

**PART IX—SECONDARY MARKET FOR
MORTGAGE LOANS**

**FEDERAL NATIONAL MORTGAGE ASSOCIATION AND
GOVERNMENT NATIONAL MORTGAGE ASSOCIATION**

EXCERPT FROM NATIONAL HOUSING ACT

(FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT)

[Public Law 479, 73d Congress; 48 Stat. 1252; 12 U.S.C. 1716 et seq.]

TITLE III—NATIONAL MORTGAGE ASSOCIATIONS

PURPOSES

SEC. 301. [12 U.S.C. 1716] The Congress hereby declares that the purposes of this title are to establish secondary market facilities for residential mortgages, to provide that the operations thereof shall be financed by private capital to the maximum extent feasible, and to authorize such facilities to—

(1) provide stability in the secondary market for residential mortgages;

(2) respond appropriately to the private capital market;

(3) provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing;

(4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and

(5) manage and liquidate federally owned mortgage portfolios in an orderly manner, with a minimum of adverse effect upon the residential mortgage market and minimum loss to the Federal Government.

CREATION OF ASSOCIATION

SEC. 302. [12 U.S.C. 1717] (a)(1) There is hereby created a body corporate to be known as the “Federal National Mortgage Association” which shall be in the Department of Housing and Urban Development. The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be es-

established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(2) On September 1, 1968, the body corporate described in the foregoing paragraph shall cease to exist in that form and is hereby partitioned into two separate and distinct bodies corporate, each of which shall have continuity and corporate succession as a separated portion of the previously existing body corporate, as follows:

(A) One of such separated portions shall be a body corporate without capital stock to be known as the Government National Mortgage Association (hereinafter referred to as the "Association"), which shall be in the Department of Housing and Urban Development and which shall retain the assets and liabilities acquired and incurred under sections 305 and 306 prior to such date, including any and all liabilities incurred pursuant to section 302(c). The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(B) The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the "corporation"), which shall retain the assets and liabilities acquired and incurred under sections 303 and 304 prior to such date. The corporation shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions to be a District of Columbia corporation.

(3) The partition transaction effected pursuant to the foregoing paragraph constitutes a reorganization within the meaning of section 368(a)(1)(E) of the Internal Revenue Code of 1954; and for the purposes of such Code, no gain or loss is recognized by the previously existing body corporate's by reason of the partition, and the basis and holding period of the assets of the corporation immediately following such partition are the same as the basis and holding period of such assets immediately prior to such partition.

(b)(1) For the purposes set forth in section 301 and subject to the limitations and restrictions of this title, each of the bodies corporate named in subsection (a)(2) is authorized, pursuant to commitments or otherwise, to purchase, service, sell, or otherwise deal in any mortgages which are insured under the National Housing Act or title V of the Housing Act of 1949, or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code; and to purchase, service, sell, or otherwise deal in any loans made or guaranteed under part B of title VI of the Public Health Service Act; and the corporation is authorized to lend on the security of any such mortgages and to purchase, sell, or otherwise deal in any securities guaranteed by the Association under section 306(g): *Provided*, That (1) the Association may not purchase any mortgage at a price exceeding 100 per centum of the unpaid principal amount thereof at the time of purchase, with adjustments for interest and any comparable items;

(2) the Association may not purchase any mortgage, except a mortgage insured under title V of the Housing Act of 1949, if it offered by, or covers property held by a State, territorial, or municipal instrumentality; and (3) the Association may not purchase any mortgage under section 305, except a mortgage insured under section 220 or title VIII or section 203(k) or under title X with respect to a new community approved under section 1004 thereof, or insured under section 213 and covering property located in an urban renewal area, or a mortgage covering property located in Alaska, Guam, or Hawaii, if the original principal obligation thereof exceeds or exceeded \$55,000 in the case of property upon which is located a dwelling designed principally for a one-family residence; or \$60,000 in the case of a two- or three-family residence, or \$68,750 in the case of a four-family residence; or in the case of a property containing more than four dwelling units, \$38,000 per dwelling unit (or such higher amount not in excess of \$45,000 per dwelling unit as the Secretary may by regulation specify in any geographical area where the Secretary finds that cost levels so require) for that part of the property (attributable to dwelling use). Notwithstanding the provisions of clause (3) of the preceding sentence, the Association may purchase a mortgage under section 305 with an original principal obligation which exceeds the otherwise applicable maximum amount per dwelling unit if the mortgage is insured under section 207(c)(3), 213(b)(2), 220(d)(3)(B)(iii), 221(d)(3)(ii), 221(d)(4)(ii), 231(c)(2), 234(e)(3), or 236. For the purposes of this title, the term "mortgages" and "home mortgages" shall be inclusive of any mortgages or other loans insured under any of the provisions of the National Housing Act or title V of the Housing Act of 1949.

(2) For the purposes set forth in section 301(a), the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as "conventional mortgages"). No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit

Union Administration, or any other seller currently engaged in mortgage lending or investing activities. For the purpose of this section, the term "conventional mortgages" shall include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member of a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1954, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board. The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands.

(3)¹ The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit for the purchase and installation of home improvements, including energy conserving improvements or solar energy systems described in the last paragraph of section 2(a) of the National Housing Act and residential energy conservation measures as described in section 210(11) of the National Energy Conservation Policy Act and financed by a public utility in accordance with the requirements of title II of such Act. To be eligible for purchase, any such loan or advance of credit (other than a loan or advance made with respect to energy conserving improvements or solar energy systems or residential energy conservation measures) not insured under title I of the National Housing Act shall be secured by a lien against the property to be improved.

(4)² The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of

¹Section 246 of the National Energy Conservation Policy Act, Pub. L. 95-619, approved November 9, 1978, added this paragraph. It was amended and rewritten by section 339(a) of the Housing and Community Development Act of 1980, Pub. L. 96-399, approved October 8, 1980. Section 339(a)(2) of such Act provides, in part, as follows: "When the Federal National Mortgage Association submits its proposal to the Secretary of Housing and Urban Development to implement the authority granted by the amendment made by this paragraph, the Secretary of Housing and Urban Development shall, within 75 days, approve such proposal or transmit to the Congress a report explaining why such proposal has not been approved."

²Paragraph (4) was added by section 339(b) of the Housing and Community Development Act of 1980, Pub. L. 96-399, approved October 8, 1980, which also provides, in part, as follows:

credit secured by mortgages or other liens against manufactured homes.

(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) conventional mortgages that are secured by a subordinate lien against a one-to-four-family residence that is the principal residence of the mortgagor; and (ii) conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence.

(6) The corporation may not implement any new program (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) before obtaining the approval of the Secretary under section 1322 of such Act.

(c)(1) Notwithstanding any other provision of this Act or of any other law, the Association is authorized under section 306 to cre-

“When the Federal National Mortgage Association submits its proposal to the Secretary of Housing and Urban Development to implement the authority granted by the amendment made by this paragraph, the Secretary of Housing and Urban Development shall, within 75 days, approve such proposal or transmit to the Congress a report explaining why such proposal has not been approved.”

ate, accept, execute, and otherwise administer in all respects such trusts, receiverships, conservatorships, liquidating or other agencies, or other fiduciary and representative undertakings and activities, hereinafter in this subsection called "trusts", as might be appropriate for financing purposes; and in relation thereto the Association may acquire, hold and manage, dispose of, and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in paragraph (2) of this subsection may have a financial interest. The Association may join in any such undertakings and activities notwithstanding that it is also serving in a fiduciary or representative capacity; and is authorized to guarantee any participations or other instruments, whether evidence of property rights or debt, issued for such financing purposes. Participations or other instruments issued by the Association pursuant to this subsection shall to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. The amounts of any mortgages and other obligations acquired by the Association under section 306, pursuant to this subsection, shall not be included in the total amounts set forth in section 306(c).

(2) Subject to the limitations provided in paragraph (4) of this subsection, one or more trusts may be established as provided in this subsection by each of the following departments or agencies:

(A) The Farmers Home Administration of the Department of Agriculture, but only with respect to operating loans, direct farm ownership loans, direct housing loans, and direct soil and water loans. Such trusts may not be established with respect to loans for housing for the elderly under sections 502 and 515(a) of the Housing Act of 1949, nor with respect to loans for nonfarm recreational development.

(B) The Department of Education, but only with respect to loans made by the Secretary of Education for construction of academic facilities, and loans to help finance student loan programs.

(C) The Department of Housing and Urban Development.

(D) The Department of Veterans Affairs.

(E) The Export-Import Bank.

(F) The Small Business Administration.

The head of each such department or agency, hereinafter in this subsection called the "trustor", is authorized to set aside a part or all of any obligations held by the trustor and subject them to a trust or trusts and, incident thereto, shall guarantee to the trustee timely payment thereof. The trust instrument may provide for the issuance and sale of beneficial interests or participations, by the trustee, in such obligations or in the right to receive interest and principal collections therefrom; and may provide for the substitution or withdrawal of such obligations, or for the substitution of cash for obligations. The trust or trusts shall be exempt from all taxation. The trust instrument may also contain other appropriate provisions in keeping with the purposes of this subsection. The Association shall be named and shall act as trustee of any such trusts and, for the purposes thereof, the title to such obligations shall be

deemed to have passed to the Association in trust. The trust instrument shall provide that custody, control, and administration of the obligations shall remain in the trustor subjecting the obligations to the trust, subject to transfer to the trustee in event of default or probable default, as determined by the trustee, in the payment of principal and interest of the beneficial interests or participations. Collections from obligations subject to the trusts shall be dealt with as provided in the instrument creating the trust. The trust instrument shall provide that the trustee will promptly pay to the trustor the full net proceeds of any sale of beneficial interests or participations to the extent they are based upon such obligations or collections. Such proceeds shall be dealt with as otherwise provided by law for sales or repayment of such obligations. The effect of both past and future sales of any issue of beneficial interests or participations shall be the same, to the extent of the principal of such issue, as the direct sale with recourse of the obligations subject to the trust. Any trustor creating a trust or trusts hereunder is authorized to purchase, through the facilities of the trustee, outstanding beneficial interests or participations to the extent of the amount of the trustor's responsibility to the trustee on beneficial interests or participations outstanding, and to pay the trustor's proper share of the costs and expenses incurred by the Association as trustee pursuant to the trust instrument.

(3) When any trustor guarantees to the trustee the timely payment of obligations the trustor subjects to a trust pursuant to this subsection, and it becomes necessary for such trustor to meet his responsibilities under such guaranty, the trustor is authorized to fulfill such guaranty.

(4) Beneficial interests or participations shall not be issued for the account of any trustor in an aggregate principal amount greater than is authorized with respect to such trustor in an appropriation Act. Any such authorization shall remain available only for the fiscal year for which it is granted and for the succeeding fiscal year.

(5) The Association, as trustee, is authorized to issue and sell beneficial interests or participations under this subsection, notwithstanding that there may be insufficiency in aggregate receipts from obligations subject to the related trust to provide for the payment by the trustee (on a timely basis out of current receipts or otherwise) of all interest or principal on such interests or participations (after provision for all costs and expenses incurred by the trustee, fairly prorated among trustors). There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable any trustor to pay the trustee such insufficiency as the trustee may require on account of outstanding beneficial interests or participations authorized to be issued pursuant to paragraph (4) of this subsection. Such trustor shall make timely payments to the trustee from such appropriations, subject to and in accord with the trust instrument. In the event that the insufficiency required by the trustee is on account of principal maturities of outstanding beneficial interests or participations authorized to be issued pursuant to paragraph (4) of this subsection, or pursuant hereto, the trustee is authorized to elect to issue additional beneficial interests or participations for refinancing purposes in lieu of

requiring any trustor or trustors to make payments to the trustee from appropriated funds or other sources. Each such issue of beneficial interests or participations shall be in an amount determined by the trustee but not in excess of the aggregate amount which the trustee would otherwise require the trustor or trustors to pay from appropriated funds or other sources, and may be issued without regard to the provisions of paragraph (4) of this subsection. All refinancing issues of beneficial interests or participations shall be deemed to have been issued pursuant to the authority contained in the appropriation Act or Acts under which the beneficial interests or participations were originally issued.

CAPITALIZATION—FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 303. [12 U.S.C. 1718] (a) The corporation shall have common stock, without par value, which shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors. The corporation may eliminate such rights of cumulative voting by a resolution adopted by its board of directors and approved by the holders of a majority of the shares of common stock voting in person or by proxy at the annual meeting, or other special meeting, at which such resolution is considered. The corporation may have preferred stock on such terms and conditions as the board of directors shall prescribe. The free transferability of the stock at all times to any person, firm, corporation, or other entity shall not be restricted except that, as to the corporation, it shall be transferable only on the books of the corporation. The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus.

(b)(1) The corporation may impose charges or fees, which may be regarded as elements of pricing, with the objective that all costs and expenses of the operations of the corporation should be within its income derived from such operations and that such operations should be fully self-supporting.

(2) All earnings from the operations of the corporation shall annually be transferred to the general surplus account of the corporation. At any time, funds of the general surplus account may, in the discretion of the board of directors, be transferred to reserves.

(c)(1) Except as provided in paragraph (2), the corporation may make such capital distributions (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) as may be declared by the board of directors. All capital distributions shall be charged against the general surplus account of the corporation.

(2) The corporation may not make any capital distribution that would decrease the total capital of the corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the corporation established under section 1361 of such Act or that would decrease the core capital of the corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the corporation established under section 1362 of such Act, without prior written approval of the distribution by the Director of the Office of

Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(d) Notwithstanding any other provision of law, any institution, including a national bank or State member bank of the Federal Reserve System or any member of the Federal Deposit Insurance Corporation, trust company, or other banking organization, organized under any law of the United States, including the laws relating to the District of Columbia, shall be authorized to purchase shares of common stock of the corporation and to hold or dispose of such stock, subject to the provisions of this title.

SECONDARY MARKET OPERATIONS—FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 304. [12 U.S.C. 1719] (a)(1) To carry out the purposes set forth in paragraph (a) of section 301, the operations of the corporation under this section shall be confined so far as practicable, to mortgages which are deemed by the corporation to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors. In the interest of assuring sound operation, the prices to be paid by the corporation for mortgages purchased in its secondary market operations under this section, should be established, from time to time, within the range of market prices for the particular class of mortgages involved, as determined by the corporation.

The volume of the corporation's purchases and sales, and the establishment of the purchase prices, sale prices, and charges or fees, in its secondary market operations under this section, should be determined by the corporation from time to time, and such determinations should be consistent with the objectives that such purchases and sales should be effected only at such prices and on such terms as will reasonably prevent excessive use of the corporation's facilities, and that the operations of the corporation under this section should be within its income derived from such operations and that such operations should be fully self-supporting. Nothing in this title shall prohibit the corporation from purchasing, and making commitments to purchase, any mortgage with respect to which the Secretary of Housing and Urban Development has entered into a contract with the corporation to make interest subsidy payments under section 243 of the National Housing Act.

(2) The volume of the corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees in its secondary market operations under this section, should be determined by the corporation from time to time; and such determinations, in conjunction with determinations made under paragraph (1), should be consistent with the objectives that the lending activities should be conducted on such terms as will reasonably prevent excessive use of the corporation's facilities, and that the operations of the corporation under this section should be within its income derived from such operations and that such operations should be fully self-supporting. The corporation shall not be permitted to use its lending authority (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market;

or (B) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the corporation is hereby empowered, in connection with any loan under this section, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the corporation.

(b) For the purposes of this section, the corporation is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury, to be redeemable at the option of the corporation before maturity in such manner as may be stipulated in such obligations. The corporation shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the corporation. The corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) The Secretary of the Treasury is authorized in the Secretary's discretion to purchase any obligations issued pursuant to subsection (b) of this section, as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of the Secretary's then outstanding holding of such obligations under this subsection to an amount greater than \$2,250,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this subsection. All redemptions, purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(d) To provide a greater degree of liquidity to the mortgage investment market and an additional means of financing its operations under this section, the corporation is authorized to set aside

any mortgages held by it under this section, and, upon approval of the Secretary of the Treasury, to issue and sell securities based upon the mortgages so set aside. Securities issued under this subsection may be in the form of debt obligations or trust certificates of beneficial interest, or both. Securities issued under this subsection shall have such maturities and bear such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury. Securities issued by the corporation under this subsection shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal and interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. Mortgages set aside pursuant to this subsection shall at all times be adequate to enable the corporation to make timely principal and interest payments on the securities issued and sold pursuant to this subsection. The corporation shall insert appropriate language in all of the securities issued under this subsection clearly indicating that such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation.

(e) For the purposes of this section, the corporation is authorized to issue, upon the approval of the Secretary of the Treasury, obligations which are subordinated to any or all other obligations of the corporation, including subsequent obligations. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as may be determined by the corporation with the approval of the Secretary of the Treasury and may be made redeemable at the option of the corporation before maturity in such manner as may be stipulated in such obligations. Any of such obligations may be made convertible into shares of common stock in such manner, at such price or prices, and at such time or times as may be stipulated therein. Obligations issued by the corporation under this subsection shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission. The corporation shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the corporation. The corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(f) Except for fees paid pursuant to section 309(g) of this Act and assessments pursuant to section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage,

asset, obligation, trust certificate of beneficial interest, or other security by the corporation. No provision of this subsection shall affect the purchase of any obligation by the Secretary of the Treasury pursuant to subsection (c).

【SPECIAL ASSISTANCE FUNCTIONS—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION】

【SEC. 305. Repealed.】

MANAGEMENT AND LIQUIDATION FUNCTIONS—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

SEC. 306. 【12 U.S.C. 1721】 (a) To carry out the purposes set forth in paragraph (c) of section 301, the Association is authorized and directed, as of the close of the cutoff date determined by the Association pursuant to section 303(d) of this title, to establish separate accountability for all of its assets and liabilities (exclusive of capital, surplus, surplus reserves, and undistributed earnings to be evidenced by preferred stock as provided in section 303(d) hereof, but inclusive of all rights and obligations under any outstanding contracts), and to maintain such separate accountability for the management and orderly liquidation of such assets and liabilities as provided in this section.

(b) For the purposes of this section and to assure that, to the maximum extent, and as rapidly as possible, private financing will be substituted for Treasury borrowings otherwise required to carry mortgages held under the aforesaid separate accountability, the Association is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association with the approval of the Secretary of the Treasury, to be redeemable at the option, of the Association before maturity in such manner as may be stipulated in such obligations; but in no event shall any such obligations be issued if, at the time of such proposed issuance, and as a consequence thereof, the resulting aggregate amount of its outstanding obligations under this subsection would exceed the amount of the Association's ownership under the aforesaid separate accountability, free from any liens or encumbrances, of cash, mortgages, and obligations of the United States or guaranteed thereby, or obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds. The proceeds of any private financing effected under this subsection shall be paid to the Secretary of the Treasury in reduction of the indebtedness of the Association to the Secretary of the Treasury under the aforesaid separate accountability. The Association shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Association. The Association is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) No mortgage shall be purchased by the Association in its operations under this section except pursuant to and in accordance with the terms of a contract or commitment to purchase the same made prior to the cutoff date provided for in section 303(d), which contract or commitment became a part of the aforesaid separate accountability, and the total amount of mortgages and commitments held by the Association under this section shall not, in any event, exceed \$3,350,000,000: *Provided*, That such maximum amount shall be progressively reduced by the amount of cash realizations on account of principal of mortgages held under the aforesaid separate accountability and by cancellation of any commitments to purchase mortgages thereunder, as reflected by the books of the Association, with the objective that the entire aforesaid maximum amount shall be eliminated with the orderly liquidation of all mortgages held under the aforesaid separate accountability: *And provided further*, That nothing in this subsection shall preclude the Association from granting such usual and customary increases in the amounts of outstanding commitments (resulting from increased costs or otherwise) as have theretofore been covered by like increases in commitments granted by the agencies of the Federal Government insuring or guaranteeing the mortgages. There shall be excluded from the total amounts set forth in this subsection the amounts of any mortgages which, subsequent to May 31, 1954, are transferred by law to the Association and held under the aforesaid separate accountability.

(d) The Association may issue to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section, such obligations to mature not more than five years from their respective dates of issue, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations. Each such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized to purchase any obligations of the Association to be issued under this section, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include any purchases of the Association's obligations hereunder.

(e) Notwithstanding any other provision of law, the Association is authorized, under the aforesaid separate accountability, to make commitments to purchase, and to purchase, service, or sell any obligations offered to it by the Secretary of Housing and Urban Development, or any mortgages covering residential property offered to it by any Federal instrumentality, or the head thereof.¹ There shall

¹ Section 306(b) of the Housing Act of 1959, Pub. L. 86-372, approved September 23, 1959, provides as follows:

be excluded from the total amounts set forth in subsection (c) the amounts of any obligations or mortgages purchased by the Association pursuant to this subsection.

(f) Notwithstanding any of the provisions of this Act or of any other law, an amount equal to the net decrease for the preceding fiscal year in the aggregate principal amount of all mortgages owned by the Association under this section shall, as of July 1 of each of the years 1961 through 1964, be transferred to and merged with the authority provided under section 305(a), and the amount of such authority as specified in section 305(c) shall be increased by an amount so transferred.

(g)(1) The Association is authorized, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on such trust certificates or other securities as shall (i) be issued by the corporation under section 304(d), or by any other issuer approved for the purposes of this subsection by the Association, and (ii) be based on and backed by a trust or pool composed of mortgages which are insured under the National Housing Act or title V of the Housing Act of 1949, or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code; or guaranteed under section 184 of the Housing and Community Development Act of 1992. The Association shall collect from the issuer a reasonable fee for any guaranty under this subsection and shall make such charges as it may determine to be reasonable for the analysis of any trust or other security arrangement proposed by the issuer. In the event the issuer is unable to make any payment of principal of or interest on any security guaranteed under this subsection, the Association shall make such payment as and when due in cash, and thereupon shall be subrogated fully to the rights satisfied by such payment. In any case in which (I) Federal law requires the reduction of the interest rate on any mortgage backing a security guaranteed under this subsection, (II) the mortgagor under the mortgage is a person in the military service, and (III) the issuer of such security fails to receive from the mortgagor the full amount of interest payment due, the Association may make payments of interest on the security in amounts not exceeding the difference between the amount payable under the interest rate on the mortgage and the amount of interest actually paid by the mortgagor. The Association is hereby empowered, in connection with any guaranty under this subsection, whether before or after any default, to provide by contract with the issuer for the extinguishment, upon default by the issuer, of any redemption, equitable, legal, or other right, title, or interest of the issuer in any mortgage or mortgages constituting the trust or pool against which the guaranteed securities are issued; and with respect to any issue of guaranteed securi-

"(b) In connection with the sale of any mortgages to the Federal National Mortgage Association pursuant to section 306(e) of the Federal National Mortgage Association Charter Act, the Housing and Home Finance Administrator is authorized and any other official unit, or agency selling such mortgages thereunder is directed, to transfer to the Association from time to time, from authorizations, limitations, and funds available for administrative expenses of such official, unit, or agency in connection with the same mortgages, such amounts thereof as said Administrator determines to be required for administrative expenses of the Association in connection with the purchase, servicing, and sale of such mortgages: *Provided*, That no such transfer shall be made after a budget estimate of the Association with respect to the same mortgages has been submitted to and finally acted upon by the Congress."

ties, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such trust or pool shall become the absolute property of the Association subject only to the unsatisfied rights of the holders of the securities based on and backed by such trust or pool. No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this subsection after the effective date of this sentence), shall preclude or limit the exercise by the Association of (A) its power to contract with the issuer on the terms stated in the preceding sentence, (B) its rights to enforce any such contract with the issuer, or (C) its ownership rights, as provided in the preceding sentence, in the mortgages constituting the trust or pool against which the guaranteed securities are issued. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guaranty under this subsection. There shall be excluded from the total amounts set forth in subsection (c) the amounts of any mortgages acquired by the Association as a result of its operations under this subsection.

(2) Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of \$110,000,000,000 during fiscal year 1996. There are authorized to be appropriated to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of guarantees issued under this Act by the Association such sums as may be necessary for fiscal year 1996.

(3)(A)¹ No² fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to any guaranty of the timely payment of principal or interest on securities or notes based on or backed by mortgages that are secured by 1- to 4-family dwellings and (i) insured by the Federal Housing Administration under title II of the National Housing Act; or (ii) insured or guaranteed under the Serviceman's Readjustment Act of 1944, chapter 37 of title 38, United States Code, or title V of the Housing Act of 1949.

(B) The fees charged for the guaranty of securities or on notes based on or backed by mortgages not referred to in subparagraph

¹The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327, 108 Stat. 2314, provides as follows:

"Notwithstanding subsection 306(g)(3) of the National Housing Act, as amended, fees charged for the guaranty of, or commitment to guaranty, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Government National Mortgage Association prior to February 1, 1993, and other related fees, shall be charged in an amount the Association deems appropriate."

²Section 972 of the Higher Education Amendments of 1998, Public Law 105-244, provides as follows:

"SEC. 972. GNMA GUARANTEE FEE.

"(a) IN GENERAL.—Section 306(g)(3)(A) of the National Housing Act (12 U.S.C. 1721(g)(3)(A)) is amended by striking "No fee or charge" and all that follows through "States)" and inserting "The Association shall assess and collect a fee in an amount equal to nine basis points".

"(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 2004."

(A), as authorized by other provisions of law, shall be set by the Association at a level not more than necessary to create reserves sufficient to meet anticipated claims based upon actuarial analysis, and for no other purpose.

(C) Fees or charges for the issuance of commitments or miscellaneous administrative fees of the Association shall not be on a competitive auction basis and shall remain at the level set for such fees or charges as of September 1, 1985, except that such fees or charges may be increased if reasonably related to the cost of administering the program, and for no other purpose.

(D) Not less than 90 days before increasing any fee or charge under subparagraph (B) or (C), the Secretary shall submit to the Congress a certification that such increase is solely for the purpose specified in such subparagraph.

(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection, and other related fees shall be charged by the Association in an amount the Association deems appropriate. The Association shall take such action as may be necessary to reasonably assure that such portion of the benefit, resulting from the Association's multiclass securities program, as the Association determines is appropriate accrues to mortgagors who execute eligible mortgages after the date of the enactment of this subparagraph.

(ii) The Association shall provide for the initial implementation of the program for which fees are charged under the first sentence of clause (i) by notice published in the Federal Register. The notice shall be effective upon publication and shall provide an opportunity for public comment. Not later than 12 months after publication of the notice, the Association shall issue regulations for such program based on the notice, comments received, and the experience of the Association in carrying out the program during such period.

(iii) The Association shall consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the multiclass securities program.

(iv) No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this clause after the effective date of this subparagraph) shall preclude or limit the exercise by the Association of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program.¹

SEPARATE ACCOUNTABILITY

SEC. 307. [12 U.S.C. 1722] All of the benefits and burdens incident to the administration of the functions and operations of the

¹The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, Pub. L. 103-327, 108 Stat. 2315, provides as follows:

"Beginning fiscal year 1995, the Government National Mortgage Association shall permit Ginnie Mae II mortgage-backed securities to be eligible as collateral for multiclass securities that such Association guarantees, in accordance with the Notice published at 59 Fed. Reg. 27290 (May 26, 1994) and successor Notices."

Association under sections 305 and 306, respectively, of this title, after allowance for related obligations of the Association, its prorated expenses, and the like, including amounts required for the establishment of such reserves as the Secretary of Housing and Urban Development shall deem appropriate, shall inure solely to the Secretary of the Treasury, and such related earnings or other amounts as become available shall be paid annually by the Association to the Secretary of the Treasury for covering into miscellaneous receipts.

MANAGEMENT

SEC. 308. [12 U.S.C. 1723] (a) All the powers and duties of the Government National Mortgage Association shall be vested in the Secretary of Housing and Urban Development and the Association shall be administered under the direction of the Secretary. Within the limitations of law, the Secretary shall determine the general policies which shall govern the operations of the Association, and shall have power to adopt, amend and repeal by laws governing the performance of the powers and duties granted to or imposed upon it by law.

There is hereby established in the Department of Housing and Urban Development the position of President, Government National Mortgage Association, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary shall select and effect the appointment of qualified persons to fill the offices of vice president, and such other offices as may be provided for in the bylaws. Persons appointed under the preceding sentence shall perform such executive functions, powers, and duties as may be prescribed by the bylaws or by the Secretary, and such persons shall be executive officers of the Association and shall discharge all such executive functions, powers, and duties.

(b) The Federal National Mortgage Association shall have a board of directors, which shall consist of eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom shall be elected annually by the common stockholders. The board shall at all times have as members appointed by the President at least one person from the homebuilding industry, at least one person from the mortgage lending industry, at least one person from the real estate industry, and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households. Each member of the board of directors shall be appointed or elected for a term ending on the date of the next annual meeting of the stockholders, except that any such appointed member may be removed from office by the President for good cause. Any elective seat on the board which becomes vacant after the annual election of the directors shall be filled by the board, but only for the unexpired portion of the term. Any appointive seat which becomes vacant shall be filled by appointment of the President, but only for the unexpired portion of the term. Within the limitations of law and regulation, the board shall determine the general policies which shall govern the operations of the corporation, and shall have power to adopt, amend,

and repeal by laws governing the performance of the powers and duties granted to or imposed upon it by law. The board of directors shall select and effect the appointment of qualified persons to fill the offices of president and vice president, and such other offices as may be provided for in the bylaws. Any member of the board who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for his services.

GENERAL POWERS

SEC. 309. [12 U.S.C. 1723a] (a) Each of the bodies corporate named in section 302(a)(2) shall have power to adopt, alter, and use a corporate seal, which shall be judicially noted; to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without regard to any qualification or similar statute in any State of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that the Association may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations or services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(b) Except as may be otherwise provided in this title, in chapter 91 of title 31, United States Code, or in other laws specifically applicable to Government corporations, the Association shall determine the necessity for and the character and amount of its obligations and expenditures and the manner in which they shall be incurred, allowed, paid, and accounted for.

(c)(1) The Association, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(2) The corporation, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.

(d)(1) Subject to the provisions of section 308(a), the Secretary of Housing and Urban Development shall have power to select and appoint or employ such officers, attorneys, employees, and agents of the Association, to vest them with such powers and duties, and to fix and to cause the Association to pay such compensation to them for their services, as he may determine, subject to the civil service and classification laws. Bonds may be required for the faithful performance of their duties, and the Association may pay the premiums therefor. With the consent of any Government corporation or Federal Reserve bank, or of any board, commission, independent establishment, or executive department of the Government, the Association may avail itself on a reimbursable basis of the use of information, services, facilities, officers, and employees thereof, including any field service thereof, in carrying out the provisions of this title.

(2) The board of directors of the corporation shall have the power to select and appoint or employ such officers, attorneys, employees, and agents, to vest them with such powers and duties, and to fix and to cause the corporation to pay such compensation to them for their services, as the board of directors determines reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation; and any such action shall be without regard to the Federal civil service and classification laws. Appointments, promotions, and separations so made shall be based on merit and efficiency, and no political tests or qualifications shall be permitted or given consideration. Each officer and employee of the corporation who is employed by the corporation prior to January 31, 1972 and who on the day previous to the beginning of such employment will have been subject to the civil service retirement law (subch. III of ch. 83 of title 5, United States Code) shall, so long as the employment of such officer or employee by the corporation continues without a break in continuity of service, continue to be subject to such law; and for the purpose of such law the employment of such officer or employee by the corporation without a break in continuity of service shall be deemed to be employment by the Government of the United States. The corporation shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by section 8334(a) of title 5, United States Code, except that such sum shall be determined by applying to the total basic pay (as defined in 5 U.S.C. 8331(3) and except as hereinafter provided) paid to the employees of the corporation who are covered by the

civil service retirement law, the per centum rate determined annually by the United States Civil Service Commission to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5, United States Code. The corporation shall also pay into the Civil Service Retirement and Disability Fund such portion of the cost of administration of the fund as is determined by the United States Civil Service Commission to be attributable to its employees. Notwithstanding the foregoing provisions, there shall not be considered for the purposes of the civil service retirement law that portion of the basic pay in any one year of any officer or employee of the corporation which exceeds the basic pay provided for positions listed in section 5312 of title 5, United States Code, on the last day of such year: *Provided*, That with respect to any person whose employment is made subject to the civil service retirement law by section 806 of the Housing and Community Development Act of 1974, there shall not be considered for the purposes of such law that portion of the basic pay of such person in any one year which exceeds the basic pay provided for positions listed in section 5316 of such title 5 on the last day of such year; except as provided in this subsection, the corporation shall not be subject to the provisions of title 5, United States Code.

(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate on (i) the comparability of the compensation policies of the corporation with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation's performance, and (iii) the comparability of the corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(B) Notwithstanding the first sentence of paragraph (2), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the corporation, unless such agreement or contract is approved in advance by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agree-

¹Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that "any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives".

ments for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

(C) For purposes of this paragraph, the term “executive officer” has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(e) No individual, association, partnership, or corporation, except the bodies corporate named in section 302(a)(2) of this title, shall hereafter use the words “Federal National Mortgage Association”, “Government National Mortgage Association” or any combination of such words, as the name or a part thereof under which the individual, association, partnership, or corporation shall do business. Violations of the foregoing sentence may be enjoined by any court of general jurisdiction at the suit of the proper body corporate. In any such suit, the plaintiff may recover any actual damages flowing from such violations, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damages) of not exceeding \$100 for each day during which such violation is committed or repeated.

(f) In order that the Association may be supplied with such forms of obligations or certificates as it may need for issuance under this title, the Secretary of the Treasury is authorized, upon request of the Association, to prepare such forms as shall be suitable and approved by the Association, to be held in the Treasury subject to delivery, upon order of the Association. The engraved plates, dies, bed-pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such forms.

(g) The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for each of the bodies corporate named in section 302(a)(2), for its own account or as fiduciary, and such banks shall be reimbursed for such services in such manner as may be agreed upon; and each of such bodies corporate may itself act in such capacities, for its own account or as fiduciary, and for the account of others.

[(h) [Repealed.]]

[(i) [Repealed.]]

(j)(1) The programs, activities, receipts, expenditures, and financial transactions of the corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report on each such audit shall be made by the Comptroller General

to the Congress. The corporation shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General.

(2) To carry out this subsection, the representatives of the General Accounting Office shall have access, upon request to the corporation or any auditor for an audit of the corporation under subsection (l), to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(k)(1) The corporation shall submit to the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development annual and quarterly reports of the financial condition and operations of the corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

(2) Each such annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Director may require; and

(C) an assessment (as of the end of the corporation's most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the corporation, of—

(i) the effectiveness of the internal control structure and procedures of the corporation; and

(ii) the compliance of the corporation with designated safety and soundness laws.

(3) The corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the corporation to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(1)(1) The corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the corporation (A) are presented fairly in accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (k)(2)(B).

(m)(1) The corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) the income, census tract location, race, and gender of mortgagors under such mortgages;

(B) the loan-to-value ratios of purchased mortgages at the time of origination;

(C) whether a particular mortgage purchased is newly originated or seasoned;

(D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

(E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

(2) The corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) census tract location of the housing;

(B) income levels and characteristics of tenants of the housing (to the extent practicable);

(C) rent levels for units in the housing;

(D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);

(F) use of funds (such as new construction, rehabilitation, refinancing);

(G) type of originating institution; and

(H) any other information that the Secretary considers appropriate, to the extent practicable.

(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the corporation after December 31, 1992.

(B) This subsection shall apply to any mortgage purchased by the corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the corporation.

(n)(1) The corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Secretary a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(2) The report under this subsection shall—

(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

(B) include, in aggregate form and by appropriate category, statements of the number of families served by the corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(C) include a statement of the extent to which the mortgages purchased by the corporation have been used in conjunction with public subsidy programs under Federal law;

(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the corporation that have been made to first-time homebuyers, as soon as providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

(E) include, in aggregate form and by appropriate category, the data provided to the Secretary under subsection (m)(1)(B);

(F) compare the level of securitization versus portfolio activity;

(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress toward standardization and securitization of mortgage products for multifamily housing;

(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been purchased by the corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

(J) describe in the aggregate the seller and servicer network of the corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

(K) describe the activities undertaken by the corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the corporation's activities support the objectives of comprehensive housing affordability strategies under section 105 of the Cranston-Gonzalez National Affordable Housing Act; and

(L) include any other information that the Secretary considers appropriate.

(3)(A) The corporation shall make each report under this subsection available to the public at the principal and regional offices of the corporation.

(B) Before making a report under this subsection available to the public, the corporation may exclude from the report information that the Secretary has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(o)(1) Not later than 4 months after the date of enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the corporation shall appoint an Affordable Housing Advisory Council to advise the corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.

INVESTMENT OF FUNDS

SEC. 310. [12 U.S.C. 1723b] Moneys of the Association not invested in mortgages or other security holdings or in operating facilities shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations or other instruments which are lawful investments for fiduciary, trust, or public funds.

OBLIGATIONS OF ASSOCIATION LEGAL INVESTMENTS

SEC. 311. [12 U.S.C. 1723c] All obligations, participations, or other instruments issued by either of the bodies corporate named in section 302(a)(2) shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All stock, obligations, securities, participations, or other instruments issued pursuant to this title shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

SHORT TITLE

SEC. 312. [12 U.S.C. 1716 note] This title III may be referred to as the "Federal National Mortgage Association Charter Act".

[INTERIM AUTHORITY TO PURCHASE CERTAIN MORTGAGES]

[SEC. 313. [Repealed.]]

[PURCHASE OF ENERGY CONSERVING IMPROVEMENT LOANS TO LOW- AND MODERATE-INCOME FAMILIES]

[SEC. 314. [Repealed.]]

[AUTHORITY OF SOLAR ENERGY AND ENERGY CONSERVATION BANK TO PURCHASE LOANS AND ADVANCES OF CREDIT FOR ENERGY CONSERVING IMPROVEMENTS OR SOLAR ENERGY SYSTEMS]

[SEC. 315. [Repealed.]]

【AUTHORITY OF SOLAR ENERGY AND ENERGY CONSERVATION BANK TO PURCHASE MORTGAGES SECURED BY NEWLY CONSTRUCTED HOMES WITH SOLAR ENERGY SYSTEMS】

【SEC. 316. [Repealed.]】

CIVIL MONEY PENALTIES AGAINST ISSUERS

SEC. 317. **【12 U.S.C. 1723i】** (a) IN GENERAL.

(1) **AUTHORITY.**—Whenever an issuer or custodian approved under section 306(g) knowingly and materially violates any provisions of subsection (b), the Secretary of Housing and Urban Development may impose a civil money penalty on the issuer or the custodian in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

(2) **AMOUNT OF PENALTY.**—The amount of the penalty, as determined by the Secretary, may not exceed \$5,000 for each violation, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed \$1,000,000. Each violation of a provision of subsection (b)(1) shall constitute a separate violation with respect to each pool of mortgages. In the case of a continuing violation, as determined by the Secretary, each day shall constitute a separate violation.

(b) **VIOLATIONS FOR WHICH A PENALTY MAY BE IMPOSED.**—

(1) **VIOLATIONS.**—The violations by an issuer or a custodian for which the Secretary may impose a civil money penalty under subsection (a) are the following:

(A) Failure to make timely payments of principal and interest to holders of securities guaranteed under section 306(g).

(B)¹ Failure to segregate cash flow from pooled mortgages or to deposit either principal and interest funds or escrow funds into special accounts with a depository institution whose accounts are insured by the National Credit Union Administration or by the Federal Deposit Insurance Corporation through the Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations.

(C) Use of escrow funds for any purpose other than that for which they were received.

(D) Transfer of servicing for a pool of mortgages to an issuer not approved under this title, unless expressly permitted by statute, regulation, or contract approved by the Secretary.

¹Section 2704(d)(13)(A) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (title II of division A of the Omnibus Consolidated Appropriations Act, 1997; Public Law 104-208) amends this subparagraph by striking “Bank Insurance Fund for banks or through the Savings Association Insurance Fund for savings associations” and inserting “Deposit Insurance Fund”. Section 2704(c) of such Act provides that such amendment “shall become effective on January, 1, 1999, if no insured depository institution is a savings association on that date.”.

(E) Failure to maintain a minimum net worth in accordance with requirements prescribed by the Association;¹

(F) Failure to promptly notify the Association in writing of any changes that materially affect the business status of an issuer.

(G) Submission to the Association of false information in connection with any securities guaranteed, or mortgages pooled, under section 306(g).

(H) Hiring, or retaining in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by the Association while such person was under suspension or debarment by the Secretary.

(I) Submission to the Association of a false certification either on its own behalf or on behalf of another person or entity.

(J) Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to, the application for approval as an issuer of securities under section 306(g).

(K) Violation of any provisions of this title or any implementing regulation, handbook, or participant letter issued under authority of this title.

(2) NOTIFICATION TO ATTORNEY GENERAL.—Before taking action to impose a civil money penalty for a violation under paragraph (1)(G) or paragraph (1)(I), the Secretary shall inform the Attorney General of the United States.

(c) AGENCY PROCEDURES.—

(1) ESTABLISHMENT.—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

(A) shall provide for the Secretary to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after an issuer or a custodian has been given notice of, and opportunity for, a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing.

(2) FINAL ORDERS.—If no hearing is requested with 15 days of receipt of a notice of opportunity for hearing, the imposition of a penalty shall constitute a final and unappealable determination. If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order. If the Secretary does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the

¹ So in law.

offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine by regulations.

(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The Secretary's determination or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (d).

(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

(1) IN GENERAL.—After exhausting all administrative remedies established by the Secretary under subsection (c)(1), an issuer or a custodian against which the Secretary has imposed a civil money penalty under subsection (a) may obtain a review of the penalty and such ancillary issues as may be addressed in the notice provided under subsection (c)(1)(A) in the appropriate court of appeals of the United States, by filing in such court, within 20 days after the entry of such order or determination, a written petition praying that the Secretary's order or determination be modified or be set aside in whole or in part.

(2) OBJECTIONS NOT RAISED IN HEARING.—A court shall not consider any objection that was not raised in the hearing conducted pursuant to subsection (c)(1) unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence, which was not presented at such hearing, is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the court shall remand the matter to the Secretary for consideration of such additional evidence.

(3) SCOPE OF REVIEW.—The decisions, findings, and determinations of the Secretary shall be reviewed pursuant to section 706 of title 5, United States Code.

(4) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, the court shall have the power in any such review to order payment of the penalty imposed by the Secretary.

(e) ACTION TO COLLECT PENALTY.—If any issuer or custodian fails to comply with the Secretary's determination or order imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (c)(1) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against the issuer or custodian and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) DEFINITION OF KNOWINGLY.—The term “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(h) REGULATIONS.—The Secretary shall issue such regulations as the Secretary deems appropriate to implement this section.

(i) DEPOSIT OF PENALTIES.—The Secretary shall deposit all civil money penalties collected under this section into moneys of the Association pursuant to section 307.

GNMA ADMINISTRATIVE EXPENSES

EXCERPT FROM HOUSING ACT OF 1959

[Public Law 86-372; 73 Stat. 654; 12 U.S.C. 1721 note]

SEC. 306. * * *

(b) [12 U.S.C. 1721 note] In connection with the sale of any mortgages to the Government National Mortgage Association pursuant to section 306(e) of the Federal National Mortgage Association Charter Act, the Secretary of Housing and Urban Development is authorized and any other official, unit, or agency selling such mortgages thereunder is directed, to transfer to the Association from time to time, from authorizations, limitations, and funds available for administrative expenses of such official, unit, or agency in connection with the same mortgages, such amounts thereof as said Secretary determines to be required for administrative expenses of the Association in connection with the purchase, servicing, and sale of such mortgages: *Provided*, That no such transfer shall be made after a budget estimate of the Association with respect to the same mortgages has been submitted to and finally acted upon by the Congress.

FNMA AND GNMA—PARTITION

EXCERPTS FROM HOUSING AND URBAN DEVELOPMENT ACT OF 1968

[Public Law 90-448; 82 Stat. 536; 12 U.S.C. 1716b]

TITLE VIII—SECONDARY MORTGAGE MARKET

PURPOSES

SEC. 801. [12 U.S.C. 1716b] The purposes of this title include the partition of the Federal National Mortgage Association as heretofore existing into two separate and distinct corporations, each of which shall have continuity and corporate succession as a separated portion of the previously existing corporation. One of such corporations, to be known as Federal National Mortgage Association, will be a Government-sponsored private corporation, will retain the assets and liabilities of the previously existing corporation accounted for under section 304 of the Federal National Mortgage Association Charter Act, and will continue to operate the secondary market operations authorized by such section 304. The other to be known as Government National Mortgage Association, will remain in the Government, will retain the assets and liabilities of the previously existing corporation accounted for under sections 305 and 306 of such Act, and will continue to operate the special assistance functions and management and liquidating functions authorized by such sections 305 and 306.

* * * * *

EFFECTIVE DATE

SEC. 808. [12 U.S.C. 1716b note] The amendments made by this title shall be effective from and after a date, no more than one hundred and twenty days following the date of enactment of this Act, as established by the Secretary of Housing and Urban Development.¹ Notice of the establishment of such effective date shall be published in the Federal Register at least thirty days prior thereto.

SAVINGS PROVISIONS

SEC. 809. [12 U.S.C. 1716b note] (a) No cause of action by or against the Federal National Mortgage Association existing prior to the effective date established pursuant to section 808 shall abate by reason of the enactment of this title. Any such cause of action may thereafter be asserted by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act.

(b) No suit, action, or other proceeding commenced by or against the Federal National Mortgage Association, or any officer

¹ September 1, 1968, was established as the effective date.

thereof in his official capacity, prior to the effective date established pursuant to section 808 shall abate by reason of the enactment of this title. A court may at any time thereafter during the pendency of any such litigation, on its own motion or that of any party, order that the litigation may be maintained by or against the appropriate corporate body named in section 302(a)(2) of the National Housing Act or the appropriate corresponding officer thereof.

TRANSITIONAL PROVISIONS

SEC. 810. **[12 U.S.C. 1716b note]** (a) On the effective date established pursuant to section 808 of this Act, each share of outstanding nonvoting common stock, with a par value of \$100 per share, of the Federal National Mortgage Association shall be changed into and shall become one share of voting common stock, without par value, of such corporation. For the purposes of the Internal Revenue Code of 1954, no gain or loss is recognized by the holders of such stock on such change, and the basis and holder period of such stock in the hands of the stockholders immediately after such change are the same as the basis and holding period of such stock in their hands immediately prior to such change.

[(b) [Repealed.]]

[(c) [Repealed.]]

(d) Those persons who are the officers and employees of the Federal National Mortgage Association immediately prior to the effective date established pursuant to section 808 shall become the officers and employees of the Government National Mortgage Association on such date. The Federal National Mortgage Association and the Government National Mortgage Association shall provide by contract for the conditions and methods under which and by which the Federal National Mortgage Association during the transitional period may employ those individuals who are employees of the Government National Mortgage Association on such effective date; and may provide by contract for the operation by either of such corporations of any of the functions of the other. The Secretary of Housing and Urban Development shall make every reasonable effort to place in other comparable Federal positions any individuals who are career or career-conditional employees of the Government National Mortgage Association on such effective date and who are subsequently during the transitional period neither employed by the Federal National Mortgage Association nor retained by the Government National Mortgage Association.

**FNMA MORTGAGE-BACKED SECURITIES PROGRAM
PROPOSAL**

**EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1980**

[Public Law 96-399; 94 Stat. 1652; 12 U.S.C. 1723a note]

MORTGAGE-BACKED SECURITIES PROGRAM

SEC. 330. **[12 U.S.C. 1723a note]** If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development or the Secretary of the Treasury, after the date of enactment of this section,¹ a proposal with respect to undertaking a mortgage-backed securities program, the Secretary of Housing and Urban Development or the Secretary of the Treasury, as the case may be, shall, within 90 days after submission of such proposal, approve the proposal or transmit to the Congress a report explaining why the proposal has not been approved.

¹ October 8, 1980.

FEDERAL HOME LOAN MORTGAGE CORPORATION

EXCERPT FROM EMERGENCY HOME FINANCE ACT OF 1970

[Public Law 91-351; 84 Stat. 450; 12 U.S.C. 1451 et seq.]

TITLE III—FEDERAL HOME LOAN MORTGAGE CORPORATION

SHORT TITLE AND STATEMENT OF PURPOSE

SEC. 301. [12 U.S.C. 1451 note] (a) This title may be cited as the “Federal Home Loan Mortgage Corporation Act”.

(b) It is the purpose of the Federal Home Loan Mortgage Corporation—

(1) to provide stability in the secondary market for residential mortgages;

(2) to respond appropriately to the private capital market;

(3) to provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for home mortgage financing; and

(4) to promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.

DEFINITIONS

SEC. 302. [12 U.S.C. 1451] As used in this title—

(a) The term “Board of Directors” means the Board of Directors of the Corporation.

(b) The term “Corporation” means the Federal Home Loan Mortgage Corporation created by this title.

(c) The term “law” includes any law of the United States or of any State (including any rule of law or of equity).

(d) The term “mortgage” includes such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages.

(e) The term “organization” means any corporation, partnership, association, business trust, or business entity.

(f) The term “prescribe” means to prescribe by regulations or otherwise.

(g) The term “property” includes any property, whether real, personal, mixed, or otherwise, including without limitation on the generality of the foregoing choses in action and mortgages, and includes any interest in any of the foregoing.

(h) The term “residential mortgage” means a mortgage which (1) is a mortgage on real estate, in fee simple or under a leasehold having such term as may be prescribed by the Corporation, upon which there is located a structure or structures designed in whole or in part for residential use, or which comprises or includes one or more condominium units or dwelling units (as defined by the Corporation) and (2) has such characteristics and meets such requirements as to amount, term, repayment provisions, number of families, status as a lien on such real estate, and otherwise, as may be prescribed by the Corporation.

The term “residential mortgage” also includes a loan or advance of credit insured under title I of the National Housing Act whose original proceeds are applied for in order to finance energy conserving improvements, or the addition of a solar energy system, to residential real estate. The term “residential mortgage” also includes a loan or advance of credit for such purposes, or purchased from any public utility carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy Act if the residential mortgage to be purchased is a loan or advance of credit the original proceeds of which are applied for in order to finance the purchase and installation of residential energy conservation measures (as defined in section 210(11) of the National Energy Conservation Policy Act) in residential real estate, not having the benefit of such insurance and includes loans made where the lender relies for purposes of repayment primarily on the borrower’s general credit standing and forecast of income, with or without other security. The term “residential mortgage” is also deemed to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a “residential mortgage” as defined under the first sentence of this subsection. Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection. A “secured loan or advance of credit” is one in which a security interest is taken in the rehabilitated, renovated, modernized, refurbished, or improved property. Such term shall also include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder, or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1954, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of tenant-stockholder or resident-member in such cooperative housing corporation. The term “residential mortgage” also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the bor-

rower, without regard to whether the security property is real, personal, or mixed.

(i) The term “conventional mortgage” means a mortgage other than a mortgage as to which the Corporation has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

(j) The term “security” has the meaning ascribed to it by section 2 of the Securities Act of 1933.

(k) The term “State”, whether used as a noun or otherwise, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(l) The term “mortgage insurance program” includes, in the case of a residential mortgage secured by a manufactured home, any manufactured home lending program under title I of the National Housing Act.

ESTABLISHMENT OF THE CORPORATION

SEC. 303. [12 U.S.C. 1452] (a)(1) There is hereby created the Federal Home Loan Mortgage Corporation, which shall be a body corporate under the direction of a Board of Directors. Within the limitations of law and regulation, the Board of Directors shall determine the general policies that govern the operations of the Corporation. The principal office of the Corporation shall be in the District of Columbia or at any other place determined by the Corporation.

(2)(A) The Board of Directors of the Corporation shall consist of 18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom shall be elected annually by the voting common stockholders. The Board of Directors shall at all times have as members appointed by the President of the United States at least 1 person from the homebuilding industry, at least 1 person from the mortgage lending industry, at least 1 person from the real estate industry, and at least 1 person from an organization that has represented consumer or community interests for not less than 2 years or 1 person who has demonstrated a career commitment to the provision of housing for low-income households.

(B) Each member of the Board of Directors shall be such or elected for a term ending on the date of the next annual meeting of the voting common stockholders, except that any appointed member may be removed from office by the President for good cause.

(C) Any appointive seat on the Board of Directors that becomes vacant shall be filled by appointment by the President of the United States, but only for the unexpired portion of the term. Any elective seat on the Board of Directors that becomes vacant after the annual election of the directors shall be filled by the Board of Directors, but only for the unexpired portion of the term.

(D) Any member of the Board of Directors who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for services as such a member.

(b)(1) Except as provided in paragraph (2), the Corporation may make such capital distributions (as such term is defined in

section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) as may be declared by the Board of Directors.

(2) The Corporation may not make any capital distribution that would decrease the total capital of the Corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the Corporation established under section 1361 of such Act or that would decrease the core capital of the Corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the Corporation established under section 1362 of such Act, without prior written approval of the distribution by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(c) The Corporation shall have power (1) to adopt, alter, and use a corporate seal; (2) to have succession until dissolved by Act of Congress; (3) to make and enforce such bylaws, rules, and regulations as may be necessary or appropriate to carry out the purposes or provisions of this title; (4) to make and perform contracts, agreements, and commitments; (5) to prescribe and impose fees and charges for services by the Corporation; (6) to settle, adjust, and compromise, and with or without consideration or benefit to the Corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Corporation; (7) to sue and be sued, complain and defend, in any State, Federal, or other court; (8) to acquire, take, hold, and own, and to deal with and dispose of any property; and (9) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation and benefits of officers, employees, attorneys, and agents as the Board of Directors determines reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or other major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in subsection (h)(3)) of the Corporation shall be based on the performance of the Corporation, all without regard to any other law except as may be provided by the Corporation or by laws hereafter enacted by the Congress expressly in limitation of this sentence. The Corporation, with the consent of any such department, establishment, or instrumentality, including any field services thereof, may utilize and act through any such department, establishment, or instrumentality and may avail itself of the use of information, services, facilities, and personnel thereof, and may pay compensation therefor, and all of the foregoing are hereby authorized to provide the same to the Corporation as it may request.

(d)¹ Funds of the Corporation may be invested in such investments as the Board of Directors may prescribe. Any Federal Re-

¹Item 1 of the section that is designated as section 2 and follows section 664 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as enacted by section 101(f) of P.L. 104-208) provides that "12 U.S.C. 90 is amended by adding at the end" a new provision.

serve bank or Federal home loan bank, or any bank as to which at the time of its designation by the Corporation there is outstanding a designation by the Secretary of the Treasury as a general or other depository of public money, may be designated by the Corporation as a depository or custodian or as a fiscal or other agent of the Corporation, and is hereby authorized to act as such depository, custodian, or agent. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depository of public money, under such regulations as may be prescribed by the Secretary of the Treasury, and may also be employed as fiscal or other agent of the United States, and it shall perform all such reasonable duties as such depository or agent as may be required of it.

(e) The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(f) Notwithstanding section 1349 of title 28 of the United States Code or any other provision of law, (1) the Corporation shall be deemed to be an agency included in sections 1345 and 1442 of such title 28; (2) all civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and (3) any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Corporation is a party may at any time before the trial thereof be removed by the Corporation, without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of the Corporation is located, by following any procedure for removal of causes in effect at the time of such removal.

(g) All mortgages, obligations, or other securities which are or have been sold by the Corporation pursuant to section 305 or section 306 of this title shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any officers thereof.

The U.S. Code citation corresponds to section 5153 of title LXIII of the Revised Statutes of the United States (relating to depositories of public moneys and financial agents of Government). The matter to be added is as follows:

“Notwithstanding the Federal Property and Administrative Services Act of 1949, as amended, the Secretary may select associations as financial agents in accordance with any process the Secretary deems appropriate and their reasonable duties may include the provision of electronic benefit transfer services (including State-administered benefits with the consent of the States), as defined by the Secretary.”

Item 2 of such section reads as follows: “2. Make conforming changes to 12 U.S.C. 265, 266, 391, 1452(d), 1767, 1789a, 2013, 2122 and to 31 U.S.C. 3122 and 3303.”. The U.S. Code citation of 12 U.S.C. 1452(d) corresponds to this subsection.

(h)(1) Not later than June 30, 1993, and annually thereafter, the Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate on (A) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses, (B) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the Corporation's performance, and (C) the comparability of the Corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the Corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(2) Notwithstanding the first sentence of subsection (c), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the Corporation, unless such agreement or contract is approved in advance by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this paragraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

(3) For purposes of this subsection, the term "executive officer" has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

CAPITAL STOCK

SEC. 304. [12 U.S.C. 1453] (a) The common stock of the Corporation shall consist of voting common stock, which shall be issued to such holders in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.

(b) The voting common stock shall have such par value and other characteristics as the Corporation provides. The voting common stock shall be vested with all voting rights, each share being entitled to 1 vote. The free transferability of the voting common

¹Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that "any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives".

stock at all times to any person, firm, corporation or other entity shall not be restricted except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

MORTGAGE OPERATIONS

SEC. 305. [12 U.S.C. 1454] (a)(1) The Corporation is authorized to purchase, and make commitments to purchase, residential mortgages. The Corporation may hold and deal with, and sell or otherwise dispose of, pursuant to commitments or otherwise, any such mortgage or interest therein. The operations of the Corporation under this section shall be confined so far as practicable to residential mortgages which are deemed by the Corporation to be of such quality, type, and class as to meet generally the purchase standards imposed by private institutional mortgage investors. The Corporation may establish requirements, and impose charges or fees, which may be regarded as elements of pricing, for different classes of sellers or servicers, and for such purposes the Corporation is authorized to classify sellers or services according to type, size, location, assets, or, without limitation on the generality of the foregoing, on such other basis or bases of differentiation as the Corporation may consider necessary or appropriate to effectuate the purposes or provisions of this Act. The Corporation may specify requirements concerning among other things, (A) minimum net worth; (B) supervisory mechanisms; (C) warranty compensation mechanisms; (D) prior approval of facilities; (E) prior origination and servicing experience with respect to different types of mortgages; (F) capital contributions and substitutes; (G) mortgage purchase volume limits; and (H) reduction of mortgage purchases during periods of borrowing. With respect to any particular type of seller, the Corporation shall not be required to make available programs involving prior approval of mortgages, optional delivery of mortgages, and purchase of other than conventional mortgages to an extent greater than the Corporation elects to make such programs available to other types of eligible sellers. Any requirements specified by the Corporation pursuant to the preceding three sentences must bear a rational relationship to the purposes or provisions of this Act, but will not be considered discriminatory solely on the grounds of differential effects on types of eligible sellers. Insofar as is practicable, the Corporation shall make reasonable efforts to encourage participation in its programs by each type of eligible seller. Nothing in this section authorizes the Corporation to impose any charge or fee upon any mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act solely because of such status.

(2) No conventional mortgages secured by a property comprising one- to four-family dwelling units shall be purchased under this section if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon

demand of the Corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation¹. The Corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The Corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. With respect to any transaction in which a seller contemporaneously sells mortgages originated more than one year old prior to the date of sale to the Corporation and receives in payment for such mortgages securities representing undivided interests only in those mortgages, the Corporation shall not impose any fee or charge upon an eligible seller which is not a member of a Federal Home Loan Bank which differs from that imposed upon an eligible seller which is such a member. The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation. Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, and \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board. The foregoing limitations may be in-

¹Section 202(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105-276, approved October 21, 1998, amended this sentence by striking "or" at the end of clause (B) and by striking the period at the end of the sentence and adding the following: "; or (D) the mortgage is subject to default loss protection that the Corporation determines is financially equal or superior, on an individual or pooled basis, to the protection provided by clause (C) of this sentence: *Provided*, That if the Director of the Office of Federal Housing Enterprise Oversight subsequently finds that such default loss protection determined by the Corporation does not provide such equal or superior protection, the Corporation shall provide such additional default loss protection for such mortgage, as approved by the Director of the Office of Federal Housing Enterprise Oversight, necessary to provide such equal or superior protection."

Section 122 of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105-277, approved October 21, 1998, provides that "[u]pon enactment of H.R. 4194, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, section 202 of that Act is hereby repealed."

created by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands.

(3) The sale or other disposition by the Corporation of a mortgage under this section may be with or without recourse, and shall be upon such terms and conditions relating to resale, repurchase, guaranty, substitution, replacement, or otherwise as the Corporation may prescribe.

(4)(A) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) residential mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) residential mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the Corporation shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage, secured by the same residence, the aggregate original amount of such other mortgages and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The Corporation shall establish limitations governing the maximum original principal obligation of such mortgages. In any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage secured by a subordinate lien and not merely with respect to the interest purchased by the Corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the Corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default. The Corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (iii) of such sentence.

(5) The Corporation is authorized to lend on the security of, and to make commitments to lend on the security of, any mortgage that the Corporation is authorized to purchase under this section. The volume of the Corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees in its secondary market operations under this paragraph, shall be determined by the Corporation from time to time; and such

determinations shall be consistent with the objectives that the lending activities shall be conducted on such terms as will reasonably prevent excessive use of the Corporation's facilities, and that the operations of the Corporation under this paragraph shall be within its income derived from such operations and that such operations shall be fully self-supporting. The corporation shall not be permitted to use its lending authority under this paragraph (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the Corporation is hereby empowered, in connection with any loan under this paragraph, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the Corporation.

(b) Notwithstanding any other law, authority to enter into and to perform and carry out any transactions or matter referred to in this section is conferred on any Federal home loan bank, Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the National Credit Union Administration, any Federal savings and loan association, any Federal home loan bank member, and any other financial institution the deposits or accounts of which are insured by any agency of the United States to the extent that Congress has the power to confer such authority.

(c) The Corporation may not implement any new program (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) before obtaining the approval of the Secretary under section 1322 of such Act.

OBLIGATIONS AND SECURITIES

SEC. 306. [12 U.S.C. 1455] (a) The Corporation is authorized, upon such terms and conditions as it may prescribe, to borrow, to give security, to pay interest or other return, and to issue notes, debentures, bonds, or other obligations, or other securities, including without limitation mortgage-backed securities guaranteed by the Government National Mortgage Association in the manner provided in section 306(g) of the National Housing Act. Any obligation or security of the Corporation shall be valid and binding notwithstanding that a person or persons purporting to have executed or attested the same may have died, become under disability, or ceased to hold office or employment before the issuance thereof.

(b) The Corporation may, by regulations or by writing executed by the Corporation, establish prohibitions or restrictions upon the creation of indebtedness or obligations of the Corporation or of liens or charges upon property of the Corporation, including after-acquired property, and create liens and charges, which may be floating liens or charges, upon all or any part or parts of the property of the Corporation, including after-acquired property. Such

prohibitions, restrictions, liens, and charges shall have effect, including without limitation on the generality of the foregoing such rank and priority, as may be provided by regulations of the Corporation or by writings executed by the Corporation, and shall create causes of action which may be enforced by action in the United States District Court for the District of Columbia or in the United States district court for any judicial district in which any of the property affected is located. Process in any such action may run to and be served in any judicial district or any place subject to the jurisdiction of the United States.

(c)(1) The Secretary of the Treasury may purchase any obligations issued under subsection (a). For such purpose, the Secretary may use a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include such purpose.

(2) The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if the purchase would increase the aggregate principal amount of the outstanding holdings of obligations under this subsection by the Secretary to an amount greater than \$2,250,000,000.

(3) Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions established to yield a rate of return determined by the Secretary to be appropriate, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of the purchase.

(4) The Secretary of the Treasury may at any time sell, upon terms and conditions and at prices determined by the Secretary, any of the obligations acquired by the Secretary under this subsection.

(5) All redemptions, purchases and sales by the Secretary of the Treasury of obligations under this subsection shall be treated as public debt transactions of the United States.

(d) The provisions of this section and of any restriction, prohibition, lien, or charge referred to in subsection (b) shall be fully effective notwithstanding any other law, including without limitation on the generality of the foregoing any law of or relating to sovereign immunity or priority.

(e)(1) Any person, trust, or organization created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in mortgages, obligations, or other securities which are or have been sold by the Corporation pursuant to this section or pursuant to section 305 of this title to the same extent that such person, trust, or organization is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, or organization, such Corporation mortgages, obligations, and other securities shall be considered to be obligations issued by the United States for purposes of the limitation.

(2) The provisions of paragraph (1) shall not apply with respect to a particular person, trust, or organization or class thereof in any State which, after December 21, 1979, enacts a statute which specifically names the Corporation and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by such person, trust, or organization or class thereof than is provided in paragraph (1). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest which was made prior thereto.

(3) Any authority granted by paragraph (1) and not granted by any other Federal statute shall expire as of the end of June 30, 1985. Such expiration shall not affect the validity of the contractual commitment to purchase, hold, or invest, which was made prior thereto pursuant to paragraph (1), and shall not affect the validity of any contractual commitment or other action to purchase, hold, or invest pursuant to any other authorization.

(f) The Corporation may have preferred stock on such terms and conditions as the Board of Directors shall prescribe. Any preferred stock shall not be entitled to vote with respect to the election of any member of the Board of Directors.

(g) All securities issued or guaranteed by the Corporation (other than securities guaranteed by the Corporation that are backed by mortgages not purchased by the Corporation) shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of the laws administered by the Securities and Exchange Commission.

(h)(1) The Corporation may not guarantee mortgage-backed securities or mortgage related payment securities backed by mortgages not purchased by the Corporation.

(2) The Corporation shall insert appropriate language in all of the obligations and securities of the Corporation issued under this section and section 305 clearly indicating that such obligations and securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Corporation.

(i) Except for fees paid pursuant to sections 303(c) and 1316(c)¹ of this Act and assessments pursuant to section 106² of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, or other security by the Corporation. No provision of this subsection shall affect the purchase of any obligation by any Federal home loan bank pursuant to section 303(a).

¹So in law. This subsection, as in effect before it was amended by section 1382(n)(2) of the Housing and Community Development Act of 1992, Pub. L. 102-550, approved October 28, 1992, indicates that this reference was probably intended to refer to section 306(c).

²So in law. Probably intended to refer to section 1316 of such Act, relating to assessments.

(j)(1) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation evidencing money borrowed, whether general or subordinated, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury.

(2) Any notes, debentures, of substantially identical types of unsecured obligations of the Corporation having maturities of 1 year or less that the corporation has issued or is issuing as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989¹ shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 365 days after such date of enactment.

(3) Any notes, debentures or substantially identical types of unsecured obligations of the Corporation having maturities of more than 1 year that the Corporation has issued or is issuing as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989¹ shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 60 days after such date of enactment.

(k)(1) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and shall bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury.

(2) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, that the Corporation has issued or is issuing as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989¹ shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection.

MISCELLANEOUS PROVISIONS

SEC. 307. [12 U.S.C. 1456] (a) All rights and remedies of the Corporation, including without limitation on the generality of the foregoing any rights and remedies of the Corporation on, under, or with respect to any mortgage or any obligation secured thereby, shall be immune from impairment, limitation, or restriction by or under (1) any law (except laws enacted by the Congress expressly in limitation of this sentence) which becomes effective after the acquisition by the Corporation of the subject or property on, under, or with respect to which such right or remedy arises or exists or would so arise or exist in the absence of such law, or (2) any administrative or other action which becomes effective after such acquisition. The Corporation is authorized to conduct its business without regard to any qualification or similar statute in any State.

¹ August 9, 1989.

(b)(1) The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. A report on each such audit shall be made by the Comptroller General to the Congress. The Corporation shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General.

(2) To carry out this subsection, the representatives of the General Accounting Office shall have access, upon request to the Corporation or any auditor for an audit of the Corporation under subsection (d), to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the Corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(c)(1) The Corporation shall submit to the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development annual and quarterly reports of the financial condition and operations of the Corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

(2) Each such annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Director may require; and

(C) an assessment (as of the end of the Corporation's most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the Corporation, of—

(i) the effectiveness of the internal control structure and procedures of the Corporation; and

(ii) the compliance of the Corporation with designated safety and soundness laws.

(3) The Corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the Board of Directors of the Corporation to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(d)(1) The Corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the Corporation (A) are presented fairly in

accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (c)(2)(B).

(e)(1) The Corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) the income, census tract location, race, and gender of mortgagors under such mortgages;

(B) the loan-to-value ratios of purchased mortgages at the time of origination;

(C) whether a particular mortgage purchased is newly originated or seasoned;

(D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

(E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

(2) The Corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) census tract location of the housing;

(B) income levels and characteristics of tenants of the housing (to the extent practicable);

(C) rent levels for units in the housing;

(D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);

(F) use of funds (such as new construction, rehabilitation, refinancing);

(G) type of originating institution; and

(H) any other information that the Secretary considers appropriate, to the extent practicable.

(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the Corporation after December 31, 1992.

(B) This subsection shall apply to any mortgage purchased by the Corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the Corporation.

(f)(1) The Corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Secretary a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(2) The report under this subsection shall—

¹Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

(B) include, in aggregate form and by appropriate category, statements of the number of families served by the Corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

(C) include a statement of the extent to which the mortgages purchased by the Corporation have been used in conjunction with public subsidy programs under Federal law;

(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the Corporation that have been made to first-time homebuyers, as soon as providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

(E) include, in aggregate form and by appropriate category, the data provided to the Secretary under subsection (e)(1)(B);

(F) compare the level of securitization versus portfolio activity;

(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress, toward standardization and securitization of mortgage products for multifamily housing;

(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the Corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been purchased by the Corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

(J) describe in the aggregate the seller and servicer network of the Corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

(K) describe the activities undertaken by the Corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the Corporation's activities support the objectives of com-

prehensive housing affordability strategies under section 105 of the Cranston-Gonzalez National Affordable Housing Act; and

(L) include any other information that the Secretary considers appropriate.

(3)(A) The Corporation shall make each report under this subsection available to the public at the principal and regional offices of the Corporation.

(B) Before making a report under this subsection available to the public, the Corporation may exclude from the report information that the Secretary has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(g)(1) Not later than 4 months after the date of enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Corporation shall appoint an Affordable Housing Advisory Council to advise the Corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.

PENAL PROVISIONS

SEC. 308. [12 U.S.C. 1457] Except as expressly authorized by statute of the United States, no individual or organization (except the Corporation) shall use the term “Federal Home Loan Mortgage Corporation”, or any combination of words including the words “Federal”, and “Home Loan”, and “Mortgage”, as a name or part thereof under which any individual or organization does any business, but this sentence shall not make unlawful the use of any name under which business is being done on the date of the enactment of this Act. No individual or organization shall use or display (1) any sign, device, or insigne prescribed or approved by the Corporation for use or display by the Corporation or by members of the Federal home loan banks, (2) any copy, reproduction, or colorable imitation of any such signs, device, or insigne, or (3) any sign, device, or insigne reasonably calculated to convey the impression that it is a sign, device, or insigne used by the Corporation or prescribed or approved by the Corporation, contrary to regulations of the Corporation prohibiting, or limiting or restricting, such use or display by such individual or organization. An organization violating this subsection shall for each violation be punished by a fine of not more than \$10,000. An officer or member of an organization participating or knowingly acquiescing in any violation of this subsection shall be punished by a fine of not more than \$5,000 or imprisonment for not more than one year, or both. An individual violating this subsection shall for each violation be punished as set forth in the sentence next preceding this sentence.

TERRITORIAL APPLICABILITY

SEC. 309. [12 U.S.C. 1458] Notwithstanding any other law, this title shall be applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEPARABILITY

SEC. 310. [12 U.S.C. 1459] Notwithstanding any other evidences of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of this title, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY
AND SOUNDNESS ACT OF 1992**

**EXCERPT FROM HOUSING AND COMMUNITY DEVELOPMENT ACT OF
1992**

[Public Law 102-550; 106 Stat. 3941; 12 U.S.C. 4501 et seq.]

**TITLE XIII—GOVERNMENT SPONSORED
ENTERPRISES**

SEC. 1301. [12 U.S.C. 4501 note] SHORT TITLE.

This title may be cited as the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992”.

SEC. 1302. [12 U.S.C. 4501] CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (referred to in this section collectively as the “enterprises”), and the Federal Home Loan Banks (referred to in this section as the “Banks”), have important public missions that are reflected in the statutes and charter Acts establishing the Banks and the enterprises;

(2) because the continued ability of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to accomplish their public missions is important to providing housing in the United States and the health of the Nation’s economy, more effective Federal regulation is needed to reduce the risk of failure of the enterprises;

(3) considering the current operating procedures of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, the enterprises and the Banks currently pose low financial risk of insolvency;

(4) neither the enterprises nor the Banks, nor any securities or obligations issued by the enterprises or the Banks, are backed by the full faith and credit of the United States;

(5) an entity regulating the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should have sufficient autonomy from the enterprises and special interest groups;

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

(7) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return; and

(8) the Federal Home Loan Bank Act should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

SEC. 1303. [12 U.S.C. 4502] DEFINITIONS.

For purposes of this title:

(1) **AFFILIATE.**—Except as provided by the Director, the term “affiliate” means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) **CAPITAL DISTRIBUTION.**—

(A) **IN GENERAL.**—The term “capital distribution” means—

(i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of the enterprise;

(ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and

(iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) **EXCEPTION.**—Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of the enterprise under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(3) **COMPENSATION.**—The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(4) **CORE CAPITAL.**—The term “core capital” means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) The par or stated value of outstanding common stock.

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock.

(C) Paid-in capital.

(D) Retained earnings.

The core capital of an enterprise shall not include any amounts that the enterprise could be required to pay, at the option of investors, to retire capital instruments.

(5) DIRECTOR.—The term “Director” means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(6) ENTERPRISE.—The term “enterprise” means—

(A) the Federal National Mortgage Association and any affiliate thereof; and

(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(7) EXECUTIVE OFFICER.—The term “executive officer” means, with respect to an enterprise, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(8) LOW-INCOME.—The term “low-income” means—

(A) in the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(B) in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(9) MEDIAN INCOME.—The term “median income” means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the Secretary.

(10) MODERATE-INCOME.—The term “moderate-income” means—

(A) in the case of owner-occupied units, income not in excess of area median income; and

(B) in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(11) MORTGAGE PURCHASES.—The term “mortgage purchases” includes mortgages purchased for portfolio or securitization.

(12) MULTIFAMILY HOUSING.—The term “multifamily housing” means a residence consisting of more than 4 dwelling units.

(13) NEW PROGRAM.—The term “new program” means any program for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in, conventional mortgages that—

(A) is significantly different from programs that have been approved under this Act or that were approved or engaged in by an enterprise before the date of the enactment of this Act¹; or

(B) represents an expansion, in terms of the dollar volume or number of mortgages or securities involved, of programs above limits expressly contained in any prior approval.

¹ October 28, 1992.

(14) OFFICE.—The term “Office” means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(15) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(16) SINGLE FAMILY HOUSING.—The term “single family housing” means a residence consisting of 1 to 4 dwelling units.

(17) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(18) TOTAL CAPITAL.—The term “total capital” means, with respect to an enterprise, the sum of the following:

(A) The core capital of the enterprise;

(B) A general allowance for foreclosure losses, which—

(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) shall not include any reserves of the enterprise made or held against specific assets.

(C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(19) VERY LOW-INCOME.—The term “very low-income” means—

(A) in the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(B) in the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

SEC. 1304. [12 U.S.C. 4503] PROTECTION OF TAXPAYERS AGAINST LIABILITY.

This title and the amendments made by this title may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks. This title and the amendments made by this title may not be construed as implying that any such enterprise or Bank, or any obligations or securities of such an enterprise or Bank, are backed by the full faith and credit of the United States.

Subtitle A—Supervision and Regulation of Enterprises

PART 1—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

SEC. 1311. [12 U.S.C. 4511] ESTABLISHMENT OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT.

There is hereby established an office within the Department of Housing and Urban Development, which shall be known as the Office of Federal Housing Enterprise Oversight.

SEC. 1312. [12 U.S.C. 4512] DIRECTOR.

(a) APPOINTMENT.—The Office shall be under the management of a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the nomination of such individual for appointment as Director.

(b) TERM.—The Director shall be appointed for a term of 5 years.

(c) VACANCY.—A vacancy in the position of Director shall be filled in the manner in which the original appointment was made under subsection (a).

(d) SERVICE AFTER END OF TERM.—A Director may serve after the expiration of the term for which the Director was appointed until a successor Director has been appointed.

(e) DEPUTY DIRECTOR.—

(1) IN GENERAL.—The Office shall have a Deputy Director who shall be appointed by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Deputy Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the appointment of such individual as Deputy Director.

(2) FUNCTIONS.—The Deputy Director shall have such functions, powers, and duties as the Director shall prescribe. In the event of the death, resignation, sickness, or absence of the Director, the Deputy Director shall serve as acting Director until the return of the Director or the appointment of a successor pursuant to subsection (c).

SEC. 1313. [12 U.S.C. 4513] DUTY AND AUTHORITY OF DIRECTOR.

(a) DUTY.—The duty of the Director shall be to ensure that the enterprises are adequately capitalized and operating safely, in accordance with this title.

(b) **AUTHORITY EXCLUSIVE OF SECRETARY.**—The Director is authorized, without the review or approval of the Secretary, to make such determinations, take such actions, and perform such functions as the Director determines necessary regarding—

(1) the issuance of regulations to carry out this part, subtitle B, and subtitle C (including the establishment of capital standards pursuant to subtitle B);

(2) examinations of the enterprises under section 1317;

(3) determining the capital levels of the enterprises and classification of the enterprises within capital classifications established under subtitle B;

(4) decisions to appoint conservators for the enterprises;

(5) administrative and enforcement actions under subtitle B, actions taken under subtitle C with respect to enforcement of subtitle B, and other matters relating to safety and soundness;

(6) approval of payments of capital distributions by the enterprises under section 303(c)(2) of the Federal National Mortgage Association Charter Act and section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act;

(7) requiring the enterprises to submit reports under section 1314 of this title, section 309(k) of the Federal National Mortgage Association Charter Act, and section 307(c) of the Federal Home Loan Mortgage Corporation Act;

(8) prohibiting the payment of excessive compensation by the enterprises to any executive officer of the enterprises under section 1318;

(9)¹ the management of the Office, including the establishment and implementation of annual budgets, the hiring of, and compensation levels for, personnel of the Office, and annual assessments for the costs of the Office;

(10) conducting research and financial analysis; and

(11) the submission of reports required by the Director under this title.

(c) **AUTHORITY SUBJECT TO APPROVAL OF SECRETARY.**—Any determinations, actions, and functions of the Director not referred to in subsection (b) shall be subject to the review and approval of the Secretary.

(d) **DELEGATION OF AUTHORITY.**—The Director may delegate to officers and employees of the Office any of the functions, powers, and duties of the Director, as the Director considers appropriate.

(e) **INDEPENDENCE IN PROVIDING INFORMATION TO CONGRESS.**—The Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommit-

¹Section 202(b) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105–276, approved October 21, 1998, amended this subsection by redesignating paragraphs (9), (10), and (11) and inserting a new paragraph (9), as follows:

“(9) default loss protection levels under section 305(a)(2)(D) of the Federal Home Loan Mortgage Corporation Act;”

Section 122 of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, approved October 21, 1998, provides that “[u]pon enactment of H.R. 4194, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, section 202 of that Act is hereby repealed.”

tee thereof, any reports, recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.

SEC. 1314. [12 U.S.C. 4514] AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.

(a) SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION.—

(1) FINANCIAL CONDITION.—The Director may require an enterprise to submit reports of financial condition and operations (in addition to the annual and quarterly reports required under section 309(k) of the Federal National Mortgage Association Charter Act and section 307(c) of the Federal Home Loan Mortgage Corporation Act).

(2) SPECIAL REPORTS.—The Director may also require an enterprise to submit special reports whenever, in the judgment of the Director, such reports are necessary to carry out the purposes of this title.

(3) LIMITATION.—The Director may not require the inclusion, in any report pursuant to paragraph (1) or (2), of any information that is not reasonably obtainable by the enterprise.

(4) NOTICE AND DECLARATION.—The Director shall notify the enterprise, a reasonable period in advance of the date for submission of any report under this subsection, of any specific information to be contained in the report and the date for the submission of the report. Each report under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the enterprise to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(b) CAPITAL DISTRIBUTIONS.—The Director may require an enterprise to submit a report to the Director after the declaration of any capital distribution by the enterprise and before making the capital distribution. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.

SEC. 1315. [12 U.S.C. 4515] PERSONNEL.

(a) OFFICE PERSONNEL.—The Director may appoint and fix the compensation of such officers and employees of the Office as the Director considers necessary to carry out the functions of the Director and the Office. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

(b) COMPARABILITY OF COMPENSATION WITH FEDERAL BANKING AGENCIES.—In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(c) PERSONNEL OF OTHER FEDERAL AGENCIES.—In carrying out the duties of the Office, the Director may use information, services,

staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

(d) REIMBURSEMENT OF HUD.—The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office.

(e) OUTSIDE EXPERTS AND CONSULTANTS.—Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the Office.

(f) EQUAL OPPORTUNITY REPORT.—Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 1312, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) a complete description of the equal opportunity, affirmative action, and minority business enterprise utilization programs of the Office; and

(2) such recommendations for administrative and legislative action as the Director determines appropriate to carry out such programs.

SEC. 1316. [12 U.S.C. 4516] FUNDING.

(a) ANNUAL ASSESSMENTS.—The Director may, to the extent provided in appropriation Acts, establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office, including the expenses of any examinations under section 1317. The initial annual assessment shall include any startup costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year.

(b) ALLOCATION OF ANNUAL ASSESSMENT TO ENTERPRISES.—

(1) AMOUNT OF PAYMENT.—Each enterprise shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of each enterprise bears to the total assets of both enterprises.

(2) TIMING OF PAYMENT.—The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.

(3) DEFINITION.—For the purpose of this section, the term “total assets” means, with respect to an enterprise, the sum of—

(A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(B) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and

(C) other off-balance-sheet obligations as determined by the Director.

(c) DEFICIENCIES DUE TO INCREASED COSTS OF REGULATION.—The semiannual payments made pursuant to subsection (b) by any enterprise that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise.

(d) SURPLUS.—If any amount from any annual assessment collected from an enterprise remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the enterprise for the following year.

(e) INITIAL SPECIAL ASSESSMENT.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act,¹ the enterprises shall each pay into the Federal Housing Enterprises Oversight Fund established under subsection (f) an initial assessment of \$1,500,000 to cover the startup costs of the Office, including space and modifications thereof, capital equipment, supplies, recruitment, and activities of the Office during the period preceding the first annual assessment under subsection (a). Any amounts collected from an enterprise under this subsection shall be credited against the first annual assessment collected pursuant to subsection (a), and are hereby appropriated, and shall be available and used, without fiscal year limitation, as provided in this section.

(f) FUND.—There is established in the Treasury of the United States a fund to be known as the Federal Housing Enterprises Oversight Fund. Any assessments collected pursuant to this section shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriation Acts and subsection (e), for—

(1) carrying out the responsibilities of the Director relating to the enterprises; and

(2) necessary administrative and nonadministrative expenses of the Office to carry out the purposes of this title.

(g) BUDGET AND FINANCIAL REPORTS.—

(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Director shall submit a copy of the financial operating plans and forecasts for the Office to the Secretary and the Director of the Office of Management and Budget.

(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Director shall submit a copy of the report of the results of the operations of the Office during such period to the Secretary and the Director of the Office of Management and Budget.

(3) INCLUSION IN PRESIDENT'S BUDGET.—The annual plans, forecasts, and reports required under this subsection shall be

¹The date of enactment was October 28, 1992.

included (A) in the Budget of the United States in the appropriate form, and (B) in the congressional justifications of the Department of Housing and Urban Development for each fiscal year in a form determined by the Secretary.

SEC. 1317. [12 U.S.C. 4517] EXAMINATIONS.

(a) **ANNUAL EXAMINATION.**—The Director shall annually conduct an on-site examination under this section of each enterprise to determine the condition of the enterprise for the purpose of ensuring its financial safety and soundness.

(b) **OTHER EXAMINATIONS.**—In addition to annual examinations under subsection (a), the Director may conduct an examination under this section whenever the Director determines that an examination is necessary to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness.

(c) **EXAMINERS.**—The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision for the services of examiners. The Director shall reimburse such agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

(d) **LAW APPLICABLE TO EXAMINERS.**—The Director and each examiner shall have the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.

(e) **TECHNICAL EXPERTS.**—The Director may obtain the services of any technical experts the Director considers appropriate to provide temporary technical assistance relating to examinations to the Director, officers, and employees of the Office. The Director shall describe, in the record of each examination, the nature and extent of any such temporary technical assistance.

(f) **OATHS, EVIDENCE, AND SUBPOENA POWERS.**—In connection with examinations under this section, the Director shall have the authority provided under section 1379B.

SEC. 1318. [12 U.S.C. 4518] PROHIBITION OF EXCESSIVE COMPENSATION.

(a) **IN GENERAL.**—The Director shall prohibit the enterprises from providing compensation to any executive officer of the enterprise that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

(b) **PROHIBITION OF SETTING COMPENSATION.**—In carrying out subsection (a), the Director may not prescribe or set a specific level or range of compensation.

SEC. 1319. [12 U.S.C. 4519] AUTHORITY TO PROVIDE FOR REVIEW OF ENTERPRISES BY RATING ORGANIZATION.

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating

organization for the purposes of the capital rules for broker-dealers, to conduct a review of the enterprises.

SEC. 1319A. EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS.

(a) **IN GENERAL.**—Each enterprise shall establish a minority outreach program to ensure the inclusion (to the maximum extent possible) in contracts entered into by the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

(b) **REPORT.**—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act,¹ each enterprise shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives² and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken by the enterprise pursuant to subsection (a). **[12 U.S.C. 4520]**

SEC. 1319B. [12 U.S.C. 4521] ANNUAL REPORTS BY DIRECTOR.

(a) **GENERAL REPORT.**—The Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives² and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than June 15 of each year, a written report, which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this title;

(2) a description of the financial safety and soundness of each enterprise, including the results and conclusions of the annual examinations of the enterprises conducted under section 1317(a);

(3) any recommendations for legislation to enhance the financial safety and soundness of the enterprises; and

(4) a description of—

(A) whether the procedures established by each enterprise pursuant to section 102(b)(3) of the Flood Disaster Protection Act of 1973 are adequate and being complied with, and

(B) the results and conclusions of any examination, as determined necessary by the Director, to determine the compliance of the enterprises with the requirements of section 102(b)(3) of such Act, which shall include a description of the methods used to determine compliance and the types and sources of deficiencies (if any), and identify any corrective measures that have been taken to remedy any such deficiencies,

except that the information described in this paragraph shall be included only in each of the first, third, and fifth annual reports under this subsection required to be submitted after the expiration of the 1-year period beginning on the date of enact-

¹The date of enactment was October 28, 1992.

²Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

ment of the Riegle Community Development and Regulatory Improvement Act of 1994¹.

(b) **REPORT ON ENFORCEMENT ACTIONS.**—Not later than March 15 of each year, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives² and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subtitle C and describing the disposition of each request, which shall include statements of—

- (1) the total number of requests made by the Director;
- (2) the number of requests that resulted in the commencement of litigation by the Department of Justice;
- (3) the number of requests that did not result in the commencement of litigation by the Department of Justice;
- (4) with respect to requests that resulted in the commencement of litigation—
 - (A) the number of days between the date of the request and the commencement of the litigation; and
 - (B) the number of days between the date of the commencement and termination of the litigation; and
- (5) the number of litigation requests pending at the beginning of the calendar year, the number of requests made during the calendar year, the number of requests for which action was completed during the calendar year, and the number of requests pending at the end of the calendar year.

SEC. 1319C. [12 U.S.C. 4522] PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) **IN GENERAL.**—The Director shall make available to the public—

- (1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;
- (2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under subtitle C and that has become final; and
- (3) any modification to or termination of any final order made public pursuant to this subsection.

(b) **HEARINGS.**—All hearings on the record with respect to any action of the Director or notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) **DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.**—If the Director makes a determination in writing

¹The date of enactment was September 23, 1994.

²Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Director may file any document or part thereof under seal in any hearing under subtitle C if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under subtitle C.

(f) DISCLOSURES TO CONGRESS.—This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

SEC. 1319D. [12 U.S.C. 4523] LIMITATION ON SUBSEQUENT EMPLOYMENT.

Neither the Director nor any former officer or employee of the Office who, while employed by the Office, was compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under section 5107 of title 5, United States Code, may accept compensation from an enterprise during the 2-year period beginning on the date of separation from employment by the Office.

SEC. 1319E. [12 U.S.C. 4524] AUDITS BY GAO.

The Comptroller General shall audit the operations of the Office in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the Office shall be made available to the Comptroller General. Audits under this section shall be conducted annually for the first 2 fiscal years following the date of the enactment of this Act¹ and as appropriate thereafter.

SEC. 1319F. [12 U.S.C. 4525] INFORMATION, RECORDS, AND MEETINGS.

For purposes of subchapter II of chapter 5 of title 5, United States Code—

- (1) the Office, and
 - (2) the Department of Housing and Urban Development,
- with respect to activities under this title, shall be considered agencies responsible for the regulation or supervision of financial institutions.

SEC. 1319G. [12 U.S.C. 4526] REGULATIONS AND ORDERS.

(a) AUTHORITY.—The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this title before the expiration of the 18-month period beginning on the appointment of the Director under section 1312. Such regulations and orders shall be subject to the approval of the Sec-

¹The date of enactment was October 28, 1992.

retary only to the extent provided in subsections (b) and (c) of section 1313.

(b) NOTICE AND COMMENT.—Any regulations issued by the Director under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

(c) CONGRESSIONAL REVIEW.—The Director may not publish any regulation for comment under subsection (b) unless, not less than 15 days before it is published for comment, the Director has submitted a copy of the regulation, in the form it is intended to be proposed, to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate.

PART 2—AUTHORITY OF SECRETARY

Subpart A—General Authority

SEC. 1321. [12 U.S.C. 4541] REGULATORY AUTHORITY.

Except for the authority of the Director of the Office of Federal Housing Enterprise Oversight described in section 1313(b) and all other matters relating to the safety and soundness of the enterprises, the Secretary of Housing and Urban Development shall have general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act are accomplished.

SEC. 1322. [12 U.S.C. 4542] PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.

(a) AUTHORITY.—The Secretary shall require each enterprise to obtain the approval of the Secretary for any new program of the enterprise before implementing the program.

(b) STANDARD FOR APPROVAL.—

(1) PERMANENT STANDARD.—Except as provided in paragraph (2), the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

(A) for a new program of the Federal National Mortgage Association, the Secretary determines that the program is not authorized under paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act, or under section 304 of such Act;

(B) for a new program of the Federal Home Loan Mortgage Corporation, the Secretary determines that the program is not authorized under section 305(a) (1), (4), or (5) of the Federal Home Loan Mortgage Corporation Act; or

(C) the Secretary determines that the new program is not in the public interest.

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(2) TRANSITION STANDARD.—Before the date occurring 12 months after the date of the effectiveness of the regulations under section 1361(e) establishing the risk-based capital test, the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

(A) The Secretary makes a determination as described in paragraph (1) (A), (B), or (C); or

(B) the Director determines that the new program would risk significant deterioration of the financial condition of the enterprise.

(c) PROCEDURE FOR APPROVAL.—

(1) SUBMISSION OF REQUEST.—To obtain the approval of the Secretary for purposes of subsection (a), an enterprise shall submit to the Secretary a written request for approval of the new program that describes the program.

(2) RESPONSE.—The Secretary shall, not later than the expiration of the 45-day period beginning upon the submission of a request for approval, approve the request or submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate a report explaining the reasons for not approving the request. The Secretary may extend such period for a single additional 15-day period only if the Secretary requests additional information from the enterprise.

(3) FAILURE TO RESPOND.—If the Secretary fails to approve the request or fails to submit a report under paragraph (2) during the period under such paragraph, the request shall be considered to have been approved.

(4) REVIEW OF DISAPPROVAL.—

(A) UNAUTHORIZED NEW PROGRAMS.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subparagraph (A) or (B) of subsection (b)(1), the Secretary shall provide the enterprise submitting the request with a timely opportunity to review and supplement the administrative record.

(B) NEW PROGRAMS NOT IN PUBLIC INTEREST.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subsection (b)(1)(C) or (b)(2)(B), the Secretary shall provide the enterprise submitting the request notice of, and opportunity for, a hearing on the record regarding such disapproval.

SEC. 1323. [12 U.S.C. 4543] PUBLIC ACCESS TO MORTGAGE INFORMATION.

(a) IN GENERAL.—The Secretary shall make available to the public, in forms useful to the public (including forms accessible by computers), the data submitted by the enterprises in the reports required under section 309(m) of the Federal National Mortgage As-

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

sociation Charter Act or section 307(e) of the Federal Home Loan Mortgage Corporation Act.

(b) ACCESS.—

(1) PROPRIETARY DATA.—Except as provided in paragraph (2), the Secretary may not make available to the public data that the Secretary determines pursuant to section 1326 are proprietary information.

(2) EXCEPTION.—The Secretary shall not restrict access to the data provided in accordance with section 309(m)(1)(A) of the Federal National Mortgage Association Charter Act or section 307(e)(1)(A) of the Federal Home Loan Mortgage Corporation Act.

(c) FEES.—The Secretary may charge reasonable fees to cover the cost of making data available under this section to the public.

SEC. 1324. [12 U.S.C. 4544] ANNUAL HOUSING REPORT.

(a) IN GENERAL.—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act and section 307(f) of the Federal Home Loan Mortgage Corporation Act, the Secretary shall submit a report, as part of the annual report under section 1328(a) of this title, on the extent to which each enterprise is achieving the annual housing goals established under subpart B of this part and the purposes of the enterprise established by law.

(b) CONTENTS.—The report shall—

(1) aggregate and analyze census tract data to assess the compliance of each enterprise with the central cities, rural areas, and other underserved areas housing goal and to determine levels of business in central cities, rural areas, underserved areas, low- and moderate-income census tracts, minority census tracts, and other geographical areas deemed appropriate by the Secretary;

(2) aggregate and analyze data on income to assess the compliance of each enterprise with the low- and moderate-income and special affordable housing goals;

(3) aggregate and analyze data on income, race, and gender by census tract and compare such data with larger demographic, housing, and economic trends;

(4) examine actions that each enterprise has undertaken or could undertake to promote and expand the annual goals established under sections 1332, 1333, and 1334, and the purposes of the enterprise established by law;

(5) examine the primary and secondary multifamily housing mortgage markets and describe—

(A) the availability and liquidity of mortgage credit;

(B) the status of efforts to provide standard credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products; and

(C) any factors inhibiting such standardization and securitization;

(6) examine actions each enterprise has undertaken and could undertake to promote and expand opportunities for first-time homebuyers; and

(7) describe any actions taken under section 1325(5) with respect to originators found to violate fair lending procedures.

SEC. 1325. [12 U.S.C. 4545] FAIR HOUSING.

The Secretary shall—

(1) by regulation, prohibit each enterprise from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(2) by regulation, require each enterprise to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act;

(3) by regulation, require each enterprise to submit data to the Secretary to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act, and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act, for appropriate action;

(4) obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act and the Equal Credit Opportunity Act and make such information available to the enterprises;

(5) direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the Equal Credit Opportunity Act, pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5, United States Code; and

(6) periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and this section.

SEC. 1326. [12 U.S.C. 4546] PROHIBITION OF PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION.

(a) **IN GENERAL.**—The Secretary may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 1323 of this title, section 309(n)(3) of the Federal National Mortgage Association Charter Act, or section 307(f)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) **PROTECTION OF INFORMATION ON HOUSING ACTIVITIES.**—The Secretary shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 309(n) of the Federal National Mortgage Association Charter Act or section 307(f) of the Federal Home Loan Mortgage Corporation Act that the Secretary determines is proprietary.

(c) NONDISCLOSURE PENDING CONSIDERATION.—This section may not be construed to authorize the disclosure of information to, or examination of data by, the public or a representative of any person or agency pending the issuance of a final decision under this section.

SEC. 1327. [12 U.S.C. 4547] AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.

The Secretary shall require each enterprise to submit reports on its activities to the Secretary as the Secretary considers appropriate.

SEC. 1328. [12 U.S.C. 4548] REPORTS BY SECRETARY.

(a) ANNUAL REPORT.—The Secretary shall, not later than June 30 of each year, submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of each enterprise.

(b) VIEWS ON BUDGET AND FINANCIAL PLANS OF ENTERPRISES.—On an annual basis, the Secretary shall provide the Committees referred to in subsection (a) with comments on the plans, forecasts, and reports required under section 1316(g).

Subpart B—Housing Goals

SEC. 1331. [12 U.S.C. 4561] ESTABLISHMENT.

(a) IN GENERAL.—The Secretary shall establish, by regulation, housing goals under this subpart for each enterprise. The housing goals shall include a low- and moderate-income housing goal pursuant to section 1332, a special affordable housing goal pursuant to section 1333, and a central cities, rural areas, and other underserved areas housing goal pursuant to section 1334. The Secretary shall implement this subpart in a manner consistent with section 301(3) of the Federal National Mortgage Association Charter Act and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) CONSIDERATION OF UNITS IN MULTIFAMILY HOUSING.—In establishing any goal under this subpart, the Secretary may take into consideration the number of housing units financed by any mortgage on multifamily housing purchased by an enterprise.

(c) ADJUSTMENT OF HOUSING GOALS.—Except as otherwise provided in this title, from year to year the Secretary may, by regulation, adjust any housing goal established under this subpart.

SEC. 1332. [12 U.S.C. 4562] LOW- AND MODERATE-INCOME HOUSING GOAL.

(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing for low- and moderate-income families. The Secretary may establish separate specific subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

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

(b) **FACTORS TO BE APPLIED.**—In establishing the goal under this section, the Secretary shall consider—

- (1) national housing needs;
- (2) economic, housing, and demographic conditions;
- (3) the performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;
- (4) the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;
- (5) the ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
- (6) the need to maintain the sound financial condition of the enterprises.

(c) **USE OF BORROWER AND TENANT INCOME.**—

(1) **IN GENERAL.**—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

(B) in the case of a rental dwelling—

(i) the income of the prospective or actual tenants of the property, where such data are available; or

(ii) the rent levels affordable to low- and moderate-income families, where the data referred to in clause (i) are not available.

(2) **AFFORDABILITY.**—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) **TRANSITION.**—

(1) **INTERIM TARGET.**—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for low- and moderate-income mortgage purchases for each enterprise shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

(2) **INTERIM GOAL.**—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

(3) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act¹ and shall be effective upon issuance.

SEC. 1333. [12 U.S.C. 4563] SPECIAL AFFORDABLE HOUSING GOAL.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families. The special affordable housing goal established under this section for an enterprise shall not be less than 1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year.

(2) STANDARDS.—In establishing the special affordable housing goal for an enterprise, the Secretary shall consider—

(A) data submitted to the Secretary in connection with the special affordable housing goal for previous years;

(B) the performance and efforts of the enterprise toward achieving the special affordable housing goal in previous years;

(C) national housing needs within the categories set forth in this section;

(D) the ability of the enterprise to lead the industry in making mortgage credit available for low-income and very low-income families; and

(E) the need to maintain the sound financial condition of the enterprise.

(b) FULL CREDIT ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall give full credit toward achievement of the special affordable housing goal under this section (for purposes of section 1336) to the following activities:

(A) FEDERALLY RELATED MORTGAGES.—The purchase or securitization of federally insured or guaranteed mortgages, if—

(i) such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal agency;

(ii) participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

¹The date of enactment was October 28, 1992.

(iii) the mortgages involved are on housing that otherwise qualifies under such goal to be considered for purposes of such goal.

(B) PORTFOLIOS.—The purchase or refinancing of existing, seasoned portfolios of loans, if—

(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and

(ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal.

(C) RTC AND FDIC LOANS.—The purchase of direct loans made by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation, if such loans—

(i) are not guaranteed by such agencies themselves or other Federal agencies;

(ii) are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

(iii) are made for the purchase of housing that otherwise qualifies under such goal to be considered for purposes of such goal.

(2) EXCLUSION.—No credit toward the achievement of the special affordable housing goal may be given to the purchase or securitization of mortgages associated with the refinancing of the existing enterprise portfolios.

(c) USE OF BORROWER AND TENANT INCOME.—

(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

(B) in the case of a rental dwelling—

(i) the income of the prospective or actual tenants of the property, where such data are available; or

(ii) the rent levels affordable to low-income and very low-income families, where the data referred to in clause (i) are not available.

(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) TRANSITION.—

(1) FNMA MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal National Mortgage Association shall include mortgage purchases of not less than \$2,000,000,000 (for such 2-year period), with one-half of such purchases consisting of

mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

(2) FHLMC MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal Home Loan Mortgage Corporation shall include mortgage purchases of not less than \$1,500,000,000 (for such 2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

(3) INCOME CHARACTERISTICS FOR MORTGAGE PURCHASES.—

(A) MULTIFAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on multifamily housing that are purchased and contribute to the achievement of such goals—

(i) 45 percent shall be mortgages on multifamily housing affordable to low-income families; and

(ii) 55 percent shall be mortgages on multifamily housing in which—

(I) at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the median income for the area; or

(II) at least 40 percent of the units are affordable to very low-income families.

(B) SINGLE FAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on single family housing that are purchased and contribute to the achievement of such goals—

(i) 45 percent shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income; and

(ii) 55 percent shall be mortgages of very low-income families.

(C) COMPLIANCE WITH SPECIAL AFFORDABLE HOUSING GOALS.—Only the portion of mortgages on multifamily housing purchased by an enterprise that are attributable to units affordable to low-income families shall contribute to the achievement of the special affordable housing goals under subparagraph (A)(ii).

(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act¹ and shall be effective upon issuance.

¹The date of enactment was October 28, 1992.

SEC. 1334. [12 U.S.C. 4564] CENTRAL CITIES, RURAL AREAS, AND OTHER UNDERSERVED AREAS HOUSING GOAL.

(a) **IN GENERAL.**—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas. The Secretary may establish separate subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

(b) **FACTORS TO BE APPLIED.**—In establishing the housing goal under this section, the Secretary shall consider—

(1) urban and rural housing needs and the housing needs of underserved areas;

(2) economic, housing, and demographic conditions;

(3) the performance and efforts of the enterprises toward achieving the central cities, rural areas, and other underserved areas housing goal in previous years;

(4) the size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

(5) the ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

(6) the need to maintain the sound financial condition of the enterprises.

(c) **LOCATION OF PROPERTIES.**—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on the location of the properties subject to mortgages purchased by each enterprise.

(d) **TRANSITION.**—

(1) **INTERIM TARGET.**—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for purchases by each enterprise of mortgages on housing located in central cities shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

(2) **INTERIM GOAL.**—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

(3) **DEFINITION OF CENTRAL CITY.**—For purposes of this subsection, the term “central city” means any political subdivision designated as a central city by the Office of Management and Budget.

(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act¹ and shall be effective upon issuance.

SEC. 1335. [12 U.S.C. 4565] OTHER REQUIREMENTS.

(a) IN GENERAL.—To meet the low- and moderate-income housing goal under section 1332, the special affordable housing goal under section 1333, and the central cities, rural areas, and other underserved areas housing goal under section 1334, each enterprise shall—

(1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;

(2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(3) take affirmative steps to—

(A) assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, and

(B) assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977,

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures;

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers; and

(5) assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997.

(b) AFFORDABLE HOUSING GOALS.—Actions taken under subsection (a)(5) shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 1332, 1333, and 1334 for any fiscal year, as determined by the Secretary.

SEC. 1336. [12 U.S.C. 4566] MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

(a) IN GENERAL.—

(1) AUTHORITY.—The Secretary shall monitor and enforce compliance with the housing goals established under sections 1332, 1333, and 1334, as provided in this section.

(2) GUIDELINES.—The Secretary shall establish guidelines to measure the extent of compliance with the housing goals, which may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of

¹The date of enactment was October 28, 1992.

mortgage purchase activities of the enterprises, based on such criteria as the Secretary deems appropriate.

(3) EXTENT OF COMPLIANCE.—In determining compliance with the housing goals established under this subpart, the Secretary—

(A) shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which such mortgage purchase qualifies; and

(B) may take into consideration the number of housing units financed by any mortgage on housing purchased by an enterprise.

(b) NOTICE AND DETERMINATION OF FAILURE TO MEET GOALS.—

(1) NOTICE.—If the Secretary determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, the Secretary shall provide written notice to the enterprise of such a determination, the reasons for such determination, the requirement to submit a housing plan under subsection (c) of this section, and the information on which the Secretary based the determination or imposed such requirement.

(2) RESPONSE PERIOD.—

(A) IN GENERAL.—During the 30-day period beginning on the date that an enterprise is provided notice under paragraph (1), the enterprise may submit to the Secretary any written information that the enterprise considers appropriate for consideration by the Secretary in determining whether such failure has occurred or whether the achievement of such goal was or is feasible.

(B) EXTENDED PERIOD.—The Secretary may extend the period under subparagraph (A) for good cause for not more than 30 additional days.

(C) SHORTENED PERIOD.—The Secretary may shorten the period under subparagraph (A) for good cause.

(D) FAILURE TO RESPOND.—The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the Secretary.

(3) CONSIDERATION OF INFORMATION AND DETERMINATION.—

(A) IN GENERAL.—After the expiration of the response period under paragraph (2) or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Secretary shall determine (i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal, and (ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

(B) CONSIDERATIONS.—In making such determinations, the Secretary shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) NOTICE.—The Secretary shall provide written notice to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹, and the Committee on Banking, Housing, and Urban Affairs of the Senate, of—

- (i) each determination that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;
- (ii) each determination that the achievement of a housing goal was or is feasible; and
- (iii) the reasons for each such determination.

Such notice shall respond to any information submitted during the response period.

(c) HOUSING PLANS.—

(1) REQUIREMENT.—If the Secretary finds pursuant to subsection (b), that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, and that the achievement of the housing goal was or is feasible, the Secretary shall require the enterprise to submit a housing plan under this subsection for approval by the Secretary.

(2) CONTENTS.—Each housing plan shall be a feasible plan describing the specific actions the enterprise will take—

(A) to achieve the goal for the next calendar year; or

(B) if the Secretary determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements as are reasonable in the remainder of such year.

The plan shall be sufficiently specific to enable the Secretary to monitor compliance periodically.

(3) DEADLINE FOR SUBMISSION.—The Secretary shall, by regulation, establish a deadline for an enterprise to submit a housing plan to the Secretary, which may not be more than 45 days after the enterprise is provided notice under subsection (b)(3) that a housing plan is required. The regulations shall provide that the Secretary may extend the deadline to the extent that the Secretary determines necessary. Any extension of the deadline shall be in writing and for a time certain.

(4) APPROVAL.—The Secretary shall review each housing plan submitted under this subsection and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Secretary may extend the period for approval or disapproval for a single additional 30-day period if the Secretary determines it necessary. The Secretary shall approve any plan that the Secretary determines is likely to succeed, and con-

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

forms with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act (as applicable), this title, and any other applicable laws and regulations.

(5) NOTICE OF APPROVAL AND DISAPPROVAL.—The Secretary shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(6) RESUBMISSION.—If the initial housing plan submitted by an enterprise is disapproved, the enterprise shall submit an amended plan acceptable to the Secretary within 30 days or such longer period that the Secretary determines is in the public interest.

SEC. 1337. [12 U.S.C. 4567] REPORTS DURING TRANSITION.

Each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹, and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report for each transitional housing goal for the enterprise under section 1332(d), 1333(d), or 1334(d), describing the actions the enterprise plans to take to meet such goal. Each such report shall be submitted within 45 days after the establishment of the goal for which the report is submitted.

SEC. 1338. [12 U.S.C. 4562 note] EFFECTIVE DATE OF TRANSITION GOALS.

The housing goals established under sections 1332(d), 1333(d), and 1334(d) shall not become effective until January 1, 1993.

Subpart C—Enforcement of Housing Goals

SEC. 1341. [12 U.S.C. 4581] CEASE-AND-DESIST PROCEEDINGS.

(a) GROUNDS FOR ISSUANCE.—The Secretary may issue and serve a notice of charges under this section upon an enterprise if, in the determination of the Secretary—

(1) the enterprise has failed to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

(2) the enterprise is engaging or has engaged, or the Secretary has reasonable cause to believe that the enterprise is about to engage, in any failure to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

(b) PROCEDURE.—

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(1) NOTICE OF CHARGES.—Each notice of charges shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

(2) ISSUANCE OF ORDER.—If the Secretary finds on the record made at such hearing that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 1342(a)(4)), the Secretary may issue and serve upon the enterprise an order requiring the enterprise to (A) submit a housing plan in compliance with section 1336(c), (B) comply with the housing plan, or (C) provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

(c) EFFECTIVE DATE.—An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the enterprise (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Secretary or otherwise, as provided in this subpart.

(d) TRANSITION PERIOD LIMITATION.—The Secretary may not impose any cease-and-desist order under this section for any failure by an enterprise, during the 2-year period beginning on the January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with the approved plan.

SEC. 1342. [12 U.S.C. 4582] HEARINGS.

(a) REQUIREMENTS.—

(1) VENUE AND RECORD.—Any hearing under section 1341 or 1345 shall be held on the record and in the District of Columbia.

(2) TIMING.—Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 1341(b)(1) or determination to impose a penalty under section 1345(c)(1), unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) PROCEDURE.—Any such hearing shall be conducted in accordance with chapter 5 of title 5, United States Code.

(4) FAILURE TO APPEAR.—If the enterprise served fails to appear at the hearing through a duly authorized representative, such enterprise shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) ISSUANCE OF ORDER.—

(1) IN GENERAL.—After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the Secretary for final decision, the Secretary shall render the decision (which shall include findings

of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an order or orders consistent with the provisions of this subpart.

(2) MODIFICATION.—Judicial review of any such order shall be exclusively as provided in section 1343. Unless such a petition for review is timely filed as provided in section 1343, and thereafter until the record in the proceeding has been filed as so provided, the Secretary may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Secretary considers proper. Upon such filing of the record, the Secretary may modify, terminate, or set aside any such order with permission of the court.

SEC. 1343. [12 U.S.C. 4583] JUDICIAL REVIEW.

(a) COMMENCEMENT.—An enterprise that is a party to a proceeding under section 1341 or 1345 may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Secretary.

(b) FILING OF RECORD.—Upon receiving a copy of a petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(c) JURISDICTION.—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Secretary shall (except as provided in the last sentence of section 1342(b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Secretary.

(d) REVIEW.—Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(e) ORDER TO PAY PENALTY.—Such court shall have the authority in any such review to order payment of any penalty imposed by the Secretary under this subpart.

(f) NO AUTOMATIC STAY.—The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.

SEC. 1344. [12 U.S.C. 4584] ENFORCEMENT AND JURISDICTION.

(a) ENFORCEMENT.—The Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 1341 or 1345. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) LIMITATION ON JURISDICTION.—Except as otherwise provided in this subpart, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 1341 or 1345, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 1345. [12 U.S.C. 4585] CIVIL MONEY PENALTIES.

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

(1) to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

(2) to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

(3) to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

(b) **AMOUNT OF PENALTY.**—The amount of the penalty, as determined by the Secretary, may not exceed—

(1) for any failure described in subsection (a)(1), \$25,000 for each day that the failure occurs; and

(2) for any failure described in subsection (a) (2) or (3), \$10,000 for each day that the failure occurs.

(c) **PROCEDURES.**—

(1) **ESTABLISHMENT.**—The Secretary shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

(A) shall provide for the Secretary to notify the enterprise in writing of the Secretary's determination to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 1342; and

(C) may provide for review by the Director for any determination or order, or interlocutory ruling, arising from a hearing.

(2) **FACTORS IN DETERMINING AMOUNT OF PENALTY.**—In determining the amount of a penalty under this section, the Secretary shall give consideration to such factors as the gravity of the offense, any history of prior offenses, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine, by regulation, to be appropriate.

(d) **ACTION TO COLLECT PENALTY.**—If an enterprise fails to comply with an order by the Secretary imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 1342 and 1343, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

(e) **SETTLEMENT BY SECRETARY.**—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) **TRANSITION PERIOD LIMITATION.**—The Secretary may not impose any civil money penalty under this section for any failure by an enterprise, during the 2-year period beginning on January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with an approved plan.

(g) **DEPOSIT OF PENALTIES.**—The Secretary shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

SEC. 1346. [12 U.S.C. 4586] PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) **IN GENERAL.**—The Secretary shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Secretary or any modification to or termination thereof, unless the Secretary, in the Secretary's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Secretary under this subpart and that has become final in accordance with sections 1342 and 1343; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) **HEARINGS.**—All hearings with respect to any notice of charges issued by the Secretary shall be open to the public, unless the Secretary, in the Secretary's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) **DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.**—If the Secretary makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial soundness of the enterprise, the Secretary may delay the public disclosure of such order for a reasonable time.

(d) **DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.**—The Secretary may file any document or part thereof under seal in any hearing under this subpart if the Secretary determines in writing that disclosure thereof would be contrary to the public interest.

(e) **RETENTION OF DOCUMENTS.**—The Secretary shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Secretary under this subpart.

(f) **DISCLOSURES TO CONGRESS.**—This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

SEC. 1347. [12 U.S.C. 4587] NOTICE OF SERVICE.

Any service required or authorized to be made by the Secretary under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the Secretary may by regulation or otherwise provide.

SEC. 1348. [12 U.S.C. 4588] SUBPOENA AUTHORITY.

(a) **IN GENERAL.**—In the course of or in connection with any administrative proceeding under this subpart, the Secretary shall have the authority—

- (1) to administer oaths and affirmations;
- (2) to take and preserve testimony under oath;
- (3) to issue subpoenas and subpoenas duces tecum; and
- (4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Secretary.

(b) **WITNESSES AND DOCUMENTS.**—The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) **ENFORCEMENT.**—The Secretary may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) **FEES AND EXPENSES.**—Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an enterprise may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

SEC. 1349. [12 U.S.C. 4589] REGULATIONS.

The Secretary shall issue any final regulations necessary to implement the provisions of this part (not including the provisions of sections 1332(d), 1333(d), and 1334(d), relating to transition housing goals) not later than the expiration of the 18-month period beginning on the date of the enactment of this Act.¹ Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

PART 3—MISCELLANEOUS PROVISIONS

SEC. 1351. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

(a) **DIRECTOR AT LEVEL II OF EXECUTIVE SCHEDULE.**—Section 5313 of title 5, United States Code, is amended by inserting at the end the following new item:

“Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.”.

¹The date of enactment was October 28, 1992.

(b) **EXCLUSION FROM SENIOR EXECUTIVE SERVICE.**—Section 3132(a)(1)(D) of title 5, United States Code, is amended by inserting “the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development,” after “Farm Credit Administration,”.

SEC. 1352. PROHIBITION OF MERGER OF OFFICE.

Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by adding at the end the following new subsection:

“(d) Notwithstanding any other provision of this Act, the Secretary may not merge or consolidate the Office of Federal Housing Enterprise Oversight of the Department, or any of the functions or responsibilities of such Office, with any function or program administered by the Secretary.”.

SEC. 1353. PROTECTION OF CONFIDENTIAL INFORMATION.

Section 1905 of title 18, United States Code, is amended by inserting “any person acting on behalf of the Office of Federal Housing Enterprise Oversight,” after “or agency thereof,”.

SEC. 1354. [12 U.S.C. 4601] REVIEW OF UNDERWRITING GUIDELINES.

(a) **STUDY.**—Each of the enterprises shall conduct a study to review the underwriting guidelines of the enterprise. The studies shall examine—

(1) the extent to which the underwriting guidelines prevent or inhibit the purchase or securitization of mortgages for housing located in mixed-use, urban center, and predominantly minority neighborhoods and for housing for low- and moderate-income families;

(2) the standards employed by private mortgage insurers and the extent to which such standards inhibit the purchase and securitization by the enterprises of mortgages described in paragraph (1); and

(3) the implications of implementing underwriting standards that—

(A) establish a downpayment requirement for mortgagors of 5 percent or less;

(B) allow the use of cash on hand as a source for downpayments; and

(C) approve borrowers who have a credit history of delinquencies if the borrower can demonstrate a satisfactory credit history for at least the 12-month period ending on the date of the application for the mortgage.

(b) **REPORT.**—Not later than the expiration of the 1-year period beginning on the date of the enactment of this Act,¹ each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives², and the Committee on Banking, Housing, and Urban Affairs of the Senate a report regarding the study conducted by the enterprise under subsection (a). Each report shall include any recommendations of

¹The date of enactment was October 28, 1992.

²Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

the enterprise for better meeting the housing needs of low- and moderate-income families.

SEC. 1355. [12 U.S.C. 4602] STUDIES OF EFFECTS OF PRIVATIZATION OF FNMA AND FHLMC.

(a) **IN GENERAL.**—The Comptroller General of the United States, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each conduct and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than the expiration of the 2-year period beginning on the date of the enactment of this Act,² a study regarding the desirability and feasibility of repealing the Federal charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, eliminating any Federal sponsorship of the enterprises, and allowing the enterprises to continue to operate as fully private entities.

(b) **REQUIREMENTS.**—Each study shall particularly examine the effects of such privatization on—

(1) the requirements applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under Federal law and the costs to the enterprises;

(2) the cost of capital to the enterprises;

(3) housing affordability and availability and the cost of homeownership;

(4) the level of secondary mortgage market competition subsequently available in the private sector;

(5) whether increased amounts of capital would be necessary for the enterprises to continue operation;

(6) the secondary market for residential loans and the liquidity of such loans; and

(7) any other factors that the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, or the Director of the Congressional Budget Office deems appropriate to enable the Congress to evaluate the desirability and feasibility of privatization of the enterprises.

(c) **INFORMATION.**—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall provide full and prompt access to the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office to any books, records, and other information requested for the purposes of conducting the studies under this section.

(d) **VIEWS OF THE FNMA AND FHLMC.**—

(1) **CONSIDERATION IN STUDIES.**—In conducting the studies under this section, the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

²The date of enactment was October 28, 1992.

each consider the views of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) DIRECT REPORT.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation may each report directly to the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ and the Committee on Banking, Housing, and Urban Affairs of the Senate on its own analysis of the desirability and feasibility of repealing the Federal charters of the enterprises, eliminating any Federal sponsorship, and allowing the enterprises to continue to operate as fully private entities.

SEC. 1356. [12 U.S.C. 4603] TRANSITION.

Before the expiration of the period ending 18 months after the appointment of the Director under section 1312, any rules and regulations promulgated before the date of the enactment of this Act by the Secretary pursuant to the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act shall remain in effect unless modified, terminated, superseded, or revoked by operation of law or in accordance with law. Such rules and regulations shall terminate, effective upon the expiration of such period.

Subtitle B—Required Capital Levels for Enterprises and Special Enforcement Powers

SEC. 1361. [12 U.S.C. 4611] RISK-BASED CAPITAL LEVELS.

(a) RISK-BASED CAPITAL TEST.—The Director shall, by regulation, establish a risk-based capital test under this section for the enterprises. When applied to an enterprise, the risk-based capital test shall determine the amount of total capital for the enterprise that is sufficient for the enterprise to maintain positive capital during a 10-year period in which the following circumstances occur (in this section referred to as the “stress period”):

(1) CREDIT RISK.—With respect to mortgages owned or guaranteed by the enterprise and other obligations of the enterprise, losses occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing practice for that industry in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years, experienced the highest rates of default and severity of mortgage losses, in comparison with such rates of default and severity of mortgage losses in other such areas for any period of such duration.

(2) INTEREST RATE RISK.—

(A) IN GENERAL.—Interest rates decrease as described in subparagraph (B) or increase as described in subpara-

¹ See footnote 1 on preceding page.

graph (C), whichever would require more capital for the enterprise.

(B) DECREASES.—The 10-year constant maturity Treasury yield decreases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield decreases to the lesser of—

(i) 600 basis points below the average yield during the preceding 9 months, or

(ii) 60 percent of the average yield during the preceding 3 years,

but in no case to a yield less than 50 percent of the average yield during the preceding 9 months.

(C) INCREASES.—The 10-year constant maturity Treasury yield increases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield increases to the greater of—

(i) 600 basis points above the average yield during the preceding 9 months, or

(ii) 160 percent of the average yield during the preceding 3 years,

but in no case to a yield greater than 175 percent of the average yield during the preceding 9 months.

(D) DIFFERENT TERMS TO MATURITY.—Yields of Treasury instruments with other terms to maturity will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director.

(E) LARGE INCREASES IN YIELDS.—If the 10-year constant maturity Treasury yield is assumed to increase by more than 50 percent over the average yield during the preceding 9 months, the Director shall adjust the losses in paragraphs (1) and (3) to reflect a correspondingly higher rate of general price inflation.

(3) NEW BUSINESS.—

(A) IN GENERAL.—Any contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period. No other purchases of mortgages shall be assumed, except as provided in subparagraph (B).

(B) ADDITIONAL NEW BUSINESS.—The Director may, after consideration of each of the studies required by subparagraph (C), assume that the enterprise conducts additional new business during the stress period consistent with the following—

(i) AMOUNT AND PRODUCT TYPES.—The amount and types of mortgages purchased and their financing will be reasonably related to recent experience and the economic characteristics of the stress period.

(ii) **LOSSES.**—Default and loss severity characteristics of mortgages purchased will be reasonably related to historical experience.

(iii) **PRICING.**—Prices charged by the enterprise in purchasing new mortgages will be reasonably related to recent experience and the economic characteristics of the stress period. The Director may assume that a reasonable period of time would lapse before the enterprise would recognize and react to the characteristics of the stress period.

(iv) **INTEREST RATE RISK.**—Interest rate risk on new mortgages purchased will occur to an extent reasonably related to historical experience.

(v) **RESERVES.**—The enterprise must maintain reserves during and at the end of the stress period on new business conducted during the first 5 years of the stress period reasonably related to the expected future losses on such business, consistent with generally accepted accounting principles and industry accounting practice.

(C) **STUDIES.**—Within 1 year after regulations are first issued under subsection (e), the Director of the Congressional Budget Office, and the Comptroller General of the United States shall each submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹ a study of the advisability and appropriate form of any new business assumptions under subparagraph (B).

(D) **EFFECTIVE DATE.**—The provisions of subparagraph (B) shall become effective 4 years after regulations are first issued under subsection (e).

(4) **OTHER ACTIVITIES.**—Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, on the basis of available information, to be consistent with the stress period.

(b) **CONSIDERATIONS.**—

(1) **IN GENERAL.**—In establishing the risk-based capital test under subsection (a), the Director shall take into account appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and any other factors the Director considers appropriate.

(2) **CONSISTENCY.**—Characteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period.

(c) **RISK-BASED CAPITAL LEVEL.**—For purposes of this subtitle, the risk-based capital level for an enterprise shall be equal to the sum of the following amounts:

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(1) CREDIT AND INTEREST RATE RISK.—The amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

(2) MANAGEMENT AND OPERATIONS RISK.—To provide for management and operations risk, 30 percent of the amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

(d) DEFINITIONS.—For purposes of this section:

(1) SEASONING.—The term “seasoning” means the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured, determined on an annual basis by region, in accordance with the Constant Quality Home Price Index published by the Secretary of Commerce (or any index of similar quality, authority, and public availability that is regularly used by the Federal Government).

(2) TYPE OF MORTGAGE PRODUCT.—The term “type of mortgage product” means a classification of one or more mortgage products, as established by the Director, which have similar characteristics from each set of characteristics under the following subparagraphs:

(A) The property securing the mortgage is—

(i) a residential property consisting of 1 to 4 dwelling units; or

(ii) a residential property consisting of more than 4 dwelling units.

(B) The interest rate on the mortgage is—

(i) fixed; or

(ii) adjustable.

(C) The priority of the lien securing the mortgage is—

(i) first; or

(ii) second or other.

(D) The term of the mortgage is—

(i) 1 to 15 years;

(ii) 16 to 30 years; or

(iii) more than 30 years.

(E) The owner of the property is—

(i) an owner-occupant; or

(ii) an investor.

(F) The unpaid principal balance of the mortgage—

(i) will amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage;

(ii) will not amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage; or

(iii) may increase significantly at some time during the term of the mortgage.

(G) Any other characteristics of the mortgage, as the Director may determine.

(e) REGULATIONS.—

(1) ISSUANCE.—The Director shall issue final regulations establishing the risk-based capital test under this section not later than the expiration of the 18-month period beginning on

the date of the appointment of the Director. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code, and shall take effect upon issuance.

(2) CONTENTS.—The regulations under this subsection shall contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, and prepayment rates). The regulations shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(3) CONFIDENTIALITY OF INFORMATION.—Any person that receives any book, record, or information from the Director or an enterprise to enable the risk-based capital test to be applied shall—

(A) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the enterprise; and

(B) be exempt from section 552 of title 5, United States Code, with respect to the book, record, or information.

(f) AVAILABILITY OF MODEL.—The Director shall provide copies of the statistical model or models used to implement the risk-based capital test under this section to the Secretary, the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Comptroller General of the United States, and the Director of the Congressional Budget Office. The Director shall make copies of such model or models available for public acquisition and may charge a reasonable fee for such copies.

SEC. 1362. [12 U.S.C. 4612] MINIMUM CAPITAL LEVELS.

(a) IN GENERAL.—For purposes of this subtitle, the minimum capital level for each enterprise shall be the sum of—

(1) 2.50 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.45 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.45 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) TRANSITION.—Notwithstanding subsection (a), during the 18-month period beginning upon the date of the enactment of this Act,¹ the minimum capital level for each enterprise shall be the sum of—

¹The date of enactment was October 28, 1992.

(1) 2.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.40 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.40 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

SEC. 1363. [12 U.S.C. 4613] CRITICAL CAPITAL LEVELS.

For purposes of this subtitle, the critical capital level for each enterprise shall be the sum of—

(1) 1.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.25 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.25 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

SEC. 1364. [12 U.S.C. 4614] CAPITAL CLASSIFICATIONS.

(a) **IN GENERAL.**—For purposes of this subtitle, the Director shall classify the enterprises according to the following capital classifications:

(1) **ADEQUATELY CAPITALIZED.**—An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise under section 1361; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 1362.

(2) **UNDERCAPITALIZED.**—An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; or

- (B) the enterprise is otherwise classified as undercapitalized under subsection (b)(1) of this section.
- (3) SIGNIFICANTLY UNDERCAPITALIZED.—An enterprise shall be classified as significantly undercapitalized if—
- (A) the enterprise—
- (i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise;
 - (ii) does not maintain an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; and
 - (iii) maintains an amount of core capital that is equal to or exceeds the critical capital level established for the enterprise under section 1363; or
- (B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 1365(b).
- (4) CRITICALLY UNDERCAPITALIZED.—An enterprise shall be classified as critically undercapitalized if—
- (A) the enterprise—
- (i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and
 - (ii) does not maintain an amount of core capital that is equal to or exceeds the critical capital level for the enterprise; or
- (B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 1366(b)(5).
- (b) DISCRETIONARY CLASSIFICATION.—If at any time the Director determines in writing that an enterprise is engaging in conduct not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly, the Director may classify the enterprise—
- (1) as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;
 - (2) as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized; and
 - (3) as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized.
- (c) QUARTERLY DETERMINATION.—The Director shall determine the capital classification of the enterprises for purposes of this subtitle on not less than a quarterly basis (and as appropriate under subsection (b)). The first such determination shall be made during the 3-month period beginning on the appointment of the Director.
- (d) IMPLEMENTATION.—Notwithstanding any other provision of this section, during the period beginning on the date of the enactment of this Act¹ and ending upon the effective date of section 1365 (as provided in section 1365(c)), an enterprise shall be classified as adequately capitalized if the enterprise maintains an

¹The date of enactment was October 28, 1992.

amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 1362.

SEC. 1365. [12 U.S.C. 4615] SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED ENTERPRISES.

(a) **MANDATORY ACTIONS.**—

(1) **CAPITAL RESTORATION PLAN.**—An enterprise that is classified as undercapitalized shall, within the time period provided in section 1369C (b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.

(2) **RESTRICTION ON CAPITAL DISTRIBUTIONS.**—An enterprise that is classified as undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as significantly undercapitalized or critically undercapitalized.

(b) **DISCRETIONARY RECLASSIFICATION FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED.**—The Director may reclassify as significantly undercapitalized an enterprise that is classified as undercapitalized (and the enterprise shall be subject to the provisions of section 1366) if—

(1) the enterprise does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by the enterprise; or

(2) the Director determines that the enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(c) **EFFECTIVE DATE.**—This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 1361(e) establishing the risk-based capital test.

SEC. 1366. [12 U.S.C. 4616] SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED ENTERPRISES.

(a) **MANDATORY SUPERVISORY ACTIONS.**—

(1) **CAPITAL RESTORATION PLAN.**—An enterprise that is classified as significantly undercapitalized shall, within the time period under section 1369C (b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.

(2) **RESTRICTIONS ON CAPITAL DISTRIBUTIONS.**—

(A) **PRIOR APPROVAL.**—An enterprise that is classified as significantly undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as critically undercapitalized. An enterprise that is classified as significantly undercapitalized enterprise may not make any other capital distribution unless the Director approves the distribution.

(B) **STANDARD FOR APPROVAL.**—The Director may approve a capital distribution by an enterprise classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of the enterprise to meet the risk-based capital level and the

minimum capital level for the enterprise promptly, (ii) will contribute to the long-term financial safety and soundness of the enterprise, or (iii) is otherwise in the public interest.

(b) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other actions taken by the Director (including actions under subsection (a)), the Director may, at any time, take any of the following actions with respect to an enterprise that is classified as significantly undercapitalized:

(1) LIMITATION ON INCREASE IN OBLIGATIONS.—Limit any increase in, or order the reduction of, any obligations of the enterprise, including off-balance sheet obligations.

(2) LIMITATION ON GROWTH.—Limit or prohibit the growth of the assets of the enterprise or require contraction of the assets of the enterprise.

(3) ACQUISITION OF NEW CAPITAL.—Require the enterprise to acquire new capital in a form and amount determined by the Director.

(4) RESTRICTION OF ACTIVITIES.—Require the enterprise to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the enterprise.

(5) RECLASSIFICATION FROM SIGNIFICANTLY TO CRITICALLY UNDERCAPITALIZED.—The Director may reclassify as critically undercapitalized an enterprise that is classified as significantly undercapitalized (and the enterprise shall be subject to the provisions of section 1367) if—

(A) the enterprise does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by the enterprise; or

(B) the Director determines that the enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(6) CONSERVATORSHIP.—Appoint a conservator for the enterprise in accordance with the provisions of section 1369 (excluding subsection (a) (1) and (2)), but only if the Director determines—

(A) that the amount of core capital of the enterprise is less than the minimum capital level established for the enterprise under section 1362; and

(B) that alternative remedies available to the Director under this title are not satisfactory.

(c) EFFECTIVE DATE.—This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 1364.

SEC. 1367. [12 U.S.C. 4617] APPOINTMENT OF CONSERVATORS FOR CRITICALLY UNDERCAPITALIZED ENTERPRISES.

(a) APPOINTMENT.—

(1) IN GENERAL.—Upon a determination and notice under section 1368(d) that an enterprise is critically undercapitalized and not later than 30 days after providing notice under section 1369(a)(3), the Director shall appoint a conservator for the en-

terprise in accordance with the provisions of section 1369 (excluding subsections (a) (1) and (2)).

(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may determine not to appoint a conservator for an enterprise classified as critically undercapitalized, but only pursuant to a written finding by the Director, with the written concurrence of the Secretary of the Treasury, that—

(A) the appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(B) the public interest would be better served by taking some other enforcement action authorized under this title.

(b) AUTHORITY.—The Director shall have the authority to take any actions under sections 1365 and 1366 with respect to an enterprise under conservatorship.

(c) APPROVAL OF ACTIVITIES.—

(1) CONSERVATOR.—The conservator of any enterprise classified as critically undercapitalized may undertake an activity subject to the approval of the Secretary under section 1322 of this title only with the additional approval of the Director.

(2) NO CONSERVATOR.—If the Director determines under subsection (a)(2) not to appoint a conservator for an enterprise classified as critically undercapitalized, the provisions of section 1366 shall apply with respect to the enterprise.

(d) EFFECTIVE DATE.—This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 1364.

SEC. 1368. [12 U.S.C. 4618] NOTICE OF CLASSIFICATION AND ENFORCEMENT ACTION.

(a) NOTICE.—Before taking any action referred to in subsection (b), the Director shall provide to the enterprise written notice of the proposed action, which states the reasons for the proposed action and the information on which the proposed action is based.

(b) APPLICABILITY.—The requirements of subsection (a) shall apply to the following actions:

(1) Classification or reclassification of an enterprise within a particular capital classification under section 1364.

(2) Any discretionary supervisory action pursuant to section 1365.

(3) Any discretionary supervisory action pursuant to section 1366 except a decision to appoint a conservator under section 1366(b)(6).

Notice of classification under paragraph (1) and notice of supervisory actions under paragraph (2) or (3) may be provided together in a single notice under subsection (a).

(c) RESPONSE PERIOD.—

(1) IN GENERAL.—During the 30-day period beginning on the date that an enterprise is provided notice under subsection (a) of a proposed action, the enterprise may submit to the Director any information relevant to the action that the enterprise considers appropriate for consideration by the Director in determining whether to take such action. The Director may, at

the discretion of the Director, hold an informal administrative hearing to receive and discuss such information and the proposed determination.

(2) EXTENDED PERIOD.—The Director may extend the period under paragraph (1) for good cause for not more than 30 additional days.

(3) SHORTENED PERIOD.—The Director may shorten the period under paragraph (1) if the Director determines that the condition of the enterprise so requires or the enterprise consents.

(4) FAILURE TO RESPOND.—The failure of an enterprise to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the enterprise to comment on the proposed action of the Director.

(d) CONSIDERATION OF INFORMATION AND DETERMINATION.—After the expiration of the response period under subsection (c) or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by the enterprise during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

(e) EFFECTIVE DATE OF ACTIONS.—An action referred to in subsection (b) shall take effect upon receipt by the enterprise of notice of the determination of the Director under subsection (d), unless otherwise provided in such notice.

SEC. 1369. [12 U.S.C. 4619] APPOINTMENT OF CONSERVATORS.

(a) APPOINTMENT.—

(1) DISCRETIONARY AUTHORITY.—The Director may, after providing notice under paragraph (3), appoint a conservator for an enterprise upon a determination in writing—

(A) that alternative remedies available to the Director under this title are not satisfactory; and

(B) that—

(i) the enterprise is not likely to pay its obligations in the normal course of business;

(ii) the enterprise has incurred or is reasonably likely to incur losses that would deplete substantially all of its core capital and it is unlikely that the enterprise will replenish its core capital within a reasonable period;

(iii) the enterprise has concealed or is concealing books, papers, records, or assets of the enterprise that are material to the discharge of the Director's respon-

¹Section 1(a) of Public Law 104-14, 109 Stat. 186, provides, in part, that "any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives".

sibilities under this subtitle, or has refused or is refusing to submit such books, papers, records, or information regarding the affairs of the enterprise for inspection to the Director upon request; or

(iv) the enterprise has willfully violated, or is willfully violating, a final cease-and-desist order under section 1371.

(2) CONSENT OF ENTERPRISE.—Notwithstanding paragraph (1), the Director may appoint a conservator for an enterprise if the enterprise, by an affirmative vote of a majority of the members of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

(3) NOTICE.—Upon making a determination under paragraph (1) of this subsection or under section 1366 or 1367 to appoint a conservator for an enterprise, or upon consent of the enterprise under paragraph (2) to such an appointment, the Director shall provide written notice to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives¹, and the Committee on Banking, Housing, and Urban Affairs of the Senate—

(A) that a conservator will be appointed for the enterprise;

(B) stating the reasons for the appointment of the conservator; and

(C) identifying the person or governmental agency that the Director intends to appoint as conservator.

(4) QUALIFICATIONS.—The conservator shall be—

(A) the Director or any other governmental agency; or

(B) any person that—

(i) has no claim against, or financial interest in, the enterprise or other basis for a conflict of interest; and

(ii) has the financial and management expertise necessary to direct the operations and affairs of the enterprise.

(b) JUDICIAL REVIEW.—

(1) TIMING AND JURISDICTION.—Except as provided in paragraph (2), an enterprise for which a conservator is appointed (pursuant to this section or section 1366 or 1367) may bring an action in the United States District Court for the District of Columbia for an order requiring the Director to terminate the appointment of the conservator. The court, upon the merits, shall dismiss such action or shall direct the Director to terminate the appointment of the conservator. Such an action may be commenced only during the 20-day period beginning upon the appointment of the conservator.

(2) CONSENSUAL APPOINTMENTS.—Appointment of a conservator pursuant to consent of the enterprise under subsection (a)(2) shall not be subject to judicial review under this subsection.

¹Section 1(a) of Public Law 104–14, 109 Stat. 186, provides, in part, that “any reference in any provision of law enacted before January 4, 1995, to . . . the Committee on Banking, Finance and Urban Affairs of the House of Representatives shall be treated as referring to the Committee on Banking and Financial Services of the House of Representatives”.

(3) STANDARD OF REVIEW.—A decision of the Director to appoint a conservator may be set aside under this subsection only if the court finds that the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(4) LIMITATION ON JURISDICTION.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of powers or functions of a conservator.

(c) REPLACEMENT.—The Director may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the right of the enterprise under subsection (b) to obtain judicial review of the decision of the Director to appoint a conservator.

(d) EXAMINATIONS.—The Director may examine and supervise any enterprise in conservatorship during the period in which the enterprise continues to operate as a going concern.

(e) TERMINATION.—

(1) DISCRETIONARY.—At any time the Director determines that termination of a conservatorship pursuant to an appointment under subsection (a) is in the public interest and may safely be accomplished, the Director may terminate the conservatorship and permit the enterprise to resume the transaction of its business subject to such terms, conditions, and limitations as the Director may prescribe.

(2) MANDATORY.—The Director shall terminate a conservatorship initiated pursuant to section 1366 or 1367 upon a determination by the Director that the enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise established under section 1362, and may by written order prescribe such terms, conditions, and limitations on the enterprise as the Director considers appropriate.

(3) TERMS.—Any terms, conditions, and limitations imposed by the Director upon termination of a conservatorship shall be enforceable and reviewable under the provisions of sections 1374 and 1375, to the same extent as any cease-and-desist order issued pursuant to subtitle C.

SEC. 1369A. [12 U.S.C. 4620] POWERS OF CONSERVATORS.

(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the enterprise under conservatorship and may operate the enterprise in the name of the enterprise, unless the Director provides otherwise.

(b) ADDITIONAL POWER.—A conservator may avoid any security interest taken by a creditor with the intent to hinder, delay, or defraud the enterprise or the creditors of the enterprise.

(c) LIMITATIONS BY DIRECTOR.—A conservator shall be subject to any rules, regulations, and orders issued from time to time by the Director and, except as otherwise specifically provided in such rules, regulations, or orders or in section 1369B, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations applicable to directors, officers, or employees of the enterprise.

(d) ENFORCEMENT OF CONTRACTS.—

(1) IN GENERAL.—A conservator may enforce any contract described in paragraph (2), notwithstanding any provision of the contract providing for the termination, default, acceleration, or other exercise of rights upon, or solely by reason of, the insolvency of the enterprise or the appointment of a conservator.

(2) ENFORCEABLE CONTRACTS.—Any contract that is within a class of contracts shall be enforceable under paragraph (1) if the Director—

(A) determines that the continued enforceability of such class of contracts is necessary to achieve the purpose of the conservatorship; and

(B) specifically provides for the enforceability of such class of contracts in a regulation or order, issued for the purpose of this subsection, which describes such class.

(3) APPLICABILITY.—This subsection and any regulation or order issued under this subsection shall apply only to contracts entered into, modified, extended, or renewed after the effective date of the regulation or order.

(e) STAYS.—

(1) IN GENERAL.—Not later than 45 days after appointment pursuant to section 1366, 1367, or 1369, or 45 days after receipt of actual notice of an action or proceeding that is pending at the time of appointment, a conservator may request that any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period not exceeding 45 days after the request. Upon petition, the court shall grant such stay as to all parties.

(2) FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator appointed for an enterprise is a Federal agency or an officer or employee of the Federal Government, the conservator may make a request for a stay under paragraph (1) only with the prior consent of the Attorney General and subject to the direction and control of the Attorney General.

(f) PAYMENT OF CREDITORS.—The Director may require a conservator to set aside and make available for payment to creditors any amounts that the Director determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

(g) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Director may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(h) EXPENSES.—All expenses of a conservatorship pursuant to this section (including compensation pursuant to subsection (f)) shall be paid by the enterprise under conservatorship and shall be

secured by a lien on the enterprise, which shall have priority over any other lien.

(i) **CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE.**—A conservator shall be subject to any laws and regulations relating to conflicts of interest and financial disclosure that apply to employees of the Office.

SEC. 1369B. [12 U.S.C. 4621] LIABILITY PROTECTION FOR CONSERVATORS.

(a) **FEDERAL AGENCIES AND EMPLOYEES.**—In any case in which a conservator appointed under this subtitle is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) **OTHER CONSERVATORS.**—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.

(c) **INDEMNIFICATION.**—The Director, with the approval of the Attorney General, may indemnify the conservator on such terms as the Director considers appropriate.

SEC. 1369C. [12 U.S.C. 4622] CAPITAL RESTORATION PLANS.

(a) **CONTENTS.**—Each capital restoration plan submitted under this subtitle shall set forth a feasible plan for restoring the core capital of the enterprise subject to the plan to an amount not less than the minimum capital level for the enterprise and for restoring the total capital of the enterprise to an amount not less than the risk-based capital level for the enterprise. Each capital restoration plan shall—

(1) specify the level of capital the enterprise will achieve and maintain;

(2) describe the actions that the enterprise will take to become classified as adequately capitalized;

(3) establish a schedule for completing the actions set forth in the plan;

(4) specify the types and levels of activities (including existing and new programs) in which the enterprise will engage during the term of the plan; and

(5) describe the actions that the enterprise will take to comply with any mandatory and discretionary requirements imposed under this subtitle.

(b) **DEADLINES FOR SUBMISSION.**—The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the enterprise is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary. Any extension of the deadline shall be in writing and for a time certain.

(c) APPROVAL.—The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to any enterprise submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(d) RESUBMISSION.—If the Director disapproves the initial capital restoration plan submitted by the enterprise, the enterprise shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

SEC. 1369D. [12 U.S.C. 4623] JUDICIAL REVIEW OF DIRECTOR ACTION.

(a) JURISDICTION.—

(1) FILING OF PETITION.—An enterprise that is not classified as critically undercapitalized and is the subject of a classification under section 1364 or a discretionary supervisory action taken under this subtitle by the Director (other than action to appoint a conservator under section 1366 or 1367 or action under section 1369) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) SCOPE OF REVIEW.—The Court may modify, terminate, or set aside an action taken by the Director and reviewed by the Court pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) UNAVAILABILITY OF STAY.—The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall not have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to an enterprise that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of an enterprise as significantly or critically undercapitalized.

(d) LIMITATION ON JURISDICTION.—Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subtitle (other than appointment of a conservator under section 1366 or 1367 or action under section 1369) or to review, modify, suspend, terminate, or set aside such classification or action.

Subtitle C—Enforcement Provisions

SEC. 1371. [12 U.S.C. 4631] CEASE-AND-DESIST PROCEEDINGS.

(a) **GROUND FOR ISSUANCE AGAINST ADEQUATELY CAPITALIZED ENTERPRISES.**—The Director may issue and serve a notice of charges under this section upon an enterprise that is classified (for purposes of subtitle B) as adequately capitalized or upon any executive officer or director of such an enterprise, if in the determination of the Director, the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

(1) any conduct that threatens to cause a significant depletion of the core capital of the enterprise;

(2) any conduct or violation that may result in the issuance of an order described in subsection (d)(1); or

(3) any conduct that violates—

(A) any provision of this title, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any order, rule, or regulation under any such title or Act, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act; or

(B) any written agreement entered into by the enterprise with the Director.

(b) **GROUND FOR ISSUANCE AGAINST UNDERCAPITALIZED, SIGNIFICANTLY UNDERCAPITALIZED, AND CRITICALLY UNDERCAPITALIZED ENTERPRISES.**—The Director may issue and serve a notice of charges under this section upon an enterprise classified (for purposes of subtitle B) as undercapitalized, significantly undercapitalized, or critically undercapitalized, or any executive officer or director of any such enterprise, if in the determination of the Director the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

(1) any conduct likely to result in a material depletion of the core capital of the enterprise, or

(2) any conduct or violation described in paragraph (2) or

(3) of subsection (a),

except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act.

(c) **PROCEDURE.**—

(1) **NOTICE OF CHARGES.**—Each notice of charges under this section shall contain a statement of the facts constituting the alleged conduct or violation and shall fix a time and place

at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct or violation should issue.

(2) **ISSUANCE OF ORDER.**—If the Director finds on the record made at such hearing that any conduct or violation specified in the notice of charges has been established (or the enterprise consents pursuant to section 1373(a)(4)), the Director may issue and serve upon the enterprise, executive officer, or director an order requiring such party to cease and desist from any such conduct or violation and to take affirmative action to correct or remedy the conditions resulting from any such conduct or violation.

(d) **AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR ACTIVITIES.**—The authority under this section and section 1372 to issue any order requiring an enterprise, executive officer, or director to take affirmative action to correct or remedy any condition resulting from any conduct or violation with respect to which such order is issued includes the authority—

(1) to require an executive officer or a director to make restitution to, or provide reimbursement, indemnification, or guarantee against loss to the enterprise to the extent that such person—

(A) was unjustly enriched in connection with such conduct or violation; or

(B) engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 1376(b)(3);

(2) to require an enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the enterprise;

(4) to require the enterprise to dispose of any asset involved;

(5) to require the enterprise to rescind agreements or contracts;

(6) to require the enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the enterprise to take such other action as the Director determines appropriate.

(e) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this section or section 1372 includes the authority to place limitations on the activities or functions of the enterprise or any executive officer or director of the enterprise.

(f) **EFFECTIVE DATE.**—An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the enterprise, executive officer, or director concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subtitle.

SEC. 1372. [12 U.S.C. 4632] TEMPORARY CEASE-AND-DESIST ORDERS.

(a) **GROUND FOR ISSUANCE AND SCOPE.**—Whenever the Director determines that any conduct or violation, or threatened conduct or violation, specified in the notice of charges served upon the enterprise, executive officer, or director pursuant to section 1371 (a) or (b), or the continuation thereof, is likely—

- (1) to cause insolvency,
 - (2) to cause a significant depletion of the core capital of the enterprise, or
 - (3) otherwise to cause irreparable harm to the enterprise,
- prior to the completion of the proceedings conducted pursuant to section 1371(c), the Director may issue a temporary order requiring the enterprise, executive officer, or director to cease and desist from any such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).

(b) **EFFECTIVE DATE.**—An order issued pursuant to subsection (a) shall become effective upon service upon the enterprise, executive officer, or director and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 1371.

(c) **INCOMPLETE OR INACCURATE RECORDS.**—

(1) **TEMPORARY ORDER.**—If a notice of charges served under section 1371 (a) or (b) specifies on the basis of particular facts and circumstances that the books and records of the enterprise served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the enterprise or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that enterprise, the Director may issue a temporary order requiring—

- (A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or
- (B) affirmative action to restore the books or records to a complete and accurate state.

(2) **EFFECTIVE PERIOD.**—Any temporary order issued under paragraph (1)—

- (A) shall become effective upon service; and
- (B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—

- (i) the completion of the proceeding initiated under section 1371 in connection with the notice of charges; or

- (ii) the date the Director determines, by examination or otherwise, that the books and records of the enterprise are accurate and reflect the financial condition of the enterprise.

(d) JUDICIAL REVIEW.—An enterprise, executive officer, or director that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, executive officer, or director under section 1371 (a) or (b). Such court shall have jurisdiction to issue such injunction.

(e) ENFORCEMENT BY ATTORNEY GENERAL.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order or may, under the direction and control of the Attorney General, bring such an action. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

SEC. 1373. [12 U.S.C. 4633] HEARINGS.

(a) REQUIREMENTS.—

(1) VENUE AND RECORD.—Any hearing under section 1371 or 1376(c) shall be held on the record and in the District of Columbia.

(2) TIMING.—Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 1371 or determination to impose a penalty under section 1376, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) PROCEDURE.—Any such hearing shall be conducted in accordance with chapter 5 of title 5, United States Code.

(4) FAILURE TO APPEAR.—If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) ISSUANCE OF ORDER.—

(1) IN GENERAL.—After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subtitle.

(2) MODIFICATION.—Judicial review of any such order shall be exclusively as provided in section 1374. Unless such a petition for review is timely filed as provided in section 1374, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the

record, the Director may modify, terminate, or set aside any such order with permission of the court.

SEC. 1374. [12 U.S.C. 4634] JUDICIAL REVIEW.

(a) **COMMENCEMENT.**—Any party to a proceeding under section 1371 or 1376 may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) **FILING OF RECORD.**—Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(c) **JURISDICTION.**—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 1373(b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) **REVIEW.**—Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(e) **ORDER TO PAY PENALTY.**—Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subtitle.

(f) **NO AUTOMATIC STAY.**—The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

SEC. 1375. [12 U.S.C. 4635] ENFORCEMENT AND JURISDICTION.

(a) **ENFORCEMENT.**—The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subtitle or subtitle B or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) **LIMITATION ON JURISDICTION.**—Except as otherwise provided in this subtitle and sections 1369 and 1369D, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 1371, 1372, or 1376, or subtitle B, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 1376. [12 U.S.C. 4636] CIVIL MONEY PENALTIES.

(a) **IN GENERAL.**—The Director may impose a civil money penalty in accordance with this section on any enterprise, or any executive officer or director of any enterprise, that—

(1) violates any provision of this title, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any order, rule, or regulation under any such title or Act, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or

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

(2) violates any final or temporary order issued pursuant to section 1365, 1366, 1371, or 1372;

(3) violates any written agreement between the enterprise and the Director; or

(4) engages in any conduct that causes or is likely to cause a loss to the enterprise.

(b) AMOUNT OF PENALTY.—

(1) FIRST TIER.—The Director may impose a penalty on an enterprise for any violation described in paragraphs (1) through (3) of subsection (a). The amount of a penalty under this paragraph shall not exceed \$5,000 for each day that a violation continues.

(2) SECOND TIER.—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$10,000, or on an enterprise in an amount not to exceed \$25,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct—

(A) is part of a pattern of misconduct; or

(B) involved recklessness and caused or would be likely to cause a material loss to the enterprise.

(3) THIRD TIER.—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$100,000, or on an enterprise in an amount not to exceed \$1,000,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the enterprise.

(c) PROCEDURES.—

(1) ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b). Such standards and procedures—

(A) shall provide for the Director to notify the enterprise in writing of the Director's determination to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the enterprise, executive officer, or director has been given an opportunity for a hearing on the record pursuant to section 1373; and

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

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of the enterprise, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) REVIEW OF IMPOSITION OF PENALTY.—The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 1374.

(d) ACTION TO COLLECT PENALTY.—If an enterprise, executive officer, or director fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, executive officer, or director and such other relief as may be available, or may, under the direction and control of the Attorney General, bring such an action. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

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

(f) AVAILABILITY OF OTHER REMEDIES.—Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) PROHIBITION OF REIMBURSEMENT OR INDEMNIFICATION.—An enterprise may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3).

(h) DEPOSIT OF PENALTIES.—The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) APPLICABILITY.—A penalty under this section may be imposed only for conduct or violations under subsection (a) occurring after the date of the enactment of this Act.¹

SEC. 1377. [12 U.S.C. 4637] NOTICE AFTER SEPARATION FROM SERVICE.

The resignation, termination of employment or participation, or separation of a director or executive officer of an enterprise shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subtitle against any such director or executive officer, if such notice is served before the end of the 2-year period beginning on the date such director or executive officer ceases to be associated with the enterprise.

SEC. 1378. [12 U.S.C. 4638] PRIVATE RIGHTS OF ACTION.

This title and the amendments made by this title shall not create any private right of action on behalf of any person against an enterprise, or any director or executive officer of an enterprise, or impair any existing private right of action under other applicable law.

¹ October 28, 1992.

SEC. 1379. [12 U.S.C. 4639] PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) **IN GENERAL.**—The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subtitle and that has become final in accordance with sections 1373 and 1374; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) **HEARINGS.**—All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) **DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.**—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) **DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.**—The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) **RETENTION OF DOCUMENTS.**—The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subtitle or any other law.

(f) **DISCLOSURES TO CONGRESS.**—This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

SEC. 1379A. [12 U.S.C. 4640] NOTICE OF SERVICE.

Any service required or authorized to be made by the Director under this subtitle may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

SEC. 1379B. [12 U.S.C. 4641] SUBPOENA AUTHORITY.

(a) **IN GENERAL.**—In the course of or in connection with any administrative proceeding under this subtitle, the Director shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(b) WITNESSES AND DOCUMENTS.—The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) ENFORCEMENT.—The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) FEES AND EXPENSES.—Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an enterprise may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

Subtitle D—Amendments to Charter Acts of Enterprises

SEC. 1381. AMENDMENTS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT.

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SEC. 1382. AMENDMENTS TO FEDERAL HOME LOAN MORTGAGE CORPORATION ACT.

* * * * *

SEC. 1383. [12 U.S.C. 1451 note] IMPLEMENTATION.

(a) IN GENERAL.—The Secretary of Housing and Urban Development and the Director, as appropriate, shall issue any final regulations necessary to implement the amendments made by this subtitle not later than the expiration of the 18-month period beginning on the date of the enactment of this Act.

(b) NOTICE AND COMMENT.—The regulations under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

Subtitle E—Regulation of Federal Home Loan Bank System

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FEDERAL AGRICULTURAL MORTGAGE CORPORATION

TITLE VIII OF FARM CREDIT ACT OF 1971

(As added by Public Law 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa et seq.)

**TITLE VIII—AGRICULTURAL MORTGAGE
SECONDARY MARKET**

SEC. 8.0. [12 U.S.C. 2279aa] DEFINITIONS.

For purposes of this title:

(1) **AGRICULTURAL REAL ESTATE.**—The term “agricultural real estate” means—

(A) a parcel or parcels of land, or a building or structure affixed to the parcel or parcels, that—

(i) is used for the production of one or more agricultural commodities or products; and

(ii) consists of a minimum acreage or is used in producing minimum annual receipts, as determined by the Corporation; or

(B) a principal residence that is a single family, moderate-priced residential dwelling located in a rural area, excluding—

(i) any community having a population in excess of 2,500 inhabitants; and

(ii) any dwelling, excluding the land to which the dwelling is affixed, with a value exceeding \$100,000 (as adjusted for inflation).

(2) **BOARD.**—The term “Board” means—

(A) the interim board of directors established in section 8.2(a); and

(B) the permanent board of directors established in section 8.2(b);

as the case may be.

(3) **CERTIFIED FACILITY.**—The term “certified facility” means—

(A) an agricultural mortgage marketing facility that is certified under section 8.5; or

(B) the Corporation and any affiliate thereof.

(4) **CORPORATION.**—The term “Corporation” means the Federal Agricultural Mortgage Corporation established in section 8.1.

(5) **GUARANTEE.**—The term “guarantee” means the guarantee of timely payment of the principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans, in accordance with this title.

(6) INTERIM BOARD.—The term “interim board” means the interim board of directors established in section 8.2(a).

(7) ORIGINATOR.—The term “originator” means any Farm Credit System institution, bank, insurance company, business and industrial development company, savings and loan association, association of agricultural producers, agricultural cooperative, commercial finance company, trust company, credit union, or other entity that originates and services agricultural mortgage loans.

(8) PERMANENT BOARD.—The term “permanent board” means the permanent board of directors established in section 8.2(b).

(9) QUALIFIED LOAN.—The term “qualified loan” means an obligation—

(A)(i) that is secured by a fee-simple or leasehold mortgage with status as a first lien, on agricultural real estate located in the United States that is not subject to any legal or equitable claims deriving from a preceding fee-simple or leasehold mortgage;

(ii) of—

(I) a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States; or

(II) a private corporation or partnership whose members, stockholders, or partners holding a majority interest in the corporation or partnership are individuals described in subclause (I); and

(iii) of a person, corporation, or partnership that has training or farming experience that, under criteria established by the Corporation, is sufficient to ensure a reasonable likelihood that the loan will be repaid according to its terms; or

(B) that is the portion of a loan guaranteed by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except that—

(i) subsections (b) through (d) of section 8.6, and sections 8.8 and 8.9, shall not apply to the portion of a loan guaranteed by the Secretary or to an obligation, pool, or security representing an interest in or obligation backed by a pool of obligations relating to the portion of a loan guaranteed by the Secretary; and

(ii) the portion of a loan guaranteed by the Secretary shall be considered to meet all standards for qualified loans for all purposes under this Act.

(10) STATE.—The term “State” has the meaning given such term in section 5.51.

Subtitle A—Establishment and Activities of Federal Agricultural Mortgage Corporation

SEC. 8.1. [12 U.S.C. 2279aa-1] FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established a corporation to be known as the Federal Agricultural Mortgage Corporation, which shall be a federally chartered instrumentality of the United States.

(2) INSTITUTION WITHIN FARM CREDIT SYSTEM.—The Corporation shall be an institution of the Farm Credit System.

(3) LIABILITY.—

(A) CORPORATION.—The Corporation shall not be liable for any debt or obligation of any other institution of the Farm Credit System.

(B) SYSTEM INSTITUTIONS.—The Farm Credit System and System institutions (other than the Corporation) shall not be liable for any debt or obligation of the Corporation.

(b) DUTIES.—The Corporation shall—

(1) in consultation with originators, develop uniform underwriting, security appraisal, and repayment standards for qualified loans;

(2) determine the eligibility of agricultural mortgage marketing facilities to contract with the Corporation for the provision of guarantees for specific mortgage pools;

(3) provide guarantees for the timely repayment of principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans; and

(4) purchase qualified loans and issue securities representing interests in, or obligations backed by, the qualified loans, guaranteed for the timely repayment of principal and interest.

SEC. 8.2. [12 U.S.C. 2279aa-2] BOARD OF DIRECTORS.

(a) INTERIM BOARD.—

(1) NUMBER AND APPOINTMENT.—Until the permanent board of directors established in subsection (b) first meets with a quorum of its members present, the Corporation shall be under the management of an interim board of directors composed of 9 members appointed by the President within 90 days after the date of the enactment of this title as follows:

(A) 3 members appointed from among persons who are representatives of banks, other financial institutions or entities, and insurance companies.

(B) 3 members appointed from among persons who are representatives of the Farm Credit System institutions.

(C) 2 members appointed from among persons who are farmers or ranchers who are not serving, and have not served, as directors or officers of any financial institution or entity, of which not more than 1 may be a stockholder of any Farm Credit System institution.

- (D) 1 member appointed from among persons who represent the interests of the general public and are not serving, and have not served, as directors or officers of any financial institution or entity.
- (2) POLITICAL AFFILIATION.—Not more than 5 members of the interim board shall be of the same political party.
- (3) VACANCY.—A vacancy in the interim board shall be filled in the manner in which the original appointment was made.
- (4) CONTINUATION OF MEMBERSHIP.—If—
- (A) any member of the interim board who was appointed to such board from among persons who are representatives of banks, other financial institutions or entities, insurance companies, or Farm Credit System institutions ceases to be such a representative; or
- (B) any member who was appointed from among persons who are not or have not been directors or officers of any financial institution or entity becomes a director or an officer of any financial institution or entity;
- such member may continue as a member for not longer than the 45-day period beginning on the date such member ceases to be such a representative or becomes such a director or officer, as the case may be.
- (5) TERMS.—The members of the interim board shall be appointed for the life of such board.
- (6) QUORUM.—5 members of the interim board shall constitute a quorum.
- (7) CHAIRPERSON.—The President shall designate 1 of the members of the interim board as the chairperson of the interim board.
- (8) MEETINGS.—The interim board shall meet at the call of the chairperson or a majority of its members.
- (9) VOTING COMMON STOCK.—
- (A) INITIAL OFFERING.—Upon the appointment of sufficient members of the interim board to convene a meeting with a quorum present, the interim board shall arrange for an initial offering of common stock and shall take whatever other actions are necessary to proceed with the operations of the Corporation.
- (B) PURCHASERS.—Subject to subparagraph (C), the voting common stock shall be offered to banks, other financial entities, insurance companies, and System institutions under such terms and conditions as the interim board may adopt.
- (C) DISTRIBUTION.—The voting stock shall be fairly and broadly offered to ensure that no institution or institutions acquire a disproportionate amount of the total amount of voting common stock outstanding of a class and that capital contributions and issuances of voting common stock for the contributions are fairly distributed between entities eligible to hold class A and class B stock, as provided under section 8.4.

(10) **TERMINATION.**—The interim board shall terminate when the permanent board of directors established in subsection (b) first meets with a quorum present.

(b) **PERMANENT BOARD.**—

(1) **ESTABLISHMENT.**—Immediately after the date that banks, other financial institutions or entities, insurance companies, and System institutions have subscribed and fully paid for at least \$20,000,000 of common stock of the Corporation, the Corporation shall arrange for the election and appointment of a permanent board of directors. After the termination of the interim board, the Corporation shall be under the management of the permanent board.

(2) **COMPOSITION.**—The permanent board shall consist of 15 members, of which—

(A) 5 members shall be elected by holders of common stock that are insurance companies, banks, or other financial institutions or entities;

(B) 5 members shall be elected by holders of common stock that are Farm Credit System institutions; and

(C) 5 members shall be appointed by the President, by and with the advice and consent of the Senate—

(i) which members shall not be, or have been, officers or directors of any financial institutions or entities;

(ii) which members shall be representatives of the general public;

(iii) of which members not more than 3 shall be members of the same political party; and

(iv) of which members at least 2 shall be experienced in farming or ranching.

(3) **PRESIDENTIAL APPOINTEES.**—The President shall appoint the members of the permanent board referred to in paragraph (2)(C) not later than the later of—

(A) the date referred to in paragraph (1); or

(B) the expiration of the 270-day period beginning on the date of the enactment of this title.

(4) **VACANCY.**—

(A) **ELECTED MEMBERS.**—Subject to paragraph (6), a vacancy among the members elected to the permanent board in the manner described in subparagraph (A) or (B) of paragraph (2) shall be filled by the permanent board from among persons eligible for election to the position for which the vacancy exists.

(B) **APPOINTED MEMBERS.**—A vacancy among the members appointed to the permanent board under paragraph (2)(C) shall be filled in the manner in which the original appointment was made.

(5) **CONTINUATION OF MEMBERSHIP.**—If—

(A) any member of the permanent board who was appointed or elected to the permanent board from among persons who are representatives of banks, other financial institutions or entities, insurance companies, or Farm Credit System institutions ceases to be such a representative; or

(B) any member who was appointed from persons who are not or have not been directors or officers of any financial institution or entity becomes a director or an officer of any financial institution or entity; such member may continue as a member for not longer than the 45-day period beginning on the date such member ceases to be such a representative, officer, or employee or becomes such a director or officer, as the case may be.

(6) TERMS.—

(A) APPOINTED MEMBERS.—The members appointed by the President shall serve at the pleasure of the President.

(B) ELECTED MEMBERS.—The members elected under subparagraphs (A) and (B) of subsection (b)(2) shall each be elected annually for a term ending on the date of the next annual meeting of the common stockholders of the Corporation and shall serve until their successors are elected and qualified. Any seat on the permanent board that becomes vacant after the annual election of the directors shall be filled by the members of the permanent board from the same category of directors, but only for the unexpired portion of the term.

(C) VACANCY APPOINTMENT.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed only for the remainder of such term.

(D) SERVICE AFTER EXPIRATION OF TERM.—A member may serve after the expiration of the term of the member until the successor of the member has taken office.

(7) QUORUM.—8 members of the permanent board shall constitute a quorum.

(8) NO ADDITIONAL PAY FOR FEDERAL OFFICERS OR EMPLOYEES.—Members of the permanent board who are fulltime officers or employees of the United States shall receive no additional pay by reason of service on the permanent board.

(9) CHAIRPERSON.—The President shall designate 1 of the members of the permanent board who are appointed by the President as the chairperson of the permanent board.

(10) MEETINGS.—The permanent board shall meet at the call of the chairperson or a majority of its members.

(c) OFFICERS AND STAFF.—The Board may appoint, employ, fix the pay of, and provide other allowances and benefits for such officers and employees of the Corporation as the Board determines to be appropriate.

SEC. 8.3. [12 U.S.C. 2279aa-3] POWERS AND DUTIES OF CORPORATION AND BOARD.

(a) GUARANTEES.—After the Board has been duly constituted, subject to the other provisions of this title and other commitments and requirements established pursuant to law, the Corporation may provide guarantees on terms and conditions determined by the Corporation of securities issued on the security of, or in participation in, pooled interests in qualified loans.

(b) DUTIES OF THE BOARD.—

(1) IN GENERAL.—The Board shall—

(A) determine the general policies that shall govern the operations of the Corporation;

(B) select, appoint, and determine the compensation of qualified persons to fill such offices as may be provided for in the bylaws of the Corporation; and

(C) assign to such persons such executive functions, powers, and duties as may be prescribed by the bylaws of the Corporation or by the Board.

(2) EXECUTIVE OFFICERS AND FUNCTIONS.—The persons elected or appointed under paragraph (1)(B) shall be the executive officers of the Corporation and shall discharge the executive functions, powers, and duties of the Corporation.

(c) POWERS OF THE CORPORATION.—The Corporation shall be a body corporate and shall have the following powers:

(1) To operate under the direction of its Board.

(2) To issue stock in the manner provided in section 8.4.

(3) To adopt, alter, and use a corporate seal, which shall be judicially noted.

(4) To provide for a president, 1 or more vice presidents, secretary, treasurer, and such other officers, employees, and agents, as may be necessary, define their duties and compensation levels, all without regard to title 5, United States Code, and require surety bonds or make other provisions against losses occasioned by acts of such persons.

(5) To provide guarantees in the manner provided under section 8.6.

(6) To have succession until dissolved by a law enacted by the Congress.

(7) To prescribe bylaws, through the Board, not inconsistent with law, that shall provide for—

(A) the classes of the stock of the Corporation; and

(B) the manner in which—

(i) the stock shall be issued, transferred, and retired;

(ii) the officers, employees, and agents of the Corporation are selected;

(iii) the property of the Corporation is acquired, held, and transferred;

(iv) the commitments and other financial assistance of the Corporation are made;

(v) the general business of the Corporation is conducted; and

(vi) the privileges granted by law to the Corporation are exercised and enjoyed;

(8) To prescribe such standards as may be necessary to carry out this title.

(9) To enter into contracts and make payments with respect to the contracts.

(10) To sue and be sued in its corporate capacity and to complain and defend in any action brought by or against the Corporation in any State or Federal court of competent jurisdiction.

(11) To make and perform contracts, agreements, and commitments with persons and entities both inside and outside of the Farm Credit System.

(12) To acquire, hold, lease, mortgage or dispose of, at public or private sale, real and personal property, purchase or sell any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the business of the Corporation.

(13) To purchase, hold, sell, or assign a qualified loan, to issue a guaranteed security, representing an interest in, or an obligation backed by, the qualified loan, and to perform all the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under this title.

(14) To establish, acquire, and maintain affiliates (as such term is defined in section 8.11(e)) under applicable State laws to carry out any activities that otherwise would be performed directly by the Corporation under this title.

(15) To exercise such other incidental powers as are necessary to carry out the powers, duties, and functions of the Corporation in accordance with this title.

(d) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks may act as depositaries for, or¹ as fiscal agents or custodians of, the Corporation.

(e) ACCESS TO BOOK-ENTRY SYSTEM.—The Corporation shall have access to the book-entry system of the Federal Reserve System.

SEC. 8.4. [12 U.S.C. 2279aa-4] STOCK ISSUANCE.

(a) VOTING COMMON STOCK.—

(1) ISSUE.—The Corporation shall issue voting common stock having such par value as may be fixed by the Board from time to time. Each share of voting common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors. Voting shall be by classes as described in section 8.2(a)(9). The stock shall be divided into two classes with the same par value per share. Class A stock may be held only by entities that are not Farm Credit System institutions and that are entitled to vote for directors specified in section 8.2(b)(2)(A), including national banking associations (which shall be allowed to purchase and hold such stock). Class B stock may be held only by Farm Credit System institutions that are entitled to vote for directors specified in section 8.2(b)(2)(B).

(2) LIMITATION ON ISSUE.—After the date the permanent board first meets with a quorum of its members present, voting common stock of the Corporation may be issued only to originators and certified facilities.

(3) AUTHORITY OF BOARD TO ESTABLISH TERMS AND PROCEDURES.—The Board shall adopt such terms, conditions, and procedures with regard to the issue of stock under this section

¹Section 105(1) of the Farm Credit System Reform Act of 1996 (P.L. 104-105) provided that section 8.3(d) was amended by striking “may act as depositaries for, or” and inserting “shall act as depositaries for, and”. The amendment could not be executed because the phrase intended to be stricken does not appear.

as may be necessary, including the establishment of a maximum amount limitation on the number of shares of voting common stock that may be outstanding at any time.

(4) TRANSFERABILITY.—Subject to such limitations as the Board may impose, any share of any class of voting common stock issued under this section shall be transferable among the institutions or entities to which shares of such class of common stock may be offered under paragraph (1), except that, as to the Corporation, such shares shall be transferable only on the books of the Corporation.

(5) MAXIMUM NUMBER OF SHARES.—No stockholder, other than a holder of class B stock, may own, directly or indirectly, more than 33 percent of the outstanding shares of such class of the voting common stock of the Corporation.

(b) REQUIRED CAPITAL CONTRIBUTIONS.—

(1) IN GENERAL.—The Corporation may require each originator and each certified facility to make, or commit to make, such nonrefundable capital contributions to the Corporation as are reasonable and necessary to meet the administrative expenses of the Corporation.

(2) STOCK ISSUED AS CONSIDERATION FOR CONTRIBUTION.—The Corporation, from time to time, shall issue to each originator or certified facility voting common stock evidencing any capital contributions made pursuant to this subsection.

(c) DIVIDENDS.—

(1) IN GENERAL.—Such dividends as may be declared by the Board, in the discretion of the Board, shall be paid by the Corporation to the holders of the voting common stock of the Corporation pro rata based on the total number of shares of both classes of stock outstanding.

(2) RESERVES REQUIREMENT.—No dividend may be declared or paid by the Board under this section unless the Board determines that adequate provision has been made for the reserve required under section 8.10(c)(1).

(3) DIVIDENDS PROHIBITED WHILE OBLIGATIONS ARE OUTSTANDING.—No dividend may be declared or paid by the Board under this section while any obligation issued by the Corporation to the Secretary of the Treasury under section 8.13 remains outstanding.

(d) NONVOTING COMMON STOCK.—The Corporation is authorized to issue nonvoting common stock having such par value as may be fixed by the Board from time to time. Such nonvoting common stock shall be freely transferable, except that, as to the Corporation, such stock shall be transferable only on the books of the Corporation. Such dividends as may be declared by the Board, in the discretion of the Board, may be paid by the Corporation to the holders of the nonvoting common stock of the Corporation, subject to paragraphs (2) and (3) of subsection (c).

(e) PREFERRED STOCK.—

(1) AUTHORITY OF BOARD.—The Corporation is authorized to issue nonvoting preferred stock having such par value as may be fixed by the Board from time to time. Such preferred stock issued shall be freely transferable, except that, as to the

Corporation, such stock shall be transferred only on the books of the Corporation.

(2) RIGHTS OF PREFERRED STOCK.—Subject to paragraphs (2) and (3) of subsection (c), the holders of the preferred stock shall be entitled to such rate of cumulative dividends, and such holders shall be subject to such redemption or other conversion provisions, as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid.

(3) PREFERENCE ON TERMINATION OF BUSINESS.—In the event of any liquidation, dissolution, or winding up of the business of the Corporation, the holders of the preferred shares of stock shall be paid in full at the par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

SEC. 8.5. [12 U.S.C. 2279aa-5] CERTIFICATION OF AGRICULTURAL MORTGAGE MARKETING FACILITIES.

(a) ELIGIBILITY STANDARDS.—

(1) ESTABLISHMENT REQUIRED.—Within 120 days after the date on which the permanent board first meets with a quorum present, the Corporation shall issue standards for the certification of agricultural mortgage marketing facilities (other than the Corporation), including eligibility standards in accordance with paragraph (2).

(2) MINIMUM REQUIREMENTS.—To be eligible to be certified under the standards referred to in paragraph (1), an agricultural mortgage marketing facility (other than the Corporation) shall—

(A) be an institution of the Farm Credit System or a corporation, association, or trust organized under the laws of the United States or of any State;

(B) meet or exceed capital standards established by the Board;

(C) have as one of the purposes of the facility, the sale or resale of securities representing interests in, or obligations backed by, pools of qualified loans that have been provided guarantees by the Corporation;

(D) demonstrate managerial ability with respect to agricultural mortgage loan underwriting, servicing, and marketing that is acceptable to the Corporation;

(E) adopt appropriate agricultural mortgage loan underwriting, appraisal, and servicing standards and procedures that meet or exceed the standards established by the Board;

(F) for purposes of enabling the Corporation to examine the facility, agree to allow officers or employees of the Corporation to have access to all books, accounts, financial records, reports, files, and all other papers, things, or property, of any type whatsoever, belonging to or used by the Corporation that are necessary to facilitate an examination of the operations of the facility in connection with securities, and the pools of qualified loans that back securities, for which the Corporation has provided guarantees; and

(G) adopt appropriate minimum standards and procedures relating to loan administration and disclosure to borrowers concerning the terms and rights applicable to loans for which guarantee is provided, in conformity with uniform standards established by the Corporation.

(3) NONDISCRIMINATION REQUIREMENT.—The standards established under this subsection shall not discriminate between or against Farm Credit System and non-Farm Credit System applicants.

(b) CERTIFICATION BY CORPORATION.—Within 60 days after receiving an application for certification under this section, the Corporation shall certify the facility if the facility meets the standards established by the Corporation under subsection (a)(1).

(c) MAXIMUM TIME PERIOD FOR CERTIFICATION.—Any certification by the Corporation of an agricultural mortgage marketing facility shall be effective for a period determined by the Corporation of not to exceed 5 years.

(d) REVOCATION.—

(1) IN GENERAL.—After notice and an opportunity for a hearing, the Corporation may revoke the certification of an agricultural mortgage marketing facility if the Corporation determines that the facility no longer meets the standards referred to in subsection (a).

(2) EFFECT OF REVOCATION.—Revocation of a certification shall not affect any pool guarantee that has been issued by the Corporation.

(e) AFFILIATION OF FCS INSTITUTIONS WITH FACILITY.—

(1) ESTABLISHMENT OF AFFILIATE AUTHORIZED.—Notwithstanding any other provision of this Act, any Farm Credit System institution, acting for such institution alone or in conjunction with one or more other such institutions, may establish and operate, as an affiliate, an agricultural mortgage marketing facility if, within a reasonable time after such establishment, such facility obtains and thereafter retains certification under subsection (b) as a certified facility.

(2) EXCLUSIVE AGENCY AGREEMENT AUTHORIZED.—Any number of Farm Credit System institutions (other than the Corporation) may enter into an agreement with any certified facility (including an affiliate established under paragraph (1)) to sell the qualified loans of such institutions exclusively to or through the facility.

SEC. 8.6. [12 U.S.C. 2279aa-6] GUARANTEE OF QUALIFIED LOANS.

(a) GUARANTEE AUTHORIZED FOR CERTIFIED FACILITIES.—

(1) IN GENERAL.—Subject to the requirements of this section and on such other terms and conditions as the Corporation shall consider appropriate, the Corporation—

(A) shall guarantee the timely payment of principal and interest on the securities issued by a certified facility that represents interests solely in, or obligations fully backed by, any pool consisting solely of qualified loans which meet the standards established under section 8.8 and which are held by such facility; and

(B) may issue a security, guaranteed as to the timely payment of principal and interest, that represents an interest solely in, or an obligation fully backed by, a pool consisting of qualified loans that—

- (i) meet the standards established under section 8.8; and
- (ii) have been purchased and held by the Corporation.

(2) INABILITY OF FACILITY TO PAY.—If the facility is unable to make any payment of principal or interest on any security for which a guarantee has been provided by the Corporation under paragraph (1), the Corporation shall make such payment as and when due in cash, and on such payment shall be subrogated fully to the rights satisfied by such payment.

(3) POWER OF CORPORATION.—Notwithstanding any other provision of law, the Corporation is empowered, in connection with any guarantee under this subsection, whether before or after any default, to provide by contract with the facility for the extinguishment, on default by the facility, of any redemption, equitable, legal, or other right, title, or interest of the facility in any mortgage or mortgages constituting the pool against which the guaranteed securities are issued. With respect to any issue of guaranteed securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such pool shall become the absolute property of the Corporation subject only to the unsatisfied rights of the holders of the securities based on and backed by such pool.

(b) OTHER RESPONSIBILITIES OF AND LIMITATIONS ON CERTIFIED FACILITIES.—As a condition for providing any guarantees under this section for securities issued by a certified facility that represent interests in, or obligations backed by, any pool of qualified loans, the Corporation shall require such facility to agree to comply with the following requirements:

(1) LOAN DEFAULT RESOLUTION.—The facility shall act in accordance with the standards of a prudent institutional lender to resolve loan defaults.

(2) SUBROGATION OF UNITED STATES AND CORPORATION TO INTERESTS OF FACILITY.—The proceeds of any collateral, judgments, settlements, or guarantees received by the facility with respect to any loan in such pool, shall be applied, after payment of costs of collection—

(A) first, to reduce the amount of any principal outstanding on any obligation of the Corporation that was purchased by the Secretary of the Treasury under section 8.13 to the extent the proceeds of such obligation were used to make guarantees in connection with such securities; and

(B) second, to reimburse the Corporation for any such guarantee payments.

(3) LOAN SERVICING.—The originator of any loan in such pool shall be permitted to retain the right to service the loan.

(4) MINORITY PARTICIPATION IN PUBLIC OFFERINGS.—The facility shall take such steps as may be necessary to ensure

that minority owned or controlled investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of securities.

(5) NO DISCRIMINATION AGAINST STATES WITH BORROWERS RIGHTS.—The facility may not refuse to purchase qualified loans originating in States that have established borrowers rights laws either by statute or under the constitution of such States, except that the facility may require discounts or charge fees reasonably related to costs and expenses arising from such statutes or constitutional provisions.

(c) ADDITIONAL AUTHORITY OF THE BOARD.—To ensure the liquidity of securities for which guarantees have been provided under this section, the Board shall adopt appropriate standards regarding—

(1) the characteristics of any pool of qualified loans serving as collateral for such securities; and

(2) transfer requirements.

(d) AGGREGATE PRINCIPAL AMOUNTS OF QUALIFIED LOANS.—

(1) INITIAL YEAR.—During the first year after the date of the enactment of this title, the Corporation may not provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an aggregate principal amount in excess of 2 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year (as published by the Board of Governors of the Federal Reserve System), less all Farmers Home Administration agricultural real estate debt.

(2) SECOND YEAR.—During the year following the year referred to in paragraph (1), the Corporation may not provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an additional principal amount in excess of 4 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

(3) THIRD YEAR.—During the year following the year referred to in paragraph (2), the Corporation may not provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an additional principal amount in excess of 8 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year, less all Farmers Home Administration agricultural real estate debt.

(4) SUBSEQUENT YEARS.—In years subsequent to the year referred to in paragraph (3), the Corporation may provide guarantees without regard to the principal amount of the qualified loans guaranteed.

(e) PURCHASE OF GUARANTEED SECURITIES.—

(1) PURCHASE AUTHORITY.—The Corporation (and affiliates) may purchase, hold, and sell any securities guaranteed under this section by the Corporation that represent interests in, or obligations backed by, pools of qualified loans. Securities issued under this section shall have maturities and bear rates of interest as determined by the Corporation.

(2) ISSUANCE OF DEBT OBLIGATIONS.—The Corporation (and affiliates) may issue debt obligations solely for the purpose of obtaining amounts for the purchase of any securities under paragraph (1), for the purchase of qualified loans (as defined in section 8.0(9)), and for maintaining reasonable amounts for business operations (including adequate liquidity) relating to activities under this subsection.

(3) TERMS AND LIMITATIONS.—

(A) TERMS.—The obligations issued under this subsection shall have maturities and bear rates of interest as determined by the Corporation, and may be redeemable at the option of the Corporation before maturity in the manner stipulated in the obligations.

(B) REQUIREMENT.—Each obligation shall clearly indicate that the obligation is not an obligation of, and is not guaranteed as to principal and interest by, the Farm Credit Administration, the United States, or any other agency or instrumentality of the United States (other than the Corporation).

(C) AUTHORITY.—The Corporation may not issue obligations pursuant to paragraph (2) under this subsection while any obligation issued by the Corporation under section 8.13(a) remains outstanding.

[SEC. 8.7. [Repealed.]]

SEC. 8.8. [12 U.S.C. 2279aa-8] STANDARDS FOR QUALIFIED LOANS.

(a) STANDARDS.—Not later than 120 days after the appointment and election of the permanent Board, the Corporation, in consultation with originators, shall establish uniform underwriting, security appraisal, and repayment standards for qualified loans. In establishing standards for qualified loans, the Corporation shall confine corporate operations, so far as practicable, to mortgage loans that are deemed by the Board to be of such quality so as to meet, substantially and generally, the purchase standards imposed by private institutional mortgage investors.

(b) MINIMUM CRITERIA.—To further the purpose of this title to provide a new source of long-term fixed rate financing to assist farmers and ranchers to purchase agricultural real estate, the standards established by the Board pursuant to subsection (a) shall, at a minimum—

(1) provide that no agricultural mortgage loan with a loan-to-value ratio in excess of 80 percent may be treated as a qualified loan;

(2) require each borrower to demonstrate sufficient cash-flow to adequately service the agricultural mortgage loan;

(3) contain sufficient documentation standards;

(4) contain adequate standards to protect the integrity of the appraisal process with respect to any agricultural mortgage loans;

(5) contain adequate standards to ensure that the borrower is or will be actively engaged in agricultural production, and require the borrower to certify to the originator that the borrower intends to continue agricultural production on the site involved;

(6) minimize speculation in agricultural real estate for nonagricultural purposes; and

(7) in establishing the value of agricultural real estate, consider the purpose for which the real estate is taxed.

(c) LOAN AMOUNT LIMITATION.—

(1) IN GENERAL.—A loan may not be treated as a qualified loan if the principal amount of such loan exceeds \$2,500,000, adjusted for inflation, except as provided in paragraph (2).

(2) ACREAGE EXCEPTION.—Paragraph (1) shall not apply with respect to any agricultural mortgage loan described in such paragraph if such loan is secured by agricultural real estate that, in the aggregate, comprises not more than 1,000 acres.

(d) CONGRESSIONAL REVIEW.—No standard prescribed under subsection (a) shall take effect before the later of—

(1) the end of a period consisting of 30 legislative days and beginning on the date such standards are submitted to the Congress; or

(2) the end of a period consisting of 90 calendar days and beginning on such date.

(e) NONDISCRIMINATION REQUIREMENT.—The standards established under subsection (a) shall not discriminate against small originators or small agricultural mortgage loans that are at least \$50,000. The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.

SEC. 8.9. [12 U.S.C. 2279aa–9] EXEMPTION FROM RESTRUCTURING AND BORROWERS RIGHTS PROVISIONS FOR POOLED LOANS.

(a) RESTRUCTURING.—Notwithstanding any other provision of law, sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 shall not apply to any loan included in a pool of qualified loans backing securities or obligations for which the Corporation provides guarantee. The loan servicing standards established by the Corporation shall be patterned after similar standards adopted by other federally sponsored secondary market facilities.

(b) BORROWERS RIGHTS.—At the time of application for a loan (as defined in section 4.14A(a)(5)), originators that are Farm Credit System institutions shall give written notice to each applicant of the terms and conditions of the loan, setting forth separately terms and conditions for pooled loans and loans that are not pooled. This notice shall include a statement, if applicable, that the loan may be pooled and that, if pooled, sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 shall not apply. This notice also shall inform the applicant that he or she has the right not to have the loan pooled. Within 3 days from the time of commitment, an applicant has the right to refuse to allow the loan to be pooled, thereby retaining

rights under sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36, if applicable.

SEC. 8.10. [12 U.S.C. 2279aa-10] FUNDING FOR GUARANTEE; RESERVES OF CORPORATION.

(a) **GUARANTEE.**—The Corporation shall provide guarantees for securities representing interests in, or obligations backed by, pools of qualified loans through commitments issued by the Corporation providing for guarantees.

(b) **GUARANTEE FEES.**—

(1) **INITIAL FEE.**—At the time a guarantee is issued by the Corporation, the Corporation shall assess the certified facility a fee of not more than $\frac{1}{2}$ of 1 percent of the initial principal amount of each pool of qualified loans.

(2) **ANNUAL FEES.**—Beginning in the second year after the date the guarantee is issued under paragraph (1), the Corporation may, at the end of each year, assess the certified facility an annual fee of not more than $\frac{1}{2}$ of 1 percent of the principal amount of the loans then constituting the pool.

(3) **DETERMINATION OF AMOUNT.**—The Corporation shall establish such fees on the amount of risk incurred by the Corporation in providing the guarantees with respect to which such fee is assessed, as determined by the Corporation. Fees assessed under paragraphs (1) and (2) shall be established on an actuarially sound basis.

(4) **REVIEW BY GAO.**—The Comptroller General of the United States may review, and submit to the Congress a report regarding, the actuarial soundness and reasonableness of the fees established by the Corporation under this subsection.

(c) **CORPORATION RESERVE AGAINST GUARANTEES LOSSES REQUIRED.**—

(1) **IN GENERAL.**—So much of the fees assessed under this section as the Board determines to be necessary shall be set aside by the Corporation in a segregated account as a reserve against losses arising out of the guarantee activities of the Corporation.

(2) **EXHAUSTION OF RESERVE REQUIRED.**—The Corporation may not issue obligations to the Secretary of the Treasury under section 8.13 in order to meet the obligations of the Corporation with respect to any guarantees provided under this title until the reserve established under paragraph (1) has been exhausted.

(d) **FEES TO COVER ADMINISTRATIVE COSTS AUTHORIZED.**—The Corporation may impose charges or fees in reasonable amounts in connection with the administration of its activities under this title to recover its costs for performing such administration.

SEC. 8.11. [12 U.S.C. 2279aa-11] SUPERVISION, EXAMINATION, AND REPORT OF CONDITION.

(a) **REGULATION.**—

(1) **AUTHORITY.**—Notwithstanding any other provision of this Act, the Farm Credit Administration shall have the authority to provide, acting through the Office of Secondary Market Oversight—

- (A) for the examination of the Corporation and its affiliates; and
- (B) for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation and its affiliates by this title, including through the use of the authorities granted to the Farm Credit Administration under—
 - (i) part C of title V; and
 - (ii) beginning 6 months after December 13, 1991, section 5.17(a)(9).
- (2) CONSIDERATIONS.—In exercising its authority pursuant to this section, the Farm Credit Administration shall consider—
 - (A) the purposes for which the Corporation was created;
 - (B) the practices appropriate to the conduct of secondary markets in agricultural loans; and
 - (C) the reduced levels of risk associated with appropriately structured secondary market transactions.
- (3) OFFICE OF SECONDARY MARKET OVERSIGHT.—
 - (A) Not later than 180 days after the date of enactment of this paragraph, the Farm Credit Administration Board shall establish within the Farm Credit Administration the Office of Secondary Market Oversight.
 - (B) The Farm Credit Administration Board shall carry out the authority set forth in this section through the Office of Secondary Market Oversight.
 - (C) The Office of Secondary Market Oversight shall be managed by a full-time Director who shall be selected by and report to the Farm Credit Administration Board.
- (b) EXAMINATIONS AND AUDITS.—
 - (1) IN GENERAL.—The financial transactions of the Corporation shall be examined by examiners of the Farm Credit Administration in accordance with the principles and procedures applicable to commercial corporate transactions under such rules and regulations as may be prescribed by the Administration.
 - (2) FREQUENCY.—The examinations shall occur at such times as the Farm Credit Administration Board may determine, but in no event less than once each year.
 - (3) ACCESS.—The examiners shall—
 - (A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit; and
 - (B) be afforded full access for verifying transactions with certified facilities and other entities with whom the Corporation conducts transactions.
 - (c) ANNUAL REPORT OF CONDITION.—The Corporation shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration may by regulation prescribe. The fi-

nancial statements of the Corporation shall be audited by an independent public accountant.

(d) FCA ASSESSMENTS TO COVER COSTS.—The Farm Credit Administration shall assess the Corporation for the cost to the Administration of any regulatory activities conducted under this section, including the cost of any examination.

(e) DEFINITION OF AFFILIATE.—As used in this title, the term “affiliate” shall mean an entity effectively controlled or owned by the Corporation, except that such term shall not include an originator (as defined in section 8.0(7)).

(f) The Farm Credit Administration Board shall ensure that—

(1) the Office of Secondary Market Oversight has access to a sufficient number of qualified and trained employees to adequately supervise the secondary market activities of the Corporation; and

(2) the supervision of the powers, functions, and duties of the Corporation is performed, to the extent practicable, by personnel who are not responsible for the supervision of the banks and associations of the Farm Credit System.

SEC. 8.12. [12 U.S.C. 2279aa–12] SECURITIES IN CREDIT ENHANCED POOLS.

(a) FEDERAL LAWS.—

(1) APPLICABILITY OF CERTAIN FEDERAL SECURITIES LAWS.—For purposes of section 3(a)(2) of the Securities Act of 1933, no security representing an interest in, or obligations backed by, a pool of qualified loans for which guarantees have been provided by the Corporation shall be deemed to be a security issued or guaranteed by a person controlled or supervised by, or acting as an instrumentality of, the Government of the United States. No such security shall be deemed to be a “government security” for purposes of the Securities Exchange Act of 1934 or for purposes of the Investment Company Act of 1940.

(2) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Each security for which credit enhancement has been provided by the Corporation shall clearly indicate that the security is not an obligation of, and is not guaranteed as to principal or interest by, the Farm Credit Administration, the United States, or any other agency or instrumentality of the United States (other than the Corporation).

(b) STATE SECURITIES LAWS.—

(1) GENERAL EXEMPTION.—Any security or obligation that has been provided a guarantee by the Corporation shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by, or guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States.

(2) STATE OVERRIDE.—The provisions of paragraph (1) shall not be applicable to any State that, during the 8-year period beginning on the date of the enactment of this title, enacts a law that—

(A) specifically refers to this subsection; and

(B) expressly provides that paragraph (1) shall not apply to the State.

(c) AUTHORIZED INVESTMENTS.—

(1) IN GENERAL.—Securities representing an interest in, or obligations backed by, pools of qualified loans with respect to which the Corporation has provided a guarantee shall be authorized investments of any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State to the same extent that the person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality of the United States. Such securities or obligations may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any State or any officers of either.

(2) STATE LIMITATIONS ON PURCHASE, HOLDING, OR INVESTMENT.—If State law limits the purchase, holding, or investment in obligations issued by the United States by the person, trust, corporation, partnership, association, business trust, or business entity, securities or obligations of a certified facility issued on which the Corporation has provided a guarantee shall be considered to be obligations issued by the United States for purposes of the limitation.

(3) NONAPPLICABILITY OF PROVISIONS.—

(A) SUBSEQUENT STATE LAW.—Paragraphs (1) and (2) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, in any State that, prior to the expiration of the 8-year period beginning on the date of the enactment of this title, enacts a law that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in the securities by any person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, than is provided in paragraphs (1) and (2).

(B) EFFECT OF SUBSEQUENT STATE LAW.—The enactment by any State of a law of the type described in subparagraph (A) shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to the effective date of the law and shall not require the sale or other disposition of any securities acquired prior to the effective date of the law.

(d) STATE USURY LAWS SUPERSEDED.—A provision of the Constitution or law of any State shall not apply to an agricultural loan made by an originator or a certified facility in accordance with this title for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided, or has committed to provide, a guarantee, if the loan, not later than 180 days after the date the loan was made, is sold to the Corporation or included

in a pool for which the Corporation has provided a guarantee, if the provision—

(1) limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by an agricultural lender or a certified facility; or

(2) limits or prohibits a prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment that may be charged, taken, or received by an agricultural lender or a certified facility in connection with the full or partial payment of the principal amount due on a loan by a borrower in advance of the scheduled date for the payment under the terms of the loan, otherwise known as a prepayment of the loan principal.

SEC. 8.13. [12 U.S.C. 2279aa-13] AUTHORITY TO ISSUE OBLIGATIONS TO COVER GUARANTEE LOSSES OF CORPORATION.

(a) **SALE OF OBLIGATIONS TO TREASURY.**—

(1) **IN GENERAL.**—Subject to the limitations contained in section 8.10(c) and the requirement of paragraph (2), the Corporation may issue obligations to the Secretary of the Treasury the proceeds of which may be used by the Corporation solely for the purpose of fulfilling the obligations of the Corporation under any guarantee provided by the Corporation under this title.

(2) **CERTIFICATION.**—The Secretary of the Treasury may purchase obligations of the Corporation under paragraph (1) only if the Corporation certifies to the Secretary that—

(A) the requirements of section 8.10(c) have been fulfilled; and

(B) the proceeds of the sale of such obligations are needed to fulfill the obligations of the Corporation under any guarantee provided by the Corporation under this title.

(b) **EXPEDITIOUS TRANSACTION REQUIRED.**—Not later than 10 business days after receipt by the Secretary of the Treasury of any certification by the Corporation under subsection (a)(2), the Secretary of the Treasury shall purchase obligations issued by the Corporation in an amount determined by the Corporation to be sufficient to meet the guarantee liabilities of the Corporation.

(c) **LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.**—The aggregate amount of obligations issued by the Corporation under subsection (a)(1) which may be held by the Secretary of the Treasury at any time (as determined by the Secretary) shall not exceed \$1,500,000,000.

(d) **TERMS OF OBLIGATION.**—

(1) **INTEREST.**—Each obligation purchased by the Secretary of the Treasury shall bear interest at a rate determined by the Secretary, taking into consideration the average rate on outstanding marketable obligations of the United States as of the last day of the last calendar month ending before the date of the purchase of such obligation.

(2) **REDEMPTION.**—The Secretary of the Treasury shall require that such obligations be repurchased by the Corporation within a reasonable time.

(e) COORDINATION WITH TITLE 31, UNITED STATES CODE.—

(1) AUTHORITY TO USE PROCEEDS FROM SALE OF TREASURY SECURITIES.—For the purpose of purchasing obligations of the Corporation, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale by the Secretary of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include such purchases.

(2) TREATMENT OF TRANSACTIONS.—All purchases and sales by the Secretary of the Treasury of obligations issued by the Corporation under this section shall be treated as public debt transactions of the United States.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Treasury \$1,500,000,000, without fiscal year limitation, to carry out the purposes of this title.

SEC. 8.14. [12 U.S.C. 2279aa–14] FEDERAL JURISDICTION.

Notwithstanding section 1349 of title 28, United States Code, or any other provision of law:

(1) The Corporation shall be considered an agency under sections 1345 and 1442 of such title.

(2) All civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States and, to the extent applicable, shall be deemed to be governed by Federal common law. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount of value.

(3) Any civil or other action, case, or controversy in a court of a State or any court, other than a district court of the United States, to which the Corporation is a party may at any time before trial be removed by the Corporation, without the giving of any bond or security—

(A) to the District Court of the United States for the district and division embracing the place where the same is pending; or

(B) if there is no such district court, to the District Court of the United States for the district in which the principal office of the Corporation is located; by following any procedure for removal for causes in effect at the time of such removal.

(4) No attachment or execution shall be issued against the Corporation or any of the property of the Corporation before final judgment in any Federal, State, or other court.

Subtitle B—Regulation of Financial Safety and Soundness of Federal Agricultural Mortgage Corporation

SEC. 8.31. [12 U.S.C. 2279bb] DEFINITIONS.

For purposes of this subtitle:

(1) COMPENSATION.—The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(2) CORE CAPITAL.—The term “core capital” means, with respect to the Corporation, the sum of the following (as determined in accordance with generally accepted accounting principles):

- (A) The par value of outstanding common stock.
- (B) The par value of outstanding preferred stock.
- (C) Paid-in capital.
- (D) Retained earnings.

(3) DIRECTOR.—The term “Director” means the Director of the Office of Secondary Market Oversight of the Farm Credit Administration, selected under section 8.11(a)(3).

(4) OFFICE.—The term “Office” means the Office of Secondary Market Oversight of the Farm Credit Administration, established in section 8.11(a).

(5) REGULATORY CAPITAL.—The term “regulatory capital” means, with respect to the Corporation, the core capital of the Corporation plus an allowance for losses and guarantee claims, as determined in accordance with generally accepted accounting principles.

(6) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 8.32. [12 U.S.C. 2279bb-1] RISK-BASED CAPITAL LEVELS.

(a) RISK-BASED CAPITAL TEST.—Not sooner than the expiration of the 3-year period beginning on the date of enactment of the Farm Credit System Reform Act of 1996, the Director of the Office of Secondary Market Oversight shall, by regulation, establish a risk-based capital test under this section for the Corporation. When applied to the Corporation, the risk-based capital test shall determine the amount of regulatory capital for the Corporation that is sufficient for the Corporation to maintain positive capital during a 10-year period in which both of the following circumstances occur:

(1) CREDIT RISK.—With respect to securities representing an interest in, or obligations backed by, a pool of qualified loans owned or guaranteed by the Corporation and other obligations of the Corporation, losses on the underlying qualified loans occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing industry practice in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years (as established by the Director), experienced the highest rates of default and severity of agricultural mortgage losses, in comparison with such rates of default and severity of agricultural

mortgage losses in other such areas for any period of such duration, as determined by the Director.

(2) INTEREST RATE RISK.—Interest rates on Treasury obligations of varying terms increase or decrease over the first 12 months of such 10-year period by not more than the lesser of (A) 50 percent (with respect to the average interest rates on such obligations during the 12-month period preceding the 10-year period), or (B) 600 basis points, and remain at such level for the remainder of the period. This paragraph may not be construed to require the Director to determine interest rate risk under this paragraph based on the interest rates for various long-term and short-term obligations all increasing or all decreasing concurrently.

(b) CONSIDERATIONS.—

(1) ESTABLISHMENT OF TEST.—In establishing the risk-based capital test under subsection (a)—

(A) the Director shall take into account appropriate distinctions based on various types of agricultural mortgage products, varying terms of Treasury obligations, and any other factors the Director considers appropriate;

(B) the Director shall conform loan data used in determining credit risk to the minimum geographic and commodity diversification standards applicable to pools of qualified loans eligible for guarantee;

(C) the Director may take into account retained subordinated participating interests under section 8.6(b)(2) (as in effect before the date of the enactment of the Farm Credit System Reform Act of 1996);

(D) the Director may take into account other methods or tests to determine credit risk developed by the Corporation before December 13, 1991; and

(E) the Director shall consider any other information submitted by the Corporation in writing during the 180-day period beginning on December 13, 1991.

(2) REVISING TEST.—Upon the expiration of the 8-year period beginning on December 13, 1991, the Director shall examine the risk-based capital test under subsection (a) and may revise the test. In making examinations and revisions under this paragraph, the Director shall take into account that, before December 13, 1991, the Corporation has not issued guarantees for pools of qualified loans. To the extent that the revision of the risk-based capital test causes a change in the classification of the Corporation within the enforcement levels established under section 8.35, the Director shall waive the applicability of any additional enforcement actions available because of such change for a reasonable period of time, to permit the Corporation to increase the amount of regulatory capital of the Corporation accordingly.

(c) RISK-BASED CAPITAL LEVEL.—For purposes of this subtitle, the risk-based capital level for the Corporation shall be equal to the sum of the following amounts:

(1) CREDIT AND INTEREST RATE RISK.—The amount of regulatory capital determined by applying the risk-based capital

test under subsection (a) to the Corporation, adjusted to account for foreign exchange risk.

(2) MANAGEMENT AND OPERATIONS RISK.—To provide for management and operations risk, 30 percent of the amount of regulatory capital determined by applying the risk-based capital test under subsection (a) to the Corporation.

(d) SPECIFIED CONTENTS.—

(1) IN GENERAL.—The regulations establishing the risk-based capital test under this section shall—

(A) be issued by the Director for public comment in the form of a notice of proposed rulemaking, to be first published after the expiration of the period referred to in subsection (a); and

(B) contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, prepayment rates, and performance of pools of qualified loans).

(2) SPECIFICITY.—The regulations referred to in paragraph (1) shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(e) AVAILABILITY OF MODEL.—The Director shall make copies of the statistical model or models used to implement the risk-based capital test under this section available for public acquisition and may charge a reasonable fee for such copies.

SEC. 8.33. [12 U.S.C. 2279bb-2] MINIMUM CAPITAL LEVEL.

(a) IN GENERAL.—Except as provided in subsection (b), for purposes of this subtitle, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of—

(1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with generally accepted accounting principles; and

(2) 0.75 percent of the aggregate off-balance sheet obligations of the Corporation, which, for the purposes of this subtitle, shall include—

(A) the unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans;

(B) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to instruments described in subparagraph (A); and

(C) other off-balance sheet obligations of the Corporation.

(b) TRANSITION PERIOD.—

(1) IN GENERAL.—For purposes of this subtitle, the minimum capital level for the Corporation—

(A) prior to January 1, 1997, shall be the amount of core capital equal to the sum of—

(i) 0.45 percent of aggregate off-balance sheet obligations of the Corporation;

(ii) 0.45 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(iii) 2.50 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

(B) during the 1-year period ending December 31, 1997, shall be the amount of core capital equal to the sum of—

(i) 0.55 percent of aggregate off-balance sheet obligations of the Corporation;

(ii) 1.20 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(iii) 2.55 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

(C) during the 1-year period ending December 31, 1998, shall be the amount of core capital equal to—

(i) if the Corporation's core capital is not less than \$25,000,000 on January 1, 1998, the sum of—

(I) 0.65 percent of aggregate off-balance sheet obligations of the Corporation;

(II) 1.95 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(III) 2.65 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2); or

(ii) if the Corporation's core capital is less than \$25,000,000 on January 1, 1998, the amount determined under subsection (a); and

(D) on and after January 1, 1999, shall be the amount determined under subsection (a).

(2) DESIGNATED ON-BALANCE SHEET ASSETS.—For purposes of this subsection, the designated on-balance sheet assets of the Corporation shall be—

(A) the aggregate on-balance sheet assets of the Corporation acquired under section 8.6(e); and

(B) the aggregate amount of qualified loans purchased and held by the Corporation under section 8.3(c)(13).

SEC. 8.34. [12 U.S.C. 2279bb-3] CRITICAL CAPITAL LEVEL.

For purposes of this subtitle, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 8.33.

SEC. 8.35. [12 U.S.C. 2279bb-4] ENFORCEMENT LEVELS.

(a) IN GENERAL.—The Director shall classify the Corporation, for purposes of this subtitle, according to the following enforcement levels:

(1) LEVEL I.—The Corporation shall be classified as within level I if the Corporation—

- (A) maintains an amount of regulatory capital that is equal to or exceeds the risk-based capital level established under section 8.32; and
- (B) equals or exceeds the minimum capital level established under section 8.33.
- (2) LEVEL II.—The Corporation shall be classified as within level II if—
- (A) the Corporation—
- (i) maintains an amount of regulatory capital that is less than the risk-based capital level; and
- (ii) equals or exceeds the minimum capital level;
- or
- (B) the Corporation is otherwise classified as within level II under subsection (b) of this section.
- (3) LEVEL III.—The Corporation shall be classified as within level III if—
- (A) the Corporation—
- (i) does not equal or exceed the minimum capital level; and
- (ii) equals or exceeds the critical capital level established under section 8.34; or
- (B) the Corporation is otherwise classified as within level III under subsection (b) of this section.
- (4) LEVEL IV.—The Corporation shall be classified as within level IV if the Corporation—
- (A) does not equal or exceed the critical capital level;
- or
- (B) is otherwise classified as within level IV under subsection (b) of this section.
- (b) DISCRETIONARY CLASSIFICATION.—If at any time the Director determines in writing (and provides written notification to the Corporation and the Farm Credit Administration) that the Corporation is taking any action not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages securitized by the Corporation or property underlying securities guaranteed by the Corporation, has decreased significantly, the Director may classify the Corporation—
- (1) as within level II, if the Corporation is otherwise within level I;
- (2) as within level III, if the Corporation is otherwise within level II; or
- (3) as within level IV, if the Corporation is otherwise within level III.
- (c) QUARTERLY DETERMINATION.—The Director shall determine the classification of the Corporation for purposes of this subtitle on not less than a quarterly basis (and as appropriate under subsection (b)). The first such determination shall be made for the quarter ending March 31, 1992.
- (d) NOTICE.—Upon determining under subsection (b) or (c) that the Corporation is within level II or III, the Director shall provide written notice to the Congress and to the Corporation—
- (1) that the Corporation is within such level;

(2) that the Corporation is subject to the provisions of section 8.36 or 8.37, as applicable; and

(3) stating the reasons for the classification of the Corporation within such level.

(e) IMPLEMENTATION.—Notwithstanding paragraphs (1) and (2) of subsection (a), during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 8.32, the Corporation shall be classified as within level I if the Corporation equals or exceeds the minimum capital level established under section 8.33.

SEC. 8.36. [12 U.S.C. 2279bb-5] MANDATORY ACTIONS APPLICABLE TO LEVEL II.

(a) CAPITAL RESTORATION PLAN.—If the Corporation is classified as within level II, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

(b) RESTRICTION ON DIVIDENDS.—If the Corporation is classified as within level II, the Corporation may not make any payment of dividends that would result in the Corporation being reclassified as within level III or IV.

(c) RECLASSIFICATION FROM LEVEL II TO LEVEL III.—The Director shall immediately reclassify the Corporation as within level III (and the Corporation shall be subject to the provisions of section 8.37), if—

(1) the Corporation is within level II; and

(2)(A) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(B) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

(d) EFFECTIVE DATE.—This section shall take effect upon the expiration of the 30-month period beginning on the date of the enactment of this section.

SEC. 8.37. [12 U.S.C. 2279bb-6] SUPERVISORY ACTIONS APPLICABLE TO LEVEL III.

(a) MANDATORY SUPERVISORY ACTIONS.—

(1) CAPITAL RESTORATION PLAN.—If the Corporation is classified as within level III, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

(2) RESTRICTIONS ON DIVIDENDS.—

(A) PRIOR APPROVAL.—If the Corporation is classified as within level III, the Corporation—

(i) may not make any payment of dividends that would result in the Corporation being reclassified as within level IV; and

(ii) may make any other payment of dividends only if the Director approves the payment before the payment.

(B) STANDARD FOR APPROVAL.—If the Corporation is classified as within level III, the Director may approve a payment of dividends by the Corporation only if the Direc-

tor determines that the payment (i) will enhance the ability of the Corporation to meet the risk-based capital level and the minimum capital level promptly, (ii) will contribute to the long-term safety and soundness of the Corporation, or (iii) is otherwise in the public interest.

(3) RECLASSIFICATION FROM LEVEL III TO LEVEL IV.—The Director shall immediately reclassify the Corporation as within level IV if—

(A) the Corporation is classified as within level III; and

(B)(i) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(ii) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

(b) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other actions taken by the Director (including actions under subsection (a)), the Director may, at any time, take any of the following actions if the Corporation is classified as within level III:

(1) LIMITATION ON INCREASE IN OBLIGATIONS.—Limit any increase in, or order the reduction of, any obligations of the Corporation, including off-balance sheet obligations.

(2) LIMITATION ON GROWTH.—Limit or prohibit the growth of the assets of the Corporation or require contraction of the assets of the Corporation.

(3) PROHIBITION ON DIVIDENDS.—Prohibit the Corporation from making any payment of dividends.

(4) ACQUISITION OF NEW CAPITAL.—Require the Corporation to acquire new capital in any form and in any amount sufficient to provide for the reclassification of the Corporation as within level II.

(5) RESTRICTION OF ACTIVITIES.—Require the Corporation to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the Corporation.

(6) CONSERVATORSHIP.—Appoint a conservator for the Corporation consistent with this Act.

(c) EFFECTIVE DATE.—This section shall take effect on January 1, 1992.

SEC. 8.38. [12 U.S.C. 2279bb-7] RECAPITALIZATION OF THE CORPORATION.

(a) MANDATORY RECAPITALIZATION.—The Corporation shall increase the core capital of the Corporation to an amount equal to or greater than \$25,000,000, not later than the earlier of—

(1) the date that is 2 years after the date of enactment of this section; or

(2) the date that is 180 days after the end of the first calendar quarter that the aggregate on-balance sheet assets of the Corporation, plus the outstanding principal of the off-balance sheet obligations of the Corporation, equal or exceed \$2,000,000,000.

(b) RAISING CORE CAPITAL.—In carrying out this section, the Corporation may issue stock under section 8.4 and otherwise em-

ploy any recognized and legitimate means of raising core capital in the power of the Corporation under section 8.3.

(c) **LIMITATION ON GROWTH OF TOTAL ASSETS.**—During the 2-year period beginning on the date of enactment of this section, the aggregate on-balance sheet assets of the Corporation plus the outstanding principal of the off-balance sheet obligations of the Corporation may not exceed \$3,000,000,000 if the core capital of the Corporation is less than \$25,000,000.

(d) **ENFORCEMENT.**—If the Corporation fails to carry out subsection (a) by the date required under paragraph (1) or (2) of subsection (a), the Corporation may not purchase a new qualified loan or issue or guarantee a new loan-backed security until the core capital of the Corporation is increased to an amount equal to or greater than \$25,000,000.

Subtitle C—Receivership, Conservatorship, and Liquidation of the Federal Agricultural Mortgage Corporation

SEC. 8.41. [12 U.S.C. 2279cc] CONSERVATORSHIP; LIQUIDATION; RECEIVERSHIP.

(a) **VOLUNTARY LIQUIDATION.**—The Corporation may voluntarily liquidate only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board.

(b) **INVOLUNTARY LIQUIDATION.**—

(1) **IN GENERAL.**—The Farm Credit Administration Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 4.12(b).

(2) **APPLICATION.**—In applying section 4.12(b) to the Corporation under paragraph (1)—

(A) the Corporation shall also be considered insolvent if the Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(B) a conservator may also be appointed for the Corporation if the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; and

(C) a receiver may also be appointed for the Corporation if—

(i)(I) the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(II) the Corporation is classified under section 8.35 as within level III or IV and the alternative actions available under subtitle B are not satisfactory; and

(ii) the Farm Credit Administration determines that the appointment of a conservator would not be appropriate.

(3) **NO EFFECT ON SUPERVISORY ACTIONS.**—The grounds for appointment of a conservator for the Corporation under this subsection shall be in addition to those in section 8.37.

(c) APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) QUALIFICATIONS.—Notwithstanding section 4.12(b), if a conservator or receiver is appointed for the Corporation, the conservator or receiver shall be—

(A) the Farm Credit Administration or any other governmental entity or employee, including the Farm Credit System Insurance Corporation; or

(B) any person that—

(i) has no claim against, or financial interest in, the Corporation or other basis for a conflict of interest as the conservator or receiver; and

(ii) has the financial and management expertise necessary to direct the operations and affairs of the Corporation and, if necessary, to liquidate the Corporation.

(2) COMPENSATION.—

(A) IN GENERAL.—A conservator or receiver for the Corporation and professional personnel (other than a Federal employee) employed to represent or assist the conservator or receiver may be compensated for activities conducted as, or for, a conservator or receiver.

(B) LIMIT ON COMPENSATION.—Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Farm Credit Administration may provide for compensation at higher rates that are not in excess of rates prevailing in the private sector if the Farm Credit Administration determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(C) CONTRACTUAL ARRANGEMENTS.—The conservator or receiver may contract with any governmental entity, including the Farm Credit System Insurance Corporation, to make personnel, services, and facilities of the entity available to the conservator or receiver on such terms and compensation arrangements as shall be mutually agreed, and each entity may provide the same to the conservator or receiver.

(3) EXPENSES.—A valid claim for expenses of the conservatorship or receivership (including compensation under paragraph (2)) and a valid claim with respect to a loan made under subsection (f) shall—

(A) be paid by the conservator or receiver from funds of the Corporation before any other valid claim against the Corporation; and

(B) may be secured by a lien, on such property of the Corporation as the conservator or receiver may determine, that shall have priority over any other lien.

(4) LIABILITY.—If the conservator or receiver for the Corporation is not a Federal entity, or an officer or employee of the Federal Government, the conservator or receiver shall not be personally liable for damages in tort or otherwise for an act or omission performed pursuant to and in the course of the conservatorship or receivership, unless the act or omission con-

stitutes gross negligence or any form of intentional tortious conduct or criminal conduct.

(5) INDEMNIFICATION.—The Farm Credit Administration may allow indemnification of the conservator or receiver from the assets of the conservatorship or receivership on such terms as the Farm Credit Administration considers appropriate.

(d) JUDICIAL REVIEW OF APPOINTMENT.—

(1) IN GENERAL.—Notwithstanding subsection (i)(1), not later than 30 days after a conservator or receiver is appointed under subsection (b), the Corporation may bring an action in the United States District Court for the District of Columbia for an order requiring the Farm Credit Administration Board to remove the conservator or receiver. The court shall, on the merits, dismiss the action or direct the Farm Credit Administration Board to remove the conservator or receiver.

(2) STAY OF OTHER ACTIONS.—On the commencement of an action under paragraph (1), any court having jurisdiction of any other action or enforcement proceeding authorized under this Act to which the Corporation is a party shall stay the action or proceeding during the pendency of the action for removal of the conservator or receiver.

(e) GENERAL POWERS OF CONSERVATOR OR RECEIVER.—The conservator or receiver for the Corporation shall have such powers to conduct the conservatorship or receivership as shall be provided pursuant to regulations adopted by the Farm Credit Administration Board. Such powers shall be comparable to the powers available to a conservator or receiver appointed pursuant to section 4.12(b).

(f) BORROWINGS FOR WORKING CAPITAL.—

(1) IN GENERAL.—If the conservator or receiver of the Corporation determines that it is likely that there will be insufficient funds to pay the ongoing administrative expenses of the conservatorship or receivership or that there will be insufficient liquidity to fund maturing obligations of the conservatorship or receivership, the conservator or receiver may borrow funds in such amounts, from such sources, and at such rates of interest as the conservator or receiver considers necessary or appropriate to meet the administrative expenses or liquidity needs of the conservatorship or receivership.

(2) WORKING CAPITAL FROM FARM CREDIT BANKS.—A Farm Credit bank may loan funds to the conservator or receiver for a loan authorized under paragraph (1) or, in the event of receivership, a Farm Credit bank may purchase assets of the Corporation.

(g) AGREEMENTS AGAINST INTERESTS OF CONSERVATOR OR RECEIVER.—No agreement that tends to diminish or defeat the right, title, or interest of the conservator or receiver for the Corporation in any asset acquired by the conservator or receiver as conservator or receiver for the Corporation shall be valid against the conservator or receiver unless the agreement—

- (1) is in writing;
- (2) is executed by the Corporation and any person claiming an adverse interest under the agreement, including the obligor,

contemporaneously with the acquisition of the asset by the Corporation;

(3) is approved by the Board or an appropriate committee of the Board, which approval shall be reflected in the minutes of the Board or committee; and

(4) has been, continuously, from the time of the agreement's execution, an official record of the Corporation.

(h) REPORT TO THE CONGRESS.—On a determination by the receiver for the Corporation that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the financial condition of the receivership.

(i) TERMINATION OF AUTHORITIES.—

(1) CORPORATION.—The charter of the Corporation shall be canceled, and the authority provided to the Corporation by this title shall terminate, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

(2) OVERSIGHT.—The Office of Secondary Market Oversight established under section 8.11 shall be abolished, and section 8.11(a) and subtitle B shall have no force or effect, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.