
7 *an opportunity for comment by the enterprise, and a*
8 *final determination by the Director;*

9 *“(2) the enterprise has failed to submit the infor-*
10 *mation required under subsection (m) or (n) of sec-*
11 *tion 309 of the Federal National Mortgage Association*
12 *Charter Act, or subsection (e) or (f) of section 307 of*
13 *the Federal Home Loan Mortgage Corporation Act;*

14 *“(3) solely with respect to the housing goals es-*
15 *tablished under sections 1332(a) and 1333(a)(1), the*
16 *enterprise has failed to submit a housing plan that*
17 *complies with section 1336(c) within the applicable*
18 *period; or*

19 *“(4) solely with respect to the housing goals es-*
20 *tablished under sections 1332(a) and 1333(a)(1), the*
21 *enterprise has failed to comply with a housing plan*
22 *under section 1336(c).*

23 *“(b) PROCEDURE.—*

24 *“(1) NOTICE OF CHARGES.—Each notice of*
25 *charges issued under this section shall contain a*
26 *statement of the facts constituting the alleged conduct*

1 *and shall fix a time and place at which a hearing*
2 *will be held to determine on the record whether an*
3 *order to cease and desist from such conduct should*
4 *issue.*

5 “(2) *ISSUANCE OF ORDER.*—*If the Director finds*
6 *on the record made at a hearing described in para-*
7 *graph (1) that any conduct specified in the notice of*
8 *charges has been established (or the enterprise con-*
9 *sents pursuant to section 1342(a)(4)), the Director*
10 *may issue and serve upon the enterprise an order re-*
11 *quiring the enterprise to—*

12 “(A) *submit a report under section 1327;*

13 “(B) *solely with respect to the housing goals*
14 *established under sections 1332(a) and*
15 *1333(a)(1), submit a housing plan in compliance*
16 *with section 1336(c);*

17 “(C) *solely with respect to the housing goals*
18 *established under sections 1332(a) and*
19 *1333(a)(1), comply with the housing plan in*
20 *compliance with section 1336(c); or*

21 “(D) *provide the information required*
22 *under subsection (m) or (n) of section 309 of the*
23 *Federal National Mortgage Association Charter*
24 *Act, or subsection (e) or (f) of section 307 of the*
25 *Federal Home Loan Mortgage Corporation Act.*

1 “(c) *EFFECTIVE DATE.*—An order under this section
2 shall become effective upon the expiration of the 30-day pe-
3 riod beginning on the date of service of the order upon the
4 enterprise (except in the case of an order issued upon con-
5 sent, which shall become effective at the time specified there-
6 in), and shall remain effective and enforceable as provided
7 in the order, except to the extent that the order is stayed,
8 modified, terminated, or set aside by action of the Director
9 or otherwise, as provided in this subpart.’’.

10 (d) *CIVIL MONEY PENALTIES.*—

11 (1) *REPEAL.*—Section 1345 of the Federal Hous-
12 ing Enterprises Financial Safety and Soundness Act
13 of 1992 (12 U.S.C. 4585) is hereby repealed.

14 (2) *CIVIL MONEY PENALTIES.*—The Federal
15 Housing Enterprises Financial Safety and Soundness
16 Act of 1992 is amended by inserting after section
17 1344 the following:

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

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

22 “(1) submit a report under section 1327, fol-
23 lowing a notice of such failure, an opportunity for
24 comment by the enterprise, and a final determination
25 by the Director;

1 “(2) submit the information required under sub-
2 section (m) or (n) of section 309 of the Federal Na-
3 tional Mortgage Association Charter Act or subsection
4 (e) or (f) of section 307 of the Federal Home Loan
5 Mortgage Corporation Act;

6 “(3) solely with respect to the housing goals es-
7 tablished under sections 1332(a) and 1333(a)(1), sub-
8 mit a housing plan or perform its responsibilities
9 under a remedial order issued pursuant to section
10 1336(c) within the required period; or

11 “(4) solely with respect to the housing goals es-
12 tablished under sections 1332(a) and 1333(a)(1), com-
13 ply with a housing plan for the enterprise under sec-
14 tion 1336(c).

15 “(b) AMOUNT OF PENALTY.—The amount of a penalty
16 under this section, as determined by the Director, may not
17 exceed—

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

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

24 “(c) PROCEDURES.—

1 “(1) *ESTABLISHMENT.*—*The Director shall estab-*
2 *lish standards and procedures governing the imposi-*
3 *tion of civil money penalties under this section. Such*
4 *standards and procedures—*

5 “(A) *shall provide for the Director to notify*
6 *the enterprise in writing of the determination of*
7 *the Director to impose the penalty, which shall*
8 *be made on the record;*

9 “(B) *shall provide for the imposition of a*
10 *penalty only after the enterprise has been given*
11 *an opportunity for a hearing on the record pur-*
12 *suant to section 1342; and*

13 “(C) *may provide for review by the Director*
14 *of any determination or order, or interlocutory*
15 *ruling, arising from a hearing.*

16 “(2) *FACTORS IN DETERMINING AMOUNT OF PEN-*
17 *ALTY.*—*In determining the amount of a penalty*
18 *under this section, the Director shall give consider-*
19 *ation to factors including—*

20 “(A) *the gravity of the offense;*

21 “(B) *any history of prior offenses;*

22 “(C) *ability to pay the penalty;*

23 “(D) *injury to the public;*

24 “(E) *benefits received;*

25 “(F) *deterrence of future violations;*

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

3 “(H) such other factors as the Director may
4 determine, by regulation, to be appropriate.

5 “(d) ACTION TO COLLECT PENALTY.—If an enterprise
6 fails to comply with an order by the Director imposing a
7 civil money penalty under this section, after the order is
8 no longer subject to review, as provided in sections 1342
9 and 1343, the Director may bring an action in the United
10 States District Court for the District of Columbia to obtain
11 a monetary judgment against the enterprise, and such other
12 relief as may be available. The monetary judgment may,
13 in the court’s discretion, include the attorneys’ fees and
14 other expenses incurred by the United States in connection
15 with the action. In an action under this subsection, the va-
16 lidity and appropriateness of the order imposing the pen-
17 alty shall not be subject to review.

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

21 “(f) DEPOSIT OF PENALTIES.—The Director shall use
22 any civil money penalties collected under this section to
23 help fund the Housing Trust Fund established under section
24 1338.’’.

25 (e) DIRECTOR AUTHORITY.—

- 1 (1) *AUTHORITY TO BRING A CIVIL ACTION.*—*Sec-*
2 *tion 1344(a) of the Federal Housing Enterprises Fi-*
3 *nancial Safety and Soundness Act of 1992 (12 U.S.C.*
4 *4584) is amended by striking “The Secretary may re-*
5 *quest the Attorney General of the United States to*
6 *bring a civil action” and inserting “The Director*
7 *may bring a civil action”.*
- 8 (2) *SUBPOENA ENFORCEMENT.*—*Section 1348(c)*
9 *of the Federal Housing Enterprises Financial Safety*
10 *and Soundness Act of 1992 (12 U.S.C. 4588(c)) is*
11 *amended by inserting “may bring an action or” be-*
12 *fore “may request”.*
- 13 (3) *CONFORMING AMENDMENTS.*—*Subpart C of*
14 *part 2 of subtitle A of the Federal Housing Enter-*
15 *prises Financial Safety and Soundness Act of 1992*
16 *(12 U.S.C. 4581 et seq.) is amended by striking “Sec-*
17 *retary” each place that term appears and inserting*
18 *“Director” in each of—*
- 19 (A) *section 1342 (12 U.S.C. 4582);*
20 (B) *section 1343 (12 U.S.C. 4583);*
21 (C) *section 1346 (12 U.S.C. 4586);*
22 (D) *section 1347 (12 U.S.C. 4587); and*
23 (E) *section 1348 (12 U.S.C. 4588).*

1 **SEC. 1131. AFFORDABLE HOUSING PROGRAMS.**

2 (a) *REPEAL.*—Section 1337 of the Federal Housing
3 Enterprises Financial Safety and Soundness Act of 1992
4 (12 U.S.C. 4567) is hereby repealed.

5 (b) *ANNUAL HOUSING REPORT.*—The Federal Housing
6 Enterprises Financial Safety and Soundness Act of 1992
7 (12 U.S.C. 1301 et seq.) is amended by inserting after sec-
8 tion 1336 the following:

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

10 “(a) *SET ASIDE AND ALLOCATION OF AMOUNTS BY*
11 *ENTERPRISES.*—Subject to subsection (b), in each fiscal
12 year—

13 “(1) the Federal Home Loan Mortgage Corpora-
14 tion shall—

15 “(A) set aside an amount equal to 4.2 basis
16 points for each dollar of the unpaid principal
17 balance of its total new business purchases; and

18 “(B) allocate or otherwise transfer—

19 “(i) 65 percent of such amounts to the
20 Secretary of Housing and Urban Develop-
21 ment to fund the Housing Trust Fund es-
22 tablished under section 1338; and

23 “(ii) 35 percent of such amounts to
24 fund the Capital Magnet Fund established
25 pursuant to section 1339; and

1 “(2) *the Federal National Mortgage Association*
2 *shall—*

3 “(A) *set aside an amount equal to 4.2 basis*
4 *points for each dollar of unpaid principal bal-*
5 *ance of its total new business purchases; and*

6 “(B) *allocate or otherwise transfer—*

7 “(i) *65 percent of such amounts to the*
8 *Secretary of Housing and Urban Develop-*
9 *ment to fund the Housing Trust Fund es-*
10 *tablished under section 1338; and*

11 “(ii) *35 percent of such amounts to*
12 *fund the Capital Magnet Fund established*
13 *pursuant to section 1339.*

14 “(b) *SUSPENSION OF CONTRIBUTIONS.—The Director*
15 *shall temporarily suspend allocations under subsection (a)*
16 *by an enterprise upon a finding by the Director that such*
17 *allocations—*

18 “(1) *are contributing, or would contribute, to the*
19 *financial instability of the enterprise;*

20 “(2) *are causing, or would cause, the enterprise*
21 *to be classified as undercapitalized; or*

22 “(3) *are preventing, or would prevent, the enter-*
23 *prise from successfully completing a capital restora-*
24 *tion plan under section 1369C.*

1 “(c) *PROHIBITION OF PASS-THROUGH OF COST OF AL-*
2 *LOCATIONS.—The Director shall, by regulation, prohibit*
3 *each enterprise from redirecting the costs of any allocation*
4 *required under this section, through increased charges or*
5 *fees, or decreased premiums, or in any other manner, to*
6 *the originators of mortgages purchased or securitized by the*
7 *enterprise.*

8 “(d) *ENFORCEMENT OF REQUIREMENTS ON ENTER-*
9 *PRISE.—Compliance by the enterprises with the require-*
10 *ments under this section shall be enforceable under subpart*
11 *C. Any reference in such subpart to this part or to an order,*
12 *rule, or regulation under this part specifically includes this*
13 *section and any order, rule, or regulation under this sec-*
14 *tion.*

15 “(e) *REQUIRED AMOUNT FOR HOPE*
 RESERVE
16 *FUND.—Of the aggregate amount allocated under subsection*
17 *(a), 25 percent shall be deposited into a fund established*
18 *in the Treasury of the United States by the Secretary of*
19 *the Treasury for such purpose.*

20 “(f) *LIMITATION.—No funds under this title may be*
21 *used in conjunction with property taken by eminent do-*
22 *main, unless eminent domain is employed only for a public*
23 *use, except that, for purposes of this section, public use shall*
24 *not be construed to include economic development that pri-*
25 *marily benefits any private entity.*

1 *“SEC. 1338. HOUSING TRUST FUND.*2 *“(a) ESTABLISHMENT AND PURPOSE.—*

3 *“(1) IN GENERAL.—The Secretary of Housing*
 4 *and Urban Development (in this section referred to as*
 5 *the ‘Secretary’) shall establish and manage a Housing*
 6 *Trust Fund, which shall be funded with amounts allo-*
 7 *cated by the enterprises under section 1337 and any*
 8 *amounts as are or may be appropriated, transferred,*
 9 *or credited to such Housing Trust Fund under any*
 10 *other provisions of law. The purpose of the Housing*
 11 *Trust Fund under this section is to provide grants to*
 12 *States (as such term is defined in section 1303) for*
 13 *use—*

14 *“(A) to increase and preserve the supply of*
 15 *rental housing for extremely low- and very low-*
 16 *income families, including homeless families;*
 17 *and*

18 *“(B) to increase homeownership for ex-*
 19 *tremely low- and very low-income families.*

20 *“(2) FEDERAL ASSISTANCE.—For purposes of the*
 21 *application of Federal civil rights laws, all assistance*
 22 *provided from the Housing Trust Fund shall be con-*
 23 *sidered Federal financial assistance.*

24 *“(b) ALLOCATIONS FOR HOPE BOND PAYMENTS.—*

25 *“(1) IN GENERAL.—Notwithstanding subsection*

26 *(c), to help address the mortgage crisis,*
of the

1 *amounts allocated pursuant to clauses (i) and (ii) of*
2 *section 1337(a)(1)(B) and clauses (i) and (ii) of sec-*
3 *tion 1337(a)(2)(B) in excess of amounts described in*
4 *section 1337(e)—*

5 *“(A) 100 percent of such excess shall be used*
6 *to reimburse the Treasury for payments made*
7 *pursuant to section 257(w)(1)(C) of the National*
8 *Housing Act in calendar year 2009;*

9 *“(B) 50 percent of such excess shall be used*
10 *to reimburse the Treasury for such payments in*
11 *calendar year 2010; and*

12 *“(C) 25 percent of such excess shall be used*
13 *to reimburse the Treasury for such payments in*
14 *calendar year 2011.*

15 *“(2) EXCESS FUNDS.—At the termination of the*
16 *HOPE for Homeowners Program established under*
17 *section 257 of the National Housing Act, if amounts*
18 *used to reimburse the Treasury under paragraph (1)*
19 *exceed the total net cost to the Government of the*
20 *HOPE for Homeowners Program, such amounts shall*
21 *be used for their original purpose, as described in*
22 *paragraphs (1)(B) and (2)(B) of section 1337(a).*

23 *“(3) TREASURY FUND.—The amounts referred to*
24 *in subparagraphs (A) through (C) of paragraph (1)*
25 *shall be deposited into a fund established in the*

1 *Treasury of the United States by the Secretary of the*
2 *Treasury for such purpose.*

3 “(c) *ALLOCATION FOR HOUSING TRUST FUND IN FIS-*
4 *CAL YEAR 2010 AND SUBSEQUENT YEARS.—*

5 “(1) *IN GENERAL.—Except as provided in sub-*
6 *section (b), the Secretary shall distribute the amounts*
7 *allocated for the Housing Trust Fund under this sec-*
8 *tion to provide affordable housing as described in this*
9 *subsection.*

10 “(2) *PERMISSIBLE DESIGNEES.—A State receiv-*
11 *ing grant amounts under this subsection may des-*
12 *ignate a State housing finance agency, housing and*
13 *community development entity, tribally designated*
14 *housing entity (as such term is defined in section 4*
15 *of the Native American Housing Assistance and Self-*
16 *Determination Act of 1997 (25 U.S.C. 4103)), or any*
17 *other qualified instrumentality of the State to receive*
18 *such grant amounts.*

19 “(3) *DISTRIBUTION TO STATES BY NEEDS-BASED*
20 *FORMULA.—*

21 “(A) *IN GENERAL.—The Secretary shall, by*
22 *regulation, establish a formula within 12 months*
23 *of the date of enactment of the Federal Housing*
24 *Finance Regulatory Reform Act of 2008, to dis-*
25 *tribute amounts made available under this sub-*

1 *section to each State to provide affordable hous-*
2 *ing to extremely low- and very low-income*
3 *households.*

4 “(B) *BASIS FOR FORMULA.—The formula*
5 *required under subparagraph (A) shall include*
6 *the following:*

7 “(i) *The ratio of the shortage of stand-*
8 *ard rental units both affordable and avail-*
9 *able to extremely low-income renter house-*
10 *holds in the State to the aggregate shortage*
11 *of standard rental units both affordable and*
12 *available to extremely low-income renter*
13 *households in all the States.*

14 “(ii) *The ratio of the shortage of stand-*
15 *ard rental units both affordable and avail-*
16 *able to very low-income renter households in*
17 *the State to the aggregate shortage of stand-*
18 *ard rental units both affordable and avail-*
19 *able to very low-income renter households in*
20 *all the States.*

21 “(iii) *The ratio of extremely low-in-*
22 *come renter households in the State living*
23 *with either (I) incomplete kitchen or plumb-*
24 *ing facilities, (II) more than 1 person per*
25 *room, or (III) paying more than 50 percent*

1 *of income for housing costs, to the aggregate*
2 *number of extremely low-income renter*
3 *households living with either (IV) incom-*
4 *plete kitchen or plumbing facilities, (V)*
5 *more than 1 person per room, or (VI) pay-*
6 *ing more than 50 percent of income for*
7 *housing costs in all the States.*

8 “(iv) *The ratio of very low-income*
9 *renter households in the State paying more*
10 *than 50 percent of income on rent relative*
11 *to the aggregate number of very low-income*
12 *renter households paying more than 50 per-*
13 *cent of income on rent in all the States.*

14 “(v) *The resulting sum calculated from*
15 *the factors described in clauses (i) through*
16 *(iv) shall be multiplied by the relative cost*
17 *of construction in the State. For purposes of*
18 *this subclause, the term ‘cost of construc-*
19 *tion’—*

20 “(I) *means the cost of construction*
21 *or building rehabilitation in the State*
22 *relative to the national cost of con-*
23 *struction or building rehabilitation;*
24 *and*

1 “(II) shall be calculated such that
2 values higher than 1.0 indicate that the
3 State’s construction costs are higher
4 than the national average, a value of
5 1.0 indicates that the State’s construc-
6 tion costs are exactly the same as the
7 national average, and values lower
8 than 1.0 indicate that the State’s cost
9 of construction are lower than the na-
10 tional average.

11 “(C) PRIORITY.—The formula required
12 under subparagraph (A) shall give priority em-
13 phasis and consideration to the factor described
14 in subparagraph (B)(i).

15 “(4) ALLOCATION OF GRANT AMOUNTS.—

16 “(A) NOTICE.—Not later than 60 days after
17 the date that the Secretary determines the for-
18 mula amounts described in paragraph (3), the
19 Secretary shall caused to be published in the
20 Federal Register a notice that such amounts
21 shall be so available.

22 “(B) GRANT AMOUNT.—In each fiscal year
23 other than fiscal year 2009, the Secretary shall
24 make a grant to each State in an amount that

1 *is equal to the formula amount determined under*
2 *paragraph (3) for that State.*

3 “(C) *MINIMUM STATE ALLOCATIONS.—If the*
4 *formula amount determined under paragraph*
5 *(3) for a fiscal year would allocate less than*
6 *\$3,000,000 to any of the 50 States of the United*
7 *States or the District of Columbia, the allocation*
8 *for such State of the United States or the Dis-*
9 *trict of Columbia shall be \$3,000,000, and the*
10 *increase shall be deducted pro rata from the allo-*
11 *cations made to all other of the States (as such*
12 *term is defined in section 1303).*

13 “(5) *ALLOCATION PLANS REQUIRED.—*

14 “(A) *IN GENERAL.—For each year that a*
15 *State or State designated entity receives a grant*
16 *under this subsection, the State or State des-*
17 *ignated entity shall establish an allocation plan.*

18 *Such plan shall—*

19 “(i) *set forth a plan for the distribu-*
20 *tion of grant amounts received by the State*
21 *or State designated entity for such year;*

22 “(ii) *be based on priority housing*
23 *needs, as determined by the State or State*
24 *designated entity in accordance with the*

1 regulations established under subsection
2 (g)(2)(D);
3 “(iii) comply with paragraph (6); and
4 “(iv) include performance goals that
5 comply with the requirements established by
6 the Secretary pursuant to subsection (g)(2).
7 “(B) ESTABLISHMENT.—In establishing an
8 allocation plan under this paragraph, a State or
9 State designated entity shall—
10 “(i) notify the public of the establish-
11 ment of the plan;
12 “(ii) provide an opportunity for public
13 comments regarding the plan;
14 “(iii) consider any public comments
15 received regarding the plan; and
16 “(iv) make the completed plan avail-
17 able to the public.
18 “(C) CONTENTS.—An allocation plan of a
19 State or State designated entity under this para-
20 graph shall set forth the requirements for eligible
21 recipients under paragraph (8) to apply for such
22 grant amounts, including a requirement that
23 each such application include—

1 “(i) a description of the eligible activi-
2 ties to be conducted using such assistance;

3 *and*

4 “(ii) a certification by the eligible re-
5 cipient applying for such assistance that
6 any housing units assisted with such assist-
7 ance will comply with the requirements
8 *under this section.*

9 “(6) *SELECTION OF ACTIVITIES FUNDED USING*
10 *HOUSING TRUST FUND GRANT AMOUNTS.—Grant*
11 *amounts received by a State or State designated enti-*
12 *ty under this subsection may be used, or committed*
13 *for use, only for activities that—*

14 “(A) *are eligible under paragraph (7) for*
15 *such use;*

16 “(B) *comply with the applicable allocation*
17 *plan of the State or State designated entity*
18 *under paragraph (5); and*

19 “(C) *are selected for funding by the State or*
20 *State designated entity in accordance with the*
21 *process and criteria for such selection established*
22 *pursuant to subsection (g)(2)(D).*

23 “(7) *ELIGIBLE ACTIVITIES.—Grant amounts al-*
24 *located to a State or State designated entity under*

1 *this subsection shall be eligible for use, or for commit-*
2 *ment for use, only for assistance for—*

3 *“(A) the production, preservation, and reha-*
4 *bilitation of rental housing, including housing*
5 *under the programs identified in section*
6 *1335(a)(2)(B) and for operating costs, except*
7 *that not less than 75 percent of such grant*
8 *amounts shall be used for the benefit only of ex-*
9 *tremely low-income families or families with in-*
10 *comes at or below the poverty line (as such term*
11 *is defined in section 673 of the Omnibus Budget*
12 *Reconciliation Act of 1981 (42 U.S.C. 9902), in-*
13 *cluding any revision required by such section)*
14 *applicable to a family of the size involved, and*
15 *not more than 25 percent for the benefit only of*
16 *very low-income families; and*

17 *“(B) the production, preservation, and re-*
18 *habilitation of housing for homeownership, in-*
19 *cluding such forms as down payment assistance,*
20 *closing cost assistance, and assistance for interest*
21 *rate buy-downs, that—*

22 *“(i) is available for purchase only for*
23 *use as a principal residence by families that*
24 *qualify both as—*

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

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

17 “(ii) has an initial purchase price that
18 meets the requirements of section 215(b)(1)
19 of the Cranston-Gonzalez National Afford-
20 able Housing Act;

21 “(iii) is subject to the same resale re-
22 strictions established under section
23 215(b)(3) of the Cranston-Gonzalez National
24 Affordable Housing Act and applicable to

1 *the participating jurisdiction that is the*
2 *State in which such housing is located; and*
3 *“(iv) is made available for purchase*
4 *only by, or in the case of assistance under*
5 *this subsection, is made available only to*
6 *homebuyers who have, before purchase com-*
7 *pleted a program of independent financial*
8 *education and counseling from an eligible*
9 *organization that meets the requirements of*
10 *section 132 of the Federal Housing Finance*
11 *Regulatory Reform Act of 2008.*

12 *“(8) TENANT PROTECTIONS AND PUBLIC PARTICI-*
13 *PATION.—All amounts from the Trust Fund shall be*
14 *allocated in accordance with, and any eligible activi-*
15 *ties carried out in whole or in part with grant*
16 *amounts under this subtitle (including housing pro-*
17 *vided with such grant amounts) shall comply with*
18 *and be operated in compliance with—*

19 *“(A) laws relating to tenant protections and*
20 *tenant rights to participate in decision making*
21 *regarding their residences;*

22 *“(B) laws requiring public participation,*
23 *including laws relating to Consolidated Plans,*
24 *Qualified Allocation Plans, and Public Housing*
25 *Agency Plans; and*

1 “(C) *fair housing laws and laws regarding*
2 *accessibility in federally assisted housing, includ-*
3 *ing section 504 of the Rehabilitation Act of 1973.*

4 “(9) *ELIGIBLE RECIPIENTS.—Grant amounts al-*
5 *located to a State or State designated entity under*
6 *this subsection may be provided only to a recipient*
7 *that is an organization, agency, or other entity (in-*
8 *cluding a for-profit entity or a nonprofit entity)*
9 *that—*

10 “(A) *has demonstrated experience and ca-*
11 *capacity to conduct an eligible activity under*
12 *paragraph (7), as evidenced by its ability to—*

13 “(i) *own, construct or rehabilitate,*
14 *manage, and operate an affordable multi-*
15 *family rental housing development;*

16 “(ii) *design, construct or rehabilitate,*
17 *and market affordable housing for home-*
18 *ownership; or*

19 “(iii) *provide forms of assistance, such*
20 *as down payments, closing costs, or interest*
21 *rate buy-downs for purchasers;*

22 “(B) *demonstrates the ability and financial*
23 *capacity to undertake, comply, and manage the*
24 *eligible activity;*

1 “(C) demonstrates its familiarity with the
2 requirements of any other Federal, State, or local
3 housing program that will be used in conjunc-
4 tion with such grant amounts to ensure compli-
5 ance with all applicable requirements and regu-
6 lations of such programs; and

7 “(D) makes such assurances to the State or
8 State designated entity as the Secretary shall, by
9 regulation, require to ensure that the recipient
10 will comply with the requirements of this sub-
11 section during the entire period that begins upon
12 selection of the recipient to receive such grant
13 amounts and ending upon the conclusion of all
14 activities under paragraph (8) that are engaged
15 in by the recipient and funded with such grant
16 amounts.

17 “(10) LIMITATIONS ON USE.—

18 “(A) REQUIRED AMOUNT FOR HOMEOWNER-
19 SHIP ACTIVITIES.—Of the aggregate amount allo-
20 cated to a State or State designated entity under
21 this subsection not more than 10 percent shall be
22 used for activities under subparagraph (B) of
23 paragraph (7).

24 “(B) DEADLINE FOR COMMITMENT OR
25 USE.—Grant amounts allocated to a State or

1 *State designated entity under this subsection*
2 *shall be used or committed for use within 2 years*
3 *of the date that such grant amounts are made*
4 *available to the State or State designated entity.*
5 *The Secretary shall recapture any such amounts*
6 *not so used or committed for use and reallocate*
7 *such amounts under this subsection in the first*
8 *year after such recapture.*

9 *“(C) USE OF RETURNS.—The Secretary*
10 *shall, by regulation, provide that any return on*
11 *a loan or other investment of any grant amount*
12 *used by a State or State designated entity to*
13 *provide a loan under this subsection shall be*
14 *treated, for purposes of availability to and use*
15 *by the State or State designated entity, as a*
16 *grant amount authorized under this subsection.*

17 *“(D) PROHIBITED USES.—The Secretary*
18 *shall, by regulation—*

19 *“(i) set forth prohibited uses of grant*
20 *amounts allocated under this subsection,*
21 *which shall include use for—*

22 *“(I) political activities;*

23 *“(II) advocacy;*

24 *“(III) lobbying, whether directly*
25 *or through other parties;*

1 “(IV) counseling services;

2 “(V) travel expenses; and

3 “(VI) preparing or providing ad-

4 vice on tax returns;

5 *and for the purposes of this subparagraph,*

6 *the prohibited use of funds for political ac-*

7 *tivities includes influencing the selection,*

8 *nomination, election, or appointment of one*

9 *or more candidates to any Federal, State or*

10 *local office as codified in section 501 of the*

11 *Internal Revenue Code of 1986 (26 U.S.C.*

12 *501);*

13 “(ii) provide that, except as provided

14 in clause (iii), grant amounts of a State or

15 State designated entity may not be used for

16 administrative, outreach, or other costs of—

17 “(I) the State or State designated

18 entity; or

19 “(II) any other recipient of such

20 grant amounts; and

21 “(iii) limit the amount of any grant

22 amounts for a year that may be used by the

23 State or State designated entity for admin-

24 istrative costs of carrying out the program

25 required under this subsection, including

1 *home ownership counseling, to a percentage*
2 *of such grant amounts of the State or State*
3 *designated entity for such year, which may*
4 *not exceed 10 percent.*

5 *“(E) PROHIBITION OF CONSIDERATION OF*
6 *USE FOR MEETING HOUSING GOALS OR DUTY TO*
7 *SERVE.—In determining compliance with the*
8 *housing goals under this subpart and the duty to*
9 *serve underserved markets under section 1335,*
10 *the Director may not consider any grant*
11 *amounts used under this section for eligible ac-*
12 *tivities under paragraph (7). The Director shall*
13 *give credit toward the achievement of such hous-*
14 *ing goals and such duty to serve underserved*
15 *markets to purchases by the enterprises of mort-*
16 *gages for housing that receives funding from such*
17 *grant amounts, but only to the extent that such*
18 *purchases by the enterprises are funded other*
19 *than with such grant amounts.*

20 *“(d) REDUCTION FOR FAILURE TO OBTAIN RETURN*
21 *OF MISUSED FUNDS.—If in any year a State or State des-*
22 *ignated entity fails to obtain reimbursement or return of*
23 *the full amount required under subsection (e)(1)(B) to be*
24 *reimbursed or returned to the State or State designated en-*
25 *tity during such year—*

1 “(1) except as provided in paragraph (2)—

2 “(A) the amount of the grant for the State
3 or State designated entity for the succeeding
4 year, as determined pursuant to this section,
5 shall be reduced by the amount by which such
6 amounts required to be reimbursed or returned
7 exceed the amount actually reimbursed or re-
8 turned; and

9 “(B) the amount of the grant for the suc-
10 ceeding year for each other State or State des-
11 igned entity whose grant is not reduced pursu-
12 ant to subparagraph (A) shall be increased by
13 the amount determined by applying the formula
14 established pursuant to this section to the total
15 amount of all reductions for all State or State
16 designated entities for such year pursuant to
17 subparagraph (A); or

18 “(2) in any case in which such failure to obtain
19 reimbursement or return occurs during a year imme-
20 diately preceding a year in which grants under this
21 section will not be made, the State or State des-
22 igned entity shall pay to the Secretary for realloca-
23 tion among the other grantees an amount equal to the
24 amount of the reduction for the entity that would oth-
25 erwise apply under paragraph (1)(A).

1 “(e) *ACCOUNTABILITY OF RECIPIENTS AND GRANT-*
2 *EES.—*

3 “(1) *RECIPIENTS.—*

4 “(A) *TRACKING OF FUNDS.—The Secretary*
5 *shall—*

6 “(i) *require each State or State des-*
7 *ignated entity to develop and maintain a*
8 *system to ensure that each recipient of as-*
9 *stance under this section uses such*
10 *amounts in accordance with this section, the*
11 *regulations issued under this section, and*
12 *any requirements or conditions under which*
13 *such amounts were provided; and*

14 “(ii) *establish minimum requirements*
15 *for agreements, between the State or State*
16 *designated entity and recipients, regarding*
17 *assistance under this section, which shall*
18 *include—*

19 “(I) *appropriate periodic finan-*
20 *cial and project reporting, record re-*
21 *tention, and audit requirements for the*
22 *duration of the assistance to the recipi-*
23 *ent to ensure compliance with the limi-*
24 *tations and requirements of this section*

1 *and the regulations under this section;*

2 *and*

3 *“(II) any other requirements that*
4 *the Secretary determines are necessary*
5 *to ensure appropriate administration*
6 *and compliance.*

7 *“(B) MISUSE OF FUNDS.—*

8 *“(i) REIMBURSEMENT REQUIRE-*
9 *MENT.—If any recipient of assistance under*
10 *this section is determined, in accordance*
11 *with clause (ii), to have used any such*
12 *amounts in a manner that is materially in*
13 *violation of this section, the regulations*
14 *issued under this section, or any require-*
15 *ments or conditions under which such*
16 *amounts were provided, the State or State*
17 *designated entity shall require that, within*
18 *12 months after the determination of such*
19 *misuse, the recipient shall reimburse the*
20 *State or State designated entity for such*
21 *misused amounts and return to the State or*
22 *State designated entity any such amounts*
23 *that remain unused or uncommitted for use.*
24 *The remedies under this clause are in addi-*

1 “(II) *the manner in which the*
2 *State or State designated entity com-*
3 *plied during such year with any allo-*
4 *cation plan established pursuant to*
5 *subsection (c).*

6 “(ii) *PUBLIC AVAILABILITY.—The Sec-*
7 *retary shall make such reports pursuant to*
8 *this subparagraph publicly available.*

9 “(B) *MISUSE OF FUNDS.—If the Secretary*
10 *determines, after reasonable notice and oppor-*
11 *tunity for hearing, that a State or State des-*
12 *ignated entity has failed to comply substantially*
13 *with any provision of this section, and until the*
14 *Secretary is satisfied that there is no longer any*
15 *such failure to comply, the Secretary shall—*

16 “(i) *reduce the amount of assistance*
17 *under this section to the State or State des-*
18 *ignated entity by an amount equal to the*
19 *amount of grant amounts which were not*
20 *used in accordance with this section;*

21 “(ii) *require the State or State des-*
22 *ignated entity to repay the Secretary any*
23 *amount of the grant which was not used in*
24 *accordance with this section;*

1 “(iii) limit the availability of assist-
2 ance under this section to the State or State
3 designated entity to activities or recipients
4 not affected by such failure to comply; or
5 “(iv) terminate any assistance under
6 this section to the State or State designated
7 entity.

8 “(f) DEFINITIONS.—For purposes of this section, the
9 following definitions shall apply:

10 “(1) EXTREMELY LOW-INCOME RENTER HOUSE-
11 HOLD.—The term ‘extremely low-income renter house-
12 hold’ means a household whose income is not in excess
13 of 30 percent of the area median income, with adjust-
14 ments for smaller and larger families, as determined
15 by the Secretary.

16 “(2) RECIPIENT.—The term ‘recipient’ means an
17 individual or entity that receives assistance from a
18 State or State designated entity from amounts made
19 available to the State or State designated entity
20 under this section.

21 “(3) SHORTAGE OF STANDARD RENTAL UNITS
22 BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY
23 LOW-INCOME RENTER HOUSEHOLDS.—

24 “(A) IN GENERAL.—The term ‘shortage of
25 standard rental units both affordable and avail-

1 *able to extremely low-income renter households’*
2 *means for any State or other geographical area*
3 *the gap between—*

4 “(i) *the number of units with complete*
5 *plumbing and kitchen facilities with a rent*
6 *that is 30 percent or less of 30 percent of*
7 *the adjusted area median income as deter-*
8 *mined by the Secretary that are occupied by*
9 *extremely low-income renter households or*
10 *are vacant for rent; and*

11 “(ii) *the number of extremely low-in-*
12 *come renter households.*

13 “(B) *RULE OF CONSTRUCTION.—If the*
14 *number of units described in subparagraph*
15 *(A)(i) exceeds the number of extremely low-in-*
16 *come households as described in subparagraph*
17 *(A)(ii), there is no shortage.*

18 “(4) *SHORTAGE OF STANDARD RENTAL UNITS*
19 *BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-IN-*
20 *COME RENTER HOUSEHOLDS.—*

21 “(A) *IN GENERAL.—The term ‘shortage of*
22 *standard rental units both affordable and avail-*
23 *able to very low-income renter households’ means*
24 *for any State or other geographical area the gap*
25 *between—*

1 “(i) the number of units with complete
2 plumbing and kitchen facilities with a rent
3 that is 30 percent or less of 50 percent of
4 the adjusted area median income as deter-
5 mined by the Secretary that are occupied by
6 very low-income renter households or are
7 vacant for rent; and

8 “(ii) the number of very low-income
9 renter households.

10 “(B) *RULE OF CONSTRUCTION.*—If the
11 number of units described in subparagraph
12 (A)(i) exceeds the number of very low-income
13 households as described in subparagraph (A)(ii),
14 there is no shortage.

15 “(5) *VERY LOW-INCOME FAMILY.*—The term ‘very
16 low-income family’ has the meaning given such term
17 in section 1303, except that such term includes any
18 family that resides in a rural area that has an in-
19 come that does not exceed the poverty line (as such
20 term is defined in section 673(2) of the Omnibus
21 Budget Reconciliation Act of 1981 (42
22 U.S.C.
23 9902(2)), including any revision required by such sec-
24 tion) applicable to a family of the size involved.

25 “(6) *VERY LOW-INCOME RENTER HOUSE-*
 HOLDS.—The term ‘very low-income renter house-

1 *holds' means a household whose income is in excess of*
2 *30 percent but not greater than 50 percent of the area*
3 *median income, with adjustments for smaller and*
4 *larger families, as determined by the Secretary.*

5 “(g) *REGULATIONS.—*

6 “(1) *IN GENERAL.—The Secretary shall issue*
7 *regulations to carry out this section.*

8 “(2) *REQUIRED CONTENTS.—The regulations*
9 *issued under this subsection shall include—*

10 “(A) *a requirement that the Secretary en-*
11 *sure that the use of grant amounts under this*
12 *section by States or State designated entities is*
13 *audited not less than annually to ensure compli-*
14 *ance with this section;*

15 “(B) *authority for the Secretary to audit,*
16 *provide for an audit, or otherwise verify a State*
17 *or State designated entity's activities to ensure*
18 *compliance with this section;*

19 “(C) *a requirement that, for the purposes of*
20 *subparagraphs (A) and (B), any financial state-*
21 *ment submitted by a grantee or recipient to the*
22 *Secretary shall be reviewed by an independent*
23 *certified public accountant in accordance with*
24 *Statements on Standards for Accounting and*

1 *Review Services, issued by the American Insti-*
2 *tute of Certified Public Accountants;*

3 *“(D) requirements for a process for applica-*
4 *tion to, and selection by, each State or State des-*
5 *ignated entity for activities meeting the State or*
6 *State designated entity’s priority housing needs*
7 *to be funded with grant amounts under this sec-*
8 *tion, which shall provide for priority in funding*
9 *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 application*
24 *makes use of other funding sources; and*

1 *count within the Community Development Financial Insti-*
2 *tutions Fund.*

3 “(b) *DEPOSITS TO TRUST FUND.—The Capital Mag-*
4 *net Fund shall consist of—*

5 “(1) *any amounts transferred to the Fund pur-*
6 *suant to section 1337; and*

7 “(2) *any amounts as are or may be appro-*
8 *priated, transferred, or credited to such Fund under*
9 *any other provisions of law.*

10 “(c) *EXPENDITURES FROM TRUST FUND.—Amounts*
11 *in the Capital Magnet Fund shall be available to the Sec-*
12 *retary of the Treasury to carry out a competitive grant pro-*
13 *gram to attract private capital for and increase investment*
14 *in—*

15 “(1) *the development, preservation, rehabilita-*
16 *tion, or purchase of affordable housing for primarily*
17 *extremely low-, very low-, and low-income families;*
18 *and*

19 “(2) *economic development activities or commu-*
20 *nity service facilities, such as day care centers, work-*
21 *force development centers, and health care clinics,*
22 *which in conjunction with affordable housing activi-*
23 *ties implement a concerted strategy to stabilize or re-*
24 *vitalize a low-income area or underserved rural area.*

1 “(d) *FEDERAL ASSISTANCE.*—For purposes of the ap-
2 plication of Federal civil rights laws, all assistance pro-
3 vided using amounts in the Capital Magnet Fund shall be
4 considered Federal financial assistance.

5 “(e) *ELIGIBLE GRANTEES.*—A grant under this section
6 may be made, pursuant to such requirements as the Sec-
7 retary of the Treasury shall establish for experience and
8 success in attracting private financing and carrying out
9 the types of activities proposed under the application of the
10 grantee, only to—

11 “(1) a Treasury certified community develop-
12 ment financial institution; or

13 “(2) a nonprofit organization having as 1 of its
14 principal purposes the development or management of
15 affordable housing.

16 “(f) *ELIGIBLE USES.*—Grant amounts awarded from
17 the Capital Magnet Fund pursuant to this section may be
18 used for the purposes described in paragraphs (1) and (2)
19 of subsection (c), including for the following uses:

20 “(1) To provide loan loss reserves.

21 “(2) To capitalize a revolving loan fund.

22 “(3) To capitalize an affordable housing fund.

23 “(4) To capitalize a fund to support activities
24 described in subsection (c)(2).

25 “(5) For risk-sharing loans.

1 “(g) *APPLICATIONS.*—

2 “(1) *IN GENERAL.*—*The Secretary of the Treas-*
3 *ury shall provide, in a competitive application proc-*
4 *ess established by regulation, for eligible grantees*
5 *under subsection (e) to submit applications for Cap-*
6 *ital Magnet Fund grants to the Secretary at such*
7 *time and in such manner as the Secretary shall deter-*
8 *mine.*

9 “(2) *CONTENT OF APPLICATION.*—*The applica-*
10 *tion required under paragraph (1) shall include a de-*
11 *tailed description of—*

12 “(A) *the types of affordable housing, eco-*
13 *nomical, and community revitalization projects*
14 *that support or sustain residents of an affordable*
15 *housing project funded by a grant under this sec-*
16 *tion for which such grant amounts would be*
17 *used, including the proposed use of eligible*
18 *grants as authorized under this section;*

19 “(B) *the types, sources, and amounts of*
20 *other funding for such projects; and*

21 “(C) *the expected time frame of any grant*
22 *used for such project.*

23 “(h) *GRANT LIMITATION.*—

24 “(1) *IN GENERAL.*—*Any 1 eligible grantee and*
25 *its subsidiaries and affiliates may not be awarded*

1 *more than 15 percent of the aggregate funds available*
2 *for grants during any year from the Capital Magnet*
3 *Fund.*

4 “(2) *GEOGRAPHIC DIVERSITY.*—

5 “(A) *GOAL.*—*The Secretary of the Treasury*
6 *shall seek to fund activities in geographically di-*
7 *verse areas of economic distress, including metro-*
8 *politan and underserved rural areas in every*
9 *State.*

10 “(B) *DIVERSITY DEFINED.*—*For purposes of*
11 *this paragraph, geographic diversity includes*
12 *those areas that meet objective criteria of eco-*
13 *nomical distress developed by the Secretary of the*
14 *Treasury, which may include—*

15 “(i) *the percentage of low-income fami-*
16 *lies or the extent of poverty;*

17 “(ii) *the rate of unemployment or*
18 *underemployment;*

19 “(iii) *extent of blight and disinvest-*
20 *ment;*

21 “(iv) *projects that target extremely*
22 *low-, very low-, and low-income families in*
23 *or outside a designated economic distress*
24 *area; or*

1 “(v) any other criteria designated by
2 the Secretary of the Treasury.

3 “(3) *LEVERAGE OF FUNDS.*—Each grant from
4 the Capital Magnet Fund awarded under this section
5 shall be reasonably expected to result in eligible hous-
6 ing, or economic and community development projects
7 that support or sustain an affordable housing project
8 funded by a grant under this section whose aggregate
9 costs total at least 10 times the grant amount.

10 “(4) *COMMITMENT FOR USE DEADLINE.*—
11 Amounts made available for grants under this section
12 shall be committed for use within 2 years of the date
13 of such allocation. The Secretary of the Treasury shall
14 recapture into the Capital Magnet Fund any amounts
15 not so used or committed for use and allocate such
16 amounts in the first year after such recapture.

17 “(5) *PROHIBITED USES.*—The Secretary shall,
18 by regulation, set forth prohibited uses of
 grant
19 amounts awarded under this section, which shall in-
20 clude use for—

21 “(A) political activities;

22 “(B) advocacy;

23 “(C) lobbying, whether directly or through
24 other parties;

25 “(D) counseling services;

1 “(E) travel expenses; and

2 “(F) preparing or providing advice on tax
3 returns;

4 and for the purposes of this paragraph, the prohibited
5 use of funds for political activities includes influ-
6 encing the selection, nomination, election, or appoint-
7 ment of one or more candidates to any Federal, State
8 or local office as codified in section §501 of the Inter-
9 nal Revenue Code of 1986 (26 U.S.C. 501).

10 “(6) ADDITIONAL LOBBYING RESTRICTIONS.—No
11 assistance or amounts made available under this sec-
12 tion may be expended by an eligible grantee to pay
13 any person to influence or attempt to influence any
14 agency, elected official, officer or employee of a State
15 or local government in connection with the making,
16 award, extension, continuation, renewal, amendment,
17 or modification of any State or local government con-
18 tract, grant, loan, or cooperative agreement as such
19 terms are defined in section 1352 of title 31, United
20 States Code.

21 “(7) PROHIBITION OF CONSIDERATION OF USE
22 FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—
23 In determining the compliance of the enterprises with
24 the housing goals under this section and the duty to
25 serve underserved markets under section 1335, the Di-

1 *rector of the Federal Housing Finance Agency may*
2 *not consider any Capital Magnet Fund amounts used*
3 *under this section for eligible activities under sub-*
4 *section (f). The Director of the Federal Housing Fi-*
5 *nance Agency shall give credit toward the achieve-*
6 *ment of such housing goals and such duty to serve un-*
7 *derserved markets to purchases by the enterprises of*
8 *mortgages for housing that receives funding from*
9 *Capital Magnet Fund grant amounts, but only to the*
10 *extent that such purchases by the enterprises are*
11 *funded other than with such grant amounts.*

12 *“(8) ACCOUNTABILITY OF RECIPIENTS AND*
13 *GRANTEES.—*

14 *“(A) TRACKING OF FUNDS.—The Secretary*
15 *of the Treasury shall—*

16 *“(i) require each grantee to develop*
17 *and maintain a system to ensure that each*
18 *recipient of assistance from the Capital*
19 *Magnet Fund uses such amounts in accord-*
20 *ance with this section, the regulations issued*
21 *under this section, and any requirements or*
22 *conditions under which such amounts were*
23 *provided; and*

24 *“(ii) establish minimum requirements*
25 *for agreements, between the grantee and the*

1 *Capital Magnet Fund, regarding assistance*
2 *from the Capital Magnet Fund, which shall*
3 *include—*

4 “(I) *appropriate periodic finan-*
5 *cial and project reporting, record re-*
6 *tention, and audit requirements for the*
7 *duration of the grant to the recipient*
8 *to ensure compliance with the limita-*
9 *tions and requirements of this section*
10 *and the regulations under this section;*

11 *and*

12 “(II) *any other requirements that*
13 *the Secretary determines are necessary*
14 *to ensure appropriate grant adminis-*
15 *tration and compliance.*

16 “(B) *MISUSE OF FUNDS.—If the Secretary*
17 *of the Treasury determines, after reasonable no-*
18 *tice and opportunity for hearing, that a grantee*
19 *has failed to comply substantially with any pro-*
20 *vision of this section and until the Secretary is*
21 *satisfied that there is no longer any such failure*
22 *to comply, the Secretary shall—*

23 “(i) *reduce the amount of assistance*
24 *under this section to the grantee by an*
25 *amount equal to the amount of Capital*

1 *Magnet Fund grant amounts which were*
2 *not used in accordance with this section;*

3 “(ii) *require the grantee to repay the*
4 *Secretary any amount of the Capital Mag-*
5 *net Fund grant amounts which were not*
6 *used in accordance with this section;*

7 “(iii) *limit the availability of assist-*
8 *ance under this section to the grantee to ac-*
9 *tivities or recipients not affected by such*
10 *failure to comply; or*

11 “(iv) *terminate any assistance under*
12 *this section to the grantee.*

13 “(i) *PERIODIC REPORTS.—*

14 “(1) *IN GENERAL.—The Secretary of the Treas-*
15 *ury shall submit a report, on a periodic basis, to the*
16 *Committee on Banking, Housing, and Urban Affairs*
17 *of the Senate and the Committee on Financial Serv-*
18 *ices of the House of Representatives describing the ac-*
19 *tivities to be funded under this section.*

20 “(2) *REPORTS AVAILABLE TO PUBLIC.—The Sec-*
21 *retary of the Treasury shall make the reports required*
22 *under paragraph (1) publicly available.*

23 “(j) *REGULATIONS.—*

24 “(1) *IN GENERAL.—The Secretary of the Treas-*
25 *ury shall issue regulations to carry out this section.*

1 “(2) *REQUIRED CONTENTS.*—*The regulations*
2 *issued under this subsection shall include—*

3 “(A) *authority for the Secretary to audit,*
4 *provide for an audit, or otherwise verify an en-*
5 *terprise’s activities, to ensure compliance with*
6 *this section;*

7 “(B) *a requirement that the Secretary en-*
8 *sure that the allocation of each enterprise is au-*
9 *dated not less than annually to ensure compli-*
10 *ance with this section;*

11 “(C) *a requirement that, for the purposes of*
12 *subparagraphs (A) and (B), any financial state-*
13 *ment submitted by a grantee to the Secretary*
14 *shall be reviewed by an independent certified*
15 *public accountant in accordance with Statements*
16 *on Standards for Accounting and Review Serv-*
17 *ices, issued by the American Institute of Cer-*
18 *tified Public Accountants; and*

19 “(D) *requirements for a process for applica-*
20 *tion to, and selection by, the Secretary for activi-*
21 *ties to be funded with amounts from the Capital*
22 *Magnet Fund, which shall provide that—*

23 “(i) *funds be fairly distributed to*
24 *urban, suburban, and rural areas; and*

1 (4) *educating prospective homebuyers about the*
2 *options available to build savings for short- and long-*
3 *term goals.*

4 (b) *GRANTS.—*

5 (1) *IN GENERAL.—The Secretary of the Treasury*
6 *(in this section referred to as the “Secretary”) shall*
7 *make grants to eligible organizations to enable such*
8 *organizations to provide a range of financial edu-*
9 *cation and counseling services to prospective home-*
10 *buyers.*

11 (2) *SELECTION.—The Secretary shall select eligi-*
12 *ble organizations to receive assistance under this sec-*
13 *tion based on their experience and ability to provide*
14 *financial education and counseling services that result*
15 *in documented positive behavioral changes.*

16 (c) *ELIGIBLE ORGANIZATIONS.—*

17 (1) *IN GENERAL.—For purposes of this section,*
18 *the term “eligible organization” means an organiza-*
19 *tion that is—*

20 (A) *certified in accordance with section*
21 *106(e)(1) of the Housing and Urban Develop-*
22 *ment Act of 1968 (12 U.S.C. 1701x(e)); or*

23 (B) *certified by the Office of Financial*
24 *Education of the Department of the Treasury for*

1 *purposes of this section, in accordance with*
2 *paragraph (2).*

3 *(2) OFE CERTIFICATION.—To be certified by the*
4 *Office of Financial Education for purposes of this sec-*
5 *tion, an eligible organization shall be—*

6 *(A) a housing counseling agency certified by*
7 *the Secretary of Housing and Urban Develop-*
8 *ment under section 106(e) of the Housing and*
9 *Urban Development Act of 1968;*

10 *(B) a State, local, or tribal government*
11 *agency;*

12 *(C) a community development financial in-*
13 *stitution (as defined in section 103(5) of the*
14 *Community Development Banking and Finan-*
15 *cial Institutions Act of 1994 (12 U.S.C. 4702(5))*
16 *or a credit union; or*

17 *(D) any collaborative effort of entities de-*
18 *scribed in any of subparagraphs (A) through*
19 *(C).*

20 *(d) AUTHORITY FOR PILOT PROJECTS.—*

21 *(1) IN GENERAL.—The Secretary of the Treasury*
22 *shall authorize not more than 5 pilot project grants*
23 *to eligible organizations under subsection (c) in order*
24 *to—*

1 (A) carry out the services under this section;

2 and

3 (B) provide such other services that will im-

4 prove the financial stability and economic condi-

5 tion of low- and moderate-income and low-

6 wealth individuals.

7 (2) GOAL.—The goal of the pilot project grants

8 under this subsection is to—

9 (A) identify successful methods resulting in

10 positive behavioral change for financial em-

11 powerment; and

12 (B) establish program models for organiza-

13 tions to carry out effective counseling services.

14 (e) AUTHORIZATION OF APPROPRIATIONS.—There are

15 authorized to be appropriated to the Secretary such sums

16 as are necessary to carry out this section and for the provi-

17 sion of additional financial educational services.

18 (f) STUDY AND REPORT ON EFFECTIVENESS AND IM-

19 PACT.—

20 (1) IN GENERAL.—The Comptroller General of

21 the United States shall conduct a study on the effec-

22 tiveness and impact of the grant program established

23 under this section. Not later than 3 years after the

24 date of enactment of this Act, the Comptroller General

25 shall submit a report on the results of such study to

1 *the Committee on Banking, Housing, and Urban Af-*
2 *fairs of the Senate and the Committee on Financial*
3 *Services of the House of Representatives.*

4 (2) *CONTENT OF STUDY.—The study required*
5 *under paragraph (1) shall include an evaluation of*
6 *the following:*

7 (A) *The effectiveness of the grant program*
8 *established under this section in improving the*
9 *financial situation of homeowners and prospec-*
10 *tive homebuyers served by the grant program.*

11 (B) *The extent to which financial education*
12 *and counseling services have resulted in positive*
13 *behavioral changes.*

14 (C) *The effectiveness and quality of the eli-*
15 *gible organizations providing financial edu-*
16 *cation and counseling services under the grant*
17 *program.*

18 (g) *REGULATIONS.—The Secretary is authorized to*
19 *promulgate such regulations as may be necessary to imple-*
20 *ment and administer the grant program authorized by this*
21 *section.*

22 **SEC. 1133. TRANSFER AND RIGHTS OF CERTAIN HUD EM-**
23 **PLOYEES.**

24 (a) *TRANSFER.—Each employee of the Department of*
25 *Housing and Urban Development whose position respon-*

1 *sibilities primarily involve the establishment and enforce-*
2 *ment of the housing goals under subpart B of part 2 of*
3 *subtitle A of the Federal Housing Enterprises Financial*
4 *Safety and Soundness Act of 1992 (12 U.S.C. 4561 et seq.)*
5 *shall be transferred to the Federal Housing Finance Agency*
6 *for employment, not later than the effective date of the Fed-*
7 *eral Housing Finance Regulatory Reform Act of 2008, and*
8 *such transfer shall be deemed a transfer of function for pur-*
9 *poses of section 3503 of title 5, United States Code.*

10 *(b) GUARANTEED POSITIONS.—*

11 *(1) INGENERAL.—Each employee transferred*
12 *under subsection (a) shall be guaranteed a position*
13 *with the same status, tenure, grade, and pay as that*
14 *held on the day immediately preceding the transfer.*

15 *(2) NO INVOLUNTARY SEPARATION OR REDUC-*
16 *TION.—An employee transferred under subsection (a)*
17 *holding a permanent position on the day immediately*
18 *preceding the transfer may not be involuntarily sepa-*
19 *rated or reduced in grade or compensation during the*
20 *12-month period beginning on the date of transfer, ex-*
21 *cept for cause, or, in the case of a temporary em-*
22 *ployee, separated in accordance with the terms of the*
23 *appointment of the employee.*

24 *(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND*
25 *SENIOR EXECUTIVE SERVICE EMPLOYEES.—*

1 (1) *IN GENERAL.*—*In the case of an employee oc-*
2 *cupying a position in the excepted service or the Sen-*
3 *ior Executive Service, any appointment authority es-*
4 *tablished under law or by regulations of the Office of*
5 *Personnel Management for filling such position shall*
6 *be transferred, subject to paragraph (2).*

7 (2) *DECLINE OF TRANSFER.*—*The Director may*
8 *decline a transfer of authority under paragraph (1)*
9 *to the extent that such authority relates to—*

10 (A) *a position excepted from the competitive*
11 *service because of its confidential, policymaking,*
12 *policy-determining, or policy-advocating char-*
13 *acter; or*

14 (B) *a noncareer position in the Senior Ex-*
15 *ecutive Service (within the meaning of section*
16 *3132(a)(7) of title 5, United States Code).*

17 (d) *REORGANIZATION.*—*If the Director determines,*
18 *after the end of the 1-year period beginning on the effective*
19 *date of the Federal Housing Finance Regulatory Reform*
20 *Act of 2008, that a reorganization of the combined work-*
21 *force is required, that reorganization shall be deemed a*
22 *major reorganization for purposes of affording affected em-*
23 *ployee retirement under section 8336(d)(2) or 8414(b)(1)(B)*
24 *of title 5, United States Code.*

25 (e) *EMPLOYEE BENEFIT PROGRAMS.*—

1 (1) *IN GENERAL.*—Any employee described under
2 *subsection (a) accepting employment with the Agency*
3 *as a result of a transfer under subsection (a) may re-*
4 *tain, for 12 months after the date on which such*
5 *transfer occurs, membership in any employee benefit*
6 *program of the Agency or the Department of Housing*
7 *and Urban Development, as applicable, including in-*
8 *surance, to which such employee belongs on such effec-*
9 *tive date, if—*

10 (A) *the employee does not elect to give up*
11 *the benefit or membership in the program; and*

12 (B) *the benefit or program is continued by*
13 *the Director of the Federal Housing Finance*
14 *Agency.*

15 (2) *COST DIFFERENTIAL.*—

16 (A) *IN GENERAL.*—*The difference in the*
17 *costs between the benefits which would have been*
18 *provided by the Department of Housing and*
19 *Urban Development and those provided by this*
20 *section shall be paid by the Director.*

21 (B) *HEALTH INSURANCE.*—*If any employee*
22 *elects to give up membership in a health insur-*
23 *ance program or the health insurance program is*
24 *not continued by the Director, the employee shall*
25 *be permitted to select an alternate Federal health*

1 *insurance program not later than 30 days after*
2 *the date of such election or notice, without regard*
3 *to any other regularly scheduled open season.*

4 ***Subtitle C—Prompt Corrective***
5 ***Action***

6 ***SEC. 1141. CRITICAL CAPITAL LEVELS.***

7 *(a) IN GENERAL.—Section 1363 of the Federal Hous-*
8 *ing Enterprises Financial Safety and Soundness Act of*
9 *1992 (12 U.S.C. 4613) is amended—*

10 *(1) by striking “For” and inserting “(a) ENTER-*
11 *PRISES.—FOR”;* and

12 *(2) by adding at the end the following new sub-*
13 *section:*

14 ***“(b) FEDERAL HOME LOAN BANKS.—***

15 ***“(1) IN GENERAL.—For purposes of this subtitle,***
16 ***the critical capital level for each Federal Home Loan***
17 ***Bank shall be such amount of capital as the Director***
18 ***shall, by regulation, require.***

19 ***“(2) CONSIDERATION OF OTHER CRITICAL CAP-***
20 ***ITAL LEVELS.—In establishing the critical capital***
21 ***level under paragraph (1) for the Federal Home Loan***
22 ***Banks, the Director shall take due consideration of the***
23 ***critical capital level established under subsection (a)***
24 ***for the enterprises, with such modifications as the Di-***
25 ***rector determines to be appropriate to reflect the dif-***

1 *ference in operations between the banks and the enter-*
2 *prises.’’.*

3 (b) *REGULATIONS.*—*Not later than the expiration of*
4 *the 180-day period beginning on the date of enactment of*
5 *this Act, the Director of the Federal Housing Finance Agen-*
6 *cy shall issue regulations pursuant to section 1363(b) of the*
7 *Federal Housing Enterprises Financial Safety and Sound-*
8 *ness Act of 1992 (as added by this section) establishing the*
9 *critical capital level under such section.*

10 ***SEC. 1142. CAPITAL CLASSIFICATIONS.***

11 (a) *IN GENERAL.*—*Section 1364 of the Federal Hous-*
12 *ing Enterprises Financial Safety and Soundness Act of*
13 *1992 (12 U.S.C. 4614) is amended—*

14 (1) *in the heading for subsection (a) by striking*
15 *‘‘In General’’ and inserting ‘‘Enterprises’’;*

16 (2) *in subsection (c)—*

17 (A) *by striking ‘‘subsection (b)’’ and insert-*
18 *ing ‘‘subsection (c)’’;*

19 (B) *by striking ‘‘enterprises’’ and inserting*
20 *‘‘regulated entities’’; and*

21 (C) *by striking the last sentence;*

22 (3) *by redesignating subsections (c) (as so*
23 *amended by paragraph (2) of this subsection) and (d)*
24 *as subsections (d) and (f), respectively;*

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

3 “(b) *FEDERAL HOME LOAN BANKS.*—

4 “(1) *ESTABLISHMENT AND CRITERIA.*—For pur-
5 poses of this subtitle, the Director shall, by regula-
6 tion—

7 “(A) establish the capital classifications
8 specified under paragraph (2) for the Federal
9 Home Loan Banks;

10 “(B) establish criteria for each such capital
11 classification based on the amount and types of
12 capital held by a bank and the risk-based, min-
13 imum, and critical capital levels for the banks
14 and taking due consideration of the capital clas-
15 sifications established under subsection (a) for
16 the enterprises, with such modifications as the
17 Director determines to be appropriate to reflect
18 the difference in operations between the banks
19 and the enterprises; and

20 “(C) shall classify the Federal Home Loan
21 Banks according to such capital classifications.

22 “(2) *CLASSIFICATIONS.*—The capital classifica-
23 tions specified under this paragraph are—

24 “(A) adequately capitalized;

25 “(B) undercapitalized;

1 “(C) significantly undercapitalized; and

2 “(D) critically undercapitalized.

3 “(c) DISCRETIONARY CLASSIFICATION.—

4 “(1) GROUNDS FOR RECLASSIFICATION.—The

5 Director may reclassify a regulated entity
6 under

7 paragraph (2) if—

8 “(A) at any time, the Director determines
9 in writing that the regulated entity is engaging
10 in conduct that could result in a rapid depletion
11 of core or total capital or the value of collateral
12 pledged as security has decreased significantly or
13 that the value of the property subject to mort-
14 gages held by the regulated entity (or securitized
15 in the case of an enterprise) has decreased sig-
16 nificantly;

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

21 “(C) pursuant to section 1371(b), the Direc-
22 tor deems the regulated entity to be engaging in
23 an unsafe or unsound practice.

24 “(2) RECLASSIFICATION.—In addition to any
25 other action authorized under this title, including the
reclassification of a regulated entity for any reason

1 *not specified in this subsection, if the Director takes*
2 *any action described in paragraph (1), the Director*
3 *may classify a regulated entity—*

4 “(A) *as undercapitalized, if the regulated*
5 *entity is otherwise classified as adequately cap-*
6 *italized;*

7 “(B) *as significantly undercapitalized, if*
8 *the regulated entity is otherwise classified as*
9 *undercapitalized; and*

10 “(C) *as critically undercapitalized, if the*
11 *regulated entity is otherwise classified as signifi-*
12 *cantly undercapitalized.’’; and*

13 (5) *by inserting after subsection (d) (as so redes-*
14 *ignated by paragraph (3) of this subsection), the fol-*
15 *lowing new subsection:*

16 “(e) *RESTRICTION ON CAPITAL DISTRIBUTIONS.—*

17 “(1) *IN GENERAL.—A regulated entity shall*
18 *make no capital distribution if, after making the dis-*
19 *tribution, the regulated entity would be undercapital-*
20 *ized.*

21 “(2) *EXCEPTION.—Notwithstanding paragraph*
22 *(1), the Director may permit a regulated entity, to*
23 *the extent appropriate or applicable, to repurchase,*
24 *redeem, retire, or otherwise acquire shares or owner-*

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

3 (4) in subsection (a)—

4 (A) by redesignating paragraphs (1) and

5 (2) as paragraphs (2) and (3), respectively;

6 (B) by inserting before paragraph (2), as

7 redesignated, the following:

8 “(1) *REQUIRED MONITORING.*—The Director
9 shall—

10 “(A) closely monitor the condition of any
11 undercapitalized regulated entity;

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

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

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

22 “(4) *RESTRICTION OF ASSET GROWTH.*—An
23 undercapitalized regulated entity shall not permit its
24 average total assets during any calendar quarter to

1 *exceed its average total assets during the preceding*
2 *calendar quarter, unless—*

3 “(A) *the Director has accepted the capital*
4 *restoration plan of the regulated entity;*

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

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

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

17 “(A) *the Director has accepted the capital*
18 *restoration plan of the regulated entity, the regu-*
19 *lated entity is implementing the plan, and the*
20 *Director determines that the proposed action is*
21 *consistent with and will further the achievement*
22 *of the plan; or*

23 “(B) *the Director determines that the pro-*
24 *posed action will further the purpose of this sub-*
25 *title.”;*

1 (5) *in subsection (b)—*

2 (A) *in the subsection heading, by striking*

3 “*DISCRETIONARY*”;

4 (B) *in the matter preceding paragraph (1),*

5 *by striking “may” and inserting “shall”; and*

6 (C) *in paragraph (2)—*

7 (i) *by striking “make, in good faith,*

8 *reasonable efforts necessary to”;* and

9 (ii) *by striking the period at the end*

10 *and inserting “in any material respect.”;*

11 *and*

12 (6) *by striking subsection (c) and inserting the*

13 *following:*

14 “*(c) OTHER DISCRETIONARY SAFEGUARDS.—The Di-*

15 *rector may take, with respect to an undercapitalized regu-*

16 *lated entity, any of the actions authorized to be taken under*

17 *section 1366 with respect to a significantly undercapital-*

18 *ized regulated entity, if the Director determines that such*

19 *actions are necessary to carry out the purpose of this sub-*

20 *title.”.*

1 **SEC. 1144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
2 **CANTLY UNDERCAPITALIZED REGULATED EN-**
3 **TITIES.**

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

7 (1) *in subsection (a)(2), by striking “under-*
8 *capitalized enterprise” and inserting “undercapital-*
9 *ized”;*

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

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

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

16 (5) *in subsection (b)—*

17 (A) *in the subsection heading, by striking*
18 *“DISCRETIONARY SUPERVISORY” and inserting*
19 *“SPECIFIC”;*

20 (B) *in the matter preceding paragraph (1),*
21 *by striking “may, at any time, take any” and*
22 *inserting “shall carry out this section by taking,*
23 *at any time, 1 or more”;*

24 (C) *by striking paragraph (6);*

25 (D) *by redesignating paragraph (5) as*
26 *paragraph (6);*

1 (E) by inserting after paragraph (4) the fol-
2 lowing:

3 “(5) *IMPROVEMENT OF MANAGEMENT.*—Take 1
4 or more of the following actions:

5 “(A) *NEW ELECTION OF BOARD.*—Order a
6 new election for the board of directors of the reg-
7 ulated entity.

8 “(B) *DISMISSAL OF DIRECTORS OR EXECU-*
9 *TIVE OFFICERS.*—Require the regulated entity to
10 dismiss from office any director or executive offi-
11 cer who had held office for more than 180 days
12 immediately before the date on which the regu-
13 lated entity became undercapitalized. Dismissal
14 under this subparagraph shall not be construed
15 to be a removal pursuant to the enforcement
16 powers of the Director under section 1377.

17 “(C) *EMPLOY QUALIFIED EXECUTIVE OFFI-*
18 *CERS.*—Require the regulated entity to employ
19 qualified executive officers (who, if the Director
20 so specifies, shall be subject to approval by the
21 Director).”; and

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

23 “(7) *OTHER ACTION.*—Require the regulated en-
24 tity to take any other action that the Director deter-
25 mines will better carry out the purpose of this section

1 “(1) *IN GENERAL.*—Notwithstanding any other
2 *provision of Federal or State law, the Director may*
3 *appoint the Agency as conservator or receiver for a*
4 *regulated entity in the manner provided under para-*
5 *graph (2) or (4). All references to the conservator or*
6 *receiver under this section are references to the Agen-*
7 *cy acting as conservator or receiver.*

8 “(2) *DISCRETIONARY APPOINTMENT.*—The Agen-
9 *cy may, at the discretion of the Director, be ap-*
10 *pointed conservator or receiver for the purpose of re-*
11 *organizing, rehabilitating, or winding up the affairs*
12 *of a regulated entity.*

13 “(3) *GROUND FOR DISCRETIONARY APPOINT-*
14 *MENT OF CONSERVATOR OR RECEIVER.*—The grounds
15 *for appointing conservator or receiver for any regu-*
16 *lated entity under paragraph (2) are as follows:*

17 “(A) *ASSETS INSUFFICIENT FOR OBLIGA-*
18 *TIONS.*—The assets of the regulated entity are
19 *less than the obligations of the regulated entity*
20 *to its creditors and others.*

21 “(B) *SUBSTANTIAL DISSIPATION.*—Substan-
22 *tial dissipation of assets or earnings due to—*

23 “(i) *any violation of any provision of*
24 *Federal or State law; or*

25 “(ii) *any unsafe or unsound practice.*

1 “(C) *UNSAFE OR UNSOUND CONDITION.*—An
2 *unsafe or unsound condition to transact busi-*
3 *ness.*

4 “(D) *CEASE AND DESIST ORDERS.*—Any
5 *willful violation of a cease and desist order that*
6 *has become final.*

7 “(E) *CONCEALMENT.*—Any concealment of
8 *the books, papers, records, or assets of the regu-*
9 *lated entity, or any refusal to submit the books,*
10 *papers, records, or affairs of the regulated entity,*
11 *for inspection to any examiner or to any lawful*
12 *agent of the Director.*

13 “(F) *INABILITY TO MEET OBLIGATIONS.*—
14 *The regulated entity is likely to be unable to pay*
15 *its obligations or meet the demands of its credi-*
16 *tors in the normal course of business.*

17 “(G) *LOSSES.*—The regulated entity has in-
18 *curring or is likely to incur losses that will de-*
19 *plete all or substantially all of its capital, and*
20 *there is no reasonable prospect for the regulated*
21 *entity to become adequately capitalized (as de-*
22 *fined in section 1364(a)(1)).*

23 “(H) *VIOLATIONS OF LAW.*—Any violation
24 *of any law or regulation, or any unsafe or un-*
25 *sound practice or condition that is likely to—*

1 “(i) cause insolvency or substantial
2 dissipation of assets or earnings; or

3 “(ii) weaken the condition of the regu-
4 lated entity.

5 “(I) CONSENT.—The regulated entity, by
6 resolution of its board of directors or its share-
7 holders or members, consents to the appointment.

8 “(J) UNDERCAPITALIZATION.—The regu-
9 lated entity is undercapitalized or significantly
10 undercapitalized (as defined in section
11 1364(a)(3)), and—

12 “(i) has no reasonable prospect of be-
13 coming adequately capitalized;

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

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

18 “(II) section 1366(a)(1) with re-
19 spect to a significantly undercapital-
20 ized regulated entity;

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

1 “(iv) materially fails to implement a
2 capital restoration plan submitted and ac-
3 cepted under section 1369C.

4 “(K) CRITICAL UNDERCAPITALIZATION.—
5 The regulated entity is critically undercapital-
6 ized, as defined in section 1364(a)(4).

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

13 “(4) MANDATORY RECEIVERSHIP.—

14 “(A) IN GENERAL.—The Director shall ap-
15 point the Agency as receiver for a regulated enti-
16 ty if the Director determines, in writing, that—

17 “(i) the assets of the regulated entity
18 are, and during the preceding 60 calendar
19 days have been, less than the obligations of
20 the regulated entity to its creditors and oth-
21 ers; or

22 “(ii) the regulated entity is not, and
23 during the preceding 60 calendar days has
24 not been, generally paying the debts of the
25 regulated entity (other than debts that are

1 *the subject of a bona fide dispute) as such*
2 *debts become due.*

3 “(B) *PERIODIC DETERMINATION REQUIRED*
4 *FOR CRITICALLY UNDERCAPITALIZED REGU-*
5 *LATED ENTITY.—If a regulated entity is criti-*
6 *cally undercapitalized, the Director shall make a*
7 *determination, in writing, as to whether the reg-*
8 *ulated entity meets the criteria specified in*
9 *clause (i) or (ii) of subparagraph (A)—*

10 “(i) *not later than 30 calendar days*
11 *after the regulated entity initially becomes*
12 *critically undercapitalized; and*

13 “(ii) *at least once during each suc-*
14 *ceeding 30-calendar day period.*

15 “(C) *DETERMINATION NOT REQUIRED IF*
16 *RECEIVERSHIP ALREADY IN PLACE.—Subpara-*
17 *graph (B) does not apply with respect to a regu-*
18 *lated entity in any period during which the*
19 *Agency serves as receiver for the regulated entity.*

20 “(D) *RECEIVERSHIP TERMINATES CON-*
21 *SERVATORSHIP.—The appointment of the Agency*
22 *as receiver of a regulated entity under this sec-*
23 *tion shall immediately terminate any con-*
24 *servatorship established for the regulated entity*
25 *under this title.*

1 “(5) *JUDICIAL REVIEW.*—

2 “(A) *IN GENERAL.*—*If the Agency is ap-*
3 *pointed conservator or receiver under this sec-*
4 *tion, the regulated entity may, within 30 days of*
5 *such appointment, bring an action in the United*
6 *States district court for the judicial district in*
7 *which the home office of such regulated entity is*
8 *located, or in the United States District Court*
9 *for the District of Columbia, for an order requir-*
10 *ing the Agency to remove itself as conservator or*
11 *receiver.*

12 “(B) *REVIEW.*—*Upon the filing of an ac-*
13 *tion under subparagraph (A), the court shall,*
14 *upon the merits, dismiss such action or direct*
15 *the Agency to remove itself as such conservator*
16 *or receiver.*

17 “(6) *DIRECTORS NOT LIABLE FOR ACQUIESCING*
18 *IN APPOINTMENT OF CONSERVATOR OR RECEIVER.*—
19 *The members of the board of directors of a regulated*
20 *entity shall not be liable to the shareholders or credi-*
21 *tors of the regulated entity for acquiescing in or con-*
22 *senting in good faith to the appointment of the Agen-*
23 *cy as conservator or receiver for that regulated entity.*

24 “(7) *AGENCY NOT SUBJECT TO ANY OTHER FED-*
25 *ERAL AGENCY.*—*When acting as conservator or re-*

1 *ceiver, the Agency shall not be subject to the direction*
2 *or supervision of any other agency of the United*
3 *States or any State in the exercise of the rights, pow-*
4 *ers, and privileges of the Agency.*

5 *“(b) POWERS AND DUTIES OF THE AGENCY AS CON-*
6 *SERVATOR OR RECEIVER.—*

7 *“(1) RULEMAKING AUTHORITY OF THE AGEN-*
8 *CY.—The Agency may prescribe such regulations as*
9 *the Agency determines to be appropriate regarding*
10 *the conduct of conservatorships or receiverships.*

11 *“(2) GENERAL POWERS.—*

12 *“(A) SUCCESSOR TO REGULATED ENTITY.—*

13 *The Agency shall, as conservator or receiver, and*
14 *by operation of law, immediately succeed to—*

15 *“(i) all rights, titles, powers, and*
16 *privileges of the regulated entity, and of*
17 *any stockholder, officer, or director of such*
18 *regulated entity with respect to the regu-*
19 *lated entity and the assets of the regulated*
20 *entity; and*

21 *“(ii) title to the books, records, and as-*
22 *sets of any other legal custodian of such reg-*
23 *ulated entity.*

24 *“(B) OPERATE THE REGULATED ENTITY.—*

25 *The Agency may, as conservator or receiver—*

- 1 “(i) take over the assets of and operate
2 the regulated entity with all the powers of
3 the shareholders, the directors, and the offi-
4 cers of the regulated entity and conduct all
5 business of the regulated entity;
6 “(ii) collect all obligations and money
7 due the regulated entity;
8 “(iii) perform all functions of the regu-
9 lated entity in the name of the regulated en-
10 tity which are consistent with the appoint-
11 ment as conservator or receiver;
12 “(iv) preserve and conserve the assets
13 and property of the regulated entity; and
14 “(v) provide by contract for assistance
15 in fulfilling any function, activity, action,
16 or duty of the Agency as conservator or re-
17 ceiver.

18 “(C) *FUNCTIONS OF OFFICERS, DIRECTORS,*
19 *AND SHAREHOLDERS OF A REGULATED ENTI-*
20 *TY.—The Agency may, by regulation or order,*
21 *provide for the exercise of any function by any*
22 *stockholder, director, or officer of any regulated*
23 *entity for which the Agency has been named con-*
24 *servator or receiver.*

1 “(D) *POWERS AS CONSERVATOR.*—*The*
2 *Agency may, as conservator, take such action as*
3 *may be—*

4 “(i) *necessary to put the regulated en-*
5 *tity in a sound and solvent condition; and*

6 “(ii) *appropriate to carry on the busi-*
7 *ness of the regulated entity and preserve*
8 *and conserve the assets and property of the*
9 *regulated entity.*

10 “(E) *ADDITIONAL POWERS AS RECEIVER.*—

11 *In any case in which the Agency is acting as re-*
12 *ceiver, the Agency shall place the regulated entity*
13 *in liquidation and proceed to realize upon the*
14 *assets of the regulated entity in such manner as*
15 *the Agency deems appropriate, including through*
16 *the sale of assets, the transfer of assets to a lim-*
17 *ited-life regulated entity established under sub-*
18 *section (i), or the exercise of any other rights or*
19 *privileges granted to the Agency under this para-*
20 *graph.*

21 “(F) *ORGANIZATION OF NEW ENTER-*
22 *PRISE.*—*The Agency may, as receiver for an en-*
23 *terprise, organize a successor enterprise that will*
24 *operate pursuant to subsection (i).*

1 “(G) *TRANSFER OR SALE OF ASSETS AND*
2 *LIABILITIES.—The Agency may, as conservator*
3 *or receiver, transfer or sell any asset or liability*
4 *of the regulated entity in default, and may do so*
5 *without any approval, assignment, or consent*
6 *with respect to such transfer or sale.*

7 “(H) *PAYMENT OF VALID OBLIGATIONS.—*
8 *The Agency, as conservator or receiver, shall, to*
9 *the extent of proceeds realized from the perform-*
10 *ance of contracts or sale of the assets of a regu-*
11 *lated entity, pay all valid obligations of the reg-*
12 *ulated entity that are due and payable at the*
13 *time of the appointment of the Agency as conser-*
14 *vator or receiver, in accordance with the pre-*
15 *scriptions and limitations of this section.*

16 “(I) *SUBPOENA AUTHORITY.—*

17 “(i) *IN GENERAL.—*

18 “(I) *AGENCY AUTHORITY.—The*
19 *Agency may, as conservator or receiver,*
20 *and for purposes of carrying out any*
21 *power, authority, or duty with respect*
22 *to a regulated entity (including deter-*
23 *mining any claim against the regu-*
24 *lated entity and determining and real-*
25 *izing upon any asset of any person in*

1 *the course of collecting money due the*
2 *regulated entity), exercise any power*
3 *established under section 1348.*

4 “(II) *APPLICABILITY OF LAW.—*
5 *The provisions of section 1348 shall*
6 *apply with respect to the exercise of*
7 *any power under this subparagraph,*
8 *in the same manner as such provisions*
9 *apply under that section.*

10 “(ii) *SUBPOENA.—A subpoena or sub-*
11 *poena duces tecum may be issued under*
12 *clause (i) only by, or with the written ap-*
13 *proval of, the Director, or the designee of the*
14 *Director.*

15 “(iii) *RULE OF CONSTRUCTION.—This*
16 *subsection shall not be construed to limit*
17 *any rights that the Agency, in any capac-*
18 *ity, might otherwise have under section*
19 *1317 or 1379B.*

20 “(J) *INCIDENTAL POWERS.—The Agency*
21 *may, as conservator or receiver—*

22 “(i) *exercise all powers and authorities*
23 *specifically granted to conservators or re-*
24 *ceivers, respectively, under this section, and*

1 *such incidental powers as shall be necessary*
2 *to carry out such powers; and*

3 *“(ii) take any action authorized by*
4 *this section, which the Agency determines is*
5 *in the best interests of the regulated entity*
6 *or the Agency.*

7 *“(K) OTHER PROVISIONS.—*

8 *“(i) SHAREHOLDERS AND CREDITORS*
9 *OF FAILED REGULATED ENTITY.—Notwith-*
10 *standing any other provision of law, the ap-*
11 *pointment of the Agency as receiver for a*
12 *regulated entity pursuant to paragraph (2)*
13 *or (4) of subsection (a) and its succession,*
14 *by operation of law, to the rights, titles,*
15 *powers, and privileges described in sub-*
16 *section (b)(2)(A) shall terminate all rights*
17 *and claims that the stockholders and credi-*
18 *tors of the regulated entity may have*
19 *against the assets or charter of the regulated*
20 *entity or the Agency arising as a result of*
21 *their status as stockholders or creditors, ex-*
22 *cept for their right to payment, resolution,*
23 *or other satisfaction of their claims, as per-*
24 *mitted under subsections (b)(9), (c), and (e).*

1 “(ii) *ASSETS OF REGULATED ENTI-*
2 *TY.—Notwithstanding any other provision*
3 *of law, for purposes of this section, the char-*
4 *ter of a regulated entity shall not be consid-*
5 *ered an asset of the regulated entity.*

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

8 “(A) *IN GENERAL.—The Agency may, as re-*
9 *ceiver, determine claims in accordance with the*
10 *requirements of this subsection and any regula-*
11 *tions prescribed under paragraph (4).*

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

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

22 “(ii) *republish such notice approxi-*
23 *mately 1 month and 2 months, respectively,*
24 *after the date of publication under clause*
25 *(i).*

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

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

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

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

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

21 “(A) *DETERMINATION PERIOD.*—

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

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

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

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

15 “(I) on the books of the regulated
16 entity;

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

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

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

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

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

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

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

19 “(D) AUTHORITY TO DISALLOW CLAIMS.—

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

1 “(ii) *PAYMENTS TO LESS THAN FULLY*
2 *SECURED CREDITORS.—In the case of a*
3 *claim of a creditor against a regulated enti-*
4 *ty which is secured by any property or*
5 *other asset of such regulated entity, the re-*
6 *ceiver—*

7 “(I) *may treat the portion of such*
8 *claim which exceeds an amount equal*
9 *to the fair market value of such prop-*
10 *erty or other asset as an unsecured*
11 *claim against the regulated entity; and*

12 “(II) *may not make any payment*
13 *with respect to such unsecured portion*
14 *of the claim, other than in connection*
15 *with the disposition of all claims of*
16 *unsecured creditors of the regulated en-*
17 *tity.*

18 “(iii) *EXCEPTIONS.—No provision of*
19 *this paragraph shall apply with respect*
20 *to—*

21 “(I) *any extension of credit from*
22 *any Federal Reserve Bank, Federal*
23 *Home Loan Bank, or the United States*
24 *Treasury; or*

1 “(II) any security interest in the
2 assets of the regulated entity securing
3 any such extension of credit.

4 “(E) NO JUDICIAL REVIEW OF DETERMINA-
5 TION PURSUANT TO SUBPARAGRAPH (D).—No
6 court may review the determination of the Agen-
7 cy under subparagraph (D) to disallow a claim.

8 “(F) 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 which was filed before the
19 date of the appointment of the receiver, sub-
20 ject to the determination of claims by the
21 receiver.

22 “(6) PROVISION FOR JUDICIAL DETERMINATION
23 OF CLAIMS.—

24 “(A) IN GENERAL.—The claimant may file
25 suit on a claim (or continue an action com-

1 *menced before the appointment of the receiver) in*
2 *the district or territorial court of the United*
3 *States for the district within which the principal*
4 *place of business of the regulated entity is located*
5 *or the United States District Court for the Dis-*
6 *trict of Columbia (and such court shall have ju-*
7 *risdiction to hear such claim), before the end of*
8 *the 60-day period beginning on the earlier of—*

9 *“(i) the end of the period described in*
10 *paragraph (5)(A)(i) with respect to any*
11 *claim against a regulated entity for which*
12 *the Agency is receiver; or*

13 *“(ii) the date of any notice of disallow-*
14 *ance of such claim pursuant to paragraph*
15 *(5)(A)(i).*

16 *“(B) STATUTE OF LIMITATIONS.—A claim*
17 *shall be deemed to be disallowed (other than any*
18 *portion of such claim which was allowed by the*
19 *receiver), and such disallowance shall be final,*
20 *and the claimant shall have no further rights or*
21 *remedies with respect to such claim, if the claim-*
22 *ant fails, before the end of the 60-day period de-*
23 *scribed under subparagraph (A), to file suit on*
24 *such claim (or continue an action commenced be-*
25 *fore the appointment of the receiver).*

1 “(7) *REVIEW OF CLAIMS.*—

2 “(A) *OTHER REVIEW PROCEDURES.*—

3 “(i) *IN GENERAL.*—*The Agency shall*
4 *establish such alternative dispute resolution*
5 *processes as may be appropriate for the res-*
6 *olution of claims filed under paragraph*
7 *(5)(A)(i).*

8 “(ii) *CRITERIA.*—*In establishing alter-*
9 *native dispute resolution processes, the*
10 *Agency shall strive for procedures which are*
11 *expeditious, fair, independent, and low cost.*

12 “(iii) *VOLUNTARY BINDING OR NON-*
13 *BINDING PROCEDURES.*—*The Agency may*
14 *establish both binding and nonbinding proc-*
15 *esses under this subparagraph, which may*
16 *be conducted by any government or private*
17 *party. All parties, including the claimant*
18 *and the Agency, must agree to the use of the*
19 *process in a particular case.*

20 “(B) *CONSIDERATION OF INCENTIVES.*—*The*
21 *Agency shall seek to develop incentives for claim-*
22 *ants to participate in the alternative dispute res-*
23 *olution process.*

24 “(8) *EXPEDITED DETERMINATION OF CLAIMS.*—

1 “(A) *ESTABLISHMENT REQUIRED.*—The
2 Agency shall establish a procedure for expedited
3 relief outside of the routine claims process estab-
4 lished under paragraph (5) for claimants who—

5 “(i) *allege the existence of legally valid*
6 *and enforceable or perfected security inter-*
7 *ests in assets of any regulated entity for*
8 *which the Agency has been appointed re-*
9 *ceiver; and*

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

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

18 “(i) *determine—*

19 “(I) *whether to allow or disallow*
20 *such claim; or*

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

1 “(ii) notify the claimant of the deter-
2 mination, and if the claim is disallowed,
3 provide a statement of each reason for the
4 disallowance and the procedure for obtain-
5 ing agency review or judicial determina-
6 tion.

7 “(C) *PERIOD FOR FILING OR RENEWING*
8 *SUIT.*—Any claimant who files a request for ex-
9 pedited relief shall be permitted to file a suit, or
10 to continue a suit filed before the date of ap-
11 pointment of the receiver, seeking a determina-
12 tion of the rights of the claimant with respect to
13 such security interest after the earlier of—

14 “(i) the end of the 90-day period begin-
15 ning on the date of the filing of a request
16 for expedited relief; or

17 “(ii) the date on which the Agency de-
18 nies the claim.

19 “(D) *STATUTE OF LIMITATIONS.*—If an ac-
20 tion described under subparagraph (C) is not
21 filed, or the motion to renew a previously filed
22 suit is not made, before the end of the 30-day pe-
23 riod beginning on the date on which such action
24 or motion may be filed under subparagraph (B),
25 the claim shall be deemed to be disallowed as of

1 *the end of such period (other than any portion*
2 *of such claim which was allowed by the receiver),*
3 *such disallowance shall be final, and the claim-*
4 *ant shall have no further rights or remedies with*
5 *respect to such claim.*

6 “(E) *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 that was filed before the*
17 *appointment of the receiver, subject to the*
18 *determination of claims by the receiver.*

19 “(9) *PAYMENT OF CLAIMS.—*

20 “(A) *IN GENERAL.—The receiver may, in*
21 *the discretion of the receiver, and to the extent*
22 *that funds are available from the assets of the*
23 *regulated entity, pay creditor claims, in such*
24 *manner and amounts as are authorized under*
25 *this section, which are—*

1 “(i) allowed by the receiver;

2 “(ii) approved by the Agency pursuant
3 to a final determination pursuant to para-
4 graph (7) or (8); or

5 “(iii) determined by the final judgment
6 of any court of competent jurisdiction.

7 “(B) AGREEMENTS AGAINST THE INTEREST
8 OF THE AGENCY.—No agreement that tends to
9 diminish or defeat the interest of the Agency in
10 any asset acquired by the Agency as receiver
11 under this section shall be valid against the
12 Agency unless such agreement is in writing and
13 executed by an authorized officer or representa-
14 tive of the regulated entity.

15 “(C) PAYMENT OF DIVIDENDS ON CLAIMS.—
16 The receiver may, in the sole discretion of the re-
17 ceiver, pay from the assets of the regulated entity
18 dividends on proved claims at any time, and no
19 liability shall attach to the Agency by reason of
20 any such payment, for failure to pay dividends
21 to a claimant whose claim is not proved at the
22 time of any such payment.

23 “(D) RULEMAKING AUTHORITY OF THE DI-
24 RECTOR.—The Director may prescribe such
25 rules, including definitions of terms, as the Di-

1 *rector deems appropriate to establish a single*
2 *uniform interest rate for, or to make payments*
3 *of post-insolvency interest to creditors holding*
4 *proven claims against the receivership estates of*
5 *the regulated entity, following satisfaction by the*
6 *receiver of the principal amount of all creditor*
7 *claims.*

8 “(10) *SUSPENSION OF LEGAL ACTIONS.—*

9 “(A) *IN GENERAL.—After the appointment*
10 *of a conservator or receiver for a regulated enti-*
11 *ty, the conservator or receiver may, in any judi-*
12 *cial action or proceeding to which such regulated*
13 *entity is or becomes a party, request a stay for*
14 *a period not to exceed—*

15 “(i) *45 days, in the case of any conser-*
16 *vator; and*

17 “(ii) *90 days, in the case of any re-*
18 *ceiver.*

19 “(B) *GRANT OF STAY BY ALL COURTS RE-*
20 *QUIRED.—Upon receipt of a request by the con-*
21 *servator or receiver under subparagraph (A) for*
22 *a stay of any judicial action or proceeding in*
23 *any court with jurisdiction of such action or*
24 *proceeding, the court shall grant such stay as to*
25 *all parties.*

1 “(11) *ADDITIONAL RIGHTS AND DUTIES.*—

2 “(A) *PRIOR FINAL ADJUDICATION.*—*The*
3 *Agency shall abide by any final unappealable*
4 *judgment of any court of competent jurisdiction*
5 *which was rendered before the appointment of*
6 *the Agency as conservator or receiver.*

7 “(B) *RIGHTS AND REMEDIES OF CONSER-*
8 *VATOR OR RECEIVER.*—*In the event of any ap-*
9 *pealable judgment, the Agency as conservator or*
10 *receiver—*

11 “(i) *shall have all of the rights and*
12 *remedies available to the regulated entity*
13 *(before the appointment of such conservator*
14 *or receiver) and the Agency, including re-*
15 *moval to Federal court and all appellate*
16 *rights; and*

17 “(ii) *shall not be required to post any*
18 *bond in order to pursue such remedies.*

19 “(C) *NO ATTACHMENT OR EXECUTION.*—*No*
20 *attachment or execution may issue by any court*
21 *upon assets in the possession of the receiver, or*
22 *upon the charter, of a regulated entity for which*
23 *the Agency has been appointed receiver.*

1 “(D) *LIMITATION ON JUDICIAL REVIEW.*—
2 *Except as otherwise provided in this subsection,*
3 *no court shall have jurisdiction over—*

4 “(i) *any claim or action for payment*
5 *from, or any action seeking a determination*
6 *of rights with respect to, the assets or char-*
7 *ter of any regulated entity for which the*
8 *Agency has been appointed receiver; or*

9 “(ii) *any claim relating to any act or*
10 *omission of such regulated entity or the*
11 *Agency as receiver.*

12 “(E) *DISPOSITION OF ASSETS.*—*In exer-*
13 *cising any right, power, privilege, or authority*
14 *as conservator or receiver in connection with any*
15 *sale or disposition of assets of a regulated entity*
16 *for which the Agency has been appointed conser-*
17 *vator or receiver, the Agency shall conduct its*
18 *operations in a manner which—*

19 “(i) *maximizes the net present value*
20 *return from the sale or disposition of such*
21 *assets;*

22 “(ii) *minimizes the amount of any loss*
23 *realized in the resolution of cases; and*

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 accrues;
15 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 accrues;
22 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 sub-
3 paragraph (A), the date on which the statute of
4 limitations begins to run on any claim described
5 in such subparagraph shall be the later of—

6 “(i) the date of the appointment of the
7 Agency as conservator or receiver; or

8 “(ii) the date on which the cause of ac-
9 tion accrues.

10 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
11 ACTION.—

12 “(A) IN GENERAL.—In the case of any tort
13 claim described under clause (ii) for which the
14 statute of limitations applicable under State law
15 with respect to such claim has expired not more
16 than 5 years before the appointment of the Agen-
17 cy as conservator or receiver, the Agency may
18 bring an action as conservator or receiver on
19 such claim without regard to the expiration of
20 the statute of limitations applicable under State
21 law.

22 “(B) CLAIMS DESCRIBED.—A tort claim re-
23 ferred to under clause (i) is a claim arising from
24 fraud, intentional misconduct resulting in unjust

1 *enrichment, or intentional misconduct resulting*
2 *in substantial loss to the regulated entity.*

3 *“(14) ACCOUNTING AND RECORDKEEPING RE-*
4 *QUIREMENTS.—*

5 *“(A) IN GENERAL.—The Agency as conser-*
6 *vator or receiver shall, consistent with the ac-*
7 *counting and reporting practices and procedures*
8 *established by the Agency, maintain a full ac-*
9 *counting of each conservatorship and receiver-*
10 *ship or other disposition of a regulated entity in*
11 *default.*

12 *“(B) ANNUAL ACCOUNTING OR REPORT.—*
13 *With respect to each conservatorship or receiver-*
14 *ship, the Agency shall make an annual account-*
15 *ing or report available to the Board, the Comp-*
16 *troller General of the United States, the Com-*
17 *mittee on Banking, Housing, and Urban Affairs*
18 *of the Senate, and the Committee on Financial*
19 *Services of the House of Representatives.*

20 *“(C) AVAILABILITY OF REPORTS.—Any re-*
21 *port prepared under subparagraph (B) shall be*
22 *made available by the Agency upon request to*
23 *any shareholder of a regulated entity or any*
24 *member of the public.*

1 “(D) *RECORDKEEPING REQUIREMENT.*—
2 *After the end of the 6-year period beginning on*
3 *the date on which the conservatorship or receiv-*
4 *ership is terminated by the Director, the Agency*
5 *may destroy any records of such regulated entity*
6 *which the Agency, in the discretion of the Agen-*
7 *cy, determines to be unnecessary, unless directed*
8 *not to do so by a court of competent jurisdiction*
9 *or governmental agency, or prohibited by law.*

10 “(15) *FRAUDULENT TRANSFERS.*—

11 “(A) *IN GENERAL.*—*The Agency, as conser-*
12 *vator or receiver, may avoid a transfer of any*
13 *interest of an entity-affiliated party, or any per-*
14 *son determined by the conservator or receiver to*
15 *be a debtor of the regulated entity, in property,*
16 *or any obligation incurred by such party or per-*
17 *son, that was made within 5 years of the date*
18 *on which the Agency was appointed conservator*
19 *or receiver, if such party or person voluntarily*
20 *or involuntarily made such transfer or incurred*
21 *such liability with the intent to hinder, delay, or*
22 *defraud the regulated entity, the Agency, the con-*
23 *servator, or receiver.*

24 “(B) *RIGHT OF RECOVERY.*—*To the extent a*
25 *transfer is avoided under subparagraph (A), the*

1 conservator or receiver may recover, for the ben-
2 efit of the regulated entity, the property trans-
3 ferred, or, if a court so orders, the value of such
4 property (at the time of such transfer) from—

5 “(i) the initial transferee of such trans-
6 fer or the entity-affiliated party or person
7 for whose benefit such transfer was made; or

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

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

13 “(i) any transferee that takes for value,
14 including satisfaction or securing of a
15 present or antecedent debt, in good faith; or

16 “(ii) any immediate or mediate good
17 faith transferee of such transferee.

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

1 “(16) *ATTACHMENT OF ASSETS AND OTHER IN-*
2 *JUNCTIVE RELIEF.*—*Subject to paragraph (17), any*
3 *court of competent jurisdiction may, at the request of*
4 *the conservator or receiver, issue an order in accord-*
5 *ance with rule 65 of the Federal Rules of Civil Proce-*
6 *dure, including an order placing the assets of any*
7 *person designated by the conservator or receiver under*
8 *the control of the court, and appointing a trustee to*
9 *hold such assets.*

10 “(17) *STANDARDS OF PROOF.*—*Rule 65 of the*
11 *Federal Rules of Civil Procedure shall apply with re-*
12 *spect to any proceeding under paragraph (16) with-*
13 *out regard to the requirement of such rule that the ap-*
14 *plicant show that the injury, loss, or damage is irrep-*
15 *arable and immediate.*

16 “(18) *TREATMENT OF CLAIMS ARISING FROM*
17 *BREACH OF CONTRACTS EXECUTED BY THE CONSER-*
18 *VATOR OR RECEIVER.*—

19 “(A) *IN GENERAL.*—*Notwithstanding any*
20 *other provision of this subsection, any final and*
21 *unappealable judgment for monetary damages*
22 *entered against the conservator or receiver for the*
23 *breach of an agreement executed or approved in*
24 *writing by the conservator or receiver after the*
25 *date of its appointment, shall be paid as an ad-*

1 *ministrative expense of the conservator or re-*
2 *ceiver.*

3 “(B) *NO LIMITATION OF POWER.—Nothing*
4 *in this paragraph shall be construed to limit the*
5 *power of the conservator or receiver to exercise*
6 *any rights under contract or law, including to*
7 *terminate, breach, cancel, or otherwise dis-*
8 *continue such agreement.*

9 “(19) *GENERAL EXCEPTIONS.—*

10 “(A) *LIMITATIONS.—The rights of the con-*
11 *servator or receiver appointed under this section*
12 *shall be subject to the limitations on the powers*
13 *of a receiver under sections 402 through 407 of*
14 *the Federal Deposit Insurance Corporation Im-*
15 *provement Act of 1991 (12 U.S.C. 4402 through*
16 *4407).*

17 “(B) *MORTGAGES HELD IN TRUST.—*

18 “(i) *IN GENERAL.—Any mortgage, pool*
19 *of mortgages, or interest in a pool of mort-*
20 *gages held in trust, custodial, or agency ca-*
21 *capacity by a regulated entity for the benefit*
22 *of any person other than the regulated enti-*
23 *ty shall not be available to satisfy the*
24 *claims of creditors generally, except that*
25 *nothing in this clause shall be construed to*

1 *expand or otherwise affect the authority of*
2 *any regulated entity.*

3 “(ii) *HOLDING OF MORTGAGES.—Any*
4 *mortgage, pool of mortgages, or interest in*
5 *a pool of mortgages described in clause (i)*
6 *shall be held by the conservator or receiver*
7 *appointed under this section for the bene-*
8 *ficial owners of such mortgage, pool of*
9 *mortgages, or interest in accordance with*
10 *the terms of the agreement creating such*
11 *trust, custodial, or other agency arrange-*
12 *ment.*

13 “(iii) *LIABILITY OF CONSERVATOR OR*
14 *RECEIVER.—The liability of the conservator*
15 *or receiver appointed under this section for*
16 *damages shall, in the case of any contingent*
17 *or unliquidated claim relating to the mort-*
18 *gages held in trust, be estimated in accord-*
19 *ance with the regulations of the Director.*

20 “(c) *PRIORITY OF EXPENSES AND*
 UNSECURED

21 *CLAIMS.—*

22 “(1) *IN GENERAL.—Unsecured claims against a*
23 *regulated entity, or the receiver therefor, that are*
24 *proven to the satisfaction of the receiver shall have*
25 *priority in the following order:*

1 “(A) Administrative expenses of the re-
2 ceiver.

3 “(B) Any other general or senior liability of
4 the regulated entity (which is not a liability de-
5 scribed under subparagraph (C) or (D)).

6 “(C) Any obligation subordinated to general
7 creditors (which is not an obligation described
8 under subparagraph (D)).

9 “(D) Any obligation to shareholders or
10 members arising as a result of their status as
11 shareholder or members.

12 “(2) CREDITORS SIMILARLY SITUATED.—All
13 creditors that are similarly situated under paragraph
14 (1) shall be treated in a similar manner, except that
15 the receiver may take any action (including making
16 payments) that does not comply with this subsection,
17 if—

18 “(A) the Director determines that such ac-
19 tion is necessary to maximize the value of the as-
20 sets of the regulated entity, to maximize the
21 present value return from the sale or other dis-
22 position of the assets of the regulated entity, or
23 to minimize the amount of any loss realized
24 upon the sale or other disposition of the assets of
25 the regulated entity; and

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

4 “(3) DEFINITION.—As used in this subsection,
5 the term ‘administrative expenses of the receiver’ in-
6 cludes—

7 “(A) the actual, necessary costs and ex-
8 penses incurred by the receiver in preserving the
9 assets of a failed regulated entity or liquidating
10 or otherwise resolving the affairs of a failed regu-
11 lated entity; and

12 “(B) any obligations that the receiver deter-
13 mines are necessary and appropriate to facilitate
14 the smooth and orderly liquidation or other reso-
15 lution of the regulated entity.

16 “(d) PROVISIONS RELATING TO CONTRACTS ENTERED
17 INTO BEFORE APPOINTMENT OF CONSERVATOR OR RE-
18 CEIVER.—

19 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
20 In addition to any other rights a conservator or re-
21 ceiver may have, the conservator or receiver for any
22 regulated entity may disaffirm or repudiate any con-
23 tract or lease—

24 “(A) to which such regulated entity is a
25 party;

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

4 “(C) the disaffirmance or repudiation of
5 which the conservator or receiver determines, in
6 its sole discretion, will promote the orderly ad-
7 ministration of the affairs of the regulated enti-
8 ty.

9 “(2) *TIMING OF REPUDIATION.*—The conservator
10 or receiver shall determine whether or not to exercise
11 the rights of repudiation under this subsection within
12 a reasonable period following such appointment.

13 “(3) *CLAIMS FOR DAMAGES FOR REPUDIATION.*—

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

20 “(i) limited to actual direct compen-
21 satory damages; and

22 “(ii) determined as of—

23 “(I) the date of the appointment
24 of the conservator or receiver; or

1 “(II) in the case of any contract
2 or agreement referred to in paragraph
3 (8), the date of the disaffirmance or re-
4 pudiation of such contract or agree-
5 ment.

6 “(B) NO LIABILITY FOR OTHER DAMAGES.—
7 For purposes of subparagraph (A), the term ‘ac-
8 tual direct compensatory damages’ shall not in-
9 clude—

10 “(i) punitive or exemplary damages;

11 “(ii) damages for lost profits or oppor-
12 tunity; or

13 “(iii) damages for pain and suffering.

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

19 “(i) deemed to include normal and rea-
20 sonable costs of cover or other reasonable
21 measures of damages utilized in the indus-
22 tries for such contract and agreement
23 claims; and

1 “(ii) paid in accordance with this sub-
2 section and subsection (e), except as other-
3 wise specifically provided in this section.

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

6 “(A) IN GENERAL.—If the conservator or re-
7 ceiver disaffirms or repudiates a lease under
8 which the regulated entity was the lessee, the con-
9 servator or receiver shall not be liable for any
10 damages (other than damages determined under
11 subparagraph (B)) for the disaffirmance or repu-
12 diation of such lease.

13 “(B) PAYMENTS OF RENT.—Notwith-
14 standing subparagraph (A), the lessor under a
15 lease to which that subparagraph applies shall—

16 “(i) be entitled to the contractual rent
17 accruing before the later of the date on
18 which—

19 “(I) the notice of disaffirmance or
20 repudiation is mailed; or

21 “(II) the disaffirmance or repudi-
22 ation becomes effective, unless the lessor
23 is in default or breach of the terms of
24 the lease;

1 “(ii) have no claim for damages under
2 any acceleration clause or other penalty
3 provision in the lease; and

4 “(iii) have a claim for any unpaid
5 rent, subject to all appropriate offsets and
6 defenses, due as of the date of the appoint-
7 ment, which shall be paid in accordance
8 with this subsection and subsection (e).

9 “(5) LEASES UNDER WHICH THE REGULATED
10 ENTITY IS THE LESSOR.—

11 “(A) IN GENERAL.—If the conservator or re-
12 ceiver repudiates an unexpired written lease of
13 real property of the regulated entity under which
14 the regulated entity is the lessor and the lessee is
15 not, as of the date of such repudiation, in de-
16 fault, the lessee under such lease may either—

17 “(i) treat the lease as terminated by
18 such repudiation; or

19 “(ii) remain in possession of the lease-
20 hold interest for the balance of the term of
21 the lease, unless the lessee defaults under the
22 terms of the lease after the date of such re-
23 pudiation.

24 “(B) PROVISIONS APPLICABLE TO LESSEE
25 REMAINING IN POSSESSION.—If any lessee under

1 *a lease described under subparagraph (A) re-*
2 *mains in possession of a leasehold interest under*
3 *clause (ii) of subparagraph (A)—*

4 *“(i) the lessee—*

5 *“(I) shall continue to pay the con-*
6 *tractual rent pursuant to the terms of*
7 *the lease after the date of the repudi-*
8 *ation of such lease; and*

9 *“(II) may offset against any rent*
10 *payment which accrues after the date*
11 *of the repudiation of the lease, and any*
12 *damages which accrue after such date*
13 *due to the nonperformance of any obli-*
14 *gation of the regulated entity under the*
15 *lease after such date; and*

16 *“(ii) the conservator or receiver shall*
17 *not be liable to the lessee for any damages*
18 *arising after such date as a result of the re-*
19 *pu diation, other than the amount of any*
20 *offset allowed under clause (i)(II).*

21 *“(6) CONTRACTS FOR THE SALE OF REAL PROP-*
22 *ERTY.—*

23 *“(A) IN GENERAL.—If the conservator or re-*
24 *ceiver repudiates any contract for the sale of real*
25 *property and the purchaser of such real property*

1 *under such contract is in possession, and is not,*
2 *as of the date of such repudiation, in default,*
3 *such purchaser may either—*

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

6 *“(ii) remain in possession of such real*
7 *property.*

8 *“(B) PROVISIONS APPLICABLE TO PUR-*
9 *CHASER REMAINING IN POSSESSION.—If any*
10 *purchaser of real property under any contract*
11 *described under subparagraph (A) remains in*
12 *possession of such property under clause (ii) of*
13 *subparagraph (A)—*

14 *“(i) the purchaser—*

15 *“(I) shall continue to make all*
16 *payments due under the contract after*
17 *the date of the repudiation of the con-*
18 *tract; and*

19 *“(II) may offset against any such*
20 *payments any damages which accrue*
21 *after such date due to the nonperform-*
22 *ance (after such date) of any obligation*
23 *of the regulated entity under the con-*
24 *tract; and*

25 *“(ii) the conservator or receiver shall—*

1 “(I) not be liable to the purchaser
2 for any damages arising after such
3 date as a result of the repudiation,
4 other than the amount of any offset al-
5 lowed under clause (i)(II);

6 “(II) deliver title to the purchaser
7 in accordance with the provisions of
8 the contract; and

9 “(III) have no obligation under
10 the contract other than the performance
11 required under subclause (II).

12 “(C) ASSIGNMENT AND SALE ALLOWED.—

13 “(i) IN GENERAL.—No provision of
14 this paragraph shall be construed as lim-
15 iting the right of the conservator or receiver
16 to assign the contract described under sub-
17 paragraph (A), and sell the property subject
18 to the contract and the provisions of this
19 paragraph.

20 “(ii) NO LIABILITY AFTER ASSIGNMENT
21 AND SALE.—If an assignment and sale de-
22 scribed under clause (i) is consummated, the
23 conservator or receiver shall have no further
24 liability under the contract described under
25 subparagraph (A), or with respect to the

1 *real property which was the subject of such*
2 *contract.*

3 “(7) *SERVICE CONTRACTS.—*

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

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

13 “(ii) *deemed to have arisen as of the*
14 *date on which the conservator or receiver*
15 *was appointed.*

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

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

4 “(ii) the amount of such payment shall
5 be treated as an administrative expense of
6 the conservatorship or receivership.

7 “(C) ACCEPTANCE OF PERFORMANCE NO
8 BAR TO SUBSEQUENT REPUDIATION.—The ac-
9 ceptance by the conservator or receiver of services
10 referred to under subparagraph (B) in connec-
11 tion with a contract described in such subpara-
12 graph shall not affect the right of the conservator
13 or receiver to repudiate such contract under this
14 section at any time after such performance.

15 “(8) CERTAIN QUALIFIED FINANCIAL CON-
16 TRACTS.—

17 “(A) RIGHTS OF PARTIES TO CONTRACTS.—
18 Subject to paragraphs (9) and (10), and not-
19 withstanding any other provision of this title
20 (other than subsection (b)(9)(B) of this section),
21 any other Federal law, or the law of any State,
22 no person shall be stayed or prohibited from ex-
23 ercising—

24 “(i) any right of that person to cause
25 the termination, liquidation, or acceleration

1 *of any qualified financial contract with a*
2 *regulated entity that arises upon the ap-*
3 *pointment of the Agency as receiver for such*
4 *regulated entity at any time after such ap-*
5 *pointment;*

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

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

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

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

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

13 “(ii) EXCEPTION FOR CERTAIN TRANS-
14 FERS.—*Clause (i) shall not apply to any*
15 *transfer of money or other property in con-*
16 *nection with any qualified financial con-*
17 *tract with a regulated entity if the Agency*
18 *determines that the transferee had actual*
19 *intent to hinder, delay, or defraud such reg-*
20 *ulated entity, the creditors of such regulated*
21 *entity, or any conservator or receiver ap-*
22 *pointed for such regulated entity.*

23 “(D) CERTAIN CONTRACTS AND AGREE-
24 MENTS DEFINED.—*In this subsection the fol-*
25 *lowing definitions shall apply:*

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

10 “(ii) *SECURITIES CONTRACT.—The*
11 *term ‘securities contract’—*

12 “(I) *means a contract for the pur-*
13 *chase, sale, or loan of a security, a cer-*
14 *tificate of deposit, a mortgage loan, or*
15 *any interest in a mortgage loan, a*
16 *group or index of securities, certificates*
17 *of deposit, or mortgage loans or inter-*
18 *ests therein (including any interest*
19 *therein or based on the value thereof)*
20 *or any option on any of the foregoing,*
21 *including any option to purchase or*
22 *sell any such security, certificate of de-*
23 *posit, mortgage loan, interest, group or*
24 *index, or option, and including any re-*
25 *purchase or reverse repurchase trans-*

1 *action on any such security, certificate*
2 *of deposit, mortgage loan, interest,*
3 *group or index, or option;*

4 *“(II) does not include any pur-*
5 *chase, sale, or repurchase obligation*
6 *under a participation in a commercial*
7 *mortgage loan, unless the Agency deter-*
8 *mines by regulation, resolution, or*
9 *order to include any such agreement*
10 *within the meaning of such term;*

11 *“(III) means any option entered*
12 *into on a national securities exchange*
13 *relating to foreign currencies;*

14 *“(IV) means the guarantee by or*
15 *to any securities clearing agency of*
16 *any settlement of cash, securities, cer-*
17 *tificates of deposit, mortgage loans or*
18 *interests therein, group or index of se-*
19 *curities, certificates of deposit, or mort-*
20 *gage loans or interests therein (includ-*
21 *ing any interest therein or based on*
22 *the value thereof) or option on any of*
23 *the foregoing, including any option to*
24 *purchase or sell any such security, cer-*

1 *tificate of deposit, mortgage loan, in-*
2 *terest, group or index, or option;*
3 *“(V) means any margin loan;*
4 *“(VI) means any other agreement*
5 *or transaction that is similar to any*
6 *agreement or transaction referred to in*
7 *this clause;*
8 *“(VII) means any combination of*
9 *the agreements or transactions referred*
10 *to in this clause;*
11 *“(VIII) means any option to enter*
12 *into any agreement or transaction re-*
13 *ferred to in this clause;*
14 *“(IX) means a master agreement*
15 *that provides for an agreement or*
16 *transaction referred to in subclause (I),*
17 *(III), (IV), (V), (VI), (VII), or (VIII),*
18 *together with all supplements to any*
19 *such master agreement, without regard*
20 *to whether the master agreement pro-*
21 *vides for an agreement or transaction*
22 *that is not a securities contract under*
23 *this clause, except that the master*
24 *agreement shall be considered to be a*
25 *securities contract under this clause*

1 *only with respect to each agreement or*
2 *transaction under the master agree-*
3 *ment that is referred to in subclause*
4 *(I), (III), (IV), (V), (VI), (VII), or*
5 *(VIII); and*

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

14 *“(iii) COMMODITY CONTRACT.—The*
15 *term ‘commodity contract’ means—*

16 *“(I) with respect to a futures com-*
17 *mission merchant, a contract for the*
18 *purchase or sale of a commodity for fu-*
19 *ture delivery on, or subject to the rules*
20 *of, a contract market or board of trade;*

21 *“(II) with respect to a foreign fu-*
22 *tures commission merchant, a foreign*
23 *future;*

1 “(III) with respect to a leverage
2 transaction merchant, a leverage trans-
3 action;

4 “(IV) with respect to a clearing
5 organization, a contract for the pur-
6 chase or sale of a commodity for future
7 delivery on, or subject to the rules of,
8 a contract market or board of trade
9 that is cleared by such clearing organi-
10 zation, or commodity option traded on,
11 or subject to the rules of, a contract
12 market or board of trade that is
13 cleared by such clearing organization;

14 “(V) with respect to a commodity
15 options dealer, a commodity option;

16 “(VI) any other agreement or
17 transaction that is similar to any
18 agreement or transaction referred to in
19 this clause;

20 “(VII) any combination of the
21 agreements or transactions referred to
22 in this clause;

23 “(VIII) any option to enter into
24 any agreement or transaction referred
25 to in this clause;

1 “(IX) a master agreement that
2 provides for an agreement or trans-
3 action referred to in subclause (I), (II),
4 (III), (IV), (V), (VI), (VII), or (VIII),
5 together with all supplements to any
6 such master agreement, without regard
7 to whether the master agreement pro-
8 vides for an agreement or transaction
9 that is not a commodity contract
10 under this clause, except that the mas-
11 ter agreement shall be considered to be
12 a commodity contract under this clause
13 only with respect to each agreement or
14 transaction under the master agree-
15 ment that is referred to in subclause
16 (I), (II), (III), (IV), (V), (VI), (VII), or
17 (VIII); or

18 “(X) any security agreement or
19 arrangement or other credit enhance-
20 ment related to any agreement or
21 transaction referred to in this clause,
22 including any guarantee or reimburse-
23 ment obligation in connection with
24 any agreement or transaction referred
25 to in this clause.

1 “(iv) *FORWARD CONTRACT.*—*The term*
2 *‘forward contract’ means—*

3 “(I) *a contract (other than a com-*
4 *modity contract) for the purchase, sale,*
5 *or transfer of a commodity or any*
6 *similar good, article, service, right, or*
7 *interest which is presently or in the fu-*
8 *ture becomes the subject of dealing in*
9 *the forward contract trade, or product*
10 *or byproduct thereof, with a maturity*
11 *date more than 2 days after the date*
12 *on which the contract is entered into,*
13 *including a repurchase transaction, re-*
14 *verse repurchase transaction, consign-*
15 *ment, lease, swap, hedge transaction,*
16 *deposit, loan, option, allocated trans-*
17 *action, unallocated transaction, or any*
18 *other similar agreement;*

19 “(II) *any combination of agree-*
20 *ments or transactions referred to in*
21 *subclauses (I) and (III);*

22 “(III) *any option to enter into*
23 *any agreement or transaction referred*
24 *to in subclause (I) or (II);*

1 “(IV) a master agreement that
2 provides for an agreement or trans-
3 action referred to in subclauses (I),
4 (II), or (III), together with all supple-
5 ments to any such master agreement,
6 without regard to whether the master
7 agreement provides for an agreement
8 or transaction that is not a forward
9 contract under this clause, except that
10 the master agreement shall be consid-
11 ered to be a forward contract under
12 this clause only with respect to each
13 agreement or transaction under the
14 master agreement that is referred to in
15 subclause (I), (II), or (III); or
16 “(V) any security agreement or
17 arrangement or other credit enhance-
18 ment related to any agreement or
19 transaction referred to in subclause (I),
20 (II), (III), or (IV), including any
21 guarantee or reimbursement obligation
22 in connection with any agreement or
23 transaction referred to in any such
24 subclause.

1 “(v) *REPURCHASE AGREEMENT.*—*The*
2 *term ‘repurchase agreement’ (including a*
3 *reverse repurchase agreement)—*

4 *“(I) means an agreement, includ-*
5 *ing related terms, which provides for*
6 *the transfer of one or more certificates*
7 *of deposit, mortgage-related securities*
8 *(as such term is defined in section 3 of*
9 *the Securities Exchange Act of 1934),*
10 *mortgage loans, interests in mortgage-*
11 *related securities or mortgage loans, el-*
12 *igible bankers’ acceptances, qualified*
13 *foreign government securities (defined*
14 *for purposes of this clause as a security*
15 *that is a direct obligation of, or that is*
16 *fully guaranteed by, the central govern-*
17 *ment of a member of the Organization*
18 *for Economic Cooperation and Devel-*
19 *opment, as determined by regulation or*
20 *order adopted by the appropriate Fed-*
21 *eral banking authority), or securities*
22 *that are direct obligations of, or that*
23 *are fully guaranteed by, the United*
24 *States or any agency of the United*
25 *States against the transfer of funds by*

1 *the transferee of such certificates of de-*
2 *posit, eligible bankers' acceptances, se-*
3 *curities, mortgage loans, or interests*
4 *with a simultaneous agreement by such*
5 *transferee to transfer to the transferor*
6 *thereof certificates of deposit, eligible*
7 *bankers' acceptances, securities, mort-*
8 *gage loans, or interests as described*
9 *above, at a date certain not later than*
10 *1 year after such transfers or on de-*
11 *mand, against the transfer of funds, or*
12 *any other similar agreement;*

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

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

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

1 “(V) means a master agreement
2 that provides for an agreement or
3 transaction referred to in subclause (I),
4 (III), or (IV), together with all supple-
5 ments to any such master agreement,
6 without regard to whether the master
7 agreement provides for an agreement
8 or transaction that is not a repurchase
9 agreement under this clause, except
10 that the master agreement shall be con-
11 sidered to be a repurchase agreement
12 under this subclause only with respect
13 to each agreement or transaction under
14 the master agreement that is referred to
15 in subclause (I), (III), or (IV); and
16 “(VI) means any security agree-
17 ment or arrangement or other credit
18 enhancement related to any agreement
19 or transaction referred to in subclause
20 (I), (III), (IV), or (V), including any
21 guarantee or reimbursement obligation
22 in connection with any agreement or
23 transaction referred to in any such
24 subclause.

1 “(vi) *SWAP AGREEMENT.*—*The term*
2 *‘swap agreement’ means—*
3 “(I) *any agreement, including the*
4 *terms and conditions incorporated by*
5 *reference in any such agreement, which*
6 *is an interest rate swap, option, future,*
7 *or forward agreement, including a rate*
8 *floor, rate cap, rate collar, cross-cur-*
9 *rency rate swap, and basis swap; a*
10 *spot, same day-tomorrow, tomorrow-*
11 *next, forward, or other foreign ex-*
12 *change or precious metals agreement; a*
13 *currency swap, option, future, or for-*
14 *ward agreement; an equity index or eq-*
15 *uity swap, option, future, or forward*
16 *agreement; a debt index or debt swap,*
17 *option, future, or forward agreement; a*
18 *total return, credit spread or credit*
19 *swap, option, future, or forward agree-*
20 *ment; a commodity index or com-*
21 *modity swap, option, future, or for-*
22 *ward agreement; or a weather swap,*
23 *weather derivative, or weather option;*
24 “(II) *any agreement or trans-*
25 *action that is similar to any other*

1 *agreement or transaction referred to in*
2 *this clause and that is of a type that*
3 *has been, is presently, or in the future*
4 *becomes, the subject of recurrent deal-*
5 *ings in the swap markets (including*
6 *terms and conditions incorporated by*
7 *reference in such agreement) and that*
8 *is a forward, swap, future, or option*
9 *on one or more rates, currencies, com-*
10 *modities, equity securities or other eq-*
11 *uity instruments, debt securities or*
12 *other debt instruments, quantitative*
13 *measures associated with an occur-*
14 *rence, extent of an occurrence, or con-*
15 *tingency associated with a financial,*
16 *commercial, or economic consequence,*
17 *or economic or financial indices or*
18 *measures of economic or financial risk*
19 *or value;*

20 *“(III) any combination of agree-*
21 *ments or transactions referred to in*
22 *this clause;*

23 *“(IV) any option to enter into*
24 *any agreement or transaction referred*
25 *to in this clause;*

1 “(V) a master agreement that pro-
2 vides for an agreement or transaction
3 referred to in subclause (I), (II), (III),
4 or (IV), together with all supplements
5 to any such master agreement, without
6 regard to whether the master agreement
7 contains an agreement or transaction
8 that is not a swap agreement under
9 this clause, except that the master
10 agreement shall be considered to be a
11 swap agreement under this clause only
12 with respect to each agreement or
13 transaction under the master agree-
14 ment that is referred to in subclause
15 (I), (II), (III), or (IV); and
16 “(VI) any security agreement or
17 arrangement or other credit enhance-
18 ment related to any agreements or
19 transactions referred to in subclause
20 (I), (II), (III), (IV), or (V), including
21 any guarantee or reimbursement obli-
22 gation in connection with any agree-
23 ment or transaction referred to in any
24 such subclause.

1 “(vii) *TREATMENT OF MASTER AGREE-*
2 *MENT AS ONE AGREEMENT.*—Any master
3 *agreement for any contract or agreement de-*
4 *scribed in any preceding clause of this sub-*
5 *paragraph (or any master agreement for*
6 *such master agreement or agreements), to-*
7 *gether with all supplements to such master*
8 *agreement, shall be treated as a single*
9 *agreement and a single qualified financial*
10 *contract. If a master agreement contains*
11 *provisions relating to agreements or trans-*
12 *actions that are not themselves qualified fi-*
13 *nancial contracts, the master agreement*
14 *shall be deemed to be a qualified financial*
15 *contract only with respect to those trans-*
16 *actions that are themselves qualified finan-*
17 *cial contracts.*

18 “(viii) *TRANSFER.*—The term ‘*trans-*
19 *fer*’ means every mode, direct or indirect,
20 *absolute or conditional, voluntary or invol-*
21 *untary, of disposing of or parting with*
22 *property or with an interest in property,*
23 *including retention of title as a security in-*
24 *terest and foreclosure of the equity of re-*
25 *demption of the regulated entity.*

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

8 “(i) any right such person has to cause
9 the termination, liquidation, or acceleration
10 of any qualified financial contract with a
11 regulated entity in a conservatorship based
12 upon a default under such financial con-
13 tract which is enforceable under applicable
14 noninsolvency law;

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

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

24 “(F) CLARIFICATION.—No provision of law
25 shall be construed as limiting the right or power

1 of the Agency, or authorizing any court or agen-
2 cy to limit or delay in any manner, the right or
3 power of the Agency to transfer any qualified fi-
4 nancial contract in accordance with paragraphs
5 (9) and (10), or to disaffirm or repudiate any
6 such contract in accordance with subsection
7 (d)(1).

8 “(G) WALKAWAY CLAUSES NOT EFFEC-
9 TIVE.—

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

17 “(ii) WALKAWAY CLAUSE DEFINED.—
18 For purposes of this subparagraph, the term
19 ‘walkaway clause’ means a provision in a
20 qualified financial contract that, after cal-
21 culation of a value of a party’s position or
22 an amount due to or from 1 of the parties
23 in accordance with its terms upon termi-
24 nation, liquidation, or acceleration of the
25 qualified financial contract, either does not

1 *create a payment obligation of a party or*
2 *extinguishes a payment obligation of a*
3 *party in whole or in part solely because of*
4 *the status of such party as a nondefaulting*
5 *party.*

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

11 “(A) *transfer to 1 person—*

12 “(i) *all qualified financial contracts*
13 *between any person (or any affiliate of such*
14 *person) and the regulated entity in default;*

15 “(ii) *all claims of such person (or any*
16 *affiliate of such person) against such regu-*
17 *lated entity under any such contract (other*
18 *than any claim which, under the terms of*
19 *any such contract, is subordinated to the*
20 *claims of general unsecured creditors of such*
21 *regulated entity);*

22 “(iii) *all claims of such regulated enti-*
23 *ty against such person (or any affiliate of*
24 *such person) under any such contract; and*

1 “(iv) all property securing, or any
2 other credit enhancement for any contract
3 described in clause (i), or any claim de-
4 scribed in clause (ii) or (iii) under any
5 such contract; or

6 “(B) transfer none of the financial con-
7 tracts, claims, or property referred to under sub-
8 paragraph (A) (with respect to such person and
9 any affiliate of such person).

10 “(10) NOTIFICATION OF TRANSFER.—

11 “(A) IN GENERAL.—The conservator or re-
12 ceiver shall notify any person that is a party to
13 a contract or transfer by 5:00 p.m. (Eastern
14 Standard Time) on the business day following
15 the date of the appointment of the receiver in the
16 case of a receivership, or the business day fol-
17 lowing such transfer in the case of a conservator-
18 ship, if—

19 “(i) the conservator or receiver for a
20 regulated entity in default makes any trans-
21 fer of the assets and liabilities of such regu-
22 lated entity; and

23 “(ii) such transfer includes any quali-
24 fied financial contract.

1 “(B) *CERTAIN RIGHTS NOT ENFORCE-*
2 *ABLE.—*

3 “(i) *RECEIVERSHIP.—A person who is*
4 *a party to a qualified financial contract*
5 *with a regulated entity may not exercise*
6 *any right that such person has to terminate,*
7 *liquidate, or net such contract under para-*
8 *graph (8)(A) of this subsection or under sec-*
9 *tion 403 or 404 of the Federal Deposit In-*
10 *surance Corporation Improvement Act of*
11 *1991, solely by reason of or incidental to the*
12 *appointment of a receiver for the regulated*
13 *entity (or the insolvency or financial condi-*
14 *tion of the regulated entity for which the re-*
15 *ceiver has been appointed)—*

16 “(I) *until 5:00 p.m. (Eastern*
17 *Standard Time) on the business day*
18 *following the date of the appointment*
19 *of the receiver; or*

20 “(II) *after the person has received*
21 *notice that the contract has been trans-*
22 *ferred pursuant to paragraph (9)(A).*

23 “(ii) *CONSERVATORSHIP.—A person*
24 *who is a party to a qualified financial con-*
25 *tract with a regulated entity may not exer-*

1 *cise any right that such person has to ter-*
2 *minate, liquidate, or net such contract*
3 *under paragraph (8)(E) of this subsection*
4 *or under section 403 or 404 of the Federal*
5 *Deposit Insurance Corporation Improve-*
6 *ment Act of 1991, solely by reason of or in-*
7 *cidental to the appointment of a conservator*
8 *for the regulated entity (or the insolvency or*
9 *financial condition of the regulated entity*
10 *for which the conservator has been ap-*
11 *pointed).*

12 “(iii) NOTICE.—*For purposes of this*
13 *paragraph, the conservator or receiver of a*
14 *regulated entity shall be deemed to have no-*
15 *tified a person who is a party to a qualified*
16 *financial contract with such regulated enti-*
17 *ty, if the conservator or receiver has taken*
18 *steps reasonably calculated to provide notice*
19 *to such person by the time specified in sub-*
20 *paragraph (A).*

21 “(C) BUSINESS DAY DEFINED.—*For pur-*
22 *poses of this paragraph, the term ‘business day’*
23 *means any day other than any Saturday, Sun-*
24 *day, or any day on which either the New York*

1 *Stock Exchange or the Federal Reserve Bank of*
2 *New York is closed.*

3 *“(11) DISAFFIRMANCE OR REPUDIATION OF*
4 *QUALIFIED FINANCIAL CONTRACTS.—In exercising the*
5 *rights of disaffirmance or repudiation of a conser-*
6 *vator or receiver with respect to any qualified finan-*
7 *cial contract to which a regulated entity is a party,*
8 *the conservator or receiver for such institution shall*
9 *either—*

10 *“(A) disaffirm or repudiate all qualified fi-*
11 *nancial contracts between—*

12 *“(i) any person or any affiliate of such*
13 *person; and*

14 *“(ii) the regulated entity in default; or*

15 *“(B) disaffirm or repudiate none of the*
16 *qualified financial contracts referred to in sub-*
17 *paragraph (A) (with respect to such person or*
18 *any affiliate of such person).*

19 *“(12) CERTAIN SECURITY INTERESTS NOT AVOID-*
20 *ABLE.—No provision of this subsection shall be con-*
21 *strued as permitting the avoidance of any legally en-*
22 *forceable or perfected security interest in any of the*
23 *assets of any regulated entity, except where such an*
24 *interest is taken in contemplation of the insolvency of*
25 *the regulated entity, or with the intent to hinder,*

1 *delay, or defraud the regulated entity or the creditors*
2 *of such regulated entity.*

3 “(13) *AUTHORITY TO ENFORCE CONTRACTS.*—

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

14 “(B) *CERTAIN RIGHTS NOT AFFECTED.*—*No*
15 *provision of this paragraph may be construed as*
16 *impairing or affecting any right of the conser-*
17 *vator or receiver to enforce or recover under a li-*
18 *ability insurance contract for an officer or direc-*
19 *tor, or regulated entity bond under other appli-*
20 *cable law.*

21 “(C) *CONSENT REQUIREMENT.*—

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

1 *contract to which a regulated entity is a*
2 *party, or to obtain possession of or exercise*
3 *control over any property of the regulated*
4 *entity, or affect any contractual rights of*
5 *the regulated entity, without the consent of*
6 *the conservator or receiver, as appropriate,*
7 *for a period of—*

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

10 “(II) 90 days after the date of ap-
11 pointment of a receiver.

12 “(ii) *EXCEPTIONS.—This subpara-*
13 *graph shall not—*

14 “(I) *apply to a contract for liabil-*
15 *ity insurance for an officer or director;*

16 “(II) *apply to the rights of parties*
17 *to certain qualified financial contracts*
18 *under subsection (d)(8); and*

19 “(III) *be construed as permitting*
20 *the conservator or receiver to fail to*
21 *comply with otherwise enforceable pro-*
22 *visions of such contracts.*

23 “(14) *SAVINGS CLAUSE.—The meanings of terms*
24 *used in this subsection are applicable for purposes of*
25 *this subsection only, and shall not be construed or ap-*

1 plied so as to challenge or affect the characterization,
2 definition, or treatment of any similar terms under
3 any other statute, regulation, or rule, including the
4 Gramm-Leach-Bliley Act, the Legal Certainty
5 for
6 Bank Products Act of 2000, the securities laws (as
7 that term is defined in section 3(a)(47) of the Securi-
8 ties Exchange Act of 1934), and the Commodity Ex-
9 change 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 Bank
14 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 determines
22 to utilize with respect to a regulated entity in default
23 or in danger of default, including transactions au-
24 thorized under subsection (i), this subsection shall

1 *govern the rights of the creditors of such regulated en-*
2 *tity.*

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 re-*
7 *ceiver is appointed shall be not more than the amount*
8 *that such claimant would have received if the Agency*
9 *had liquidated the assets and liabilities of the regu-*
10 *lated entity without exercising the authority of the*
11 *Agency under subsection (i).*

12 “(f) *LIMITATION ON COURT ACTION.—Except as pro-*
13 *vided in this section or at the request of the Director, no*
14 *court may take any action to restrain or affect the exercise*
15 *of powers or functions of the Agency as a conservator or*
16 *a receiver.*

17 “(g) *LIABILITY OF DIRECTORS AND OFFICERS.—*

18 “(1) *IN GENERAL.—A director or officer of a reg-*
19 *ulated entity may be held personally liable for mone-*
20 *tary damages in any civil action described in para-*
21 *graph (2) brought by, on behalf of, or at the request*
22 *or direction of the Agency, and prosecuted wholly or*
23 *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 demonstrates
8 a greater disregard of a duty of care than gross neg-
9 ligence, including intentional tortious conduct, as
10 such terms are defined and determined under applica-
11 ble State law.

12 “(3) NO LIMITATION.—Nothing in this subsection
13 shall impair or affect any right of the Agency under
14 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 otherwise
20 improper use or investment of any assets of the regulated
21 entity shall include principal losses and appropriate inter-
22 est.

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 in*
7 *default or in danger of default as the Direc-*
8 *tor determines necessary, subject to the pro-*
9 *visions of this subsection, and the Director*
10 *shall grant a temporary charter to that lim-*
11 *ited-life regulated entity, and that limited-*
12 *life regulated entity may operate subject to*
13 *that charter; and*

14 “(ii) *shall, in the case of an enterprise,*
15 *organize a limited-life regulated entity with*
16 *respect to that enterprise in accordance*
17 *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 regu-*
23 *lated 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-life*
18 *regulated entity established under this sub-*
19 *section with respect to such enterprise shall,*
20 *by operation of law and immediately upon*
21 *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 accord-*
4 *ance with, and subject to, such charter,*
5 *this Act, and any other provision of*
6 *law to which the Federal National*
7 *Mortgage Association is subject, except*
8 *as otherwise provided in this sub-*
9 *section.*

10 *“(ii) FREDDIE MAC.—If the Agency is*
11 *appointed as receiver for the Federal Home*
12 *Loan Mortgage Corporation, the limited-life*
13 *regulated entity established under this sub-*
14 *section with respect to such enterprise shall,*
15 *by operation of law and immediately upon*
16 *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 accord-*
23 *ance with, and subject to, such charter,*
24 *this Act, and any other provision of*
25 *law to which the Federal Home Loan*

1 Mortgage Corporation is subject, except
2 as otherwise provided in this sub-
3 section.

4 “(B) INTERESTS IN AND ASSETS AND OBLI-
5 GATIONS OF REGULATED ENTITY IN DEFAULT.—

6 Notwithstanding subparagraph (A) or any other
7 provision of law—

8 “(i) a limited-life regulated entity shall
9 assume, acquire, or succeed to the assets or
10 liabilities of a regulated entity only to the
11 extent that such assets or liabilities are
12 transferred by the Agency to the limited-life
13 regulated entity in accordance with, and
14 subject to the restrictions set forth in, para-
15 graph (1)(B);

16 “(ii) a limited-life regulated entity
17 shall not assume, acquire, or succeed to any
18 obligation that a regulated entity for which
19 a receiver has been appointed may have to
20 any shareholder of the regulated entity that
21 arises as a result of the status of that person
22 as a shareholder of the regulated entity; and

23 “(iii) no shareholder or creditor of a
24 regulated entity shall have any right or
25 claim against the charter of the regulated

1 *entity once the Agency has been appointed*
2 *receiver for the regulated entity and a lim-*
3 *ited-life regulated entity succeeds to the*
4 *charter pursuant to subparagraph (A).*

5 “(C) *LIMITED-LIFE REGULATED ENTITY*
6 *TREATED AS BEING IN DEFAULT FOR CERTAIN*
7 *PURPOSES.—A limited-life regulated entity shall*
8 *be treated as a regulated entity in default at*
9 *such times and for such purposes as the Agency*
10 *may, in its discretion, determine.*

11 “(D) *MANAGEMENT.—Upon its establish-*
12 *ment, a limited-life regulated entity shall be*
13 *under the management of a board of directors*
14 *consisting of not fewer than 5 nor more than 10*
15 *members appointed by the Agency.*

16 “(E) *BYLAWS.—The board of directors of a*
17 *limited-life regulated entity shall adopt such by-*
18 *laws as may be approved by the Agency.*

19 “(3) *CAPITAL STOCK.—*

20 “(A) *NO AGENCY REQUIREMENT.—The*
21 *Agency is not required to pay capital stock*
22 *into a limited-life regulated entity or to*
23 *issue any capital stock on behalf of a lim-*
24 *ited-life regulated entity established under*
25 *this subsection.*

1 “(B) *AUTHORITY.*—*If the Director de-*
2 *termines that such action is advisable, the*
3 *Agency may cause capital stock or other se-*
4 *curities of a limited-life regulated entity es-*
5 *tablished with respect to an enterprise to be*
6 *issued and offered for sale, in such amounts*
7 *and on such terms and conditions as the*
8 *Director may determine, in the discretion of*
9 *the Director.*

10 “(4) *INVESTMENTS.*—*Funds of a limited-life reg-*
11 *ulated entity shall be kept on hand in cash, invested*
12 *in obligations of the United States or obligations*
13 *guaranteed as to principal and interest by the United*
14 *States, or deposited with the Agency, or any Federal*
15 *reserve bank.*

16 “(5) *EXEMPT TAX STATUS.*—*Notwithstanding*
17 *any other provision of Federal or State law, a lim-*
18 *ited-life regulated entity, its franchise, property, and*
19 *income shall be exempt from all taxation now or here-*
20 *after imposed by the United States, by any territory,*
21 *dependency, or possession thereof, or by any State,*
22 *county, municipality, or local taxing authority.*

23 “(6) *WINDING UP.*—

24 “(A) *IN GENERAL.*—*Subject to subpara-*
25 *graphs (B) and (C), not later than 2 years after*

1 *the date of its organization, the Agency shall*
2 *wind up the affairs of a limited-life regulated en-*
3 *tity.*

4 “(B) *EXTENSION.*—*The Director may, in*
5 *the discretion of the Director, extend the status*
6 *of a limited-life regulated entity for 3 additional*
7 *1-year periods.*

8 “(C) *TERMINATION OF STATUS AS LIMITED-*
9 *LIFE REGULATED ENTITY.*—

10 “(i) *IN GENERAL.*—*Upon the sale by*
11 *the Agency of 80 percent or more of the cap-*
12 *ital stock of a limited-life regulated entity,*
13 *as defined in clause (iv), to 1 or more per-*
14 *sons (other than the Agency)—*

15 “(I) *the status of the limited-life*
16 *regulated entity as such shall termi-*
17 *nate; and*

18 “(II) *the entity shall cease to be a*
19 *limited-life regulated entity for pur-*
20 *poses of this subsection.*

21 “(ii) *DIVESTITURE OF REMAINING*
22 *STOCK, IF ANY.*—

23 “(I) *IN GENERAL.*—*Not later than*
24 *1 year after the date on which the sta-*
25 *tus of a limited-life regulated entity is*

1 *terminated pursuant to clause (i), the*
2 *Agency shall sell to 1 or more persons*
3 *(other than the Agency) any remaining*
4 *capital stock of the former limited-life*
5 *regulated entity.*

6 “(II) *EXTENSION AUTHORIZED.—*
7 *The Director may extend the period re-*
8 *ferred to in subclause (I) for not longer*
9 *than an additional 2 years, if the Di-*
10 *rector determines that such action*
11 *would be in the public interest.*

12 “(iii) *SAVINGS CLAUSE.—Notwith-*
13 *standing any provision of law, other than*
14 *clause (ii), the Agency shall not be required*
15 *to sell the capital stock of an enterprise or*
16 *a limited-life regulated entity established*
17 *with respect to an enterprise.*

18 “(iv) *APPLICABILITY.—This subpara-*
19 *graph applies only with respect to a lim-*
20 *ited-life regulated entity that is established*
21 *with respect to an enterprise.*

22 “(7) *TRANSFER OF ASSETS AND LIABILITIES.—*

23 “(A) *IN GENERAL.—*

24 “(i) *TRANSFER OF ASSETS AND LIABIL-*
25 *ITIES.—The Agency, as receiver, may trans-*

1 *fer any assets and liabilities of a regulated*
2 *entity in default, or in danger of default, to*
3 *the limited-life regulated entity in accord-*
4 *ance with and subject to the restrictions of*
5 *paragraph (1).*

6 *“(ii) SUBSEQUENT TRANSFERS.—At*
7 *any time after the establishment of a lim-*
8 *ited-life regulated entity, the Agency, as re-*
9 *ceiver, may transfer any assets and liabil-*
10 *ities of the regulated entity in default, or in*
11 *danger of default, as the Agency may, in its*
12 *discretion, determine to be appropriate in*
13 *accordance with and subject to the restric-*
14 *tions of paragraph (1).*

15 *“(iii) EFFECTIVE WITHOUT AP-*
16 *PROVAL.—The transfer of any assets or li-*
17 *abilities of a regulated entity in default or*
18 *in danger of default to a limited-life regu-*
19 *lated entity shall be effective without any*
20 *further approval under Federal or State*
21 *law, assignment, or consent with respect*
22 *thereto.*

23 *“(iv) EQUITABLE TREATMENT OF SIMI-*
24 *LARLY SITUATED CREDITORS.—The Agency*
25 *shall treat all creditors of a regulated entity*

1 *in default or in danger of default that are*
2 *similarly situated under subsection (c)(1) in*
3 *a similar manner in exercising the author-*
4 *ity of the Agency under this subsection to*
5 *transfer any assets or liabilities of the regu-*
6 *lated entity to the limited-life regulated en-*
7 *tity established with respect to such regu-*
8 *lated entity, except that the Agency may*
9 *take actions (including making payments)*

10 *that do not comply with this clause, if—*

11 *“(I) the Director determines that*
12 *such actions are necessary to maximize*
13 *the value of the assets of the regulated*
14 *entity, to maximize the present value*
15 *return from the sale or other disposi-*
16 *tion of the assets of the regulated enti-*
17 *ty, or to minimize the amount of any*
18 *loss realized upon the sale or other dis-*
19 *position of the assets of the regulated*
20 *entity; and*

21 *“(II) all creditors that are simi-*
22 *larly situated under subsection (c)(1)*
23 *receive not less than the amount pro-*
24 *vided in subsection (e)(2).*

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

6 “(III) indemnify the representa-
7 tives for purposes of paragraph (I)(B),
8 and the directors, officers, employees,
9 and agents of a limited-life regulated
10 entity on such terms as the Agency de-
11 termines to be appropriate; and

12 “(ii) the board of directors of a lim-
13 ited-life regulated entity—

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

21 “(II) may appoint a chief execu-
22 tive officer who is not also the chair-
23 person, except that such person shall
24 not serve as chief executive officer with-
25 out the prior approval of the Agency.

1 “(B) *STAY OF JUDICIAL ACTION.*—Any judi-
2 *cial action to which a limited-life regulated enti-*
3 *ty becomes a party by virtue of its acquisition*
4 *of any assets or assumption of any liabilities of*
5 *a regulated entity in default shall be stayed from*
6 *further proceedings for a period of not longer*
7 *than 45 days, at the request of the limited-life*
8 *regulated entity. Such period may be modified*
9 *upon the consent of all parties.*

10 “(10) *NO FEDERAL STATUS.*—

11 “(A) *AGENCY STATUS.*—A limited-life regu-
12 *lated entity is not an agency, establishment, or*
13 *instrumentality of the United States.*

14 “(B) *EMPLOYEE STATUS.*—Representatives
15 *for purposes of paragraph (1)(B), interim direc-*
16 *tors, directors, officers, employees, or agents of a*
17 *limited-life regulated entity are not, solely by*
18 *virtue of service in any such capacity, officers or*
19 *employees of the United States. Any employee of*
20 *the Agency or of any Federal instrumentality*
21 *who serves at the request of the Agency as a rep-*
22 *resentative for purposes of paragraph (1)(B), in-*
23 *terim director, director, officer, employee, or*
24 *agent of a limited-life regulated entity shall*
25 *not—*

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

6 “(ii) receive any salary or benefits for
7 service in any such capacity with respect to
8 a limited-life regulated entity in addition to
9 such salary or benefits as are obtained
10 through employment with the Agency or
11 such Federal instrumentality.

12 “(11) AUTHORITY TO OBTAIN CREDIT.—

13 “(A) IN GENERAL.—A limited-life regulated
14 entity may obtain unsecured credit and issue
15 unsecured debt.

16 “(B) INABILITY TO OBTAIN CREDIT.—If a
17 limited-life regulated entity is unable to obtain
18 unsecured credit or issue unsecured debt, the Di-
19 rector may authorize the obtaining of credit or
20 the issuance of debt by the limited-life regulated
21 entity—

22 “(i) with priority over any or all of
23 the obligations of the limited-life regulated
24 entity;

1 “(ii) secured by a lien on property of
2 the limited-life regulated entity that is not
3 otherwise subject to a lien; or

4 “(iii) secured by a junior lien on prop-
5 erty of the limited-life regulated entity that
6 is subject to a lien.

7 “(C) LIMITATIONS.—

8 “(i) IN GENERAL.—The Director, after
9 notice and a hearing, may authorize the ob-
10 taining of credit or the issuance of debt by
11 a limited-life regulated entity that is se-
12 cured by a senior or equal lien on property
13 of the limited-life regulated entity that is
14 subject to a lien (other than mortgages that
15 collateralize the mortgage-backed securities
16 issued or guaranteed by an enterprise) only
17 if—

18 “(I) the limited-life regulated en-
19 tity is unable to otherwise obtain such
20 credit or issue such debt; and

21 “(II) there is adequate protection
22 of the interest of the holder of the lien
23 on the property with respect to which
24 such senior or equal lien is proposed to
25 be granted.

1 “(D) *BURDEN OF PROOF.*—*In any hearing*
2 *under this subsection, the Director has the bur-*
3 *den of proof on the issue of adequate protection.*

4 “(12) *EFFECT ON DEBTS AND LIENS.*—*The rever-*
5 *sal or modification on appeal of an authorization*
6 *under this subsection to obtain credit or issue debt, or*
7 *of a grant under this section of a priority or a lien,*
8 *does not affect the validity of any debt so issued, or*
9 *any priority or lien so granted, to an entity that ex-*
10 *tended such credit in good faith, whether or not such*
11 *entity knew of the pendency of the appeal, unless such*
12 *authorization and the issuance of such debt, or the*
13 *granting of such priority or lien, were stayed pending*
14 *appeal.*

15 “(j) *OTHER AGENCY EXEMPTIONS.*—

16 “(1) *APPLICABILITY.*—*The provisions of this sub-*
17 *section shall apply with respect to the Agency in any*
18 *case in which the Agency is acting as a conservator*
19 *or a receiver.*

20 “(2) *TAXATION.*—*The Agency, including its fran-*
21 *chise, its capital, reserves, and surplus, and its in-*
22 *come, shall be exempt from all taxation imposed by*
23 *any State, county, municipality, or local taxing au-*
24 *thority, except that any real property of the Agency*
25 *shall be subject to State, territorial, county, munic-*

1 *ipal, or local taxation to the same extent according to*
2 *its value as other real property is taxed, except that,*
3 *notwithstanding the failure of any person to challenge*
4 *an assessment under State law of the value of such*
5 *property, and the tax thereon, shall be determined as*
6 *of the period for which such tax is imposed.*

7 “(3) *PROPERTY PROTECTION.—No property of*
8 *the Agency shall be subject to levy, attachment, gar-*
9 *nishment, foreclosure, or sale without the consent of*
10 *the Agency, nor shall any involuntary lien attach to*
11 *the property of the Agency.*

12 “(4) *PENALTIES AND FINES.—The Agency shall*
13 *not be liable for any amounts in the nature of pen-*
14 *alties or fines, including those arising from the fail-*
15 *ure of any person to pay any real property, personal*
16 *property, probate, or recording tax or any recording*
17 *or filing fees when due.*

18 “(k) *PROHIBITION OF CHARTER REVOCATION.—In no*
19 *case may the receiver appointed pursuant to this section*
20 *revoke, annul, or terminate the charter of an enterprise.’’.*

21 (b) *TECHNICAL AND CONFORMING AMENDMENTS.—*
22 *The Federal Housing Enterprises Financial Safety and*
23 *Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-*
24 *ed—*

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

1 (A) by striking “an enterprise” each place
2 that term appears and inserting “a regulated en-
3 tity”; and

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

7 (2) in section 1369C (12 U.S.C. 4622), by strik-
8 ing “enterprise” each place that term appears and in-
9 serting “regulated entity”;

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

11 (A) by striking “an enterprise” each place
12 that term appears and inserting “a regulated en-
13 tity”; and

14 (B) in subsection (a)(1), by striking “An
15 enterprise” and inserting “A regulated entity”;
16 and

17 (4) by striking sections 1369, 1369A, and 1369B
18 (12 U.S.C. 4619, 4620, and 4621).

19 ***Subtitle D—Enforcement Actions***

20 ***SEC. 1151. CEASE AND DESIST PROCEEDINGS.***

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

24 (1) by striking subsections (a) and (b) and in-
25 serting the following:

1 “(a) *ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES*
2 *AND VIOLATIONS.*—

3 “(1) *AUTHORITY OF DIRECTOR.*—*If, in the opin-*
4 *ion of the Director, a regulated entity or any entity-*
5 *affiliated party is engaging or has engaged, or the Di-*
6 *rector has reasonable cause to believe that the regu-*
7 *lated entity or any entity-affiliated party is about to*
8 *engage, in an unsafe or unsound practice in con-*
9 *ducting the business of the regulated entity or the Of-*
10 *fice of Finance, or is violating or has violated, or the*
11 *Director has reasonable cause to believe is about to*
12 *violate, a law, rule, regulation, or order, or any con-*
13 *dition imposed in writing by the Director in connec-*
14 *tion with the granting of any application or other re-*
15 *quest by the regulated entity or the Office of Finance*
16 *or any written agreement entered into with the Direc-*
17 *tor, the Director may issue and serve upon the regu-*
18 *lated entity or entity-affiliated party a notice of*
19 *charges in respect thereof.*

20 “(2) *LIMITATION.*—*The Director may not, pur-*
21 *suant to this section, enforce compliance with any*
22 *housing goal established under subpart B of part 2 of*
23 *subtitle A of this title, with section 1336 or 1337 of*
24 *this title, with subsection (m) or (n) of section 309 of*
25 *the Federal National Mortgage Association Charter*

1 Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or
2 (f) of section 307 of the Federal Home Loan Mortgage
3 Corporation Act (12 U.S.C. 1456(e), (f)), or with
4 paragraph (5) of section 10(j) of the Federal Home
5 Loan Bank Act (12 U.S.C. 1430(j)).

6 “(b) *ISSUANCE FOR UNSATISFACTORY RATING.*—If a
7 regulated entity receives, in its most recent report of exam-
8 ination, a less-than-satisfactory rating for asset quality,
9 management, earnings, or liquidity, the Director may (if
10 the deficiency is not corrected) deem the regulated entity
11 to be engaging in an unsafe or unsound practice for pur-
12 poses of subsection (a).”;

13 (2) in subsection (c)—

14 (A) in paragraph (1), by inserting before
15 the period at the end the following: “, unless the
16 party served with a notice of charges shall ap-
17 pear at the hearing personally or by a duly au-
18 thorized representative, the party shall be deemed
19 to have consented to the issuance of the cease and
20 desist order”; and

21 (B) in paragraph (2)—

22 (i) by striking “or director” and in-
23 serting “director, or entity-affiliated party”;
24 and

1 (ii) by inserting “or entity-affiliated
2 party” before “consents”;

3 (3) in each of subsections (c), (d), and (e)—

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

7 (B) by striking “an enterprise” each place
8 that term appears and inserting “a regulated en-
9 tity”; and

10 (C) by striking “conduct” each place that
11 term appears and inserting “practice”;

12 (4) in subsection (d)—

13 (A) in the matter preceding paragraph

14 (1)—

15 (i) by striking “or director” and in-
16 serting “director, or entity-affiliated party”;
17 and

18 (ii) by inserting “to require a regu-
19 lated entity or entity-affiliated party” after
20 “includes the authority”;

21 (B) in paragraph (1)—

22 (i) by striking “to require an executive
23 officer or a director to”; and

1 (ii) by striking “loss” and all that fol-
2 lows through “person” and inserting “loss,
3 if”;

4 (iii) in subparagraph (A), by inserting
5 “such entity or party or finance facility”
6 before “was”; and

7 (iv) by striking subparagraph (B) and
8 inserting the following:

9 “(B) the violation or practice involved a
10 reckless disregard for the law or any applicable
11 regulations or prior order of the Director;”;

12 (C) in paragraph (4), by inserting “loan
13 or” before “asset”;

14 (5) in subsection (e), by inserting “or entity-af-
15 filiated party”—

16 (A) before “or any executive”; and

17 (B) before the period at the end; and

18 (6) in subsection (f)—

19 (A) by striking “enterprise” and inserting
20 “regulated entity, finance facility,”; and

21 (B) by striking “or director” and inserting
22 “director, or entity-affiliated party”.

1 *SEC. 1152. TEMPORARY CEASE AND DESIST PROCEEDINGS.*

2 *Section 1372 of the Federal Housing Enterprises Fi-*
3 *ancial Safety and Soundness Act of 1992 (12 U.S.C. 4632)*
4 *is amended—*

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

7 *“(a) GROUNDS FOR ISSUANCE.—*

8 *“(1) IN GENERAL.—If the Director determines*
9 *that the actions specified in the notice of charges*
10 *served upon a regulated entity or any entity-affiliated*
11 *party pursuant to section 1371(a), or the continu-*
12 *ation thereof, is likely to cause insolvency or signifi-*
13 *cant dissipation of assets or earnings of that entity,*
14 *or is likely to weaken the condition of that entity*
15 *prior to the completion of the proceedings conducted*
16 *pursuant to sections 1371 and 1373, the Director*
17 *may—*

18 *“(A) issue a temporary order requiring that*
19 *regulated entity or entity-affiliated party to*
20 *cease and desist from any such violation or prac-*
21 *tice; and*

22 *“(B) require that regulated entity or entity-*
23 *affiliated party to take affirmative action to pre-*
24 *vent or remedy such insolvency, dissipation, con-*
25 *dition, or prejudice pending completion of such*
26 *proceedings.*

1 “(2) *ADDITIONAL REQUIREMENTS.—An order*
2 *issued under paragraph (1) may include any require-*
3 *ment authorized under subsection 1371(d).’*”;
4 (2) *in subsection (b)—*
5 (A) *by striking “or director” and inserting*
6 *“director, or entity-affiliated party”*; and
7 (B) *by striking “enterprise” each place that*
8 *term appears and inserting “regulated entity”*;
9 (3) *in subsection (c), by striking “enterprise”*
10 *each place that term appears and inserting “regulated*
11 *entity”*;
12 (4) *in subsection (d)—*
13 (A) *by striking “or director” each place that*
14 *term appears and inserting “director, or entity-*
15 *affiliated party”*; and
16 (B) *by striking “An enterprise” and insert-*
17 *ing “A regulated entity”*; and
18 (5) *in subsection (e)—*
19 (A) *by striking “request the Attorney Gen-*
20 *eral of the United States to”*; and
21 (B) *by striking “or may, under the direc-*
22 *tion and control of the Attorney General, bring*
23 *such action”*.

1 **SEC. 1153. REMOVAL AND PROHIBITION AUTHORITY.**

2 (a) *IN GENERAL.*—Part 1 of subtitle C of the Federal
3 Housing Enterprises Financial Safety and Soundness Act
4 of 1992 (12 U.S.C. 4631 et seq.) is amended—

5 (1) by redesignating sections 1377 through
6 1379B (12 U.S.C. 4637–4641) as sections 1379
7 through 1379D, respectively; and

8 (2) by inserting after section 1376 (12 U.S.C.
9 4636) the following:

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

11 **“(a) AUTHORITY TO ISSUE ORDER.**—

12 **“(1) IN GENERAL.**—The Director may serve upon
13 a party described in paragraph (2), or any officer,
14 director, or management of the Office of Finance a
15 written notice of the intention of the Director to sus-
16 pend or remove such party from office, or prohibit
17 any further participation by such party, in any man-
18 ner, in the conduct of the affairs of the regulated enti-
19 ty.

20 **“(2) APPLICABILITY.**—A party described in this
21 paragraph is an entity-affiliated party or any officer,
22 director, or management of the Office of Finance, if
23 the Director determines that—

24 **“(A)** that party, officer, or director has, di-
25 rectly or indirectly—

26 **“(i)** violated—

1 “(I) any law or regulation;

2 “(II) any cease and desist order
3 which has become final;

4 “(III) any condition imposed in
5 writing by the Director in connection
6 with the grant of any application or
7 other request by such regulated entity;

8 or

9 “(IV) any written agreement be-
10 tween such regulated entity and the
11 Director;

12 “(ii) engaged or participated in any
13 unsafe or unsound practice in connection
14 with any regulated entity or business insti-
15 tution; or

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

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

21 “(i) such regulated entity or business
22 institution has suffered or will probably suf-
23 fer financial loss or other damage; or

24 “(ii) such party has received financial
25 gain or other benefit; and

1 “(C) *the violation, practice, or breach de-*
2 *scribed in subparagraph (A)—*

3 “(i) *involves personal dishonesty on the*
4 *part of such party; or*

5 “(ii) *demonstrates willful or con-*
6 *tinuing disregard by such party for the*
7 *safety or soundness of such regulated entity*
8 *or business institution.*

9 “(b) *SUSPENSION ORDER.—*

10 “(1) *SUSPENSION OR PROHIBITION AUTHOR-*
11 *ITY.—If the Director serves written notice under sub-*
12 *section (a) upon a party subject to that subsection*
13 *(a), the Director may, by order, suspend or remove*
14 *such party from office, or prohibit such party from*
15 *further participation in any manner in the conduct*
16 *of the affairs of the regulated entity, if the Director—*

17 “(A) *determines that such action is nec-*
18 *essary for the protection of the regulated entity;*
19 *and*

20 “(B) *serves such party with written notice*
21 *of the order.*

22 “(2) *EFFECTIVE PERIOD.—Any order issued*
23 *under this subsection—*

24 “(A) *shall become effective upon service; and*

1 “(B) unless a court issues a stay of such
2 order under subsection (g), shall remain in effect
3 and enforceable until—

4 “(i) the date on which the Director dis-
5 misses the charges contained in the notice
6 served under subsection (a) with respect to
7 such party; or

8 “(ii) the effective date of an order
9 issued under subsection (b).

10 “(3) COPY OF ORDER.—If the Director issues an
11 order under subsection (b) to any party, the Director
12 shall serve a copy of such order on any regulated enti-
13 ty with which such party is affiliated at the time
14 such order is issued.

15 “(c) NOTICE, HEARING, AND ORDER.—

16 “(1) NOTICE.—A notice under subsection (a) of
17 the intention of the Director to issue an order under
18 this section shall contain a statement of the facts con-
19 stituting grounds for such action, and shall fix a time
20 and place at which a hearing will be held on such ac-
21 tion.

22 “(2) TIMING OF HEARING.—A hearing shall be
23 fixed for a date not earlier than 30 days, nor later
24 than 60 days, after the date of service of notice under

1 *subsection (a), unless an earlier or a later date is set*
2 *by the Director at the request of—*

3 *“(A) the party receiving such notice, and*
4 *good cause is shown; or*

5 *“(B) the Attorney General of the United*
6 *States.*

7 *“(3) CONSENT.—Unless the party that is the*
8 *subject of a notice delivered under subsection (a) ap-*
9 *pears at the hearing in person or by a duly author-*
10 *ized representative, such party shall be deemed to*
11 *have consented to the issuance of an order under this*
12 *section.*

13 *“(4) ISSUANCE OF ORDER OF SUSPENSION.—The*
14 *Director may issue an order under this section, as the*
15 *Director may deem appropriate, if—*

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

18 *“(B) upon the record made at the hearing,*
19 *the Director finds that any of the grounds speci-*
20 *fied in the notice have been established.*

21 *“(5) EFFECTIVENESS OF ORDER.—Any order*
22 *issued under paragraph (4) shall become effective at*
23 *the expiration of 30 days after the date of service*
24 *upon the relevant regulated entity and party (except*
25 *in the case of an order issued upon consent under*

1 of Finance, or prohibited from participating in the
2 conduct of the affairs of a regulated entity or the Of-
3 fice of Finance, may not, while such order is in effect,
4 continue or commence to hold any office in, or par-
5 ticipate in any manner in the conduct of the affairs
6 of, any regulated entity or the Office of Finance.

7 “(2) *EXCEPTION IF DIRECTOR PROVIDES WRIT-*
8 *TEN CONSENT.*—If, on or after the date on which an
9 order is issued under this section which removes or
10 suspends from office any party, or prohibits such
11 party from participating in the conduct of the affairs
12 of a regulated entity or the Office of Finance, such
13 party receives the written consent of the Director, the
14 order shall, to the extent of such consent, cease to
15 apply to such party with respect to the regulated enti-
16 ty or such Office of Finance described in the written
17 consent. Any such consent shall be publicly disclosed.

18 “(3) *VIOLATION OF PARAGRAPH (1) TREATED AS*
19 *VIOLATION OF ORDER.*—Any violation of paragraph
20 (1) by any person who is subject to an order issued
21 under subsection (h) shall be treated as a violation of
22 the order.

23 “(f) *APPLICABILITY.*—This section shall only apply to
24 a person who is an individual, unless the Director specifi-

1 cally finds that it should apply to a corporation, firm, or
2 other business entity.

3 “(g) *STAY OF SUSPENSION AND PROHIBITION OF EN-*
4 *TITY-AFFILIATED PARTY.—Not later than 10 days after the*
5 *date on which any entity-affiliated party has been sus-*
6 *sended from office or prohibited from participation in the*
7 *conduct of the affairs of a regulated entity under this sec-*
8 *tion, such party may apply to the United States District*
9 *Court for the District of Columbia, or the United States*
10 *district court for the judicial district in which the head-*
11 *quarters of the regulated entity is located, for a stay of such*
12 *suspension or prohibition pending the completion of the ad-*
13 *ministrative proceedings pursuant to subsection (c). The*
14 *court shall have jurisdiction to stay such suspension or pro-*
15 *hibition.*

16 “(h) *SUSPENSION OR REMOVAL OF ENTITY-AFFILI-*
17 *ATED PARTY CHARGED WITH FELONY.—*

18 “(I) *SUSPENSION OR PROHIBITION.—*

19 “(A) *IN GENERAL.—Whenever any entity-*
20 *affiliated party is charged in any information,*
21 *indictment, or complaint, with the commission*
22 *of or participation in a crime involving dishon-*
23 *esty or breach of trust which is punishable by*
24 *imprisonment for a term exceeding 1 year under*
25 *Federal or State law, the Director may, if con-*

1 *tinued service or participation by such party*
2 *may pose a threat to the regulated entity or im-*
3 *pair public confidence in the regulated entity, by*
4 *written notice served upon such party, suspend*
5 *such party from office or prohibit such party*
6 *from further participation in any manner in the*
7 *conduct of the affairs of any regulated entity.*

8 *“(B) PROVISIONS APPLICABLE TO NO-*
9 *TICE.—*

10 *“(i) COPY.—A copy of any notice*
11 *under subparagraph (A) shall be served*
12 *upon the relevant regulated entity.*

13 *“(ii) EFFECTIVE PERIOD.—A suspen-*
14 *sion or prohibition under subparagraph (A)*
15 *shall remain in effect until the information,*
16 *indictment, or complaint referred to in sub-*
17 *paragraph (A) is finally disposed of, or*
18 *until terminated by the Director.*

19 *“(2) REMOVAL OR PROHIBITION.—*

20 *“(A) IN GENERAL.—If a judgment of con-*
21 *viction or an agreement to enter a pretrial diver-*
22 *sion or other similar program is entered against*
23 *an entity-affiliated party in connection with a*
24 *crime described in paragraph (1)(A), at such*
25 *time as such judgment is not subject to further*

1 *appellate review, the Director may, if continued*
2 *service or participation by such party may pose*
3 *a threat to the regulated entity or impair public*
4 *confidence in the regulated entity, issue and*
5 *serve upon such party an order removing such*
6 *party from office or prohibiting such party from*
7 *further participation in any manner in the con-*
8 *duct of the affairs of the regulated entity without*
9 *the prior written consent of the Director.*

10 *“(B) PROVISIONS APPLICABLE TO ORDER.—*

11 *“(i) COPY.—A copy of any order under*
12 *subparagraph (A) shall be served upon the*
13 *relevant regulated entity, at which time the*
14 *entity-affiliated party who is subject to the*
15 *order (if a director or an officer) shall cease*
16 *to be a director or officer of such regulated*
17 *entity.*

18 *“(ii) EFFECT OF ACQUITTAL.—A find-*
19 *ing of not guilty or other disposition of the*
20 *charge shall not preclude the Director from*
21 *instituting proceedings after such finding or*
22 *disposition to remove a party from office or*
23 *to prohibit further participation in the af-*
24 *fairs of a regulated entity pursuant to sub-*
25 *section (a) or (b).*

1 “(iii) *EFFECTIVE PERIOD.*—Unless ter-
2 minated by the Director, any notice of sus-
3 pension or order of removal issued under
4 this subsection shall remain effective and
5 outstanding until the completion of any
6 hearing or appeal authorized under para-
7 graph (4).

8 “(3) *AUTHORITY OF REMAINING BOARD MEM-*
9 *BERS.*—

10 “(A) *IN GENERAL.*—If at any time, because
11 of the suspension of 1 or more directors pursuant
12 to this section, there shall be on the board of di-
13 rectors of a regulated entity less than a quorum
14 of directors not so suspended, all powers and
15 functions vested in or exercisable by such board
16 shall vest in and be exercisable by the director or
17 directors on the board not so suspended, until
18 such time as there shall be a quorum of the board
19 of directors.

20 “(B) *APPOINTMENT OF TEMPORARY DIREC-*
21 *TORS.*—If all of the directors of a regulated enti-
22 ty are suspended pursuant to this section, the
23 Director shall appoint persons to serve tempo-
24 rarily as directors pending the termination of
25 such suspensions, or until such time as those who

1 *have been suspended cease to be directors of the*
2 *regulated entity and their respective successors*
3 *take office.*

4 *“(4) HEARING REGARDING CONTINUED PARTICI-*
5 *PATION.—*

6 *“(A) IN GENERAL.—Not later than 30 days*
7 *after the date of service of any notice of suspen-*
8 *sion or order of removal issued pursuant to*
9 *paragraph (1) or (2), the entity-affiliated party*
10 *may request in writing an opportunity to ap-*
11 *pear before the Director to show that the contin-*
12 *ued service or participation in the conduct of the*
13 *affairs of the regulated entity by such party does*
14 *not, or is not likely to, pose a threat to the inter-*
15 *ests of the regulated entity, or threaten to impair*
16 *public confidence in the regulated entity.*

17 *“(B) TIMING AND FORM OF HEARING.—*
18 *Upon receipt of a request for a hearing under*
19 *subparagraph (A), the Director shall fix a time*
20 *(not later than 30 days after the date of receipt*
21 *of such request, unless extended at the request of*
22 *such party) and place at which the entity-affili-*
23 *ated party may appear, personally or through*
24 *counsel, before the Director or 1 or more des-*
25 *ignated employees of the Director to submit writ-*

1 *ten materials (or, at the discretion of the Direc-*
2 *tor, oral testimony) and oral argument.*

3 “(C) *DETERMINATION.*—*Not later than 60*
4 *days after the date of a hearing under subpara-*
5 *graph (B), the Director shall notify the entity-af-*
6 *filiated party whether the suspension or prohibi-*
7 *tion from participation in any manner in the*
8 *conduct of the affairs of the regulated entity will*
9 *be continued, terminated, or otherwise modified,*
10 *or whether the order removing such party from*
11 *office or prohibiting such party from further*
12 *participation in any manner in the conduct of*
13 *the affairs of the regulated entity will be re-*
14 *scinded or otherwise modified. Such notification*
15 *shall contain a statement of the basis for any ad-*
16 *verse decision of the Director.*

17 “(5) *RULES.*—*The Director is authorized to pre-*
18 *scribe such rules as may be necessary to carry out*
19 *this subsection.’’.*

20 (b) *CONFORMING AMENDMENTS.*—

21 (1) *SAFETY AND SOUNDNESS ACT.*—*Subtitle C of*
22 *the Federal Housing Enterprises Financial Safety*
23 *and Soundness Act of 1992 (12 U.S.C. 4501 et seq.)*
24 *is amended—*

1 (A) in section 1317(f), by striking “section
2 1379B” and inserting “section 1379D”;

3 (B) in section 1373(a)—

4 (i) in paragraph (1), by striking “or
5 1376(c)” and inserting “, 1376(c), or
6 1377”;

7 (ii) in paragraph (2), by inserting “or
8 1377” after” 1371”; and

9 (iii) in paragraph (4), by inserting
10 “or removal or prohibition” after “cease
11 and desist”; and

12 (C) in section 1374(a)—

13 (i) by striking “or 1376” and inserting
14 “1313B, 1376, or 1377”; and

15 (ii) by striking “such section” and in-
16 serting “this title”.

17 (2) FANNIE MAE CHARTER ACT.—Section 308(b)
18 of the Federal National Mortgage Association Charter
19 Act (12 U.S.C. 1723(b)) is amended in the second
20 sentence, by striking “The” and inserting “Except to
21 the extent that action under section 1377 of the Fed-
22 eral Housing Enterprises Financial Safety and
23 Soundness Act of 1992 temporarily results in a lesser
24 number, the”.

1 (3) *FREDDIE MAC CHARTER ACT.—Section*
2 *303(a)(2)(A) of the Federal Home Loan Mortgage*
3 *Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amend-*
4 *ed, in the second sentence, by striking “The” and in-*
5 *serting “Except to the extent action under section*
6 *1377 of the Federal Housing Enterprises Financial*
7 *Safety and Soundness Act of 1992 temporarily results*
8 *in a lesser number, the”.*

9 **SEC. 1154. ENFORCEMENT AND JURISDICTION.**

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

13 *(1) by striking subsection (a) and inserting the*
14 *following new subsection:*

15 *“(a) ENFORCEMENT.—The Director may, in the dis-*
16 *cretion of the Director, apply to the United States District*
17 *Court for the District of Columbia, or the United States*
18 *district court within the jurisdiction of which the head-*
19 *quarters of the regulated entity is located, for the enforce-*
20 *ment of any effective and outstanding notice or order issued*
21 *under this subtitle or subtitle B, or request that the Attorney*
22 *General of the United States bring such an action. Such*
23 *court shall have jurisdiction and power to order and require*
24 *compliance with such notice or order.”; and*

1 (2) in subsection (b), by striking “or 1376” and
2 inserting “1313B, 1376, or 1377”.

3 **SEC. 1155. CIVIL MONEY PENALTIES.**

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

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

9 “(a) *IN GENERAL.*—The Director may impose a civil
10 money penalty in accordance with this section on any regu-
11 lated entity or any entity-affiliated party. The Director
12 shall not impose a civil penalty in accordance with this
13 section on any regulated entity or any entity-affiliated
14 party for any violation that is addressed under section
15 1345(a).”;

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

18 “(b) *AMOUNT OF PENALTY.*—

19 “(1) *FIRST TIER.*—A regulated entity or entity-
20 affiliated party shall forfeit and pay a civil penalty
21 of not more than \$10,000 for each day during which
22 a violation continues, if such regulated entity or
23 party—

24 “(A) violates any provision of this title, the
25 authorizing statutes, or any order, condition,

1 *rule, or regulation under this title or any au-*
2 *thorizing statute;*

3 *“(B) violates any final or temporary order*
4 *or notice issued pursuant to this title;*

5 *“(C) violates any condition imposed in*
6 *writing by the Director in connection with the*
7 *grant of any application or other request by such*
8 *regulated entity; or*

9 *“(D) violates any written agreement be-*
10 *tween the regulated entity and the Director.*

11 *“(2) SECOND TIER.—Notwithstanding paragraph*
12 *(1), a regulated entity or entity-affiliated party shall*
13 *forfeit and pay a civil penalty of not more than*
14 *\$50,000 for each day during which a violation, prac-*
15 *tice, or breach continues, if—*

16 *“(A) the regulated entity or entity-affiliated*
17 *party, respectively—*

18 *“(i) commits any violation described*
19 *in any subparagraph of paragraph (1);*

20 *“(ii) recklessly engages in an unsafe or*
21 *unsound practice in conducting the affairs*
22 *of the regulated entity; or*

23 *“(iii) breaches any fiduciary duty; and*

24 *“(B) the violation, practice, or breach—*

25 *“(i) is part of a pattern of misconduct;*

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 paragraphs
7 (1) and (2), any regulated entity or entity-affiliated
8 party shall forfeit and pay a civil penalty in an
9 amount not to exceed the applicable
10 maximum
11 amount determined under paragraph (4) for each day
12 during which such violation, practice, or breach con-
13 tinues, if such regulated entity or entity-affiliated
14 party—

14 “(A) knowingly—

15 “(i) commits any violation described
16 in any subparagraph of paragraph (1);

17 “(ii) engages in any unsafe or unsound
18 practice in conducting the affairs of the reg-
19 ulated 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 substan-
23 tial 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 ANY*
2 *VIOLATION DESCRIBED IN PARAGRAPH (3).*—*The max-*
3 *imum daily amount of any civil penalty which may*
4 *be assessed pursuant to paragraph (3) for any viola-*
5 *tion, practice, or breach described in paragraph (3)*
6 *is—*

7 “(A) *in the case of any entity-affiliated*
8 *party, an amount not to exceed \$2,000,000; and*

9 “(B) *in the case of any regulated entity,*
10 *\$2,000,000.’’;*

11 (3) *in subsection (c)—*

12 (A) *by striking “enterprise” each place that*
13 *term appears and inserting “regulated entity”;*

14 (B) *by inserting “or entity-affiliated party”*
15 *before “in writing”;* and

16 (C) *by inserting “or entity-affiliated party”*
17 *before “has been given”;*

18 (4) *in subsection (d)—*

19 (A) *by striking “or director” each place*
20 *such term appears and inserting “director, or*
21 *entity-affiliated party”;*

22 (B) *by striking “an enterprise” and insert-*
23 *ing “a regulated entity”;*

24 (C) *by striking “the enterprise” and insert-*
25 *ing “the regulated entity”;*

1 (D) by striking “request the Attorney Gen-
2 eral of the United States to”;

3 (E) by inserting “, or the United States dis-
4 trict court within the jurisdiction of which the
5 headquarters of the regulated entity is located,”
6 after “District of Columbia”;

7 (F) by striking “, or may, under the direc-
8 tion and control of the Attorney General of the
9 United States, bring such an action”; and

10 (G) by striking “and section 1374”; and

11 (5) in subsection (g), by striking “An enterprise”
12 and inserting “A regulated entity”.

13 **SEC. 1156. CRIMINAL PENALTY.**

14 (a) *IN GENERAL.*—Subtitle C of the Federal Housing
15 *Enterprises Financial Safety and Soundness Act of 1992*
16 *(12 U.S.C. 4631 et seq.)* is amended by inserting after sec-
17 *tion 1377, as added by this Act, the following:*

18 **“SEC. 1378. CRIMINAL PENALTY.**

19 “Whoever, being subject to an order in effect under sec-
20 *tion 1377, without the prior written approval of the Direc-*
21 *tor, knowingly participates, directly or indirectly, in any*
22 *manner (including by engaging in an activity specifically*
23 *prohibited in such an order) in the conduct of the affairs*
24 *of any regulated entity shall, notwithstanding section 3571*

1 of title 18, be fined not more than \$1,000,000, imprisoned
2 for not more than 5 years, or both.’’.

3 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—
4 *The Federal Housing Enterprises Financial Safety and*
5 *Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-*
6 *ed—*

7 (1) *in section 1379 (as so designated by this*
8 *Act)—*

9 (A) *by striking “an enterprise” and insert-*
10 *ing “a regulated entity”; and*

11 (B) *by striking “the enterprise” and insert-*
12 *ing “the regulated entity”;*

13 (2) *in section 1379A (as so designated by this*
14 *Act), by striking “an enterprise” and inserting “a*
15 *regulated entity”;*

16 (3) *in section 1379B(c) (as so designated by this*
17 *Act), by striking “enterprise” and inserting “regu-*
18 *lated entity”;* and

19 (4) *in section 1379D (as so designated by this*
20 *Act), by striking “enterprise” and inserting “regu-*
21 *lated entity”.*

22 ***SEC. 1157. NOTICE AFTER SEPARATION FROM SERVICE.***

23 *Section 1379 of the Federal Housing Enterprises Fi-*
24 *ancial Safety and Soundness Act of 1992 (12 U.S.C.*
25 *4637), as so designated by this Act, is amended—*

- 1 (1) by striking “2-year” and inserting “6-year”;
- 2 (2) by striking “a director or executive officer of
- 3 an enterprise” and inserting “an entity-
- 4 affiliated
- 5 party”;
- 6 (3) by striking “director or officer” each place
- 7 that term appears and inserting “entity-affiliated
- 8 party”; and
- 9 (4) by striking “enterprise.” and inserting “reg-
- 10 ulated entity.”.

11 **SEC. 1158. SUBPOENA AUTHORITY.**

12 (a) *IN GENERAL.*—Section 1379B of the Federal Hous-

13 ing Enterprises Financial Safety and Soundness Act of

14 1992 (12 U.S.C. 4641) is amended—

15 (1) in subsection (a)—

16 (A) in the matter preceding paragraph

17 (1)—

18 (i) by striking “administrative”;

19 (ii) by inserting “, examination, or in-

20 vestigation” after “proceeding”;

21 (iii) by striking “subtitle” and insert-

22 ing “title”; and

23 (iv) by inserting “or any designated

24 representative thereof, including any person

25 designated to conduct any hearing under

this subtitle” after “Director”; and

1 (B) in paragraph (4), by striking “issued
2 by the Director”;

3 (2) in subsection (b), by inserting “or in any
4 territory or other place subject to the jurisdiction of
5 the United States” after “State”;

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

8 “(c) ENFORCEMENT.—

9 “(1) IN GENERAL.—The Director, or any party
10 to proceedings under this subtitle, may apply to the
11 United States District Court for the District of Co-
12 lumbia, or the United States district court for the ju-
13 dicial district of the United States in any territory
14 in which such proceeding is being conducted, or where
15 the witness resides or carries on business, for enforce-
16 ment of any subpoena or subpoena duces tecum issued
17 pursuant to this section.

18 “(2) POWER OF COURT.—The courts described
19 under paragraph (1) shall have the jurisdiction and
20 power to order and require compliance with any sub-
21 poena issued under paragraph (1).”;

22 (4) in subsection (d), by inserting “enterprise-af-
23 filiated party” before “may allow”; and

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

1 “(e) *PENALTIES.*—A person shall be guilty of a mis-
2 demeanor, and upon conviction, shall be subject to a fine
3 of not more than \$1,000 or to imprisonment for a term
4 of not more than 1 year, or both, if that person willfully
5 fails or refuses, in disobedience of a subpoena issued under
6 subsection (c), to—

7 “(1) attend court;

8 “(2) testify in court;

9 “(3) answer any lawful inquiry; or

10 “(4) produce books, papers, correspondence, con-
11 tracts, agreements, or such other records as requested
12 in the subpoena.”.

13 ***Subtitle E—General Provisions***

14 ***SEC. 1161. CONFORMING AND TECHNICAL AMENDMENTS.***

15 (a) *AMENDMENTS TO 1992 ACT.*—The Federal Hous-
16 ing Enterprises Financial Safety and Soundness Act of
17 1992 (12 U.S.C. 4501 et seq.), as amended by this Act, is
18 amended—

19 (1) in section 1315 (12 U.S.C. 4515)—

20 (A) in subsection (a)—

21 (i) by striking “(a) *OFFICE PER-*
22 *SONNEL.—The*” and inserting “(a) *IN GEN-*
23 *ERAL.—Subject to title III of the Federal*
24 *Housing Finance Regulatory Reform Act of*
25 *2008, the*”; and

- 1 (ii) by striking “the Office” each place
2 that term appears and inserting “the Agen-
3 cy”;
- 4 (B) in subsection (c), by striking “the Of-
5 fice” and inserting “the Agency”;
- 6 (C) in subsection (e), by striking “the Of-
7 fice” and inserting “the Agency”;
- 8 (D) by striking subsection (d) and redesi-
9 gnating subsection (e) as subsection (d); and
- 10 (E) by striking subsection (f);
- 11 (2) in section 1319A (12 U.S.C. 4520)—
- 12 (A) by striking “(a) IN GENERAL.—”; and
- 13 (B) by striking subsection (b);
- 14 (3) in section 1364(c) (12 U.S.C. 4614(c)), by
15 striking the last sentence;
- 16 (4) by striking section 1383 (12 U.S.C. 1451
17 note);
- 18 (5) in each of sections 1319D, 1319E, and 1319F
19 (12 U.S.C. 4523, 4524, 4525) by striking “the Office”
20 each place that term appears and inserting “the
21 Agency”; and
- 22 (6) in each of sections 1319B and 1369(a)(3) (12
23 U.S.C. 4521, 4619(a)(3)), by striking “Committee on
24 Banking, Finance and Urban Affairs” each place

1 *such term appears and inserting “Committee on Fi-*
2 *nancial Services”.*

3 (b) *AMENDMENTS TO FANNIE MAE CHARTER ACT.—*

4 *The Federal National Mortgage Association Charter Act (12*
5 *U.S.C. 1716 et seq.) is amended—*

6 (1) *in each of sections 303(c)(2) (12 U.S.C.*
7 *1718(c)(2)), 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)),*
8 *and 309(k)(1) (12 U.S.C. 1723a(k)(1)), by striking*

9 *“Director of the Office of Federal Housing Enterprise*
10 *Oversight of the Department of Housing and Urban*
11 *Development” each place that term appears, and in-*
12 *serting “Director of the Federal Housing Finance*
13 *Agency”;* and

14 (2) *in section 309—*

15 (A) *in subsection (m) (12 U.S.C.*
16 *1723a(m))—*

17 (i) *in paragraph (1), by striking “to*
18 *the Secretary, in a form determined by the*
19 *Secretary” and inserting “to the Director of*
20 *the Federal Housing Finance Agency, in a*
21 *form determined by the Director”;* and

22 (ii) *in paragraph (2), by striking “to*
23 *the Secretary, in a form determined by the*
24 *Secretary” and inserting “to the Director of*

1 *the Federal Housing Finance Agency, in a*
2 *form determined by the Director”;*

3 *(B) in subsection (n) (12 U.S.C.*
4 *1723a(n))—*

5 *(i) in paragraph (1), by striking “and*
6 *the Secretary” and inserting “and the Di-*
7 *rector of the Federal Housing Finance*
8 *Agency”;* and

9 *(ii) in paragraph (2), by striking*
10 *“Secretary” each place that term appears*
11 *and inserting “Director of the Federal*
12 *Housing Finance Agency”;* and

13 *(C) in paragraph (3)(B), by striking “Sec-*
14 *retary” and inserting “Director of the Federal*
15 *Housing Finance Agency”.*

16 *(c) AMENDMENTS TO FREDDIE MAC CHARTER ACT.—*
17 *The Federal Home Loan Mortgage Corporation Act (12*
18 *U.S.C. 1451 et seq.) is amended—*

19 *(1) in each of sections 303(b)(2) (12 U.S.C.*
20 *1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and*
21 *section 307(c)(1) (12 U.S.C. 1456(c)(1)), by striking*

22 *“Director of the Office of Federal Housing Enterprise*
23 *Oversight of the Department of Housing and Urban*
24 *Development” each place that term appears, and in-*

1 serting “Director of the Federal Housing Finance
2 Agency”;

3 (2) in section 306 (12 U.S.C. 1455)—

4 (A) in subsection (c)(2), by inserting “the”
5 after “Secretary of”;

6 (B) in subsection (i)—

7 (i) by striking “section 1316(c)” and
8 inserting “section 306(c)”; and

9 (ii) by striking “section 106” and in-
10 serting “section 1316”; and

11 (C) in subsection (j)(2), by striking “of sub-
12 stantially” and inserting “or substantially”; and

13 (3) in section 307 (12 U.S.C. 1456)—

14 (A) in subsection (e)—

15 (i) in paragraph (1), by striking “to
16 the Secretary, in a form determined by the
17 Secretary” and inserting “to the Director of
18 the Federal Housing Finance Agency, in a
19 form determined by the Director”; and

20 (ii) in paragraph (2), by striking “to
21 the Secretary, in a form determined by the
22 Secretary” and inserting “to the Director of
23 the Federal Housing Finance Agency, in a
24 form determined by the Director”; and

25 (B) in subsection (f)—

1 *of Housing and Urban Development Act (42 U.S.C. 3534)*
2 *is amended by striking subsection (d).*

3 (g) AMENDMENTS TO TITLE 5, UNITED
STATES

4 *CODE.—Title 5, United States Code, is amended—*

5 *(1) in section 5313, by striking the item relating*
6 *to the Director of the Office of Federal Housing En-*
7 *terprise Oversight, Department of Housing*
8 *and*
9 *Urban Development and inserting the following new*
10 *item:*

11 *“Director of the Federal Housing Finance Agen-*
12 *cy.”; and*

13 *(2) in section 3132(a)(1)—*

14 *(A) in subparagraph (B), by striking “,,*
15 *and” and inserting “, and”;*

16 *(B) in subparagraph (D)—*

17 *(i) by striking “the Federal Housing*
18 *Finance Board”;*

19 *(ii) by striking “the Office of Federal*
20 *Housing Enterprise Oversight of the De-*
21 *partment of Housing and Urban Develop-*
22 *ment” and inserting “the Federal Housing*
23 *Finance Agency”;* and

(iii) by striking “or or” at the end;

1 (C) in subparagraph (E), as added by sec-
 2 tion 8(d)(1)(B)(iii) of Public Law 107–123, by
 3 adding “or” at the end; and

4 (D) by redesignating subparagraph (E), as
 5 added by section 10702(c)(1)(C) of Public Law
 6 107–171, as subparagraph (F).

7 (h) *AMENDMENT TO SARBANES-OXLEY ACT.*—Section
 8 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002 (15
 9 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by inserting “and
 10 the Director of the Federal Housing Finance Agency,” after
 11 “Commission,”.

12 (i) *AMENDMENT TO FEDERAL DEPOSIT INSURANCE*
 13 *ACT.*—Section 11(t)(2)(A) of the Federal Deposit Insurance
 14 Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding at the
 15 end the following:

16 “(vii) Federal Housing Finance Agen-
 17 cy.”.

18 **SEC. 1162. PRESIDENTIALLY-APPOINTED DIRECTORS OF**
 19 **ENTERPRISES.**

20 (a) *FANNIE MAE.*—

21 (1) *IN GENERAL.*—Section 308(b) of the Federal
 22 National Mortgage Association Charter Act
 (12

23 U.S.C. 1723(b)) is amended—

24 (A) in the first sentence, by striking “eight-
 25 een persons, five of whom shall be appointed an-

1 *nually by the President of the United States, and*
2 *the remainder of whom” and inserting “13 per-*
3 *sons, or such other number that the Director de-*
4 *termines appropriate, who”;*

5 *(B) in the second sentence, by striking “ap-*
6 *pointed by the President”;*

7 *(C) in the third sentence—*

8 *(i) by striking “appointed or”;* and

9 *(ii) by striking “, except that any such*
10 *appointed member may be removed from of-*
11 *fice by the President for good cause”;*

12 *(D) in the fourth sentence, by striking “elec-*
13 *tive”;* and

14 *(E) by striking the fifth sentence.*

15 *(2) TRANSITIONAL PROVISION.—The amendments*
16 *made by paragraph (1) shall not apply to any ap-*
17 *pointed position of the board of directors of the Fed-*
18 *eral National Mortgage Association until the expira-*
19 *tion of the annual term for such position during*
20 *which the effective date under section 1163 occurs.*

21 *(b) FREDDIE MAC.—*

22 *(1) IN GENERAL.—Section 303(a)(2) of the Fed-*
23 *eral Home Loan Mortgage Corporation Act (12*
24 *U.S.C. 1452(a)(2)) is amended—*

25 *(A) in subparagraph (A)—*

1 (i) *in the first sentence, by striking*
2 *“18 persons, 5 of whom shall be appointed*
3 *annually by the President of the United*
4 *States and the remainder of whom” and in-*
5 *serting “13 persons, or such other number*
6 *as the Director determines appropriate,*
7 *who”;* and

8 (ii) *in the second sentence, by striking*
9 *“appointed by the President of the United*
10 *States”;*

11 (B) *in subparagraph (B)—*

12 (i) *by striking “such or”;* and

13 (ii) *by striking “, except that any ap-*
14 *pointed member may be removed from office*
15 *by the President for good cause”;* and

16 (C) *in subparagraph (C)—*

17 (i) *by striking the first sentence;* and

18 (ii) *by striking “elective”.*

19 (2) *TRANSITIONAL PROVISION.—The amendments*
20 *made by paragraph (1) shall not apply to any ap-*
21 *pointed position of the board of directors of the Fed-*
22 *eral Home Loan Mortgage Corporation until the expi-*
23 *ration of the annual term for such position during*
24 *which the effective date under section 1163 occurs.*

1 **SEC. 1163. EFFECTIVE DATE.**

2 *Except as otherwise specifically provided in this title,*
3 *this title and the amendments made by this title shall take*
4 *effect on, and shall apply beginning on, the date of enact-*
5 *ment of this Act.*

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