

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1461
OFFERED BY MR. OXLEY OF OHIO**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Federal Housing Finance Reform Act of 2005”.

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

Sec. 1. Short title and table of contents.
Sec. 2. Definitions.

**TITLE I—REFORM OF REGULATION OF ENTERPRISES AND
FEDERAL HOME LOAN BANKS**

Subtitle A—Improvement of safety and soundness

Sec. 101. Establishment of the Federal Housing Finance Agency.
Sec. 102. Duties and authorities of Director.
Sec. 103. Housing Finance Oversight Board.
Sec. 104. Authority to require reports by regulated entities.
Sec. 105. Assessments.
Sec. 106. Examiners and accountants.
Sec. 107. Prohibition and withholding of executive compensation.
Sec. 108. Reviews of regulated entities.
Sec. 109. Regulations and orders.
Sec. 110. Risk-based capital requirements.
Sec. 111. Minimum and critical capital levels.
Sec. 112. Review of and authority over enterprise assets and liabilities.
Sec. 113. Corporate governance of enterprises.
Sec. 114. Required registration under Securities Exchange Act of 1934.
Sec. 115. Conforming amendments.

Subtitle B—Improvement of mission supervision

Sec. 121. Transfer of program and activities approval and housing goal oversight.
Sec. 122. Review by Director of new programs and activities of enterprises.



2

- Sec. 123. Conforming loan limits.
- Sec. 124. Annual housing report regarding regulated entities.
- Sec. 125. Revision of housing goals.
- Sec. 126. Duty to serve underserved markets.
- Sec. 127. Monitoring and enforcing compliance with housing goals.
- Sec. 128. Affordable housing fund.
- Sec. 129. Consistency with mission.
- Sec. 130. Enforcement.
- Sec. 131. Conforming amendments.

Subtitle C—Prompt corrective action

- Sec. 141. Capital classifications.
- Sec. 142. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 143. Supervisory actions applicable to significantly undercapitalized regulated Entities.
- Sec. 144. Authority over critically undercapitalized regulated entities.
- Sec. 145. Conforming amendments.

Subtitle D—Enforcement actions

- Sec. 161. Cease-and-desist proceedings.
- Sec. 162. Temporary cease-and-desist proceedings.
- Sec. 163. Prejudgment attachment.
- Sec. 164. Enforcement and jurisdiction.
- Sec. 165. Civil money penalties.
- Sec. 166. Removal and prohibition authority.
- Sec. 167. Criminal penalty.
- Sec. 168. Subpoena authority.
- Sec. 169. Conforming amendments.

Subtitle E—General provisions

- Sec. 181. Presidentially appointed directors of Enterprises.
- Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.
- Sec. 183. Conforming and technical amendments.
- Sec. 184. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Definitions.
- Sec. 202. Directors.
- Sec. 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
- Sec. 204. Joint activities of banks.
- Sec. 205. Sharing of information between Federal Home Loan Banks.
- Sec. 206. Reorganization of banks and voluntary merger.
- Sec. 207. Securities and Exchange Commission disclosure.
- Sec. 208. Community financial institution members.
- Sec. 209. Technical and conforming amendments.
- Sec. 210. Effective date.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD, AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



Subtitle A—Office of Federal Housing Enterprise Oversight

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

Subtitle B—Federal Housing Finance Board

- Sec. 321. Abolishment of the Federal Housing Finance Board.
- Sec. 322. Continuation and coordination of certain regulations.
- Sec. 323. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 324. Transfer of property and facilities.

Subtitle C—Department of Housing and Urban Development

- Sec. 341. Termination of enterprise-related functions.
- Sec. 342. Continuation and coordination of certain regulations.
- Sec. 343. Transfer and rights of employees.
- Sec. 344. Transfer of appropriations, property, and facilities.

1 SEC. 2. DEFINITIONS.

2 Section 1303 of the Housing and Community Devel-
3 opment Act of 1992 (12 U.S.C. 4502) is amended—

4 (1) by striking “an enterprise” each place such
5 term appears (except in paragraphs (4), (13)(A),
6 and (18)) and inserting “a regulated entity”;

7 (2) by striking “the enterprise” each place such
8 term appears (except in paragraphs (4) and (18))
9 and inserting “the regulated entity”;

10 (3) in paragraph (5), by striking “Office of
11 Federal Housing Enterprise Oversight of the De-
12 partment of Housing and Urban Development” and
13 inserting “Federal Housing Finance Agency”;

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



1 (5) in paragraph (13), by inserting “, with re-
2 spect to an enterprise,” after “means”;

3 (6) by redesignating paragraphs (16) through
4 (19) as paragraphs (20) through (23), respectively;

5 (7) by striking paragraphs (14) and (15) and
6 inserting the following new paragraphs:

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

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

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

13 “(C) each Federal home loan bank.

14 “(19) REGULATED ENTITY-AFFILIATED
15 PARTY.—The term ‘regulated entity-affiliated party’
16 means—

17 “(A) any director, officer, employee, or
18 controlling stockholder of, or agent for, a regu-
19 lated entity;

20 “(B) any shareholder, affiliate, consultant,
21 or joint venture partner of a regulated entity,
22 and any other person, as determined by the Di-
23 rector (by regulation or on a case-by-case basis)
24 that participates in the conduct of the affairs of
25 a regulated entity; and



1 “(C) any independent contractor for a reg-
2 ulated entity (including any attorney, appraiser,
3 or accountant); and

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

7 (8) by redesignating paragraphs (8) through
8 (13) as paragraphs (12) through (17), respectively;
9 and

10 (9) by inserting after paragraph (7) the fol-
11 lowing new paragraph:

12 “(11) FEDERAL HOME LOAN BANK.—The term
13 ‘Federal home loan bank’ means a bank established
14 under the authority of the Federal Home Loan
15 Bank Act.”;

16 (10) by redesignating paragraphs (2) through
17 (7) as paragraphs (5) through (10), respectively;
18 and

19 (11) by inserting after paragraph (1) the fol-
20 lowing new paragraphs:

21 “(2) AGENCY.—The term ‘Agency’ means the
22 Federal Housing Finance Agency.

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



1 “(A) the Federal National Mortgage Asso-
2 ciation Charter Act;

3 “(B) the Federal Home Loan Mortgage
4 Corporation Act; and

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

6 “(4) BOARD.—The term ‘Board’ means the
7 Housing Finance Oversight Board established under
8 section 1313B.”.

9 **TITLE I—REFORM OF REGULA-**
10 **TION OF ENTERPRISES AND**
11 **FEDERAL HOME LOAN BANKS**
12 **Subtitle A—Improvement of Safety**
13 **and Soundness**

14 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**
15 **NANCE AGENCY.**

16 (a) IN GENERAL.—The Housing and Community De-
17 velopment Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
18 ed by striking sections 1311 and 1312 and inserting the
19 following:

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

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



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

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

6 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE
7 MAC, AND FEDERAL HOME LOAN BANKS.—The Di-
8 rector of the Federal Housing Finance Agency shall
9 have general supervisory and regulatory authority
10 over each regulated entity and shall exercise such
11 general regulatory authority, including such duties
12 and authorities set forth under section 1313 of this
13 Act, to ensure that the purposes of this Act, the au-
14 thORIZING statutes, and any other applicable law are
15 carried out.

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

20 **“SEC. 1312. DIRECTOR.**

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

24 “(b) APPOINTMENT; TERM.—



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

9 “(2) TERM AND REMOVAL.—The Director shall
10 be appointed for a term of 5 years and may be re-
11 moved by the President only for cause.

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

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

23 “(5) TRANSITIONAL PROVISION.—Notwith-
24 standing paragraphs (1) and (2), the Director of the
25 Office of Federal Housing Enterprise Oversight of



1 the Department of Housing and Urban Development
2 shall serve as the Director until a successor has been
3 appointed under paragraph (1).

4 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-
5 TERPRISE REGULATION.—

6 “(1) IN GENERAL.—The Agency shall have a
7 Deputy Director of the Division of Enterprise Regu-
8 lation, who shall be appointed by the Director from
9 among individuals who are citizens of the United
10 States, have a demonstrated understanding of finan-
11 cial management or oversight and of mortgage secu-
12 rities markets and housing finance.

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

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

20 “(1) IN GENERAL.—The Agency shall have a
21 Deputy Director of the Division of Federal Home
22 Loan Bank Regulation, who shall be appointed by
23 the Director from among individuals who are citi-
24 zens of the United States, have a demonstrated un-
25 derstanding of financial management or oversight



1 and of the Federal Home Loan Bank System and
2 housing finance.

3 “(2) FUNCTIONS.—The Deputy Director of the
4 Division of Federal Home Loan Bank Regulation
5 shall have such functions, powers, and duties with
6 respect to the oversight of the Federal home loan
7 banks as the Director shall prescribe.

8 “(e) DEPUTY DIRECTOR FOR HOUSING.—

9 “(1) IN GENERAL.—The Agency shall have a
10 Deputy Director for Housing, who shall be ap-
11 pointed by the Director from among individuals who
12 are citizens of the United States, and have a dem-
13 onstrated understanding of the housing markets and
14 housing finance.

15 “(2) FUNCTIONS.—The Deputy Director for
16 Housing shall have such functions, powers, and du-
17 ties with respect to the oversight of the housing mis-
18 sion and goals of the enterprises, and with respect
19 to oversight of the housing mission of the Federal
20 home loan banks, as the Director shall prescribe.

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

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



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

4 “(3) have served as an executive officer or di-
5 rector of any regulated entity, or regulated entity-af-
6 filiated party, at any time during the 3-year period
7 ending on the date of appointment of such individual
8 as Director or Deputy Director.”.

9 (b) APPOINTMENT OF DIRECTOR.—Notwithstanding
10 any other provision of law or of this Act, the President
11 may, any time after the date of the enactment of this Act,
12 appoint an individual to serve as the Director of the Fed-
13 eral Housing Finance Agency, as such office is established
14 by the amendment made by subsection (a). This sub-
15 section shall take effect on the date of the enactment of
16 this Act.

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

18 (a) IN GENERAL.—The Housing and Community De-
19 velopment Act of 1992 (12 U.S.C. 4513) is amended by
20 striking section 1313 and inserting the following new sec-
21 tions:

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

23 “(a) DUTIES.—

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



1 “(A) to oversee the operations of each reg-
2 ulated entity; and

3 “(B) to ensure that—

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

8 “(ii) the operations and activities of
9 each regulated entity foster liquid, effi-
10 cient, competitive, and resilient national
11 housing finance markets that minimize the
12 cost of housing finance (including activities
13 relating to mortgages on housing for low-
14 and moderate- income families involving a
15 reasonable economic return that may be
16 less than the return earned on other activi-
17 ties);

18 “(iii) each regulated entity complies
19 with this title and the rules, regulations,
20 guidelines, and orders issued under this
21 title and the authorizing statutes; and

22 “(iv) each regulated entity carries out
23 its statutory mission only through activi-
24 ties that are consistent with this title and
25 the authorizing statutes.



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

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

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

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

17 “(c) LITIGATION AUTHORITY.—

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



1 may act in the Director's own name and through the
2 Director's own attorneys.

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

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

18 “(a) STANDARDS.—The Director shall establish
19 standards, by regulation, guideline, or order, for each reg-
20 ulated entity relating to—

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

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



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

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

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

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

13 “(7) management of any asset and investment
14 portfolio;

15 “(8) investments and acquisitions by a regu-
16 lated entity, to ensure that they are consistent with
17 the purposes of this Act and the authorizing stat-
18 utes;

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

23 “(10) issuance of subordinated debt by that
24 particular regulated entity, as the Director considers
25 necessary;



1 “(11) overall risk management processes, in-
2 cluding adequacy of oversight by senior management
3 and the board of directors and of processes and poli-
4 cies to identify, measure, monitor, and control mate-
5 rial risks, including reputational risks, and for ade-
6 quate, well-tested business resumption plans for all
7 major systems with remote site facilities to protect
8 against disruptive events; and

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

12 “(b) FAILURE TO MEET STANDARDS.—

13 “(1) PLAN REQUIREMENT.—

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

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

22 “(ii) if such standard is established by
23 guideline, the Director may require the
24 regulated entity to submit a plan described
25 in clause (i).



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

8 “(C) DEADLINES FOR SUBMISSION AND
9 REVIEW.—The Director shall by regulation es-
10 tablish deadlines that—

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

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

22 “(2) REQUIRED ORDER UPON FAILURE TO SUB-
23 MIT OR IMPLEMENT PLAN.—If a regulated entity
24 fails to submit an acceptable plan within the time al-
25 lowed under paragraph (1)(C), or fails in any mate-



1 rial respect to implement a plan accepted by the Di-
2 rector, the following shall apply:

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

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

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

18 “(ii) Require the regulated entity—

19 “(I) in the case of an enterprise,
20 to increase its ratio of core capital to
21 assets.

22 “(II) in the case of a Federal
23 home loan bank, to increase its ratio
24 of total capital (as such term is de-
25 fined in section 6(a)(5) of the Federal



1 Home Loan Bank Act (12 U.S.C.
2 1426(a)(5)) to assets.

3 “(iii) Require the regulated entity to
4 take any other action that the Director de-
5 termines will better carry out the purposes
6 of this section than any of the actions de-
7 scribed in this subparagraph

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

12 “(A) the Director determines that the reg-
13 ulated entity fails to meet any standard pre-
14 scribed under subsection (a);

15 “(B) the regulated entity has not corrected
16 the deficiency; and

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

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



1 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
2 AND RECOMMENDATIONS.—Section 111 of Public Law
3 93–495 (12 U.S.C. 250) is amended by striking “the Fed-
4 eral Housing Finance Board” and inserting “the Director
5 of the Federal Housing Finance Agency”.

6 **SEC. 103. HOUSING FINANCE OVERSIGHT BOARD.**

7 (a) IN GENERAL.—Title XIII of the Housing and
8 Community Development Act of 1992 (12 U.S.C. 4501 et
9 seq.) is amended by inserting after section 1313A, as
10 added by section 102 of this Act, the following new sec-
11 tion:

12 **“SEC. 1313B. HOUSING FINANCE OVERSIGHT BOARD.**

13 “(a) IN GENERAL.—There is established the Housing
14 Finance Oversight Board.

15 “(b) DUTIES.—

16 “(1) IN GENERAL.—The Board shall advise the
17 Director with respect to overall strategies and poli-
18 cies in carrying out the duties of the Director under
19 this title, at the request of the Director and at the
20 initiative of the Board, and shall carry out such
21 functions as otherwise provided by law.

22 “(2) LIMITATION.—The Director may not dele-
23 gate to the Board any of the functions, powers, or
24 duties of the Director.



1 “(c) COMPOSITION.—The Board shall be comprised
2 of 5 members, as follows:

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

5 “(2) One member shall be the Secretary of the
6 Treasury or the designee of the Secretary.

7 “(3) One member shall be the Secretary of
8 Housing and Urban Development or the designee of
9 the Secretary.

10 “(4) Two members shall be appointed by the
11 President, by and with the advice and consent of the
12 Senate, who shall include—

13 “(A) one individual who has extensive ex-
14 perience and expertise in the capital markets
15 (including debt markets), the secondary mort-
16 gage market, and mortgage-backed securities;
17 and

18 “(B) one individual who has extensive ex-
19 perience and expertise in mortgage finance (in-
20 cluding single family and multifamily housing
21 mortgage finance), development of affordable
22 housing, and economic development and revital-
23 ization.

24 “(d) TERMS AND VACANCIES.—



1 “(1) TERMS.—Each member of the Board pur-
2 suant to paragraph (4) shall be appointed for a term
3 of 3 years, and may be removed by the President
4 only for cause.

5 “(2) VACANCIES.—A member of the Board ap-
6 pointed to fill a vacancy occurring before the expira-
7 tion of the term for which the member’s predecessor
8 was appointed shall be appointed only for the re-
9 mainder of that term. A member of the Board may
10 serve after the expiration of the member’s term until
11 a successor has been appointed.

12 “(e) PROHIBITION OF ADDITIONAL COMPENSA-
13 TION.—Notwithstanding any other provision of law, mem-
14 bers of Board pursuant to paragraphs (1), (2), and (3)
15 shall not receive additional compensation by reason of
16 service on the Board.

17 “(f) LIMITATIONS.—Each member of the Board may
18 not—

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

22 “(2) hold any office, position, or employment in
23 any regulated entity or regulated entity-affiliated
24 party.

25 “(g) FULL-TIME MEMBERS AND STAFF.—



1 “(1) FULL-TIME MEMBERS.—The members of
2 the Board pursuant to subsection (c)(4) shall serve
3 on a full-time basis.

4 “(2) STAFF.—The staff of the Board shall be
5 appointed subject to the provisions of title 5, United
6 States Code, governing appointments in the competi-
7 tive service, and shall be paid in accordance with the
8 provisions of chapter 51 and subchapter III of chap-
9 ter 53 of that title relating to classification and Gen-
10 eral Schedule pay rates, except that each member of
11 the Board pursuant to paragraph (4) may appoint
12 one staff member without regard to the such provi-
13 sions governing appointments in the competitive
14 service and such staff members may be paid by the
15 Board without regard to the such provisions relating
16 to classification and General Schedule pay rates.

17 “(h) MEETINGS.—

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

22 “(2) SPECIAL MEETINGS.—Any member of the
23 Board may, upon giving written notice to the Direc-
24 tor, require a special meeting of the Board, which



1 shall be convened by the Director within 30 days
2 after such notice.

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

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

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

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

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

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

16 “(6) such other matters relating to the Agency,
17 the Board, and the regulated entities, and their ful-
18 fillment of their missions, as the Board determines
19 appropriate.

20 “(j) COSTS.—Costs of the Board, including staff,
21 shall be paid by the Agency as a cost and expense of the
22 Agency.

23 “(k) EXEMPTION.—Notwithstanding any other provi-
24 sion of law, the provisions of section 552b of title 5,
25 United States Code, shall not apply to the Board.”.



1 (b) ANNUAL REPORT OF THE DIRECTOR.—Section
2 1319B(a) of the Housing and Community Development
3 Act of 1992 (12 U.S.C. 4521 (a)) is amended—

4 (1) in paragraph (3), by striking “and” at the
5 end; and

6 (2) by striking paragraph (4) and inserting the
7 following new paragraphs:

8 “(4) an assessment of the Board with respect
9 to—

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

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

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

16 “(D) an evaluation of the performance of
17 the regulated entities in carrying out their mis-
18 sions, including compliance of the enterprises
19 with the housing goals under subpart B of part
20 2 of this subtitle and compliance of the Federal
21 home loan banks with the community invest-
22 ment and affordable housing programs under
23 subsections (i) and (j) of section 10 of the Fed-
24 eral Home Loan Bank Act;



1 “(E) an evaluation of the performance of
2 the Agency in fulfilling its duties and respon-
3 sibilities under law; and

4 “(F) such other matters relating to the
5 Board and the fulfillment of its duties as the
6 Board considers appropriate;

7 “(5) operations, resources, and performance of
8 the Agency; and

9 “(6) such other matters relating to the Agency
10 and its fulfillment of its mission.”.

11 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
12 **LATED ENTITIES.**

13 Section 1314 of the Housing and Community Devel-
14 opment Act of 1992 (12 U.S.C. 4514) is amended—

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

17 (2) in subsection (a)—

18 (A) in the subsection heading, by striking
19 “Special Reports and Reports of Financial Con-
20 dition” and inserting “Regular and Special Re-
21 ports”;

22 (B) in paragraph (1)—

23 (i) in the paragraph heading, by strik-
24 ing “**FINANCIAL CONDITION**” and inserting
25 “**REGULAR REPORTS**”; and



1 (ii) by striking “reports of financial
2 condition and operations” and inserting
3 “regular reports on the condition (includ-
4 ing financial condition), management, ac-
5 tivities, or operations of the regulated enti-
6 ty, as the Director considers appropriate”;
7 and

8 (C) in paragraph (2), after “submit special
9 reports” insert “on any of the topics specified
10 in paragraph (1) or such other topics”; and

11 (3) by adding at the end the following new sub-
12 section:

13 “(c) **REPORTS OF FRAUDULENT FINANCIAL TRANS-**
14 **ACTIONS.**—The Director shall require a regulated entity
15 to submit to the Director a timely report upon discovery
16 by the regulated entity that it has purchased or sold a
17 fraudulent loan or financial instrument or suspects a pos-
18 sible fraud relating to a purchase or sale of any loan or
19 financial instrument. The Director shall require the regu-
20 lated entities to establish and maintain procedures de-
21 signed to discover any such transactions.”.

22 **SEC. 105. ASSESSMENTS.**

23 Section 1316 of the Housing and Community Devel-
24 opment Act of 1992 (12 U.S.C. 4516) is amended—



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

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

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

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

13 “(3) such amounts in excess of actual expenses
14 for any given year as deemed necessary by the Di-
15 rector to maintain a working capital fund in accord-
16 ance with subsection (e).”;

17 (2) in subsection (b)—

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

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

25 (C) in paragraph (1)—



1 (i) by striking “Each enterprise” and
2 inserting “Each regulated entity”;

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

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

8 (D) in paragraph (3)—

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

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

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

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

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



1 (iv) by adding at the end the following
2 new subparagraph:

3 “(B) FEDERAL HOME LOAN BANKS.—With
4 respect to a Federal home loan bank, the total
5 assets of the Bank, as determined by the Direc-
6 tor in accordance with generally accepted ac-
7 counting principles.”.

8 (3) by striking subsection (c) and inserting the
9 following new subsection;

10 “(c) INCREASED COSTS OF REGULATION.—

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

18 “(2) ADJUSTMENT FOR ENFORCEMENT ACTIVI-
19 TIES.—The Director may adjust the amounts of any
20 semiannual assessments for an assessment under
21 subsection (a) that are to be paid pursuant to sub-
22 section (b) by a regulated entity, as necessary in the
23 discretion of the Director, to ensure that the costs
24 of enforcement activities under subtitle B and C for



1 a regulated entity are borne only by such regulated
2 entity.

3 “(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased
4 costs of regulation of a regulated entity that is not
5 classified (for purposes of subtitle B) as adequately
6 capitalized or as the result of supervisory or en-
7 forcement activities under subtitle B or C for a reg-
8 ulated entity, the amount available from any semi-
9 annual payment made by such regulated entity pur-
10 suant to subsection (b) is insufficient to cover the
11 costs of the Agency with respect to such entity, the
12 Director may make and collect from such regulated
13 entity an immediate assessment to cover the amount
14 of such deficiency for the semiannual period. If, at
15 the end of any semiannual period during which such
16 an assessment is made, any amount remains from
17 such assessment, such remaining amount shall be
18 deducted from the assessment for such regulated en-
19 tity for the following semiannual period.”

21 (4) in subsection (d), by striking “If” and in-
22 sserting “Except with respect to amounts collected
23 pursuant to subsection (a)(3), if”; and

24 (5) by striking subsections (e) through (g) and
25 inserting the following new subsections:



1 “(e) WORKING CAPITAL FUND.—At the end of each
2 year for which an assessment under this section is made,
3 the Director shall remit to each regulated entity any
4 amount of assessment collected from such regulated entity
5 that is attributable to subsection (a)(3) and is in excess
6 of the amount the Director deems necessary to maintain
7 a working capital fund.

8 “(f) TREATMENT OF ASSESSMENTS.—

9 “(1) DEPOSIT.—Amounts received by the Di-
10 rector from assessments under this section may be
11 deposited by the Director in the manner provided in
12 section 5234 of the Revised Statutes (12 U.S.C.
13 192) for monies deposited by the Comptroller of the
14 Currency.

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

19 “(3) NO APPORTIONMENT OF FUNDS.—Not-
20 withstanding any other provision of law, the
21 amounts received by the Director from any assess-
22 ment under this section shall not be subject to ap-
23 portionment for the purpose of chapter 15 of title
24 31, United States Code, or under any other author-
25 ity.



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

6 “(5) AVAILABILITY OF OVERSIGHT FUND
7 AMOUNTS.—Notwithstanding any other provision of
8 law, any amounts remaining in the Federal Housing
9 Enterprises Oversight Fund established under this
10 section (as in effect before the effective date under
11 section 184 of the Federal Housing Finance Reform
12 Act of 2005), and any amounts remaining from as-
13 sessments on the Federal Home Loan banks pursu-
14 ant to section 18(b) of the Federal Home Loan
15 Bank Act (12 U.S.C. 1438(b)), shall, upon such ef-
16 fective date, be treated for purposes of this sub-
17 section as amounts received from assessments under
18 this section.

19 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

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



1 quarterly reports of the Agency's financial condition
2 and results of operations as prepared by the Direc-
3 tor in the ordinary course of the Agency's oper-
4 ations.

5 “(2) FINANCIAL STATEMENTS.—The Agency
6 shall prepare annually a statement of assets and li-
7 abilities and surplus or deficit; a statement of in-
8 come and expenses; and a statement of sources and
9 application of funds.

10 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
11 Agency shall implement and maintain financial man-
12 agement systems that comply substantially with
13 Federal financial management systems require-
14 ments, applicable Federal accounting standards, and
15 that uses a general ledger system that accounts for
16 activity at the transaction level.

17 “(4) ASSERTION OF INTERNAL CONTROLS.—
18 The Director shall provide to the Comptroller Gen-
19 eral an assertion as to the effectiveness of the inter-
20 nal controls that apply to financial reporting by the
21 Agency, using the standards established in section
22 3512 (c) of title 31, United States Code.

23 “(5) RULE OF CONSTRUCTION.—This sub-
24 section may not be construed as implying any obliga-
25 tion on the part of the Director to consult with or



1 obtain the consent or approval of the Director of the
2 Office of Management and Budget with respect to
3 any reports, plans, forecasts, or other information
4 referred to in paragraph (1) or any jurisdiction or
5 oversight over the affairs or operations of the Agen-
6 cy.

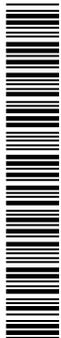
7 “(h) AUDIT OF AGENCY.—

8 “(1) IN GENERAL.—The Comptroller General
9 shall annually audit the financial transactions of the
10 Agency in accordance with the U.S. generally accept-
11 ed government auditing standards as may be pre-
12 scribed by the Comptroller General of the United
13 States. The audit shall be conducted at the place or
14 places where accounts of the Agency are normally
15 kept. The representatives of the Government Ac-
16 countability Office shall have access to the personnel
17 and to all books, accounts, documents, papers,
18 records (including electronic records), reports, files,
19 and all other papers, automated data, things, or
20 property belonging to or under the control of or used
21 or employed by the Agency pertaining to its financial
22 transactions and necessary to facilitate the audit,
23 and such representatives shall be afforded full facili-
24 ties for verifying transactions with the balances or
25 securities held by depositaries, fiscal agents, and



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

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



1 President and to the Agency at the time submitted
2 to the Congress.

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

22 **SEC. 106. EXAMINERS AND ACCOUNTANTS.**

23 (a) EXAMINATIONS.—Section 1317 of the Housing
24 and Community Development Act of 1992 (12 U.S.C.
25 4517) is amended—



1 (1) in subsection (a), by adding after the period
2 at the end the following: “Each examination under
3 this subsection of a regulated entity shall include a
4 review of the procedures required to be established
5 and maintained by the regulated entity pursuant to
6 section 1314(c) (relating to fraudulent financial
7 transactions) and the report regarding each such ex-
8 amination shall describe any problems with such
9 procedures maintained by the regulated entity.”;

10 (2) in subsection (b)—

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

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

17 (3) in subsection (c)—

18 (A) in the second sentence, by inserting
19 “to conduct examinations under this section”
20 before the period; and

21 (B) in the third sentence, by striking
22 “from amounts available in the Federal Hous-
23 ing Enterprises Oversight Fund”.

24 (b) ENHANCED AUTHORITY TO HIRE EXAMINERS
25 AND ACCOUNTANTS.—Section 1317 of the Housing and



1 Community Development Act of 1992 (12 U.S.C. 4517)
2 is amended by adding at the end the following new sub-
3 section:

4 “(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
5 SPECIALISTS, AND EXAMINERS.—

6 “(1) APPLICABILITY.—This section applies with
7 respect to any position of examiner, accountant, spe-
8 cialist in financial markets, specialist in technology,
9 and economist at the Agency, with respect to super-
10 vision and regulation of the regulated entities, that
11 is in the competitive service.

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

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

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

21 (c) REPEAL.—Section 20 of the Federal Home Loan
22 Bank Act (12 U.S.C. 1440) is amended—

23 (1) in the section heading, by striking “**RE-**
24 **PORTS**” and inserting “**GAO AUDITS**”;



1 (2) in the third sentence, by striking “the
2 Board and” each place such term appears; and

3 (3) by striking the first two sentences and in-
4 serting the following: “The Federal home loan banks
5 shall be subject to examinations by the Director to
6 the extent provided in section 1317 of the Federal
7 Housing Enterprises Financial Safety and Sound-
8 ness Act of 1992 (12 U.S.C. 4517).”.

9 **SEC. 107. PROHIBITION AND WITHHOLDING OF EXECUTIVE**
10 **COMPENSATION.**

11 (a) IN GENERAL.—Section 1318 of the Housing and
12 Community Development Act of 1992 (12 U.S.C. 4518)
13 is amended—

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

17 (2) by redesignating subsection (b) as sub-
18 section (d); and

19 (3) by inserting after subsection (a) the fol-
20 lowing new subsections:

21 “(b) FACTORS.—In making any determination under
22 subsection (a), the Director may take into consideration
23 any factors the Director considers relevant, including any
24 wrongdoing on the part of the executive officer, and such
25 wrongdoing shall include any fraudulent act or omission,



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

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

17 (b) CONFORMING AMENDMENTS.—

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

22 “(4) Notwithstanding any other provision of this sec-
23 tion, the corporation shall not transfer, disburse, or pay
24 compensation to any executive officer, or enter into an
25 agreement with such executive officer, without the ap-



1 proval of the Director, for matters being reviewed under
2 section 1318 of the Federal Housing Enterprises Finan-
3 cial Safety and Soundness Act of 1992 (12 U.S.C.
4 4518).”.

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

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

17 (3) FEDERAL HOME LOAN BANKS.—Section 7
18 of the Federal Home Loan Bank Act (12 U.S.C.
19 1427) is amended by adding at the end the following
20 new subsection:

21 “(1) WITHHOLDING OF COMPENSATION.—Notwith-
22 standing any other provision of this section, a Federal
23 home loan bank shall not transfer, disburse, or pay com-
24 pensation to any executive officer, or enter into an agree-
25 ment with such executive officer, without the approval of



1 the Director, for matters being reviewed under section
2 1318 of the Federal Housing Enterprises Financial Safety
3 and Soundness Act of 1992 (12 U.S.C. 4518).”.

4 **SEC. 108. REVIEWS OF REGULATED ENTITIES.**

5 Section 1319 of the Housing and Community Devel-
6 opment Act of 1992 (12 U.S.C. 4519) is amended—

7 (1) by striking the section designation and
8 heading and inserting the following:

9 **“SEC. 1319. REVIEWS OF REGULATED ENTITIES.”**; and

10 (2) by inserting after “any entity” the fol-
11 lowing: “that the Director considers appropriate, in-
12 cluding an entity”.

13 **SEC. 109. REGULATIONS AND ORDERS.**

14 Section 1319G of the Housing and Community De-
15 velopment Act of 1992 (12 U.S.C. 4526) is amended—

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

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

23 (2) in subsection (b), by inserting “, this title,
24 or any of the authorizing statutes” after “under this
25 section”; and



1 (3) by striking subsection (c).

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

3 (a) IN GENERAL.—Section 1361 of the Housing and
4 Community Development Act of 1992 (12 U.S.C. 4611)
5 is amended to read as follows:

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

8 “(a) IN GENERAL.—

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

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

20 “(b) CONFIDENTIALITY OF INFORMATION.—Any per-
21 son that receives any book, record, or information from
22 the Director or a regulated entity to enable the risk-based
23 capital requirements established under this section to be
24 applied shall—



1 “(1) maintain the confidentiality of the book,
2 record, or information in a manner that is generally
3 consistent with the level of confidentiality established
4 for the material by the Director or the regulated en-
5 tity; and

6 “(2) be exempt from section 552 of title 5,
7 United States Code, with respect to the book,
8 record, or information.

9 “(c) 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
12 the 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
15 Act (12 U.S.C. 1426(a)(3)) is amended—

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

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 manner,
23 with sufficient permanent capital and reserves
24 to support the risks that arise in the operations



1 and management of the Federal home loans
2 banks.”; and

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

5 **SEC. 111. MINIMUM AND CRITICAL CAPITAL LEVELS.**

6 (a) **MINIMUM CAPITAL LEVEL.**—Section 1362 of the
7 Housing and Community Development Act of 1992 (12
8 U.S.C. 4612) is amended—

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

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

13 “(b) **FEDERAL HOME LOAN BANKS.**—For purposes
14 of this subtitle, the minimum capital level for each Federal
15 home loan bank shall be the minimum capital required to
16 be maintained to comply with the leverage requirement for
17 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 CAP-**
20 **ITAL LEVELS.**—Notwithstanding subsections (a) and (b)
21 and notwithstanding the capital classifications of the regu-
22 lated entities, the Director may, by regulations issued
23 under section 1319G(b), establish a minimum capital level
24 for the enterprises, for the Federal home loan banks, or
25 for both the enterprises and the banks, that is higher than



1 the level specified in subsection (a) for the enterprises or
2 the level specified in subsection (b) for the Federal home
3 loan banks, to the extent needed to ensure that the regu-
4 lated entities operate in a safe and sound manner.

5 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-
6 CREASE.—Notwithstanding subsections (a) and (b) and
7 any minimum capital level established pursuant to sub-
8 section (c), the Director may, by order, increase the min-
9 imum capital level for a regulated entity for such period
10 as the Director may provide if the Director—

11 “(1) makes any of the determinations specified
12 in subparagraphs (A) through (C) of section
13 1364(e)(1); or

14 “(2) determines that the regulated entity has
15 violated any of the prudential management and op-
16 erations standards established pursuant to section
17 1313A and, as a result of such violation, is oper-
18 ating in an unsafe and unsound manner.

19 “(e) AUTHORITY TO ESTABLISH ADDITIONAL CAP-
20 ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR
21 PROGRAMS.—The Director may, at any time by order or
22 regulation, establish such capital or reserve requirements
23 with respect to any program or activity of a regulated enti-
24 ty as the Director considers appropriate to ensure that
25 the regulated entity operates in a safe and sound manner,



1 with sufficient capital and reserves to support the risks
2 that arise in the operations and management of the regu-
3 lated entity.

4 “(f) PERIODIC REVIEW.—The Director shall periodi-
5 cally review the amount of core capital maintained by the
6 enterprises, the amount of capital retained by the Federal
7 home loan banks, and the minimum capital levels estab-
8 lished for such regulated entities pursuant to this sec-
9 tion.”.

10 (b) CRITICAL CAPITAL LEVELS.—

11 (1) IN GENERAL.—Section 1363 of the Housing
12 and Community Development Act of 1992 (12
13 U.S.C. 4613) is amended—

14 (A) by striking “For” and inserting “(a)
15 Enterprises.—For”; and

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

18 “(b) FEDERAL HOME LOAN BANKS.—

19 “(1) IN GENERAL.—For purposes of this sub-
20 title, the critical capital level for each Federal home
21 loan bank shall be such amount of capital as the Di-
22 rector shall, by regulation require.

23 “(2) CONSIDERATION OF OTHER CRITICAL CAP-
24 ITAL LEVELS.—In establishing the critical capital
25 level under paragraph (1) for the Federal home loan



1 banks, the Director shall take due consideration of
2 the critical capital level established under subsection
3 (a) for the enterprises, with such modifications as
4 the Director determines to be appropriate to reflect
5 the difference in operations between the banks and
6 the enterprises.”.

7 (2) REGULATIONS.—Not later than the expira-
8 tion of the 180-day period beginning on the effective
9 date under section 184, the Director of the Federal
10 Housing Finance Agency shall issue regulations pur-
11 suant to section 1363(b) of the Housing and Com-
12 munity Development Act of 1992 (as added by para-
13 graph (1) of this subsection) establishing the critical
14 capital level under such section.

15 **SEC. 112. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
16 **ASSETS AND LIABILITIES.**

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

20 (1) by striking the subtitle designation and
21 heading and inserting the following:



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

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

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

10 “(a) IN GENERAL.—The Director shall conduct, on
11 a periodic basis, a review of the on-balance sheet and off-
12 balance sheet assets and liabilities of each enterprise.

13 “(b) AUTHORITY TO REQUIRE DISPOSITION OR AC-
14 QUISSION.—Pursuant to such a review and notwith-
15 standing the capital classifications of the enterprises, the
16 Director may by order require an enterprise, under such
17 terms and conditions as the Director determines to be ap-
18 propriate, to dispose of or acquire any asset or liability,
19 if the Director determines that such action is consistent
20 with the safe and sound operation of the enterprise or with
21 the purposes of this Act or any of the authorizing stat-
22 utes.”.



1 **SEC. 113. CORPORATE GOVERNANCE OF ENTERPRISES.**

2 The Housing and Community Development Act of
3 1992 is amended by inserting before section 1323 (12
4 U.S.C. 4543) the following new section:

5 **“SEC. 1322A CORPORATE GOVERNANCE OF ENTERPRISES.**

6 “(a) BOARD OF DIRECTORS.—

7 “(1) MEMBERSHIP.—

8 “(A) IN GENERAL.—No person may serve
9 on the board of directors of an enterprise for
10 more than 10 years or past the age of 72,
11 whichever comes first; except that a member of
12 a board of directors may serve his or her full
13 term if he or she has served less than 10 years
14 or is 72 years on the date of his or her election
15 or appointment to the board.

16 “(B) WAIVER.—Upon the written request
17 of an enterprise, the Director may waive, in the
18 Director’s sole discretion and for good cause,
19 the limits on the service of a board member
20 under subparagraph (A).

21 “(2) INDEPENDENCE.—A majority of seated
22 members of the board of directors of each enterprise
23 shall be independent board members, as defined
24 under rules set forth by the New York Stock Ex-
25 change, as such rules may be amended from time to
26 time.



1 “(3) FREQUENCY OF MEETINGS.—To carry out
2 its obligations and duties under applicable laws,
3 rules, regulations, and guidelines, the board of direc-
4 tors of an enterprise shall meet at least eight times
5 a year and not less than once a calendar quarter.

6 “(4) NON-MANAGEMENT BOARD MEMBER
7 MEETINGS.—The non-management directors of an
8 enterprise shall meet at regularly scheduled execu-
9 tive sessions without management participation.

10 “(5) QUORUM; PROHIBITION ON PROXIES.—For
11 the transaction of business, a quorum of the board
12 of directors of an enterprise shall be at least a ma-
13 jority of the seated board of directors and a board
14 member may not vote by proxy.

15 “(6) INFORMATION.—The management of an
16 enterprise shall provide a board member of the en-
17 terprise with such adequate and appropriate infor-
18 mation that a reasonable board member would find
19 important to the fulfillment of his or her fiduciary
20 duties and obligations.

21 “(7) ANNUAL REVIEW.—At least annually, the
22 board of directors of each enterprise shall review,
23 with appropriate professional assistance, the require-
24 ments of laws, rules, regulations, and guidelines that
25 are applicable to its activities and duties.



1 “(b) COMMITTEES OF BOARDS OF DIRECTORS.—

2 “(1) FREQUENCY OF MEETINGS.—Any com-
3 mittee of the board of directors of an enterprise
4 shall meet with sufficient frequency to carry out its
5 obligations and duties under applicable laws, rules,
6 regulations, and guidelines.

7 “(2) REQUIRED COMMITTEES.—Each enterprise
8 shall provide for the establishment, however styled,
9 of the following committees of the board of directors:

10 “(A) Audit committee.

11 “(B) Compensation committee.

12 “(C) Nominating/corporate governance
13 committee.

14 Such committees shall be in compliance with the
15 charter, independence, composition, expertise, duties,
16 responsibilities, and other requirements set forth
17 under section 10A(m) of the Securities Exchange
18 Act of 1934 (15 U.S.C. 78j-1(m)), with respect to
19 the audit committee, and under rules issued by the
20 New York Stock Exchange, as such rules may be
21 amended from time to time.

22 “(c) COMPENSATION.—

23 “(1) IN GENERAL.—The compensation of board
24 members, executive officers, and employees of an
25 enterprise—



1 “(A) shall not be in excess of that which
2 is reasonable and appropriate;

3 “(B) shall be commensurate with the du-
4 ties and responsibilities of such persons,

5 “(C) shall be consistent with the long-term
6 goals of the enterprise;

7 “(D) shall not focus solely on earnings per-
8 formance, but shall take into account risk man-
9 agement, operational stability and legal and
10 regulatory compliance as well; and

11 “(E) shall be undertaken in a manner that
12 complies with applicable laws, rules, and regula-
13 tions.

14 “(2) REIMBURSEMENT.—If an enterprise is re-
15 quired to prepare an accounting restatement due to
16 the material noncompliance of the enterprise, as a
17 result of misconduct, with any financial reporting re-
18 quirement under the securities laws, the chief execu-
19 tive officer and chief financial officer of the enter-
20 prise shall reimburse the enterprise as provided
21 under section 304 of the Sarbanes-Oxley Act of
22 2002 (15 U.S.C. 7243). This provision does not oth-
23 erwise limit the authority of the Agency to employ
24 remedies available to it under its enforcement au-
25 thorities.



1 “(d) CODE OF CONDUCT AND ETHICS.—

2 “(1) IN GENERAL.—An enterprise shall estab-
3 lish and administer a written code of conduct and
4 ethics that is reasonably designed to assure the abil-
5 ity of board members, executive officers, and em-
6 ployees of the enterprise to discharge their duties
7 and responsibilities, on behalf of the enterprise, in
8 an objective and impartial manner, and that includes
9 standards required under section 406 of the Sar-
10 banes-Oxley Act of 2002 (15 U.S.C. 7264) and
11 other applicable laws, rules, and regulations.

12 “(2) REVIEW.—Not less than once every three
13 years, an enterprise shall review the adequacy of its
14 code of conduct and ethics for consistency with prac-
15 tices appropriate to the enterprise and make any ap-
16 propriate revisions to such code.

17 “(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF
18 DIRECTORS.—The board of directors of an enterprise shall
19 be responsible for directing the conduct and affairs of the
20 enterprise in furtherance of the safe and sound operation
21 of the enterprise and shall remain reasonably informed of
22 the condition, activities, and operations of the enterprise.
23 The responsibilities of the board of directors shall include
24 having in place adequate policies and procedures to assure
25 its oversight of, among other matters, the following:



1 “(1) Corporate strategy, major plans of action,
2 risk policy, programs for legal and regulatory com-
3 pliance and corporate performance, including pru-
4 dent plans for growth and allocation of adequate re-
5 sources to manage operations risk.

6 “(2) Hiring and retention of qualified executive
7 officers and succession planning for such executive
8 officers.

9 “(3) Compensation programs of the enterprise.

10 “(4) Integrity of accounting and financial re-
11 porting systems of the enterprise, including inde-
12 pendent audits and systems of internal control.

13 “(5) Process and adequacy of reporting, disclo-
14 sures, and communications to shareholders, inves-
15 tors, and potential investors.

16 “(6) Extensions of credit to board members and
17 executive officers.

18 “(7) Responsiveness of executive officers in pro-
19 viding accurate and timely reports to Federal regu-
20 lators and in addressing the supervisory concerns of
21 Federal regulators in a timely and appropriate man-
22 ner.

23 “(f) PROHIBITION OF EXTENSIONS OF CREDIT.—An
24 enterprise may not directly or indirectly, including
25 through any subsidiary, extend or maintain credit, arrange



1 for the extension of credit, or renew an extension of credit,
2 in the form of a personal loan to or for any board member
3 or executive officer of the enterprise, as provided by sec-
4 tion 13(k) of the Securities Exchange Act of 1934 (15
5 U.S.C. 78m(k)).

6 “(g) CERTIFICATION OF DISCLOSURES.—The chief
7 executive officer and the chief financial officer of an enter-
8 prise shall review each quarterly report and annual report
9 issued by the enterprise and such reports shall include cer-
10 tifications by such officers as required by section 302 of
11 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

12 “(h) CHANGE OF AUDIT PARTNER.—An enterprise
13 may not accept audit services from an external auditing
14 firm if the lead or coordinating audit partner who has pri-
15 mary responsibility for the external audit of the enterprise,
16 or the external audit partner who has responsibility for
17 reviewing the external audit has performed audit services
18 for the enterprise in each of the five previous fiscal years.

19 “(i) COMPLIANCE PROGRAM.—

20 “(1) REQUIREMENT.—Each enterprise shall es-
21 tablish and maintain a compliance program that is
22 reasonably designed to assure that the enterprise
23 complies with applicable laws, rules, regulations, and
24 internal controls.



1 “(2) COMPLIANCE OFFICER.—The compliance
2 program of an enterprise shall be headed by a com-
3 pliance officer, however styled, who reports directly
4 to the chief executive officer of the enterprise. The
5 compliance officer shall report regularly to the board
6 of directors or an appropriate committee of the
7 board of directors on compliance with and the ade-
8 quacy of current compliance policies and procedures
9 of the enterprise, and shall recommend any adjust-
10 ments to such policies and procedures that the com-
11 pliance officer considers necessary and appropriate.

12 “(j) RISK MANAGEMENT PROGRAM.—

13 “(1) REQUIREMENT.—Each enterprise shall es-
14 tablish and maintain a risk management program
15 that is reasonably designed to manage the risks of
16 the operations of the enterprise.

17 “(2) RISK MANAGEMENT OFFICER.—The risk
18 management program of an enterprise shall be head-
19 ed by a risk management officer, however styled,
20 who reports directly to the chief executive officer of
21 the enterprise. The risk management officer shall re-
22 port regularly to the board of directors or an appro-
23 priate committee of the board of directors on compli-
24 ance with and the adequacy of current risk manage-
25 ment policies and procedures of the enterprise, and



1 shall recommend any adjustments to such policies
2 and procedures that the risk management officer
3 considers necessary and appropriate.

4 “(k) COMPLIANCE WITH OTHER LAWS.—

5 “(1) DEREGISTERED OR UNREGISTERED COM-
6 MON STOCK.—If an enterprise deregisters or has not
7 registered its common stock with the Securities and
8 Exchange Commission under the Securities Ex-
9 change Act of 1934, the enterprise shall comply or
10 continue to comply with sections 10A(m) and 13(k)
11 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78j-1(m), 78m(k)) and sections 302, 304, and 406
13 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241,
14 7243, 7264), subject to such requirements as pro-
15 vided by subsection (l) of this section.

16 “(2) REGISTERED COMMON STOCK.—An enter-
17 prise that has its common stock registered with the
18 Securities and Exchange Commission shall maintain
19 such registered status, unless it provides 60 days
20 prior written notice to the Director stating its intent
21 to deregister and its understanding that it will re-
22 main subject to the requirements of the sections of
23 the Securities Exchange Act of 1934 and the Sar-
24 banes-Oxley Act of 2002, subject to such require-
25 ments as provided by subsection (l) of this section.



1 “(l) OTHER MATTERS.—The Director may from time
2 to time establish standards, by regulation, order, or guide-
3 line, regarding such other corporate governance matters
4 of the enterprises as the Director considers appropriate.

5 “(m) MODIFICATION OF STANDARDS.—In connection
6 with standards of Federal or State law (including the Re-
7 vised Model Corporation Act) or New York Stock Ex-
8 change rules that are made applicable to an enterprise by
9 section 1710.10 of the Director’s rules (12 C.F.R.
10 1710.10) and by subsections (a), (b), (g), (i), (j), and (k)
11 of this section, the Director, in the Director’s sole discre-
12 tion, may modify the standards contained in this section
13 or in part 1710 of the Director’s rules (12 U.S.C. Part
14 1710) in accordance with section 553 of title 5, United
15 States Code, and upon written notice to the enterprise.”.

16 **SEC. 114. REQUIRED REGISTRATION UNDER SECURITIES**
17 **EXCHANGE ACT OF 1934.**

18 The Housing and Community Development Act of
19 1992 is amended by adding after section 1322A, as added
20 by the preceding provisions of this Act, the following new
21 section:

22 **“SEC. 1322B. REQUIRED REGISTRATION UNDER SECURI-**
23 **TIES EXCHANGE ACT OF 1934..**

24 “(a) IN GENERAL.—Each regulated entity shall reg-
25 ister at least one class of the capital stock of such regu-



1 lated entity, and maintain such registration with the Secu-
2 rities and Exchange Commission, under the Securities Ex-
3 change Act of 1934.

4 “(b) ENTERPRISES.—Each enterprise shall comply
5 with sections 14 and 16 of the Securities Exchange Act
6 of 1934.”.

7 **SEC. 115. CONFORMING AMENDMENTS.**

8 (a) 1992 Act.—Part 1 of subtitle A of title XIII of
9 the Housing and Community Development Act of 1992
10 (12 U.S.C. 4511 et seq.), as amended by the preceding
11 provisions of this Act, is further amended—

12 (1) by striking “an enterprise” each place such
13 term appears in such part (except in sections
14 1313(a)(2)(A), 1313A(b)(2)(B)(ii)(I), and
15 1316(b)(3)) and inserting “a regulated entity”;

16 (2) by striking “the enterprise” each place such
17 term appears in such part (except in section
18 1316(b)(3)) and inserting “the regulated entity”;

19 (3) by striking “the enterprises” each place
20 such term appears in such part (except in sections
21 1312(c)(2), 1312(e)(2), and 1319B(a)(4)(D)) and
22 inserting “the regulated entities”;

23 (4) by striking “each enterprise” each place
24 such term appears in such part and inserting “each
25 regulated entity”;



1 (5) by striking “Office” each place such term
2 appears in such part (except in sections 1312(b)(5),
3 1315(b), and 1316(g), and section 1317(c)) and in-
4 sserting “Agency”;

5 (6) in section 1315 (12 U.S.C. 4515)—

6 (A) in subsection (a)—

7 (i) in the subsection heading, by strik-
8 ing “Office Personnel” and inserting “In
9 General”; and

10 (ii) by striking “The” and inserting
11 “Subject to titles III and IV of the Federal
12 Housing Finance Reform Act of 2005,
13 the”;

14 (B) by striking subsections (d) and (f);
15 and

16 (C) by redesignating subsection (e) as sub-
17 section (d);

18 (7) in section 1316(e) (12 U.S.C. 4516(e)), by
19 striking “any enterprise” and inserting “any regu-
20 lated entity”;

21 (8) in section 1319A (12 U.S.C. 4520)—

22 (A) by striking “(a) In General.—Each en-
23 terprise” and inserting “Each regulated enti-
24 ty”; and

25 (B) by striking subsection (b);



1 (9) in section 1319B (12 U.S.C. 4521), by
2 striking “Committee on Banking, Finance and
3 Urban Affairs” each place such term appears and
4 inserting “Committee on Financial Services”; and

5 (10) in section 1319F (12 U.S.C. 4525), strik-
6 ing all that follows “United States Code” and insert-
7 ing “, the Agency shall be considered an agency re-
8 sponsible for the regulation or supervision of finan-
9 cial institutions.”.

10 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—

11 The Federal National Mortgage Association Charter Act
12 (12 U.S.C. 1716 et seq.) is amended—

13 (1) by striking “Director of the Office of Fed-
14 eral Housing Enterprise Oversight of the Depart-
15 ment of Housing and Urban Development” each
16 place such term appears, and inserting “Director of
17 the Federal Housing Finance Agency”, in—

18 (A) section 303(c)(2) (12 U.S.C.
19 1718(c)(2));

20 (B) section 309(d)(3)(B) (12 U.S.C.
21 1723a(d)(3)(B)); and

22 (C) section 309(k)(1); and

23 (2) in section 309—

24 (A) in subsections (d)(3)(A) and (n)(1), by
25 striking “Banking, Finance and Urban Affairs”



1 each place such term appears and inserting
2 “Financial Services”; and

3 (B) in subsection (m)—

4 (i) in paragraph (1), by striking “Sec-
5 retary” the second place such term ap-
6 pears and inserting “Director”; and

7 (ii) in paragraph (2), by striking
8 “Secretary” the second place such term
9 appears and inserting “Director”; and

10 (iii) by striking “Secretary” each
11 other place such term appears and insert-
12 ing “Director of the Federal Housing Fi-
13 nance Agency”; and

14 (C) in subsection (n), by striking “Sec-
15 retary” each place such term appears and in-
16 serting “Director of the Federal Housing Fi-
17 nance Agency”; and

18 (c) AMENDMENTS TO FREDDIE MAC ACT.—The Fed-
19 eral Home Loan Mortgage Corporation Act is amended—

20 (1) by striking “Director of the Office of Fed-
21 eral Housing Enterprise Oversight of the Depart-
22 ment of Housing and Urban Development” each
23 place such term appears, and inserting “Director of
24 the Federal Housing Finance Agency”, in—



1 (A) section 303(b)(2) (12 U.S.C.
2 1452(b)(2));

3 (B) section 303(h)(2) (12 U.S.C.
4 1452(h)(2)); and

5 (C) section 307(c)(1) (12 U.S.C.
6 1456(c)(1));

7 (2) in sections 303(h)(1) and 307(f)(1) (12
8 U.S.C. 1452(h)(1), 1456(f)(1)), by striking “Bank-
9 ing, Finance and Urban Affairs” each place such
10 term appears and inserting “Financial Services”;

11 (3) in section 306(i) (12 U.S.C. 1455(i))—

12 (A) by striking “section 1316(c)” and in-
13 serting “section 306(c)”; and

14 (B) by striking “section 106” and insert-
15 ing “section 1316”; and

16 (4) in section 307 (12 U.S.C. 1456)—

17 (A) in subsection (e)—

18 (i) in paragraph (1), by striking “Sec-
19 retary” the second place such term ap-
20 pears and inserting “Director”; and

21 (ii) in paragraph (2), by striking
22 “Secretary” the second place such term
23 appears and inserting “Director”; and

24 (iii) by striking “Secretary” each
25 other place such term appears and insert-



1 ing “Director of the Federal Housing Fi-
2 nance Agency”; and

3 (B) in subsection (f), by striking “Sec-
4 retary” each place such term appears and in-
5 serting “Director of the Federal Housing Fi-
6 nance Agency”.

7 **Subtitle B—Improvement of** 8 **Mission Supervision**

9 **SEC. 121. TRANSFER OF PROGRAM AND ACTIVITIES AP-** 10 **PROVAL AND HOUSING GOAL OVERSIGHT.**

11 Part 2 of subtitle A of title XIII of the Housing and
12 Community Development Act of 1992 (12 U.S.C. 4541 et
13 seq.) is amended—

14 (1) by striking the designation and heading for
15 the part and inserting the following:

16 **“PART 2—PROGRAM AND ACTIVITIES APPROVAL**
17 **BY DIRECTOR, CORPORATE GOVERNANCE,**
18 **AND ESTABLISHMENT OF HOUSING GOALS”;**

19 and

20 (2) by striking sections 1321 and 1322.

21 **SEC. 122. REVIEW BY DIRECTOR OF NEW PROGRAMS AND** 22 **ACTIVITIES OF ENTERPRISES.**

23 (a) IN GENERAL.—Part 2 of subtitle A of title XIII
24 of the Housing and Community Development Act of 1992



1 is amended by inserting before section 1323 (12 U.S.C.
2 4543) the following new section:

3 **“SEC. 1321. REVIEW AND APPROVAL BY DIRECTOR OF NEW**
4 **PROGRAMS AND BUSINESS ACTIVITIES OF**
5 **ENTERPRISES.**

6 “(a) LIMITATION ON AUTHORITY TO UNDERTAKE
7 PROGRAMS AND ACTIVITIES.—An enterprise may not un-
8 dertake any new program, including a pilot program, or
9 any new business activity except in accordance with the
10 procedures set forth in this section and orders and regula-
11 tions issued under this section.

12 “(b) NEW PROGRAMS.—

13 “(1) PRIOR APPROVAL REQUIREMENT.—An en-
14 terprise may not commence any new program before
15 it has obtained the approval of the Director, pursu-
16 ant to this subsection, for the new program.

17 “(2) APPLICATION.—The Director shall, by
18 order or regulation, require that an enterprise shall,
19 to obtain a determination by the Director regarding
20 approval of a new program by the enterprise, submit
21 to the Director a written application for the new
22 program in a format as prescribed by the Director.

23 “(3) NOTICE.—Immediately upon receipt of a
24 complete application for a new program, the Direc-
25 tor shall cause to be published in the Federal Reg-



1 ister notice of the receipt of such application and of
2 the period for public comment pursuant to para-
3 graph (4) regarding such new program, and a de-
4 scription of the new program proposed by the appli-
5 cation.

6 “(4) PUBLIC COMMENT PERIOD.—During the
7 30-day period beginning upon publication pursuant
8 to paragraph (3) of a notice regarding such an ap-
9 plication, the Director shall receive public comments
10 regarding the new program.

11 “(5) DETERMINATION.—Not less than 15 days
12 after the conclusion of the public comment period
13 pursuant to paragraph (4) regarding an application
14 but not more than 30 days after the conclusion of
15 such comment period, the Director shall approve,
16 conditionally approve, or reject such program, in
17 writing.

18 “(6) STANDARD FOR APPROVAL.—The Director
19 may approve, or conditionally approve, a new pro-
20 gram of an enterprise only if the Director deter-
21 mines, taking into consideration any relevant infor-
22 mation and comments received during the public
23 comment period, that such new program—

24 “(A) does not contravene and is not incon-
25 sistent with the purposes of this title, the Fed-



1 eral National Mortgage Association Charter
2 Act, or the Federal Home Loan Mortgage Cor-
3 poration Act, as such purposes are determined
4 taking into consideration the definitions of the
5 terms ‘primary mortgage market’ and ‘sec-
6 ondary mortgage market’ pursuant to section
7 1303;

8 “(B) is not otherwise inconsistent with the
9 safety and soundness of the enterprise; and

10 “(C) is in the public interest.

11 “(c) NEW BUSINESS ACTIVITIES.—

12 “(1) AUTHORITY OF DIRECTOR TO PROHIBIT
13 NEW BUSINESS ACTIVITIES.—The Director shall
14 have authority to prohibit any new business activity
15 by an enterprise if the Director determines, in writ-
16 ing, that such activity—

17 “(A) contravenes or is inconsistent with
18 the purposes of this title, the Federal National
19 Mortgage Association Charter Act, or the Fed-
20 eral Home Loan Mortgage Corporation Act;

21 “(B) is otherwise inconsistent with the
22 safety and soundness of the enterprise; or

23 “(C) is not in the public interest.

24 “(2) NOTIFICATION OF NEW BUSINESS ACTIVI-
25 TIES.—An enterprise that undertakes any new busi-



1 ness activity shall provide written notice of the activ-
2 ity to the Director and may commence the new busi-
3 ness activity only in accordance with paragraph (4).

4 “(3) DIRECTOR DETERMINATION OF APPLICA-
5 BLE PROCEDURE.—

6 “(A) TIMING.—Immediately upon receipt
7 of any notice under paragraph (2) regarding a
8 new business activity, the Director shall under-
9 take a determination under subparagraph (B)
10 of this paragraph regarding the new business
11 activity.

12 “(B) DETERMINATION AND TREATMENT
13 AS NEW PROGRAM.—If the Director determines
14 that any new business activity consists of, re-
15 lates to, or involves any new program—

16 “(i) the Director shall notify the en-
17 terprise of the determination;

18 “(ii) the new business activity de-
19 scribed in the notice shall be considered a
20 new program for purposes of this section;
21 and

22 “(iii) the Director shall prohibit the
23 enterprise from carrying out the activity
24 except to the extent that approval for the



1 activity is obtained pursuant to subsection
2 (b).

3 “(4) COMMENCEMENT.—An enterprise may
4 commence a new business activity—

5 “(A) if the Director issues a written ap-
6 proval regarding such new business activity, im-
7 mediately upon such issuance or at such other
8 time as provided by the Director in such letter;
9 or

10 “(B) if, during the 30-day period begin-
11 ning upon receipt by the Director of notice pur-
12 suant to paragraph (2) regarding a new busi-
13 ness activity, the Director has not issued to the
14 enterprise a written approval or denial of the
15 new business activity, upon the expiration of
16 such 30-day period.

17 “(d) APPROVAL AND CONDITIONAL APPROVAL.—The
18 Director may at any time conditionally approve the under-
19 taking of a particular new program or new business activ-
20 ity by an enterprise and set forth the terms and conditions
21 that apply to the program or activity with which the enter-
22 prise shall comply if it undertakes the new program or
23 activity. Such approval may, in the discretion of the Direc-
24 tor, be in the form of a written agreement between the
25 enterprise and the Director and shall be subject to such



1 terms and conditions therein. Such a written agreement
2 or conditional approval shall be enforceable under subtitle
3 C.

4 “(e) DETERMINATION AND TREATMENT OF ACTIVITY
5 AS NEW BUSINESS ACTIVITY.—If the Director determines
6 that any activity of an enterprise consists of, relates to,
7 or involves any new business activity—

8 “(1) the Director shall notify the enterprise of
9 the determination;

10 “(2) such activity shall be considered a new
11 business activity for purposes of this section; and

12 “(3) the Director shall prohibit the enterprise
13 from carrying out the activity except to the extent
14 that approval for the activity is obtained pursuant to
15 subsection (c).

16 “(f) EFFECT ON OTHER AUTHORITIES.—

17 “(1) EXAMINATIONS.—Nothing in this section
18 may be construed to limit, in any manner, any other
19 authority or right the Director may have under
20 other provisions of law to conduct an examination of
21 an enterprise.

22 “(2) REQUESTS FOR INFORMATION.—Nothing
23 in this section may be construed to limit the right
24 of the Director at any time to request additional in-



1 formation from an enterprise concerning any busi-
2 ness activity.

3 “(3) NO IMPLIED RIGHT OF ACTION.—This sec-
4 tion shall not create any private right of action
5 against an enterprise or any director or executive of-
6 ficer of an enterprise, or impair any private right of
7 action under other applicable law.

8 “(4) NO LIMITATION.—Nothing in this section
9 may be construed to restrict the general supervisory
10 and regulatory authority of the Director over all pro-
11 grams, products, activities, or business operations of
12 any kind.

13 “(g) REPORT ON PROGRAMS AND BUSINESS ACTIVI-
14 TIES.—Not later than the expiration of the 180-day period
15 beginning on the effective date under section 184 of the
16 Federal Housing Finance Reform Act of 2005, each enter-
17 prise shall submit to the Director a report identifying and
18 describing each program and business activity of the en-
19 terprise engaged in or existing as of the submission of the
20 report.

21 “(h) REGULATIONS.—The Director shall by order or
22 regulation issue rules and procedures to implement this
23 section, including in the discretion of the Director, such
24 definitions, interpretations, forms, and other guidances as
25 the Director considers appropriate.”



1 (b) DEFINITIONS.—Section 1303 of the Housing and
2 Community Development Act of 1992 (12 U.S.C. 4502),
3 as amended by section 2 of this Act, is further amended—

4 (1) by redesignating paragraphs (17) through
5 (23) as paragraphs (20) through (26), respectively;

6 (2) by inserting after paragraph (16) the fol-
7 lowing new paragraph:

8 “(19) NEW BUSINESS ACTIVITY.—The term
9 ‘new business activity’ means, with respect to an en-
10 terprise, a business activity that—

11 “(A) is materially changed or materially
12 different from any of the business activities
13 that the enterprise was engaging in on the ef-
14 fective date under section 184 of the Federal
15 Housing Finance Reform Act of 2005; and

16 “(B) the enterprise has not previously ob-
17 tained authorization, pursuant to the provisions
18 of section 1321(c), to offer, undertake, trans-
19 act, conduct, or engage in.”;

20 (3) by redesignating paragraphs (15) and (16)
21 as paragraphs (17) and (18), respectively;

22 (4) by inserting after paragraph (14) the fol-
23 lowing new paragraph:

24 “(16) MORTGAGE MARKETS.—The terms ‘pri-
25 mary mortgage market’ and ‘secondary mortgage



1 market' shall have such meanings as the Director
2 shall, by regulation, prescribe consistent with the
3 Federal National Mortgage Association Charter Act
4 and the Federal Home Loan Mortgage Corporation
5 Act. The Director shall issue such regulations not
6 later than the expiration of the 6-month period be-
7 ginning on the effective date under section 184 of
8 the Federal Housing Finance Reform Act of 2005.”;

9 (5) by redesignating paragraphs (5) through
10 (14) as paragraphs (6) through (15), respectively;
11 and

12 (6) by inserting after paragraph (4) the fol-
13 lowing new paragraph:

14 “(5) BUSINESS ACTIVITY.—The term ‘business
15 activity’ means, with respect to an enterprise, any
16 offering, undertaking, transacting, conducting, or
17 engaging in any conduct, activity, or product by the
18 enterprise, as the Director shall provide.”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) FANNIE MAE.—Section 302(b)(6) of the
21 Federal National Mortgage Association Charter Act
22 (12 U.S.C. 1717(b)(6)) is amended—

23 (A) by striking “new program (as such
24 term is” and inserting “new program or new
25 business activity (as such terms are”;



1 (B) by striking “before obtaining the ap-
2 proval of the Secretary under section 1322”
3 and inserting “except in accordance with sec-
4 tion 1321”.

5 (2) FREDDIE MAC.—Section 305(c) of the Fed-
6 eral Home Loan Mortgage Corporation Act (12
7 U.S.C. 1454(c)) is amended—

8 (A) by striking “new program (as such
9 term is” and inserting “new program or new
10 business activity (as such terms are”;

11 (B) by striking “before obtaining the ap-
12 proval of the Secretary under section 1322”
13 and inserting “except in accordance with sec-
14 tion 1321”.

15 **SEC. 123. CONFORMING LOAN LIMITS.**

16 (a) FANNIE MAE.—

17 (1) GENERAL LIMIT.—Section 302(b)(2) of the
18 Federal National Mortgage Association Charter Act
19 (12 U.S.C. 1717(b)(2)) is amended by striking the
20 7th and 8th sentences and inserting the following
21 new sentences: “Such limitations shall not exceed
22 \$359,650 for a mortgage secured by a single-family
23 residence, \$460,400 for a mortgage secured by a 2-
24 family residence, \$556,500 for a mortgage secured
25 by a 3-family residence, and \$691,600 for a mort-



1 gage secured by a 4-family residence, except that
2 such maximum limitations shall be adjusted effective
3 January 1 of each year beginning after the effective
4 date under section 184 of the Federal Housing Fi-
5 nance Reform Act of 2005, subject to the limitations
6 in this paragraph. Each adjustment shall be made
7 by adding to or subtracting from each such amount
8 (as it may have been previously adjusted) a percent-
9 age thereof equal to the percentage increase or de-
10 crease, during the most recent 12-month or fourth-
11 quarter period ending before the time of determining
12 such annual adjustment, in the housing price index
13 maintained by the Director of the Federal Housing
14 Finance Agency (pursuant to section 1322 of the
15 Housing and Community Development Act of 1992
16 (12 U.S.C. 4541)).”.

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



1 foregoing limitation for such size residence or the
2 amount that is equal to the median price in such
3 area for such size residence, except that, subject to
4 the order, if any, issued by the Director of the Fed-
5 eral Housing Finance Agency pursuant to section
6 123(d)(3) of the Federal Housing Finance Reform
7 Act of 2005, such increase shall apply only with re-
8 spect to mortgages on which are based securities
9 issued and sold by the corporation.”

10 (b) FREDDIE MAC.—

11 (1) GENERAL LIMIT.— Section 305(a)(2) of the
12 Federal Home Loan Mortgage Corporation Act (12
13 U.S.C. 1454(a)(2)) is amended by striking the 6th
14 and 7th sentences and inserting the following new
15 sentences: “Such limitations shall not exceed
16 \$359,650 for a mortgage secured by a single-family
17 residence, \$460,400 for a mortgage secured by a 2-
18 family residence, \$556,500 for a mortgage secured
19 by a 3-family residence, and \$691,600 for a mort-
20 gage secured by a 4-family residence, except that
21 such maximum limitations shall be adjusted effective
22 January 1 of each year beginning after the effective
23 date under section 184 of the Federal Housing Fi-
24 nance Reform Act of 2005, subject to the limitations
25 in this paragraph. Each adjustment shall be made



1 by adding to or subtracting from each such amount
2 (as it may have been previously adjusted) a percent-
3 age thereof equal to the percentage increase or de-
4 crease, during the most recent 12-month or fourth-
5 quarter period ending before the time of determining
6 such annual adjustment, in the housing price index
7 maintained by the Director of the Federal Housing
8 Finance Agency (pursuant to section 1322 of the
9 Housing and Community Development Act of 1992
10 (12 U.S.C. 4541)).”.

11 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)
12 of the Federal Home Loan Mortgage Corporation
13 Act is amended by adding after the period at the
14 end the following: Such foregoing limitations shall
15 also be increased with respect to properties of a par-
16 ticular size located in any area for which the median
17 price for such size residence exceeds the foregoing
18 limitation for such size residence, to the lesser of
19 150 percent of such foregoing limitation for such
20 size residence or the amount that is equal to the me-
21 dian price in such area for such size residence, ex-
22 cept that, subject to the order, if any, issued by the
23 Director of the Federal Housing Finance Agency
24 pursuant to section 123(d)(3) of the Federal Hous-
25 ing Finance Reform Act of 2005, such increase shall



1 apply only with respect to mortgages on which are
2 based securities issued and sold by the Corporation.

3 (c) HOUSING PRICE INDEX.—Subpart A of part 2 of
4 subtitle A of title XIII of the Housing and Community
5 Development Act of 1992 (as amended by the preceding
6 provisions of this Act) is amended by inserting after sec-
7 tion 1321 (as added by section 122 of this Act) the fol-
8 lowing new section:

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

10 “(a) IN GENERAL.—The Director shall establish and
11 maintain a method of assessing the national average 1-
12 family house price for use for adjusting the conforming
13 loan limitations of the enterprises. In establishing such
14 method, the Director shall take into consideration the
15 monthly survey of all major lenders conducted by the Fed-
16 eral Housing Finance Agency to determine the national
17 average 1-family house price, the House Price Index main-
18 tained by the Office of Federal Housing Enterprise Over-
19 sight of the Department of Housing and Urban Develop-
20 ment before the effective date under section 184 of the
21 Federal Housing Finance Reform Act of 2005, any appro-
22 priate house price indexes of the Bureau of the Census
23 of the Department of Commerce, and any other indexes
24 or measures that the Director considers appropriate.

25 “(b) GAO AUDIT.—



1 “(1) IN GENERAL.—At such times as are re-
2 quired under paragraph (2), the Comptroller Gen-
3 eral of the United States shall conduct an audit of
4 the methodology established by the Director under
5 subsection (a) to determine whether the methodology
6 established is an accurate and appropriate means of
7 measuring changes to the national average 1-family
8 house price.

9 “(2) TIMING.—An audit referred to in para-
10 graph (1) shall be conducted and completed not later
11 than the expiration of the 180-day period that be-
12 gins upon each of the following dates:

13 “(A) ESTABLISHMENT.—The date upon
14 which such methodology is initially established
15 under subsection (a) in final form by the Direc-
16 tor.

17 “(B) MODIFICATION OR AMENDMENT.—
18 Each date upon which any modification or
19 amendment to such methodology is adopted in
20 final form by the Director.

21 “(3) REPORT.—Within 30 days of the comple-
22 tion of any audit conducted under this subsection,
23 the Comptroller General shall submit a report detail-
24 ing the results and conclusions of the audit to the
25 Director, the Committee on Financial Services of the



1 House of Representatives, and the Committee on
2 Banking, Housing, and Urban Affairs of the Sen-
3 ate.”.

4 (d) CONDITIONS ON CONFORMING LOAN LIMIT FOR
5 HIGH-COST AREAS.—

6 (1) STUDY.—The Director of the Federal
7 Housing Finance Agency shall conduct a study
8 under this subsection during the six-month period
9 beginning on the effective date under section 184 of
10 this Act.

11 (2) ISSUES.—The study under this subsection
12 shall determine—

13 (A) the effect that restricting the con-
14 forming loan limits for high-cost areas only to
15 mortgages on which are based securities issued
16 and sold by the Federal National Mortgage As-
17 sociation and the Federal Home Loan Mortgage
18 Corporation (as provided in the last sentence of
19 section 302(b)(2) of the Federal National Mort-
20 gage Association Charter Act and the last sen-
21 tence of section 305(a)(2) of the Federal Home
22 Loan Mortgage Corporation Act, pursuant to
23 the amendments made by subsections (a)(2)
24 and (b)(2) of this section) would have on the



1 cost to borrowers for mortgages on housing in
2 such high-cost areas;

3 (B) the effects that such restrictions would
4 have on the availability of mortgages for hous-
5 ing in such high-cost areas; and

6 (C) the extent to which the Federal Na-
7 tional Mortgage Association and the Federal
8 Home Loan Mortgage Corporation will be able
9 to issue and sell securities based on mortgages
10 for housing located in such high-cost areas.

11 (3) DETERMINATION.—

12 (A) IN GENERAL.—Not later than the ex-
13 piration of the six-month period specified in
14 paragraph (1), the Director of the Federal
15 Housing Finance Agency shall make a deter-
16 mination, based on the results of the study
17 under this subsection, of whether the restriction
18 of conforming loan limits for high-cost areas
19 only to mortgages on which are based securities
20 issued and sold by the Federal National Mort-
21 gage Association and the Federal Home Loan
22 Mortgage Corporation (as provided in the
23 amendments made by subsections (a)(2) and
24 (b)(2) of this section) will result in an increase



1 in the cost to borrowers for mortgages on hous-
2 ing in such high-cost areas.

3 (B) ORDER.— If such determination is
4 that costs to borrowers on housing in such
5 high-cost areas will be increased by such re-
6 strictions, the Director may issue an order ter-
7 minating such restrictions, in whole or in part.

8 (4) PUBLICATION.— Not later than the expira-
9 tion of the six-month period specified in paragraph
10 (1), the Director of the Federal Housing Finance
11 Agency shall cause to be published in the Federal
12 Register—

13 (A) a report that—

14 (i) describes the study under this sub-
15 section; and

16 (ii) sets forth the conclusions of the
17 study regarding the issues to be deter-
18 mined under paragraph (2); and

19 (B) notice of the determination of the Di-
20 rector under paragraph (3); and

21 (C) the order of the Director under para-
22 graph (3).

23 (5) DEFINITION.—For purposes of this sub-
24 section, the term “conforming loan limits for high-
25 cost areas” means the dollar amount limitations ap-



1 plicable under the section 302(b)(2) of the Federal
2 National Mortgage Association Charter Act and sec-
3 tion 305(a)(2) of the Federal Home Loan Mortgage
4 Corporation Act (as amended by subsections (a) and
5 (b) of this section) for areas described in the last
6 sentence of such sections (as so amended).

7 **SEC. 124. ANNUAL HOUSING REPORT REGARDING REGU-**
8 **LATED ENTITIES.**

9 The Housing and Community Development Act of
10 1992 is amended by striking section 1324 (12 U.S.C.
11 4544) and inserting the following new section:

12 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**
13 **LATED ENTITIES.**

14 “(a) IN GENERAL.—After reviewing and analyzing
15 the reports submitted under section 309(n) of the Federal
16 National Mortgage Association Charter Act, section
17 307(f) of the Federal Home Loan Mortgage Corporation
18 Act, and section 10(j)(12) of the Federal Home Loan
19 Bank Act (12 U.S.C. 1430(j)(12)), the Director shall sub-
20 mit a report, not later than October 30 of each year, to
21 the Committee on Financial Services of the House of Rep-
22 resentatives and the Committee on Banking, Housing, and
23 Urban Affairs of the Senate, on the activities of each regu-
24 lated entity.

25 “(b) CONTENTS.—The report shall—



1 “(1) discuss the extent to which—

2 “(A) each enterprise is achieving the an-
3 nual housing goals established under subpart B
4 of this part;

5 “(B) each enterprise is complying with sec-
6 tion 1337;

7 “(C) each Federal home loan bank com-
8 plying with section 10(j) of the Federal Home
9 Loan Bank Act; and

10 “(D) each regulated entity is achieving the
11 purposes of the regulated entity established by
12 law;

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

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

20 “(4) examine actions that—

21 “(A) each enterprise has undertaken or
22 could undertake to promote and expand the an-
23 nual goals established under subpart B and the
24 purposes of the enterprise established by law;
25 and



1 “(B) each Federal home loan bank has
2 taken or could undertake to promote and ex-
3 pand the community investment program and
4 affordable housing program of the bank estab-
5 lished under section subsections (i) and (j) of
6 section 10 of the Federal Home Loan Bank
7 Act;

8 “(5) examine the primary and secondary multi-
9 family housing mortgage markets and describe—

10 “(A) the availability and liquidity of mort-
11 gage credit;

12 “(B) the status of efforts to provide stand-
13 ard credit terms and underwriting guidelines
14 for multifamily housing and to securitize such
15 mortgage products; and

16 “(C) any factors inhibiting such standard-
17 ization and securitization;

18 “(6) examine actions each regulated entity has
19 undertaken and could undertake to promote and ex-
20 pand opportunities for first-time homebuyers;

21 “(7) describe any actions taken under section
22 1325(5) with respect to originators found to violate
23 fair lending procedures; and

24 “(8) discuss and analyze existing conditions and
25 trends, including conditions and trends relating to



1 pricing, in the housing markets and mortgage mar-
2 kets.

3 “(c) DATA COLLECTION AND REPORTING.—

4 “(1) IN GENERAL.—To assist the Director in
5 analyzing the matters described in subsection (b)
6 and establishing the methodology described in sec-
7 tion 1322, the Director shall conduct, on a monthly
8 basis, a survey of mortgage markets in accordance
9 with this subsection.

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

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

19 “(i) the price of the house that se-
20 cures the mortgage;

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

24 “(iii) the terms of the mortgage;



1 “(iv) the creditworthiness of the bor-
2 rower or borrowers; and

3 “(v) whether the mortgage, in the
4 case of a conforming mortgage, was pur-
5 chased by an enterprise; and

6 “(B) such other matters as the Director
7 determines to be appropriate.

8 “(3) PUBLIC AVAILABILITY.—The Director
9 shall make any data collected by the Director in con-
10 nection with the conduct of a monthly survey avail-
11 able to the public in a timely manner, provided that
12 the Director may modify the data released to the
13 public to ensure that the data is not released in an
14 identifiable form.

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

21 **SECTION 125. REVISION OF HOUSING GOALS.**

22 (a) HOUSING GOALS.—The Housing and Community
23 Development Act of 1992 is amended by striking sections
24 1331 through 1334 (12 U.S.C. 4561–4) and inserting the
25 following new sections:



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

2 “(a) IN GENERAL.—The Director shall establish, ef-
3 fective for the first year that begins after the effective date
4 under section 184 of the Federal Housing Finance Reform
5 Act of 2005 and each year thereafter, annual housing
6 goals, with respect to the mortgage purchases by the en-
7 terprises, as follows:

8 “(1) SINGLE FAMILY HOUSING GOALS.—Three
9 single-family housing goals under section 1332.

10 “(2) MULTIFAMILY SPECIAL AFFORDABLE
11 HOUSING GOALS.—A multifamily special affordable
12 housing goal under section 1333.

13 “(b) TIMING.—The Director shall establish an annual
14 deadline by which the Director shall establish the annual
15 housing goals under this subpart for each year, taking into
16 consideration the need for the enterprises to reasonably
17 and sufficiently plan their operations and activities in ad-
18 vance, including operations and activities necessary to
19 meet such annual goals.

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

21 “(a) IN GENERAL.—The Director shall establish an
22 annual goal for the purchase by each enterprise of conven-
23 tional, conforming, single-family, owner-occupied, pur-
24 chase money mortgages financing housing for each of the
25 following categories of families:

26 “(1) Low-income families.



1 “(2) Families that reside in low-income areas.

2 “(3) Very low-income families.

3 “(b) DETERMINATION OF COMPLIANCE.—The Direc-
4 tor shall determine, for each year that the housing goal
5 under this section is in effect pursuant to section 1331(a),
6 whether each enterprise has complied with the single-fam-
7 ily housing goal established under this section for such
8 year. An enterprise shall be considered to be in compliance
9 with such a goal for a year only if—

10 “(1) for each of the types of families described
11 in subsection (a), the percentage of the number of
12 conventional, conforming, single-family, owner-occu-
13 pied, purchase money mortgages purchased by each
14 enterprise in such year that serve such families,
15 meets or exceeds

16 “(2) the target for the year for such type of
17 family that is established under subsection (c).

18 “(c) ANNUAL TARGETS.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), for each of the types of families described
21 in subsection (a), the target under this subsection
22 for a year shall be the average percentage, for the
23 three years that most recently precede such year and
24 for which information under the Home Mortgage
25 Disclosure Act of 1975 is publicly available, of the



1 number of conventional, conforming, single-family,
2 owner-occupied, purchase money mortgages origi-
3 nated in such year that serves such type of family,
4 as determined by the Director using the information
5 obtained and determined pursuant to paragraphs (3)
6 and (4).

7 “(2) AUTHORITY TO INCREASE TARGETS.—

8 “(A) IN GENERAL.—The Director may, for
9 any year, establish by regulation, for any or all
10 of the types of families described in subsection
11 (a), percentage targets that are higher than the
12 percentages for such year determined pursuant
13 to paragraph (1), to reflect expected changes in
14 market performance related to such information
15 under the Home Mortgage Disclosure Act of
16 1975.

17 “(B) FACTORS.—In establishing any tar-
18 gets pursuant to subparagraph (A), the Direc-
19 tor shall consider the following factors:

20 “(i) National housing needs.

21 “(ii) Economic, housing, and demo-
22 graphic conditions.

23 “(iii) The performance and effort of
24 the enterprises toward achieving the hous-



1 ing goals under this section in previous
2 years.

3 “(iv) The size of the conventional
4 mortgage market serving each of the types
5 of families described in subsection (a) rel-
6 ative to the size of the overall conventional
7 mortgage market.

8 “(v) The need to maintain the sound
9 financial condition of the enterprises.

10 “(3) HMDA INFORMATION.—The Director
11 shall annually obtain information submitted in com-
12 pliance with the Home Mortgage Disclosure Act of
13 1975 regarding conventional, conforming, single-
14 family, owner-occupied, purchase money mortgages
15 originated and purchased for the previous year.

16 “(4) CONFORMING MORTGAGES.—In deter-
17 mining whether a mortgage is a conforming mort-
18 gage for purposes of this paragraph, the Director
19 shall consider the original principal balance of the
20 mortgage loan to be the principal balance as re-
21 ported in the information referred to in paragraph
22 (3), as rounded to the nearest thousand dollars.

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



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

11 “(2) COMMENT PERIOD.—The Director shall
12 provide each enterprise an opportunity to comment
13 on the determination during the 30-day period be-
14 ginning upon receipt by the enterprise of the notice.

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

21 **“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE GOAL.**

22 “(a) ESTABLISHMENT.—

23 “(1) IN GENERAL.—The Director shall estab-
24 lish, by regulation, an annual goal for the purchase



1 by each enterprise of each of the following types of
2 mortgages on multifamily housing:

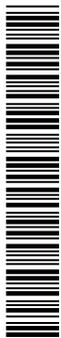
3 “(A) Mortgages that finance dwelling units
4 for very low-income families.

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

9 “(2) ADDITIONAL REQUIREMENTS FOR SMALL-
10 ER PROJECTS.—The Director shall establish, within
11 the goal under this section, additional requirements
12 for the purchase by each enterprise of mortgages de-
13 scribed in paragraph (1) for multifamily housing
14 projects of a smaller or limited size, which may be
15 based on the number of dwelling units in the project
16 or the amount of the mortgage, or both, and shall
17 include multifamily housing projects of such smaller
18 sizes as are typical among such projects that serve
19 rural areas.

20 “(3) FACTORS.—In establishing the goal under
21 this section relating to mortgages on multifamily
22 housing for an enterprise, the Director shall
23 consider—

24 “(A) national multifamily mortgage credit
25 needs;



1 “(B) the performance and effort of the en-
2 terprise in making mortgage credit available for
3 multifamily housing in previous years;

4 “(C) the size of the multifamily mortgage
5 market;

6 “(D) the ability of the enterprise to lead
7 the industry in making mortgage credit avail-
8 able, especially for underserved markets, such
9 as for small multifamily projects of 5 to 50
10 units, multifamily properties in need of rehabili-
11 tation, and multifamily properties located in
12 rural areas; and

13 “(E) the need to maintain the sound finan-
14 cial condition of the enterprise.

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

23 “(1) such bonds are secured by a guarantee of
24 the enterprise; or



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

3 “(c) USE OF TENANT INCOME OR RENT.—The Di-
4 rector shall monitor the performance of each enterprise
5 in meeting the goals established under this section and
6 shall evaluate such performance (for purposes of section
7 1336) based on—

8 “(1) the income of the prospective or actual
9 tenants of the property, where such data are avail-
10 able; or

11 “(2) where the data referred to in paragraph
12 (1) are not available, rent levels affordable to low-
13 income and very low-income families.

14 A rent level shall be considered to be affordable for pur-
15 poses of this subsection for an income category referred
16 to in this subsection if it does not exceed 30 percent of
17 the maximum income level of such income category, with
18 appropriate adjustments for unit size as measured by the
19 number of bedrooms.

20 “(d) DETERMINATION OF COMPLIANCE.—The Direc-
21 tor shall, for each year that the housing goal under this
22 section is in effect pursuant to section 1331(a), determine
23 whether each enterprise has complied with such goal and
24 the additional requirements under subsection (a)(2)..



1 **“SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING**
2 **GOALS.**

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

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

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

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

21 “(c) **DETERMINATION.**—The Director shall make a
22 determination regarding any proposed reduction within 30
23 days of receipt of the petition regarding the reduction. The
24 Director may extend such period for a single additional
25 15-day period, but only if the Director requests additional
26 information from the enterprise. A denial by the Director



1 to reduce the level of any goal under this section may be
2 appealed to the United States District Court for the Dis-
3 trict of Columbia or the United States district court in
4 the jurisdiction in which the headquarters of an enterprise
5 is located.”.

6 (b) CONFORMING AMENDMENTS.—The Housing and
7 Community Development Act of 1992 is amended—

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

13 (2) in section 1336 (12 U.S.C. 4566)—

14 (A) in section (a)(1), by striking “sections
15 1332, 1333, and 1334,” and inserting “this
16 subpart”; and

17 (B) in subsection (b)(1), by striking “sec-
18 tion 1332, 1333, or 1334,” and inserting “this
19 subpart”;

20 (c) DEFINITIONS.—Section 1303 of the Housing and
21 Community Development Act of 1992 (12 U.S.C. 4502),
22 as amended by the preceding provisions of this Act, is fur-
23 ther amended—



1 (1) in paragraph (25), by striking “60 percent”
2 each place such term appears and inserting “50 per-
3 cent”;

4 (2) by redesignating paragraphs (23) through
5 (26) as paragraphs (27) through (30), respectively;

6 (3) by inserting after paragraph (22) the fol-
7 lowing new paragraph:

8 “(26) RURAL AREAS.—The term ‘rural areas’
9 means any areas that are non-metropolitan areas (as
10 such term is defined by the Director of the Office of
11 Management and Budget), including micropolitan
12 areas.”.

13 (4) by redesignating paragraphs (14) through
14 (22) as paragraphs (17) through (25), respectively;
15 and

16 (5) by inserting after paragraph (13) the fol-
17 lowing new paragraph:

18 “(16) LOW-INCOME AREA.—The term ‘low in-
19 come area’ means a census tract or block numbering
20 area in which the median income does not exceed 80
21 percent of the median income for the area in which
22 such census tract or block numbering area is lo-
23 cated.”;

24 (6) by redesignating paragraphs (12) and (13)
25 as paragraphs (14) and (15), respectively;



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

3 “(13) EXTREMELY LOW-INCOME.—The term
4 ‘extremely 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
9 not in excess of 30 percent of the area median
10 income, with adjustments for smaller and larger
11 families, as determined by the Secretary.”;

12 (8) by redesignating paragraphs (8) through
13 (11) as paragraphs (9) through (12), respectively;
14 and

15 (9) by inserting after paragraph (7) the fol-
16 lowing new paragraph:

17 “(8) CONFORMING MORTGAGE.—The term ‘con-
18 forming mortgage’ means, with respect to an enter-
19 prise, a conventional mortgage having an original
20 principal obligation that does not exceed the dollar
21 limitation, in effect at the time of such origination,
22 under, as 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
2 Home Loan Mortgage Corporation Act.”.

3 **SEC. 126. DUTY TO SERVE UNDERSERVED MARKETS.**

4 (a) ESTABLISHMENT AND EVALUATION OF PER-
5 FORMANCE.—Section 1335 of the Housing and Commu-
6 nity Development Act of 1992 (12 U.S.C. 4565) is
7 amended—

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

11 (2) by striking subsection (b);

12 (3) in subsection (a)—

13 (A) in the matter preceding paragraph (1),
14 by inserting “and to carry out the duty under
15 subsection (a) of this section,” before “, each
16 enterprise shall”;

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

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

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

22 (E) by redesignating such subsection as
23 subsection (b);



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

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

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

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

23 “(A) MANUFACTURED HOUSING.—The en-
24 terprise shall lead the industry in developing
25 loan products and flexible underwriting guide-



1 lines to facilitate a secondary market for mort-
2 gages on manufactured homes for very low-,
3 low-, and moderate-income families.

4 “(B) AFFORDABLE HOUSING PRESERVA-
5 TION.—The enterprise shall lead the industry in
6 developing loan products and flexible under-
7 writing guidelines to facilitate a secondary mar-
8 ket to preserve housing affordable to very low-
9 , low-, and moderate-income families, including
10 housing projects subsidized under—

11 “(i) the project-based and tenant-
12 based rental assistance programs under
13 section 8 of the United States Housing Act
14 of 1937;

15 “(ii) the program under section 236
16 of the National Housing Act;

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

20 “(iv) the supportive housing for the
21 elderly program under section 202 of the
22 Housing Act of 1959;

23 “(v) the supportive housing program
24 for persons with disabilities under section



1 811 of the Cranston-Gonzalez National Af-
2 fordable Housing Act; and

3 “(vi) the rural rental housing program
4 under section 515 of the Housing Act of
5 1949.

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

20 (5) by adding at the end the following new sub-
21 section:

22 “(c) EVALUATION AND REPORTING OF COMPLI-
23 ANCE.—

24 “(1) IN GENERAL.—Not later than 6 months
25 after the effective date under section 184 of the



1 Federal Housing Finance Reform Act of 2005, the
2 Director shall establish a manner for evaluating
3 whether, and the extent to which, the enterprises
4 have complied with the duty under subsection (a) to
5 serve underserved markets and for rating the extent
6 of such compliance. Using such method, the Director
7 shall, for each year, evaluate such compliance and
8 rate the performance of each enterprise as to extent
9 of compliance. The Director shall include such eval-
10 uation and rating for each enterprise for a year in
11 the report for that year submitted pursuant to sec-
12 tion 1319B(a).

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

20 “(A) the development of loan products and
21 more flexible underwriting guidelines;

22 “(B) the extent of outreach to qualified
23 loan sellers in each of such underserved mar-
24 kets; and



1 “(C) the volume of loans purchased in each
2 of such underserved markets.”.

3 (b) ENFORCEMENT.—Subsection (a) of section 1336
4 of the Housing and Community Development Act of 1992
5 (12 U.S.C. 4566(a)) is amended—

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

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

13 “(4) ENFORCEMENT OF DUTY TO PROVIDE
14 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—
15 The duty under section 1335(a) of each enterprise
16 to serve underserved markets (as determined in ac-
17 cordance with section 1335(c)) shall be enforceable
18 under this section to the same extent and under the
19 same provisions that the housing goals established
20 under sections 1332, 1333, and 1334 are enforce-
21 able. Such duty shall not be enforceable under any
22 other provision of this title (including subpart C of
23 this part) other than this section or under any provi-
24 sion of the Federal National Mortgage Association



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

3 **SEC. 127. MONITORING AND ENFORCING COMPLIANCE**
4 **WITH HOUSING GOALS.**

5 Section 1336 of the Housing and Community Devel-
6 opment Act of 1992 (12 U.S.C. 4566) is amended—

7 (1) in subsection (b)—

8 (A) in the subsection heading, by inserting
9 “Preliminary” before “Determination”;

10 (B) by striking paragraph (1) and insert-
11 ing the following new paragraph:

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

21 (C) in paragraph (2)—

22 (i) in subparagraph (A), by inserting
23 “finally” before “determining”;



1 (ii) by striking subparagraphs (B) and
2 (C) and inserting the following new sub-
3 paragraph:

4 “(B) EXTENSION OR SHORTENING OF PE-
5 RIOD.—The Director may—

6 “(i) extend the period under subpara-
7 graph (A) for good cause for not more
8 than 30 additional days; and

9 “(ii) shorten the period under sub-
10 paragraph (A) for good cause.”; and

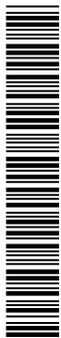
11 (iii) by redesignating subparagraph
12 (D) as subparagraph (C); and
13 (D) in paragraph (3)—

14 (i) in subparagraph (A), by striking
15 “determine” and inserting “issue a final
16 determination of”;

17 (ii) in subparagraph (B), by inserting
18 “final” before “determinations”; and

19 (iii) in subparagraph (C)—

20 (I) by striking “Committee on
21 Banking, Finance and Urban Affairs”
22 and inserting “Committee on Finan-
23 cial Services”; and



1 (II) by inserting “final” before
2 “determination” each place such term
3 appears; and

4 (2) in subsection (c)—

5 (A) by striking the subsection designation
6 and heading and all that follows through the
7 end of paragraph (1) and inserting the fol-
8 lowing:

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

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



1 sist order in accordance with section 1341, impose
2 civil money penalties in accordance with section
3 1345, or order other remedies as set forth in para-
4 graph (7) of this subsection.”;

5 (B) in paragraph (2)—

6 (i) by striking “**CONTENTS.**—Each
7 housing plan” and inserting “**HOUSING**
8 **PLAN.**—If the Director requires a housing
9 plan under this section, such a plan”; and

10 (ii) in subparagraph (B), by inserting
11 “and changes in its operations” after “im-
12 provements”;

13 (C) in paragraph (3)—

14 (i) by inserting “comply with any re-
15 medial action or” before “submit a housing
16 plan”; and

17 (ii) by striking “under subsection
18 (b)(3) that a housing plan is required”;

19 (D) in paragraph (4), by striking the first
20 two sentences and inserting the following: “The
21 Director shall review each submission by an en-
22 terprise, including a housing plan submitted
23 under this subsection, and not later than 30
24 days after submission, approve or disapprove
25 the plan or other action. The Director may ex-



1 tend the period for approval or disapproval for
2 a single additional 30-day period if the Director
3 determines such extension necessary.”; and

4 (E) by adding at the end the following new
5 paragraph:

6 “(7) **ADDITIONAL REMEDIES FOR FAILURE TO**
7 **MEET GOALS.**—In addition to ordering a housing
8 plan under this section, issuing cease and desist or-
9 ders under section 1341, and ordering civil money
10 penalties under section 1345, the Director may seek
11 other actions when an enterprise fails to meet a
12 goal, and exercise appropriate enforcement authority
13 available to the Director under this Act to prohibit
14 the enterprise from entering into new programs and
15 new business activities and to order the enterprise to
16 suspend programs and business activities pending its
17 achievement of the goal.”.

18 **SEC. 128. AFFORDABLE HOUSING FUND.**

19 The Housing and Community Development Act of
20 1992 is amended by striking sections 1337 and 1338 (12
21 U.S.C. 4562 note) and inserting the following new section:

22 **“SEC. 1337. AFFORDABLE HOUSING FUND.**

23 “(a) **ESTABLISHMENT AND PURPOSE.**—Each enter-
24 prise shall establish and manage an affordable housing



1 fund in accordance with this section. The purpose of the
2 affordable housing fund shall be—

3 “(1) to increase homeownership for extremely
4 low-and very low-income families;

5 “(2) to increase investment in housing in low-
6 income areas, and areas designated as qualified cen-
7 sus tracts or an area of chronic economic distress
8 pursuant to section 143(j) of the Internal Revenue
9 Code of 1986 (26 U.S.C. 143(j)); and

10 “(3) to increase and preserve the supply of
11 rental and owner-occupied housing for extremely
12 low- and very low-income families.

13 “(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

14 “(1) IN GENERAL.—In accordance with regula-
15 tions issued by the Director under subsection (j) and
16 subject to paragraph (2) of this subsection, each en-
17 terprise shall allocate to the affordable housing fund
18 established under subsection (a) by the enterprise—

19 “(A) in the first year beginning after the
20 effective date under section 184 of the Federal
21 Housing Finance Reform Act of 2005, 3.5 per-
22 cent of the after-tax income of the enterprise
23 for the preceding year; and

24 “(B) in the second year beginning after
25 the effective date under section 184 of the Fed-



1 eral Housing Finance Reform Act of 2005 and
2 each year thereafter, 5 percent of the after-tax
3 income of the enterprise for the preceding year.

4 “(2) LIMITATION.—An enterprise shall not be
5 required to make an allocation for a year to the af-
6 fordable housing fund of the enterprise established
7 under subsection (a) unless—

8 “(A) the enterprise is classified by the Di-
9 rector at the time of such allocation as ade-
10 quately capitalized; and

11 “(B) the enterprise generated after-tax in-
12 come for the preceding year.

13 “(3) DETERMINATION OF AFTER-TAX IN-
14 COME.—For purposes of this section, the term
15 ‘after-tax income’ means, with respect to an enter-
16 prise for a year, the amount reported by the enter-
17 prise for such year in the enterprise’s annual report
18 for such year that is filed with the Securities and
19 Exchange Commission, except that for any year in
20 which no such filing is made by an enterprise or
21 such filing is not timely made, such term means the
22 amount determined by the Director based on the in-
23 come tax return filings of the enterprise.

24 “(c) SELECTION OF ACTIVITIES FUNDED USING AF-
25 FORDABLE HOUSING FUND AMOUNTS.—Amounts from



1 the affordable housing fund of the enterprise may be used,
2 or committed for use, only for activities that—

3 “(1) are eligible under subsection (d) for such
4 use; and

5 “(2) are selected for funding by the enterprise
6 in accordance with the process and criteria for such
7 selection established pursuant to subsection
8 (j)(2)(C).

9 “(d) ELIGIBLE ACTIVITIES.—Amounts from the af-
10 fordable housing fund of an enterprise shall be eligible for
11 use, or for commitment for use, only for assistance for—

12 “(1) the production, preservation, and rehabili-
13 tation of rental housing, including housing under the
14 programs identified in section 1335(a)(2)(B), except
15 that amounts provided from the Fund may be used
16 for the benefit only of extremely low- and very low-
17 income families; and

18 “(2) the production, preservation, and rehabili-
19 tation of housing for homeownership, including such
20 forms as downpayment assistance, closing cost as-
21 sistance, and assistance for interest-rate buy-downs,
22 that—

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



1 “(i) extremely low- and very-low in-
2 come families at the times described in
3 subparagraphs (A) through (C) of section
4 215(b)(2) of the Cranston-Gonzalez Na-
5 tional Affordable Housing Act (42 U.S.C.
6 12745(b)(2)); and

7 “(ii) first-time homebuyers, as such
8 term is defined in section 104 of the Cran-
9 ston-Gonzalez National Affordable Housing
10 Act (42 U.S.C. 12704), except that any
11 reference in such section to assistance
12 under title II of such Act shall for pur-
13 poses of this section be considered to refer
14 to assistance from the affordable housing
15 fund of the enterprise;

16 “(B) has an initial purchase price that
17 meets the requirements of section 215(b)(1) of
18 the Cranston-Gonzalez National Affordable
19 Housing Act;

20 “(C) is subject to the same resale restric-
21 tions established under section 215(b)(3) of the
22 Cranston-Gonzalez National Affordable Hous-
23 ing Act and applicable to the participating ju-
24 risdiction that is the State in which hous-
25 ing is located.



1 “(e) LIMITATIONS ON USE.—

2 “(1) AMOUNTS FOR HOMEOWNERSHIP.—Of any
3 amounts allocated pursuant to subsection (b) in each
4 year to the affordable housing fund of an enterprise,
5 not less than 10 percent shall be used for activities
6 under paragraphs (2) and (3) of subsection (d).

7 “(2) DEADLINE FOR COMMITMENT OR USE.—
8 Any amounts allocated to the affordable housing
9 fund of an enterprise shall be used or committed for
10 use within two years of the date of such allocation.

11 “(3) USE OF RETURNS.—Any return on invest-
12 ment of any amounts allocated pursuant to sub-
13 section (b) to the affordable housing fund of an en-
14 terprise shall be available for use by the enterprise
15 only for eligible activities under subsection (d).

16 “(4) ADMINISTRATIVE COSTS.—The Director
17 shall, by regulation—

18 “(A) provide that, except as provided in
19 subparagraph (B), amounts allocated to the af-
20 fordable housing fund of an enterprise may not
21 be used for administrative, outreach, or other
22 costs of—

23 “(i) the enterprise; or

24 “(ii) any recipient of amounts from
25 the affordable housing fund; and



1 “(B) limit the amount of any such con-
2 tributions that may be used for administrative
3 costs of the enterprise of maintaining the af-
4 fordable housing fund and carrying out the pro-
5 gram under this section.

6 “(5) PROHIBITION OF CONSIDERATION OF USE
7 FOR MEETING HOUSING GOALS.—In determining
8 compliance with the housing goals under this sub-
9 part, the Director may not consider amounts used
10 under this section for eligible activities under sub-
11 section (d). The Director shall give credit toward the
12 achievement of such housing goals to purchases of
13 mortgages for housing that receives funding under
14 this section, but only to the extent that such pur-
15 chases are funded other than under this section.

16 “(f) CONSISTENCY OF USE WITH HOUSING
17 NEEDS.—

18 “(1) PERIODIC REPORTS.—The Director shall
19 require each enterprise to submit a report, on a peri-
20 odic basis, to the Director and the affordable hous-
21 ing board established under subsection (i) describing
22 the activities funded under this section during such
23 quarter with amounts from the affordable housing
24 fund of the enterprise established under this section.
25 The Director shall make such reports publicly avail-



1 able. The affordable housing board shall review each
2 report by an enterprise to determine the consistency
3 of such activities funded with the criteria for selec-
4 tion of such activities established pursuant to sub-
5 section (j)(2)(C).

6 “(2) REPLENISHMENT.—If the affordable hous-
7 ing board determines that an activity funded by an
8 enterprise with amounts from the affordable housing
9 fund of the enterprise is not consistent with the cri-
10 teria established pursuant to subsection (j)(2)(C),
11 the board shall notify the Director and the Director
12 shall require the enterprise to allocate to such af-
13 fordable housing fund (in addition to amounts allo-
14 cated in compliance with subsection (b)) an amount
15 equal to the sum of the amounts from the affordable
16 housing fund used and further committed for use for
17 such activity.

18 “(g) CAPITAL REQUIREMENTS.—The utilization or
19 commitment of amounts from the affordable housing fund
20 of an enterprise shall not be subject to the risk-based cap-
21 ital requirements established pursuant to section 1361(a).

22 “(h) REPORTING REQUIREMENT.—Each enterprise
23 shall include, in the report required under section 309(m)
24 of the Federal National Mortgage Association Charter Act
25 or section 307(f) of the Federal Home Loan Mortgage



1 Corporation Act, as applicable, a description of the actions
2 taken by the enterprise to utilize or commit amounts allo-
3 cated under this section to the affordable housing fund
4 of the enterprise established under this section.

5 “(i) AFFORDABLE HOUSING BOARD.—

6 “(1) APPOINTMENT.—The Director shall ap-
7 point an affordable housing board of 7, 9, or 11 per-
8 sons, who shall include—

9 “(A) the Director, or the Director’s des-
10 ignee;

11 “(B) the Secretary of Housing and Urban
12 Development, or the Secretary’s designee;

13 “(C) the Secretary of Agriculture, or the
14 Secretary’s designee;

15 “(D) 2 persons from for-profit organiza-
16 tions or businesses actively involved in pro-
17 viding or promoting affordable housing for ex-
18 tremely low- and very low-income households;
19 and

20 “(E) 2 persons from nonprofit organiza-
21 tions actively involved in providing or promoting
22 affordable housing for extremely low- and very
23 low-income households.

24 “(2) TERMS.—



1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term of each member of
3 the affordable housing board appointed pursu-
4 ant to paragraph (1) (but not including mem-
5 bers appointed pursuant to subparagraphs (A),
6 (B), and (C)) shall be 3 years.

7 “(B) INITIAL APPOINTEES.—The Director
8 shall appoint the initial members of the afford-
9 able housing board not later than the expiration
10 of the 60-day period beginning on the date of
11 the enactment of this Act. As designated by the
12 Director at the time of appointment, of the
13 members of the affordable housing board first
14 appointed pursuant to paragraph (1) (but not
15 including members appointed pursuant to sub-
16 paragraphs (A), (B), and (C))—

17 “(i) in the case of a board having 7
18 members—

19 “(I) one shall be appointed for a
20 term of one year; and

21 “(II) one shall be appointed for a
22 term of two years;

23 “(ii) in the case of a board having 9
24 members—



1 “(I) two shall be appointed for a
2 term of one year; and

3 “(II) two shall be appointed for a
4 term of two years; and

5 “(iii) in the case of a board having 11
6 members—

7 “(I) two shall be appointed for a
8 term of one year; and

9 “(II) three shall be appointed for
10 a term of two years;

11 “(3) DUTIES.—The affordable housing board
12 shall meet not less than quarterly—

13 “(A) to determine extremely low- and very
14 low-income housing needs;

15 “(B) to advise the Director with respect
16 to—

17 “(i) establishment of the selection cri-
18 teria under subsection (j)(2)(C) that pro-
19 vide for appropriate use of amounts from
20 the affordable housing funds of the enter-
21 prises to meet such needs; and

22 “(ii) operation of, and changes to, the
23 program under this section appropriate to
24 meet such needs; and



1 “(C) to review the reports submitted by
2 the enterprises pursuant to subsection (f)(1) to
3 determine whether the activities funded using
4 amounts from the affordable housing funds of
5 the enterprises comply with the regulations
6 issued pursuant to subsection (j)(2)(C) and in-
7 form the Director of such determinations, for
8 purposes of subsection (f)(2).

9 “(4) EXPENSES AND PER DIEM.—Members of
10 the board shall receive travel expenses, including per
11 diem in lieu of subsistence, in accordance with sec-
12 tions 5702 and 5703 of title 5, United States Code.

13 “(5) ADVISORY COMMITTEE.—The board shall
14 be considered an advisory committee for purposes of
15 the Federal Advisory Committee Act (5 U.S.C.
16 App.).

17 “(6) DURATION.— The board shall have contin-
18 ued existence until terminated by law.

19 “(j) REGULATIONS.—

20 “(1) IN GENERAL.—The Director shall issue
21 regulations to carry out this section.

22 “(2) REQUIRED CONTENTS.—The regulations
23 issued under this subsection shall include—

24 “(A) authority for the Director to audit,
25 provide for an audit, or otherwise verify an en-



1 enterprise’s activities, to ensure compliance with
2 this section;

3 “(B) a requirement that the Director en-
4 sure that the affordable housing fund of each
5 enterprise is audited not less than annually to
6 ensure compliance with this section;

7 “(C) requirements for a process for appli-
8 cation to, and selection by, an enterprise for ac-
9 tivities to be funded with amounts from the af-
10 fordable housing fund, which shall provide
11 that—

12 “(i) selection shall based upon specific
13 criteria, including a prioritization of fund-
14 ing based upon—

15 “(I) greatest impact;

16 “(II) geographic diversity; and

17 “(III) ability to obligate amounts
18 and undertake activities so funded in
19 a timely manner;

20 “(IV) in the case of rental hous-
21 ing projects under subsection (d)(1),
22 the extent to which rents for units in
23 the project funded are affordable, es-
24 pecially for extremely low-income fam-
25 ilies; and



1 “(V) in the case of rental housing
2 projects under subsection (d)(1), the
3 extent of the duration for which such
4 rents will remain affordable.

5 “(ii) an enterprise may not require for
6 such selection that an activity involve fi-
7 nancing or underwriting of any kind by the
8 enterprise (other than funding through the
9 affordable housing fund of the enterprise)
10 and may not give preference in such selec-
11 tion to activities that involve such financ-
12 ing; and

13 “(D) requirements to ensure that amounts
14 from the affordable housing funds of the enter-
15 prises used for rental housing under subsection
16 (d)(1) are used only for the benefit of extremely
17 low- and very-low income families.

18 “(3) LIMITATION.—Any regulations issued by
19 the Director pursuant to this section shall be no
20 more restrictive on the enterprises’ activities in con-
21 nection with the allocation of after-tax income under
22 this section than the regulations issued to implement
23 the affordable housing program of the Federal home
24 loan banks pursuant to section 10(j) of the Federal
25 Home Loan Bank Act (12 U.S.C. 1430(j)).”.



1 **SEC. 129. CONSISTENCY WITH MISSION.**

2 Subpart B of part 2 of subtitle A of title XIII of the
3 Housing and Community Development Act of 1992 (12
4 U.S.C. 4561 et seq.) is amended by adding after section
5 1337, as added by section 127 of this Act, the following
6 new section:

7 **“SEC. 1338. CONSISTENCY WITH MISSION.**

8 “This subpart may not be construed to authorize an
9 enterprise to engage in any program or activity that con-
10 travenes or is inconsistent with the Federal National
11 Mortgage Association Charter Act or the Federal Home
12 Loan Mortgage Corporation Act.”.

13 **SEC. 130. ENFORCEMENT.**

14 (a) CEASE-AND-DESIST PROCEEDINGS.—Section
15 1341 of the Housing and Community Development Act
16 of 1992 (12 U.S.C. 4581) is amended—

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

19 “(a) GROUNDS FOR ISSUANCE.—The Director may
20 issue and serve a notice of charges under this section upon
21 an enterprise if the Director determines—

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



1 “(2) the enterprise has failed to submit a report
2 under section 1314, following a notice of such fail-
3 ure, an opportunity for comment by the enterprise,
4 and a final determination by the Director;

5 “(3) the enterprise has failed to submit the in-
6 formation required under subsection (m) or (n) of
7 section 309 of the Federal National Mortgage Asso-
8 ciation Charter Act, or subsection (e) or (f) of sec-
9 tion 307 of the Federal Home Loan Mortgage Cor-
10 poration Act;

11 “(4) the enterprise has violated any provision of
12 this part or any order, rule or regulation under this
13 part;

14 “(5) the enterprise has failed to submit a hous-
15 ing plan that complies with section 1336(c) within
16 the applicable period; or

17 “(6) the enterprise has failed to comply with a
18 housing plan under section 1336(c).”;

19 (2) in subsection (b)(2), by striking “requiring
20 the enterprise to” and all that follows through the
21 end of the paragraph and inserting the following:

22 “requiring the enterprise to—

23 “(A) comply with the goal or goals;

24 “(B) submit a report under section 1314;



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

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

6 “(E) comply with a housing plan submitted
7 under section 1336(c); or

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

14 (3) in subsection (c), by inserting “date of the”
15 before “service of the order”; and

16 (4) by striking subsection (d).

17 (b) **AUTHORITY OF DIRECTOR TO ENFORCE NOTICES**
18 **AND ORDERS.**—Section 1344 of the Housing and Commu-
19 nity Development Act of 1992 (12 U.S.C. 4584) is amend-
20 ed by striking subsection (a) and inserting the following
21 new subsection:

22 “(a) **ENFORCEMENT.**—The Director may, in the dis-
23 cretion of the Director, apply to the United States District
24 Court for the District of Columbia, or the United States
25 district court within the jurisdiction of which the head-



1 quarters of the enterprise is located, for the enforcement
2 of any effective and outstanding notice or order issued
3 under section 1341 or 1345, or request that the Attorney
4 General of the United States bring such an action. Such
5 court shall have jurisdiction and power to order and re-
6 quire compliance with such notice or order.”.

7 (c) CIVIL MONEY PENALTIES.—Section 1345 of the
8 Housing and Community Development Act of 1992 (12
9 U.S.C. 4585) is amended—

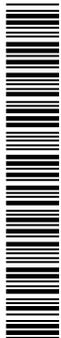
10 (1) by striking subsections (a) and (b) and in-
11 serting the following new subsections:

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

15 “(1) meet any housing goal established under
16 subpart B, following a written notice and determina-
17 tion of such failure in accordance with section
18 1336(b);

19 “(2) submit a report under section 1314, fol-
20 lowing a notice of such failure, an opportunity for
21 comment by the enterprise, and a final determina-
22 tion by the Director;

23 “(3) submit the information required under
24 subsection (m) or (n) of section 309 of the Federal
25 National Mortgage Association Charter Act, or sub-



1 section (e) or (f) of section 307 of the Federal Home
2 Loan Mortgage Corporation Act;

3 “(4) comply with any provision of this part or
4 any order, rule or regulation under this part;

5 “(5) submit a housing plan pursuant to section
6 1336(e) within the required period; or

7 “(6) comply with a housing plan for the enter-
8 prise under section 1336(e).

9 “(b) AMOUNT OF PENALTY.—The amount of the
10 penalty, as determined by the Director, may not exceed—

11 “(1) for any failure described in paragraph (1),
12 (5), or (6) of subsection (a), \$50,000 for each day
13 that the failure occurs; and

14 “(2) for any failure described in paragraph (2),
15 (3), or (4) of subsection (a), \$20,000 for each day
16 that the failure occurs.”;

17 (2) in subsection (c)—

18 (A) in paragraph (1)—

19 (i) in subparagraph (A), by inserting
20 “and” after the semicolon at the end;

21 (ii) in subparagraph (B), by striking
22 “; and” and inserting a period; and

23 (iii) by striking subparagraph (C);
24 and



1 (B) in paragraph (2), by inserting after
2 the period at the end the following: “In deter-
3 mining the penalty under subsection (a)(1), the
4 Director shall give consideration to the length
5 of time the enterprise should reasonably take to
6 achieve the goal.”;

7 (3) in the first sentence of subsection (d)—

8 (A) by striking “request the Attorney Gen-
9 eral of the United States to” and inserting “,
10 in the discretion of the Director,”; and

11 (B) by inserting “, or request that the At-
12 torney General of the United States bring such
13 an action” before the period at the end;

14 (4) by striking subsection (f); and

15 (5) by redesignating subsection (g) as sub-
16 section (f).

17 (d) ENFORCEMENT OF SUBPOENAS.—Section
18 1348(c) of the Housing and Community Development Act
19 of 1992 (12 U.S.C. 4588(c)) is amended—

20 (1) by striking “request the Attorney General
21 of the United States to” and inserting “, in the dis-
22 cretion of the Director,”; and

23 (2) by inserting “or request that the Attorney
24 General of the United States bring such an action,”
25 after “District of Columbia,”



1 (e) CONFORMING AMENDMENT.—The heading for
2 subpart C of part 2 of subtitle A of the Housing and Com-
3 munity Development Act of 1992 is amended to read as
4 follows:

5 **“Subpart C—Enforcement”.**

6 **SEC. 131. CONFORMING AMENDMENTS.**

7 Part 2 of subtitle A of title XIII of the Housing and
8 Community Development Act of 1992 (12 U.S.C. 4541 et
9 seq.) is amended—

10 (1) by striking “Secretary” each place such
11 term appears in such part and inserting “Director”;

12 (2) in the section heading for section 1323 (12
13 U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-
14 fore the period at the end;

15 (3) by striking section 1327 (12 U.S.C. 4547);

16 (4) by striking section 1328 (12 U.S.C. 4548);

17 (5) in sections 1345(c)(1)(A) and 1346(b) (12
18 U.S.C. 4585(c)(1)(A), 4586(b)), by striking “Sec-
19 retary’s” each place such term appears and inserting
20 “Director’s”; and

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



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

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

4 (a) IN GENERAL.—Section 1364 of the Housing and
5 Community Development Act of 1992 (12 U.S.C. 4614)
6 is amended—

7 (1) in the heading for subsection (a) by striking
8 “In General” and inserting “Enterprises”;

9 (2) in subsection (c)—

10 (A) by striking “subsection (b)” and in-
11 serting “subsection (e)”;

12 (B) by striking “enterprises” and inserting
13 “regulated entities”; and

14 (C) by striking the last sentence;

15 (3) by redesignating subsections (c) (as so
16 amended by paragraph (2) of this subsection) and
17 (d) as subsections (d) and (f), respectively;

18 (4) by striking subsection (b) and inserting the
19 following new subsections:

20 “(b) FEDERAL HOME LOAN BANKS.—

21 “(1) ESTABLISHMENT AND CRITERIA.—For
22 purposes of this subtitle, the Director shall, by
23 regulation—



1 “(A) establish the capital classifications
2 specified under paragraph (2) for the Federal
3 home loan banks;

4 “(B) establish criteria for each such cap-
5 ital classification based on the amount and
6 types of capital held by a bank and the risk-
7 based, minimum, and critical capital levels for
8 the banks and taking due consideration of the
9 capital classifications established under sub-
10 section (a) for the enterprises, with such modi-
11 fications as the Director determines to be ap-
12 propriate to reflect the difference in operations
13 between the banks and the enterprises; and

14 “(C) shall classify the Federal home loan
15 banks according to such capital classifications.

16 “(2) CLASSIFICATIONS.—The capital classifica-
17 tions specified under this paragraph are—

18 “(A) adequately capitalized;

19 “(B) undercapitalized;

20 “(C) significantly undercapitalized; and

21 “(D) critically undercapitalized.

22 “(c) DISCRETIONARY CLASSIFICATION.—

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



1 “(A) at any time, the Director determines
2 in writing that the regulated entity is engaging
3 in conduct that could result in a rapid depletion
4 of core or total capital or, in the case of an en-
5 terprise, that the value of the property subject
6 to mortgages held or securitized by the enter-
7 prise has decreased significantly;

8 “(B) after notice and an opportunity for
9 hearing, the Director determines that the regu-
10 lated entity is in an unsafe or unsound condi-
11 tion; or

12 “(C) pursuant to section 1371(b), the Di-
13 rector deems the regulated entity to be engag-
14 ing in an unsafe or unsound practice.

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

21 “(A) as undercapitalized, if the regulated
22 entity is otherwise classified as adequately cap-
23 italized;



1 “(B) as significantly undercapitalized, if
2 the regulated entity is otherwise classified as
3 undercapitalized; and

4 “(C) as critically undercapitalized, if the
5 regulated entity is otherwise classified as sig-
6 nificantly undercapitalized.”; and

7 (5) by inserting after subsection (d) (as so re-
8 designated by paragraph (3) of this subsection), the
9 following new subsection:

10 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

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

15 “(2) EXCEPTION.—Notwithstanding paragraph
16 (1), the Director may permit a regulated entity, to
17 the extent appropriate or applicable, to repurchase,
18 redeem, retire, or otherwise acquire shares or owner-
19 ship interests if the repurchase, redemption, retire-
20 ment, or other acquisition—

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



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

4 (b) REGULATIONS.—Not later than the expiration of
5 the 180-day period beginning on the effective date under
6 section 184, the Director of the Federal Housing Finance
7 Agency shall issue regulations to carry out section 1364(b)
8 of the Housing and Community Development Act of 1992
9 (as added by paragraph (4) of this subsection), relating
10 to capital classifications for the Federal home loan banks.

11 **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
12 **CAPITALIZED REGULATED ENTITIES.**

13 Section 1365 of the Housing and Community Devel-
14 opment Act of 1992 (12 U.S.C. 4615) is amended—

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

17 (2) in subsection (a)—

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

20 (B) by inserting before paragraph (2) the
21 following paragraph:

22 “(1) **REQUIRED MONITORING.**—The Director
23 shall—



1 “(A) closely monitor the condition of any
2 regulated entity that is classified as under-
3 capitalized;

4 “(B) closely monitor compliance with the
5 capital restoration plan, restrictions, and re-
6 quirements imposed under this section; and

7 “(C) periodically review the plan, restric-
8 tions, and requirements applicable to the under-
9 capitalized regulated entity to determine wheth-
10 er the plan, restrictions, and requirements are
11 achieving the purpose of this section.”; and

12 (C) by inserting at the end the following
13 new paragraphs:

14 “(4) RESTRICTION OF ASSET GROWTH.—A reg-
15 ulated entity that is classified as undercapitalized
16 shall not permit its average total assets (as such
17 term is defined in section 1316(b) during any cal-
18 endar quarter to exceed its average total assets dur-
19 ing the preceding calendar quarter unless—

20 “(A) the Director has accepted the capital
21 restoration plan of the regulated entity;

22 “(B) any increase in total assets is con-
23 sistent with the plan; and

24 “(C) the ratio of total capital to assets for
25 the regulated entity increases during the cal-



1 endar quarter at a rate sufficient to enable the
2 entity to become adequately capitalized within a
3 reasonable time.

4 “(5) PRIOR APPROVAL OF ACQUISITIONS, NEW
5 PROGRAMS, AND NEW BUSINESS ACTIVITIES.—A reg-
6 ulated entity that is classified as undercapitalized
7 shall not, directly or indirectly, acquire any interest
8 in any entity or engage in any new program or new
9 business activity unless—

10 “(A) the Director has accepted the capital
11 restoration plan of the regulated entity, the en-
12 tity is implementing the plan, and the Director
13 determines that the proposed action is con-
14 sistent with and will further the achievement of
15 the plan; or

16 “(B) the Director determines that the pro-
17 posed action will further the purpose of this
18 section.”;

19 (3) in the subsection heading for subsection (b),
20 by striking “From Undercapitalized to Significantly
21 Undercapitalized”; and

22 (4) by striking subsection (c) and inserting the
23 following new subsection:

24 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
25 Director may take, with respect to a regulated entity that



1 is classified as undercapitalized, any of the actions author-
2 ized to be taken under section 1366 with respect to a regu-
3 lated entity that is classified as significantly undercapital-
4 ized, if the Director determines that such actions are nec-
5 essary to carry out the purpose of this subtitle.”.

6 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
7 **CANTLY UNDERCAPITALIZED REGULATED**
8 **ENTITIES.**

9 Section 1366 of the Housing and Community Devel-
10 opment Act of 1992 (12 U.S.C. 4616) is amended—

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

13 (2) in subsection (a)(2)(A), by striking “enter-
14 prise” the last place such term appears;

15 (3) in subsection (b)—

16 (A) in the subsection heading, by striking
17 “Discretionary Supervisory Actions” and insert-
18 ing “Specific Actions”;

19 (B) in the matter preceding paragraph (1),
20 by striking “may, at any time, take any” and
21 inserting “shall carry out this section by taking,
22 at any time, one or more”;

23 (C) by redesignating paragraphs (5) and
24 (6) as paragraphs (6) and (7), respectively;



1 (D) by inserting after paragraph (4) the
2 following new paragraph:

3 “(5) IMPROVEMENT OF MANAGEMENT.—Take
4 one or more of the following actions:

5 “(A) NEW ELECTION OF BOARD.—Order a
6 new election for the board of directors of the
7 regulated entity.

8 “(B) DISMISSAL OF DIRECTORS OR EXECU-
9 TIVE OFFICERS.—Require the regulated entity
10 to dismiss from office any director or executive
11 officer who had held office for more than 180
12 days immediately before the entity became
13 undercapitalized. Dismissal under this subpara-
14 graph shall not be construed to be a removal
15 pursuant to the Director’s enforcement powers
16 provided in section 1377.

17 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
18 FICERS.—Require the regulated entity to em-
19 ploy qualified executive officers (who, if the Di-
20 rector so specifies, shall be subject to approval
21 by the Director).”; and

22 (E) by inserting at the end the following
23 new paragraph:

24 “(8) OTHER ACTION.—Require the regulated
25 entity to take any other action that the Director de-



1 termines will better carry out the purpose of this
2 section than any of the actions specified in this
3 paragraph.”;

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

6 (5) by inserting after subsection (b) the fol-
7 lowing new subsection:

8 “(c) RESTRICTION ON COMPENSATION OF EXECU-
9 TIVE OFFICERS.—A regulated entity that is classified as
10 significantly undercapitalized may not, without prior writ-
11 ten approval by the Director—

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

13 “(2) provide compensation to any executive offi-
14 cer at a rate exceeding that officer’s average rate of
15 compensation (excluding bonuses, stock options, and
16 profit sharing) during the 12 calendar months pre-
17 ceding the calendar month in which the regulated
18 entity became undercapitalized.”.

19 **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
20 **IZED REGULATED ENTITIES.**

21 (a) IN GENERAL.—Section 1367 of the Housing and
22 Community Development Act of 1992 (12 U.S.C. 4617)
23 is amended to read as follows:



1 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
2 **IZED REGULATED ENTITIES.**

3 “(a) APPOINTMENT OF AGENCY AS CONSERVATOR
4 OR RECEIVER.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of Federal or State law, if any of the
7 grounds under paragraph (3) exist, at the discretion
8 of the Director, the Director may establish a con-
9 servatorship or receivership, as appropriate, for the
10 purpose of reorganizing, rehabilitating, or winding
11 up the affairs of a regulated entity.

12 “(2) APPOINTMENT.—In any conservatorship or
13 receivership established under this section, the Di-
14 rector shall appoint the Agency as conservator or re-
15 ceiver.

16 “(3) GROUNDS FOR APPOINTMENT.—The
17 grounds for appointing a conservator or receiver for
18 a regulated entity are as follows:

19 “(A) ASSETS INSUFFICIENT FOR OBLIGA-
20 TIONS.—The assets of the regulated entity are
21 less than the obligations of the regulated entity
22 to its creditors and others.

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



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

3 “(ii) any unsafe or unsound practice.

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

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

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

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

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



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

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

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

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

12 “(J) UNDERCAPITALIZATION.—The regu-
13 lated entity is undercapitalized or significantly
14 undercapitalized (as defined in section
15 1364(a)(3) or in regulations issued pursuant to
16 section 1364(b), as applicable), and—

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

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

21 “(I) section 1365(a)(1) with re-
22 spect to an undercapitalized regulated
23 entity; or



1 “(II) section 1366(a)(1) with re-
2 spect to a significantly undercapital-
3 ized regulated entity;

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

8 “(iv) materially fails to implement a
9 capital restoration plan submitted and ac-
10 cepted under section 1369C.

11 “(K) CRITICAL UNDERCAPITALIZATION.—
12 The regulated entity is critically undercapital-
13 ized, as defined in section 1364(a)(4) or in reg-
14 ulations issued pursuant to section 1364(b), as
15 applicable.

16 “(L) MONEY LAUNDERING.—The Attorney
17 General notifies the Director in writing that the
18 regulated entity has been found guilty of a
19 criminal offense under section 1956 or 1957 of
20 title 18, United States Code, or section 5322 or
21 5324 of title 31, United States Code.

22 “(4) JUDICIAL REVIEW.—

23 “(A) IN GENERAL.—If the Agency is ap-
24 pointed conservator or receiver under this sec-
25 tion, the regulated entity may, within 30 days



1 of such appointment, bring an action in the
2 United States District Court for the judicial
3 district in which the principal place of business
4 of such regulated entity is located, or in the
5 United States District Court for the District of
6 Columbia, for an order requiring the Agency to
7 remove itself as conservator or receiver.

8 “(B) REVIEW.—Upon the filing of an ac-
9 tion under subparagraph (A), the court shall,
10 upon the merits, dismiss such action or direct
11 the Agency to remove itself as such conservator
12 or receiver.

13 “(5) DIRECTORS NOT LIABLE FOR ACQUI-
14 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
15 CEIVER.—The members of the board of directors of
16 a regulated entity shall not be liable to the share-
17 holders or creditors of the regulated entity for acqui-
18 escing in or consenting in good faith to the appoint-
19 ment of the Agency as conservator or receiver for
20 that regulated entity.

21 “(6) AGENCY NOT SUBJECT TO ANY OTHER
22 FEDERAL AGENCY.—When acting as conservator or
23 receiver, the Agency shall not be subject to the di-
24 rection or supervision of any other agency of the



1 United States or any State in the exercise of the
2 rights, powers, and privileges of the Agency.

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

5 “(1) RULEMAKING AUTHORITY OF THE AGEN-
6 CY.—The Agency may prescribe such regulations as
7 the Agency determines to be appropriate regarding
8 the conduct of conservatorships or receiverships.

9 “(2) GENERAL POWERS.—

10 “(A) SUCCESSOR TO REGULATED ENTI-
11 TY.—The Agency shall, as conservator or re-
12 ceiver, and by operation of law, immediately
13 succeed to—

14 “(i) all rights, titles, powers, and
15 privileges of the regulated entity, and of
16 any stockholder, officer, or director of such
17 regulated entity with respect to the regu-
18 lated entity and the assets of the regulated
19 entity; and

20 “(ii) title to the books, records, and
21 assets of any other legal custodian of such
22 regulated entity.

23 “(B) OPERATE THE REGULATED ENTI-
24 TY.—The Agency may, as conservator or
25 receiver—



1 “(i) take over the assets of and oper-
2 ate the regulated entity with all the powers
3 of the shareholders, the directors, and the
4 officers of the regulated entity and conduct
5 all business of the regulated entity;

6 “(ii) collect all obligations and money
7 due the regulated entity;

8 “(iii) perform all functions of the reg-
9 ulated entity in the name of the regulated
10 entity which are consistent with the ap-
11 pointment as conservator or receiver; and

12 “(iv) preserve and conserve the assets
13 and property of such regulated entity.

14 “(C) FUNCTIONS OF OFFICERS, DIREC-
15 TORS, AND SHAREHOLDERS OF A REGULATED
16 ENTITY.—The Agency may, by regulation or
17 order, provide for the exercise of any function
18 by any stockholder, director, or officer of any
19 regulated entity for which the Agency has been
20 named conservator or receiver.

21 “(D) POWERS AS CONSERVATOR.—The
22 Agency may, as conservator, take such action
23 as may be—

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



1 “(ii) appropriate to carry on the busi-
2 ness of the regulated entity and preserve
3 and conserve the assets and property of
4 the regulated entity.

5 “(E) ADDITIONAL POWERS AS RE-
6 CEIVER.—The Agency may, as receiver, place
7 the regulated entity in liquidation and proceed
8 to realize upon the assets of the regulated enti-
9 ty, having due regard to the conditions of the
10 housing finance market.

11 “(F) ORGANIZATION OF NEW REGULATED
12 ENTITIES.—The Agency may, as receiver, orga-
13 nize a successor regulated entity that will oper-
14 ate pursuant to subsection (i).

15 “(G) TRANSFER OF ASSETS AND LIABIL-
16 ITIES.—The Agency may, as conservator or re-
17 ceiver, transfer any asset or liability of the reg-
18 ulated entity in default without any approval,
19 assignment, or consent with respect to such
20 transfer. Any Federal home loan bank may,
21 with the approval of the Agency, acquire the as-
22 sets of any Bank in conservatorship or receiver-
23 ship, and assume the liabilities of such Bank

24 “(H) PAYMENT OF VALID OBLIGATIONS.—
25 The Agency, as conservator or receiver, shall, to



1 the extent of proceeds realized from the per-
2 formance of contracts or sale of the assets of a
3 regulated entity, pay all valid obligations of the
4 regulated entity in accordance with the pre-
5 scriptions and limitations of this section.

6 “(I) SUBPOENA AUTHORITY.—

7 “(i) IN GENERAL.—

8 “(I) IN GENERAL.—The Agency
9 may, as conservator or receiver, and
10 for purposes of carrying out any
11 power, authority, or duty with respect
12 to a regulated entity (including deter-
13 mining any claim against the regu-
14 lated entity and determining and real-
15 izing upon any asset of any person in
16 the course of collecting money due the
17 regulated entity), exercise any power
18 established under section 1348.

19 “(II) APPLICABILITY OF LAW.—

20 The provisions of section 1348 shall
21 apply with respect to the exercise of
22 any power exercised under this sub-
23 paragraph in the same manner as
24 such provisions apply under that sec-
25 tion.



1 “(ii) AUTHORITY OF DIRECTOR.—A
2 subpoena or subpoena duces tecum may be
3 issued under clause (i) only by, or with the
4 written approval of, the Director, or the
5 designee of the Director.

6 “(iii) RULE OF CONSTRUCTION.—This
7 subsection shall not be construed to limit
8 any rights that the Agency, in any capac-
9 ity, might otherwise have under section
10 1317 or 1379D.

11 “(J) CONTRACTING FOR SERVICES.—The
12 Agency may, as conservator or receiver, provide
13 by contract for the carrying out of any of its
14 functions, activities, actions, or duties as con-
15 servator or receiver.

16 “(K) INCIDENTAL POWERS.—The Agency
17 may, as conservator or receiver—

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

23 “(ii) take any action authorized by
24 this section, which the Agency determines



1 is in the best interests of the regulated en-
2 tity or the Agency.

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

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

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

13 “(i) promptly publish a notice to the
14 creditors of the regulated entity to present
15 their claims, together with proof, to the re-
16 ceiver by a date specified in the notice
17 which shall be not less than 90 days after
18 the publication of such notice; and

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

23 “(C) MAILING REQUIRED.—The receiver
24 shall mail a notice similar to the notice pub-
25 lished under subparagraph (B)(i) at the time of



1 such publication to any creditor shown on the
2 books of the regulated entity—

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

5 “(ii) upon discovery of the name and
6 address of a claimant not appearing on the
7 books of the regulated entity within 30
8 days after the discovery of such name and
9 address.

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

16 “(5) PROCEDURES FOR DETERMINATION OF
17 CLAIMS.—

18 “(A) DETERMINATION PERIOD.—

19 “(i) IN GENERAL.—Before the end of
20 the 180-day period beginning on the date
21 on which any claim against a regulated en-
22 tity is filed with the Agency as receiver,
23 the Agency shall determine whether to
24 allow or disallow the claim and shall notify



1 the claimant of any determination with re-
2 spect to such claim.

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

7 “(iii) MAILING OF NOTICE SUFFI-
8 CIENT.—The notification requirements of
9 clause (i) shall be deemed to be satisfied if
10 the notice of any determination with re-
11 spect to any claim is mailed to the last ad-
12 dress of the claimant which appears—

13 “(I) on the books of the regu-
14 lated entity;

15 “(II) in the claim filed by the
16 claimant; or

17 “(III) in documents submitted in
18 proof of the claim.

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

23 “(I) a statement of each reason
24 for the disallowance; and



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

5 “(B) ALLOWANCE OF PROVEN CLAIM.—
6 The receiver shall allow any claim received on
7 or before the date specified in the notice pub-
8 lished under paragraph (3)(B)(i), or the date
9 specified in the notice required under paragraph
10 (3)(C), which is proved to the satisfaction of
11 the receiver.

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

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

24 “(ii) PAYMENTS TO LESS THAN
25 FULLY SECURED CREDITORS.—In the case



1 of a claim of a creditor against a regulated
2 entity which is secured by any property or
3 other asset of such regulated entity, the
4 receiver—

5 “(I) may treat the portion of
6 such claim which exceeds an amount
7 equal to the fair market value of such
8 property or other asset as an unse-
9 cured claim against the regulated en-
10 tity; and

11 “(II) may not make any payment
12 with respect to such unsecured por-
13 tion of the claim other than in connec-
14 tion with the disposition of all claims
15 of unsecured creditors of the regu-
16 lated entity.

17 “(iii) EXCEPTIONS.—No provision of
18 this paragraph shall apply with respect to
19 any extension of credit from any Federal
20 Reserve Bank, Federal home loan bank, or
21 the Treasury of the United States.

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



1 claim. This subparagraph shall not effect the
2 authority of a claimant to obtain de novo judi-
3 cial review of a claim pursuant to paragraph
4 (6).

5 “(F) LEGAL EFFECT OF FILING.—

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

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

19 “(6) PROVISION FOR JUDICIAL DETERMINATION
20 OF CLAIMS.—

21 “(A) IN GENERAL.—The claimant may file
22 suit on a claim (or continue an action com-
23 menced before the appointment of the receiver)
24 in the district or territorial court of the United
25 States for the district within which the prin-



1 principal place of business of the regulated entity is
2 located or the United States District Court for
3 the District of Columbia (and such court shall
4 have jurisdiction to hear such claim), before the
5 end of the 60-day period beginning on the ear-
6 lier of—

7 “(i) the end of the period described in
8 paragraph (5)(A)(i) with respect to any
9 claim against a regulated entity for which
10 the Agency is receiver; or

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

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

25 “(7) REVIEW OF CLAIMS.—



1 “(A) OTHER REVIEW PROCEDURES.—

2 “(i) IN GENERAL.—The Agency shall
3 establish such alternative dispute resolu-
4 tion processes as may be appropriate for
5 the resolution of claims filed under para-
6 graph (5)(A)(i).

7 “(ii) CRITERIA.—In establishing alter-
8 native dispute resolution processes, the
9 Agency shall strive for procedures which
10 are expeditious, fair, independent, and low
11 cost.

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

20 “(B) CONSIDERATION OF INCENTIVES.—
21 The Agency shall seek to develop incentives for
22 claimants to participate in the alternative dis-
23 pute resolution process.

24 “(8) EXPEDITED DETERMINATION OF
25 CLAIMS.—



1 “(A) ESTABLISHMENT REQUIRED.—The
2 Agency shall establish a procedure for expedited
3 relief outside of the routine claims process es-
4 tablished under paragraph (5) for claimants
5 who—

6 “(i) allege the existence of legally
7 valid and enforceable or perfected security
8 interests in assets of any regulated entity
9 for which the Agency has been appointed
10 receiver; and

11 “(ii) allege that irreparable injury will
12 occur if the routine claims procedure is fol-
13 lowed.

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

19 “(i) determine—

20 “(I) whether to allow or disallow
21 such claim; or

22 “(II) whether such claim should
23 be determined pursuant to the proce-
24 dures established under paragraph
25 (5); 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,
10 or to continue a suit filed before the appoint-
11 ment of the receiver, seeking a determination of
12 the rights of the claimant with respect to such
13 security interest after the earlier of—

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

17 “(ii) the date the Agency denies the
18 claim.

19 “(D) STATUTE OF LIMITATIONS.—If an
20 action 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
23 period beginning on the date on which such ac-
24 tion or motion may be filed under subparagraph
25 (B), the claim shall be deemed to be disallowed



1 as of the end of such period (other than any
2 portion of such claim which was allowed by the
3 receiver), such disallowance shall be final, and
4 the claimant shall have no further rights or
5 remedies with 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 funds are available from the assets of the regu-
23 lated entity, pay creditor claims, in such man-
24 ner and amounts as are authorized under this
25 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 judg-
6 ment of any court of competent jurisdic-
7 tion.

8 “(B) AGREEMENTS AGAINST THE INTER-
9 EST OF THE AGENCY.—No agreement that
10 tends to diminish or defeat the interest of the
11 Agency in any asset acquired by the Agency as
12 receiver under this section shall be valid against
13 the Agency unless such agreement is in writing,
14 and executed by an authorized official of the
15 regulated entity, except that such requirements
16 for qualified financial contracts shall be applied
17 in a manner consistent with reasonable business
18 trading practices in the financial contracts mar-
19 ket.

20 “(C) PAYMENT OF DIVIDENDS ON
21 CLAIMS.—The receiver may, in the sole discre-
22 tion of the receiver, pay from the assets of the
23 regulated entity dividends on proved claims at
24 any time, and no liability shall attach to the
25 Agency, by reason of any such payment, for



1 failure to pay dividends to a claimant whose
2 claim is not proved at the time of any such pay-
3 ment.

4 “(D) RULEMAKING AUTHORITY OF THE
5 DIRECTOR.—The Director may prescribe such
6 rules, including definitions of terms, as the Di-
7 rector deems appropriate to establish a single
8 uniform interest rate for, or to make payments
9 of post-insolvency interest to creditors holding
10 proven claims against the receivership estates of
11 regulated entities following satisfaction by the
12 receiver of the principal amount of all creditor
13 claims.

14 “(10) SUSPENSION OF LEGAL ACTIONS.—

15 “(A) IN GENERAL.—After the appointment
16 of a conservator or receiver for a regulated enti-
17 ty, the conservator or receiver may, in any judi-
18 cial action or proceeding to which such regu-
19 lated entity is or becomes a party, request a
20 stay for a period not to exceed—

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

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



1 “(B) GRANT OF STAY BY ALL COURTS RE-
2 QUIRED.—Upon receipt of a request by any
3 conservator or receiver under subparagraph (A)
4 for a stay of any judicial action or proceeding
5 in any court with jurisdiction of such action or
6 proceeding, the court shall grant such stay as
7 to all parties.

8 “(11) ADDITIONAL RIGHTS AND DUTIES.—

9 “(A) PRIOR FINAL ADJUDICATION.—The
10 Agency shall abide by any final unappealable
11 judgment of any court of competent jurisdiction
12 which was rendered before the appointment of
13 the Agency as conservator or receiver.

14 “(B) RIGHTS AND REMEDIES OF CONSER-
15 VATOR OR RECEIVER.—In the event of any ap-
16 pealable judgment, the Agency as conservator
17 or receiver shall—

18 “(i) have all the rights and remedies
19 available to the regulated entity (before the
20 appointment of such conservator or re-
21 ceiver) and the Agency, including removal
22 to Federal court and all appellate rights;
23 and

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



1 “(C) NO ATTACHMENT OR EXECUTION.—

2 No attachment or execution may issue by any
3 court upon assets in the possession of the re-
4 ceiver.

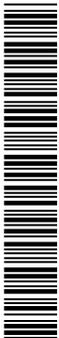
5 “(D) LIMITATION ON JUDICIAL REVIEW.—

6 Except as otherwise provided in this subsection,
7 no court shall have jurisdiction over—

8 “(i) any claim or action for payment
9 from, or any action seeking a determina-
10 tion of rights with respect to, the assets of
11 any regulated entity for which the Agency
12 has been appointed receiver; or

13 “(ii) any claim relating to any act or
14 omission of such regulated entity or the
15 Agency as receiver.

16 “(E) DISPOSITION OF ASSETS.—In exer-
17 cising any right, power, privilege, or authority
18 as conservator or receiver in connection with
19 any sale or disposition of assets of a regulated
20 entity for which the Agency has been appointed
21 conservator or receiver, the Agency shall con-
22 duct its operations in a manner which main-
23 tains stability in the housing finance markets
24 and, to the extent consistent with that goal—



1 “(i) maximizes the net present value
2 return from the sale or disposition of such
3 assets;

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

6 “(iii) ensures adequate competition
7 and fair and consistent treatment of
8 offerors.

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

11 “(A) IN GENERAL.—Notwithstanding any
12 provision of any contract, the applicable statute
13 of limitations with regard to any action brought
14 by the Agency as conservator or receiver shall
15 be—

16 “(i) in the case of any contract claim,
17 the longer of—

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

20 “(II) the period applicable under
21 State law; and

22 “(ii) in the case of any tort claim, the
23 longer of—

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



1 “(II) the period applicable under
2 State law.

3 “(B) DETERMINATION OF THE DATE ON
4 WHICH A CLAIM ACCRUES.—For purposes of
5 subparagraph (A), the date on which the stat-
6 ute of limitations begins to run on any claim
7 described in such subparagraph shall be the
8 later of—

9 “(i) the date of the appointment of
10 the Agency as conservator or receiver; or

11 “(ii) the date on which the cause of
12 action accrues.

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

15 “(A) IN GENERAL.—In the case of any tort
16 claim described under subparagraph (B) for
17 which the statute of limitations applicable
18 under State law with respect to such claim has
19 expired not more than 5 years before the ap-
20 pointment of the Agency as conservator or re-
21 ceiver, the Agency may bring an action as con-
22 servator or receiver on such claim without re-
23 gard to the expiration of the statute of limita-
24 tion applicable under State law.



1 “(B) CLAIMS DESCRIBED.—A tort claim
2 referred to under subparagraph (A) is a claim
3 arising from fraud, intentional misconduct re-
4 sulting in unjust enrichment, or intentional mis-
5 conduct resulting in substantial loss to the reg-
6 ulated entity.

7 “(14) ACCOUNTING AND RECORDKEEPING RE-
8 QUIREMENTS.—

9 “(A) IN GENERAL.—The Agency as conser-
10 vator or receiver shall, consistent with the ac-
11 counting and reporting practices and proce-
12 dures established by the Agency, maintain a full
13 accounting of each conservatorship and receiv-
14 ership or other disposition of a regulated entity
15 in default.

16 “(B) ANNUAL ACCOUNTING OR REPORT.—
17 With respect to each conservatorship or receiv-
18 ership, the Agency shall make an annual ac-
19 counting or report available to the Board, the
20 Comptroller General of the United States, the
21 Committee on Banking, Housing, and Urban
22 Affairs of the Senate, and the Committee on
23 Financial Services of the House of Representa-
24 tives.



1 “(C) AVAILABILITY OF REPORTS.—Any re-
2 port prepared under subparagraph (B) shall be
3 made available by the Agency upon request to
4 any shareholder of a regulated entity or any
5 member of the public.

6 “(D) RECORDKEEPING REQUIREMENT.—
7 After the end of the 6-year period beginning on
8 the date that the conservatorship or receiver-
9 ship is terminated by the Director, the Agency
10 may destroy any records of such regulated enti-
11 ty which the Agency, in the discretion of the
12 Agency, determines to be unnecessary unless di-
13 rected not to do so by a court of competent ju-
14 risdiction or governmental agency, or prohibited
15 by law.

16 “(15) FRAUDULENT TRANSFERS.—

17 “(A) IN GENERAL.—The Agency, as con-
18 servator or receiver, may avoid a transfer of
19 any interest of a regulated entity-affiliated
20 party, or any person who the conservator or re-
21 ceiver determines is a debtor of the regulated
22 entity, in property, or any obligation incurred
23 by such party or person, that was made within
24 5 years of the date on which the Agency was
25 appointed conservator or receiver, if such party



1 or person voluntarily or involuntarily made such
2 transfer or incurred such liability with the in-
3 tent to hinder, delay, or defraud the regulated
4 entity, the Agency, the conservator, or receiver.

5 “(B) RIGHT OF RECOVERY.—To the extent
6 a transfer is avoided under subparagraph (A),
7 the conservator or receiver may recover, for the
8 benefit of the regulated entity, the property
9 transferred, or, if a court so orders, the value
10 of such property (at the time of such transfer)
11 from—

12 “(i) the initial transferee of such
13 transfer or the regulated entity-affiliated
14 party or person for whose benefit such
15 transfer was made; or

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

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

21 “(i) any transferee that takes for
22 value, including satisfaction or securing of
23 a present or antecedent debt, in good faith;
24 or



1 “(ii) any immediate or mediate good
2 faith transferee of such transferee.

3 “(D) RIGHTS UNDER THIS PARAGRAPH.—

4 The rights under this paragraph of the conser-
5 vator or receiver described under subparagraph
6 (A) shall be superior to any rights of a trustee
7 or any other party (other than any party which
8 is a Federal agency) under title 11, United
9 States Code.

10 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
11 JUNCTIVE RELIEF.—Subject to paragraph (17), any
12 court of competent jurisdiction may, at the request
13 of the conservator or receiver, issue an order in ac-
14 cordance with Rule 65 of the Federal Rules of Civil
15 Procedure, including an order placing the assets of
16 any person designated by the Agency or such conser-
17 vator under the control of the court, and appointing
18 a trustee to hold such assets.

19 “(17) STANDARDS OF PROOF.—Rule 65 of the
20 Federal Rules of Civil Procedure shall apply with re-
21 spect to any proceeding under paragraph (16) with-
22 out regard to the requirement of such rule that the
23 applicant show that the injury, loss, or damage is ir-
24 reparable and immediate.



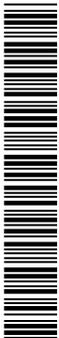
1 “(18) TREATMENT OF CLAIMS ARISING FROM
2 BREACH OF CONTRACTS EXECUTED BY THE RE-
3 CEIVER OR CONSERVATOR.—

4 “(A) IN GENERAL.—Notwithstanding any
5 other provision of this subsection, any final and
6 unappealable judgment for monetary damages
7 entered against a receiver or conservator for the
8 breach of an agreement executed or approved in
9 writing by such receiver or conservator after the
10 date of its appointment, shall be paid as an ad-
11 ministrative expense of the receiver or conser-
12 vator.

13 “(B) NO LIMITATION OF POWER.—Nothing
14 in this paragraph shall be construed to limit the
15 power of a receiver or conservator to exercise
16 any rights under contract or law, including to
17 terminate, breach, cancel, or otherwise dis-
18 continue such agreement.

19 “(19) GENERAL EXCEPTIONS.—

20 “(A) LIMITATIONS.—The rights of a con-
21 servator or receiver appointed under this section
22 shall be subject to the limitations on the powers
23 of a receiver under sections 402 through 407 of
24 the Federal Deposit Insurance Corporation Im-



1 provement Act of 1991 (12 U.S.C. 4402
2 through 4407).

3 “(B) MORTGAGES HELD IN TRUST.—

4 “(i) IN GENERAL.—Any mortgage,
5 pool of mortgages, or interest in a pool of
6 mortgages, held in trust, custodial, or
7 agency capacity by a regulated entity for
8 the benefit of persons other than the regu-
9 lated entity shall not be available to satisfy
10 the claims of creditors generally.

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

21 “(iii) LIABILITY OF RECEIVER.—The
22 liability of a receiver appointed under this
23 section for damages shall, in the case of
24 any contingent or unliquidated claim relat-
25 ing to the mortgages held in trust, be esti-



1 mated in accordance set forth in the regu-
2 lations of the Director.

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

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

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

11 “(B) Any other general or senior liability
12 of the regulated entity and claims of other Fed-
13 eral home loan banks arising from their pay-
14 ment obligations (including joint and several
15 payment obligations).

16 “(C) Any obligation subordinated to gen-
17 eral creditors.

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

21 “(2) CREDITORS SIMILARLY SITUATED.—All
22 creditors that are similarly situated under paragraph
23 (1) shall be treated in a similar manner, except that
24 the Agency may make such other payments to credi-
25 tors necessary to maximize the present value return



1 from the sale or disposition or such regulated enti-
2 ty's assets or to minimize the amount of any loss re-
3 alized in the resolution of cases so long as all credi-
4 tors similarly situated receive not less than the
5 amount provided under subsection (e)(2).

6 “(3) DEFINITION.—The term ‘administrative
7 expenses of the receiver’ shall include the actual,
8 necessary costs and expenses incurred by the re-
9 ceiver in preserving the assets of the regulated entity
10 or liquidating or otherwise resolving the affairs of
11 the regulated entity. Such expenses shall include ob-
12 ligations that are incurred by the receiver after ap-
13 pointment as receiver that the Director determines
14 are necessary and appropriate to facilitate the
15 smooth and orderly liquidation or other resolution of
16 the regulated entity.

17 “(d) PROVISIONS RELATING TO CONTRACTS EN-
18 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
19 OR RECEIVER.—

20 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
21 In addition to any other rights a conservator or re-
22 ceiver may have, the conservator or receiver for any
23 regulated entity may disaffirm or repudiate any con-
24 tract or lease—



1 “(A) to which such regulated entity is a
2 party;

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

6 “(C) the disaffirmance or repudiation of
7 which the conservator or receiver determines, in
8 its sole discretion, will promote the orderly ad-
9 ministration of the affairs of the regulated enti-
10 ty.

11 “(2) TIMING OF REPUDIATION.—The conser-
12 vator or receiver shall determine whether or not to
13 exercise the rights of repudiation under this sub-
14 section within a reasonable period following such ap-
15 pointment.

16 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
17 ATION.—

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

24 “(i) limited to actual direct compen-
25 satory damages; and



1 “(ii) determined as of—

2 “(I) the date of the appointment
3 of the conservator or receiver; or

4 “(II) in the case of any contract
5 or agreement referred to in paragraph
6 (8), the date of the disaffirmance or
7 repudiation of such contract or agree-
8 ment.

9 “(B) NO LIABILITY FOR OTHER DAM-
10 AGES.—For purposes of subparagraph (A), the
11 term ‘actual direct compensatory damages’ shall
12 not include—

13 “(i) punitive or exemplary damages;

14 “(ii) damages for lost profits or op-
15 portunity; or

16 “(iii) damages for pain and suffering.

17 “(C) MEASURE OF DAMAGES FOR REPUDI-
18 ATION OF FINANCIAL CONTRACTS.—In the case
19 of any qualified financial contract or agreement
20 to which paragraph (8) applies, compensatory
21 damages shall be—

22 “(i) deemed to include normal and
23 reasonable costs of cover or other reason-
24 able measures of damages utilized in the



1 industries for such contract and agreement
2 claims; and

3 “(ii) paid in accordance with this sub-
4 section and subsection (e), except as other-
5 wise specifically provided in this section.

6 “(4) LEASES UNDER WHICH THE REGULATED
7 ENTITY IS THE LESSEE.—

8 “(A) IN GENERAL.—If the conservator or
9 receiver disaffirms or repudiates a lease under
10 which the regulated entity was the lessee, the
11 conservator or receiver shall not be liable for
12 any damages (other than damages determined
13 under subparagraph (B)) for the disaffirmance
14 or repudiation of such lease.

15 “(B) PAYMENTS OF RENT.—Notwith-
16 standing subparagraph (A), the lessor under a
17 lease to which that subparagraph applies
18 shall—

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

21 “(I) the notice of disaffirmance
22 or repudiation is mailed; or

23 “(II) the disaffirmance or repudi-
24 ation becomes effective, unless the les-



1 sor is in default or breach of the
2 terms of the lease;

3 “(ii) have no claim for damages under
4 any acceleration clause or other penalty
5 provision in the lease; and

6 “(iii) have a claim for any unpaid
7 rent, subject to all appropriate offsets and
8 defenses, due as of the date of the appoint-
9 ment, which shall be paid in accordance
10 with this subsection and subsection (e).

11 “(5) LEASES UNDER WHICH THE REGULATED
12 ENTITY IS THE LESSOR.—

13 “(A) IN GENERAL.—If the conservator or
14 receiver repudiates an unexpired written lease
15 of real property of the regulated entity under
16 which the regulated entity is the lessor and the
17 lessee is not, as of the date of such repudiation,
18 in default, the lessee under such lease may
19 either—

20 “(i) treat the lease as terminated by
21 such repudiation; or

22 “(ii) remain in possession of the lease-
23 hold interest for the balance of the term of
24 the lease, unless the lessee defaults under



1 the terms of the lease after the date of
2 such repudiation.

3 “(B) PROVISIONS APPLICABLE TO LESSEE
4 REMAINING IN POSSESSION.—If any lessee
5 under a lease described under subparagraph (A)
6 remains in possession of a leasehold interest
7 under clause (ii) of such subparagraph—

8 “(i) the lessee—

9 “(I) shall continue to pay the
10 contractual rent pursuant to the
11 terms of the lease after the date of
12 the repudiation of such lease; and

13 “(II) may offset against any rent
14 payment which accrues after the date
15 of the repudiation of the lease, and
16 any damages which accrue after such
17 date due to the nonperformance of
18 any obligation of the regulated entity
19 under the lease after such date; and

20 “(ii) the conservator or receiver shall
21 not be liable to the lessee for any damages
22 arising after such date as a result of the
23 repudiation other than the amount of any
24 offset allowed under clause (i)(II).



1 “(6) CONTRACTS FOR THE SALE OF REAL
2 PROPERTY.—

3 “(A) IN GENERAL.—If the conservator or
4 receiver repudiates any contract for the sale of
5 real property and the purchaser of such real
6 property under such contract is in possession,
7 and is not, as of the date of such repudiation,
8 in default, such purchaser may either—

9 “(i) treat the contract as terminated
10 by such repudiation; or

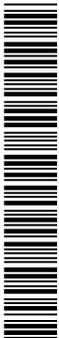
11 “(ii) remain in possession of such real
12 property.

13 “(B) PROVISIONS APPLICABLE TO PUR-
14 CHASER REMAINING IN POSSESSION.—If any
15 purchaser of real property under any contract
16 described under subparagraph (A) remains in
17 possession of such property under clause (ii) of
18 such subparagraph—

19 “(i) the purchaser—

20 “(I) shall continue to make all
21 payments due under the contract after
22 the date of the repudiation of the con-
23 tract; and

24 “(II) may offset against any such
25 payments any damages which accrue



1 after such date due to the non-
2 performance (after such date) of any
3 obligation of the regulated entity
4 under the contract; and

5 “(ii) the conservator or receiver
6 shall—

7 “(I) not be liable to the pur-
8 chaser for any damages arising after
9 such date as a result of the repudi-
10 ation other than the amount of any
11 offset allowed under clause (i)(II);

12 “(II) deliver title to the pur-
13 chaser in accordance with the provi-
14 sions of the contract; and

15 “(III) have no obligation under
16 the contract other than the perform-
17 ance required under subclause (II).

18 “(C) ASSIGNMENT AND SALE ALLOWED.—

19 “(i) IN GENERAL.—No provision of
20 this paragraph shall be construed as lim-
21 iting the right of the conservator or re-
22 ceiver to assign the contract described
23 under subparagraph (A), and sell the prop-
24 erty subject to the contract and the provi-
25 sions of this paragraph.



1 “(ii) NO LIABILITY AFTER ASSIGN-
2 MENT AND SALE.—If an assignment and
3 sale described under clause (i) is con-
4 summated, the conservator or receiver
5 shall have no further liability under the
6 contract described under subparagraph
7 (A), or with respect to the real property
8 which was the subject of such contract.

9 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
10 TRACTS.—

11 “(A) SERVICES PERFORMED BEFORE AP-
12 POINTMENT.—In the case of any contract for
13 services between any person and any regulated
14 entity for which the Agency has been appointed
15 conservator or receiver, any claim of such per-
16 son for services performed before the appoint-
17 ment of the conservator or the receiver shall
18 be—

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

21 “(ii) deemed to have arisen as of the
22 date the conservator or receiver was ap-
23 pointed.

24 “(B) SERVICES PERFORMED AFTER AP-
25 POINTMENT AND PRIOR TO REPUDIATION.—If,



1 in the case of any contract for services de-
2 scribed under subparagraph (A), the conser-
3 vator or receiver accepts performance by the
4 other person before the conservator or receiver
5 makes any determination to exercise the right
6 of repudiation of such contract under this
7 section—

8 “(i) the other party shall be paid
9 under the terms of the contract for the
10 services performed; and

11 “(ii) the amount of such payment
12 shall be treated as an administrative ex-
13 pense of the conservatorship or receiver-
14 ship.

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

24 “(8) CERTAIN QUALIFIED FINANCIAL CON-
25 TRACTS.—



1 “(A) RIGHTS OF PARTIES TO CON-
2 TRACTS.—Subject to paragraphs (9) and (10)
3 and notwithstanding any other provision of this
4 Act, any other Federal law, or the law of any
5 State, no person shall be stayed or prohibited
6 from exercising—

7 “(i) any right such person has to
8 cause the termination, liquidation, or accel-
9 eration of any qualified financial contract
10 with a regulated entity that arises upon
11 the appointment of the Agency as receiver
12 for such regulated entity at any time after
13 such appointment;

14 “(ii) any right under any security
15 agreement or arrangement or other credit
16 enhancement relating to one or more quali-
17 fied financial contracts described in clause
18 (i); or

19 “(iii) any right to offset or net out
20 any termination value, payment amount, or
21 other transfer obligation arising under or
22 in connection with 1 or more contracts and
23 agreements described in clause (i), includ-
24 ing any master agreement for such con-
25 tracts or agreements.



1 “(B) APPLICABILITY OF OTHER PROVI-
2 SIONS.—Paragraph (10) of subsection (b) shall
3 apply in the case of any judicial action or pro-
4 ceeding brought against any receiver referred to
5 under subparagraph (A), or the regulated entity
6 for which such receiver was appointed, by any
7 party to a contract or agreement described
8 under subparagraph (A)(i) with such regulated
9 entity.

10 “(C) CERTAIN TRANSFERS NOT AVOID-
11 ABLE.—

12 “(i) IN GENERAL.—Notwithstanding
13 paragraph (11) or any other Federal or
14 State laws relating to the avoidance of
15 preferential or fraudulent transfers, the
16 Agency, whether acting as such or as con-
17 servator or receiver of a regulated entity,
18 may not avoid any transfer of money or
19 other property in connection with any
20 qualified financial contract with a regu-
21 lated entity.

22 “(ii) EXCEPTION FOR CERTAIN
23 TRANSFERS.—Clause (i) shall not apply to
24 any transfer of money or other property in
25 connection with any qualified financial con-



1 tract with a regulated entity if the Agency
2 determines that the transferee had actual
3 intent to hinder, delay, or defraud such
4 regulated entity, the creditors of such reg-
5 ulated entity, or any conservator or re-
6 ceiver appointed for such regulated entity.

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

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

18 “(ii) SECURITIES CONTRACT.—The
19 term ‘securities contract’—

20 “(I) means a contract for the
21 purchase, sale, or loan of a security, a
22 certificate of deposit, a mortgage loan,
23 or any interest in a mortgage loan, a
24 group or index of securities, certifi-
25 cates of deposit, or mortgage loans or



1 interests therein (including any inter-
2 est therein or based on the value
3 thereof) or any option on any of the
4 foregoing, including any option to
5 purchase or sell any such security,
6 certificate of deposit, mortgage loan,
7 interest, group or index, or option,
8 and including any repurchase or re-
9 verse repurchase transaction on any
10 such security, certificate of deposit,
11 mortgage loan, interest, group or
12 index, or option;

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

20 “(III) means any option entered
21 into on a national securities exchange
22 relating to foreign currencies;

23 “(IV) means the guarantee by or
24 to any securities clearing agency of
25 any settlement of cash, securities, cer-



1 tificates of deposit, mortgage loans or
2 interests therein, group or index of se-
3 curities, certificates of deposit, or
4 mortgage loans or interests therein
5 (including any interest therein or
6 based on the value thereof) or option
7 on any of the foregoing, including any
8 option to purchase or sell any such se-
9 curity, certificate of deposit, mortgage
10 loan, interest, group or index, or op-
11 tion;

12 “(V) means any margin loan;

13 “(VI) means any other agree-
14 ment or transaction that is similar to
15 any agreement or transaction referred
16 to in this clause;

17 “(VII) means any combination of
18 the agreements or transactions re-
19 ferred to in this clause;

20 “(VIII) means any option to
21 enter into any agreement or trans-
22 action referred to in this clause;

23 “(IX) means a master agreement
24 that provides for an agreement or
25 transaction referred to in subclause



1 (I), (III), (IV), (V), (VI), (VII), or
2 (VIII), together with all supplements
3 to any such master agreement, with-
4 out regard to whether the master
5 agreement provides for an agreement
6 or transaction that is not a securities
7 contract under this clause, except that
8 the master agreement shall be consid-
9 ered to be a securities contract under
10 this clause only with respect to each
11 agreement or transaction under the
12 master agreement that is referred to
13 in subclause (I), (III), (IV), (V), (VI),
14 (VII), or (VIII); and

15 “(X) means any security agree-
16 ment or arrangement or other credit
17 enhancement related to any agree-
18 ment or transaction referred to in this
19 clause, including any guarantee or re-
20 imbursement obligation in connection
21 with any agreement or transaction re-
22 ferred to in this clause.

23 “(iii) COMMODITY CONTRACT.—The
24 term ‘commodity contract’ means—



1 “(I) with respect to a futures
2 commission merchant, a contract for
3 the purchase or sale of a commodity
4 for future delivery on, or subject to
5 the rules of, a contract market or
6 board of trade;

7 “(II) with respect to a foreign fu-
8 tures commission merchant, a foreign
9 future;

10 “(III) with respect to a leverage
11 transaction merchant, a leverage
12 transaction;

13 “(IV) with respect to a clearing
14 organization, a contract for the pur-
15 chase or sale of a commodity for fu-
16 ture delivery on, or subject to the
17 rules of, a contract market or board
18 of trade that is cleared by such clear-
19 ing organization, or commodity option
20 traded on, or subject to the rules of,
21 a contract market or board of trade
22 that is cleared by such clearing orga-
23 nization;

24 “(V) with respect to a commodity
25 options dealer, a commodity option;



1 “(VI) any other agreement or
2 transaction that is similar to any
3 agreement or transaction referred to
4 in this clause;

5 “(VII) any combination of the
6 agreements or transactions referred to
7 in this clause;

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

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



1 that is referred to in subclause (I),
2 (II), (III), (IV), (V), (VI), (VII), or
3 (VIII); or

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

12 “(iv) FORWARD CONTRACT.—The
13 term ‘forward contract’ means—

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



1 consignment, lease, swap, hedge
2 transaction, deposit, loan, option, allo-
3 cated transaction, unallocated trans-
4 action, or any other similar agree-
5 ment;

6 “(II) any combination of agree-
7 ments or transactions referred to in
8 subclauses (I) and (III);

9 “(III) any option to enter into
10 any agreement or transaction referred
11 to in subclause (I) or (II);

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



1 master agreement that is referred to
2 in subclause (I), (II), or (III); or

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

12 “(v) REPURCHASE AGREEMENT.—The
13 term ‘repurchase agreement’ (which defini-
14 tion also applies to a reverse repurchase
15 agreement)—

16 “(I) means an agreement, includ-
17 ing related terms, which provides for
18 the transfer of one or more certifi-
19 cates of deposit, mortgage-related se-
20 curities (as such term is defined in
21 the Securities Exchange Act of 1934),
22 mortgage loans, interests in mortgage-
23 related securities or mortgage loans,
24 eligible bankers’ acceptances, qualified
25 foreign government securities or secu-



1 rities that are direct obligations of, or
2 that are fully guaranteed by, the
3 United States or any agency of the
4 United States against the transfer of
5 funds by the transferee of such certifi-
6 cates of deposit, eligible bankers' ac-
7 ceptances, securities, mortgage loans,
8 or interests with a simultaneous
9 agreement by such transferee to
10 transfer to the transferor thereof cer-
11 tificates of deposit, eligible bankers'
12 acceptances, securities, mortgage
13 loans, or interests as described above,
14 at a date certain not later than 1 year
15 after such transfers or on demand,
16 against the transfer of funds, or any
17 other similar agreement;

18 “(II) does not include any repur-
19 chase obligation under a participation
20 in a commercial mortgage loan unless
21 the Agency determines by regulation,
22 resolution, or order to include any
23 such participation within the meaning
24 of such term;



1 “(III) means any combination of
2 agreements or transactions referred to
3 in subclauses (I) and (IV);

4 “(IV) means any option to enter
5 into any agreement or transaction re-
6 ferred to in subclause (I) or (III);

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

23 “(VI) means any security agree-
24 ment or arrangement or other credit
25 enhancement related to any agree-



1 ment or transaction referred to in
2 subclause (I), (III), (IV), or (V), in-
3 cluding any guarantee or reimburse-
4 ment obligation in connection with
5 any agreement or transaction referred
6 to in any such subclause.

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

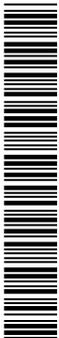
16 “(vi) SWAP AGREEMENT.—The term
17 ‘swap agreement’ means—

18 “(I) any agreement, including the
19 terms and conditions incorporated by
20 reference in any such agreement,
21 which is an interest rate swap, option,
22 future, or forward agreement, includ-
23 ing a rate floor, rate cap, rate collar,
24 cross-currency rate swap, and basis
25 swap; a spot, same day-tomorrow, to-



1 morrow-next, forward, or other for-
2 foreign exchange or precious metals
3 agreement; a currency swap, option,
4 future, or forward agreement; an eq-
5 uity index or equity swap, option, fu-
6 ture, or forward agreement; a debt
7 index or debt swap, option, future, or
8 forward agreement; a total return,
9 credit spread or credit swap, option,
10 future, or forward agreement; a com-
11 modity index or commodity swap, op-
12 tion, future, or forward agreement; or
13 a weather swap, weather derivative, or
14 weather option;

15 “(II) any agreement or trans-
16 action that is similar to any other
17 agreement or transaction referred to
18 in this clause and that is of a type
19 that has been, is presently, or in the
20 future becomes, the subject of recur-
21 rent dealings in the swap markets (in-
22 cluding terms and conditions incor-
23 porated by reference in such agree-
24 ment) and that is a forward, swap, fu-
25 ture, or option on one or more rates,



1 currencies, commodities, equity securi-
2 ties or other equity instruments, debt
3 securities or other debt instruments,
4 quantitative measures associated with
5 an occurrence, extent of an occur-
6 rence, or contingency associated with
7 a financial, commercial, or economic
8 consequence, or economic or financial
9 indices or measures of economic or fi-
10 nancial risk or value;

11 “(III) any combination of agree-
12 ments or transactions referred to in
13 this clause;

14 “(IV) any option to enter into
15 any agreement or transaction referred
16 to in this clause;

17 “(V) a master agreement that
18 provides for an agreement or trans-
19 action referred to in subclause (I),
20 (II), (III), or (IV), together with all
21 supplements to any such master
22 agreement, without regard to whether
23 the master agreement contains an
24 agreement or transaction that is not a
25 swap agreement under this clause, ex-



1 cept that the master agreement shall
2 be considered to be a swap agreement
3 under this clause only with respect to
4 each agreement or transaction under
5 the master agreement that is referred
6 to in subclause (I), (II), (III), or (IV);
7 and

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

17 Such term is applicable for purposes of
18 this subsection only and shall not be con-
19 strued or applied so as to challenge or af-
20 fect the characterization, definition, or
21 treatment of any swap agreement under
22 any other statute, regulation, or rule, in-
23 cluding the Securities Act of 1933, the Se-
24 curities Exchange Act of 1934, the Public
25 Utility Holding Company Act of 1935, the



1 Trust Indenture Act of 1939, the Invest-
2 ment Company Act of 1940, the Invest-
3 ment Advisers Act of 1940, the Securities
4 Investor Protection Act of 1970, the Com-
5 modity Exchange Act, the Gramm-Leach-
6 Bliley Act, and the Legal Certainty for
7 Bank Products Act of 2000.

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



1 “(viii) TRANSFER.—The term ‘trans-
2 fer’ means every mode, direct or indirect,
3 absolute or conditional, voluntary or invol-
4 untary, of disposing of or parting with
5 property or with an interest in property,
6 including retention of title as a security in-
7 terest and foreclosure of the regulated en-
8 tity’s equity of redemption.

9 “(E) CERTAIN PROTECTIONS IN EVENT OF
10 APPOINTMENT OF CONSERVATOR.—Notwith-
11 standing any other provision of this Act (other
12 than paragraph (13) of this subsection), any
13 other Federal law, or the law of any State, no
14 person shall be stayed or prohibited from
15 exercising—

16 “(i) any right such person has to
17 cause the termination, liquidation, or accel-
18 eration of any qualified financial contract
19 with a regulated entity in a conservator-
20 ship based upon a default under such fi-
21 nancial contract which is enforceable under
22 applicable noninsolvency law;

23 “(ii) any right under any security
24 agreement or arrangement or other credit



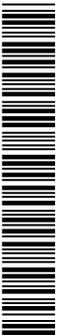
1 enhancement relating to one or more such
2 qualified financial contracts; or

3 “(iii) any right to offset or net out
4 any termination values, payment amounts,
5 or other transfer obligations arising under
6 or in connection with such qualified finan-
7 cial contracts.

8 “(F) CLARIFICATION.—No provision of law
9 shall be construed as limiting the right or
10 power of the Agency, or authorizing any court
11 or agency to limit or delay, in any manner, the
12 right or power of the Agency to transfer any
13 qualified financial contract in accordance with
14 paragraphs (9) and (10) of this subsection or to
15 disaffirm or repudiate any such contract in ac-
16 cordance with subsection (d)(1) of this section.

17 “(G) WALKAWAY CLAUSES NOT EFFEC-
18 TIVE.—

19 “(i) IN GENERAL.—Notwithstanding
20 the provisions of subparagraphs (A) and
21 (E), and sections 403 and 404 of the Fed-
22 eral Deposit Insurance Corporation Im-
23 provement Act of 1991, no walkaway
24 clause shall be enforceable in a qualified fi-



1 nancial contract of a regulated entity in
2 default.

3 “(ii) WALKAWAY CLAUSE DEFINED.—
4 For purposes of this subparagraph, the
5 term ‘walkaway clause’ means a provision
6 in a qualified financial contract that, after
7 calculation of a value of a party’s position
8 or an amount due to or from 1 of the par-
9 ties in accordance with its terms upon ter-
10 mination, liquidation, or acceleration of the
11 qualified financial contract, either does not
12 create a payment obligation of a party or
13 extinguishes a payment obligation of a
14 party in whole or in part solely because of
15 such party’s status as a nondefaulting
16 party.

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

22 “(A) transfer to 1 person—

23 “(i) all qualified financial contracts
24 between any person (or any affiliate of



1 such person) and the regulated entity in
2 default;

3 “(ii) all claims of such person (or any
4 affiliate of such person) against such regu-
5 lated entity under any such contract (other
6 than any claim which, under the terms of
7 any such contract, is subordinated to the
8 claims of general unsecured creditors of
9 such regulated entity);

10 “(iii) all claims of such regulated enti-
11 ty against such person (or any affiliate of
12 such person) under any such contract; and

13 “(iv) all property securing or any
14 other credit enhancement for any contract
15 described in clause (i) or any claim de-
16 scribed in clause (ii) or (iii) under any
17 such contract; or

18 “(B) transfer none of the financial con-
19 tracts, claims, or property referred to under
20 subparagraph (A) (with respect to such person
21 and any affiliate of such person).

22 “(10) NOTIFICATION OF TRANSFER.—

23 “(A) IN GENERAL.—If—

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



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

3 “(ii) the transfer includes any quali-
4 fied financial contract,

5 the conservator or receiver shall notify any per-
6 son who is a party to any such contract of such
7 transfer by 5:00 p.m. (eastern time) on the
8 business day following the date of the appoint-
9 ment of the receiver in the case of a receiver-
10 ship, or the business day following such trans-
11 fer in the case of a conservatorship.

12 “(B) CERTAIN RIGHTS NOT ENFORCE-
13 ABLE.—

14 “(i) RECEIVERSHIP.—A person who is
15 a party to a qualified financial contract
16 with a regulated entity may not exercise
17 any right that such person has to termi-
18 nate, liquidate, or net such contract under
19 paragraph (8)(A) of this subsection or sec-
20 tion 403 or 404 of the Federal Deposit In-
21 surance Corporation Improvement Act of
22 1991, solely by reason of or incidental to
23 the appointment of a receiver for the regu-
24 lated entity (or the insolvency or financial



1 condition of the regulated entity for which
2 the receiver has been appointed)—

3 “(I) until 5:00 p.m. (eastern
4 time) on the business day following
5 the date of the appointment of the re-
6 ceiver; or

7 “(II) after the person has re-
8 ceived notice that the contract has
9 been transferred pursuant to para-
10 graph (9)(A).

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



1 “(iii) NOTICE.—For purposes of this
2 paragraph, the Agency as receiver or con-
3 servator of a regulated entity shall be
4 deemed to have notified a person who is a
5 party to a qualified financial contract with
6 such regulated entity if the Agency has
7 taken steps reasonably calculated to pro-
8 vide notice to such person by the time
9 specified in subparagraph (A).

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

16 “(11) DISAFFIRMANCE OR REPUDIATION OF
17 QUALIFIED FINANCIAL CONTRACTS.—In exercising
18 the rights of disaffirmance or repudiation of a con-
19 servator or receiver with respect to any qualified fi-
20 nancial contract to which a regulated entity is a
21 party, the conservator or receiver for such institution
22 shall either—

23 “(A) disaffirm or repudiate all qualified fi-
24 nancial contracts between—



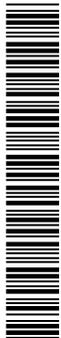
1 “(i) any person or any affiliate of
2 such person; and

3 “(ii) the regulated entity in default; or
4 “(B) disaffirm or repudiate none of the
5 qualified financial contracts referred to in sub-
6 paragraph (A) (with respect to such person or
7 any affiliate of such person).

8 “(12) CERTAIN SECURITY INTERESTS NOT
9 AVOIDABLE.—No provision of this subsection shall
10 be construed as permitting the avoidance of any le-
11 gally enforceable or perfected security interest in any
12 of the assets of any regulated entity, except where
13 such an interest is taken in contemplation of the in-
14 solvency of the regulated entity, or with the intent
15 to hinder, delay, or defraud the regulated entity or
16 the creditors of such regulated entity.

17 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

18 “(A) IN GENERAL.—Notwithstanding any
19 provision of a contract providing for termi-
20 nation, default, acceleration, or exercise of
21 rights upon, or solely by reason of, insolvency
22 or the appointment of a conservator or receiver,
23 the conservator or receiver may enforce any
24 contract or regulated entity bond entered into
25 by the regulated entity.



1 “(B) CERTAIN RIGHTS NOT AFFECTED.—

2 No provision of this paragraph may be con-
3 strued as impairing or affecting any right of the
4 conservator or receiver to enforce or recover
5 under a director’s or officer’s liability insurance
6 contract or surety bond under other applicable
7 law.

8 “(C) CONSENT REQUIREMENT.—

9 “(i) IN GENERAL.—Except as other-
10 wise provided under this section, no person
11 may exercise any right or power to termi-
12 nate, accelerate, or declare a default under
13 any contract to which a regulated entity is
14 a party, or to obtain possession of or exer-
15 cise control over any property of the regu-
16 lated entity, or affect any contractual
17 rights of the regulated entity, without the
18 consent of the conservator or receiver, as
19 appropriate, for a period of—

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

22 “(II) 90 days after the date of
23 appointment of a receiver.

24 “(ii) EXCEPTIONS.—This paragraph
25 shall—



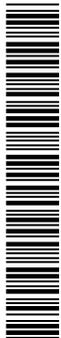
1 “(I) not apply to a director’s or
2 officer’s liability insurance contract;

3 “(II) not apply to the rights of
4 parties to any qualified financial con-
5 tracts under subsection (d)(8); and

6 “(III) not be construed as per-
7 mitting the conservator or receiver to
8 fail to comply with otherwise enforce-
9 able provisions of such contracts.

10 “(14) SAVINGS CLAUSE.—The meanings of
11 terms used in this subsection are applicable for pur-
12 poses of this subsection only, and shall not be con-
13 strued or applied so as to challenge or affect the
14 characterization, definition, or treatment of any
15 similar terms under any other statute, regulation, or
16 rule, including the Gramm-Leach-Bliley Act, the
17 Legal Certainty for Bank Products Act of 2000, the
18 securities laws (as that term is defined in section
19 3(a)(47) of the Securities Exchange Act of 1934),
20 and the Commodity Exchange Act

21 “(15) EXCEPTION FOR FEDERAL RESERVE AND
22 FEDERAL HOME LOAN BANKS.—No provision of this
23 subsection shall apply with respect to—



1 “(A) any extension of credit from any Fed-
2 eral home loan bank or Federal Reserve Bank
3 to any regulated entity; or

4 “(B) any security interest in the assets of
5 the regulated entity securing any such extension
6 of credit.

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

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of Federal law or the law of any State, and
10 regardless of the method which the Agency deter-
11 mines to utilize with respect to a regulated entity in
12 default or in danger of default, including trans-
13 actions authorized under subsection (i), this sub-
14 section shall govern the rights of the creditors of
15 such regulated entity.

16 “(2) MAXIMUM LIABILITY.—The maximum li-
17 ability of the Agency, acting as receiver or in any
18 other capacity, to any person having a claim against
19 the receiver or the regulated entity for which such
20 receiver is appointed shall equal the lesser of—

21 “(A) the amount such claimant would have
22 received if the Agency had liquidated the assets
23 and liabilities of such regulated entity without
24 exercising the authority of the Agency under
25 subsection (i) of this section; or



1 “(B) the amount of proceeds realized from
2 the performance of contracts or sale of the as-
3 sets of the regulated entity.

4 “(f) LIMITATION ON COURT ACTION.—Except as
5 provided in this section or at the request of the Director,
6 no court may take any action to restrain or affect the exer-
7 cise of powers or functions of the Agency as a conservator
8 or a receiver.

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

10 “(1) IN GENERAL.—A director or officer of a
11 regulated entity may be held personally liable for
12 monetary damages in any civil action by, on behalf
13 of, or at the request or direction of the Agency,
14 which action is prosecuted wholly or partially for the
15 benefit of the Agency—

16 “(A) acting as conservator or receiver of
17 such regulated entity, or

18 “(B) acting based upon a suit, claim, or
19 cause of action purchased from, assigned by, or
20 otherwise conveyed by such receiver or conser-
21 vator,

22 for gross negligence, including any similar conduct
23 or conduct that demonstrates a greater disregard of
24 a duty of care (than gross negligence) including in-



1 tentional tortious conduct, as such terms are defined
2 and determined under applicable State law.

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

6 “(h) DAMAGES.—In any proceeding related to any
7 claim against a director, officer, employee, agent, attorney,
8 accountant, appraiser, or any other party employed by or
9 providing services to a regulated entity, recoverable dam-
10 ages determined to result from the improvident or other-
11 wise improper use or investment of any assets of the regu-
12 lated entity shall include principal losses and appropriate
13 interest.

14 “(i) LIMITED-LIFE REGULATED ENTITIES.—

15 “(1) ORGANIZATION.—

16 “(A) PURPOSE.—If a regulated entity is in
17 default, or if the Agency anticipates that a regu-
18 lated entity will default, the Agency may orga-
19 nize a limited-life regulated entity with those
20 powers and attributes of the regulated entity in
21 default or in danger of default that the Director
22 determines necessary, subject to the provisions
23 of this subsection. The Director shall grant a
24 temporary charter to the limited-life regulated



1 entity, and the limited-life regulated entity shall
2 operate subject to that charter.

3 “(B) AUTHORITIES.—Upon the creation of
4 a limited-life regulated entity under subpara-
5 graph (A), the limited-life regulated entity
6 may—

7 “(i) assume such liabilities of the reg-
8 ulated entity that is in default or in danger
9 of default as the Agency may, in its discre-
10 tion, determine to be appropriate, provided
11 that the liabilities assumed shall not exceed
12 the amount of assets of the limited-life reg-
13 ulated entity;

14 “(ii) purchase such assets of the regu-
15 lated entity that is in default, or in danger
16 of default, as the Agency may, in its dis-
17 cretion, determine to be appropriate; and

18 “(iii) perform any other temporary
19 function which the Agency may, in its dis-
20 cretion, prescribe in accordance with this
21 section.

22 “(2) CHARTER.—

23 “(A) CONDITIONS.—The Agency may
24 grant a temporary charter if the Agency deter-
25 mines that the continued operation of the regu-



1 lated entity in default or in danger of default
2 is in the best interest of the national economy
3 and the housing markets.

4 “(B) TREATMENT AS BEING IN DEFAULT
5 FOR CERTAIN PURPOSES.—A limited-life regu-
6 lated entity shall be treated as a regulated enti-
7 ty in default at such times and for such pur-
8 poses as the Agency may, in its discretion, de-
9 termine.

10 “(C) MANAGEMENT.—A limited-life regu-
11 lated entity, upon the granting of its charter,
12 shall be under the management of a board of
13 directors consisting of not fewer than 5 nor
14 more than 10 members appointed by the Agen-
15 cy.

16 “(D) BYLAWS.—The board of directors of
17 a limited-life regulated entity shall adopt such
18 bylaws as may be approved by the Agency.

19 “(3) CAPITAL STOCK.—No capital stock need
20 be paid into a limited-life regulated entity by the
21 Agency.

22 “(4) INVESTMENTS.—Funds of a limited-life
23 regulated entity shall be kept on hand in cash, in-
24 vested in obligations of the United States or obliga-
25 tions guaranteed as to principal and interest by the



1 United States, or deposited with the Agency, or any
2 Federal Reserve bank.

3 “(5) EXEMPT STATUS.—Notwithstanding any
4 other provision of Federal or State law, the limited-
5 life regulated entity, its franchise, property, and in-
6 come shall be exempt from all taxation now or here-
7 after imposed by the United States, by any territory,
8 dependency, or possession thereof, or by any State,
9 county, municipality, or local taxing authority.

10 “(6) WINDING UP.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B), unless Congress authorizes the sale
13 of the capital stock of the limited-life regulated
14 entity, not later than 2 years after the date of
15 its organization, the Agency shall wind up the
16 affairs of the limited-life regulated entity.

17 “(B) EXTENSION.—The Director may, in
18 the discretion of the Director, extend the status
19 of the limited-life regulated entity for 3 addi-
20 tional 1-year periods.

21 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

22 “(A) IN GENERAL.—

23 “(i) TRANSFER OF ASSETS AND LI-
24 ABILITIES.—The Agency, as receiver, may
25 transfer any assets and liabilities of a reg-



1 ulated entity in default, or in danger of de-
2 fault, to the limited-life regulated entity in
3 accordance with paragraph (1).

4 “(ii) SUBSEQUENT TRANSFERS.—At
5 any time after a charter is transferred to
6 a limited-life regulated entity, the Agency,
7 as receiver, may transfer any assets and li-
8 abilities of such regulated entity in default,
9 or in danger in default, as the Agency
10 may, in its discretion, determine to be ap-
11 propriate in accordance with paragraph
12 (1).

13 “(iii) EFFECTIVE WITHOUT AP-
14 PROVAL.—The transfer of any assets or li-
15 abilities of a regulated entity in default, or
16 in danger of default, transferred to a lim-
17 ited-life regulated entity shall be effective
18 without any further approval under Fed-
19 eral or State law, assignment, or consent
20 with respect thereto.

21 “(8) PROCEEDS.—To the extent that available
22 proceeds from the limited-life regulated entity exceed
23 amounts required to pay obligations, such proceeds
24 may be paid to the regulated entity in default, or in
25 danger of default.



1 “(9) POWERS.—

2 “(A) IN GENERAL.—Each limited-life regu-
3 lated entity created under this subsection shall
4 have all corporate powers of, and be subject to
5 the same provisions of law as, the regulated en-
6 tity in default or in danger of default to which
7 it relates, except that—

8 “(i) the Agency may—

9 “(I) remove the directors of a
10 limited-life regulated entity; and

11 “(II) fix the compensation of
12 members of the board of directors and
13 senior management, as determined by
14 the Agency in its discretion, of a lim-
15 ited-life regulated entity;

16 “(ii) the Agency may indemnify the
17 representatives for purposes of paragraph
18 (1)(B), and the directors, officers, employ-
19 ees, and agents of a limited-life regulated
20 entity on such terms as the Agency deter-
21 mines to be appropriate; and

22 “(iii) the board of directors of a lim-
23 ited-life regulated entity—

24 “(I) shall elect a chairperson who
25 may also serve in the position of chief



1 executive officer, except that such per-
2 son shall not serve either as chair-
3 person or as chief executive officer
4 without the prior approval of the
5 Agency; and

6 “(II) may appoint a chief execu-
7 tive officer who is not also the chair-
8 person, except that such person shall
9 not serve as chief executive officer
10 without the prior approval of the
11 Agency.

12 “(B) STAY OF JUDICIAL ACTION.—Any ju-
13 dicial action to which a limited-life regulated
14 entity becomes a party by virtue of its acquisi-
15 tion of any assets or assumption of any liabil-
16 ities of a regulated entity in default shall be
17 stayed from further proceedings for a period of
18 up to 45 days at the request of the limited-life
19 regulated entity. Such period may be modified
20 upon the consent of all parties.

21 “(10) OBTAINING OF CREDIT AND INCURRING
22 OF DEBT.—

23 “(A) IN GENERAL.—The limited-life regu-
24 lated entity may obtain unsecured credit and



1 incur unsecured debt in the ordinary course of
2 business.

3 “(B) INABILITY TO OBTAIN CREDIT.—If
4 the limited-life regulated entity is unable to ob-
5 tain unsecured credit the Director may author-
6 ize the obtaining of credit or the incurring of
7 debt—

8 “(i) with priority over any or all ad-
9 ministrative expenses;

10 “(ii) secured by a lien on property
11 that is not otherwise subject to a lien; or

12 “(iii) secured by a junior lien on prop-
13 erty that is subject to a lien.

14 “(C) LIMITATIONS.—

15 “(i) IN GENERAL.—The Director,
16 after notice and a hearing, may authorize
17 the obtaining of credit or the incurring of
18 debt secured by a senior or equal lien on
19 property that is subject to a lien (other
20 than mortgages that collateralize the mort-
21 gage-backed securities issued or guaran-
22 teed by the regulated entity) only if—

23 “(I) the limited-life regulated en-
24 tity is unable to obtain such credit
25 otherwise; and



1 “(II) there is adequate protection
2 of the interest of the holder of the lien
3 on the property which such senior or
4 equal lien is proposed to be granted.

5 “(ii) BURDEN OF PROOF.—In any
6 hearing under this subsection, the Director
7 has the burden of proof on the issue of
8 adequate protection.

9 “(D) AFFECT ON DEBTS AND LIENS.—The
10 reversal or modification on appeal of an author-
11 ization under this paragraph to obtain credit or
12 incur debt, or of a grant under this section of
13 a priority or a lien, does not affect the validity
14 of any debt so incurred, or any priority or lien
15 so granted, to an entity that extended such
16 credit in good faith, whether or not such entity
17 knew of the pendency of the appeal, unless such
18 authorization and the incurring of such debt, or
19 the granting of such priority or lien, were
20 stayed pending appeal.

21 “(11) ISSUANCE OF PREFERRED DEBT.—A lim-
22 ited-life regulated entity may, subject to the ap-
23 proval of the Director and subject to such terms and
24 conditions as the Director may prescribe, issue
25 notes, bonds, or other debt obligations of a class to



1 which all other debt obligations of the limited-life
2 regulated entity shall be subordinate in right and
3 payment.

4 “(12) NO FEDERAL STATUS.—

5 “(A) AGENCY STATUS.—A limited-life reg-
6 ulated entity is not an agency, establishment, or
7 instrumentality of the United States.

8 “(B) EMPLOYEE STATUS.—Representa-
9 tives for purposes of paragraph (1)(B), interim
10 directors, directors, officers, employees, or
11 agents of a limited-life regulated entity are not,
12 solely by virtue of service in any such capacity,
13 officers or employees of the United States. Any
14 employee of the Agency or of any Federal in-
15 strumentality who serves at the request of the
16 Agency as a representative for purposes of
17 paragraph (1)(B), interim director, director, of-
18 ficer, employee, or agent of a limited-life regu-
19 lated entity shall not—

20 “(i) solely by virtue of service in any
21 such capacity lose any existing status as
22 an officer or employee of the United States
23 for purposes of title 5, United States Code,
24 or any other provision of law; or



1 “(ii) receive any salary or benefits for
2 service in any such capacity with respect to
3 a limited-life regulated entity in addition to
4 such salary or benefits as are obtained
5 through employment with the Agency or
6 such Federal instrumentality.

7 “(13) ADDITIONAL POWERS.—In addition to
8 any other powers granted under this subsection, a
9 limited-life regulated entity may—

10 “(A) extend a maturity date or change in
11 an interest rate or other term of outstanding
12 securities;

13 “(B) issue securities of the limited-life reg-
14 ulated entity, for cash, for property, for existing
15 securities, or in exchange for claims or inter-
16 ests, or for any other appropriate purposes; and

17 “(C) take any other action not inconsistent
18 with this section.

19 “(j) OTHER EXEMPTIONS.—When acting as a re-
20 ceiver, the following provisions shall apply with respect to
21 the Agency:

22 “(1) EXEMPTION FROM TAXATION.—The Agen-
23 cy, including its franchise, its capital, reserves, and
24 surplus, and its income, shall be exempt from all
25 taxation imposed by any State, country, munici-



1 pality, or local taxing authority, except that any real
2 property of the Agency shall be subject to State, ter-
3 ritorial, county, municipal, or local taxation to the
4 same extent according to its value as other real
5 property is taxed, except that, notwithstanding the
6 failure of any person to challenge an assessment
7 under State law of the value of such property, and
8 the tax thereon, shall be determined as of the period
9 for which such tax is imposed.

10 “(2) EXEMPTION FROM ATTACHMENT AND
11 LIENS.—No property of the Agency shall be subject
12 to levy, attachment, garnishment, foreclosure, or sale
13 without the consent of the Agency, nor shall any in-
14 voluntary lien attach to the property of the Agency.

15 “(3) EXEMPTION FROM PENALTIES AND
16 FINES.—The Agency shall not be liable for any
17 amounts in the nature of penalties or fines, includ-
18 ing those arising from the failure of any person to
19 pay any real property, personal property, probate, or
20 recording tax or any recording or filing fees when
21 due.

22 “(k) PROHIBITION OF CHARTER REVOCATION.—In
23 no case may a receiver appointed pursuant to this section
24 revoke, annul, or terminate the charter of a regulated enti-
25 ty.”.



1 (b) CONFORMING AMENDMENTS.—Subtitle B of title
2 XIII of the Housing and Community Development Act of
3 1992 is amended by striking sections 1369 (12 U.S.C.
4 4619), 1369A (12 U.S.C. 4620), and 1369B (12 U.S.C.
5 4621).

6 **SEC. 145. CONFORMING AMENDMENTS.**

7 Title XIII of the Housing and Community Develop-
8 ment Act of 1992, as amended by the preceding provisions
9 of this Act, is further amended—

10 (1) in sections 1365 (12 U.S.C. 4615) through
11 1369D (12 U.S.C. 4623), but not including section
12 1367 (12 U.S.C. 4617) as added by section 144 of
13 this Act—

14 (A) by striking “An enterprise” each place
15 such term appears and inserting “A regulated
16 entity”;

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

20 (C) by striking “the enterprise” each place
21 such term appears and inserting “the regulated
22 entity”;

23 (2) in section 1366 (12 U.S.C. 4616)—



1 (A) in subsection (b)(7), by striking “sec-
2 tion 1369 (excluding subsection (a)(1) and
3 (2)),” and inserting “section 1367”; and

4 (B) in subsection (d), by striking “the en-
5 terprises” and inserting “the regulated enti-
6 ties”;

7 (3) in section 1368(d) (12 U.S.C. 4618(d)), by
8 striking “Committee on Banking, Finance and
9 Urban Affairs” and inserting “Committee on Finan-
10 cial Services”;

11 (4) in section 1369C(e) (12 U.S.C. 4622(e)), by
12 striking “any enterprise” and inserting “any regu-
13 lated entity”; and

14 (5) in subsections (a) and (d) of section 1369D,
15 by striking “section 1366 or 1367 or action under
16 section 1369)” each place such phrase appears and
17 inserting “section 1367”.

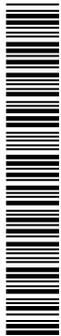
18 **Subtitle D—Enforcement Actions**

19 **SEC. 161. CEASE-AND-DESIST PROCEEDINGS.**

20 Section 1371 of the Housing and Community Devel-
21 opment Act of 1992 (12 U.S.C. 4631) is amended—

22 (1) by striking subsections (a) and (b) and in-
23 serting the following new subsections:

24 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
25 **TICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the



1 opinion of the Director, a regulated entity or any regulated
2 entity-affiliated party is engaging or has engaged, or the
3 Director has reasonable cause to believe that the regulated
4 entity or any regulated entity-affiliated party is about to
5 engage, in an unsafe or unsound practice in conducting
6 the business of the regulated entity or is violating or has
7 violated, or the Director has reasonable cause to believe
8 that the regulated entity or any regulated entity-affiliated
9 party is about to violate, a law, rule, or regulation, or any
10 condition imposed in writing by the Director in connection
11 with the granting of any application or other request by
12 the regulated entity or any written agreement entered into
13 with the Director, the Director may issue and serve upon
14 the regulated entity or such party a notice of charges in
15 respect thereof. The Director may not, pursuant to this
16 section, enforce compliance with any housing goal estab-
17 lished under subpart B of part 2 of subtitle A of this title,
18 with section 1336 or 1337 of this title, with subsection
19 (m) or (n) of section 309 of the Federal National Mort-
20 gage Association Charter Act (12 U.S.C. 1723a(m), (n)),
21 with subsection (e) or (f) of section 307 of the Federal
22 Home Loan Mortgage Corporation Act (12 U.S.C.
23 1456(e), (f)), or with paragraph (5) of section 10(j) of
24 the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).



1 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
2 regulated entity receives, in its most recent report of ex-
3 amination, a less-than-satisfactory rating for asset quality,
4 management, earnings, or liquidity, the Director may (if
5 the deficiency is not corrected) deem the regulated entity
6 to be engaging in an unsafe or unsound practice for pur-
7 poses of this subsection.”;

8 (2) in subsection (c)(2), by striking “enterprise,
9 executive officer, or director” and inserting “regu-
10 lated entity or regulated entity-affiliated party”; and

11 (3) in subsection (d)——

12 (A) in the matter preceding paragraph (1),
13 by striking “enterprise, executive officer, or di-
14 rector” and inserting “regulated entity or regu-
15 lated entity-affiliated party”

16 (B) in paragraph (1)——

17 (i) by striking “an executive officer or
18 director” and inserting “a regulated entity
19 affiliated party”;

20 (ii) by inserting “(including reim-
21 bursement of compensation under section
22 1318)” after “reimbursement”;

23 (C) in paragraph (6), by striking “and” at
24 the end;



1 (D) by redesignating paragraph (7) as
2 paragraph (8); and

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

5 “(7) to effect an attachment on a regulated en-
6 tity or regulated entity-affiliated party subject to an
7 order under this section or section 1372; and”.

8 **SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

9 Section 1372 of the Housing and Community Devel-
10 opment Act of 1992 (12 U.S.C. 4632) is amended—

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

13 “(a) **GROUND FOR ISSUANCE.**—Whenever the Direc-
14 tor determines that the violation or threatened violation
15 or the unsafe or unsound practice or practices specified
16 in the notice of charges served upon the regulated entity
17 or any regulated entity-affiliated party pursuant to section
18 1371(a), or the continuation thereof, is likely to cause in-
19 solvency or significant dissipation of assets or earnings of
20 the regulated entity, or is likely to weaken the condition
21 of the regulated entity prior to the completion of the pro-
22 ceedings conducted pursuant to sections 1371 and 1373,
23 the Director may issue a temporary order requiring the
24 regulated entity or such party to cease and desist from
25 any such violation or practice and to take affirmative ac-



1 tion to prevent or remedy such insolvency, dissipation,
2 condition, or prejudice pending completion of such pro-
3 ceedings. Such order may include any requirement author-
4 ized under subsection 1371(d).”;

5 (2) in subsection (b), by striking “enterprise,
6 executive officer, or director” and inserting “regu-
7 lated entity or regulated entity-affiliated party”;

8 (3) in subsection (d)—

9 (A) by striking “An enterprise, executive
10 officer, or director” and inserting “A regulated
11 entity or regulated entity-affiliated party”; and

12 (B) by striking “the enterprise, executive
13 officer, or director” and inserting “the regu-
14 lated entity or regulated entity-affiliated party”;
15 and

16 (4) by striking subsection (e) and in inserting
17 the following new subsection:

18 “(e) ENFORCEMENT.—In the case of violation or
19 threatened violation of, or failure to obey, a temporary
20 cease-and-desist order issued pursuant to this section, the
21 Director may apply to the United States District Court
22 for the District of Columbia or the United States district
23 court within the jurisdiction of which the headquarters of
24 the regulated entity is located, for an injunction to enforce
25 such order, and, if the court determines that there has



1 been such violation or threatened violation or failure to
2 obey, it shall be the duty of the court to issue such injunc-
3 tion.”.

4 **SEC. 163. PREJUDGMENT ATTACHMENT.**

5 The Housing and Community Development Act of
6 1992 is amended by inserting after section 1375 (12
7 U.S.C. 4635) the following new section:

8 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

9 “(a) IN GENERAL.—In any action brought pursuant
10 to this title, or in actions brought in aid of, or to enforce
11 an order in, any administrative or other civil action for
12 money damages, restitution, or civil money penalties
13 brought pursuant to this title, the court may, upon appli-
14 cation of the Director or Attorney General, as applicable,
15 issue a restraining order that—

16 “(1) prohibits any person subject to the pro-
17 ceeding from withdrawing, transferring, removing,
18 dissipating, or disposing of any funds, assets or
19 other property; and

20 “(2) appoints a person on a temporary basis to
21 administer the restraining order.

22 “(b) STANDARD.—

23 “(1) SHOWING.—Rule 65 of the Federal Rules
24 of Civil Procedure shall apply with respect to any
25 proceeding under subsection (a) without regard to



1 the requirement of such rule that the applicant show
2 that the injury, loss, or damage is irreparable and
3 immediate.

4 “(2) STATE PROCEEDING.—If, in the case of
5 any proceeding in a State court, the court deter-
6 mines that rules of civil procedure available under
7 the laws of such State provide substantially similar
8 protections to a party’s right to due process as Rule
9 65 (as modified with respect to such proceeding by
10 paragraph (1)), the relief sought under subsection
11 (a) may be requested under the laws of such State.”.

12 **SEC. 164. ENFORCEMENT AND JURISDICTION.**

13 Section 1375 of the Housing and Community Devel-
14 opment Act of 1992 (12 U.S.C. 4635) is amended—

15 (1) by striking subsection (a) and inserting the
16 following new subsection:

17 “(a) ENFORCEMENT.—The Director may, in the dis-
18 cretion of the Director, apply to the United States District
19 Court for the District of Columbia, or the United States
20 district court within the jurisdiction of which the head-
21 quarters of the regulated entity is located, for the enforce-
22 ment of any effective and outstanding notice or order
23 issued under this subtitle or subtitle B, or request that
24 the Attorney General of the United States bring such an
25 action. Such court shall have jurisdiction and power to



1 order and require compliance with such notice or order.”;

2 and

3 (2) in subsection (b), by striking “or 1376” and

4 inserting “1376, or 1377”.

5 **SEC. 165. CIVIL MONEY PENALTIES.**

6 Section 1376 of the Housing and Community Devel-

7 opment Act of 1992 (12 U.S.C. 4636) is amended—

8 (1) in subsection (a)—

9 (A) in the matter preceding paragraph (1),
10 by striking “or any executive officer or” and in-

11 sserting “any executive officer of a regulated en-
12 tity, any regulated entity-affiliated party, or
13 any”; and

14 (B) in paragraph (1)—

15 (i) by striking “the Federal National
16 Mortgage Association Charter Act, the
17 Federal Home Loan Mortgage Corporation
18 Act” and inserting “any provision of any
19 of the authorizing statutes”;

20 (ii) by striking “or Act” and inserting
21 “or statute”;

22 (iii) by striking “or subsection” and
23 inserting “, subsection”; and

24 (iv) by inserting “, or paragraph (5)
25 or (12) of section 10(j) of the Federal



1 Home Loan Bank Act” before the semi-
2 colon at the end;

3 (2) by striking subsection (b) and inserting the
4 following new subsection:

5 “(b) AMOUNT OF PENALTY.—

6 “(1) FIRST TIER.—Any regulated entity which,
7 or any regulated entity-affiliated party who—

8 “(A) violates any provision of this title,
9 any provision of any of the authorizing statutes,
10 or any order, condition, rule, or regulation
11 under any such title or statute, except that the
12 Director may not, pursuant to this section, en-
13 force compliance with any housing goal estab-
14 lished under subpart B of part 2 of subtitle A
15 of this title, with section 1336 or 1337 of this
16 title, with subsection (m) or (n) of section 309
17 of the Federal National Mortgage Association
18 Charter Act (12 U.S.C. 1723a(m), (n)), with
19 subsection (e) or (f) of section 307 of the Fed-
20 eral Home Loan Mortgage Corporation Act (12
21 U.S.C. 1456(e), (f)), or with paragraph (5) or
22 (12) of section 10(j) of the Federal Home Loan
23 Bank Act;

24 “(B) violates any final or temporary order
25 or notice issued pursuant to this title;



1 “(C) violates any condition imposed in
2 writing by the Director in connection with the
3 grant of any application or other request by
4 such regulated entity;

5 “(D) violates any written agreement be-
6 tween the regulated entity and the Director; or

7 “(E) engages in any conduct the Director
8 determines to be an unsafe or unsound practice,
9 shall forfeit and pay a civil penalty of not more
10 than \$10,000 for each day during which such
11 violation continues.

12 “(2) SECOND TIER.—Notwithstanding para-
13 graph (1)—

14 “(A) if a regulated entity, or a regulated
15 entity-affiliated party—

16 “(i) commits any violation described
17 in any subparagraph of paragraph (1);

18 “(ii) recklessly engages in an unsafe
19 or unsound practice in conducting the af-
20 fairs of such regulated entity; or

21 “(iii) breaches any fiduciary duty; and

22 “(B) the violation, practice, or breach—

23 “(i) is part of a pattern of mis-
24 conduct;



1 “(ii) causes or is likely to cause more
2 than a minimal loss to such regulated enti-
3 ty; or

4 “(iii) results in pecuniary gain or
5 other benefit to such party, the regulated
6 entity or regulated entity-affiliated party
7 shall forfeit and pay a civil penalty of not
8 more than \$50,000 for each day during
9 which such violation, practice, or breach
10 continues.

11 “(3) THIRD TIER.—Notwithstanding para-
12 graphs (1) and (2), any regulated entity which, or
13 any regulated entity-affiliated party who—

14 “(A) knowingly—

15 “(i) commits any violation or engages
16 in any conduct described in any subpara-
17 graph of paragraph (1);

18 “(ii) engages in any unsafe or un-
19 sound practice in conducting the affairs of
20 such regulated entity; or

21 “(iii) breaches any fiduciary duty; and

22 “(B) knowingly or recklessly causes a sub-
23 stantial loss to such regulated entity or a sub-
24 stantial pecuniary gain or other benefit to such
25 party by reason of such violation, practice, or



1 breach, shall forfeit and pay a civil penalty in
2 an amount not to exceed the applicable max-
3 imum amount determined under paragraph (4)
4 for each day during which such violation, prac-
5 tice, or breach continues.

6 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
7 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—
8 The maximum daily amount of any civil penalty
9 which may be assessed pursuant to paragraph (3)
10 for any violation, practice, or breach described in
11 such paragraph is—

12 “(A) in the case of any person other than
13 a regulated entity, an amount not to exceed
14 \$2,000,000; and

15 “(B) in the case of any regulated entity,
16 \$2,000,000.”;

17 (3) in subsection (c)(1)(B), by striking “enter-
18 prise, executive officer, or director” and inserting
19 “regulated entity or regulated entity-affiliated
20 party”;

21 (4) in subsection (d), by striking the first sen-
22 tence and inserting the following: “If a regulated en-
23 tity or regulated entity-affiliated party fails to com-
24 ply with an order of the Director imposing a civil
25 money penalty under this section, after the order is



1 no longer subject to review as provided under sub-
2 section (c)(1) and section 1374, the Director may, in
3 the discretion of the Director, bring an action in the
4 United States District Court for the District of Co-
5 lumbia, or the United States district court within
6 the jurisdiction of which the headquarters of the reg-
7 ulated entity is located, to obtain a monetary judg-
8 ment against the regulated entity or regulated entity
9 affiliated party and such other relief as may be
10 available, or request that the Attorney General of
11 the United States bring such an action.”; and

12 (5) in subsection (g), by striking “subsection
13 (b)(3)” and inserting “this section, unless author-
14 ized by the Director by rule, regulation, or order”.

15 **SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.**

16 (a) IN GENERAL.—Subtitle C of title XIII of the
17 Housing and Community Development Act of 1992 is
18 amended—

19 (1) by redesignating sections 1377, 1378, 1379,
20 1379A, and 1379B (12 U.S.C. 4637–41) as sections
21 1379, 1379A, 1379B, 1379C, and 1379D, respec-
22 tively; and

23 (2) by inserting after section 1376 (12 U.S.C.
24 4636) the following new section:



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

2 “(a) **AUTHORITY TO ISSUE ORDER.**—Whenever the
3 Director determines that—

4 “(1) any regulated entity-affiliated party has,
5 directly or indirectly—

6 “(A) violated—

7 “(i) any law or regulation;

8 “(ii) any cease-and-desist order which
9 has become final;

10 “(iii) any condition imposed in writing
11 by the Director in connection with the
12 grant of any application or other request
13 by such regulated entity; or

14 “(iv) any written agreement between
15 such regulated entity and the Director;

16 “(B) engaged or participated in any unsafe
17 or unsound practice in connection with any reg-
18 ulated entity; or

19 “(C) committed or engaged in any act,
20 omission, or practice which constitutes a breach
21 of such party’s fiduciary duty;

22 “(2) by reason of the violation, practice, or
23 breach described in any subparagraph of paragraph
24 (1)—



1 “(A) such regulated entity has suffered or
2 will probably suffer financial loss or other dam-
3 age; or

4 “(B) such party has received financial gain
5 or other benefit by reason of such violation,
6 practice, or breach; and

7 “(3) such violation, practice, or breach—

8 “(A) involves personal dishonesty on the
9 part of such party; or

10 “(B) demonstrates willful or continuing
11 disregard by such party for the safety or sound-
12 ness of such regulated entity, the Director may
13 serve upon such party a written notice of the
14 Director’s intention to remove such party from
15 office or to prohibit any further participation by
16 such party, in any manner, in the conduct of
17 the affairs of any regulated entity.

18 “(b) SUSPENSION ORDER.—

19 “(1) SUSPENSION OR PROHIBITION AUTHOR-
20 ITY.—If the Director serves written notice under
21 subsection (a) to any regulated entity-affiliated party
22 of the Director’s intention to issue an order under
23 such subsection, the Director may—

24 “(A) suspend such party from office or
25 prohibit such party from further participation



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

3 “(i) determines that such action is
4 necessary for the protection of the regu-
5 lated entity; and

6 “(ii) serves such party with written
7 notice of the suspension order; and

8 “(B) prohibit the regulated entity from re-
9 leasing to or on behalf of the regulated entity-
10 affiliated party any compensation or other pay-
11 ment of money or other thing of current or po-
12 tential value in connection with any resignation,
13 removal, retirement, or other termination of
14 employment or office of the party.

15 “(2) EFFECTIVE PERIOD.—Any suspension
16 order issued under this subsection—

17 “(A) shall become effective upon service;
18 and

19 “(B) unless a court issues a stay of such
20 order under subsection (g) of this section, shall
21 remain in effect and enforceable until—

22 “(i) the date the Director dismisses
23 the charges contained in the notice served
24 under subsection (a) with respect to such
25 party; or



1 “(ii) the effective date of an order
2 issued by the Director to such party under
3 subsection (a).

4 “(3) COPY OF ORDER.—If the Director issues a
5 suspension order under this subsection to any regu-
6 lated entity-affiliated party, the Director shall serve
7 a copy of such order on any regulated entity with
8 which such party is affiliated at the time such order
9 is issued.

10 “(c) NOTICE, HEARING, AND ORDER.—A notice of
11 intention to remove a regulated entity-affiliated party
12 from office or to prohibit such party from participating
13 in the conduct of the affairs of a regulated entity shall
14 contain a statement of the facts constituting grounds for
15 such action, and shall fix a time and place at which a hear-
16 ing will be held on such action. Such hearing shall be fixed
17 for a date not earlier than 30 days nor later than 60 days
18 after the date of service of such notice, unless an earlier
19 or a later date is set by the Director at the request of
20 (1) such party, and for good cause shown, or (2) the At-
21 torney General of the United States. Unless such party
22 shall appear at the hearing in person or by a duly author-
23 ized representative, such party shall be deemed to have
24 consented to the issuance of an order of such removal or
25 prohibition. In the event of such consent, or if upon the



1 record made at any such hearing the Director shall find
2 that any of the grounds specified in such notice have been
3 established, the Director may issue such orders of suspen-
4 sion or removal from office, or prohibition from participa-
5 tion in the conduct of the affairs of the regulated entity,
6 as it may deem appropriate, together with an order pro-
7 hibiting compensation described in subsection (b)(1)(B).
8 Any such order shall become effective at the expiration
9 of 30 days after service upon such regulated entity and
10 such party (except in the case of an order issued upon
11 consent, which shall become effective at the time specified
12 therein). Such order shall remain effective and enforceable
13 except to such extent as it is stayed, modified, terminated,
14 or set aside by action of the Director or a reviewing court.

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

18 “(1) participate in any manner in the conduct
19 of the affairs of any regulated entity;

20 “(2) solicit, procure, transfer, attempt to trans-
21 fer, vote, or attempt to vote any proxy, consent, or
22 authorization with respect to any voting rights in
23 any regulated entity;

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



1 “(4) vote for a director, or serve or act as a
2 regulated entity-affiliated party.

3 “(e) INDUSTRY-WIDE PROHIBITION.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), any person who, pursuant to an order
6 issued under this section, has been removed or sus-
7 pended from office in a regulated entity or prohib-
8 ited from participating in the conduct of the affairs
9 of a regulated entity may not, while such order is in
10 effect, continue or commence to hold any office in,
11 or participate in any manner in the conduct of the
12 affairs of, any regulated entity.

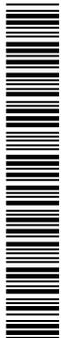
13 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
14 TEN CONSENT.—If, on or after the date an order is
15 issued under this section which removes or suspends
16 from office any regulated entity-affiliated party or
17 prohibits such party from participating in the con-
18 duct of the affairs of a regulated entity, such party
19 receives the written consent of the Director, the
20 order shall, to the extent of such consent, cease to
21 apply to such party with respect to the regulated en-
22 tity described in the written consent. If the Director
23 grants such a written consent, it shall publicly dis-
24 close such consent.



1 “(3) VIOLATION OF PARAGRAPH (1) TREATED
2 AS VIOLATION OF ORDER.—Any violation of para-
3 graph (1) by any person who is subject to an order
4 described in such subsection shall be treated as a
5 violation of the order.

6 “(f) APPLICABILITY.—This section shall only apply
7 to a person who is an individual, unless the Director spe-
8 cifically finds that it should apply to a corporation, firm,
9 or other business enterprise.

10 “(g) STAY OF SUSPENSION AND PROHIBITION OF
11 REGULATED ENTITY-AFFILIATED PARTY.—Within 10
12 days after any regulated entity-affiliated party has been
13 suspended from office and/or prohibited from participation
14 in the conduct of the affairs of a regulated entity under
15 this section, such party may apply to the United States
16 District Court for the District of Columbia, or the United
17 States district court for the judicial district in which the
18 headquarters of the regulated entity is located, for a stay
19 of such suspension and/or prohibition and any prohibition
20 under subsection (b)(1)(B) pending the completion of the
21 administrative proceedings pursuant to the notice served
22 upon such party under this section, and such court shall
23 have jurisdiction to stay such suspension and/or prohibi-
24 tion.



1 “(h) SUSPENSION OR REMOVAL OF REGULATED EN-
2 TITY-AFFILIATED PARTY CHARGED WITH FELONY.—

3 “(1) SUSPENSION OR PROHIBITION.—

4 “(A) IN GENERAL.—Whenever any regu-
5 lated entity-affiliated party is charged in any
6 information, indictment, or complaint, with the
7 commission of or participation in a crime in-
8 volving dishonesty or breach of trust which is
9 punishable by imprisonment for a term exceed-
10 ing one year under State or Federal law, the
11 Director may, if continued service or participa-
12 tion by such party may pose a threat to the
13 regulated entity or impair public confidence in
14 the regulated entity, by written notice served
15 upon such party—

16 “(i) suspend such party from office or
17 prohibit such party from further participa-
18 tion in any manner in the conduct of the
19 affairs of any regulated entity; and

20 “(ii) prohibit the regulated entity
21 from releasing to or on behalf of the regu-
22 lated entity-affiliated party any compensa-
23 tion or other payment of money or other
24 thing of current or potential value in con-
25 nection with the period of any such sus-



1 pension or with any resignation, removal,
2 retirement, or other termination of employ-
3 ment or office of the party.

4 “(B) PROVISIONS APPLICABLE TO NO-
5 TICE.—

6 “(i) COPY.—A copy of any notice
7 under paragraph (1)(A) shall also be
8 served upon the regulated entity.

9 “(ii) EFFECTIVE PERIOD.—A suspen-
10 sion or prohibition under subparagraph (A)
11 shall remain in effect until the informa-
12 tion, indictment, or complaint referred to
13 in such subparagraph is finally disposed of
14 or until terminated by the Director.

15 “(2) REMOVAL OR PROHIBITION.—

16 “(A) IN GENERAL.—If a judgment of con-
17 viction or an agreement to enter a pretrial di-
18 version or other similar program is entered
19 against a regulated entity-affiliated party in
20 connection with a crime described in paragraph
21 (1)(A), at such time as such judgment is not
22 subject to further appellate review, the Director
23 may, if continued service or participation by
24 such party may pose a threat to the regulated
25 entity or impair public confidence in the regu-



1 lated entity, issue and serve upon such party an
2 order that—

3 “(i) removes such party from office or
4 prohibits such party from further partici-
5 pation in any manner in the conduct of the
6 affairs of the regulated entity without the
7 prior written consent of the Director; and

8 “(ii) prohibits the regulated entity
9 from releasing to or on behalf of the regu-
10 lated entity-affiliated party any compensa-
11 tion or other payment of money or other
12 thing of current or potential value in con-
13 nection with the termination of employ-
14 ment or office of the party.

15 “(B) PROVISIONS APPLICABLE TO
16 ORDER.—

17 “(i) COPY.—A copy of any order
18 under paragraph (2)(A) shall also be
19 served upon the regulated entity, where-
20 upon the regulated entity-affiliated party
21 who is subject to the order (if a director or
22 an officer) shall cease to be a director or
23 officer of such regulated entity.

24 “(ii) EFFECT OF ACQUITTAL.—A find-
25 ing of not guilty or other disposition of the



1 charge shall not preclude the Director from
2 instituting proceedings after such finding
3 or disposition to remove such party from
4 office or to prohibit further participation in
5 regulated entity affairs, and to prohibit
6 compensation or other payment of money
7 or other thing of current or potential value
8 in connection with any resignation, re-
9 moval, retirement, or other termination of
10 employment or office of the party, pursu-
11 ant to subsections (a), (d), or (e) of this
12 section.

13 “(iii) EFFECTIVE PERIOD.—Any no-
14 tice of suspension or order of removal
15 issued under this subsection shall remain
16 effective and outstanding until the comple-
17 tion of any hearing or appeal authorized
18 under paragraph (4) unless terminated by
19 the Director.

20 “(3) AUTHORITY OF REMAINING BOARD MEM-
21 BERS.—If at any time, because of the suspension of
22 one or more directors pursuant to this section, there
23 shall be on the board of directors of a regulated enti-
24 ty less than a quorum of directors not so suspended,
25 all powers and functions vested in or exercisable by



1 such board shall vest in and be exercisable by the di-
2 rector or directors on the board not so suspended,
3 until such time as there shall be a quorum of the
4 board of directors. In the event all of the directors
5 of a regulated entity are suspended pursuant to this
6 section, the Director shall appoint persons to serve
7 temporarily as directors in their place and stead
8 pending the termination of such suspensions, or
9 until such time as those who have been suspended
10 cease to be directors of the regulated entity and
11 their respective successors take office.

12 “(4) HEARING REGARDING CONTINUED PAR-
13 TICIPATION.—Within 30 days from service of any
14 notice of suspension or order of removal issued pur-
15 suant to paragraph (1) or (2) of this subsection, the
16 regulated entity-affiliated party concerned may re-
17 quest in writing an opportunity to appear before the
18 Director to show that the continued service to or
19 participation in the conduct of the affairs of the reg-
20 ulated entity by such party does not, or is not likely
21 to, pose a threat to the interests of the regulated en-
22 tity or threaten to impair public confidence in the
23 regulated entity. Upon receipt of any such request,
24 the Director shall fix a time (not more than 30 days
25 after receipt of such request, unless extended at the



1 request of such party) and place at which such party
2 may appear, personally or through counsel, before
3 one or more members of the Director or designated
4 employees of the Director to submit written mate-
5 rials (or, at the discretion of the Director, oral testi-
6 mony) and oral argument. Within 60 days of such
7 hearing, the Director shall notify such party whether
8 the suspension or prohibition from participation in
9 any manner in the conduct of the affairs of the reg-
10 ulated entity will be continued, terminated, or other-
11 wise modified, or whether the order removing such
12 party from office or prohibiting such party from fur-
13 ther participation in any manner in the conduct of
14 the affairs of the regulated entity, and prohibiting
15 compensation in connection with termination will be
16 rescinded or otherwise modified. Such notification
17 shall contain a statement of the basis for the Direc-
18 tor's decision, if adverse to such party. The Director
19 is authorized to prescribe such rules as may be nec-
20 essary to effectuate the purposes of this subsection.

21 “(i) HEARINGS AND JUDICIAL REVIEW.—

22 “(1) VENUE AND PROCEDURE.—Any hearing
23 provided for in this section shall be held in the Dis-
24 trict of Columbia or in the Federal judicial district
25 in which the headquarters of the regulated entity is



1 located, unless the party afforded the hearing con-
2 sents to another place, and shall be conducted in ac-
3 cordance with the provisions of chapter 5 of title 5,
4 United States Code. After such hearing, and within
5 90 days after the Director has notified the parties
6 that the case has been submitted to it for final deci-
7 sion, it shall render its decision (which shall include
8 findings of fact upon which its decision is predi-
9 cated) and shall issue and serve upon each party to
10 the proceeding an order or orders consistent with
11 the provisions of this section. Judicial review of any
12 such order shall be exclusively as provided in this
13 subsection. Unless a petition for review is timely
14 filed in a court of appeals of the United States, as
15 provided in paragraph (2), and thereafter until the
16 record in the proceeding has been filed as so pro-
17 vided, the Director may at any time, upon such no-
18 tice and in such manner as it shall deem proper,
19 modify, terminate, or set aside any such order. Upon
20 such filing of the record, the Director may modify,
21 terminate, or set aside any such order with permis-
22 sion of the court.

23 “(2) REVIEW OF ORDER.—Any party to any
24 proceeding under paragraph (1) may obtain a review
25 of any order served pursuant to paragraph (1)



1 (other than an order issued with the consent of the
2 regulated entity or the regulated entity-affiliated
3 party concerned, or an order issued under subsection
4 (h) of this section) by the filing in the United States
5 Court of Appeals for the District of Columbia Cir-
6 cuit or court of appeals of the United States for the
7 circuit in which the headquarters of the regulated
8 entity is located, within 30 days after the date of
9 service of such order, a written petition praying that
10 the order of the Director be modified, terminated, or
11 set aside. A copy of such petition shall be forthwith
12 transmitted by the clerk of the court to the Director,
13 and thereupon the Director shall file in the court the
14 record in the proceeding, as provided in section 2112
15 of title 28, United States Code. Upon the filing of
16 such petition, such court shall have jurisdiction,
17 which upon the filing of the record shall (except as
18 provided in the last sentence of paragraph (1)) be
19 exclusive, to affirm, modify, terminate, or set aside,
20 in whole or in part, the order of the Director. Re-
21 view of such proceedings shall be had as provided in
22 chapter 7 of title 5, United States Code. The judg-
23 ment and decree of the court shall be final, except
24 that the same shall be subject to review by the Su-



1 preme Court upon certiorari, as provided in section
2 1254 of title 28, United States Code.

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

8 (b) CONFORMING AMENDMENTS.—

9 (1) 1992 ACT.—Section 1317(f) of the Housing
10 and Community Development Act of 1992 (12
11 U.S.C. 4517(f)) is amended by striking “section
12 1379B” and inserting “section 1379D”.

13 (2) FANNIE MAE CHARTER ACT.—The second
14 sentence of subsection (b) of section 308 of the Fed-
15 eral National Mortgage Association Charter Act (12
16 U.S.C. 1723(b)) is amended by striking “The” and
17 inserting “Except to the extent that action under
18 section 1377 of the Housing and Community Devel-
19 opment Act of 1992 temporarily results in a lesser
20 number, the”.

21 (3) FREDDIE MAC ACT.—The second sentence
22 of subparagraph (A) of section 303(a)(2) of the
23 Federal Home Loan Mortgage Corporation Act (12
24 U.S.C. 1452(a)(2)(A)) is amended by striking
25 “The” and inserting “Except to the extent that ac-



1 tion under section 1377 of the Housing and Commu-
2 nity Development Act of 1992 temporarily results in
3 a lesser number, the”.

4 **SEC. 167. CRIMINAL PENALTY.**

5 Subtitle C of title XIII of the Housing and Commu-
6 nity Development Act of 1992 (12 U.S.C. 4631 et seq.)
7 is amended by inserting after section 1377 (as added by
8 the preceding provisions of this Act) the following new sec-
9 tion:

10 **“SEC. 1378. CRIMINAL PENALTY.**

11 “Whoever, being subject to an order in effect under
12 section 1377, without the prior written approval of the Di-
13 rector, knowingly participates, directly or indirectly, in any
14 manner (including by engaging in an activity specifically
15 prohibited in such an order) in the conduct of the affairs
16 of any regulated entity shall, notwithstanding section
17 3571 of title 18, be fined not more than \$1,000,000, im-
18 prisoned for not more than 5 years, or both.”.

19 **SEC. 168. SUBPOENA AUTHORITY.**

20 Section 1379D(e) of the Housing and Community
21 Development Act of 1992 (12 U.S.C. 4641(e)), as so re-
22 designated by section 165(a)(1) of this Act, is further
23 amended—



1 (1) by striking “request the Attorney General
2 of the United States to” and inserting “, in the dis-
3 cretion of the Director,”;

4 (2) by inserting “or request that the Attorney
5 General of the United States bring such an action,”
6 after “District of Columbia,”; and

7 (3) by striking “or may, under the direction
8 and control of the Attorney General, bring such an
9 action”.

10 **SEC. 169. CONFORMING AMENDMENTS.**

11 Subtitle C of title XIII of the Housing and Commu-
12 nity Development Act of 1992 is amended—

13 (1) in section 1372(c)(1) (12 U.S.C. 4632(c)),
14 by striking “that enterprise” and inserting “that
15 regulated entity”;

16 (2) in section 1379 (12 U.S.C. 4637), as so re-
17 designated by section 165(a)(1) of this Act—

18 (A) by inserting “, or of a regulated entity-
19 affiliated party,” before “shall not affect”; and

20 (B) by striking “such director or executive
21 officer” each place such term appears and in-
22 serting “such director, executive officer, or reg-
23 ulated entity-affiliated party”;

24 (3) in section 1379A (12 U.S.C. 4638), as so
25 redesignated by section 165(a)(1) of this Act, by in-



1 serting “or against a regulated entity-affiliated
2 party,” before “or impair”;

3 (4) by striking “An enterprise” each place such
4 term appears in such subtitle and inserting “A regu-
5 lated entity”;

6 (5) by striking “an enterprise” each place such
7 term appears in such subtitle and inserting “a regu-
8 lated entity”;

9 (6) by striking “the enterprise” each place such
10 term appears in such subtitle and inserting “the reg-
11 ulated entity”; and

12 (7) by striking “any enterprise” each place such
13 term appears in such subtitle and inserting “any
14 regulated entity”.

15 **Subtitle E—General Provisions**

16 **SEC. 181. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-** 17 **TERPRISES.**

18 (a) FANNIE MAE.—

19 (1) IN GENERAL.—Subsection (b) of section
20 308 of the Federal National Mortgage Association
21 Charter Act (12 U.S.C. 1723(b)) is amended—

22 (A) in the first sentence, by striking
23 “eighteen persons, five of whom shall be ap-
24 pointed annually by the President of the United
25 States, and the remainder of whom” and insert-



1 ing “not less than 7 and not more than 15 per-
2 sons, who”;

3 (B) in the second sentence, by striking
4 “appointed by the President”;

5 (C) in the third sentence—

6 (i) by striking “appointed or”; and

7 (ii) by striking “, except that any
8 such appointed member may be removed
9 from office by the President for good
10 cause”;

11 (D) in the fourth sentence, by striking
12 “elective”; and

13 (E) by striking the fifth sentence.

14 (2) TRANSITIONAL PROVISION.—The amend-
15 ments made by paragraph (1) shall not apply to any
16 appointed position of the board of directors of the
17 Federal National Mortgage Association until the ex-
18 piration of the annual term for such position during
19 which the effective date under section 184 occurs.

20 (b) FREDDIE MAC.—

21 (1) IN GENERAL.—Paragraph (2) of section
22 303(a) of the Federal Home Loan Mortgage Cor-
23 poration Act (12 U.S.C. 1452(a)(2)) is amended—

24 (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
5 inserting “not less than 7 and not more
6 than 15 persons, who”; and

7 (ii) in the second sentence, by striking
8 “appointed by the President of the United
9 States”;

10 (B) in subparagraph (B)—

11 (i) by striking “such or”; and

12 (ii) by striking “, except that any ap-
13 pointed member may be removed from of-
14 fice by the President for good cause”; and

15 (C) in subparagraph (C)—

16 (i) by striking the first sentence; and

17 (ii) by striking “elective”.

18 (2) TRANSITIONAL PROVISION.—The amend-
19 ments made by paragraph (1) shall not apply to any
20 appointed position of the Board of Directors of the
21 Federal Home Loan Mortgage Corporation until the
22 expiration of the annual term for such position dur-
23 ing which the effective date under section 184 oc-
24 curs.



1 **SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY**
2 **AND SOUNDNESS, AND MISSION OF ENTER-**
3 **PRISES.**

4 Not later than the expiration of the 12-month period
5 beginning on the effective date under section 184, the Di-
6 rector of the Federal Housing Finance Agency shall sub-
7 mit a report to the Congress which shall include—

8 (1) a description of the portfolio holdings of the
9 enterprises (as such term is defined in section 1303
10 of the Housing and Community Development Act of
11 1992 (12 U.S.C. 4502) in mortgages (including
12 whole loans and mortgage-backed securities), non-
13 mortgages, and other assets;

14 (2) a description of the risk implications for the
15 enterprises of such holdings and the consequent risk
16 management undertaken by the enterprises (includ-
17 ing the use of derivatives for hedging purposes),
18 compared with off-balance sheet liabilities of the en-
19 terprises (including mortgage-backed securities guar-
20 anteed by the enterprises);

21 (3) an analysis of portfolio holdings for safety
22 and soundness purposes;

23 (4) an assessment of whether portfolio holdings
24 fulfill the mission purposes of the enterprises under
25 the Federal National Mortgage Association Charter



1 Act and the Federal Home Loan Mortgage Corpora-
2 tion Act; and

3 (5) an analysis of the potential systemic risk
4 implications for the enterprises, the housing and
5 capital markets, and the financial system of portfolio
6 holdings, and whether such holdings should be lim-
7 ited or reduced over time.

8 **SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.**

9 (a) 1992 Act.—Title XIII of the Housing and Com-
10 munity Development Act of 1992 is amended by striking
11 section 1383 (12 U.S.C. 1451 note).

12 (b) TITLE 18, UNITED STATES CODE.—Section 1905
13 of title 18, United States Code, is amended by striking
14 “Office of Federal Housing Enterprise Oversight” and in-
15 serting “Federal Housing Finance Agency” .

16 (c) FLOOD DISASTER PROTECTION ACT OF 1973.—
17 Section 102(f)(3)(A) of the Flood Disaster Protection Act
18 of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by strik-
19 ing “Director of the Office of Federal Housing Enterprise
20 Oversight of the Department of Housing and Urban De-
21 velopment” and inserting “Director of the Federal Hous-
22 ing Finance Agency”.

23 (d) DEPARTMENT OF HOUSING AND URBAN DEVEL-
24 OPMENT ACT.—Section 5 of the Department of Housing



1 and Urban Development Act (42 U.S.C. 3534) is amended
2 by striking subsection (d).

3 (e) TITLE 5, UNITED STATES CODE.—

4 (1) DIRECTOR'S PAY RATE.—Section 5313 of
5 title 5, United States Code, is amended by striking
6 the item relating to the Director of the Office of
7 Federal Housing Enterprise Oversight, Department
8 of Housing and Urban Development and inserting
9 the following new item:

10 “ Director of the Federal Housing Finance Agency.”.

11 (2) DEPUTY DIRECTORS' PAY RATE.—Section
12 5314 of title 5, United States Code, is amended by
13 adding at the end the following new item:

14 “ Deputy Directors , Federal Housing Finance Agen-
15 cy (3).”.

16 (3) PAY RATE FOR MEMBERS OF HOUSING FI-
17 NANCE OVERSIGHT BOARD.—Section 5315 of title 5,
18 United States Code, is amended by adding at the
19 end the following new item:

20 “ Members, Housing Finance Oversight Board.”.

21 (4) EXCLUSION FROM SENIOR EXECUTIVE
22 SERVICE.—Section 3132(a)((1)(D) of title 5, United
23 States Code, is amended by striking “the Office of
24 Federal Housing Enterprise Oversight of the De-



1 partment of Housing and Urban Development” and
2 inserting “the Federal Housing Finance Agency”.

3 (f) INSPECTOR GENERAL ACT OF 1978.—Section
4 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.
5 App.) is amended by striking “Federal Housing Finance
6 Board” and inserting “Federal Housing Finance Agency”.

7 (g) FEDERAL DEPOSIT INSURANCE ACT.—Section
8 11(t)(2)(A) of the Federal Deposit Insurance Act (12
9 U.S.C.1821(t)(2)(A)) is amended by adding at the end the
10 following new clause:

11 “(vii) The Federal Housing Finance
12 Agency.”.

13 (h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIA-
14 TIONS ACT.—Section 10001 of the 1997 Emergency Sup-
15 plemental Appropriations Act for Recovery From Natural
16 Disasters, and for Overseas Peacekeeping Efforts, Includ-
17 ing Those In Bosnia (42 U.S.C. 3548) is amended—

18 (1) by striking “the Government National Mort-
19 gage Association, and the Office of Federal Housing
20 Enterprise Oversight” and inserting “and the Gov-
21 ernment National Mortgage Association”; and

22 (2) by striking “, the Government National
23 Mortgage Association, or the Office of Federal
24 Housing Enterprise Oversight” and inserting “or
25 the Government National Mortgage Association”.



1 (i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Sec-
2 tion 302(b)(4) of the Cranston-Gonzalez National Afford-
3 able Housing Act (42 U.S.C. 12851(b)(4)) is amended by
4 striking “the chairperson of the Federal Housing Finance
5 Board” and inserting “the Director of the Federal Hous-
6 ing Finance Agency”.

7 **SEC. 184. EFFECTIVE DATE.**

8 Except as specifically provided otherwise in this title,
9 the amendments made by this title shall take effect on,
10 and shall apply beginning on, the expiration of the 1-year
11 period beginning on the date of the enactment of this Act.

12 **TITLE II—FEDERAL HOME LOAN**
13 **BANKS**

14 **SEC. 201. DEFINITIONS.**

15 Section 2 of the Federal Home Loan Bank Act (12
16 U.S.C. 1422) is amended—

17 (1) by striking paragraphs (1), (10), and (11);

18 (2) by redesignating paragraphs (2) through
19 (9) as paragraphs (1) through (8), respectively;

20 (3) by redesignating paragraphs (12) and (13)
21 as paragraphs (9) and (10), respectively; and

22 (4) by adding at the end the following:

23 “(11) DIRECTOR.—The term ‘Director’ means
24 the Director of the Federal Housing Finance Agen-
25 cy.



1 “(12) AGENCY.—The term ‘Agency’ means the
2 Federal Housing Finance Agency.”.

3 **SEC. 202. DIRECTORS.**

4 (a) ELECTION.—Section 7 of the Federal Home Loan
5 Bank Act (12 U.S.C. 1427) is amended—

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

8 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
9 FLICTS OF INTEREST.—

10 “(1) IN GENERAL.—The management of each
11 Federal Home Loan Bank shall be vested in a board
12 of 13 directors, or such other number as the Direc-
13 tor determines appropriate, each of whom shall be
14 elected by the members and shall be a citizen of the
15 United States.

16 “(2) MEMBER DIRECTORS.—A majority of the
17 directors of each Bank shall be officers or directors
18 of a member of such Bank that is located in the dis-
19 trict in which such Bank is located.

20 “(3) INDEPENDENT DIRECTORS.—At least one-
21 third of the directors of each Bank shall be inde-
22 pendent directors as follows:

23 “(A) IN GENERAL.—Each independent di-
24 rector shall be a bona fide resident of the dis-
25 trict in which such Bank is located.



1 “(B) PUBLIC INTEREST DIRECTORS.—At
2 least 2 of the independent directors under this
3 paragraph of each Bank shall be representatives
4 chosen from organizations with more than a 2-
5 year history of representing consumer or com-
6 munity interests on banking services, credit
7 needs, housing, or financial consumer protec-
8 tions.

9 “(C) OTHER DIRECTORS.—Each inde-
10 pendent director that is not a public interest di-
11 rector under subparagraph (B) shall have dem-
12 onstrated knowledge of, or experience in, finan-
13 cial management, auditing and accounting, risk
14 management practices, derivatives, project de-
15 velopment, or organizational management, or
16 such other knowledge or expertise as the Direc-
17 tor may provide by regulation.

18 “(D) CONFLICTS OF INTEREST.—An inde-
19 pendent director under this paragraph of a
20 Bank may not, during such director’s term of
21 office, serve as an officer of any Federal Home
22 Loan Bank or as a director or officer of any
23 member of a Bank.”;

24 (2) in subsection (b)—



1 (A) in the first sentence, by striking “di-
2 rectorship” and inserting “member directorship
3 pursuant to subsection (a)(2)” ; and

4 (B) by inserting after the period at the end
5 of the first sentence the following new sentence:
6 “Each independent directorship pursuant to
7 subsection (a)(3) shall be filled by election by a
8 plurality of the votes of the members of the
9 Bank at large, in which election each member
10 shall be entitled to nominate candidates and to
11 cast the same number of votes as in an election
12 to fill a directorship allocated to the member’s
13 State.”;

14 (3) in subsection (c), by striking the second,
15 third, and fifth sentences;

16 (4) in subsection (d)—

17 (A) in the first sentence, by striking “,
18 whether elected or appointed,”;

19 (B) in the second sentence, by striking “or
20 appointed”; and

21 (C) in the third sentence, by striking “an
22 elective” each place such term appears and in-
23 serting “a”; and

24 (5) by striking “elective” each place such term
25 appears (except in subsection (e)).



1 (b) TERMS.—

2 (1) IN GENERAL.—Section 7(d) of the Federal
3 Home Loan Bank Act (12 U.S.C. 1427(i)) is
4 amended—

5 (A) in the first sentence, by striking “3
6 years” and inserting “4 years”; and

7 (B) in the second sentence—

8 (i) by striking “Federal Home Loan
9 Bank System Modernization Act of 1999”
10 and inserting “Federal Housing Finance
11 Reform Act of 2005”; and

12 (ii) by striking “1/3” and inserting
13 “1/4”.

14 (2) SAVINGS PROVISION.—The amendments
15 made by paragraph (1) shall not apply to the term
16 of office of any director of a Federal home loan bank
17 who is serving as of the effective date of this Act
18 under section 184, including any director elected to
19 fill a vacancy in any such office.

20 (c) VACANCIES.—Subsection (f) of section 7 of the
21 Federal Home Loan Bank Act (12 U.S.C. 1427(f)) is
22 amended to read as follows:

23 “(f) VACANCIES.—A Bank director elected to fill a
24 vacancy shall be elected for the unexpired term of his or
25 her predecessor in office. In the event of a vacancy in any



1 Bank directorship, such vacancy shall be filled by an af-
2 firmative vote of a majority of the remaining Bank direc-
3 tors, regardless of whether such remaining Bank directors
4 constitute a quorum of the Bank's board of directors. A
5 Bank director so elected shall satisfy the requirements for
6 eligibility which were applicable to his predecessor. If any
7 Bank director shall cease to have any qualification set
8 forth in this section, the office held by such person shall
9 immediately become vacant. ”.

10 (d) COMPENSATION.—Subsection (i) of section 7 of
11 the Federal Home Loan Bank Act (12 U.S.C. 1427(i))
12 is amended to read as follows:

13 “(i) DIRECTORS’ COMPENSATION.—

14 “(1) IN GENERAL.—Each Federal home loan
15 bank may pay the directors on the board of directors
16 for the bank reasonable and appropriate compensa-
17 tion for the time required of such directors, and rea-
18 sonable and appropriate expenses incurred by such
19 directors, in connection with service on the board of
20 directors, in accordance with resolutions adopted by
21 the board of directors and subject to the approval of
22 the Director.

23 “(2) ANNUAL REPORT BY THE BOARD.—The
24 Director shall include, in the annual report sub-
25 mitted to the Congress pursuant to section 1319B of



1 the Federal Housing Enterprises Financial Safety
2 and Soundness Act of 1992, information regarding
3 the compensation and expenses paid by the Federal
4 home loan banks to the directors on the boards of
5 directors of the banks.”.

6 (e) **TRANSITION RULE.**—Any member of the board
7 of directors of a Federal Home Loan Bank serving as of
8 the effective date under section 210 may continue to serve
9 as a member of such board of directors for the remainder
10 of the term of such office as provided in section 7 of the
11 Federal Home Loan Bank Act, as in effect before such
12 effective date.

13 **SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVER-**
14 **SIGHT OF FEDERAL HOME LOAN BANKS.**

15 The Federal Home Loan Bank Act (12 U.S.C. 1421
16 et seq.), other than in provisions of that Act added or
17 amended otherwise by this Act, is amended—

18 (1) by striking sections 2A and 2B (12 U.S.C.
19 1422a, 1422b);

20 (2) in section 6 (12 U.S.C. 1426(b)(1))—

21 (A) in subsection (b)(1), in the matter pre-
22 ceding subparagraph (A), by striking “Finance
23 Board approval” and inserting “approval by the
24 Director”; and



1 (B) in each of subsections (c)(4)(B) and
2 (d)(2), by striking “Finance Board regulations”
3 each place that term appears and inserting
4 “regulations of the Director”;

5 (3) in section 8 (12 U.S.C. 1428), in the sec-
6 tion heading, by striking “BY THE BOARD”;

7 (4) in section 10(b) (12 U.S.C. 1430), by strik-
8 ing “by formal resolution”;

9 (5) in section 11 (12 U.S.C. 1431)—

10 (A) in subsection (b)—

11 (i) in the first sentence—

12 (I) by striking “The Board” and
13 inserting “The Office of Finance, as
14 agent for the Banks,”; and

15 (II) by striking “the Board” and
16 inserting “such Office”; and

17 (ii) in the second and fourth sen-
18 tences, by striking “the Board” each place
19 such term appears and inserting “the Of-
20 fice of Finance”;

21 (B) in subsection (c)—

22 (i) by striking “the Board” the first
23 place such term appears and inserting “the
24 Office of Finance, as agent for the
25 Banks,”; and



1 (ii) by striking “the Board” the sec-
2 ond place such term appears and inserting
3 “such Office”; and

4 (C) in subsection (f)—

5 (i) by striking the two commas after
6 “permit” and inserting “or”; and

7 (ii) by striking the comma after “re-
8 quire”;

9 (6) in section 15 (12 U.S.C. 1435), by inserting
10 “or the Director” after “the Board”;

11 (7) in section 18 (12 U.S.C. 1438), by striking
12 subsection (b);

13 (8) in section 21 (12 U.S.C. 1441)—

14 (A) in subsection (b)—

15 (i) in paragraph (5), by striking
16 “Chairperson of the Federal Housing Fi-
17 nance Board” and inserting “Director”;
18 and

19 (ii) in the heading for paragraph (8),
20 by striking “FEDERAL HOUSING FINANCE
21 BOARD” and inserting “DIRECTOR”; and

22 (B) in subsection (i), in the heading for
23 paragraph (2), by striking “FEDERAL HOUSING
24 FINANCE BOARD” and inserting “DIRECTOR”;



1 (9) in section 23 (12 U.S.C. 1443), by striking
2 “Board of Directors of the Federal Housing Finance
3 Board” and inserting “Director”;

4 (10) by striking “the Board” each place such
5 term appears in such Act (except in section 15 (12
6 U.S.C. 1435), section 21(f)(2) (12 U.S.C.
7 1441(f)(2)), subsections (a), (k)(2)(B)(i), and
8 (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), sub-
9 sections (e)(7), (f)(2)(C), and (k)(7)(B)(ii) of section
10 21B (12 U.S.C. 1441b), and the first two places
11 such term appears in section 22 (12 U.S.C. 1442))
12 and inserting “the Director”;

13 (11) by striking “The Board” each place such
14 term appears in such Act (except in sections 7(e)
15 (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b))
16 and inserting “The Director”;

17 (12) by striking “the Board’s” each place such
18 term appears in such Act and inserting “the Direc-
19 tor’s”;

20 (13) by striking “The Board’s” each place such
21 term appears in such Act and inserting “The Direc-
22 tor’s”;

23 (14) by striking “The Finance Board” each
24 place such term appears in such Act and inserting
25 “The Director”;



1 (15) by striking “the Finance Board” each
2 place such term appears in such Act and inserting
3 “the Director”;

4 (16) by striking “Federal Housing Finance
5 Board” each place such term appears and inserting
6 “Director”;

7 (17) in section 11(i) (12 U.S.C. 1431(i), by
8 striking “the Chairperson of”; and

9 (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),
10 by striking “Chairperson of the”.

11 **SEC. 204. JOINT ACTIVITIES OF BANKS.**

12 Section 11 of the Federal Home Loan Bank Act (12
13 U.S.C. 1431) is amended by adding at the end the fol-
14 lowing new subsection:

15 “(l) **JOINT ACTIVITIES.**—Subject to the regulation of
16 the Director, any two or more Federal Home Loan Banks
17 may establish a joint office for the purpose of performing
18 functions for, or providing services to, the Banks on a
19 common or collective basis, or may require that the Office
20 of Finance perform such functions or services, but only
21 if the Banks are otherwise authorized to perform such
22 functions or services individually.”.



1 **SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL**
2 **HOME LOAN BANKS.**

3 (a) IN GENERAL.— The Federal Home Loan Bank
4 Act is amended by inserting after section 20 (12 U.S.C.
5 1440) the following new section:

6 **“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL**
7 **HOME LOAN BANKS.**

8 “(a) REGULATORY AUTHORITY.—The Director shall
9 prescribe such regulations as may be necessary to ensure
10 that each Federal Home Loan Bank has access to infor-
11 mation that the Bank needs to determine the nature and
12 extent of its joint and several liability.

13 “(b) NO WAIVER OF PRIVILEGE.—The Director shall
14 not be deemed to have waived any privilege applicable to
15 any information concerning a Federal Home Loan Bank
16 by transferring, or permitting the transfer of, that infor-
17 mation to any other Federal Home Loan Bank for the
18 purpose of enabling the recipient to evaluate the nature
19 and extent of its joint and several liability.”.

20 (b) REGULATIONS.—The regulations required under
21 the amendment made by subsection (a) shall be issued in
22 final form not later than 6 months after the effective date
23 under section 210 of this Act.



1 **SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY**
2 **MERGER.**

3 Section 26 of the Federal Home Loan Bank Act (12
4 U.S.C. 1446) is amended—

5 (1) by inserting “(a) REORGANIZATION.—” be-
6 fore “Whenever”; and

7 (2) by striking “liquidated or” each place such
8 phrase appears;

9 (3) by striking “liquidation or”; and

10 (4) by adding at the end the following new sub-
11 section:

12 “(b) VOLUNTARY MERGERS.—Any Bank may, with
13 the approval of the Director, and the approval of the
14 boards of directors of the Banks involved, merge with an-
15 other Bank. The Director shall promulgate regulations es-
16 tablishing the conditions and procedures for the consider-
17 ation and approval of any such voluntary merger, includ-
18 ing the procedures for Bank member approval.”.

19 **SEC. 207. SECURITIES AND EXCHANGE COMMISSION DIS-**
20 **CLOSURE.**

21 (a) IN GENERAL.—The Federal Home Loan Banks
22 shall be exempt from compliance with—

23 (1) sections 13(e), 14(a), 14(c), and 17A of the
24 Securities Exchange Act of 1934 and related Com-
25 mission regulations; and



1 (2) section 15 of that Act and related Securities
2 and Exchange Commission regulations with respect
3 to transactions in capital stock of the Banks.

4 (b) MEMBER EXEMPTION.—The members of the
5 Federal Home Loan Banks shall be exempt from compli-
6 ance with sections 13(d), 13(f), 13(g), 14(d), and 16 of
7 the Securities Exchange Act of 1934 and related Securi-
8 ties and Exchange Commission regulations with respect
9 to their ownership of, or transactions in, capital stock of
10 the Federal Home Loan Banks.

11 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

12 (1) CAPITAL STOCK.—The capital stock issued
13 by each of the Federal Home Loan Banks under
14 section 6 of the Federal Home Loan Bank Act are—

15 (A) exempted securities within the mean-
16 ing of section 3(a)(2) of the Securities Act of
17 1933; and

18 (B) “exempted securities” within the
19 meaning of section 3(a)(12)(A) of the Securities
20 Exchange Act of 1934.

21 (2) OTHER OBLIGATIONS.—The debentures,
22 bonds, and other obligations issued under section 11
23 of the Federal Home Loan Bank Act are—



1 (A) exempted securities within the mean-
2 ing of section 3(a)(2) of the Securities Act of
3 1933;

4 (B) “government securities” within the
5 meaning of section 3(a)(42) of the Securities
6 Exchange Act of 1934;

7 (C) excluded from the definition of “gov-
8 ernment securities broker” within section
9 3(a)(43) of the Securities Exchange Act of
10 1934;

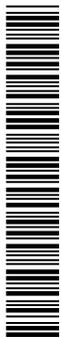
11 (D) excluded from the definition of “gov-
12 ernment securities dealer” within section
13 3(a)(44) of the Securities Exchange Act of
14 1934; and

15 (E) “government securities” within the
16 meaning of section 2(a)(16) of the Investment
17 Company Act of 1940.

18 (d) EXEMPTION FROM REPORTING REQUIRE-
19 MENTS.—The Federal Home Loan Banks shall be exempt
20 from periodic reporting requirements pertaining to—

21 (1) the disclosure of related party transactions
22 that occur in the ordinary course of business of the
23 Banks with their members; and

24 (2) the disclosure of unregistered sales of equity
25 securities.



1 (e) TENDER OFFERS.—The Securities and Exchange
2 Commission’s rules relating to tender offers shall not
3 apply in connection with transactions in capital stock of
4 the Federal Home Loan Banks.

5 (f) REGULATIONS.—In issuing final regulations to
6 implement provisions of this section, the Securities and
7 Exchange Commission shall consider the distinctive char-
8 acteristics of the Federal Home Loan Banks when evalu-
9 ating the accounting treatment with respect to the pay-
10 ment to REFCORP, the role of the combined financial
11 statements of the twelve Banks, the accounting classifica-
12 tion of redeemable capital stock, and the accounting treat-
13 ment related to the joint and several nature of the obliga-
14 tions of the Banks.

15 **SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

16 (a) TOTAL ASSET REQUIREMENT.—Paragraph (12)
17 of section 2 of the Federal Home Loan Bank Act (12
18 U.S.C. 1422(12)), as so redesignated by section 202(2) of
19 this Act, is amended by striking “\$500,000,000” each
20 place such term appears and inserting “\$1,000,000,000”.

21 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
22 MENT ACTIVITIES.—Section 10(a) of the Federal Home
23 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

24 (1) in paragraph (2)(B)—

25 (A) by striking “and”; and



1 (B) by inserting “, and community devel-
2 opment activities” before the period at the end;

3 (2) in paragraph (3)(E), by inserting “or com-
4 munity development activities” after “agriculture,”;
5 and

6 (3) in paragraph (6)—

7 (A) by striking “and”; and

8 (B) by inserting “and ‘community develop-
9 ment activities’” before “shall”.

10 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

11 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—

12 Section 1113(o) of the Right to Financial Privacy Act of
13 1978 (12 U.S.C. 3413(o)) is amended—

14 (1) by striking “Federal Housing Finance
15 Board” and inserting “Federal Housing Finance
16 Agency”; and

17 (2) by striking “Federal Housing Finance
18 Board’s” and inserting “Federal Housing Finance
19 Agency’s”.

20 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
21 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of

22 the Riegle Community Development and Regulatory Im-
23 provement Act of 1994 (12 U.S.C. 4716(e)) is amended

24 by striking “Federal Housing Finance Board” and insert-
25 ing “Federal Housing Finance Agency”.



1 (c) TITLE 18, UNITED STATES CODE.—Title 18,
2 United States Code, is amended by striking “Federal
3 Housing Finance Board” each place such term appears
4 in each of sections 212, 657, 1006, 1014, 1114, and in-
5 serting “Federal Housing Finance Agency”.

6 (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the
7 Multifamily Assisted Housing Reform and Affordability
8 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
9 ing “Federal Housing Finance Board” and inserting
10 “Federal Housing Finance Agency”.

11 (e) TITLE 44, UNITED STATES CODE.—Section
12 3502(5) of title 44, United States Code, is amended by
13 striking “Federal Housing Finance Board” and inserting
14 “Federal Housing Finance Agency”.

15 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
16 1004(d)(2)(D)(iii) of the Launching Our Communities’
17 Access to Local Television Act of 2000 (47 U.S.C.
18 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
19 eral Housing Enterprise Oversight, the Federal Housing
20 Finance Board” and inserting “Federal Housing Finance
21 Agency”.

22 **SEC. 210. EFFECTIVE DATE.**

23 Except as specifically provided otherwise in this title,
24 the amendments made by this title shall take effect on,



1 and shall apply beginning on, the expiration of the 1-year
2 period beginning on the date of the enactment of this Act.

3 **TITLE III—TRANSFER OF FUNC-**
4 **TIONS, PERSONNEL, AND**
5 **PROPERTY OF OFFICE OF**
6 **FEDERAL HOUSING ENTER-**
7 **PRISE OVERSIGHT, FEDERAL**
8 **HOUSING FINANCE BOARD,**
9 **AND DEPARTMENT OF HOUS-**
10 **ING AND URBAN DEVELOP-**
11 **MENT**

12 **Subtitle A—Office of Federal**
13 **Housing Enterprise Oversight**

14 **SEC. 301. ABOLISHMENT OF OFHEO.**

15 (a) IN GENERAL.—Effective at the end of the 1-year
16 period beginning on the date of the enactment of this Act,
17 the Office of Federal Housing Enterprise Oversight of the
18 Department of Housing and Urban Development and the
19 positions of the Director and Deputy Director of such Of-
20 fice are abolished.

21 (b) DISPOSITION OF AFFAIRS.—During the 1-year
22 period beginning on the date of the enactment of this Act,
23 the Director of the Office of Federal Housing Enterprise
24 Oversight shall, solely for the purpose of winding up the



1 affairs of the Office of Federal Housing Enterprise
2 Oversight—

3 (1) manage the employees of such Office and
4 provide for the payment of the compensation and
5 benefits of any such employee which accrue before
6 the effective date of the transfer of such employee
7 pursuant to section 303; and

8 (2) may take any other action necessary for the
9 purpose of winding up the affairs of the Office.

10 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

11 The amendments made by title I and the abolishment of
12 the Office of Federal Housing Enterprise Oversight under
13 subsection (a) of this section may not be construed to af-
14 fect the status of any employee of such Office as employ-
15 ees of an agency of the United States for purposes of any
16 other provision of law before the effective date of the
17 transfer of any such employee pursuant to section 303.

18 (d) USE OF PROPERTY AND SERVICES.—

19 (1) PROPERTY.—The Director of the Federal
20 Housing Finance Agency may use the property of
21 the Office of Federal Housing Enterprise Oversight
22 to perform functions which have been transferred to
23 the Director of the Federal Housing Finance Agency
24 for such time as is reasonable to facilitate the or-
25 derly transfer of functions transferred pursuant to



1 any other provision of this Act or any amendment
2 made by this Act to any other provision of law.

3 (2) AGENCY SERVICES.—Any agency, depart-
4 ment, or other instrumentality of the United States,
5 and any successor to any such agency, department,
6 or instrumentality, which was providing supporting
7 services to the Office of Federal Housing Enterprise
8 Oversight before the expiration of the period under
9 subsection (a) in connection with functions that are
10 transferred to the Director of the Federal Housing
11 Finance Agency shall—

12 (A) continue to provide such services, on a
13 reimbursable basis, until the transfer of such
14 functions is complete; and

15 (B) consult with any such agency to co-
16 ordinate and facilitate a prompt and reasonable
17 transition.

18 (e) SAVINGS PROVISIONS.—

19 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
20 TIONS NOT AFFECTED.—Subsection (a) shall not af-
21 fect the validity of any right, duty, or obligation of
22 the United States, the Director of the Office of Fed-
23 eral Housing Enterprise Oversight, or any other per-
24 son, which—



1 (A) arises under or pursuant to the title
2 XIII of the Housing and Community Develop-
3 ment Act of 1992, the Federal National Mort-
4 gage Association Charter Act, the Federal
5 Home Loan Mortgage Corporation Act, or any
6 other provision of law applicable with respect to
7 such Office; and

8 (B) existed on the day before the abolish-
9 ment under subsection (a) of this section.

10 (2) CONTINUATION OF SUITS.—No action or
11 other proceeding commenced by or against the Di-
12 rector of the Office of Federal Housing Enterprise
13 Oversight in connection with functions that are
14 transferred to the Director of the Federal Housing
15 Finance Agency shall abate by reason of the enact-
16 ment of this Act, except that the Director of the
17 Federal Housing Finance Agency shall be sub-
18 stituted for the Director of the Office of Federal
19 Housing Enterprise Oversight as a party to any
20 such action or proceeding.

21 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
22 **REGULATIONS.**

23 All regulations, orders, determinations, and resolu-
24 tions that—



1 (1) were issued, made, prescribed, or allowed to
2 become effective by—

3 (A) the Office of Federal Housing Enter-
4 prise Oversight; or

5 (B) a court of competent jurisdiction and
6 that relate to functions transferred by this sub-
7 title; and

8 (2) are in effect on the date of the abolishment
9 under section 301(a) of this Act, shall remain in ef-
10 fect according to the terms of such regulations, or-
11 ders, determinations, and resolutions, and shall be
12 enforceable by or against the Director of the Federal
13 Housing Finance Agency until modified, terminated,
14 set aside, or superseded in accordance with applica-
15 ble law by such Director, as the case may be, any
16 court of competent jurisdiction, or operation of law.

17 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
18 **OFHEO.**

19 (a) TRANSFER.—Each employee of the Office of Fed-
20 eral Housing Enterprise Oversight shall be transferred to
21 the Federal Housing Finance Agency for employment no
22 later than the date of the abolishment under section
23 301(a) of this Act and such transfer shall be deemed a
24 transfer of function for purposes of section 3503 of title
25 5, United States Code.



1 (b) GUARANTEED POSITIONS.—Each employee trans-
2 ferred under subsection (a) shall be guaranteed a position
3 with the same status, tenure, grade, and pay as that held
4 on the day immediately preceding the transfer. Each such
5 employee holding a permanent position shall not be invol-
6 untarily separated or reduced in grade or compensation
7 for 12 months after the date of transfer, except for cause
8 or, if the employee is a temporary employee, separated in
9 accordance with the terms of the appointment.

10 (c) APPOINTMENT AUTHORITY FOR EXCEPTED
11 SERVICE EMPLOYEES.—

12 (1) IN GENERAL.—In the case of employees oc-
13 cupying positions in the excepted service, any ap-
14 pointment authority established pursuant to law or
15 regulations of the Office of Personnel Management
16 for filling such positions shall be transferred, subject
17 to paragraph (2).

18 (2) DECLINE OF TRANSFER.—The Director of
19 the Federal Housing Finance Agency may decline a
20 transfer of authority under paragraph (1) (and the
21 employees appointed pursuant thereto) to the extent
22 that such authority relates to positions excepted
23 from the competitive service because of their con-
24 fidential, policy-making, policy-determining, or pol-
25 icy-advocating character.



1 (d) REORGANIZATION.—If the Director of the Fed-
2 eral Housing Finance Agency determines, after the end
3 of the 1-year period beginning on the date of the abolish-
4 ment under section 201(a), that a reorganization of the
5 combined work force is required, that reorganization shall
6 be deemed a major reorganization for purposes of afford-
7 ing affected employees retirement under section
8 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
9 Code.

10 (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee
11 of the Office of Federal Housing Enterprise Oversight ac-
12 cepting employment with the Director of the Federal
13 Housing Finance Agency as a result of a transfer under
14 subsection (a) may retain for 12 months after the date
15 such transfer occurs membership in any employee benefit
16 program of the Federal Housing Finance Agency or the
17 Office of Federal Housing Enterprise Oversight, as appli-
18 cable, including insurance, to which such employee belongs
19 on the date of the abolishment under section 201(a) if—

20 (1) the employee does not elect to give up the
21 benefit or membership in the program; and

22 (2) the benefit or program is continued by the
23 Director of the Federal Housing Finance Agency;

24 The difference in the costs between the benefits which
25 would have been provided by such agency and those pro-



1 vided by this section shall be paid by the Director of the
2 Federal Housing Finance Agency. If any employee elects
3 to give up membership in a health insurance program or
4 the health insurance program is not continued by such Di-
5 rector, the employee shall be permitted to select an alter-
6 nate Federal health insurance program within 30 days of
7 such election or notice, without regard to any other regu-
8 larly scheduled open season.

9 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

10 Upon the abolishment under section 301(a), all prop-
11 erty of the Office of Federal Housing Enterprise Oversight
12 shall transfer to the Director of the Federal Housing Fi-
13 nance Agency.

14 **Subtitle B—Federal Housing**
15 **Finance Board**

16 **SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
17 **NANCE BOARD.**

18 (a) IN GENERAL.—Effective at the end of the 1-year
19 period beginning on the date of enactment of this Act, the
20 Federal Housing Finance Board (in this title referred to
21 as the “Board”) is abolished.

22 (b) DISPOSITION OF AFFAIRS.—During the 1-year
23 period beginning on the date of enactment of this Act, the
24 Board, solely for the purpose of winding up the affairs
25 of the Board—



1 (1) shall manage the employees of such Board
2 and provide for the payment of the compensation
3 and benefits of any such employee which accrue be-
4 fore the effective date of the transfer of such em-
5 ployee under section 323; and

6 (2) may take any other action necessary for the
7 purpose of winding up the affairs of the Board.

8 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

9 The amendments made by titles I and II and the abolish-
10 ment of the Board under subsection (a) may not be con-
11 strued to affect the status of any employee of such Board
12 as employees of an agency of the United States for pur-
13 poses of any other provision of law before the effective
14 date of the transfer of any such employee under section
15 323.

16 (d) USE OF PROPERTY AND SERVICES.—

17 (1) PROPERTY.—The Director of the Federal
18 Housing Finance Agency may use the property of
19 the Board to perform functions which have been
20 transferred to the Director of the Federal Housing
21 Finance Agency for such time as is reasonable to fa-
22 cilitate the orderly transfer of functions transferred
23 under any other provision of this Act or any amend-
24 ment made by this Act to any other provision of law.



1 (2) AGENCY SERVICES.—Any agency, depart-
2 ment, or other instrumentality of the United States,
3 and any successor to any such agency, department,
4 or instrumentality, which was providing supporting
5 services to the Board before the expiration of the 1-
6 year period under subsection (a) in connection with
7 functions that are transferred to the Director of the
8 Federal Housing Finance Agency shall—

9 (A) continue to provide such services, on a
10 reimbursable basis, until the transfer of such
11 functions is complete; and

12 (B) consult with any such agency to co-
13 ordinate and facilitate a prompt and reasonable
14 transition.

15 (e) SAVINGS PROVISIONS.—

16 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
17 TIONS NOT AFFECTED.—Subsection (a) shall not af-
18 fect the validity of any right, duty, or obligation of
19 the United States, a member of the Board, or any
20 other person, which—

21 (A) arises under the Federal Home Loan
22 Bank Act or any other provision of law applica-
23 ble with respect to such Board; and

24 (B) existed on the day before the effective
25 date of the abolishment under subsection (a).



1 (2) CONTINUATION OF SUITS.—No action or
2 other proceeding commenced by or against the
3 Board in connection with functions that are trans-
4 ferred to the Director of the Federal Housing Fi-
5 nance Agency shall abate by reason of the enactment
6 of this Act, except that the Director of the Federal
7 Housing Finance Agency shall be substituted for the
8 Board or any member thereof as a party to any such
9 action or proceeding.

10 **SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN**
11 **REGULATIONS.**

12 (a) IN GENERAL.—All regulations, orders, and deter-
13 minations described under subsection (b) shall remain in
14 effect according to the terms of such regulations, orders,
15 determinations, and resolutions, and shall be enforceable
16 by or against the Director of the Federal Housing Finance
17 Agency until modified, terminated, set aside, or super-
18 seded in accordance with applicable law by such Director,
19 any court of competent jurisdiction, or operation of law.

20 (b) APPLICABILITY.—A regulation, order, or deter-
21 mination is described under this subsection if it—

22 (1) was issued, made, prescribed, or allowed to
23 become effective by—

24 (A) the Board; or



1 (B) a court of competent jurisdiction and
2 relates to functions transferred by this subtitle;
3 and

4 (2) is in effect on the effective date of the abol-
5 ishment under section 321(a).

6 **SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
7 **FEDERAL HOUSING FINANCE BOARD.**

8 (a) TRANSFER.—Each employee of the Board shall
9 be transferred to the Federal Housing Finance Agency for
10 employment not later than the effective date of the abol-
11 ishment under section 321(a), and such transfer shall be
12 deemed a transfer of function for purposes of section 3503
13 of title 5, United States Code.

14 (b) GUARANTEED POSITIONS.—Each employee trans-
15 ferred under subsection (a) shall be guaranteed a position
16 with the same status, tenure, grade, and pay as that held
17 on the day immediately preceding the transfer. Each such
18 employee holding a permanent position shall not be invol-
19 untarily separated or reduced in grade or compensation
20 for 12 months after the date of transfer, except for cause
21 or, if the employee is a temporary employee, separated in
22 accordance with the terms of the appointment.

23 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
24 SENIOR EXECUTIVE SERVICE EMPLOYEES.—



1 (1) IN GENERAL.—In the case of employees oc-
2 cupying positions in the excepted service or the Sen-
3 ior Executive Service, any appointment authority es-
4 tablished under law or by regulations of the Office
5 of Personnel Management for filling such positions
6 shall be transferred, subject to paragraph (2).

7 (2) DECLINE OF TRANSFER.—The Director of
8 the Federal Housing Finance Agency may decline a
9 transfer of authority under paragraph (1) to the ex-
10 tent that such authority relates to positions excepted
11 from the competitive service because of their con-
12 fidential, policymaking, policy-determining, or policy-
13 advocating character, and noncareer positions in the
14 Senior Executive Service (within the meaning of sec-
15 tion 3132(a)(7) of title 5, United States Code).

16 (d) REORGANIZATION.—If the Director of the Fed-
17 eral Housing Finance Agency determines, after the end
18 of the 1-year period beginning on the effective date of the
19 abolishment under section 321(a), that a reorganization
20 of the combined workforce is required, that reorganization
21 shall be deemed a major reorganization for purposes of
22 affording affected employees retirement under section
23 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
24 Code.

25 (e) EMPLOYEE BENEFIT PROGRAMS.—



1 (1) IN GENERAL.—Any employee of the Board
2 accepting employment with the Federal Housing Fi-
3 nance Agency as a result of a transfer under sub-
4 section (a) may retain for 12 months after the date
5 on which such transfer occurs membership in any
6 employee benefit program of the Federal Housing
7 Finance Agency or the Board, as applicable, includ-
8 ing insurance, to which such employee belongs on
9 the effective date of the abolishment under section
10 321(a) if—

11 (A) the employee does not elect to give up
12 the benefit or membership in the program; and

13 (B) the benefit or program is continued by
14 the Director of the Federal Housing Finance
15 Agency.

16 (2) COST DIFFERENTIAL.—The difference in
17 the costs between the benefits which would have
18 been provided by the Board and those provided by
19 this section shall be paid by the Director of the Fed-
20 eral Housing Finance Agency. If any employee elects
21 to give up membership in a health insurance pro-
22 gram or the health insurance program is not contin-
23 ued by such Director, the employee shall be per-
24 mitted to select an alternate Federal health insur-
25 ance program within 30 days after such election or



1 notice, without regard to any other regularly sched-
2 uled open season.

3 **SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.**

4 Upon the effective date of the abolishment under sec-
5 tion 321(a), all property of the Board shall transfer to
6 the Director of the Federal Housing Finance Agency.

7 **Subtitle C—Department of Housing**
8 **and Urban Development**

9 **SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNC-**
10 **TIONS.**

11 (a) **TERMINATION DATE.**—For purposes of this sub-
12 title, the term “termination date” means the date that oc-
13 curs one year after the date of the enactment of this Act.

14 (b) **DETERMINATION OF TRANSFERRED FUNCTIONS**
15 **AND EMPLOYEES.**—

16 (1) **IN GENERAL.**—Not later than the expira-
17 tion of the 6-month period beginning on the date of
18 the enactment of this Act, the Secretary, in con-
19 sultation with the Director of the Office of Federal
20 Housing Enterprise Oversight, shall determine—

21 (A) the functions, duties, and activities of
22 the Secretary of Housing and Urban Develop-
23 ment regarding oversight or regulation of the
24 enterprises under or pursuant to the author-
25 izing statutes, title XIII of the Housing and



1 Community Development Act of 1992, and any
2 other provisions of law, as in effect before the
3 date of the enactment of this Act, but not in-
4 cluding any such functions, duties, and activi-
5 ties of the Director of the Office of Federal
6 Housing Enterprise Oversight of the Depart-
7 ment of Housing and Urban Development and
8 such Office; and

9 (B) the employees of the Department of
10 Housing and Urban Development necessary to
11 perform such functions, duties, and activities.

12 (2) ENTERPRISE-RELATED FUNCTIONS.—For
13 purposes of this subtitle, the term “enterprise-re-
14 lated functions of the Department” means the func-
15 tions, duties, and activities of the Department of
16 Housing and Urban Development determined under
17 paragraph (1)(A).

18 (3) ENTERPRISE-RELATED EMPLOYEES.—For
19 purposes of this subtitle, the term “enterprise-re-
20 lated employees of the Department” means the em-
21 ployees of the Department of Housing and Urban
22 Development determined under paragraph (1)(B).

23 (c) DISPOSITION OF AFFAIRS.—During the 1-year
24 period beginning on the date of enactment of this Act, the
25 Secretary of Housing and Urban Development (in this



1 title referred to as the “Secretary”), solely for the purpose
2 of winding up the affairs of the Secretary regarding the
3 enterprise-related functions of the Department of Housing
4 and Urban Development (in this title referred to as the
5 “Department)” —

6 (1) shall manage the enterprise-related employ-
7 ees of the Department and provide for the payment
8 of the compensation and benefits of any such em-
9 ployee which accrue before the effective date of the
10 transfer of any such employee under section 343;
11 and

12 (2) may take any other action necessary for the
13 purpose of winding up the enterprise-related func-
14 tions of the Department.

15 (d) STATUS OF EMPLOYEES BEFORE TRANSFER.—

16 The amendments made by titles I and II and the termi-
17 nation of the enterprise-related functions of the Depart-
18 ment under subsection (b) may not be construed to affect
19 the status of any employee of the Department as employ-
20 ees of an agency of the United States for purposes of any
21 other provision of law before the effective date of the
22 transfer of any such employee under section 343.

23 (e) USE OF PROPERTY AND SERVICES.—

24 (1) PROPERTY.—The Director of the Federal
25 Housing Finance Agency may use the property of



1 the Secretary to perform functions which have been
2 transferred to the Director of the Federal Housing
3 Finance Agency for such time as is reasonable to fa-
4 cilitate the orderly transfer of functions transferred
5 under any other provision of this Act or any amend-
6 ment made by this Act to any other provision of law.

7 (2) AGENCY SERVICES.—Any agency, depart-
8 ment, or other instrumentality of the United States,
9 and any successor to any such agency, department,
10 or instrumentality, which was providing supporting
11 services to the Secretary regarding enterprise-related
12 functions of the Department before the termination
13 date under subsection (a) in connection with such
14 functions that are transferred to the Director of the
15 Federal Housing Finance Agency shall—

16 (A) continue to provide such services, on a
17 reimbursable basis, until the transfer of such
18 functions is complete; and

19 (B) consult with any such agency to co-
20 ordinate and facilitate a prompt and reasonable
21 transition.

22 (f) SAVINGS PROVISIONS.—

23 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
24 TIONS NOT AFFECTED.—Subsection (a) shall not af-
25 fect the validity of any right, duty, or obligation of



1 the United States, the Secretary, or any other per-
2 son, which—

3 (A) arises under the authorizing statutes,
4 title XIII of the Housing and Community De-
5 velopment Act of 1992, or any other provision
6 of law applicable with respect to the Secretary,
7 in connection with the enterprise-related func-
8 tions of the Department; and

9 (B) existed on the day before the termi-
10 nation date under subsection (a).

11 (2) CONTINUATION OF SUITS.—No action or
12 other proceeding commenced by or against the Sec-
13 retary in connection with the enterprise-related func-
14 tions of the Department shall abate by reason of the
15 enactment of this Act, except that the Director of
16 the Federal Housing Finance Agency shall be sub-
17 stituted for the Secretary or any member thereof as
18 a party to any such action or proceeding.

19 **SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN**
20 **REGULATIONS.**

21 (a) IN GENERAL.—All regulations, orders, and deter-
22 minations described in subsection (b) shall remain in ef-
23 fect according to the terms of such regulations, orders,
24 determinations, and resolutions, and shall be enforceable
25 by or against the Director of the Federal Housing Finance



1 Agency until modified, terminated, set aside, or super-
2 seded in accordance with applicable law by such Director,
3 any court of competent jurisdiction, or operation of law.

4 (b) APPLICABILITY.—A regulation, order, or deter-
5 mination is described under this subsection if it—

6 (1) was issued, made, prescribed, or allowed to
7 become effective by—

8 (A) the Secretary; or

9 (B) a court of competent jurisdiction and
10 that relate to the enterprise-related functions of
11 the Department; and

12 (2) is in effect on the termination date under
13 section 341(a).

14 **SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES.**

15 (a) TRANSFER.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), each enterprise-related employee of the
18 Department shall be transferred to the Federal
19 Housing Finance Agency for employment not later
20 than the termination date under section 341(a) and
21 such transfer shall be deemed a transfer of function
22 for purposes of section 3503 of title 5, United States
23 Code.

24 (2) AUTHORITY TO DECLINE.—An enterprise-
25 related employee of the Department may, in the dis-



1 cretion of the employee, decline transfer under para-
2 graph (1) to a position in the Federal Housing Fi-
3 nance Agency and shall be guaranteed a position in
4 the Department with the same status, tenure, grade,
5 and pay as that held on the day immediately pre-
6 ceding the date that such declination was made.
7 Each such employee holding a permanent position
8 shall not be involuntarily separated or reduced in
9 grade or compensation for 12 months after the date
10 that the transfer would otherwise have occurred, ex-
11 cept for cause or, if the employee is a temporary em-
12 ployee, separated in accordance with the terms of
13 the appointment.

14 (b) GUARANTEED POSITIONS.—Each enterprise-re-
15 lated employee of the Department transferred under sub-
16 section (a) shall be guaranteed a position with the same
17 status, tenure, grade, and pay as that held on the day
18 immediately preceding the transfer. Each such employee
19 holding a permanent position shall not be involuntarily
20 separated or reduced in grade or compensation for 12
21 months after the date of transfer, except for cause or, if
22 the employee is a temporary employee, separated in ac-
23 cordance with the terms of the appointment.

24 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
25 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

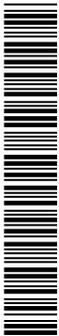


1 (1) IN GENERAL.—In the case of employees oc-
2 cupying positions in the excepted service or the Sen-
3 ior Executive Service, any appointment authority es-
4 tablished under law or by regulations of the Office
5 of Personnel Management for filling such positions
6 shall be transferred, subject to paragraph (2).

7 (2) DECLINE OF TRANSFER.—The Director of
8 the Federal Housing Finance Agency may decline a
9 transfer of authority under paragraph (1) to the ex-
10 tent that such authority relates to positions excepted
11 from the competitive service because of their con-
12 fidential, policymaking, policy-determining, or policy-
13 advocating character, and noncareer positions in the
14 Senior Executive Service (within the meaning of sec-
15 tion 3132(a)(7) of title 5, United States Code).

16 (d) REORGANIZATION.—If the Director of the Fed-
17 eral Housing Finance Agency determines, after the end
18 of the 1-year period beginning on the termination date
19 under section 341(a), that a reorganization of the com-
20 bined workforce is required, that reorganization shall be
21 deemed a major reorganization for purposes of affording
22 affected employees retirement under section 8336(d)(2) or
23 8414(b)(1)(B) of title 5, United States Code.

24 (e) EMPLOYEE BENEFIT PROGRAMS.—



1 (1) IN GENERAL.—Any enterprise-related em-
2 ployee of the Department accepting employment
3 with the Federal Housing Finance Agency as a re-
4 sult of a transfer under subsection (a) may retain
5 for 12 months after the date on which such transfer
6 occurs membership in any employee benefit program
7 of the Federal Housing Finance Agency or the De-
8 partment, as applicable, including insurance, to
9 which such employee belongs on the termination
10 date under section 341(a) if—

11 (A) the employee does not elect to give up
12 the benefit or membership in the program; and

13 (B) the benefit or program is continued by
14 the Director of the Federal Housing Finance
15 Agency.

16 (2) COST DIFFERENTIAL.—The difference in
17 the costs between the benefits which would have
18 been provided by the Department and those provided
19 by this section shall be paid by the Director of the
20 Federal Housing Finance Agency. If any employee
21 elects to give up membership in a health insurance
22 program or the health insurance program is not con-
23 tinued by such Director, the employee shall be per-
24 mitted to select an alternate Federal health insur-
25 ance program within 30 days after such election or



1 notice, without regard to any other regularly sched-
2 uled open season.

3 **SEC. 344. TRANSFER OF APPROPRIATIONS, PROPERTY, AND**
4 **FACILITIES.**

5 Upon the termination date under section 341(a), all
6 assets, liabilities, contracts, property, records, and unex-
7 pended balances of appropriations, authorizations, alloca-
8 tions, and other funds employed, held, used, arising from,
9 available to, or to be made available to the Department
10 in connection with enterprise-related functions of the De-
11 partment shall transfer to the Director of the Federal
12 Housing Finance Agency. Unexpended funds transferred
13 by this section shall be used only for the purposes for
14 which the funds were originally authorized and appro-
15 priated.

