

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5830
OFFERED BY MR. BACHUS OF ALABAMA, MRS.
BIGGERT OF ILLINOIS, AND MRS. CAPITO OF
WEST VIRGINIA**

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Homeownership Pro-
3 tection and Housing Market Stabilization Act of 2008”.

4 SEC. 2. TABLE OF CONTENTS.

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

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- Sec. 107. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
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1 **TITLE I—LICENSING SYSTEM**
2 **FOR RESIDENTIAL MORT-**
3 **GAGE LOAN ORIGINATORS**

4 **SEC. 101. PURPOSES AND METHODS FOR ESTABLISHING A**
5 **MORTGAGE LICENSING SYSTEM AND REG-**
6 **ISTRY.**

7 In order to increase uniformity, reduce regulatory
8 burden, enhance consumer protection, and reduce fraud,
9 the States, through the Conference of State Bank Super-
10 visors and the American Association of Residential Mort-
11 gage Regulators, are hereby encouraged to establish a Na-
12 tionwide Mortgage Licensing System and Registry for the
13 residential mortgage industry that accomplishes all of the
14 following objectives:

- 15 (1) Provides uniform license applications and
16 reporting requirements for State-licensed loan origi-
17 nators.
- 18 (2) Provides a comprehensive licensing and su-
19 pervisory database.

1 (3) Aggregates and improves the flow of infor-
2 mation to and between regulators.

3 (4) Provides increased accountability and track-
4 ing of loan originators.

5 (5) Streamlines the licensing process and re-
6 duces the regulatory burden.

7 (6) Enhances consumer protections and sup-
8 ports anti-fraud measures.

9 (7) Provides consumers with easily accessible
10 information regarding the employment history of,
11 and publicly adjudicated disciplinary and enforce-
12 ment actions against, loan originators.

13 **SEC. 102. DEFINITIONS.**

14 For purposes of this title, the following definitions
15 shall apply:

16 (1) FEDERAL BANKING AGENCIES.—The term
17 “Federal banking agencies” means the Board of
18 Governors of the Federal Reserve System, the
19 Comptroller of the Currency, the Director of the Of-
20 fice of Thrift Supervision, the National Credit Union
21 Administration, and the Federal Deposit Insurance
22 Corporation.

23 (2) DEPOSITORY INSTITUTION.—The term “de-
24 pository institution” has the same meaning as in

1 section 3 of the Federal Deposit Insurance Act and
2 includes any credit union.

3 (3) LOAN ORIGINATOR.—

4 (A) IN GENERAL.—The term “loan origi-
5 nator”—

6 (i) means an individual who—

7 (I) takes a residential mortgage
8 loan application;

9 (II) assists a consumer in obtain-
10 ing or applying to obtain a residential
11 mortgage loan; or

12 (III) offers or negotiates terms of
13 a residential mortgage loan, for direct
14 or indirect compensation or gain, or in
15 the expectation of direct or indirect
16 compensation or gain;

17 (ii) includes any individual who rep-
18 resents to the public, through advertising
19 or other means of communicating or pro-
20 viding information (including the use of
21 business cards, stationery, brochures,
22 signs, rate lists, or other promotional
23 items), that such individual can or will pro-
24 vide or perform any of the activities de-
25 scribed in clause (i);

1 (iii) does not include any individual
2 who is not otherwise described in clause (i)
3 or (ii) and who performs purely adminis-
4 trative or clerical tasks on behalf of a per-
5 son who is described in any such clause.

6 (iv) does not include a person or enti-
7 ty that only performs real estate brokerage
8 activities and is licensed or registered in
9 accordance with applicable State law, un-
10 less the person or entity is compensated by
11 a lender, a mortgage broker, or other loan
12 originator or by any agent of such lender,
13 mortgage broker, or other loan originator.

14 (B) OTHER DEFINITIONS RELATING TO
15 LOAN ORIGINATOR.—For purposes of this sub-
16 section, an individual “assists a consumer in
17 obtaining or applying to obtain a residential
18 mortgage loan” by, among other things, advis-
19 ing on loan terms (including rates, fees, other
20 costs), preparing loan packages, or collecting in-
21 formation on behalf of the consumer with re-
22 gard to a residential mortgage loan.

23 (C) ADMINISTRATIVE OR CLERICAL
24 TASKS.—The term “administrative or clerical
25 tasks” means the receipt, collection, and dis-

1 tribution of information common for the proc-
2 essing or underwriting of a loan in the mort-
3 gage industry and communication with a con-
4 sumer to obtain information necessary for the
5 processing or underwriting of a residential
6 mortgage loan.

7 (D) REAL ESTATE BROKERAGE ACTIVITY
8 DEFINED.—The term “real estate brokerage ac-
9 tivity” means any activity that involves offering
10 or providing real estate brokerage services to
11 the public, including—

12 (i) acting as a real estate agent or
13 real estate broker for a buyer, seller, les-
14 sor, or lessee of real property;

15 (ii) listing or advertising real property
16 for sale, purchase, lease, rental, or ex-
17 change;

18 (iii) providing advice in connection
19 with sale, purchase, lease, rental, or ex-
20 change of real property;

21 (iv) bringing together parties inter-
22 ested in the sale, purchase, lease, rental, or
23 exchange of real property;

24 (v) negotiating, on behalf of any
25 party, any portion of a contract relating to

1 the sale, purchase, lease, rental, or ex-
2 change of real property (other than in con-
3 nection with providing financing with re-
4 spect to any such transaction);

5 (vi) engaging in any activity for which
6 a person engaged in the activity is required
7 to be registered or licensed as a real estate
8 agent or real estate broker under any ap-
9 plicable law; and

10 (vii) offering to engage in any activity,
11 or act in any capacity, described in clause
12 (i), (ii), (iii), (iv), (v), or (vi).

13 (4) LOAN PROCESSOR OR UNDERWRITER.—

14 (A) IN GENERAL.—The term “loan proc-
15 essor or underwriter” means an individual who
16 performs clerical or support duties at the direc-
17 tion of and subject to the supervision and in-
18 struction of—

19 (i) a State-licensed loan originator; or
20 (ii) a registered loan originator.

21 (B) CLERICAL OR SUPPORT DUTIES.—For
22 purposes of subparagraph (A), the term “cler-
23 ical or support duties” may include—

24 (i) the receipt, collection, distribution,
25 and analysis of information common for

1 the processing or underwriting of a resi-
2 dential mortgage loan; and

3 (ii) communicating with a consumer
4 to obtain the information necessary for the
5 processing or underwriting of a loan, to the
6 extent that such communication does not
7 include offering or negotiating loan rates
8 or terms, or counseling consumers about
9 residential mortgage loan rates or terms.

10 (5) NATIONWIDE MORTGAGE LICENSING SYS-
11 TEM AND REGISTRY.—The term “Nationwide Mort-
12 gage Licensing System and Registry” means a mort-
13 gage licensing system developed and maintained by
14 the Conference of State Bank Supervisors and the
15 American Association of Residential Mortgage Regu-
16 lators for the State licensing and registration of
17 State-licensed loan originators and the registration
18 of registered loan originators or any system estab-
19 lished by the Secretary under section 108.

20 (6) REGISTERED LOAN ORIGINATOR.—The term
21 “registered loan originator” means any individual
22 who—

23 (A) meets the definition of loan originator
24 and is an employee of a depository institution
25 or a subsidiary of a depository institution; and

1 (B) is registered with, and maintains a
2 unique identifier through, the Nationwide Mort-
3 gage Licensing System and Registry.

4 (7) RESIDENTIAL MORTGAGE LOAN.—The term
5 “residential mortgage loan” means any loan pri-
6 marily for personal, family, or household use that is
7 secured by a mortgage, deed of trust, or other equiv-
8 alent consensual security interest on a dwelling (as
9 defined in section 103(v) of the Truth in Lending
10 Act) or residential real estate upon which is con-
11 structed or intended to be constructed a dwelling (as
12 so defined).

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

15 (9) STATE-LICENSED LOAN ORIGINATOR.—The
16 term “State-licensed loan originator” means any in-
17 dividual who—

18 (A) is a loan originator;

19 (B) is not an employee of a depository in-
20 stitution or any subsidiary of a depository insti-
21 tution; and

22 (C) is licensed by a State or by the Sec-
23 retary under section 107 and registered as a
24 loan originator with, and maintains a unique

1 identifier through, the Nationwide Mortgage Li-
2 censing System and Registry.

3 (10) UNIQUE IDENTIFIER.—The term “unique
4 identifier” means a number or other identifier
5 that—

6 (A) permanently identifies a loan origi-
7 nator; and

8 (B) is assigned by protocols established by
9 the Nationwide Mortgage Licensing System and
10 Registry and the Federal banking agencies to
11 facilitate electronic tracking of loan originators
12 and uniform identification of, and public access
13 to, the employment history of and the publicly
14 adjudicated disciplinary and enforcement ac-
15 tions against loan originators.

16 **SEC. 103. LICENSE OR REGISTRATION REQUIRED.**

17 (a) IN GENERAL.—An individual may not engage in
18 the business of a loan originator without first—

19 (1) obtaining and maintaining—

20 (A) a registration as a registered loan
21 originator; or

22 (B) a license and registration as a State-
23 licensed loan originator; and

24 (2) obtaining a unique identifier.

25 (b) LOAN PROCESSORS AND UNDERWRITERS.—

1 (1) SUPERVISED LOAN PROCESSORS AND UN-
2 DERWRITERS.—A loan processor or underwriter who
3 does not represent to the public, through advertising
4 or other means of communicating or providing infor-
5 mation (including the use of business cards, sta-
6 tionery, brochures, signs, rate lists, or other pro-
7 motional items), that such individual can or will per-
8 form any of the activities of a loan originator shall
9 not be required to be a State-licensed loan originator
10 or a registered loan originator.

11 (2) INDEPENDENT CONTRACTORS.—A loan
12 processor or underwriter may not work as an inde-
13 pendent contractor unless such processor or under-
14 writer is a State-licensed loan originator or a reg-
15 istered loan originator.

16 **SEC. 104. STATE LICENSE AND REGISTRATION APPLICA-**
17 **TION AND ISSUANCE.**

18 (a) BACKGROUND CHECKS.—In connection with an
19 application to any State for licensing and registration as
20 a State-licensed loan originator, the applicant shall, at a
21 minimum, furnish to the Nationwide Mortgage Licensing
22 System and Registry information concerning the appli-
23 cant's identity, including—

24 (1) fingerprints for submission to the Federal
25 Bureau of Investigation, and any governmental

1 agency or entity authorized to receive such informa-
2 tion for a State and national criminal history back-
3 ground check; and

4 (2) personal history and experience, including
5 authorization for the System to obtain—

6 (A) an independent credit report obtained
7 from a consumer reporting agency described in
8 section 603(p) of the Fair Credit Reporting
9 Act; and

10 (B) information related to any administra-
11 tive, civil or criminal findings by any govern-
12 mental jurisdiction.

13 (b) ISSUANCE OF LICENSE.—The minimum stand-
14 ards for licensing and registration as a State-licensed loan
15 originator shall include the following:

16 (1) The applicant has not had a loan originator
17 or similar license revoked in any governmental juris-
18 diction during the 5-year period immediately pre-
19 ceding the filing of the present application.

20 (2) The applicant has not been convicted, pled
21 guilty or nolo contendere in a domestic, foreign, or
22 military court of a felony during the 7-year period
23 immediately preceding the filing of the present appli-
24 cation.

1 (3) The applicant has demonstrated financial
2 responsibility, character, and general fitness such as
3 to command the confidence of the community and to
4 warrant a determination that the loan originator will
5 operate honestly, fairly, and efficiently within the
6 purposes of this title.

7 (4) The applicant has completed the pre-licens-
8 ing education requirement described in subsection
9 (c).

10 (5) The applicant has passed a written test that
11 meets the test requirement described in subsection
12 (d).

13 (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-
14 TORS.—

15 (1) MINIMUM EDUCATIONAL REQUIREMENTS.—

16 In order to meet the pre-licensing education require-
17 ment referred to in subsection (b)(4), a person shall
18 complete at least 20 hours of education approved in
19 accordance with paragraph (2), which shall include
20 at least 3 hours of Federal law and regulations and
21 3 hours of ethics which shall include instruction on
22 fraud, consumer protection and fair lending issues.

23 (2) APPROVED EDUCATIONAL COURSES.—For
24 purposes of paragraph (1), pre-licensing education

1 courses shall be reviewed, and published by the Na-
2 tionwide Mortgage Licensing System and Registry.

3 (3) LIMITATION AND STANDARDS.—

4 (A) LIMITATION.—To maintain the inde-
5 pendence of the approval process, the Nation-
6 wide Mortgage Licensing System and Registry
7 shall not directly or indirectly offer pre-licen-
8 sure educational courses for loan originators.

9 (B) STANDARDS.—In approving courses
10 under this section, the Nationwide Mortgage Li-
11 censing System and Registry shall apply rea-
12 sonable standards in the review and approval of
13 courses.

14 (d) TESTING OF LOAN ORIGINATORS.—

15 (1) IN GENERAL.—In order to meet the written
16 test requirement referred to in subsection (b)(5), an
17 individual shall pass, in accordance with the stand-
18 ards established under this subsection, a qualified
19 written test developed by the Nationwide Mortgage
20 Licensing System and Registry and administered by
21 an approved test provider.

22 (2) QUALIFIED TEST.—A written test shall not
23 be treated as a qualified written test for purposes of
24 paragraph (1) unless—

1 (A) the test consists of a minimum of 100
2 questions; and

3 (B) the test adequately measures the appli-
4 cant's knowledge and comprehension in appro-
5 priate subject areas, including—

6 (i) ethics;

7 (ii) Federal law and regulation per-
8 taining to mortgage origination;

9 (iii) State law and regulation per-
10 taining to mortgage origination; and

11 (iv) Federal and State law and regula-
12 tion, including instruction on fraud, con-
13 sumer protection, and fair lending issues.

14 (3) MINIMUM COMPETENCE.—

15 (A) PASSING SCORE.—An individual shall
16 not be considered to have passed a qualified
17 written test unless the individual achieves a test
18 score of not less than 75 percent correct an-
19 swers to questions.

20 (B) INITIAL RETESTS.—An individual may
21 retake a test 3 consecutive times with each con-
22 secutive taking occurring in less than 14 days
23 after the preceding test.

1 (C) SUBSEQUENT RETESTS.—After 3 con-
2 secutive tests, an individual shall wait at least
3 14 days before taking the test again.

4 (D) RETEST AFTER LAPSE OF LICENSE.—
5 A State-licensed loan originator who fails to
6 maintain a valid license for a period of 5 years
7 or longer shall retake the test, not taking into
8 account any time during which such individual
9 is a registered loan originator.

10 **SEC. 105. STANDARDS FOR STATE LICENSE RENEWAL.**

11 (a) IN GENERAL.—The minimum standards for li-
12 cense renewal for State-licensed loan originators shall in-
13 clude the following:

14 (1) The loan originator continues to meet the
15 minimum standards for license issuance.

16 (2) The loan originator has satisfied the annual
17 continuing education requirements described in sub-
18 section (b).

19 (b) CONTINUING EDUCATION FOR STATE-LICENSED
20 LOAN ORIGINATORS.—

21 (1) IN GENERAL.—In order to meet the annual
22 continuing education requirements referred to in
23 subsection (a)(2), a State-licensed loan originator
24 shall complete at least 8 hours of education ap-
25 proved in accordance with paragraph (2), which

1 shall include at least 3 hours of Federal law and
2 regulations and 2 hours of ethics, including edu-
3 cation on fraud, consumer protection, and fair lend-
4 ing issues.

5 (2) APPROVED EDUCATIONAL COURSES.—For
6 purposes of paragraph (1), continuing education
7 courses shall be reviewed, and published by the Na-
8 tionwide Mortgage Licensing System and Registry.

9 (3) CALCULATION OF CONTINUING EDUCATION
10 CREDITS.—A State-licensed loan originator—

11 (A) may only receive credit for a con-
12 tinuing education course in the year in which
13 the course is taken; and

14 (B) may not take the same approved
15 course in the same or successive years to meet
16 the annual requirements for continuing edu-
17 cation.

18 (4) INSTRUCTOR CREDIT.—A State-licensed
19 loan originator who is approved as an instructor of
20 an approved continuing education course may receive
21 credit for the originator's own annual continuing
22 education requirement at the rate of 2 hours credit
23 for every 1 hour taught.

24 (5) LIMITATION AND STANDARDS.—

1 (A) LIMITATION.—To maintain the inde-
2 pendence of the approval process, the Nation-
3 wide Mortgage Licensing System and Registry
4 shall not directly or indirectly offer any con-
5 tinuing education courses for loan originators.

6 (B) STANDARDS.—In approving courses
7 under this section, the Nationwide Mortgage Li-
8 censing System and Registry shall apply rea-
9 sonable standards in the review and approval of
10 courses.

11 **SEC. 106. SYSTEM OF REGISTRATION ADMINISTRATION BY**
12 **FEDERAL BANKING AGENCIES.**

13 (a) DEVELOPMENT.—

14 (1) IN GENERAL.—The Federal banking agen-
15 cies shall jointly develop and maintain a system for
16 registering employees of depository institutions or
17 subsidiaries of depository institutions as registered
18 loan originators with the Nationwide Mortgage Li-
19 censing System and Registry. The system shall be
20 implemented before the end of the 1-year period be-
21 ginning on the date of the enactment of this Act.

22 (2) REGISTRATION REQUIREMENTS.—In con-
23 nection with the registration of any loan originator
24 who is an employee of a depository institution or a
25 subsidiary of a depository institution with the Na-

1 tionwide Mortgage Licensing System and Registry,
2 the appropriate Federal banking agency shall, at a
3 minimum, furnish or cause to be furnished to the
4 Nationwide Mortgage Licensing System and Reg-
5 istry information concerning the employees's iden-
6 tity, including—

7 (A) fingerprints for submission to the Fed-
8 eral Bureau of Investigation, and any govern-
9 mental agency or entity authorized to receive
10 such information for a State and national
11 criminal history background check; and

12 (B) personal history and experience, in-
13 cluding authorization for the Nationwide Mort-
14 gage Licensing System and Registry to obtain
15 information related to any administrative, civil
16 or criminal findings by any governmental juris-
17 diction.

18 (b) COORDINATION.—

19 (1) UNIQUE IDENTIFIER.—The Federal bank-
20 ing agencies, through the Financial Institutions Ex-
21 amination Council, shall coordinate with the Nation-
22 wide Mortgage Licensing System and Registry to es-
23 tablish protocols for assigning a unique identifier to
24 each registered loan originator that will facilitate
25 electronic tracking and uniform identification of, and

1 public access to, the employment history of and pub-
2 licly adjudicated disciplinary and enforcement ac-
3 tions against loan originators.

4 (2) NATIONWIDE MORTGAGE LICENSING SYS-
5 TEM AND REGISTRY DEVELOPMENT.—To facilitate
6 the transfer of information required by subsection
7 (a)(2), the Nationwide Mortgage Licensng System
8 and Registry shall coordinate with the Federal bank-
9 ing agencies, through the Financial Institutions Ex-
10 amination Council, concerning the development and
11 operation, by such System and Registry, of the reg-
12 istration functionality and data requirements for
13 loan originators.

14 (c) CONSIDERATION OF FACTORS AND PROCE-
15 DURES.—In establishing the registration procedures under
16 subsection (a) and the protocols for assigning a unique
17 identifier to a registered loan originator, the Federal bank-
18 ing agencies shall make such de minimis exceptions as
19 may be appropriate to paragraphs (1)(A) and (2) of sec-
20 tion 103(a), shall make reasonable efforts to utilize exist-
21 ing information to minimize the burden of registering loan
22 originators, and shall consider methods for automating the
23 process to the greatest extent practicable consistent with
24 the purposes of this title.

1 **SEC. 107. SECRETARY OF HOUSING AND URBAN DEVELOP-**
2 **MENT BACKUP AUTHORITY TO ESTABLISH A**
3 **LOAN ORIGINATOR LICENSING SYSTEM.**

4 (a) **BACK UP LICENSING SYSTEM.**—If, by the end of
5 the 1-year period, or the 2-year period in the case of a
6 State whose legislature meets only biennially, beginning
7 on the date of the enactment of this Act or at any time
8 thereafter, the Secretary determines that a State does not
9 have in place by law or regulation a system for licensing
10 and registering loan originators that meets the require-
11 ments of sections 104 and 105 and subsection (d) or does
12 not participate in the Nationwide Mortgage Licensing Sys-
13 tem and Registry, the Secretary shall provide for the es-
14 tablishment and maintenance of a system for the licensing
15 and registration by the Secretary of loan originators oper-
16 ating in such State as State-licensed loan originators.

17 (b) **LICENSING AND REGISTRATION REQUIRE-**
18 **MENTS.**—The system established by the Secretary under
19 subsection (a) for any State shall meet the requirements
20 of sections 104 and 105 for State-licensed loan origina-
21 tors.

22 (c) **UNIQUE IDENTIFIER.**—The Secretary shall co-
23 ordinate with the Nationwide Mortgage Licensing System
24 and Registry to establish protocols for assigning a unique
25 identifier to each loan originator licensed by the Secretary
26 as a State-licensed loan originator that will facilitate elec-

1 tronic tracking and uniform identification of, and public
2 access to, the employment history of and the publicly adju-
3 dicated disciplinary and enforcement actions against loan
4 originators.

5 (d) STATE LICENSING LAW REQUIREMENTS.—For
6 purposes of this section, the law in effect in a State meets
7 the requirements of this subsection if the Secretary deter-
8 mines the law satisfies the following minimum require-
9 ments:

10 (1) A State loan originator supervisory author-
11 ity is maintained to provide effective supervision and
12 enforcement of such law, including the suspension,
13 termination, or nonrenewal of a license for a viola-
14 tion of State or Federal law.

15 (2) The State loan originator supervisory au-
16 thority ensures that all State-licensed loan origina-
17 tors operating in the State are registered with Na-
18 tionwide Mortgage Licensing System and Registry.

19 (3) The State loan originator supervisory au-
20 thority is required to regularly report violations of
21 such law, as well as enforcement actions and other
22 relevant information, to the Nationwide Mortgage
23 Licensing System and Registry.

24 (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-
25 retary may extend, by not more than 6 months, the 1-

1 year or 2-year period, as the case may be, referred to in
2 subsection (a) for the licensing of loan originators in any
3 State under a State licensing law that meets the require-
4 ments of sections 104 and 105 and subsection (d) if the
5 Secretary determines that such State is making a good
6 faith effort to establish a State licensing law that meets
7 such requirements, license mortgage originators under
8 such law, and register such originators with the Nation-
9 wide Mortgage Licensing System and Registry.

10 (f) LIMITATION ON HUD-LICENSED LOAN ORIGINA-
11 TORS.—Any loan originator who is licensed by the Sec-
12 retary under a system established under this section for
13 any State may not use such license to originate loans in
14 any other State.

15 **SEC. 108. BACKUP AUTHORITY TO ESTABLISH A NATION-**
16 **WIDE MORTGAGE LICENSING AND REGISTRY**
17 **SYSTEM.**

18 If at any time the Secretary determines that the Na-
19 tionwide Mortgage Licensing System and Registry is fail-
20 ing to meet the requirements and purposes of this title
21 for a comprehensive licensing, supervisory, and tracking
22 system for loan originators, the Secretary shall establish
23 and maintain such a system to carry out the purposes of
24 this title and the effective registration and regulation of
25 loan originators.

1 **SEC. 109. FEES.**

2 The Federal banking agencies, the Secretary, and the
3 Nationwide Mortgage Licensing System and Registry may
4 charge reasonable fees to cover the costs of maintaining
5 and providing access to information from the Nationwide
6 Mortgage Licensing System and Registry to the extent
7 such fees are not charged to consumers for access such
8 system and registry.

9 **SEC. 110. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

10 (a) **ACCESS TO RECORDS.**—Notwithstanding any
11 other provision of law, in providing identification and
12 processing functions, the Attorney General shall provide
13 access to all criminal history information to the appro-
14 priate State officials responsible for regulating State-li-
15 censed loan originators to the extent criminal history
16 background checks are required under the laws of the
17 State for the licensing of such loan originators.

18 (b) **AGENT.**—For the purposes of this section and in
19 order to reduce the points of contact which the Federal
20 Bureau of Investigation may have to maintain for pur-
21 poses of subsection (a), the Conference of State Bank Su-
22 pervisors or a wholly owned subsidiary may be used as
23 a channeling agent of the States for requesting and dis-
24 tributing information between the Department of Justice
25 and the appropriate State agencies.

1 **SEC. 111. CONFIDENTIALITY OF INFORMATION.**

2 (a) SYSTEM CONFIDENTIALITY.—Except as other-
3 wise provided in this section, any requirement under Fed-
4 eral or State law regarding the privacy or confidentiality
5 of any information or material provided to the Nationwide
6 Mortgage Licensing System and Registry or a system es-
7 tablished by the Secretary under section 108, and any
8 privilege arising under Federal or State law (including the
9 rules of any Federal or State court) with respect to such
10 information or material, shall continue to apply to such
11 information or material after the information or material
12 has been disclosed to the system. Such information and
13 material may be shared with all State and Federal regu-
14 latory officials with mortgage industry oversight authority
15 without the loss of privilege or the loss of confidentiality
16 protections provided by Federal and State laws.

17 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-
18 MENTS.—Information or material that is subject to a
19 privilege or confidentiality under subsection (a) shall not
20 be subject to—

21 (1) disclosure under any Federal or State law
22 governing the disclosure to the public of information
23 held by an officer or an agency of the Federal Gov-
24 ernment or the respective State; or

25 (2) subpoena or discovery, or admission into
26 evidence, in any private civil action or administrative

1 process, unless with respect to any privilege held by
2 the Nationwide Mortgage Licensing System and
3 Registry or the Secretary with respect to such infor-
4 mation or material, the person to whom such infor-
5 mation or material pertains waives, in whole or in
6 part, in the discretion of such person, that privilege.

7 (c) COORDINATION WITH OTHER LAW.—Any State
8 law, including any State open record law, relating to the
9 disclosure of confidential supervisory information or any
10 information or material described in subsection (a) that
11 is inconsistent with subsection (a) shall be superseded by
12 the requirements of such provision to the extent State law
13 provides less confidentiality or a weaker privilege.

14 (d) PUBLIC ACCESS TO INFORMATION.—This section
15 shall not apply with respect to the information or material
16 relating to the employment history of, and publicly adju-
17 dicated disciplinary and enforcement actions against, loan
18 originators that is included in Nationwide Mortgage Li-
19 censing System and Registry for access by the public.

20 **SEC. 112. LIABILITY PROVISIONS.**

21 The Secretary, any State official or agency, any Fed-
22 eral banking agency, or any organization serving as the
23 administrator of the Nationwide Mortgage Licensing Sys-
24 tem and Registry or a system established by the Secretary
25 under section 108, or any officer or employee of any such

1 entity, shall not be subject to any civil action or proceeding
2 for monetary damages by reason of the good-faith action
3 or omission of any officer or employee of any such entity,
4 while acting within the scope of office or employment, re-
5 lating to the collection, furnishing, or dissemination of in-
6 formation concerning persons who are loan originators or
7 are applying for licensing or registration as loan origina-
8 tors.

9 **SEC. 113. ENFORCEMENT UNDER HUD BACKUP LICENSING**
10 **SYSTEM.**

11 (a) **SUMMONS AUTHORITY.**—The Secretary may—

12 (1) examine any books, papers, records, or
13 other data of any loan originator operating in any
14 State which is subject to a licensing system estab-
15 lished by the Secretary under section 107; and

16 (2) summon any loan originator referred to in
17 paragraph (1) or any person having possession, cus-
18 tody, or care of the reports and records relating to
19 such loan originator, to appear before the Secretary
20 or any delegate of the Secretary at a time and place
21 named in the summons and to produce such books,
22 papers, records, or other data, and to give testi-
23 mony, under oath, as may be relevant or material to
24 an investigation of such loan originator for compli-
25 ance with the requirements of this title.

1 (b) EXAMINATION AUTHORITY.—

2 (1) IN GENERAL.—If the Secretary establishes
3 a licensing system under section 107 for any State,
4 the Secretary shall appoint examiners for the pur-
5 poses of administering such section.

6 (2) POWER TO EXAMINE.—Any examiner ap-
7 pointed under paragraph (1) shall have power, on
8 behalf of the Secretary, to make any examination of
9 any loan originator operating in any State which is
10 subject to a licensing system established by the Sec-
11 retary under section 107 whenever the Secretary de-
12 termines an examination of any loan originator is
13 necessary to determine the compliance by the origi-
14 nator with this title.

15 (3) REPORT OF EXAMINATION.—Each examiner
16 appointed under paragraph (1) shall make a full and
17 detailed report of examination of any loan originator
18 examined to the Secretary.

19 (4) ADMINISTRATION OF OATHS AND AFFIRMA-
20 TIONS; EVIDENCE.—In connection with examinations
21 of loan originators operating in any State which is
22 subject to a licensing system established by the Sec-
23 retary under section 107, or with other types of in-
24 vestigations to determine compliance with applicable
25 law and regulations, the Secretary and examiners

1 appointed by the Secretary may administer oaths
2 and affirmations and examine and take and preserve
3 testimony under oath as to any matter in respect to
4 the affairs of any such loan originator.

5 (5) ASSESSMENTS.—The cost of conducting any
6 examination of any loan originator operating in any
7 State which is subject to a licensing system estab-
8 lished by the Secretary under section 107 shall be
9 assessed by the Secretary against the loan originator
10 to meet the Secretary's expenses in carrying out
11 such examination.

12 (c) CEASE AND DESIST PROCEEDING.—

13 (1) AUTHORITY OF SECRETARY.—If the Sec-
14 retary finds, after notice and opportunity for hear-
15 ing, that any person is violating, has violated, or is
16 about to violate any provision of this title, or any
17 regulation thereunder, with respect to a State which
18 is subject to a licensing system established by the
19 Secretary under section 107, the Secretary may pub-
20 lish such findings and enter an order requiring such
21 person, and any other person that is, was, or would
22 be a cause of the violation, due to an act or omission
23 the person knew or should have known would con-
24 tribute to such violation, to cease and desist from
25 committing or causing such violation and any future

1 violation of the same provision, rule, or regulation.
2 Such order may, in addition to requiring a person to
3 cease and desist from committing or causing a viola-
4 tion, require such person to comply, or to take steps
5 to effect compliance, with such provision or regula-
6 tion, upon such terms and conditions and within
7 such time as the Secretary may specify in such
8 order. Any such order may, as the Secretary deems
9 appropriate, require future compliance or steps to
10 effect future compliance, either permanently or for
11 such period of time as the Secretary may specify,
12 with such provision or regulation with respect to any
13 loan originator.

14 (2) HEARING.—The notice instituting pro-
15 ceedings pursuant to paragraph (1) shall fix a hear-
16 ing date not earlier than 30 days nor later than 60
17 days after service of the notice unless an earlier or
18 a later date is set by the Secretary with the consent
19 of any respondent so served.

20 (3) TEMPORARY ORDER.—Whenever the Sec-
21 retary determines that the alleged violation or
22 threatened violation specified in the notice insti-
23 tuting proceedings pursuant to paragraph (1), or the
24 continuation thereof, is likely to result in significant
25 dissipation or conversion of assets, significant harm

1 to consumers, or substantial harm to the public in-
2 terest prior to the completion of the proceedings, the
3 Secretary may enter a temporary order requiring the
4 respondent to cease and desist from the violation or
5 threatened violation and to take such action to pre-
6 vent the violation or threatened violation and to pre-
7 vent dissipation or conversion of assets, significant
8 harm to consumers, or substantial harm to the pub-
9 lic interest as the Secretary deems appropriate pend-
10 ing completion of such proceedings. Such an order
11 shall be entered only after notice and opportunity for
12 a hearing, unless the Secretary determines that no-
13 tice and hearing prior to entry would be impracti-
14 cable or contrary to the public interest. A temporary
15 order shall become effective upon service upon the
16 respondent and, unless set aside, limited, or sus-
17 pended by the Secretary or a court of competent ju-
18 risdiction, shall remain effective and enforceable
19 pending the completion of the proceedings.

20 (4) REVIEW OF TEMPORARY ORDERS.—

21 (A) REVIEW BY SECRETARY.—At any time
22 after the respondent has been served with a
23 temporary cease-and-desist order pursuant to
24 paragraph (3), the respondent may apply to the
25 Secretary to have the order set aside, limited,

1 or suspended. If the respondent has been served
2 with a temporary cease-and-desist order entered
3 without a prior hearing before the Secretary,
4 the respondent may, within 10 days after the
5 date on which the order was served, request a
6 hearing on such application and the Secretary
7 shall hold a hearing and render a decision on
8 such application at the earliest possible time.

9 (B) JUDICIAL REVIEW.—Within—

10 (i) 10 days after the date the respond-
11 ent was served with a temporary cease-
12 and-desist order entered with a prior hear-
13 ing before the Secretary; or

14 (ii) 10 days after the Secretary ren-
15 ders a decision on an application and hear-
16 ing under paragraph (1), with respect to
17 any temporary cease-and-desist order en-
18 tered without a prior hearing before the
19 Secretary,

20 the respondent may apply to the United States
21 district court for the district in which the re-
22 spondent resides or has its principal place of
23 business, or for the District of Columbia, for an
24 order setting aside, limiting, or suspending the
25 effectiveness or enforcement of the order, and

1 the court shall have jurisdiction to enter such
2 an order. A respondent served with a temporary
3 cease-and-desist order entered without a prior
4 hearing before the Secretary may not apply to
5 the court except after hearing and decision by
6 the Secretary on the respondent's application
7 under subparagraph (A).

8 (C) NO AUTOMATIC STAY OF TEMPORARY
9 ORDER.—The commencement of proceedings
10 under subparagraph (B) shall not, unless spe-
11 cifically ordered by the court, operate as a stay
12 of the Secretary's order.

13 (5) AUTHORITY OF THE SECRETARY TO PRO-
14 HIBIT PERSONS FROM SERVING AS LOAN ORIGINA-
15 TORS.—In any cease-and-desist proceeding under
16 paragraph (1), the Secretary may issue an order to
17 prohibit, conditionally or unconditionally, and per-
18 manently or for such period of time as the Secretary
19 shall determine, any person who has violated this
20 title or regulations thereunder, from acting as a loan
21 originator if the conduct of that person dem-
22 onstrates unfitness to serve as a loan originator.

23 (d) AUTHORITY OF THE SECRETARY TO ASSESS
24 MONEY PENALTIES.—

1 (1) IN GENERAL.—The Secretary may impose a
2 civil penalty on a loan originator operating in any
3 State which is subject to licensing system established
4 by the Secretary under section 107 if the Secretary
5 finds, on the record after notice and opportunity for
6 hearing, that such loan originator has violated or
7 failed to comply with any requirement of this title or
8 any regulation prescribed by the Secretary under
9 this title or order issued under subsection (c).

10 (2) MAXIMUM AMOUNT OF PENALTY.—The
11 maximum amount of penalty for each act or omis-
12 sion described in paragraph (1) shall be \$5,000 for
13 each day the violation continues.

14 **TITLE II—RESIDENTIAL**
15 **MORTGAGE LOAN DISCLOSURES**

16 **SEC. 201. REQUIRED DISCLOSURES.**

17 (a) ADDITIONAL INFORMATION.—Section 128(a) of
18 Truth in Lending Act (15 U.S.C. 1638(a)) is amended
19 by adding at the end the following new paragraphs:

20 “(16) In the case of an extension of credit that
21 is secured by the dwelling of a consumer, under
22 which the annual rate of interest is variable, or with
23 respect to which the regular payments may other-
24 wise be variable, in addition to the other disclosures
25 required under this subsection, the disclosures pro-

1 vided under this subsection shall state the maximum
2 amount of the regular required payments on the
3 loan, based on the maximum interest rate allowed,
4 introduced with the following language in con-
5 spicuous type size and format: ‘Your payment can
6 go as high as \$____’, the blank to be filled in with
7 the maximum possible payment amount.

8 “(17) In the case of a residential mortgage loan
9 for which an escrow or impound account will be es-
10 tablished for the payment of all applicable taxes, in-
11 surance, and assessments, the following statement:
12 ‘Your payments will be increased to cover taxes and
13 insurance. In the first year, you will pay an addi-
14 tional \$____ [insert the amount of the monthly pay-
15 ment to the account] every month to cover the costs
16 of taxes and insurance.’.

17 “(18) In the case of a variable rate residential
18 mortgage loan for which an escrow or impound ac-
19 count will be established for the payment of all ap-
20 plicable taxes, insurance, and assessments—

21 “(A) the amount of initial monthly pay-
22 ment due under the loan for the payment of
23 principal and interest, and the amount of such
24 initial monthly payment including the monthly
25 payment deposited in the account for the pay-

1 ment of all applicable taxes, insurance, and as-
2 sessments; and

3 “(B) the amount of the fully indexed
4 monthly payment due under the loan for the
5 payment of principal and interest, and the
6 amount of such fully indexed monthly payment
7 including the monthly payment deposited in the
8 account for the payment of all applicable taxes,
9 insurance, and assessments.

10 “(19) In the case of a residential mortgage
11 loan, the aggregate amount of settlement charges for
12 all settlement services provided in connection with
13 the loan, the amount of charges that are included in
14 the loan and the amount of such charges the bor-
15 rower must pay at closing, the approximate amount
16 of the wholesale rate of funds in connection with the
17 loan, and the aggregate amount of other fees or re-
18 quired payments in connection with the loan.

19 “(20) In the case of a residential mortgage
20 loan, the aggregate amount of fees paid to the mort-
21 gage originator in connection with the loan, the
22 amount of such fees paid directly by the consumer,
23 and any additional amount received by the originator
24 from the creditor based on the interest rate of the
25 loan.”.

1 (b) TIMING.—Section 128(b) of the Truth in Lending
2 Act (15 U.S.C. 1638(b)) is amended by adding at the end
3 the following new paragraph:

4 “(4) RESIDENTIAL MORTGAGE LOAN DISCLO-
5 SURES.—In the case of a residential mortgage loan,
6 the information required to be disclosed under sub-
7 section (a) with respect to such loan shall be dis-
8 closed before the earlier of—

9 “(A) the time required under the first sen-
10 tence of paragraph (1); or

11 “(B) the end of the 3-day period beginning
12 on the date the application for the loan from a
13 consumer is received by the creditor.”.

14 (c) ENHANCED MORTGAGE LOAN DISCLOSURES.—
15 Section 128(b)(2) of the Truth in Lending Act (15 U.S.C.
16 1638(b)(2)) is amended—

17 (1) by striking “(2) In the” and inserting the
18 following:

19 “(2) MORTGAGE DISCLOSURES.—

20 “(A) IN GENERAL.—In the”;

21 (2) by striking “a residential mortgage trans-
22 action, as defined in section 103(w)” and inserting
23 “any extension of credit that is secured by the dwell-
24 ing of a consumer”;

1 (3) by striking “shall be made in accordance”
2 and all that follows through “extended, or”;

3 (4) by striking “If the” and all that follows
4 through the end of the paragraph and inserting the
5 following new subparagraphs:

6 “(B) STATEMENT AND TIMING OF DISCLO-
7 SURES.—In the case of an extension of credit
8 that is secured by the dwelling of a consumer,
9 in addition to the other disclosures required by
10 subsection (a), the disclosures provided under
11 this paragraph shall state in conspicuous type
12 size and format, the following: ‘You are not re-
13 quired to complete this agreement merely be-
14 cause you have received these disclosures or
15 signed a loan application.’.

16 “(i) state in conspicuous type size and
17 format, the following: ‘You are not re-
18 quired to complete this agreement merely
19 because you have received these disclosures
20 or signed a loan application.’; and

21 “(ii) be furnished to the borrower not
22 later than 7 business days before the date
23 of consummation of the transaction, sub-
24 ject to subparagraph (D).

1 “(C) VARIABLE RATES OR PAYMENT
2 SCHEDULES.—In the case of an extension of
3 credit that is secured by the dwelling of a con-
4 sumer, under which the annual rate of interest
5 is variable, or with respect to which the regular
6 payments may otherwise be variable, in addition
7 to the other disclosures required by subsection
8 (a), the disclosures provided under this para-
9 graph shall label the payment schedule as fol-
10 lows: ‘Payment Schedule: Payments Will Vary
11 Based on Interest Rate Changes.’.

12 “(D) UPDATING APR.—In any case in
13 which the disclosure statement provided 7 busi-
14 ness days before the date of consummation of
15 the transaction contains an annual percentage
16 rate of interest that is no longer accurate, as
17 determined under section 107(c), the creditor
18 shall furnish an additional, corrected statement
19 to the borrower, not later than 3 business days
20 before the date of consummation of the trans-
21 action.”.

1 **SEC. 202. DISCLOSURES REQUIRED IN MONTHLY STATE-**
2 **MENTS FOR RESIDENTIAL MORTGAGE**
3 **LOANS.**

4 Section 128 of the Truth in Lending Act (15 U.S.C.
5 1638) is amended by adding at the end the following new
6 subsection:

7 “(e) PERIODIC STATEMENTS FOR RESIDENTIAL
8 MORTGAGE LOANS.—

9 “(1) IN GENERAL.—The creditor, assignee, or
10 servicer with respect to any residential mortgage
11 loan shall transmit to the obligor, for each billing
12 cycle, a statement setting forth each of the following
13 items, to the extent applicable, in a conspicuous and
14 prominent manner:

15 “(A) The amount of the principal obliga-
16 tion under the mortgage.

17 “(B) The current interest rate in effect for
18 the loan.

19 “(C) The date on which the interest rate
20 may next reset or adjust.

21 “(D) The amount of any prepayment fee
22 to be charged, if any.

23 “(E) A description of any late payment
24 fees.

1 “(F) A telephone number and electronic
2 mail address that may be used by the obligor to
3 obtain information regarding the mortgage.

4 “(G) Such other information as the Board
5 may prescribe in regulations.

6 “(2) DEVELOPMENT AND USE OF STANDARD
7 FORM.—The Federal banking agencies shall jointly
8 develop and prescribe a standard form for the disclo-
9 sure required under this subsection, taking into ac-
10 count that the statements required may be trans-
11 mitted in writing or electronically.”.

12 **TITLE III—OFFICE OF HOUSING** 13 **COUNSELING**

14 **SEC. 301. SHORT TITLE.**

15 This title may be cited as the “Expand and Preserve
16 Home Ownership Through Counseling Act”.

17 **SEC. 302. ESTABLISHMENT OF OFFICE OF HOUSING COUN-** 18 **SELING.**

19 Section 4 of the Department of Housing and Urban
20 Development Act (42 U.S.C. 3533) is amended by adding
21 at the end the following new subsection:

22 “(g) OFFICE OF HOUSING COUNSELING.—

23 “(1) ESTABLISHMENT.—There is established,
24 in the Office of the Secretary, the Office of Housing
25 Counseling.

1 “(2) DIRECTOR.—There is established the posi-
2 tion of Director of Housing Counseling. The Direc-
3 tor shall be the head of the Office of Housing Coun-
4 seling and shall be appointed by the Secretary. Such
5 position shall be a career-reserved position in the
6 Senior Executive Service.

7 “(3) FUNCTIONS.—

8 “(A) IN GENERAL.—The Director shall
9 have ultimate responsibility within the Depart-
10 ment, except for the Secretary, for all activities
11 and matters relating to homeownership coun-
12 seling and rental housing counseling, includ-
13 ing—

14 “(i) research, grant administration,
15 public outreach, and policy development re-
16 lating to such counseling; and

17 “(ii) establishment, coordination, and
18 administration of all regulations, require-
19 ments, standards, and performance meas-
20 ures under programs and laws adminis-
21 tered by the Department that relate to
22 housing counseling, homeownership coun-
23 seling (including maintenance of homes),
24 mortgage-related counseling (including
25 home equity conversion mortgages and

1 credit protection options to avoid fore-
2 closure), and rental housing counseling, in-
3 cluding the requirements, standards, and
4 performance measures relating to housing
5 counseling.

6 “(B) SPECIFIC FUNCTIONS.—The Director
7 shall carry out the functions assigned to the Di-
8 rector and the Office under this section and any
9 other provisions of law. Such functions shall in-
10 clude establishing rules necessary for—

11 “(i) the counseling procedures under
12 section 106(g)(1) of the Housing and
13 Urban Development Act of 1968 (12
14 U.S.C. 1701x(h)(1));

15 “(ii) carrying out all other functions
16 of the Secretary under section 106(g) of
17 the Housing and Urban Development Act
18 of 1968, including the establishment, oper-
19 ation, and publication of the availability of
20 the toll-free telephone number under para-
21 graph (2) of such section;

22 “(iii) carrying out section 5 of the
23 Real Estate Settlement Procedures Act of
24 1974 (12 U.S.C. 2604) for home buying

1 information booklets prepared pursuant to
2 such section;

3 “(iv) carrying out the certification
4 program under section 106(e) of the Hous-
5 ing and Urban Development Act of 1968
6 (12 U.S.C. 1701x(e));

7 “(v) carrying out the assistance pro-
8 gram under section 106(a)(4) of the Hous-
9 ing and Urban Development Act of 1968,
10 including criteria for selection of applica-
11 tions to receive assistance;

12 “(vi) carrying out any functions re-
13 garding abusive, deceptive, or unscrupulous
14 lending practices relating to residential
15 mortgage loans that the Secretary con-
16 siders appropriate, which shall include con-
17 ducting the study under section 6 of the
18 Expand and Preserve Home Ownership
19 Through Counseling Act;

20 “(vii) providing for operation of the
21 advisory committee established under para-
22 graph (4) of this subsection;

23 “(viii) collaborating with community-
24 based organizations with expertise in the
25 field of housing counseling; and

1 “(ix) providing for the building of ca-
2 pacity to provide housing counseling serv-
3 ices in areas that lack sufficient services.

4 “(4) ADVISORY COMMITTEE.—

5 “(A) IN GENERAL.—The Secretary shall
6 appoint an advisory committee to provide advice
7 regarding the carrying out of the functions of
8 the Director.

9 “(B) MEMBERS.—Such advisory committee
10 shall consist of not more than 12 individuals,
11 and the membership of the committee shall
12 equally represent all aspects of the mortgage
13 and real estate industry, including consumers.

14 “(C) TERMS.—Except as provided in sub-
15 paragraph (D), each member of the advisory
16 committee shall be appointed for a term of 3
17 years. Members may be reappointed at the dis-
18 cretion of the Secretary.

19 “(D) TERMS OF INITIAL APPOINTEES.—As
20 designated by the Secretary at the time of ap-
21 pointment, of the members first appointed to
22 the advisory committee, 4 shall be appointed for
23 a term of 1 year and 4 shall be appointed for
24 a term of 2 years.

1 “(E) PROHIBITION OF PAY; TRAVEL EX-
2 PENSES.—Members of the advisory committee
3 shall serve without pay, but shall receive travel
4 expenses, including per diem in lieu of subsist-
5 ence, in accordance with applicable provisions
6 under subchapter I of chapter 57 of title 5,
7 United States Code.

8 “(F) ADVISORY ROLE ONLY.—The advi-
9 sory committee shall have no role in reviewing
10 or awarding housing counseling grants.

11 “(5) SCOPE OF HOMEOWNERSHIP COUN-
12 SELING.—In carrying out the responsibilities of the
13 Director, the Director shall ensure that homeowner-
14 ship counseling provided by, in connection with, or
15 pursuant to any function, activity, or program of the
16 Department addresses the entire process of home-
17 ownership, including the decision to purchase a
18 home, the selection and purchase of a home, issues
19 arising during or affecting the period of ownership
20 of a home (including refinancing, default and fore-
21 closure, and other financial decisions), and the sale
22 or other disposition of a home.”.

23 **SEC. 303. COUNSELING PROCEDURES.**

24 (a) IN GENERAL.—Section 106 of the Housing and
25 Urban Development Act of 1968 (12 U.S.C. 1701x) is

1 amended by adding at the end the following new sub-
2 section:

3 “(g) PROCEDURES AND ACTIVITIES.—

4 “(1) COUNSELING PROCEDURES.—

5 “(A) IN GENERAL.—The Secretary shall
6 establish, coordinate, and monitor the adminis-
7 tration by the Department of Housing and
8 Urban Development of the counseling proce-
9 dures for homeownership counseling and rental
10 housing counseling provided in connection with
11 any program of the Department, including all
12 requirements, standards, and performance
13 measures that relate to homeownership and
14 rental housing counseling.

15 “(B) HOMEOWNERSHIP COUNSELING.—

16 For purposes of this subsection and as used in
17 the provisions referred to in this subparagraph,
18 the term ‘homeownership counseling’ means
19 counseling related to homeownership and resi-
20 dential mortgage loans. Such term includes
21 counseling related to homeownership and resi-
22 dential mortgage loans that is provided pursu-
23 ant to—

1 “(i) section 105(a)(20) of the Housing
2 and Community Development Act of 1974
3 (42 U.S.C. 5305(a)(20));

4 “(ii) in the United States Housing
5 Act of 1937—

6 “(I) section 9(e) (42 U.S.C.
7 1437g(e));

8 “(II) section 8(y)(1)(D) (42
9 U.S.C. 1437f(y)(1)(D));

10 “(III) section 18(a)(4)(D) (42
11 U.S.C. 1437p(a)(4)(D));

12 “(IV) section 23(c)(4) (42 U.S.C.
13 1437u(c)(4));

14 “(V) section 32(e)(4) (42 U.S.C.
15 1437z-4(e)(4));

16 “(VI) section 33(d)(2)(B) (42
17 U.S.C. 1437z-5(d)(2)(B));

18 “(VII) sections 302(b)(6) and
19 303(b)(7) (42 U.S.C. 1437aaa-
20 1(b)(6), 1437aaa-2(b)(7)); and

21 “(VIII) section 304(c)(4) (42
22 U.S.C. 1437aaa-3(c)(4));

23 “(iii) section 302(a)(4) of the Amer-
24 ican Homeownership and Economic Oppor-
25 tunity Act of 2000 (42 U.S.C. 1437f note);

1 “(iv) sections 233(b)(2) and 258(b) of
2 the Cranston-Gonzalez National Affordable
3 Housing Act (42 U.S.C. 12773(b)(2),
4 12808(b));

5 “(v) this section and section 101(e) of
6 the Housing and Urban Development Act
7 of 1968 (12 U.S.C. 1701x, 1701w(e));

8 “(vi) section 220(d)(2)(G) of the Low-
9 Income Housing Preservation and Resident
10 Homeownership Act of 1990 (12 U.S.C.
11 4110(d)(2)(G));

12 “(vii) sections 422(b)(6), 423(b)(7),
13 424(c)(4), 442(b)(6), and 443(b)(6) of the
14 Cranston-Gonzalez National Affordable
15 Housing Act (42 U.S.C. 12872(b)(6),
16 12873(b)(7), 12874(c)(4), 12892(b)(6),
17 and 12893(b)(6));

18 “(viii) section 491(b)(1)(F)(iii) of the
19 McKinney-Vento Homeless Assistance Act
20 (42 U.S.C. 11408(b)(1)(F)(iii));

21 “(ix) sections 202(3) and
22 810(b)(2)(A) of the Native American
23 Housing and Self-Determination Act of
24 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

25 “(x) in the National Housing Act—

1 “(I) in section 203 (12 U.S.C.
2 1709), the penultimate undesignated
3 paragraph of paragraph (2) of sub-
4 section (b), subsection (c)(2)(A), and
5 subsection (r)(4);

6 “(II) subsections (a) and (c)(3)
7 of section 237 (12 U.S.C. 1715z-2);
8 and

9 “(III) subsections (d)(2)(B) and
10 (m)(1) of section 255 (12 U.S.C.
11 1715z-20);

12 “(xi) section 502(h)(4)(B) of the
13 Housing Act of 1949 (42 U.S.C.
14 1472(h)(4)(B)); and

15 “(xii) section 508 of the Housing and
16 Urban Development Act of 1970 (12
17 U.S.C. 1701z-7).

18 “(C) RENTAL HOUSING COUNSELING.—

19 For purposes of this subsection, the term ‘rent-
20 al housing counseling’ means counseling related
21 to rental of residential property, which may in-
22 clude counseling regarding future homeown-
23 ership opportunities and providing referrals for
24 renters and prospective renters to entities pro-
25 viding counseling and shall include counseling

1 related to such topics that is provided pursuant
2 to—

3 “(i) section 105(a)(20) of the Housing
4 and Community Development Act of 1974
5 (42 U.S.C. 5305(a)(20));

6 “(ii) in the United States Housing
7 Act of 1937—

8 “(I) section 9(e) (42 U.S.C.
9 1437g(e));

10 “(II) section 18(a)(4)(D) (42
11 U.S.C. 1437p(a)(4)(D));

12 “(III) section 23(c)(4) (42
13 U.S.C. 1437u(c)(4));

14 “(IV) section 32(e)(4) (42 U.S.C.
15 1437z-4(e)(4));

16 “(V) section 33(d)(2)(B) (42
17 U.S.C. 1437z-5(d)(2)(B)); and

18 “(VI) section 302(b)(6) (42
19 U.S.C. 1437aaa-1(b)(6));

20 “(iii) section 233(b)(2) of the Cran-
21 ston-Gonzalez National Affordable Housing
22 Act (42 U.S.C. 12773(b)(2));

23 “(iv) section 106 of the Housing and
24 Urban Development Act of 1968 (12
25 U.S.C. 1701x);

1 “(v) section 422(b)(6) of the Cran-
2 ston-Gonzalez National Affordable Housing
3 Act (42 U.S.C. 12872(b)(6));

4 “(vi) section 491(b)(1)(F)(iii) of the
5 McKinney-Vento Homeless Assistance Act
6 (42 U.S.C. 11408(b)(1)(F)(iii));

7 “(vii) sections 202(3) and
8 810(b)(2)(A) of the Native American
9 Housing and Self-Determination Act of
10 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
11 and

12 “(viii) the rental assistance program
13 under section 8 of the United States Hous-
14 ing Act of 1937 (42 U.S.C. 1437f).

15 “(2) STANDARDS FOR MATERIALS.—The Sec-
16 retary, in conjunction with the advisory committee
17 established under subsection (g)(4) of the Depart-
18 ment of Housing and Urban Development Act, shall
19 establish standards for materials and forms to be
20 used, as appropriate, by organizations providing
21 homeownership counseling services, including any re-
22 cipients of assistance pursuant to subsection (a)(4).

23 “(3) MORTGAGE SOFTWARE SYSTEMS.—

24 “(A) CERTIFICATION.—The Secretary shall
25 provide for the certification of various computer

1 software programs for consumers to use in eval-
2 uating different residential mortgage loan pro-
3 posals. The Secretary shall require, for such
4 certification, that the mortgage software sys-
5 tems take into account—

6 “(i) the consumer’s financial situation
7 and the cost of maintaining a home, in-
8 cluding insurance, taxes, and utilities;

9 “(ii) the amount of time the consumer
10 expects to remain in the home or expected
11 time to maturity of the loan;

12 “(iii) such other factors as the Sec-
13 retary considers appropriate to assist the
14 consumer in evaluating whether to pay
15 points, to lock in an interest rate, to select
16 an adjustable or fixed rate loan, to select
17 a conventional or government-insured or
18 guaranteed loan and to make other choices
19 during the loan application process.

20 If the Secretary determines that available exist-
21 ing software is inadequate to assist consumers
22 during the residential mortgage loan application
23 process, the Secretary shall arrange for the de-
24 velopment by private sector software companies

1 of new mortgage software systems that meet
2 the Secretary's specifications.

3 “(B) USE AND INITIAL AVAILABILITY.—
4 Such certified computer software programs
5 shall be used to supplement, not replace, hous-
6 ing counseling. The Secretary shall provide that
7 such programs are initially used only in connec-
8 tion with the assistance of housing counselors
9 certified pursuant to subsection (e).

10 “(C) AVAILABILITY.—After a period of ini-
11 tial availability under subparagraph (B) as the
12 Secretary considers appropriate, the Secretary
13 shall take reasonable steps to make mortgage
14 software systems certified pursuant to this
15 paragraph widely available through the Internet
16 and at public locations, including public librar-
17 ies, senior-citizen centers, public housing sites,
18 offices of public housing agencies that admin-
19 ister rental housing assistance vouchers, and
20 housing counseling centers.

21 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
22 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

23 “(A) IN GENERAL.—The Director of Hous-
24 ing Counseling shall develop, implement, and
25 conduct national public service multimedia cam-

1 paigns designed to make persons facing mort-
2 gage foreclosure, persons considering a
3 subprime mortgage loan to purchase a home, el-
4 derly persons, persons who face language bar-
5 riers, low-income persons, and other potentially
6 vulnerable consumers aware that it is advisable,
7 before seeking or maintaining a residential
8 mortgage loan, to obtain homeownership coun-
9 seling from an unbiased and reliable sources
10 and that such homeownership counseling is
11 available, including through programs spon-
12 sored by the Secretary of Housing and Urban
13 Development.

14 “(B) CONTACT INFORMATION.—Each seg-
15 ment of the multimedia campaign under sub-
16 paragraph (A) shall publicize the toll-free tele-
17 phone number and web site of the Department
18 of Housing and Urban Development through
19 which persons seeking housing counseling can
20 locate a housing counseling agency in their
21 State that is certified by the Secretary of Hous-
22 ing and Urban Development and can provide
23 advice on buying a home, renting, defaults,
24 foreclosures, credit issues, and reverse mort-
25 gages.

1 “(C) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There are authorized to be appro-
3 priated to the Secretary, not to exceed
4 \$3,000,000 for fiscal years 2009, 2010, and
5 2011 for the development, implementation, and
6 conducting of national public service multimedia
7 campaigns under this paragraph.

8 “(5) EDUCATION PROGRAMS.—The Secretary
9 shall provide advice and technical assistance to
10 States, units of general local government, and non-
11 profit organizations regarding the establishment and
12 operation of, including assistance with the develop-
13 ment of content and materials for, educational pro-
14 grams to inform and educate consumers, particularly
15 those most vulnerable with respect to residential
16 mortgage loans (such as elderly persons, persons
17 facing language barriers, low-income persons, and
18 other potentially vulnerable consumers), regarding
19 home mortgages, mortgage refinancing, home equity
20 loans, and home repair loans.”.

21 (b) CONFORMING AMENDMENTS TO GRANT PRO-
22 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
23 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
24 Urban Development Act of 1968 (12 U.S.C.
25 1701x(c)(5)(A)(ii)) is amended—

1 (1) in subclause (III), by striking “and” at the
2 end;

3 (2) in subclause (IV) by striking the period at
4 the end and inserting “; and”; and

5 (3) by inserting after subclause (IV) the fol-
6 lowing new subclause:

7 “(V) notify the housing or mort-
8 gage applicant of the availability of
9 mortgage software systems provided
10 pursuant to subsection (g)(3).”.

11 **SEC. 304. GRANTS FOR HOUSING COUNSELING ASSIST-**
12 **ANCE.**

13 Section 106(a) of the Housing and Urban Develop-
14 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended
15 by adding at the end the following new paragraph:

16 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
17 ASSISTANCE.—

18 “(A) IN GENERAL.—The Secretary shall make
19 financial assistance available under this paragraph
20 to States, units of general local governments, and
21 nonprofit organizations providing homeownership or
22 rental counseling (as such terms are defined in sub-
23 section (g)(1)).

24 “(B) QUALIFIED ENTITIES.—The Secretary
25 shall establish standards and guidelines for eligibility

1 of organizations (including governmental and non-
2 profit organizations) to receive assistance under this
3 paragraph.

4 “(C) DISTRIBUTION.—Assistance made avail-
5 able under this paragraph shall be distributed in a
6 manner that encourages efficient and successful
7 counseling programs.

8 “(D) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated
10 \$45,000,000 for each of fiscal years 2009 through
11 2012 for—

12 “(i) the operations of the Office of Hous-
13 ing Counseling of the Department of Housing
14 and Urban Development;

15 “(ii) the responsibilities of the Secretary
16 under paragraphs (2) through (5) of subsection
17 (g); and

18 “(iii) assistance pursuant to this para-
19 graph for entities providing homeownership and
20 rental counseling.”.

21 **SEC. 305. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
22 **SELORS UNDER HUD PROGRAMS.**

23 Section 106(e) of the Housing and Urban Develop-
24 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

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

3 “(1) REQUIREMENT FOR ASSISTANCE.—An or-
4 ganization may not receive assistance for counseling
5 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
6 (c), or (d) of this section, or under section 101(e),
7 unless the organization, or the individuals through
8 which the organization provides such counseling, has
9 been certified by the Secretary under this subsection
10 as competent to provide such counseling.”;

11 (2) in paragraph (2)—

12 (A) by inserting “and for certifying organi-
13 zations” before the period at the end of the
14 first sentence; and

15 (B) in the second sentence by striking “for
16 certification” and inserting “, for certification
17 of an organization, that each individual through
18 which the organization provides counseling shall
19 demonstrate, and, for certification of an indi-
20 vidual,”;

21 (3) in paragraph (3), by inserting “organiza-
22 tions and” before “individuals”;

23 (4) by redesignating paragraph (3) as para-
24 graph (5); and

1 (5) by inserting after paragraph (2) the fol-
2 lowing new paragraphs:

3 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
4 Any homeownership counseling or rental housing
5 counseling (as such terms are defined in subsection
6 (g)(1)) required under, or provided in connection
7 with, any program administered by the Department
8 of Housing and Urban Development shall be pro-
9 vided only by organizations or counselors certified by
10 the Secretary under this subsection as competent to
11 provide such counseling.

12 “(4) OUTREACH.—The Secretary shall take
13 such actions as the Secretary considers appropriate
14 to ensure that individuals and organizations pro-
15 viding homeownership or rental housing counseling
16 are aware of the certification requirements and
17 standards of this subsection and of the training and
18 certification programs under subsection (f).”.

19 **SEC. 306. STUDY OF DEFAULTS AND FORECLOSURES.**

20 The Secretary of Housing and Urban Development
21 shall conduct an extensive study of the root causes of de-
22 fault and foreclosure of home loans, using as much empir-
23 ical data as are available. The study shall also examine
24 the role of escrow accounts in helping prime and nonprime
25 borrowers to avoid defaults and foreclosures. Not later

1 than 12 months after the date of the enactment of this
2 Act, the Secretary shall submit to the Congress a prelimi-
3 nary report regarding the study. Not later than 24 months
4 after such date of enactment, the Secretary shall submit
5 a final report regarding the results of the study, which
6 shall include any recommended legislation relating to the
7 study, and recommendations for best practices and for a
8 process to identify populations that need counseling the
9 most.

10 **SEC. 307. DEFINITIONS FOR COUNSELING-RELATED PRO-**
11 **GRAMS.**

12 Section 106 of the Housing and Urban Development
13 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
14 ceding provisions of this title, is further amended by add-
15 ing at the end the following new subsection:

16 “(h) DEFINITIONS.—For purposes of this section:

17 “(1) NONPROFIT ORGANIZATION.—The term
18 ‘nonprofit organization’ has the meaning given such
19 term in section 104(5) of the Cranston-Gonzalez Na-
20 tional Affordable Housing Act (42 U.S.C.
21 12704(5)), except that subparagraph (D) of such
22 section shall not apply for purposes of this section.

23 “(2) STATE.—The term ‘State’ means each of
24 the several States, the Commonwealth of Puerto
25 Rico, the District of Columbia, the Commonwealth

1 of the Northern Mariana Islands, Guam, the Virgin
2 Islands, American Samoa, the Trust Territories of
3 the Pacific, or any other possession of the United
4 States.

5 “(3) UNIT OF GENERAL LOCAL GOVERN-
6 MENT.—The term ‘unit of general local government’
7 means any city, county, parish, town, township, bor-
8 ough, village, or other general purpose political sub-
9 division of a State.”.

10 **SEC. 308. UPDATING AND SIMPLIFICATION OF MORTGAGE**
11 **INFORMATION BOOKLET.**

12 Section 5 of the Real Estate Settlement Procedures
13 Act of 1974 (12 U.S.C. 2604) is amended—

14 (1) in the section heading, by striking “SPE-
15 CIAL” and inserting “HOME BUYING”;

16 (2) by striking subsections (a) and (b) and in-
17 serting the following new subsections:

18 “(a) PREPARATION AND DISTRIBUTION.—The Sec-
19 retary shall prepare, at least once every 5 years, a booklet
20 to help consumers applying for federally related mortgage
21 loans to understand the nature and costs of real estate
22 settlement services. The Secretary shall prepare the book-
23 let in various languages and cultural styles, as the Sec-
24 retary determines to be appropriate, so that the booklet
25 is understandable and accessible to homebuyers of dif-

1 ferent ethnic and cultural backgrounds. The Secretary
2 shall distribute such booklets to all lenders that make fed-
3 erally related mortgage loans. The Secretary shall also dis-
4 tribute to such lenders lists, organized by location, of
5 homeownership counselors certified under section 106(e)
6 of the Housing and Urban Development Act of 1968 (12
7 U.S.C. 1701x(e)) for use in complying with the require-
8 ment under subsection (c) of this section.

9 “(b) CONTENTS.—Each booklet shall be in such form
10 and detail as the Secretary shall prescribe and, in addition
11 to such other information as the Secretary may provide,
12 shall include in plain and understandable language the fol-
13 lowing information:

14 “(1) A description and explanation of the na-
15 ture and purpose of the costs incident to a real es-
16 tate settlement or a federally related mortgage loan.
17 The description and explanation shall provide gen-
18 eral information about the mortgage process as well
19 as specific information concerning, at a minimum—

20 “(A) balloon payments;

21 “(B) prepayment penalties; and

22 “(C) the trade-off between closing costs
23 and the interest rate over the life of the loan.

24 “(2) An explanation and sample of the uniform
25 settlement statement required by section 4.

1 “(3) A list and explanation of lending practices,
2 including those prohibited by the Truth in Lending
3 Act or other applicable Federal law, and of other un-
4 fair practices and unreasonable or unnecessary
5 charges to be avoided by the prospective buyer with
6 respect to a real estate settlement.

7 “(4) A list and explanation of questions a con-
8 sumer obtaining a federally related mortgage loan
9 should ask regarding the loan, including whether the
10 consumer will have the ability to repay the loan,
11 whether the consumer sufficiently shopped for the
12 loan, whether the loan terms include prepayment
13 penalties or balloon payments, and whether the loan
14 will benefit the borrower.

15 “(5) An explanation of the right of rescission as
16 to certain transactions provided by sections 125 and
17 129 of the Truth in Lending Act.

18 “(6) A brief explanation of the nature of a vari-
19 able rate mortgage and a reference to the booklet
20 entitled ‘Consumer Handbook on Adjustable Rate
21 Mortgages’, published by the Board of Governors of
22 the Federal Reserve System pursuant to section
23 226.19(b)(1) of title 12, Code of Federal Regula-
24 tions, or to any suitable substitute of such booklet

1 that such Board of Governors may subsequently
2 adopt pursuant to such section.

3 “(7) A brief explanation of the nature of a
4 home equity line of credit and a reference to the
5 pamphlet required to be provided under section
6 127A of the Truth in Lending Act.

7 “(8) Information about homeownership coun-
8 seling services made available pursuant to section
9 106(a)(4) of the Housing and Urban Development
10 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
11 ommendation that the consumer use such services,
12 and notification that a list of certified providers of
13 homeownership counseling in the area, and their
14 contact information, is available.

15 “(9) An explanation of the nature and purpose
16 of escrow accounts when used in connection with
17 loans secured by residential real estate and the re-
18 quirements under section 10 of this Act regarding
19 such accounts.

20 “(10) An explanation of the choices available to
21 buyers of residential real estate in selecting persons
22 to provide necessary services incidental to a real es-
23 tate settlement.

1 “(11) An explanation of a consumer’s respon-
2 sibilities, liabilities, and obligations in a mortgage
3 transaction.

4 “(12) An explanation of the nature and purpose
5 of real estate appraisals, including the difference be-
6 tween an appraisal and a home inspection.

7 “(13) Notice that the Office of Housing of the
8 Department of Housing and Urban Development has
9 made publicly available a brochure regarding loan
10 fraud and a World Wide Web address and toll-free
11 telephone number for obtaining the brochure.

12 The booklet prepared pursuant to this section shall take
13 into consideration differences in real estate settlement pro-
14 cedures that may exist among the several States and terri-
15 tories of the United States and among separate political
16 subdivisions within the same State and territory.”;

17 (3) in subsection (c), by inserting at the end
18 the following new sentence: “Each lender shall also
19 include with the booklet a reasonably complete or
20 updated list of homeownership counselors who are
21 certified pursuant to section 106(e) of the Housing
22 and Urban Development Act of 1968 (12 U.S.C.
23 1701x(e)) and located in the area of the lender.”;
24 and

1 (4) in subsection (d), by inserting after the pe-
2 riod at the end of the first sentence the following:
3 “The lender shall provide the HUD-issued booklet in
4 the version that is most appropriate for the person
5 receiving it.”.

6 **TITLE IV—INCENTIVES FOR**
7 **BEST PRACTICES AND MORT-**
8 **GAGE LOAN MODIFICATION**

9 **SEC. 401. CRA CREDIT FOR CERTAIN LENDER PRACTICES.**

10 Section 804 of the Community Reinvestment Act of
11 1977 (12 U.S.C. 2903) is amended by adding at the end
12 the following new subsection:

13 “(d) **EFFORTS ON BEHALF OF SUBPRIME BOR-**
14 **ROWERS.**—In assessing and taking into account, under
15 subsection (a), the record of a regulated financial institu-
16 tion, the appropriate Federal financial supervisory agency
17 may consider as a factor, in accordance with such guide-
18 lines as the agency may issue, any of the following pro-
19 grams undertaken by the institution:

20 “(1) A program to provide or support the provi-
21 sion of home ownership or credit counseling to low-
22 and moderate-income consumer borrowers through
23 programs reasonably available to the consumer that
24 have been certified or approved by the Secretary of
25 Housing and Urban Development for such purpose.

1 “(2) A program to provide or support the provi-
2 sion of foreclosure-prevention counseling and other
3 prevention efforts to low- and moderate-income con-
4 sumer borrowers through programs reasonably avail-
5 able to the consumer that have been certified or ap-
6 proved by the Secretary of Housing and Urban De-
7 velopment for such purpose.

8 “(3) A program to transition low- and mod-
9 erate-income consumer borrowers from higher-cost
10 mortgage loans to lower-cost mortgage loans.”.

11 **SEC. 402. SAFE HARBOR FOR QUALIFIED LOAN MODIFICA-**
12 **TIONS OR WORKOUT PLANS FOR CERTAIN**
13 **RESIDENTIAL MORTGAGE LOANS.**

14 (a) STANDARD FOR LOAN MODIFICATIONS OR WORK-
15 OUT PLANS.—Absent specific contractual provisions to the
16 contrary—

17 (1) the duty to maximize, or to not adversely
18 affect, the recovery of total proceeds from pooled
19 residential mortgage loans is owed by a servicer of
20 such pooled loans to the securitization vehicle for the
21 benefit of all investors and holders of beneficial in-
22 terests in the pooled loans, in the aggregate, and not
23 to any individual party or group of parties; and

24 (2) a servicer of pooled residential mortgage
25 loans shall be deemed to be acting on behalf of the

1 securitization vehicle in the best interest of all inves-
2 tors and holders of beneficial interests in the pooled
3 loans, in the aggregate, if for a loan that is in pay-
4 ment default under the loan agreement or for which
5 payment default is imminent or reasonably foresee-
6 able, the loan servicer makes reasonable and docu-
7 mented efforts to implement a modification or work-
8 out plan or, if such efforts are unsuccessful or such
9 plan would be infeasible, engages in other loss miti-
10 gation, including accepting a short payment or par-
11 tial discharge of principal, or agreeing to a short
12 sale of the property, to the extent that the servicer
13 reasonably believes the modification or workout plan
14 or other mitigation actions will maximize the net
15 present value to be realized on the loan over that
16 which would be realized through foreclosure.

17 (b) SAFE HARBOR.—Absent specific contractual pro-
18 visions to the contrary, a servicer of a residential mortgage
19 loan that acts in a manner consistent with the duty set
20 forth in subsection (a), shall not be liable for entering into
21 a qualified loan modification or workout plan, to—

22 (1) any person, based on that person's owner-
23 ship of a residential mortgage loan or any interest
24 in a pool of residential mortgage loans or in securi-

1 ties that distribute payments out of the principal, in-
2 terest and other payments in loans on the pool;

3 (2) any person who is obligated to make pay-
4 ments determined in reference to any loan or any in-
5 terest referred to in paragraph (1); or

6 (3) any person that insures any loan or any in-
7 terest referred to in paragraph (1) under any law or
8 regulation of the United States or any law or regula-
9 tion of any State or political subdivision of any
10 State.

11 (c) RULE OF CONSTRUCTION.—No provision of this
12 section shall be construed as limiting the ability of a
13 servicer to enter into loan modifications or workout plans
14 other than qualified loan modification or workout plans.

15 (d) DEFINITIONS.—For purposes of this section, the
16 following definitions shall apply:

17 (1) QUALIFIED LOAN MODIFICATION OR WORK-
18 OUT PLAN.—The term “qualified loan modification
19 or workout plan” means a modification or plan
20 that—

21 (A) is scheduled to remain in place until
22 the borrower sells or refinances the property, or
23 for at least 5 years from the date of adoption
24 of the plan, whichever is sooner;

1 (B) does not provide for a repayment
2 schedule that results in negative amortization
3 at any time; and

4 (C) does not require the borrower to pay
5 additional points and fees.

6 (2) RESIDENTIAL MORTGAGE LOAN DEFINED.—
7 The term “residential mortgage loan” means a loan
8 that is secured by a lien on an owner-occupied resi-
9 dential dwelling.

10 (3) SECURITIZATION VEHICLE.—The term
11 “securitization vehicle” means a trust, corporation,
12 partnership, limited liability entity, special purpose
13 entity, or other structure that—

14 (A) is the issuer, or is created by the
15 issuer, of mortgage pass-through certificates,
16 participation certificates, mortgage-backed secu-
17 rities, or other similar securities backed by a
18 pool of assets that includes residential mortgage
19 loans; and

20 (B) holds such loans.

21 (e) EFFECTIVE PERIOD.—This section shall apply
22 only with respect to qualified loan modification or workout
23 plans initiated prior to January 1, 2011.

1 **TITLE V—FHA MODERNIZATION**

2 **SEC. 501. SHORT TITLE.**

3 This title may be cited as the “Expanding American
4 Homeownership Act of 2008”.

5 **SEC. 502. FINDINGS AND PURPOSES.**

6 (a) FINDINGS.—The Congress finds that—

7 (1) one of the primary missions of the Federal
8 Housing Administration (FHA) single family mort-
9 gage insurance program is to reach borrowers who
10 are underserved, or not served, by the existing con-
11 ventional mortgage marketplace;

12 (2) the FHA program has a long history of in-
13 novation, which includes pioneering the 30-year self-
14 amortizing mortgage and a safe-to-seniors reverse
15 mortgage product, both of which were once thought
16 too risky to private lenders;

17 (3) the FHA single family mortgage insurance
18 program traditionally has been a major provider of
19 mortgage insurance for home purchases;

20 (4) the FHA mortgage insurance premium
21 structure, as well as FHA’s product offerings,
22 should be revised to reflect FHA’s enhanced ability
23 to determine risk at the loan level and to allow FHA
24 to better respond to changes in the mortgage mar-
25 ket;

1 (5) during past recessions, including the oil-
2 patch downturns in the mid-1980s, FHA remained
3 a viable credit enhancer and was therefore instru-
4 mental in preventing a more catastrophic collapse in
5 housing markets and a greater loss of homeowner
6 equity; and

7 (6) as housing price appreciation slows and in-
8 terest rates rise, many homeowners and prospective
9 homebuyers will need the less-expensive, safer fi-
10 nancing alternative that FHA mortgage insurance
11 provides.

12 (b) PURPOSES.—The purposes of this title are—

13 (1) to provide flexibility to FHA to allow for
14 the insurance of housing loans for low- and mod-
15 erate-income homebuyers during all economic cycles
16 in the mortgage market;

17 (2) to modernize the FHA single family mort-
18 gage insurance program by making it more reflective
19 of enhancements to loan-level risk assessments and
20 changes to the mortgage market; and

21 (3) to adjust the loan limits for the single fam-
22 ily mortgage insurance program to reflect rising
23 house prices and the increased costs associated with
24 new construction.

1 **SEC. 503. MAXIMUM PRINCIPAL LOAN OBLIGATION.**

2 Paragraph (2) of section 203(b) of the National
3 Housing Act (12 U.S.C. 1709(b)(2)) is amended—

4 (1) by striking subparagraphs (A) and (B) and
5 inserting the following new subparagraphs:

6 “(A) not to exceed the lesser of—

7 “(i) in the case of a 1-family resi-
8 dence, the median 1-family house price in
9 the area, as determined by the Secretary;
10 and in the case of a 2-, 3-, or 4-family resi-
11 dence, the percentage of such median
12 price that bears the same ratio to such me-
13 dian price as the dollar amount limitation
14 in effect under section 305(a)(2) of the
15 Federal Home Loan Mortgage Corporation
16 Act (12 U.S.C. 1454(a)(2)) for a 2-, 3-, or
17 4-family residence, respectively, bears to
18 the dollar amount limitation in effect
19 under such section for a 1-family resi-
20 dence; or

21 “(ii) 132 percent of the dollar amount
22 limitation in effect for 2007 under such
23 section 305(a)(2) for a residence of the ap-
24 plicable size (without regard to any author-
25 ity to increase such limitations with re-
26 spect to properties located in Alaska,

1 Guam, Hawaii, or the Virgin Islands), ex-
2 cept that each such maximum dollar
3 amount shall be adjusted effective January
4 1 of each year beginning with 2009, by
5 adding to or subtracting from each such
6 amount (as it may have been previously
7 adjusted) a percentage thereof equal to the
8 percentage increase or decrease, during the
9 most recently completed 12-month or 4-
10 quarter period ending before the time of
11 determining such annual adjustment, in an
12 housing price index developed or selected
13 by the Secretary for purposes of adjust-
14 ments under this clause;

15 except that the dollar amount limitation in ef-
16 fect for any area under this subparagraph may
17 not be less than the greater of (I) the dollar
18 amount limitation in effect under this section
19 for the area on October 21, 1998, or (II) 65
20 percent of the dollar limitation determined
21 under such section 305(a)(2) for a residence of
22 the applicable size; and

23 “(B) not to exceed the appraised value of
24 the property, plus any initial service charges,
25 appraisal, inspection and other fees in connec-

1 tion with the mortgage as approved by the Sec-
2 retary.”;

3 (2) in the matter after and below subparagraph
4 (B), by striking the second sentence (relating to a
5 definition of “average closing cost”) and all that fol-
6 lows through “title 38, United States Code”; and

7 (3) by striking the last undesignated paragraph
8 (relating to counseling with respect to the respon-
9 sibilities and financial management involved in
10 homeownership).

11 **SEC. 504. EXTENSION OF MORTGAGE TERM.**

12 Paragraph (3) of section 203(b) of the National
13 Housing Act (12 U.S.C. 1709(b)(3)) is amended—

14 (1) by striking “thirty-five years” and inserting
15 “forty years”; and

16 (2) by striking “(or thirty years if such mort-
17 gage is not approved for insurance prior to construc-
18 tion)”.

19 **SEC. 505. MORTGAGE INSURANCE PREMIUMS.**

20 Section 203(c) of the National Housing Act (12
21 U.S.C. 1709(c)) is amended—

22 (1) in paragraph (2), in the matter preceding
23 subparagraph (A), by striking “Notwithstanding”
24 and inserting “Except as provided in paragraph (3)
25 and notwithstanding”; and

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

3 “(3) FLEXIBLE RISK-BASED PREMIUMS.—

4 “(A) IN GENERAL.—For any mortgage insured
5 by the Secretary under this title that is secured by
6 a 1- to 4-family dwelling and for which the loan ap-
7 plication is received by the mortgagee on or after
8 October 1, 2008, the Secretary may establish a
9 mortgage insurance premium structure involving a
10 single premium payment collected prior to the insur-
11 ance of the mortgage or annual payments (which
12 may be collected on a periodic basis), or both, sub-
13 ject to the limitations in subparagraphs (B) and (C).
14 The rate of premium for such a mortgage may vary
15 during the mortgage term as long as the basis for
16 determining the variable rate is established before
17 the execution of the mortgage. The Secretary may
18 change a premium structure established under this
19 subparagraph but only to the extent that such
20 change is not applied to any mortgage already exe-
21 cuted.

22 “(B) MAXIMUM UP-FRONT PREMIUM
23 AMOUNTS.—For any mortgage insured under a pre-
24 mium structure established pursuant to this para-
25 graph, the amount of any single premium payment

1 authorized by subparagraph (A), if established and
2 collected prior to the insurance of the mortgage,
3 may not exceed the following amount:

4 “(i) Except as provided in clauses (ii) and
5 (iii), 3.0 percent of the amount of the original
6 insured principal obligation of the mortgage.

7 “(ii) If the mortgagor has a credit score
8 equivalent to a FICO score of 560 or more,
9 2.25 percent of the original insured principal
10 obligation of the mortgage.

11 “(iii) If the annual premium payment is
12 equal to the maximum amount allowable under
13 clause (i) of subparagraph (C), 1.5 percent of
14 the amount of the original insured principal ob-
15 ligation of the mortgage.

16 “(C) MAXIMUM ANNUAL PREMIUM AMOUNTS.—
17 For any mortgage insured under a premium struc-
18 ture established pursuant to this paragraph, the
19 amount of any annual premium payment collected
20 may not exceed the following amount:

21 “(i) Except as provided in clauses (ii) and
22 (iii), 2.0 percent of the remaining insured prin-
23 cipal obligation of the mortgage.

24 “(ii) If the mortgagor is a mortgagor de-
25 scribed in clause (ii) of subparagraph (B), 0.55

1 percent of the remaining insured principal obli-
2 gation of the mortgage.

3 “(iii) If the single premium payment col-
4 lected at the time of insurance is equal to max-
5 imum amount allowable under clause (i) of sub-
6 paragraph (B), 1.0 percent of the remaining in-
7 sured principal obligation of the mortgage.

8 “(D) PAYMENT INCENTIVE.—Notwithstanding
9 subparagraph (C), for any mortgage insured under
10 a premium structure established pursuant to this
11 paragraph and for which the annual premium pay-
12 ment exceeds the amount set forth in subparagraph
13 (C)(ii), if during the 5-year period beginning upon
14 the time of insurance all mortgage insurance pre-
15 miums for such mortgage have been paid on a timely
16 basis, upon the expiration of such period the Sec-
17 retary shall reduce the amount of the annual pre-
18 mium payments due thereafter under such mortgage
19 to an amount equal to the amount set forth in sub-
20 paragraph (C)(ii).

21 “(E) ESTABLISHMENT AND ALTERATION OF
22 PREMIUM STRUCTURE.—A premium structure shall
23 be established or changed under subparagraph (A)
24 only by providing notice to mortgagees and to the

1 Congress, at least 30 days before the premium
2 structure is established or changed.

3 “(F) CONSIDERATIONS FOR PREMIUM STRUC-
4 TURE.—When establishing a premium structure
5 under subparagraph (A) or when changing such a
6 premium structure, the Secretary shall consider the
7 following:

8 “(i) The effect of the proposed premium
9 structure on the Secretary’s ability to meet the
10 operational goals of the Mutual Mortgage In-
11 surance Fund as provided in section 202(a).

12 “(ii) Underwriting variables.

13 “(iii) The extent to which new pricing
14 under the proposed premium structure has po-
15 tential for acceptance in the private market.

16 “(iv) The administrative capability of the
17 Secretary to administer the proposed premium
18 structure.

19 “(v) The effect of the proposed premium
20 structure on the Secretary’s ability to maintain
21 the availability of mortgage credit and provide
22 stability to mortgage markets.”.

23 **SEC. 506. REHABILITATION LOANS.**

24 Subsection (k) of section 203 of the National Hous-
25 ing Act (12 U.S.C. 1709(k)) is amended—

1 (1) in paragraph (1), by striking “on” and all
2 that follows through “1978”; and

3 (2) in paragraph (5)—

4 (A) by striking “General Insurance Fund”
5 the first place it appears and inserting “Mutual
6 Mortgage Insurance Fund”; and

7 (B) in the second sentence, by striking the
8 comma and all that follows through “General
9 Insurance Fund”.

10 **SEC. 507. DISCRETIONARY ACTION.**

11 The National Housing Act is amended—

12 (1) in subsection (e) of section 202 (12 U.S.C.
13 1708(e))—

14 (A) in paragraph (3)(B), by striking “sec-
15 tion 202(e) of the National Housing Act” and
16 inserting “this subsection”; and

17 (B) by redesignating such subsection as
18 subsection (f);

19 (2) by striking paragraph (4) of section 203(s)
20 (12 U.S.C. 1709(s)(4)) and inserting the following
21 new paragraph:

22 “(4) the Secretary of Agriculture;” and

23 (3) by transferring subsection (s) of section 203
24 (as amended by paragraph (2) of this section) to
25 section 202, inserting such subsection after sub-

1 section (d) of section 202, and redesignating such
2 subsection as subsection (e).

3 **SEC. 508. INSURANCE OF CONDOMINIUMS.**

4 (a) IN GENERAL.—Section 234 of the National
5 Housing Act (12 U.S.C. 1715y) is amended—

6 (1) in subsection (c)—

7 (A) in the first sentence—

8 (i) by striking “and” before “(2)”;

9 and

10 (ii) by inserting before the period at
11 the end the following: “, and (3) the
12 project has a blanket mortgage insured by
13 the Secretary under subsection (d)”;

14 (B) in clause (B) of the third sentence, by
15 striking “thirty-five years” and inserting “forty
16 years”; and

17 (2) in subsection (g), by striking “, except
18 that” and all that follows and inserting a period.

19 (b) DEFINITION OF MORTGAGE.—Section 201(a) of
20 the National Housing Act (12 U.S.C. 1707(a)) is amend-
21 ed—

22 (1) in clause (1), by striking “or” and inserting
23 a comma; and

24 (2) by inserting before the semicolon the fol-
25 lowing: “, or (c) a first mortgage given to secure the

1 unpaid purchase price of a fee interest in, or long-
2 term leasehold interest in, a one-family unit in a
3 multifamily project, including a project in which the
4 dwelling units are attached, semi-detached, or de-
5 tached, and an undivided interest in the common
6 areas and facilities which serve the project”.

7 **SEC. 509. MUTUAL MORTGAGE INSURANCE FUND.**

8 (a) IN GENERAL.—Subsection (a) of section 202 of
9 the National Housing Act (12 U.S.C. 1708(a)) is amended
10 to read as follows:

11 “(a) MUTUAL MORTGAGE INSURANCE FUND.—

12 “(1) ESTABLISHMENT.—Subject to the provi-
13 sions of the Federal Credit Reform Act of 1990,
14 there is hereby created a Mutual Mortgage Insur-
15 ance Fund (in this title referred to as the ‘Fund’),
16 which shall be used by the Secretary to carry out the
17 provisions of this title with respect to mortgages in-
18 sured under section 203. The Secretary may enter
19 into commitments to guarantee, and may guarantee,
20 such insured mortgages.

21 “(2) LIMIT ON LOAN GUARANTEES.—The au-
22 thority of the Secretary to enter into commitments
23 to guarantee such insured mortgages shall be effec-
24 tive for any fiscal year only to the extent that the
25 aggregate original principal loan amount under such

1 mortgages, any part of which is guaranteed, does
2 not exceed the amount specified in appropriations
3 Acts for such fiscal year.

4 “(3) FIDUCIARY RESPONSIBILITY.—The Sec-
5 retary has a responsibility to ensure that the Mutual
6 Mortgage Insurance Fund remains financially sound.

7 “(4) ANNUAL INDEPENDENT ACTUARIAL
8 STUDY.—The Secretary shall provide for an inde-
9 pendent actuarial study of the Fund to be conducted
10 annually, which shall analyze the financial position
11 of the Fund. The Secretary shall submit a report
12 annually to the Congress describing the results of
13 such study and assessing the financial status of the
14 Fund. The report shall recommend adjustments to
15 underwriting standards, program participation, or
16 premiums, if necessary, to ensure that the Fund re-
17 mains financially sound.

18 “(5) QUARTERLY REPORTS.—During each fiscal
19 year, the Secretary shall submit a report to the Con-
20 gress for each quarter, which shall specify for mort-
21 gages that are obligations of the Fund—

22 “(A) the cumulative volume of loan guar-
23 antee commitments that have been made during
24 such fiscal year through the end of the quarter
25 for which the report is submitted;

1 “(B) the types of loans insured, cat-
2 egorized by risk;

3 “(C) any significant changes between ac-
4 tual and projected claim and prepayment activ-
5 ity;

6 “(D) projected versus actual loss rates;
7 and

8 “(E) updated projections of the annual
9 subsidy rates to ensure that increases in risk to
10 the Fund are identified and mitigated by ad-
11 justments to underwriting standards, program
12 participation, or premiums, and the financial
13 soundness of the Fund is maintained.

14 The first quarterly report under this paragraph shall
15 be submitted on the last day of the first quarter of
16 fiscal year 2009, or upon the expiration of the 90-
17 day period beginning on the date of the enactment
18 of the Expanding American Homeownership Act of
19 2008, whichever is later.

20 “(6) ADJUSTMENT OF PREMIUMS.—If, pursu-
21 ant to the independent actuarial study of the Fund
22 required under paragraph (4), the Secretary deter-
23 mines that the Fund is not meeting the operational
24 goals established under paragraph (7) or there is a
25 substantial probability that the Fund will not main-

1 tain its established target subsidy rate, the Secretary
2 may either make programmatic adjustments under
3 section 203 as necessary to reduce the risk to the
4 Fund, or make appropriate premium adjustments.

5 “(7) OPERATIONAL GOALS.—The operational
6 goals for the Fund are—

7 “(A) to charge borrowers under loans that
8 are obligations of the Fund an appropriate pre-
9 mium for the risk that such loans pose to the
10 Fund;

11 “(B) to minimize the default risk to the
12 Fund and to homeowners;

13 “(C) to curtail the impact of adverse selec-
14 tion on the Fund; and

15 “(D) to meet the housing needs of the bor-
16 rowers that the single family mortgage insur-
17 ance program under this title is designed to
18 serve.”.

19 (b) OBLIGATIONS OF FUND.—The National Housing
20 Act is amended as follows:

21 (1) HOMEOWNERSHIP VOUCHER PROGRAM
22 MORTGAGES.—In section 203(v) (12 U.S.C.
23 1709(v))—

24 (A) by striking “Notwithstanding section
25 202 of this title, the” and inserting “The”; and

1 (B) by striking “General Insurance Fund”
2 the first place such term appears and all that
3 follows and inserting “Mutual Mortgage Insur-
4 ance Fund.”.

5 (2) HOME EQUITY CONVERSION MORTGAGES.—
6 Section 255(i)(2)(A) of the National Housing Act
7 (12 U.S.C. 1715z–20(i)(2)(A)) is amended by strik-
8 ing “General Insurance Fund” and inserting “Mu-
9 tual Mortgage Insurance Fund”.

10 (c) CONFORMING AMENDMENTS.—The National
11 Housing Act is amended—

12 (1) in section 205 (12 U.S.C. 1711), by striking
13 subsections (g) and (h); and

14 (2) in section 519(e) (12 U.S.C. 1735c(e)), by
15 striking “203(b)” and all that follows through
16 “203(i)” and inserting “203, except as determined
17 by the Secretary”.

18 **SEC. 510. HAWAIIAN HOME LANDS AND INDIAN RESERVA-**
19 **TIONS.**

20 (a) HAWAIIAN HOME LANDS.—Section 247(c) of the
21 National Housing Act (12 U.S.C. 1715z–12) is amend-
22 ed—

23 (1) by striking “General Insurance Fund estab-
24 lished in section 519” and inserting “Mutual Mort-
25 gage Insurance Fund”; and

1 (2) in the second sentence, by striking “(1) all
2 references” and all that follows through “and (2)”.

3 (b) INDIAN RESERVATIONS.—Section 248(f) of the
4 National Housing Act (12 U.S.C. 1715z–13) is amend-
5 ed—

6 (1) by striking “General Insurance Fund” the
7 first place it appears through “519” and inserting
8 “Mutual Mortgage Insurance Fund”; and

9 (2) in the second sentence, by striking “(1) all
10 references” and all that follows through “and (2)”.

11 **SEC. 511. CONFORMING AND TECHNICAL AMENDMENTS.**

12 (a) REPEALS.—The following provisions of the Na-
13 tional Housing Act are repealed:

14 (1) Subsection (i) of section 203 (12 U.S.C.
15 1709(i)).

16 (2) Subsection (o) of section 203 (12 U.S.C.
17 1709(o)).

18 (3) Subsection (p) of section 203 (12 U.S.C.
19 1709(p)).

20 (4) Subsection (q) of section 203 (12 U.S.C.
21 1709(q)).

22 (5) Section 222 (12 U.S.C. 1715m).

23 (6) Section 237 (12 U.S.C. 1715z–2).

24 (7) Section 245 (12 U.S.C. 1715z–10).

1 (b) DEFINITION OF AREA.—Section 203(u)(2)(A) of
2 the National Housing Act (12 U.S.C. 1709(u)(2)(A)) is
3 amended by striking “shall” and all that follows and in-
4 serting “means a metropolitan statistical area as estab-
5 lished by the Office of Management and Budget;”.

6 (c) DEFINITION OF STATE.—Section 201(d) of the
7 National Housing Act (12 U.S.C. 1707(d)) is amended by
8 striking “the Trust Territory of the Pacific Islands” and
9 inserting “the Commonwealth of the Northern Mariana
10 Islands”.

11 **SEC. 512. HOME EQUITY CONVERSION MORTGAGES.**

12 (a) IN GENERAL.—Section 255 of the National
13 Housing Act (12 U.S.C. 1715z–20) is amended—

14 (1) in subsection (g)—

15 (A) by striking the first sentence; and

16 (B) by striking “established under section
17 203(b)(2)” and all that follows through “lo-
18 cated” and inserting “limitation established
19 under section 305(a)(2) of the Federal Home
20 Loan Mortgage Corporation Act for a 1-family
21 residence”;

22 (2) in subsection (i)(1)(C), by striking “limita-
23 tions” and inserting “limitation”; and

24 (3) by adding at the end the following new sub-
25 section:

1 “(n) AUTHORITY TO INSURE HOME PURCHASE
2 MORTGAGE.—

3 “(1) IN GENERAL.—Notwithstanding any other
4 provision in this section, the Secretary may insure,
5 upon application by a mortgagee, a home equity con-
6 version mortgage upon such terms and conditions as
7 the Secretary may prescribe, when the primary pur-
8 pose of the home equity conversion mortgage is to
9 enable an elderly mortgagor to purchase a 1-to 4
10 family dwelling in which the mortgagor will occupy
11 or occupies one of the units.

12 “(2) LIMITATION ON PRINCIPAL OBLIGATION.—
13 A home equity conversion mortgage insured pursu-
14 ant to paragraph (1) shall involve a principal obliga-
15 tion that does not exceed the dollar amount limita-
16 tion determined under section 305(a)(2) of the Fed-
17 eral Home Loan Mortgage Corporation Act for a
18 residence of the applicable size.”.

19 (b) MORTGAGES FOR COOPERATIVES.—Subsection
20 (b) of section 255 of the National Housing Act (12 U.S.C.
21 1715z-20(b)) is amended—

22 (1) in paragraph (4)—

23 (A) by inserting “a first or subordinate
24 mortgage or lien” before “on all stock”;

1 (B) by inserting “unit” after “dwelling”;

2 and

3 (C) by inserting “a first mortgage or first

4 lien” before “on a leasehold”; and

5 (2) in paragraph (5), by inserting “a first or

6 subordinate lien on” before “all stock”.

7 (c) STUDY REGARDING MORTGAGE INSURANCE PRE-

8 MIUMS.—The Secretary of Housing and Urban Develop-

9 ment shall conduct a study regarding mortgage insurance

10 premiums charged under the program under section 255

11 of the National Housing Act (12 U.S.C. 1715z-20) for in-

12 surance of home equity conversion mortgages to analyze

13 and determine—

14 (1) the effects of reducing the amounts of such

15 premiums from the amounts charged as of the date

16 of the enactment of this Act on—

17 (A) costs to mortgagors; and

18 (B) the financial soundness of the pro-

19 gram; and

20 (2) the feasibility and effectiveness of exempt-

21 ing, from all the requirements under the program re-

22 garding payment of mortgage insurance premiums

23 (including both up-front or annual mortgage insur-

24 ance premiums under section 203(c)(2) of such Act),

25 any mortgage insured under the program under

1 which part or all of the amount of future payments
2 made to the homeowner are used for costs of a long-
3 term care insurance contract covering the mortgagor
4 or members of the household residing in the mort-
5 gaged property.

6 **SEC. 513. CONFORMING LOAN LIMIT IN DISASTER AREAS.**

7 Section 203(h) of the National Housing Act (12
8 U.S.C. 1709) is amended—

9 (1) by inserting after “property” the following:
10 “plus any initial service charges, appraisal, inspec-
11 tion and other fees in connection with the mortgage
12 as approved by the Secretary,”;

13 (2) by striking the second sentence (as added
14 by chapter 7 of the Emergency Supplemental Appro-
15 priations Act of 1994 (Public Law 103–211; 108
16 Stat. 12)); and

17 (3) by adding at the end the following new sen-
18 tence: “In any case in which the single family resi-
19 dence to be insured under this subsection is within
20 a jurisdiction in which the President has declared a
21 major disaster to have occurred, the Secretary is au-
22 thorized, for a temporary period not to exceed 36
23 months from the date of such Presidential declara-
24 tion, to enter into agreements to insure a mortgage
25 which involves a principal obligation of up to 100

1 percent of the dollar limitation determined under
2 section 305(a)(2) of the Federal Home Loan Mort-
3 gage Corporation Act for a single family residence,
4 and not in excess of 100 percent of the appraised
5 value of the property plus any initial service charges,
6 appraisal, inspection and other fees in connection
7 with the mortgage as approved by the Secretary.”.

8 **SEC. 514. PARTICIPATION OF MORTGAGE BROKERS AND**
9 **CORRESPONDENT LENDERS.**

10 (a) DEFINITIONS.—

11 (1) IN GENERAL.—Section 201 of the National
12 Housing Act (12 U.S.C. 1707) is amended—

13 (A) by striking “As used in section 203 of
14 this title—” and inserting “As used in this title
15 and for purposes of participation in insurance
16 programs under this title, except as specifically
17 provided otherwise, the following definitions
18 shall apply:”;

19 (B) by striking subsection (b) and insert-
20 ing the following:

21 “(2) The term ‘mortgagee’ means any of the
22 following entities, and its successors and assigns, to
23 the extent such entity is approved by the Secretary:

24 “(A) A lender or correspondent lender,
25 who—

1 “(i) makes, underwrites, and services
2 mortgages;

3 “(ii) submits to the Secretary such fi-
4 nancial audits performed in accordance
5 with the standards for financial audits of
6 the Government Auditing Standards issued
7 by the Comptroller of the United States;

8 “(iii) meet the minimum net worth re-
9 quirement that the Secretary shall estab-
10 lish; and

11 “(iv) complies with such other re-
12 quirements as the Secretary may establish.

13 “(B) A correspondent lender who—

14 “(i) closes a mortgage in its name but
15 does not underwrite or service the mort-
16 gage;

17 “(ii) posts a surety bond, in lieu of
18 any requirement to provide audited finan-
19 cial statements or meet a minimum net
20 worth requirement, in—

21 “(I) a form satisfactory to the
22 Secretary; and

23 “(II) an amount of \$75,000, as
24 such amount is adjusted annually by
25 the Secretary (as determined under

1 regulations of the Secretary) by the
2 change for such year in the Consumer
3 Price Index for All Urban Consumers
4 published monthly by the Bureau of
5 Labor Statistics of the Department of
6 Labor; and

7 “(iii) complies with such other re-
8 quirements as the Secretary may establish.

9 “(C) A mortgage broker who—

10 “(i) closes the mortgage in the name
11 of the lender and does not make, under-
12 write, or service the mortgage;

13 “(ii) is licensed, under the laws of the
14 State in which the property that is subject
15 to the mortgage is located, to act as a
16 mortgage broker in such State;

17 “(iii) posts a surety bond in accord-
18 ance with the requirements of subpara-
19 graph (B)(ii); and

20 “(iv) complies with such other re-
21 quirements as the Secretary may establish.

22 “(3) The term ‘mortgagor’ includes the original
23 borrower under a mortgage and the successors and
24 assigns of the original borrower.”;

1 (C) in subsection (a), by redesignating
2 clauses (1) and (2) as clauses (A) and (B) re-
3 spectively; and

4 (D) by redesignating subsections (a), (c),
5 (d), (e), and (f) as paragraphs (1), (4), (5), (6),
6 and (7), respectively, and realigning such para-
7 graphs two ems from the left margin.

8 (2) MORTGAGEE REVIEW.—Section 202(c)(7) of
9 the National Housing Act (12 U.S.C. 1708(c)(7)) is
10 amended—

11 (A) in subparagraph (A), by inserting “, as
12 defined in section 201,” after “mortgagee”;

13 (B) by striking subparagraph (B); and

14 (C) by redesignating subparagraphs (C)
15 and (D) as subparagraphs (B) and (C), respec-
16 tively.

17 (3) MULTIFAMILY RENTAL HOUSING INSUR-
18 ANCE.—Section 207(a)(2) of the National Housing
19 Act (12 U.S.C. 1713(a)(2)) is amended by striking
20 “means the original lender under a mortgage, and
21 its successors and assigns, and” and inserting “has
22 the meaning given such term in section 201, except
23 that such term also”.

24 (4) WAR HOUSING INSURANCE.—Section 601(b)
25 of the National Housing Act (12 U.S.C. 1736(b)) is

1 amended by striking “includes the original lender
2 under a mortgage, and his successors and assigns
3 approved by the Secretary” and inserting “has the
4 meaning given such term in section 201”.

5 (5) ARMED SERVICES HOUSING MORTGAGE IN-
6 SURANCE.—Section 801(b) of the National Housing
7 Act (12 U.S.C. 1748(b)) is amended by striking “in-
8 cludes the original lender under a mortgage, and his
9 successors and assigns approved by the Secretary”
10 and inserting “has the meaning given such term in
11 section 201”.

12 (6) GROUP PRACTICE FACILITIES MORTGAGE
13 INSURANCE.—Section 1106(8) of the National
14 Housing Act (12 U.S.C. 1749aaa-5(8)) is amended
15 by striking “means the original lender under a mort-
16 gage, and his or its successors and assigns, and”
17 and inserting “has the meaning given such term in
18 section 201, except that such term also”.

19 (b) ELIGIBILITY FOR INSURANCE.—

20 (1) TITLE i.—Paragraph (1) of section 8(b) of
21 the National Housing Act (12 U.S.C. 1706e(b)(1))
22 is amended—

23 (A) by striking “, and be held by,”; and

24 (B) by striking “as responsible and able to
25 service the mortgage properly”.

1 (2) SINGLE FAMILY HOUSING MORTGAGE IN-
2 SURANCE.—Paragraph (1) of section 203(b) of the
3 National Housing Act (12 U.S.C. 1709(b)(1)) is
4 amended—

5 (A) by striking “, and be held by,”; and

6 (B) by striking “as responsible and able to
7 service the mortgage properly”.

8 (3) SECTION 221 MORTGAGE INSURANCE.—
9 Paragraph (1) of section 221(d) of the National
10 Housing Act (12 U.S.C. 1715l(d)(1)) is amended—

11 (A) by striking “ and be held by”; and

12 (B) by striking “as responsible and able to
13 service the mortgage properly”.

14 (4) HOME EQUITY CONVERSION MORTGAGE IN-
15 SURANCE.—Paragraph (1) of section 255(d) of the
16 National Housing Act (12 U.S.C. 1715z-20(d)(1)) is
17 amended by striking “as responsible and able to
18 service the mortgage properly”.

19 (5) WAR HOUSING MORTGAGE INSURANCE.—
20 Paragraph (1) of section 603(b) of the National
21 Housing Act (12 U.S.C. 1738(b)(1)) is amended—

22 (A) by striking “, and be held by,”; and

23 (B) by striking “as responsible and able to
24 service the mortgage properly”.

1 (6) WAR HOUSING MORTGAGE INSURANCE FOR
2 LARGE-SCALE HOUSING PROJECTS.—Paragraph (1)
3 of section 611(b) of the National Housing Act (12
4 U.S.C. 1746(b)(1)) is amended—

5 (A) by striking “ and be held by”; and

6 (B) by striking “as responsible and able to
7 service the mortgage properly”.

8 (7) GROUP PRACTICE FACILITY MORTGAGE IN-
9 SURANCE.—Section 1101(b)(2) of the National
10 Housing Act (12 U.S.C. 1749aaa(b)(2)) is amend-
11 ed—

12 (A) by striking “ and held by”; and

13 (B) by striking “as responsible and able to
14 service the mortgage properly”.

15 (8) NATIONAL DEFENSE HOUSING INSUR-
16 ANCE.—Paragraph (1) of section 903(b) of the Na-
17 tional Housing Act (12 U.S.C. 1750b(b)(1)) is
18 amended—

19 (A) by striking “, and be held by,”; and

20 (B) by striking “as responsible and able to
21 service the mortgage properly”.

22 **SEC. 515. SENSE OF CONGRESS REGARDING TECHNOLOGY**
23 **FOR FINANCIAL SYSTEMS.**

24 (a) CONGRESSIONAL FINDINGS.—The Congress finds
25 the following:

1 (1) The Government Accountability Office has
2 cited the FHA single family housing mortgage insur-
3 ance program as a “high-risk” program, with a pri-
4 mary reason being non-integrated and out-dated fi-
5 nancial management systems.

6 (2) The “Audit of the Federal Housing Admin-
7 istration’s Financial Statements for Fiscal Years
8 2004 and 2003”, conducted by the Inspector Gen-
9 eral of the Department of Housing and Urban De-
10 velopment reported as a material weakness that
11 “HUD/FHA’s automated data processing [ADP]
12 system environment must be enhanced to more effec-
13 tively support FHA’s business and budget proc-
14 esses”.

15 (3) Existing technology systems for the FHA
16 program have not been updated to meet the latest
17 standards of the Mortgage Industry Standards
18 Maintenance Organization and have numerous defi-
19 ciencies that lenders have outlined.

20 (4) Improvements to technology used in the
21 FHA program will—

22 (A) allow the FHA program to improve the
23 management of the FHA portfolio, garner
24 greater efficiencies in its operations, and lower
25 costs across the program;

1 (B) result in efficiencies and lower costs
2 for lenders participating in the program, allow-
3 ing them to better use the FHA products in ex-
4 tending homeownership opportunities to higher
5 credit risk or lower-income families, in a sound
6 manner.

7 (5) The Mutual Mortgage Insurance Fund op-
8 erates without cost to the taxpayers and generates
9 revenues for the Federal Government.

10 (b) SENSE OF CONGRESS.—It is the sense of the
11 Congress that—

12 (1) the Secretary of Housing and Urban Devel-
13 opment should use a portion of the funds received
14 from premiums paid for FHA single family housing
15 mortgage insurance that are in excess of the
16 amounts paid out in claims to substantially increase
17 the funding for technology used in such FHA pro-
18 gram;

19 (2) the goal of this investment should be to
20 bring the technology used in such FHA program to
21 the level and sophistication of the technology used in
22 the conventional mortgage lending market, or to ex-
23 ceed such level; and

24 (3) the Secretary of Housing and Urban Devel-
25 opment should report to the Congress not later than

1 180 days after the date of the enactment of this Act
2 regarding the progress the Department is making
3 toward such goal and if progress is not sufficient,
4 the resources needed to make greater progress.

5 **SEC. 516. SAVINGS PROVISION.**

6 Any mortgage insured under title II of the National
7 Housing Act before the date of enactment of this Act shall
8 continue to be governed by the laws, regulations, orders,
9 and terms and conditions to which it was subject on the
10 day before the date of the enactment of this Act.

11 **SEC. 517. IMPLEMENTATION.**

12 The Secretary of Housing and Urban Development
13 shall by notice establish any additional requirements that
14 may be necessary to immediately carry out the provisions
15 of this title. The notice shall take effect upon issuance.

16 **TITLE VI—HOMEOWNERSHIP**
17 **FOR VETERANS**

18 **SEC. 601. TEMPORARY INCREASE IN MAXIMUM LOAN GUAR-**
19 **ANTY AMOUNT FOR HOUSING LOANS GUAR-**
20 **ANTEED BY SECRETARY OF VETERANS AF-**
21 **FAIRS.**

22 Section 201(a) of the Economic Stimulus Act of 2008
23 (Public Law 110–185; 122 Stat. 613) is amended by add-
24 ing at the end the following new paragraph:

1 “(3) VA GUARANTEED HOUSING LOANS.—Not-
2 withstanding subparagraph (C) of section
3 3703(a)(1) of title 38, United States Code, for pur-
4 poses of any loan described in that section for which
5 the mortgagee issues a loan commitment during the
6 period beginning on February 13, 2008, and ending
7 at the end of December 31, 2008, the term ‘max-
8 imum guaranty amount’ means the dollar amount
9 that is equal to 25 percent of the amount deter-
10 mined under paragraph (2) of this subsection for a
11 residence of the applicable size located in the area
12 in which the residence for which the loan is made is
13 located.”.

14 **SEC. 602. COUNSELING ON MORTGAGE FORECLOSURES**
15 **FOR MEMBERS OF THE ARMED FORCES RE-**
16 **TURNING FROM SERVICE ABROAD.**

17 (a) IN GENERAL.—The Secretary of Defense shall
18 develop and implement a program to advise members of
19 the Armed Forces (including members of the National
20 Guard and Reserve) who are returning from service on
21 active duty abroad (including service in Operation Iraqi
22 Freedom and Operation Enduring Freedom) on actions to
23 be taken by such members to prevent or forestall mortgage
24 foreclosures.

1 (b) ELEMENTS.—The program required by sub-
2 section (a) shall include the following:

3 (1) Credit counseling.

4 (2) Home mortgage counseling.

5 (3) Such other counseling and information as
6 the Secretary considers appropriate for purposes of
7 the program.

8 (c) TIMING OF PROVISION OF COUNSELING.—Coun-
9 seling and other information under the program required
10 by subsection (a) shall be provided to a member of the
11 Armed Forces covered by the program as soon as prac-
12 ticable after the return of the member from service as de-
13 scribed in subsection (a).

14 **SEC. 603. ENHANCEMENT OF PROTECTIONS FOR**
15 **SERVICEMEMBERS RELATING TO MORT-**
16 **GAGES AND MORTGAGE FORECLOSURES.**

17 (a) EXTENSION OF PERIOD OF PROTECTIONS
18 AGAINST MORTGAGE FORECLOSURES.—

19 (1) EXTENSION OF PROTECTION PERIOD.—Sub-
20 section (c) of section 303 of the Servicemembers
21 Civil Relief Act (50 U.S.C. App. 533) is amended by
22 striking “90 days” and inserting “9 months”.

23 (2) EXTENSION OF STAY OF PROCEEDINGS PE-
24 RIOD.—Subsection (b) of such section is amended by
25 striking “90 days” and inserting “9 months”.

1 (b) TREATMENT OF MORTGAGES AS OBLIGATIONS
2 SUBJECT TO INTEREST RATE LIMITATION.—Section 207
3 of the Servicemembers Civil Relief Act (50 U.S.C. App.
4 527) is amended—

5 (1) in subsection (a)(1), by striking “in excess
6 of 6 percent” and all that follows and inserting “in
7 excess of 6 percent—

8 “(A) during the period of military service
9 and one year thereafter, in the case of an obli-
10 gation or liability consisting of a mortgage,
11 trust deed, or other security in the nature of a
12 mortgage; or

13 “(B) during the period of military service,
14 in the case of any other obligation or liability.”;
15 and

16 (2) by striking subsection (d) and inserting the
17 following new subsection:

18 “(d) DEFINITIONS.—In this section:

19 “(1) INTEREST.—The term ‘interest’ includes
20 service charges, renewal charges, fees, or any other
21 charges (except bona fide insurance) with respect to
22 an obligation or liability.

23 “(2) OBLIGATION OR LIABILITY.—The term
24 ‘obligation or liability’ includes an obligation or li-

1 ability consisting of a mortgage, trust deed, or other
2 security in the nature of a mortgage.”.

3 (c) EFFECTIVE DATE; SUNSET.—

4 (1) EFFECTIVE DATE.—The amendment made
5 by subsection (a) shall take effect on the date of the
6 enactment of this Act.

7 (2) SUNSET.—The amendments made by sub-
8 section (a) shall expire on December 31, 2010. Ef-
9 fective January 1, 2011, the provisions of sub-
10 sections (b) and (c) of section 303 of the
11 Servicemembers Civil Relief Act, as in effect on the
12 day before the date of the enactment of this Act, are
13 hereby revived.

14 **TITLE VII—MORTGAGE ESCROW**
15 **ACCOUNTS**

16 **SEC. 701. ESCROW AND IMPOUND ACCOUNTS RELATING TO**
17 **CERTAIN CONSUMER CREDIT TRANS-**
18 **ACTIONS.**

19 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
20 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
21 after section 129 the following new section:

1 **“SEC. 129A. ESCROW OR IMPOUND ACCOUNTS RELATING**
2 **TO CERTAIN CONSUMER CREDIT TRANS-**
3 **ACTIONS.**

4 “(a) IN GENERAL.—Except as provided in subsection
5 (b) or (c), a creditor, in connection with the formation or
6 consummation of a consumer credit transaction secured
7 by a first lien on the principal dwelling of the consumer,
8 other than a consumer credit transaction under an open
9 end credit plan or a reverse mortgage, shall establish, at
10 the time of the consummation of such transaction, an es-
11 crow or impound account for the payment of taxes and
12 hazard insurance, and, if applicable, flood insurance,
13 mortgage insurance, ground rents, and any other required
14 periodic payments or premiums with respect to the prop-
15 erty or the loan terms, as provided in, and in accordance
16 with, this section.

17 “(b) WHEN REQUIRED.—No impound, trust, or other
18 type of account for the payment of property taxes, insur-
19 ance premiums, or other purposes relating to the property
20 may be required as a condition of a real property sale con-
21 tract or a loan secured by a first deed of trust or mortgage
22 on the principal dwelling of the consumer, other than a
23 consumer credit transaction under an open end credit plan
24 or a reverse mortgage, except when—

1 “(1) any such impound, trust, or other type of
2 escrow or impound account for such purposes is re-
3 quired by Federal or State law;

4 “(2) a loan is made, guaranteed, or insured by
5 a State or Federal governmental lending or insuring
6 agency;

7 “(3) the consumer’s debt-to-income ratio at the
8 time the home mortgage is established taking into
9 account income from all sources including the con-
10 sumer’s employment exceeds 50 percent;

11 “(4) the transaction is secured by a first mort-
12 gage or lien on the consumer’s principal dwelling
13 and the annual percentage rate on the credit, at the
14 time of consummation of the transaction, will exceed
15 by more than 3.0 percentage points the yield on
16 Treasury securities having comparable periods of
17 maturity on the 15th day of the month immediately
18 preceding the month in which the application of the
19 extension of credit is received by the creditor;

20 “(5) a consumer obtains a mortgage referred to
21 in section 103(aa);

22 “(6) the original principal amount of such loan
23 at the time of consummation of the transaction is—

1 “(A) 90 percent or more of the sale price,
2 if the property involved is purchased with the
3 proceeds of the loan; or

4 “(B) 90 percent or more of the appraised
5 value of the property securing the loan;

6 “(7) the combined principal amount of all loans
7 secured by the real property exceeds 95 percent of
8 the appraised value of the property securing the
9 loans at the time of consummation of the last mort-
10 gage transaction;

11 “(8) the consumer was the subject of a pro-
12 ceeding under title 11, United States Code, at any
13 time during the 7-year period preceding the date of
14 the transaction (as determined on the basis of the
15 date of entry of the order for relief or the date of
16 adjudication, as the case may be, with respect to
17 such proceeding and included in a consumer report
18 on the consumer under the Fair Credit Reporting
19 Act) ; or

20 “(9) so required by the Board pursuant to reg-
21 ulation.

22 “(c) DURATION OF MANDATORY ESCROW OR IM-
23 POUND ACCOUNT.—An escrow or impound account estab-
24 lished pursuant to subsection (b), shall remain in existence
25 for a minimum period of 5 years and until such borrower

1 has sufficient equity in the dwelling securing the consumer
2 credit transaction so as to no longer be required to main-
3 tain private mortgage insurance, or such other period as
4 may be provided in regulations to address situations such
5 as borrower delinquency, unless the underlying mortgage
6 establishing the account is terminated.

7 “(d) CLARIFICATION ON ESCROW ACCOUNTS FOR
8 LOANS NOT MEETING STATUTORY TEST.—For mort-
9 gages not covered by the requirements of subsection (b),
10 no provision of this section shall be construed as pre-
11 cluding the establishment of an impound, trust, or other
12 type of account for the payment of property taxes, insur-
13 ance premiums, or other purposes relating to the prop-
14 erty—

15 “(1) on terms mutually agreeable to the parties
16 to the loan;

17 “(2) at the discretion of the lender or servicer,
18 as provided by the contract between the lender or
19 servicer and the borrower; or

20 “(3) pursuant to the requirements for the
21 escrowing of flood insurance payments for regulated
22 lending institutions in section 102(d) of the Flood
23 Disaster Protection Act of 1973.

24 “(e) ADMINISTRATION OF MANDATORY ESCROW OR
25 IMPOUND ACCOUNTS.—

1 “(1) IN GENERAL.—Except as may otherwise
2 be provided for in this title or in regulations pre-
3 scribed by the Board, escrow or impound accounts
4 established pursuant to subsection (b) shall be estab-
5 lished in a federally insured depository institution.

6 “(2) ADMINISTRATION.—Except as provided in
7 this section or regulations prescribed under this sec-
8 tion, an escrow or impound account subject to this
9 section shall be administered in accordance with—

10 “(A) the Real Estate Settlement Proce-
11 dures Act of 1974 and regulations prescribed
12 under such Act;

13 “(B) the Flood Disaster Protection Act of
14 1973 and regulations prescribed under such
15 Act; and

16 “(C) the law of the State, if applicable,
17 where the real property securing the consumer
18 credit transaction is located.

19 “(3) APPLICABILITY OF PAYMENT OF INTER-
20 EST.—If prescribed by applicable State or Federal
21 law, each creditor shall pay interest to the consumer
22 on the amount held in any impound, trust, or escrow
23 account that is subject to this section in the manner
24 as prescribed by that applicable State or Federal
25 law.

1 “(4) PENALTY COORDINATION WITH RESPA.—
2 Any action or omission on the part of any person
3 which constitutes a violation of the Real Estate Set-
4 tlement Procedures Act of 1974 or any regulation
5 prescribed under such Act for which the person has
6 paid any fine, civil money penalty, or other damages
7 shall not give rise to any additional fine, civil money
8 penalty, or other damages under this section, unless
9 the action or omission also constitutes a direct viola-
10 tion of this section.

11 “(f) DISCLOSURES RELATING TO MANDATORY ES-
12 CROW OR IMPOUND ACCOUNT.—In the case of any im-
13 pound, trust, or escrow account that is subject to this sec-
14 tion, the creditor shall disclose by written notice to the
15 consumer at least 3 business days before the consumma-
16 tion of the consumer credit transaction giving rise to such
17 account or in accordance with timeframes established in
18 prescribed regulations the following information:

19 “(1) The fact that an escrow or impound ac-
20 count will be established at consummation of the
21 transaction.

22 “(2) The amount required at closing to initially
23 fund the escrow or impound account.

24 “(3) The amount, in the initial year after the
25 consummation of the transaction, of the estimated

1 taxes and hazard insurance, including flood insur-
2 ance, if applicable, and any other required periodic
3 payments or premiums that reflects, as appropriate,
4 either the taxable assessed value of the real property
5 securing the transaction, including the value of any
6 improvements on the property or to be constructed
7 on the property (whether or not such construction
8 will be financed from the proceeds of the trans-
9 action) or the replacement costs of the property.

10 “(4) The estimated monthly amount payable to
11 be escrowed for taxes, hazard insurance (including
12 flood insurance, if applicable) and any other re-
13 quired periodic payments or premiums.

14 “(5) The fact that, if the consumer chooses to
15 terminate the account at the appropriate time in the
16 future, the consumer will become responsible for the
17 payment of all taxes, hazard insurance, and flood in-
18 surance, if applicable, as well as any other required
19 periodic payments or premiums on the property un-
20 less a new escrow or impound account is established.

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

23 “(1) FLOOD INSURANCE.—The term ‘flood in-
24 surance’ means flood insurance coverage provided

1 under the national flood insurance program pursu-
2 ant to the National Flood Insurance Act of 1968.

3 “(2) HAZARD INSURANCE.—The term ‘hazard
4 insurance’ shall have the same meaning as provided
5 for ‘hazard insurance’, ‘casualty insurance’, ‘home-
6 owner’s insurance’, or other similar term under the
7 law of the State where the real property securing the
8 consumer credit transaction is located.”.

9 (b) IMPLEMENTATION.—

10 (1) REGULATIONS.—The Board of Governors of
11 the Federal Reserve System, the Comptroller of the
12 Currency, the Director of the Office of Thrift Super-
13 vision, the Federal Deposit Insurance Corporation,
14 the National Credit Union Administration Board,
15 (hereafter in this Act referred to as the “Federal
16 banking agencies”) and the Federal Trade Commis-
17 sion shall prescribe, in final form, such regulations
18 as determined to be necessary to implement the
19 amendments made by subsection (a) before the end
20 of the 180-day period beginning on the date of the
21 enactment of this Act.

22 (2) EFFECTIVE DATE.—The amendments made
23 by subsection (a) shall only apply to covered mort-
24 gage loans consummated after the end of the 1-year

1 period beginning on the date of the publication of
2 final regulations in the Federal Register.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for chapter 2 of the Truth in Lending Act is amended
5 by inserting after the item relating to section 129 the fol-
6 lowing new item:

“129A. Escrow or impound accounts relating to certain consumer credit trans-
actions.”.

7 **SEC. 702. DISCLOSURE NOTICE REQUIRED FOR CON-**
8 **SUMERS WHO WAIVE ESCROW SERVICES.**

9 (a) IN GENERAL.—Section 129A of the Truth in
10 Lending Act (as added by section 701) is amended by add-
11 ing at the end the following new subsection:

12 “(h) DISCLOSURE NOTICE REQUIRED FOR CON-
13 SUMERS WHO WAIVE ESCROW SERVICES.—

14 “(1) IN GENERAL.—If—

15 “(A) an impound, trust, or other type of
16 account for the payment of property taxes, in-
17 surance premiums, or other purposes relating to
18 real property securing a consumer credit trans-
19 action is not established in connection with the
20 transaction; or

21 “(B) a consumer chooses, at any time after
22 such an account is established in connection
23 with any such transaction and in accordance

1 with any statute, regulation, or contractual
2 agreement, to close such account,
3 the creditor or servicer shall provide a timely and
4 clearly written disclosure to the consumer that ad-
5 vises the consumer of the responsibilities of the con-
6 sumer and implications for the consumer in the ab-
7 sence of any such account.

8 “(2) DISCLOSURE REQUIREMENTS.—Any dis-
9 closure provided to a consumer under paragraph (1)
10 shall include the following:

11 “(A) Information concerning any applica-
12 ble fees or costs associated with either the non-
13 establishment of any such account at the time
14 of the transaction, or any subsequent closure of
15 any such account.

16 “(B) A clear and prominent notice that the
17 consumer is responsible for personally and di-
18 rectly paying the non-escrowed items, in addi-
19 tion to paying the mortgage loan payment, in
20 the absence of any such account, and the fact
21 that the costs for taxes, insurance, and related
22 fees can be substantial.

23 “(C) A clear explanation of the con-
24 sequences of any failure to pay non-escrowed
25 items, including the possible requirement for

1 the forced placement of insurance by the cred-
2 itor or servicer and the potentially higher cost
3 (including any potential commission payments
4 to the servicer) or reduced coverage for the con-
5 sumer in the event of any such creditor-placed
6 insurance.”.

7 (b) IMPLEMENTATION.—

8 (1) REGULATIONS.—The Federal banking agen-
9 cies and the Federal Trade Commission shall pre-
10 scribe, in final form, such regulations as such agen-
11 cies determine to be necessary to implement the
12 amendments made by subsection (a) before the end
13 of the 180-day period beginning on the date of the
14 enactment of this Act.

15 (2) EFFECTIVE DATE.—The amendments made
16 by subsection (a) shall only apply in accordance with
17 the regulations established in paragraph (1) and be-
18 ginning on the date occurring 180-days after the
19 date of the publication of final regulations in the
20 Federal Register.

1 **TITLE VIII—MORTGAGE FRAUD**

2 **SEC. 801. AUTHORIZATION OF APPROPRIATIONS FOR**
3 **MORTGAGE FRAUD PREVENTION, INVESTIGA-**
4 **TION, AND PROSECUTION.**

5 For fiscal years 2009, 2010, 2011, 2012, and 2013,
6 there are authorized to be appropriated to the Attorney
7 General a total of \$20,000,000, in addition to other
8 amounts authorized to be appropriated to the Attorney
9 General for any such fiscal year, for the purpose of en-
10 hancing the efforts of the Department of Justice and the
11 Federal Bureau of Investigation to prevent, investigate,
12 and prosecute mortgage fraud.

13 **TITLE IX—APPRAISAL**
14 **ACTIVITIES**

15 **SEC. 901. PROPERTY APPRAISAL REQUIREMENTS.**

16 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
17 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
18 after section 129A (as added by section 701(a)) the fol-
19 lowing new section:

20 **“SEC. 129B PROVISIONS APPLICABLE TO NONTRADITIONAL**
21 **MORTGAGES.**

22 “(a) PROPERTY APPRAISAL REQUIREMENTS.—

23 “(1) IN GENERAL.—A creditor may not extend
24 credit in the form of a subprime mortgage to any
25 consumer without first obtaining a written appraisal

1 of the property to be mortgaged prepared in accord-
2 ance with the requirements of this subsection.

3 “(2) APPRAISAL REQUIREMENTS.—

4 “(A) PHYSICAL INSPECTION.—An ap-
5 praisal of property to be secured by a subprime
6 mortgage does not meet the requirement of this
7 subsection unless it is performed by a qualified
8 appraiser who conducts a physical inspection of
9 the mortgaged property.

10 “(B) SECOND APPRAISAL UNDER CERTAIN
11 CIRCUMSTANCES.—

12 “(i) IN GENERAL.—If the purpose of
13 the subprime mortgage is to finance the
14 purchase or acquisition of the mortgaged
15 property from a person within 180 days of
16 the purchase or acquisition of such prop-
17 erty by that person at a price that was
18 lower than the current sale price of the
19 property, the creditor shall obtain a second
20 appraisal from a second qualified appraiser
21 that supports the current sale price of the
22 property.

23 “(ii) NO COST TO CONSUMER.—The
24 cost of any second appraisal required

1 under clause (i) may not be charged to the
2 consumer.

3 “(C) QUALIFIED APPRAISER DEFINED.—

4 For purposes of this subsection, the term
5 ‘qualified appraiser’ means a person who—

6 “(i) is certified or licensed by the
7 State in which property to be appraised is
8 located; and

9 “(ii) performs each appraisal in con-
10 formity with the Uniform Standards of
11 Professional Appraisal Practice and Title
12 XI of the Financial Institutions Reform,
13 Recovery, and Enforcement Act of 1989,
14 and the regulations prescribed under such
15 title, as in effect on the date of the ap-
16 praisal.

17 “(3) FREE COPY OF APPRAISAL.—A creditor
18 shall provide 1 copy of each appraisal conducted in
19 accordance with this subsection in connection with a
20 higher-cost mortgage to the consumer without
21 charge.

22 “(4) VIOLATIONS.—In addition to any other li-
23 ability to any person under this title, a creditor
24 found to have willfully failed to obtain an appraisal

1 as required in this subsection shall be liable to the
2 consumer for the sum of \$2,000.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 2 of the Truth in Lending Act is amended
5 by inserting after the item relating to section 129A (as
6 added by section 701(c)) the following new item:

“129B. Provisions applicable to nontraditional mortgages.”.

7 **SEC. 902. AMENDMENTS RELATING TO APPRAISAL SUB-**
8 **COMMITTEE OF FIEC, APPRAISER INDEPEND-**
9 **ENCE, AND APPROVED APPRAISER EDU-**
10 **CATION.**

11 (a) ANNUAL REPORT OF APPRAISAL SUB-
12 COMMITTEE.—Section 1103(a)(4) of Financial Institu-
13 tions Reform, Recovery, and Enforcement Act of 1989 (12
14 U.S.C. 3332(a)(4)) is amended by inserting “in detail the
15 activities of the Appraisal Subcommittee and” after
16 “which describes”.

17 (b) OPEN MEETINGS.—Section 1104(b) of the Fi-
18 nancial Institutions Reform, Recovery, and Enforcement
19 Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting
20 “in public session after notice to the general public” after
21 “shall meet”.

22 (c) REGULATIONS.—Section 1106 of the Financial
23 Institutions Reform, Recovery, and Enforcement Act of
24 1989 (12 U.S.C. 3335) is amended by inserting “prescribe

1 regulations after notice and opportunity for comment,”
2 after “hold hearings”.

3 (d) CRITERIA.—Section 1116 of the Financial Insti-
4 tutions Reform, Recovery, and Enforcement Act of 1989
5 (12 U.S.C. 3345) is amended—

6 (1) in subsection (c), by inserting “whose cri-
7 teria for the licensing of a real estate appraiser cur-
8 rently meet or exceed the minimum criteria issued
9 by the Appraiser Qualifications Board of The Ap-
10 praiser Foundation for the licensing of real estate
11 appraisers” before the period at the end; and

12 (2) by striking subsection (e).

13 (e) TEMPORARY PRACTICE.—Section 1122(a)(1) of
14 the Financial Institutions Reform, Recovery, and Enforce-
15 ment Act of 1989 (12 U.S.C. 3351(a)(1)) is amended—

16 (1) by striking subparagraph (A);

17 (2) by redesignating subparagraphs (B) and
18 (C) as subparagraphs (A) and (B), respectively; and

19 (3) by moving the left margin of such subpara-
20 graphs 2 ems to the right.

21 (f) RECIPROCITY.—Subsection (b) of section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
24 as follows:

1 “(b) RECIPROCIITY.—A State appraiser certifying or
2 licensing agency shall issue a reciprocal certification or li-
3 cense for an individual from another State when—

4 “(1) the appraiser licensing and certification
5 program of such other State is in compliance with
6 the provisions of this title; and

7 “(2) the appraiser holds a valid certification
8 from a State whose requirements for certification or
9 licensing meet the requirements for certification and
10 licensing as established by the Appraiser Qualifica-
11 tions Board of The Appraisal Foundation.”.

12 (g) CONSIDERATION OF PROFESSIONAL APPRAISAL
13 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
14 tutions Reform, Recovery, and Enforcement Act of 1989
15 (12 U.S.C. 3351(d)) is amended by adding at the end the
16 following new sentence: “Consideration may be given for
17 professional appraisal designations conferred by spon-
18 soring organizations of The Appraisal Foundation as an
19 indication of proficiency in addition to the criteria estab-
20 lished by certification or licensing.”.

21 (h) APPRAISER INDEPENDENCE.—Section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
24 at the end the following new subsection:

25 “(g) APPRAISER INDEPENDENCE.—

1 “(1) IN GENERAL.—No mortgage lender, mort-
2 gage broker or mortgage banker, real estate broker,
3 nor any other person with an interest in a real es-
4 tate transaction involving an appraisal shall improv-
5 erly influence or attempt to improperly influence,
6 through coercion, extortion, or bribery, the develop-
7 ment, reporting, result, or review of a real estate ap-
8 praisal sought in connection with a mortgage loan.

9 “(2) EXCEPTIONS.—The requirements of para-
10 graph (1) shall not be construed as prohibiting a
11 mortgage lender, mortgage broker, mortgage banker,
12 real estate broker, or any other person with an inter-
13 est in a real estate transaction from asking an ap-
14 praiser to provide 1 or more of the following serv-
15 ices:

16 “(A) Consider additional, appropriate
17 property information.

18 “(B) Provide further detail, substantiation,
19 or explanation for the appraiser’s value conclu-
20 sion.

21 “(C) Correct errors in the appraisal re-
22 port.”.

23 (i) APPRAISER EDUCATION.—Section 1122 of the Fi-
24 nancial Institutions Reform, Recovery, and Enforcement
25 Act of 1989 (12 U.S.C. 3351) is amended by inserting

1 after subsection (g) (as added by subsection (h) of this
2 section) the following new subsection:

3 “(h) APPROVED EDUCATION.—A State certifying or
4 licensing agency shall accept courses and seminars ap-
5 proved by the Appraiser Qualification Board’s Course Ap-
6 proval Program.”.

7 **SEC. 903. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
8 **PRAISAL PROCESS AND COMPLIANCE PRO-**
9 **GRAMS.**

10 (a) STUDY.—The Comptroller General shall conduct
11 a comprehensive study on possible improvements in the
12 appraisal process generally, and specifically on the consist-
13 ency in and the effectiveness of, and possible improve-
14 ments in, State compliance efforts and programs in ac-
15 cordance with title XI of Financial Institutions Reform,
16 Recovery, and Enforcement Act of 1989.

17 (b) REPORT.—Before the end of the 18-month period
18 beginning on the date of the enactment of this Act, the
19 Comptroller General shall submit a report on the study
20 under subsection (a) to the Committee on Financial Serv-
21 ices of the House of Representatives and the Committee
22 on Banking, Housing, and Urban Affairs of the Senate,
23 together with such recommendations for administrative or
24 legislative action, at the Federal or State level, as the
25 Comptroller General may determine to be appropriate.

1 **TITLE X—FEDERAL HOUSING**
2 **FINANCE REFORM**

3 **SECTION 1001. SHORT TITLE.**

4 This title may be cited as the “Federal Housing Fi-
5 nance Reform Act of 2008”.

6 **SEC. 1002. DEFINITIONS.**

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

9 (1) in paragraph (7), by striking “an enter-
10 prise” and inserting “a regulated entity”;

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

14 (3) in paragraph (5), by striking “Office of
15 Federal Housing Enterprise Oversight of the De-
16 partment of Housing and Urban Development” and
17 inserting “Federal Housing Finance Agency”;

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

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

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

1 (7) by striking paragraphs (14) and (15) and
2 inserting the following new paragraphs:

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

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

7 “(B) the Federal Home Loan Mortgage
8 Corporation and any affiliate thereof; and

9 “(C) each Federal home loan bank.

10 “(19) REGULATED ENTITY-AFFILIATED
11 PARTY.—The term ‘regulated entity-affiliated party’
12 means—

13 “(A) any director, officer, employee, or
14 agent for, a regulated entity, or controlling
15 shareholder of an enterprise;

16 “(B) any shareholder, affiliate, consultant,
17 or joint venture partner of a regulated entity,
18 and any other person, as determined by the Di-
19 rector (by regulation or on a case-by-case basis)
20 that participates in the conduct of the affairs of
21 a regulated entity, except that a shareholder of
22 a regulated entity shall not be considered to
23 have participated in the affairs of that regu-
24 lated entity solely by reason of being a member
25 or customer of the regulated entity;

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

4 “(i) the independent contractor know-
5 ingly or recklessly participates in—

6 “(I) any violation of any law or
7 regulation;

8 “(II) any breach of fiduciary
9 duty; or

10 “(III) any unsafe or unsound
11 practice; and

12 “(ii) such violation, breach, or prac-
13 tice caused, or is likely to cause, more than
14 a minimal financial loss to, or a significant
15 adverse effect on, the regulated entity; and

16 “(D) any not-for-profit corporation that re-
17 ceives its principal funding, on an ongoing
18 basis, from any regulated entity.”.

19 (8) by redesignating paragraphs (8) through
20 (13) as paragraphs (12) through (17), respectively;
21 and

22 (9) by inserting after paragraph (7) the fol-
23 lowing new paragraph:

24 “(11) FEDERAL HOME LOAN BANK.—The term
25 ‘Federal home loan bank’ means a bank established

1 under the authority of the Federal Home Loan
2 Bank Act.”;

3 (10) by redesignating paragraphs (2) through
4 (7) as paragraphs (5) through (10), respectively;
5 and

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

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

10 “(3) AUTHORIZING STATUTES.—The term ‘au-
11 thORIZING statutes’ means—

12 “(A) the Federal National Mortgage Asso-
13 ciation Charter Act;

14 “(B) the Federal Home Loan Mortgage
15 Corporation Act; and

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

17 “(4) BOARD.—The term ‘Board’ means the
18 Federal Housing Enterprise Board established under
19 section 1313B.”.

1 **Subtitle A—Reform of Regulation**
2 **of Enterprises and Federal**
3 **Home Loan Banks**

4 **CHAPTER 1—IMPROVEMENT OF SAFETY**
5 **AND SOUNDNESS**

6 **SEC. 1011. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**
7 **NANCE AGENCY.**

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

12 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**
13 **FINANCE AGENCY.**

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

17 “(b) GENERAL SUPERVISORY AND REGULATORY AU-
18 THORITY.—

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

22 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE
23 MAC, AND FEDERAL HOME LOAN BANKS.—The Di-
24 rector of the Federal Housing Finance Agency shall
25 have general supervisory and regulatory authority

1 over each regulated entity and shall exercise such
2 general regulatory and supervisory authority, includ-
3 ing such duties and authorities set forth under sec-
4 tion 1313 of this Act, to ensure that the purposes
5 of this Act, the authorizing statutes, and any other
6 applicable law are carried out. The Director shall
7 have the same supervisory and regulatory authority
8 over any joint office of the Federal home loan banks,
9 including the Office of Finance of the Federal Home
10 Loan Banks, as the Director has over the individual
11 Federal home loan banks.

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

16 **“SEC. 1312. DIRECTOR.**

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

20 “(b) APPOINTMENT; TERM.—

21 “(1) APPOINTMENT.—The Director shall be ap-
22 pointed by the President, by and with the advice and
23 consent of the Senate, from among individuals who
24 are citizens of the United States, have a dem-
25 onstrated understanding of financial management or

1 oversight, and have a demonstrated understanding
2 of capital markets, including the mortgage securities
3 markets and housing finance.

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

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

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

18 “(5) TRANSITIONAL PROVISION.—Notwith-
19 standing paragraphs (1) and (2), the Director of the
20 Office of Federal Housing Enterprise Oversight of
21 the Department of Housing and Urban Development
22 shall serve as the Director until a successor has been
23 appointed under paragraph (1).

24 “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-
25 TERPRISE REGULATION.—

1 “(1) IN GENERAL.—The Agency shall have a
2 Deputy Director of the Division of Enterprise Regu-
3 lation, who shall be appointed by the Director from
4 among individuals who are citizens of the United
5 States, and have a demonstrated understanding of
6 financial management or oversight and of mortgage
7 securities markets and housing finance.

8 “(2) FUNCTIONS.—The Deputy Director of the
9 Division of Enterprise Regulation shall have such
10 functions, powers, and duties with respect to the
11 oversight of the enterprises as the Director shall pre-
12 scribe.

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

15 “(1) IN GENERAL.—The Agency shall have a
16 Deputy Director of the Division of Federal Home
17 Loan Bank Regulation, who shall be appointed by
18 the Director from among individuals who are citi-
19 zens of the United States, have a demonstrated un-
20 derstanding of financial management or oversight
21 and of the Federal Home Loan Bank System and
22 housing finance.

23 “(2) FUNCTIONS.—The Deputy Director of the
24 Division of Federal Home Loan Bank Regulation
25 shall have such functions, powers, and duties with

1 respect to the oversight of the Federal home loan
2 banks as the Director shall prescribe.

3 “(e) DEPUTY DIRECTOR FOR HOUSING.—

4 “(1) IN GENERAL.—The Agency shall have a
5 Deputy Director for Housing, who shall be ap-
6 pointed by the Director from among individuals who
7 are citizens of the United States, and have a dem-
8 onstrated understanding of the housing markets and
9 housing finance and of community and economic de-
10 velopment.

11 “(2) FUNCTIONS.—The Deputy Director for
12 Housing shall have such functions, powers, and du-
13 ties with respect to the oversight of the housing mis-
14 sion and goals of the enterprises, and with respect
15 to oversight of the housing finance and community
16 and economic development mission of the Federal
17 home loan banks, as the Director shall prescribe.

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

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

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

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

6 “(g) OMBUDSMAN.—The Director shall establish the
7 position of the Ombudsman in the Agency. The Director
8 shall provide that the Ombudsman will consider com-
9 plaints and appeals from any regulated entity and any per-
10 son that has a business relationship with a regulated enti-
11 ty and shall specify the duties and authority of the Om-
12 budsman.”.

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

21 **SEC. 1012. DUTIES AND AUTHORITIES OF DIRECTOR.**

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

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

2 “(a) DUTIES.—

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

5 “(A) to oversee the operations of each reg-
6 ulated entity and any joint office of the Federal
7 Home Loan Banks; and

8 “(B) to ensure that—

9 “(i) each regulated entity operates in
10 a safe and sound manner, including main-
11 tenance of adequate capital and internal
12 controls;

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

23 “(iii) each regulated entity complies
24 with this title and the rules, regulations,
25 guidelines, and orders issued under this
26 title and the authorizing statutes; and

1 “(iv) each regulated entity carries out
2 its statutory mission only through activi-
3 ties that are consistent with this title and
4 the authorizing statutes.

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

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

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

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

21 “(c) LITIGATION AUTHORITY.—

22 “(1) IN GENERAL.—In enforcing any provision
23 of this title, any regulation or order prescribed under
24 this title, or any other provision of law, rule, regula-
25 tion, or order, or in any other action, suit, or pro-

1 ceeding to which the Director is a party or in which
2 the Director is interested, and in the administration
3 of conservatorships and receiverships, the Director
4 may act in the Director's own name and through the
5 Director's own attorneys, or request that the Attor-
6 ney General of the United States act on behalf of
7 the Director.

8 “(2) CONSULTATION WITH ATTORNEY GEN-
9 ERAL.—The Director shall provide notice to, and
10 consult with, the Attorney General of the United
11 States before taking an action under paragraph (1)
12 of this subsection or under section 1344(a), 1345(d),
13 1348(e), 1372(e), 1375(a), 1376(d), or 1379D(c),
14 except that, if the Director determines that any
15 delay caused by such prior notice and consultation
16 may adversely affect the safety and soundness re-
17 sponsibilities of the Director under this title, the Di-
18 rector shall notify the Attorney General as soon as
19 reasonably possible after taking such action.

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

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

8 **“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS**
9 **STANDARDS.**

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

13 “(1) adequacy of internal controls and informa-
14 tion systems, including information security and pri-
15 vacy policies and practices, taking into account the
16 nature and scale of business operations;

17 “(2) independence and adequacy of internal
18 audit systems;

19 “(3) management of credit and counterparty
20 risk, including systems to identify concentrations of
21 credit risk and prudential limits to restrict exposure
22 of the regulated entity to a single counterparty or
23 groups of related counterparties;

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

1 “(5) management of market risk, including
2 standards that provide for systems that accurately
3 measure, monitor, and control market risks and, as
4 warranted, that establish limitations on market risk;

5 “(6) adequacy and maintenance of liquidity and
6 reserves;

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

9 “(8) investments and acquisitions by a regu-
10 lated entity, to ensure that they are consistent with
11 the purposes of this Act and the authorizing stat-
12 utes;

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

17 “(10) issuance of subordinated debt by that
18 particular regulated entity, as the Director considers
19 necessary;

20 “(11) overall risk management processes, in-
21 cluding adequacy of oversight by senior management
22 and the board of directors and of processes and poli-
23 cies to identify, measure, monitor, and control mate-
24 rial risks, including reputational risks, and for ade-
25 quate, well-tested business resumption plans for all

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

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

6 “(b) FAILURE TO MEET STANDARDS.—

7 “(1) PLAN REQUIREMENT.—

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

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

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

20 “(B) CONTENTS.—Any plan required
21 under subparagraph (A) shall specify the ac-
22 tions that the regulated entity will take to cor-
23 rect the deficiency. If the regulated entity is
24 undercapitalized, the plan may be a part of the

1 capital restoration plan for the regulated entity
2 under section 1369C.

3 “(C) DEADLINES FOR SUBMISSION AND
4 REVIEW.—The Director shall by regulation es-
5 tablish deadlines that—

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

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

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

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

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

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

13 “(ii) Require the regulated entity—

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

17 “(II) in the case of a Federal
18 home loan bank, to increase its ratio
19 of total capital (as such term is de-
20 fined in section 6(a)(5) of the Federal
21 Home Loan Bank Act (12 U.S.C.
22 1426(a)(5)) to assets.

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

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

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

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

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

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

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

20 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
21 AND RECOMMENDATIONS.—Section 111 of Public Law
22 93–495 (12 U.S.C. 250) is amended by striking “the Fed-
23 eral Housing Finance Board” and inserting “the Director
24 of the Federal Housing Finance Agency”.

1 **SEC. 1013. FEDERAL HOUSING ENTERPRISE BOARD.**

2 (a) IN GENERAL.—Title XIII of the Housing and
3 Community Development Act of 1992 (12 U.S.C. 4501 et
4 seq.) is amended by inserting after section 1313A, as
5 added by section 1002 of this title, the following new sec-
6 tion:

7 **“SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.**

8 “(a) IN GENERAL.—There is established the Federal
9 Housing Enterprise Board, which shall advise the Director
10 with respect to overall strategies and policies in carrying
11 out the duties of the Director under this title.

12 “(b) LIMITATIONS.—The Board may not exercise any
13 executive authority, and the Director may not delegate to
14 the Board any of the functions, powers, or duties of the
15 Director.

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

18 “(1) one member shall be the Secretary of the
19 Treasury;

20 “(2) one member shall be the Secretary of
21 Housing and Urban Development; and

22 “(3) one member shall be the Director, who
23 shall serve as the Chairperson of the Board.

24 “(d) MEETINGS.—

25 “(1) IN GENERAL.—The Board shall meet upon
26 notice by the Director, but in no event shall the

1 Board meet less frequently than once every 3
2 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(D) an evaluation of the performance of
17 the regulated entities in carrying out their mis-
18 sions;

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

21 “(6) a description of the demographic makeup
22 of the workforce of the Agency; and

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

1 **SEC. 1014. AUTHORITY TO REQUIRE REPORTS BY REGU-**
2 **LATED ENTITIES.**

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

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

7 (2) in subsection (a)—

8 (A) in the subsection heading, by striking
9 “SPECIAL REPORTS AND REPORTS OF FINAN-
10 CIAL CONDITION” and inserting “REGULAR
11 AND SPECIAL REPORTS”;

12 (B) in paragraph (1)—

13 (i) in the paragraph heading, by strik-
14 ing “FINANCIAL CONDITION” and inserting
15 “REGULAR REPORTS”; and

16 (ii) by striking “reports of financial
17 condition and operations” and inserting
18 “regular reports on the condition (includ-
19 ing financial condition), management, ac-
20 tivities, or operations of the regulated enti-
21 ty, as the Director considers appropriate”;
22 and

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

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

3 “(c) REPORTS OF FRAUDULENT FINANCIAL TRANS-
4 ACTIONS.—

5 “(1) REQUIREMENT TO REPORT.—The Director
6 shall require a regulated entity to submit to the Di-
7 rector a timely report upon discovery by the regu-
8 lated entity that it has purchased or sold a fraudu-
9 lent loan or financial instrument or suspects a pos-
10 sible fraud relating to a purchase or sale of any loan
11 or financial instrument. The Director shall require
12 the regulated entities to establish and maintain pro-
13 cedures designed to discover any such transactions.

14 “(2) PROTECTION FROM LIABILITY FOR RE-
15 PORTS.—

16 “(A) IN GENERAL.—If a regulated entity
17 makes a report pursuant to paragraph (1), or
18 a regulated entity-affiliated party makes, or re-
19 quires another to make, such a report, and such
20 report is made in a good faith effort to comply
21 with the requirements of paragraph (1), such
22 regulated entity or regulated entity-affiliated
23 party shall not be liable to any person under
24 any law or regulation of the United States, any
25 constitution, law, or regulation of any State or

1 political subdivision of any State, or under any
2 contract or other legally enforceable agreement
3 (including any arbitration agreement), for such
4 report or for any failure to provide notice of
5 such report to the person who is the subject of
6 such report or any other person identified in
7 the report.

8 “(B) RULE OF CONSTRUCTION.—Subpara-
9 graph (A) shall not be construed as creating—

10 “(i) any inference that the term ‘per-
11 son’, as used in such subparagraph, may
12 be construed more broadly than its ordi-
13 nary usage so as to include any govern-
14 ment or agency of government; or

15 “(ii) any immunity against, or other-
16 wise affecting, any civil or criminal action
17 brought by any government or agency of
18 government to enforce any constitution,
19 law, or regulation of such government or
20 agency.”.

21 **SEC. 1015. DISCLOSURE OF INCOME AND CHARITABLE CON-**
22 **TRIBUTIONS BY ENTERPRISES.**

23 Section 1314 of the Housing and Community Devel-
24 opment Act of 1992 (12 U.S.C. 4514), as amended by

1 the preceding provisions of this title, is further amended
2 by adding at the end the following new subsections:

3 “(d) DISCLOSURE OF CHARITABLE CONTRIBUTIONS
4 BY ENTERPRISES.—

5 “(1) REQUIRED DISCLOSURE.—The Director
6 shall, by regulation, require each enterprise to sub-
7 mit a report annually, in a format designated by the
8 Director, containing the following information:

9 “(A) TOTAL VALUE.—The total value of
10 contributions made by the enterprise to non-
11 profit organizations during its previous fiscal
12 year.

13 “(B) SUBSTANTIAL CONTRIBUTIONS.—If
14 the value of contributions made by the enter-
15 prise to any nonprofit organization during its
16 previous fiscal year exceeds the designated
17 amount, the name of that organization and the
18 value of contributions.

19 “(C) SUBSTANTIAL CONTRIBUTIONS TO IN-
20 sider-affiliated charities.—Identification
21 of each contribution whose value exceeds the
22 designated amount that were made by the en-
23 terprise during the enterprise’s previous fiscal
24 year to any nonprofit organization of which a
25 director, officer, or controlling person of the en-

1 terprise, or a spouse thereof, was a director or
2 trustee, the name of such nonprofit organiza-
3 tion, and the value of the contribution.

4 “(2) DEFINITIONS.—For purposes of this sub-
5 section—

6 “(A) the term ‘designated amount’ means
7 such amount as may be designated by the Di-
8 rector by regulation, consistent with the public
9 interest and the protection of investors for pur-
10 poses of this subsection; and

11 “(B) the Director may, by such regulations
12 as the Director deems necessary or appropriate
13 in the public interest, define the terms officer
14 and controlling person.

15 “(3) PUBLIC AVAILABILITY.—The Director
16 shall make the information submitted pursuant to
17 this subsection publicly available.

18 “(e) DISCLOSURE OF INCOME.—Each enterprise
19 shall include, in each annual report filed under section 13
20 of the Securities Exchange Act of 1934 (15 U.S.C. 78m),
21 the income reported by the issuer to the Internal Revenue
22 Service for the most recent taxable year. Such income
23 shall—

24 “(1) be presented in a prominent location in
25 each such report and in a manner that permits a

1 ready comparison of such income to income other-
2 wise required to be included in such reports under
3 regulations issued under such section; and

4 “(2) be submitted to the Securities and Ex-
5 change Commission in a form and manner suitable
6 for entry into the EDGAR system of such Commis-
7 sion for public availability under such system.”.

8 **SEC. 1016. ASSESSMENTS.**

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

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

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

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

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

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

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

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

7 (2) in subsection (b)—

8 (A) in the subsection heading, by striking
9 “ENTERPRISES” and inserting “REGULATED
10 ENTITIES” ;

11 (B) by realigning paragraph (2) two ems
12 from the left margin, so as to align the left
13 margin of such paragraph with the left margins
14 of paragraph (1);

15 (C) in paragraph (1)—

16 (i) by striking “Each enterprise” and
17 inserting “Each regulated entity”;

18 (ii) by striking “each enterprise” and
19 inserting “each regulated entity”; and

20 (iii) by striking “both enterprises”
21 and inserting “all of the regulated enti-
22 ties”; and

23 (D) in paragraph (3)—

1 (i) in subparagraph (B), by striking
2 “subparagraph (A)” and inserting “clause
3 (i)”;

4 (ii) by redesignating subparagraphs
5 (A), (B), and (C) as clauses (i), (ii) and
6 (ii), respectively, and realigning such
7 clauses, as so redesignated, so as to be in-
8 dented 6 ems from the left margin;

9 (iii) by striking the matter that pre-
10 cedes clause (i), as so redesignated, and in-
11 sserting the following:

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

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

17 (iv) by adding at the end the following
18 new subparagraph:

19 “(B) FEDERAL HOME LOAN BANKS.—With
20 respect to a Federal home loan bank, the total
21 assets of the Bank, as determined by the Direc-
22 tor in accordance with generally accepted ac-
23 counting principles.”;

24 (3) by striking subsection (c) and inserting the
25 following new subsection:

1 “(c) INCREASED COSTS OF REGULATION.—

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

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

17 “(3) ADDITIONAL ASSESSMENT FOR DEFICI-
18 CIENCIES.—If at any time, as a result of increased
19 costs of regulation of a regulated entity that is not
20 classified (for purposes of subtitle B) as adequately
21 capitalized or as the result of supervisory or enforce-
22 ment activities under this Act for a regulated entity,
23 the amount available from any semiannual payment
24 made by such regulated entity pursuant to sub-
25 section (b) is insufficient to cover the costs of the

1 Agency with respect to such entity, the Director may
2 make and collect from such regulated entity an im-
3 mediate assessment to cover the amount of such de-
4 ficiency for the semiannual period. If, at the end of
5 any semiannual period during which such an assess-
6 ment is made, any amount remains from such as-
7 sessment, such remaining amount shall be deducted
8 from the assessment for such regulated entity for
9 the following semiannual period.”;

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

13 (5) by striking subsections (e) through (g) and
14 inserting the following new subsections:

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

22 “(f) TREATMENT OF ASSESSMENTS.—

23 “(1) DEPOSIT.—Amounts received by the Di-
24 rector from assessments under this section may be
25 deposited by the Director in the manner provided in

1 section 5234 of the Revised Statutes (12 U.S.C.
2 192) for monies deposited by the Comptroller of the
3 Currency.

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

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

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

20 “(5) AVAILABILITY OF OVERSIGHT FUND
21 AMOUNTS.—Notwithstanding any other provision of
22 law, any amounts remaining in the Federal Housing
23 Enterprises Oversight Fund established under this
24 section (as in effect before the effective date under
25 section 1065 of the Federal Housing Finance Re-

1 form Act of 2008), and any amounts remaining
2 from assessments on the Federal Home Loan banks
3 pursuant to section 18(b) of the Federal Home Loan
4 Bank Act (12 U.S.C. 1438(b)), shall, upon such ef-
5 fective date, be treated for purposes of this sub-
6 section as amounts received from assessments under
7 this section.

8 “(6) TREASURY INVESTMENTS.—

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

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

1 standing marketable obligations of the United
2 States of comparable maturity.

3 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

14 “(2) FINANCIAL STATEMENTS.—The Agency
15 shall prepare annually a statement of assets and li-
16 abilities and surplus or deficit; a statement of in-
17 come and expenses; and a statement of sources and
18 application of funds.

19 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
20 Agency shall implement and maintain financial man-
21 agement systems that comply substantially with
22 Federal financial management systems require-
23 ments, applicable Federal accounting standards, and
24 that uses a general ledger system that accounts for
25 activity at the transaction level.

1 “(4) ASSERTION OF INTERNAL CONTROLS.—
2 The Director shall provide to the Comptroller Gen-
3 eral an assertion as to the effectiveness of the inter-
4 nal controls that apply to financial reporting by the
5 Agency, using the standards established in section
6 3512(c) of title 31, United States Code.

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

16 “(h) AUDIT OF AGENCY.—

17 “(1) IN GENERAL.—The Comptroller General
18 shall annually audit the financial transactions of the
19 Agency in accordance with the U.S. generally accept-
20 ed government auditing standards as may be pre-
21 scribed by the Comptroller General of the United
22 States. The audit shall be conducted at the place or
23 places where accounts of the Agency are normally
24 kept. The representatives of the Government Ac-
25 countability Office shall have access to the personnel

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

21 “(2) REPORT.—The Comptroller General shall
22 submit to the Congress a report of each annual
23 audit conducted under this subsection. The report to
24 the Congress shall set forth the scope of the audit
25 and shall include the statement of assets and liabil-

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

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

1 and expenses of the Government Accountability Of-
2 fice, and such amount shall be available upon receipt
3 and without fiscal year limitation to cover the full
4 costs of the audit and report.”.

5 **SEC. 1017. EXAMINERS AND ACCOUNTANTS.**

6 (a) EXAMINATIONS.—Section 1317 of the Housing
7 and Community Development Act of 1992 (12 U.S.C.
8 4517) is amended—

9 (1) in subsection (a), by adding after the period
10 at the end the following: “Each examination under
11 this subsection of a regulated entity shall include a
12 review of the procedures required to be established
13 and maintained by the regulated entity pursuant to
14 section 1314(c) (relating to fraudulent financial
15 transactions) and the report regarding each such ex-
16 amination shall describe any problems with such
17 procedures maintained by the regulated entity.”;

18 (2) in subsection (b)—

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

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

25 (3) in subsection (c)—

1 (A) in the second sentence, by inserting
2 “to conduct examinations under this section”
3 before the period; and

4 (B) in the third sentence, by striking
5 “from amounts available in the Federal Hous-
6 ing Enterprises Oversight Fund”.

7 (b) ENHANCED AUTHORITY TO HIRE EXAMINERS
8 AND ACCOUNTANTS.—Section 1317 of the Housing and
9 Community Development Act of 1992 (12 U.S.C. 4517)
10 is amended by adding at the end the following new sub-
11 section:

12 “(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
13 SPECIALISTS, AND EXAMINERS.—

14 “(1) APPLICABILITY.—This section applies with
15 respect to any position of examiner, accountant, spe-
16 cialist in financial markets, specialist in information
17 technology, and economist at the Agency, with re-
18 spect to supervision and regulation of the regulated
19 entities, that is in the competitive service.

20 “(2) APPOINTMENT AUTHORITY.—The Director
21 may appoint candidates to any position described in
22 paragraph (1)—

23 “(A) in accordance with the statutes, rules,
24 and regulations governing appointments in the
25 excepted service; and

1 “(B) notwithstanding any statutes, rules,
2 and regulations governing appointments in the
3 competitive service.

4 “(3) RULE OF CONSTRUCTION.—The appoint-
5 ment of a candidate to a position under the author-
6 ity of this subsection shall not be considered to
7 cause such position to be converted from the com-
8 petitive service to the excepted service.”.

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

11 (1) by striking the section heading and insert-
12 ing the following: “EXAMINATIONS AND GAO AU-
13 DITS”;

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

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

1 **SEC. 1018. PROHIBITION AND WITHHOLDING OF EXECU-**
2 **TIVE COMPENSATION.**

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

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

9 (2) by redesignating subsection (b) as sub-
10 section (d); and

11 (3) by inserting after subsection (a) the fol-
12 lowing new subsections:

13 “(b) FACTORS.—In making any determination under
14 subsection (a), the Director may take into consideration
15 any factors the Director considers relevant, including any
16 wrongdoing on the part of the executive officer, and such
17 wrongdoing shall include any fraudulent act or omission,
18 breach of trust or fiduciary duty, violation of law, rule,
19 regulation, order, or written agreement, and insider abuse
20 with respect to the regulated entity. The approval of an
21 agreement or contract pursuant to section 309(d)(3)(B)
22 of the Federal National Mortgage Association Charter Act
23 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the
24 Federal Home Loan Mortgage Corporation Act (12 U.S.C.
25 1452(h)(2)) shall not preclude the Director from making
26 any subsequent determination under subsection (a).

1 “(c) WITHHOLDING OF COMPENSATION.—In car-
2 rying out subsection (a), the Director may require a regu-
3 lated entity to withhold any payment, transfer, or dis-
4 bursement of compensation to an executive officer, or to
5 place such compensation in an escrow account, during the
6 review of the reasonableness and comparability of com-
7 pensation.”.

8 (b) CONFORMING AMENDMENTS.—

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

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

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

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

9 (3) FEDERAL HOME LOAN BANKS.—Section 7
10 of the Federal Home Loan Bank Act (12 U.S.C.
11 1427) is amended by adding at the end the following
12 new subsection:

13 “(1) WITHHOLDING OF COMPENSATION.—Notwith-
14 standing any other provision of this section, a Federal
15 home loan bank shall not transfer, disburse, or pay com-
16 pensation to any executive officer, or enter into an agree-
17 ment with such executive officer, without the approval of
18 the Director, for matters being reviewed under section
19 1318 of the Federal Housing Enterprises Financial Safety
20 and Soundness Act of 1992 (12 U.S.C. 4518).”.

21 **SEC. 1019. REVIEWS OF REGULATED ENTITIES.**

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

24 (1) by striking the section designation and
25 heading and inserting the following:

1 **“SEC. 1319. REVIEWS OF REGULATED ENTITIES.”;**

2 and

3 (2) by striking “is a nationally recognized” and
4 all that follows through “1934” and inserting the
5 following: “the Director considers appropriate, in-
6 cluding an entity that is registered under section 15
7 of the Securities Exchange Act of 1934 (15 U.S.C.
8 78a) as a nationally registered statistical rating or-
9 ganization”.

10 **SEC. 1020. REGULATIONS AND ORDERS.**

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

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

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

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

23 (3) by striking subsection (c).

1 **SEC. 1021. NON-WAIVER OF PRIVILEGES.**

2 Part 1 of subtitle A of title XIII of the Housing and
3 Community Development Act of 1992 (12 U.S.C. 4511)
4 is amended by adding at the end the following new section:

5 **“SEC. 1319H. PRIVILEGES NOT AFFECTED BY DISCLOSURE.**

6 “(a) IN GENERAL.—The submission by any person
7 of any information to the Agency for any purpose in the
8 course of any supervisory or regulatory process of the
9 Agency shall not be construed as waiving, destroying, or
10 otherwise affecting any privilege such person may claim
11 with respect to such information under Federal or State
12 law as to any person or entity other than the Agency.

13 “(b) RULE OF CONSTRUCTION.—No provision of sub-
14 section (a) may be construed as implying or establishing
15 that—

16 “(1) any person waives any privilege applicable
17 to information that is submitted or transferred
18 under any circumstance to which subsection (a) does
19 not apply; or

20 “(2) any person would waive any privilege ap-
21 plicable to any information by submitting the infor-
22 mation to the Agency, but for this subsection.”.

23 **SEC. 1022. RISK-BASED CAPITAL REQUIREMENTS.**

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

1 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**
2 **ENTITIES.**

3 “(a) IN GENERAL.—

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

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

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

20 “(1) maintain the confidentiality of the book,
21 record, or information in a manner that is generally
22 consistent with the level of confidentiality established
23 for the material by the Director or the regulated en-
24 tity; and

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

4 “(c) NO LIMITATION.—Nothing in this section shall
5 limit the authority of the Director to require other reports
6 or undertakings, or take other action, in furtherance of
7 the responsibilities of the Director under this Act.”.

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

11 (1) by striking subparagraph (A) and inserting
12 the following new subparagraph:

13 “(A) RISK-BASED CAPITAL STANDARDS.—
14 The Director shall, by regulation, establish risk-
15 based capital standards for the Federal home
16 loan banks to ensure that the Federal home
17 loan banks operate in a safe and sound manner,
18 with sufficient permanent capital and reserves
19 to support the risks that arise in the operations
20 and management of the Federal home loans
21 banks.”; and

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

1 **SEC. 1023. MINIMUM AND CRITICAL CAPITAL LEVELS.**

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

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

7 (2) by striking subsection (b) and inserting the
8 following new subsections:

9 “(b) **FEDERAL HOME LOAN BANKS.**—For purposes
10 of this subtitle, the minimum capital level for each Federal
11 home loan bank shall be the minimum capital required to
12 be maintained to comply with the leverage requirement for
13 the bank established under section 6(a)(2) of the Federal
14 Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

15 “(c) **ESTABLISHMENT OF REVISED MINIMUM CAP-**
16 **ITAL LEVELS.**—Notwithstanding subsections (a) and (b)
17 and notwithstanding the capital classifications of the regu-
18 lated entities, the Director may, by regulations issued
19 under section 1319G, establish a minimum capital level
20 for the enterprises, for the Federal home loan banks, or
21 for both the enterprises and the banks, that is higher than
22 the level specified in subsection (a) for the enterprises or
23 the level specified in subsection (b) for the Federal home
24 loan banks, to the extent needed to ensure that the regu-
25 lated entities operate in a safe and sound manner.

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

8 “(1) makes any determination specified in sub-
9 paragraphs (A) through (C) of section 1364(c)(1);

10 “(2) determines that the regulated entity has
11 violated any of the prudential standards established
12 pursuant to section 1313A and, as a result of such
13 violation, determines that an unsafe and unsound
14 condition exists; or

15 “(3) determines that an unsafe and unsound
16 condition exists, except that a temporary increase in
17 minimum capital imposed on a regulated entity pur-
18 suant to this paragraph shall not remain in place for
19 a period of more than 6 months unless the Director
20 makes a renewed determination of the existence of
21 an unsafe and unsound condition.

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

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

7 “(f) PERIODIC REVIEW.—The Director shall periodi-
8 cally review the amount of core capital maintained by the
9 enterprises, the amount of capital retained by the Federal
10 home loan banks, and the minimum capital levels estab-
11 lished for such regulated entities pursuant to this section.
12 The Director shall rescind any temporary minimum cap-
13 ital level increase if the Director determines that the cir-
14 cumstances or facts justifying the temporary increase are
15 no longer present.”.

16 (b) CRITICAL CAPITAL LEVELS.—

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

20 (A) by striking “For” and inserting “(a)
21 ENTERPRISES.—FOR”; and

22 (B) by adding at the end the following new
23 subsection:

24 “(b) FEDERAL HOME LOAN BANKS.—

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

5 “(2) CONSIDERATION OF OTHER CRITICAL CAP-
6 ITAL LEVELS.—In establishing the critical capital
7 level under paragraph (1) for the Federal home loan
8 banks, the Director shall take due consideration of
9 the critical capital level established under subsection
10 (a) for the enterprises, with such modifications as
11 the Director determines to be appropriate to reflect
12 the difference in operations between the banks and
13 the enterprises.”.

14 (2) REGULATIONS.—Not later than the expira-
15 tion of the 180-day period beginning on the effective
16 date under section 1065, the Director of the Federal
17 Housing Finance Agency shall issue regulations pur-
18 suant to section 1363(b) of the Housing and Com-
19 munity Development Act of 1992 (as added by para-
20 graph (1) of this subsection) establishing the critical
21 capital level under such section.

1 **SEC. 1024. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
2 **ASSETS AND LIABILITIES.**

3 (a) IN GENERAL.—Subtitle B of title XIII of the
4 Housing and Community Development Act of 1992 (12
5 U.S.C. 4611 et seq.) is amended—

6 (1) by striking the subtitle designation and
7 heading and inserting the following:

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

13 and

14 (2) by adding at the end the following new sec-
15 tion:

16 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**
17 **ITIES.**

18 “(a) IN GENERAL.—The Director shall, by regula-
19 tion, establish standards by which the portfolio holdings,
20 or rate of growth of the portfolio holdings, of the enter-
21 prises will be deemed to be consistent with the mission
22 and the safe and sound operations of the enterprises. In
23 developing such standards, the Director shall consider—

24 “(1) the size or growth of the mortgage market;

25 “(2) the need for the portfolio in maintaining li-
26 quidity or stability of the secondary mortgage mar-

1 ket (including the market for the mortgage-backed
2 securities the enterprises issue);

3 “(3) the need for an inventory of mortgages in
4 connection with securitizations;

5 “(4) the need for the portfolio to directly sup-
6 port the affordable housing mission of the enter-
7 prises;

8 “(5) the liquidity needs of the enterprises;

9 “(6) any potential risks posed to the enterprises
10 by the nature of the portfolio holdings; and

11 “(7) any additional factors that the Director
12 determines to be necessary to carry out the purpose
13 under the first sentence of this subsection to estab-
14 lish standards for assessing whether the portfolio
15 holdings are consistent with the mission and safe
16 and sound operations of the enterprises.

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

22 “(c) AUTHORITY TO REQUIRE DISPOSITION OR AC-
23 QUISSION.—The Director shall monitor the portfolio of
24 each enterprise. Pursuant to subsection (a) and notwith-
25 standing the capital classifications of the enterprises, the

1 Director may, by order, require an enterprise, under such
2 terms and conditions as the Director determines to be ap-
3 propriate, to dispose of or acquire any asset, if the Direc-
4 tor determines that such action is consistent with the pur-
5 poses of this Act or any of the authorizing statutes.”.

6 (b) REGULATIONS.—Not later than the expiration of
7 the 180-day period beginning on the effective date under
8 section 1065, the Director of the Federal Housing Fi-
9 nance Agency shall issue regulations pursuant to section
10 1369E(a) of the Housing and Community Development
11 Act of 1992 (as added by subsection (a) of this section)
12 establishing the portfolio holdings standards under such
13 section.

14 **SEC. 1025. CORPORATE GOVERNANCE OF ENTERPRISES.**

15 The Housing and Community Development Act of
16 1992 is amended by inserting before section 1323 (12
17 U.S.C. 4543) the following new section:

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

19 “(a) BOARD OF DIRECTORS.—

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

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

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

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

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

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

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

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

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

10 “(A) Audit committee.

11 “(B) Compensation committee.

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

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

22 “(c) COMPENSATION.—

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

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

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

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

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

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

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

1 “(d) CODE OF CONDUCT AND ETHICS.—

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

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

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

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

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

9 “(3) Compensation programs of the enterprise.

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

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

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

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

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

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

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

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

19 “(i) COMPLIANCE PROGRAM.—

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

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

12 “(j) RISK MANAGEMENT PROGRAM.—

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

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

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

4 “(k) COMPLIANCE WITH OTHER LAWS.—

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

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

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

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

16 **SEC. 1026. REQUIRED REGISTRATION UNDER SECURITIES**
17 **EXCHANGE ACT OF 1934.**

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

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

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

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

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

7 **SEC. 1027. LIAISON WITH FINANCIAL INSTITUTIONS EXAM-**
8 **INATION COUNCIL.**

9 Section 1007 of the Federal Financial Institutions
10 Examination Council Act of 1978 (12 U.S.C. 3306) is
11 amended—

12 (1) in the section heading, by inserting after
13 “STATE” the following: “AND FEDERAL HOUSING FI-
14 NANCE AGENCY”; and

15 (2) by inserting after “financial institutions”
16 the following: “, and one representative of the Fed-
17 eral Housing Finance Agency,”.

18 **SEC. 1028. GUARANTEE FEE STUDY.**

19 (a) IN GENERAL.—The Director of the Federal
20 Housing Finance Agency, in consultation with the heads
21 of the federal banking agencies, shall, not later than 18
22 months after the date of the enactment of this Act, submit
23 to the Congress a study concerning the pricing, trans-
24 parency and reporting of the Federal National Mortgage
25 Association, the Federal Home Loan Mortgage Corpora-

1 tion, and the Federal home loan banks with regard to
2 guarantee fees and concerning analogous practices, trans-
3 parency and reporting requirements (including advances
4 pricing practices by the Federal Home Loan Banks) of
5 other participants in the business of mortgage purchases
6 and securitization.

7 (b) FACTORS.—The study required by this section
8 shall examine various factors such as credit risk,
9 counterparty risk considerations, economic value consider-
10 ations, and volume considerations used by the regulated
11 entities (as such term is defined in section 1303 of the
12 Housing and Community Development Act of 1992) in-
13 cluded in the study in setting the amount of fees they
14 charge.

15 (c) CONTENTS OF REPORT.—The report required
16 under subsection (a) shall identify and analyze—

17 (1) the factors used by each enterprise (as such
18 term is defined in section 1303 of the Housing and
19 Community Development Act of 1992) in deter-
20 mining the amount of the guarantee fees it charges;

21 (2) the total revenue the enterprises earn from
22 guarantee fees;

23 (3) the total costs incurred by the enterprises
24 for providing guarantees;

1 (4) the average guarantee fee charged by the
2 enterprises;

3 (5) an analysis of how and why the guarantee
4 fees charged differ from such fees charged during
5 the previous year;

6 (6) a breakdown of the revenue and costs asso-
7 ciated with providing guarantees, based on product
8 type and risk classifications; and

9 (7) other relevant information on guarantee
10 fees with other participants in the mortgage and
11 securitization business.

12 (d) PROTECTION OF INFORMATION.—Nothing in this
13 section may be construed to require or authorize the Di-
14 rector of the Federal Housing Finance Agency, in connec-
15 tion with the study mandated by this section, to disclose
16 information of the enterprises or other organization that
17 is confidential or proprietary.

18 (e) EFFECTIVE DATE.—This section shall take effect
19 on the date of the enactment of this Act.

20 **SEC. 1029. CONFORMING AMENDMENTS.**

21 (a) 1992 ACT.—Part 1 of subtitle A of title XIII of
22 the Housing and Community Development Act of 1992
23 (12 U.S.C. 4511 et seq.), as amended by the preceding
24 provisions of this title, is further amended—

1 (1) by striking “an enterprise” each place such
2 term appears in such part (except in sections
3 1313(a)(2)(A), 1313A(b)(2)(B)(ii)(I), and
4 1316(b)(3)) and inserting “a regulated entity”;

5 (2) by striking “the enterprise” each place such
6 term appears in such part (except in section
7 1316(b)(3)) and inserting “the regulated entity”;

8 (3) by striking “the enterprises” each place
9 such term appears in such part (except in sections
10 1312(e)(2), and 1312(e)(2)) and inserting “the reg-
11 ulated entities”;

12 (4) by striking “each enterprise” each place
13 such term appears in such part and inserting “each
14 regulated entity”;

15 (5) by striking “Office” each place such term
16 appears in such part (except in sections 1311(b)(2),
17 1312(b)(5), 1315(b), and 1316(a)(4), (g), and (h),
18 1317(c), and 1319A(a)) and inserting “Agency”;

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

20 (A) in subsection (a)—

21 (i) in the subsection heading, by strik-
22 ing “OFFICE PERSONNEL” and inserting
23 “IN GENERAL”; and

1 (ii) by striking “The” and inserting
2 “Subject to title III of the Federal Hous-
3 ing Finance Reform Act of 2008, the”;

4 (B) by striking subsections (d) and (f);

5 and

6 (C) by redesignating subsection (e) as sub-
7 section (d);

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

12 (8) in section 1319F (12 U.S.C. 4525), striking
13 all that follows “United States Code” and inserting
14 “, the Agency shall be considered an agency respon-
15 sible for the regulation or supervision of financial in-
16 stitutions.”.

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

18 The Federal National Mortgage Association Charter Act
19 (12 U.S.C. 1716 et seq.) is amended—

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

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

3 (B) section 309(d)(3)(B) (12 U.S.C.
4 1723a(d)(3)(B)); and

5 (C) section 309(k)(1); and
6 (2) in section 309—

7 (A) in subsections (d)(3)(A) and (n)(1), by
8 striking “Banking, Finance and Urban Affairs”
9 each place such term appears and inserting
10 “Financial Services”; and

11 (B) in subsection (m)—

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

15 (ii) in paragraph (2), by striking
16 “Secretary” the second place such term
17 appears and inserting “Director”; and

18 (iii) by striking “Secretary” each
19 other place such term appears and insert-
20 ing “Director of the Federal Housing Fi-
21 nance Agency”; and

22 (C) in subsection (n), by striking “Sec-
23 retary” each place such term appears and in-
24 serting “Director of the Federal Housing Fi-
25 nance Agency”.

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

3 (1) by striking “Director of the Office of Fed-
4 eral Housing Enterprise Oversight of the Depart-
5 ment of Housing and Urban Development” each
6 place such term appears, and inserting “Director of
7 the Federal Housing Finance Agency”, in—

8 (A) section 303(b)(2) (12 U.S.C.
9 1452(b)(2));

10 (B) section 303(h)(2) (12 U.S.C.
11 1452(h)(2)); and

12 (C) section 307(c)(1) (12 U.S.C.
13 1456(c)(1));

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

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

19 (A) by striking “1316(c)” and inserting
20 “306(c)”; and

21 (B) by striking “section 106” and insert-
22 ing “section 1316”; and

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

24 (A) in subsection (e)—

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

4 (ii) in paragraph (2), by striking
5 “Secretary” the second place such term
6 appears and inserting “Director”; and

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

11 (B) in subsection (f), by striking “Sec-
12 retary” each place such term appears and in-
13 serting “Director of the Federal Housing Fi-
14 nance Agency”.

15 **CHAPTER 2—IMPROVEMENT OF MISSION**
16 **SUPERVISION**

17 **SEC. 1031. TRANSFER OF PRODUCT APPROVAL AND HOUS-**
18 **ING GOAL OVERSIGHT.**

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

22 (1) by striking the designation and heading for
23 the part and inserting the following:

1 **“PART 2—PRODUCT APPROVAL BY DIRECTOR,**
2 **CORPORATE GOVERNANCE, AND ESTABLISH-**
3 **MENT OF HOUSING GOALS”;**

4 and

5 (2) by striking sections 1321 and 1322.

6 **SEC. 1032. REVIEW OF ENTERPRISE PRODUCTS.**

7 (a) IN GENERAL.—Part 2 of subtitle A of title XIII
8 of the Housing and Community Development Act of 1992
9 is amended by inserting before section 1323 (12 U.S.C.
10 4543) the following new section:

11 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS**
12 **OF ENTERPRISES.**

13 “(a) IN GENERAL.—The Director shall require each
14 enterprise to obtain the approval of the Director for any
15 product of the enterprise before initially offering the prod-
16 uct.

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

20 “(1) in the case of a product of the Federal Na-
21 tional Mortgage Association, the Director determines
22 that the product is authorized under paragraph (2),
23 (3), (4), or (5) of section 302(b) or section 304 of
24 the Federal National Mortgage Association Charter
25 Act, (12 U.S.C. 1717(b), 1719);

1 “(2) in the case of a product of the Federal
2 Home Loan Mortgage Corporation, the Director de-
3 termines that the product is authorized under para-
4 graph (1), (4), or (5) of section 305(a) of the Fed-
5 eral Home Loan Mortgage Corporation Act (12
6 U.S.C. 1454(a));

7 “(3) the product is in the public interest;

8 “(4) the product is consistent with the safety
9 and soundness of the enterprise or the mortgage fi-
10 nance system; and

11 “(5) the product does not materially impair the
12 efficiency of the mortgage finance system.

13 “(c) PROCEDURE FOR APPROVAL.—

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

19 “(2) REQUEST FOR PUBLIC COMMENT.—Imme-
20 diately upon receipt of a request for approval of a
21 product, as required under paragraph (1), the Direc-
22 tor shall publish notice of such request and of the
23 period for public comment pursuant to paragraph
24 (3) regarding the product, and a description of the
25 product proposed by the request. The Director shall

1 give interested parties the opportunity to respond in
2 writing to the proposed product.

3 “(3) PUBLIC COMMENT PERIOD.—During the
4 30-day period beginning on the date of publication
5 pursuant to paragraph (2) of a request for approval
6 of a product, the Director shall receive public com-
7 ments regarding the proposed product.

8 “(4) OFFERING OF PRODUCT.—

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

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

18 “(d) EXPEDITED REVIEW.—

19 “(1) DETERMINATION AND NOTICE.—If an en-
20 terprise determines that any new activity, service,
21 undertaking, or offering is not a product, as defined
22 in subsection (f), the enterprise shall provide written
23 notice to the Director prior to the commencement of
24 such activity, service, undertaking, or offering.

1 “(2) DIRECTOR DETERMINATION OF APPLICA-
2 BLE PROCEDURE.—Immediately upon receipt of any
3 notice pursuant to paragraph (1), the Director shall
4 make a determination under paragraph (3).

5 “(3) DETERMINATION AND TREATMENT AS
6 PRODUCT.—If the Director determines that any new
7 activity, service, undertaking, or offering consists of,
8 relates to, or involves a product—

9 “(A) the Director shall notify the enter-
10 prise of the determination;

11 “(B) the new activity, service, undertaking,
12 or offering described in the notice under para-
13 graph (1) shall be considered a product for pur-
14 poses of this section; and

15 “(C) the enterprise shall withdraw its re-
16 quest or submit a written request for approval
17 of the product pursuant to subsection (e).

18 “(e) CONDITIONAL APPROVAL.—The Director may
19 conditionally approve the offering of any product by an
20 enterprise, and may establish terms, conditions, or limita-
21 tions with respect to such product with which the enter-
22 prise must comply in order to offer such product.

23 “(f) DEFINITION OF PRODUCT.—For purposes of
24 this section, the term ‘product’ does not include—

1 “(1) the automated loan underwriting system of
2 an enterprise in existence as of the date of the en-
3 actment of the Federal Housing Finance Reform
4 Act of 2008, including any upgrade to the tech-
5 nology, operating system, or software to operate the
6 underwriting system; or

7 “(2) any modification to the mortgage terms
8 and conditions or mortgage underwriting criteria re-
9 lating to the mortgages that are purchased or guar-
10 anteed by an enterprise: *Provided*, That such modi-
11 fications do not alter the underlying transaction so
12 as to include services or financing, other than resi-
13 dential mortgage financing, or create significant new
14 exposure to risk for the enterprise or the holder of
15 the mortgage.

16 “(g) NO LIMITATION.—Nothing in this section shall
17 be deemed to restrict—

18 “(1) the safety and soundness authority of the
19 Director over all new and existing products or activi-
20 ties; or

21 “(2) the authority of the Director to review all
22 new and existing products or activities to determine
23 that such products or activities are consistent with
24 the statutory mission of the enterprise.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) FANNIE MAE.—Section 302(b)(6) of the
2 Federal National Mortgage Association Charter Act
3 (12 U.S.C. 1717(b)(6)) is amended—

4 (A) by striking “implement any new pro-
5 gram” and inserting “initially offer any prod-
6 uct”;

7 (B) by striking “section 1303” and insert-
8 ing “section 1321(f)”; and

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

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

16 (A) by striking “implement any new pro-
17 gram” and inserting “initially offer any prod-
18 uct”;

19 (B) by striking “section 1303” and insert-
20 ing “section 1321(f)”; and

21 (C) by striking “before obtaining the ap-
22 proval of the Secretary under section 1322”
23 and inserting “except in accordance with sec-
24 tion 1321”.

1 (3) 1992 ACT.—Section 1303 of the Housing
2 and Community Development Act of 1992 (12
3 U.S.C. 4502), as amended by section 1002 of this
4 title, is further amended—

5 (A) by striking paragraph (17) (relating to
6 the definition of “new program”); and

7 (B) by redesignating paragraphs (18)
8 through (23) as paragraphs (17) through (22),
9 respectively.

10 **SEC. 1033. CONFORMING LOAN LIMITS.**

11 (a) FANNIE MAE.—

12 (1) GENERAL LIMIT.—Section 302(b)(2) of the
13 Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1717(b)(2)) is amended—

15 (A) in the 4th sentence, by striking “the
16 Resolution Trust Corporation,”; and

17 (B) by striking the 7th and 8th sentences
18 and inserting the following new sentences: “For
19 2008, such limitations shall not exceed
20 \$417,000 for a mortgage secured by a single-
21 family residence, \$533,850 for a mortgage se-
22 cured by a 2-family residence, \$645,300 for a
23 mortgage secured by a 3-family residence, and
24 \$801,950 for a mortgage secured by a 4-family
25 residence, except that such maximum limita-

1 tions shall be adjusted effective January 1 of
2 each year beginning with 2009, subject to the
3 limitations in this paragraph. Each adjustment
4 shall be made by adding to or subtracting from
5 each such amount (as it may have been pre-
6 viously adjusted) a percentage thereof equal to
7 the percentage increase or decrease, during the
8 most recent 12-month or four-quarter period
9 ending before the time of determining such an-
10 nual adjustment, in the housing price index
11 maintained by the Director of the Federal
12 Housing Finance Agency (pursuant to section
13 1322 of the Housing and Community Develop-
14 ment Act of 1992 (12 U.S.C. 4541)).”.

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

1 area for such size residence, except that, subject to
2 the order, if any, issued by the Director of the Fed-
3 eral Housing Finance Agency pursuant to section
4 1033(d)(3) of the Federal Housing Finance Reform
5 Act of 2008, such increase shall apply only with re-
6 spect to mortgages on which are based securities
7 issued and sold by the corporation.”.

8 (b) FREDDIE MAC.—

9 (1) GENERAL LIMIT.—Section 305(a)(2) of the
10 Federal Home Loan Mortgage Corporation Act (12
11 U.S.C. 1454(a)(2)) is amended—

12 (A) in the 3rd sentence, by striking “the
13 Resolution Trust Corporation,”; and

14 (B) by striking the 6th and 7th sentences
15 and inserting the following new sentences: “For
16 2008, such limitations shall not exceed
17 \$417,000 for a mortgage secured by a single-
18 family residence, \$533,850 for a mortgage se-
19 cured by a 2-family residence, \$645,300 for a
20 mortgage secured by a 3-family residence, and
21 \$801,950 for a mortgage secured by a 4-family
22 residence, except that such maximum limita-
23 tions shall be adjusted effective January 1 of
24 each year beginning with 2009, subject to the
25 limitations in this paragraph. Each adjustment

1 shall be made by adding to or subtracting from
2 each such amount (as it may have been pre-
3 viously adjusted) a percentage thereof equal to
4 the percentage increase or decrease, during the
5 most recent 12-month or four-quarter period
6 ending before the time of determining such an-
7 nual adjustment, in the housing price index
8 maintained by the Director of the Federal
9 Housing Finance Agency (pursuant to section
10 1322 of the Housing and Community Develop-
11 ment Act of 1992 (12 U.S.C. 4541)).”

12 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)
13 of the Federal Home Loan Mortgage Corporation
14 Act is amended by adding after the period at the
15 end the following: “Such foregoing limitations shall
16 also be increased with respect to properties of a par-
17 ticular size located in any area for which the median
18 price for such size residence exceeds the foregoing
19 limitation for such size residence, to the lesser of
20 150 percent of such foregoing limitation for such
21 size residence or the amount that is equal to the me-
22 dian price in such area for such size residence, ex-
23 cept that, subject to the order, if any, issued by the
24 Director of the Federal Housing Finance Agency
25 pursuant to section 1033(d)(3) of the Federal Hous-

1 ing Finance Reform Act of 2008, such increase shall
2 apply only with respect to mortgages on which are
3 based securities issued and sold by the Corpora-
4 tion.”.

5 (c) HOUSING PRICE INDEX.—Subpart A of part 2 of
6 subtitle A of title XIII of the Housing and Community
7 Development Act of 1992 (as amended by the preceding
8 provisions of this title) is amended by inserting after sec-
9 tion 1321 (as added by section 1032 of this title) the fol-
10 lowing new section:

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

12 “(a) IN GENERAL.—The Director shall establish and
13 maintain a method of assessing the national average 1-
14 family house price for use for adjusting the conforming
15 loan limitations of the enterprises. In establishing such
16 method, the Director shall take into consideration the
17 monthly survey of all major lenders conducted by the Fed-
18 eral Housing Finance Agency to determine the national
19 average 1-family house price, the House Price Index main-
20 tained by the Office of Federal Housing Enterprise Over-
21 sight of the Department of Housing and Urban Develop-
22 ment before the effective date under section 1065 of the
23 Federal Housing Finance Reform Act of 2008, any appro-
24 priate house price indexes of the Bureau of the Census

1 of the Department of Commerce, and any other indexes
2 or measures that the Director considers appropriate.

3 “(b) GAO AUDIT.—

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

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

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

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

24 “(3) REPORT.—Within 30 days of the comple-
25 tion of any audit conducted under this subsection,

1 the Comptroller General shall submit a report detail-
2 ing the results and conclusions of the audit to the
3 Director, the Committee on Financial Services of the
4 House of Representatives, and the Committee on
5 Banking, Housing, and Urban Affairs of the Sen-
6 ate.”.

7 (d) CONDITIONS ON CONFORMING LOAN LIMIT FOR
8 HIGH-COST AREAS.—

9 (1) STUDY.—The Director of the Federal
10 Housing Finance Agency shall conduct a study
11 under this subsection during the six-month period
12 beginning on the effective date under section 1065
13 of this title.

14 (2) ISSUES.—The study under this subsection
15 shall determine—

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

1 the amendments made by subsections (a)(2)
2 and (b)(2) of this section) would have on the
3 cost to borrowers for mortgages on housing in
4 such high-cost areas;

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

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

13 (3) DETERMINATION.—

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

1 (b)(2) of this section) will result in an increase
2 in the cost to borrowers for mortgages on hous-
3 ing in such high-cost areas.

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

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

14 (A) a report that—

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

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

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

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

24 (5) DEFINITION.—For purposes of this sub-
25 section, the term “conforming loan limits for high-

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

8 **SEC. 1034. ANNUAL HOUSING REPORT REGARDING REGU-**
9 **LATED ENTITIES.**

10 (a) IN GENERAL.—The Housing and Community De-
11 velopment Act of 1992 is amended by striking section
12 1324 (12 U.S.C. 4544) and inserting the following new
13 section:

14 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**
15 **LATED ENTITIES.**

16 “(a) IN GENERAL.—After reviewing and analyzing
17 the reports submitted under section 309(n) of the Federal
18 National Mortgage Association Charter Act, section
19 307(f) of the Federal Home Loan Mortgage Corporation
20 Act, and section 10(j)(11) of the Federal Home Loan
21 Bank Act (12 U.S.C. 1430(j)(11)), the Director shall sub-
22 mit a report, not later than October 30 of each year, to
23 the Committee on Financial Services of the House of Rep-
24 resentatives and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate, on the activities of each regu-
2 lated entity.

3 “(b) CONTENTS.—The report shall—

4 “(1) discuss the extent to which—

5 “(A) each enterprise is achieving the an-
6 nual housing goals established under subpart B
7 of this part;

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

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

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

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

21 “(4) examine actions that—

22 “(A) each enterprise has undertaken or
23 could undertake to promote and expand the an-
24 nual goals established under subpart B and the

1 purposes of the enterprise established by law;
2 and

3 “(B) each Federal home loan bank has
4 taken or could undertake to promote and ex-
5 pand the community investment program and
6 affordable housing program of the bank estab-
7 lished under subsections (i) and (j) of section
8 10 of the Federal Home Loan Bank Act;

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

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

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

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

19 “(6) examine actions each regulated entity has
20 undertaken and could undertake to promote and ex-
21 pand opportunities for first-time homebuyers, includ-
22 ing the use of alternative credit scoring;

23 “(7) describe any actions taken under section
24 1325(5) with respect to originators found to violate
25 fair lending procedures;

1 “(8) discuss and analyze existing conditions and
2 trends, including conditions and trends relating to
3 pricing, in the housing markets and mortgage mar-
4 kets; and

5 “(9) identify the extent to which each enter-
6 prise is involved in mortgage purchases and sec-
7 ondary market activities involving subprime loans
8 (as identified in accordance with the regulations
9 issued pursuant to section 1034(b) of the Federal
10 Housing Finance Reform Act of 2008) and compare
11 the characteristics of subprime loans purchased and
12 securitized by the enterprises to other loans pur-
13 chased and securitized by the enterprises.

14 “(c) DATA COLLECTION AND REPORTING.—

15 “(1) IN GENERAL.—To assist the Director in
16 analyzing the matters described in subsection (b)
17 and establishing the methodology described in sec-
18 tion 1322, the Director shall conduct, on a monthly
19 basis, a survey of mortgage markets in accordance
20 with this subsection.

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

24 “(A) the characteristics of individual mort-
25 gages that are eligible for purchase by the en-

1 terprises and the characteristics of individual
2 mortgages that are not eligible for purchase by
3 the enterprises including, in both cases, infor-
4 mation concerning—

5 “(i) the price of the house that se-
6 cures the mortgage;

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

10 “(iii) the terms of the mortgage;

11 “(iv) the creditworthiness of the bor-
12 rower or borrowers; and

13 “(v) whether the mortgage, in the
14 case of a conforming mortgage, was pur-
15 chased by an enterprise; and

16 “(B) such other matters as the Director
17 determines to be appropriate.

18 “(3) PUBLIC AVAILABILITY.—The Director
19 shall make any data collected by the Director in con-
20 nection with the conduct of a monthly survey avail-
21 able to the public in a timely manner, provided that
22 the Director may modify the data released to the
23 public to ensure that the data is not released in an
24 identifiable form.

1 inventory, and the changes in such levels, in communities
2 throughout the United States.

3 “(b) CONTENTS.—The annual study under this sec-
4 tion shall determine, for the United States, each State,
5 and each community within each State—

6 “(1) the level of affordable housing inventory,
7 including affordable rental dwelling units and afford-
8 able homeownership dwelling units;

9 “(2) any changes to the level of such inventory
10 during the 12-month period of the study under this
11 section, including—

12 “(A) any additions to such inventory,
13 disaggregated by the category of such additions
14 (including new construction or housing conver-
15 sion);

16 “(B) any subtractions from such inventory,
17 disaggregated by the category of such subtrac-
18 tions (including abandonment, demolition, or
19 upgrade to market-rate housing);

20 “(C) the number of new affordable dwell-
21 ing units placed in service; and

22 “(D) the number of affordable housing
23 dwelling units withdrawn from service;

24 “(3) the types of financing used to build any
25 dwelling units added to such inventory level and the

1 period during which such units are required to re-
2 main affordable;

3 “(4) any excess demand for affordable housing,
4 including the number of households on rental hous-
5 ing waiting lists and the tenure of the wait on such
6 lists; and

7 “(5) such other information as the Director
8 may require.

9 “(c) REPORT.—For each annual study conducted
10 pursuant to this section, the regulated entities shall sub-
11 mit to the Congress, and make publicly available, a report
12 setting forth the findings of the study.

13 “(d) REGULATIONS AND TIMING.—The Director
14 shall, by regulation, establish requirements for the studies
15 and reports under this section, including deadlines for the
16 submission of such annual reports and standards for de-
17 termining affordable housing.”.

18 **SEC. 1036. MORTGAGOR IDENTIFICATION REQUIREMENTS**

19 **FOR MORTGAGES OF REGULATED ENTITIES.**

20 (a) IN GENERAL.—Subpart A of part 2 of subtitle
21 A of title XIII of the Housing and Community Develop-
22 ment Act of 1992 (12 U.S.C. 4541 et seq.), as amended
23 by the preceding provisions of this title, is further amend-
24 ed by adding at the end the following new section:

1 **“SEC. 1330. MORTGAGOR IDENTIFICATION REQUIREMENTS**
2 **FOR MORTGAGES OF REGULATED ENTITIES.**

3 “(a) **LIMITATION.**—The Director shall by regulation
4 establish standards, and shall enforce compliance with
5 such standards, that—

6 “(1) prohibit the enterprises from the purchase,
7 service, holding, selling, lending on the security of,
8 or otherwise dealing with any mortgage on a one- to
9 four-family residence that will be used as the prin-
10 cipal residence of the mortgagor that does not meet
11 the requirements under subsection (b); and

12 “(2) prohibit the Federal home loan banks from
13 providing any advances to a member for use in fi-
14 nancing, and from accepting as collateral for any ad-
15 vance to a member, any mortgage on a one- to four-
16 family residence that will be used as the principal
17 residence of the mortgagor that does not meet the
18 requirements under subsection (b).

19 “(b) **IDENTIFICATION REQUIREMENTS.**—The re-
20 quirements under this subsection with respect to a mort-
21 gage are that the mortgagor have, at the time of settle-
22 ment on the mortgage, a Social Security account num-
23 ber.”.

24 (b) **FANNIE MAE.**—Section 304 of the Federal Na-
25 tional Mortgage Association Charter Act (12 U.S.C. 1719)

1 is amended by adding at the end the following new sub-
2 section:

3 “(g) PROHIBITION REGARDING MORTGAGOR IDENTI-
4 FICATION REQUIREMENT.—Nothing in this Act may be
5 construed to authorize the corporation to purchase, serv-
6 ice, hold, sell, lend on the security of, or otherwise deal
7 with any mortgage that the corporation is prohibited from
8 so dealing with under the standards issued under section
9 1330 of the Housing and Community Development Act
10 of 1992 by the Director of the Federal Housing Finance
11 Agency.”.

12 (c) FREDDIE MAC.—Section 305 of the Federal
13 Home Loan Mortgage Corporation Act (12 U.S.C. 1454)
14 is amended by adding at the end the following new sub-
15 section:

16 “(d) PROHIBITION REGARDING MORTGAGOR IDENTI-
17 FICATION REQUIREMENTS.—Nothing in this Act may be
18 construed to authorize the Corporation to purchase, serv-
19 ice, hold, sell, lend on the security of, or otherwise deal
20 with any mortgage that the Corporation is prohibited from
21 so dealing with under the standards issued under section
22 1330 of the Housing and Community Development Act
23 of 1992 by the Director of the Federal Housing Finance
24 Agency.”.

1 (d) FEDERAL HOME LOAN BANKS.—Section 10(a) of
2 the Federal Home Loan Bank Act (12 U.S.C. 1430(a))
3 is amended—

4 (1) by redesignating paragraph (6) as para-
5 graph (7); and

6 (2) by inserting after paragraph (5) the fol-
7 lowing new paragraph:

8 “(6) PROHIBITION REGARDING MORTGAGOR
9 IDENTIFICATION REQUIREMENTS.—Nothing in this
10 Act may be construed to authorize a Federal Home
11 Loan Bank to provide any advance to a member for
12 use in financing, or accept as collateral for an ad-
13 vance under this section, any mortgage that a Bank
14 is prohibited from so accepting under the standards
15 issued under section 1330 of the Housing and Com-
16 munity Development Act of 1992 by the Director of
17 the Federal Housing Finance Agency.”.

18 **SEC. 1037. REVISION OF HOUSING GOALS.**

19 (a) HOUSING GOALS.—The Housing and Community
20 Development Act of 1992 is amended by striking sections
21 1331 through 1334 (12 U.S.C. 4561–4) and inserting the
22 following new sections:

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

24 “(a) IN GENERAL.—The Director shall establish, ef-
25 fective for the first year that begins after the effective date

1 under section 1065 of the Federal Housing Finance Re-
2 form Act of 2008 and each year thereafter, annual hous-
3 ing goals, with respect to the mortgage purchases by the
4 enterprises, as follows:

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

7 “(2) MULTIFAMILY SPECIAL AFFORDABLE
8 HOUSING GOALS.—A multifamily special affordable
9 housing goal under section 1333.

10 “(b) ELIMINATING INTEREST RATE DISPARITIES.—

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

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

1 “(A) refer the preliminary finding to the
2 appropriate regulatory or enforcement agency
3 for further review;

4 “(B) require the enterprise to submit addi-
5 tional data with respect to any lender or lend-
6 ers, as appropriate and to the extent prac-
7 ticable, to the Director who shall submit any
8 such additional data to the regulatory or en-
9 forcement agency for appropriate action; and

10 “(C) require the enterprise to undertake
11 remedial actions, as appropriate, pursuant to
12 section 1325(5) (12 U.S.C. 4545(5)).

13 “(3) ANNUAL REPORT TO CONGRESS.—The Di-
14 rector shall submit to the Committee on Financial
15 Services of the House of Representatives and the
16 Committee on Banking, Housing, and Urban Affairs
17 of the Senate a report describing the actions taken,
18 and being taken, by the Director to carry out this
19 subsection. No such report shall identify any lender
20 or lenders who have not been found to have engaged
21 in discriminatory lending practices pursuant to a
22 final adjudication on the record, and after oppor-
23 tunity for an administrative hearing, in accordance
24 with subchapter II of chapter 5 of title 5, United
25 States Code.

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

6 “(c) TIMING.—The Director shall establish an annual
7 deadline by which the Director shall establish the annual
8 housing goals under this subpart for each year, taking into
9 consideration the need for the enterprises to reasonably
10 and sufficiently plan their operations and activities in ad-
11 vance, including operations and activities necessary to
12 meet such annual goals.

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

14 “(a) IN GENERAL.—The Director shall establish an-
15 nual goals for the purchase by each enterprise of conven-
16 tional, conforming, single-family, purchase money mort-
17 gages financing owner-occupied and rental housing for
18 each of the following categories of families:

19 “(1) Low-income families.

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

21 “(3) Very low-income families.

22 “(b) REFINANCE SUBGOAL.—

23 “(1) IN GENERAL.—The Director shall establish
24 a separate subgoal within each goal under subsection
25 (a)(1) for the purchase by each enterprise of mort-

1 gages for low-income families on single family hous-
2 ing given to pay off or prepay an existing loan se-
3 cured by the same property. The Director shall, for
4 each year, determine whether each enterprise has
5 complied with the subgoal under this subsection in
6 the same manner provided under this section for de-
7 termining compliance with the housing goals.

8 “(2) ENFORCEMENT.—For purposes of section
9 1336, the subgoal established under paragraph (1)
10 of this subsection shall be considered to be a housing
11 goal established under this section. Such subgoal
12 shall not be enforceable under any other provision of
13 this title (including subpart C of this part) other
14 than section 1336 or under any provision of the
15 Federal National Mortgage Association Charter Act
16 or the Federal Home Loan Mortgage Corporation
17 Act.

18 “(c) DETERMINATION OF COMPLIANCE.—The Direc-
19 tor shall determine, for each year that the housing goals
20 under this section are in effect pursuant to section
21 1331(a), whether each enterprise has complied with the
22 single-family housing goals established under this section
23 for such year. An enterprise shall be considered to be in
24 compliance with such a goal for a year only if, for each
25 of the types of families described in subsection (a), the

1 percentage of the number of conventional, conforming,
2 single-family, owner-occupied or rental, as applicable, pur-
3 chase money mortgages purchased by each enterprise in
4 such year that serve such families, meets or exceeds the
5 target for the year for such type of family that is estab-
6 lished under subsection (d).

7 “(d) ANNUAL TARGETS.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), for each of the types of families described
10 in subsection (a), the target under this subsection
11 for a year shall be the average percentage, for the
12 three years that most recently precede such year and
13 for which information under the Home Mortgage
14 Disclosure Act of 1975 is publicly available, of the
15 number of conventional, conforming, single-family,
16 owner-occupied or rental, as applicable, purchase
17 money mortgages originated in such year that serves
18 such type of family, as determined by the Director
19 using the information obtained and determined pur-
20 suant to paragraphs (3) and (4).

21 “(2) AUTHORITY TO INCREASE TARGETS.—

22 “(A) IN GENERAL.—The Director may, for
23 any year, establish by regulation, for any or all
24 of the types of families described in subsection
25 (a), percentage targets that are higher than the

1 percentages for such year determined pursuant
2 to paragraph (1), to reflect expected changes in
3 market performance related to such information
4 under the Home Mortgage Disclosure Act of
5 1975.

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

9 “(i) National housing needs.

10 “(ii) Economic, housing, and demo-
11 graphic conditions.

12 “(iii) The performance and effort of
13 the enterprises toward achieving the hous-
14 ing goals under this section in previous
15 years.

16 “(iv) The size of the conventional
17 mortgage market serving each of the types
18 of families described in subsection (a) rel-
19 ative to the size of the overall conventional
20 mortgage market.

21 “(v) The ability of the enterprise to
22 lead the industry in making mortgage
23 credit available.

24 “(vi) The need to maintain the sound
25 financial condition of the enterprises.

1 “(3) HMDA INFORMATION.—The Director
2 shall annually obtain information submitted in com-
3 pliance with the Home Mortgage Disclosure Act of
4 1975 regarding conventional, conforming, single-
5 family, owner-occupied or rental, as applicable, pur-
6 chase money mortgages originated and purchased
7 for the previous year.

8 “(4) CONFORMING MORTGAGES.—In deter-
9 mining whether a mortgage is a conforming mort-
10 gage for purposes of this paragraph, the Director
11 shall consider the original principal balance of the
12 mortgage loan to be the principal balance as re-
13 ported in the information referred to in paragraph
14 (3), as rounded to the nearest thousand dollars.

15 “(e) NOTICE OF DETERMINATION AND ENTERPRISE
16 COMMENT.—

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

1 “(B) Mortgages that finance dwelling units
2 for very low-income families.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (2) in section 1336(a)(1) (12 U.S.C.
14 4566(a)(1)), by striking “sections 1332, 1333, and
15 1334,” and inserting “this subpart”.

16 (c) DEFINITIONS.—Section 1303 of the Housing and
17 Community Development Act of 1992 (12 U.S.C. 4502),
18 as amended by the preceding provisions of this title, is
19 further amended—

20 (1) in paragraph (22) (relating to the definition
21 of “very low-income”), by striking “60 percent” each
22 place such term appears and inserting “50 percent”;

23 (2) by redesignating paragraphs (19) through
24 (22) as paragraphs (23) through (26), respectively;

1 (3) by inserting after paragraph (18) the fol-
2 lowing new paragraph:

3 “(22) RURAL AREA.—The term ‘rural area’ has
4 the meaning given such term in section 520 of the
5 Housing Act of 1949 (42 U.S.C. 1490), except that
6 such term includes micropolitan areas and tribal
7 trust lands.”.

8 (4) by redesignating paragraphs (13) through
9 (18) as paragraphs (16) through (21), respectively;
10 (5) by inserting after paragraph (12) the fol-
11 lowing new paragraph:

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

21 (6) by redesignating paragraphs (11) and (12)
22 as paragraphs (13) and (14), respectively;

23 (7) by inserting after paragraph (10) the fol-
24 lowing new paragraph:

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

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

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

10 (8) by redesignating paragraphs (7) through
11 (10) as paragraphs (8) through (11), respectively;
12 and

13 (9) by inserting after paragraph (6) the fol-
14 lowing new paragraph:

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

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

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

1 **SEC. 1038. DUTY TO SERVE UNDERSERVED MARKETS.**

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

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

9 (2) by striking subsection (b);

10 (3) in subsection (a)—

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

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

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

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

20 (E) by redesignating such subsection as
21 subsection (b);

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

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

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

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

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

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

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

12 “(ii) the program under section 236
13 of the National Housing Act;

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

17 “(iv) the supportive housing for the
18 elderly program under section 202 of the
19 Housing Act of 1959;

20 “(v) the supportive housing program
21 for persons with disabilities under section
22 811 of the Cranston-Gonzalez National Af-
23 fordable Housing Act;

24 “(vi) the programs under title IV of
25 the McKinney-Vento Homeless Assistance

1 Act (42 U.S.C. 11361 et seq.), but only
2 permanent supportive housing projects
3 subsidized under such programs; and

4 “(vii) the rural rental housing pro-
5 gram under section 515 of the Housing
6 Act of 1949.

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

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

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

1 “(1) IN GENERAL.—Not later than 6 months
2 after the effective date under section 1065 of the
3 Federal Housing Finance Reform Act of 2008, the
4 Director shall establish a manner for evaluating
5 whether, and the extent to which, the enterprises
6 have complied with the duty under subsection (a) to
7 serve underserved markets and for rating the extent
8 of such compliance. Using such method, the Director
9 shall, for each year, evaluate such compliance and
10 rate the performance of each enterprise as to extent
11 of compliance. The Director shall include such eval-
12 uation and rating for each enterprise for a year in
13 the report for that year submitted pursuant to sec-
14 tion 1319B(a).

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

22 “(A) the development of loan products and
23 more flexible underwriting guidelines;

1 “(B) the extent of outreach to qualified
2 loan sellers in each of such underserved mar-
3 kets; and

4 “(C) the volume of loans purchased in each
5 of such underserved markets.

6 “(3) MANUFACTURED HOUSING MARKET.—In
7 determining whether an enterprise has complied with
8 the duty under subparagraph (A) of subsection
9 (a)(2), the Director may consider loans secured by
10 both real and personal property.”.

11 (b) ENFORCEMENT.—Subsection (a) of section 1336
12 of the Housing and Community Development Act of 1992
13 (12 U.S.C. 4566(a)) is amended—

14 (1) in paragraph (1), by inserting “and with
15 the duty under section 1335(a) of each enterprise
16 with respect to underserved markets,” before “as
17 provided in this section”; and

18 (2) by adding at the end of such subsection, as
19 amended by the preceding provisions of this subtitle,
20 the following new paragraph:

21 “(4) ENFORCEMENT OF DUTY TO PROVIDE
22 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—
23 The duty under section 1335(a) of each enterprise
24 to serve underserved markets (as determined in ac-
25 cordance with section 1335(c)) shall be enforceable

1 under this section to the same extent and under the
2 same provisions that the housing goals established
3 under this subpart are enforceable. Such duty shall
4 not be enforceable under any other provision of this
5 title (including subpart C of this part) other than
6 this section or under any provision of the Federal
7 National Mortgage Association Charter Act or the
8 Federal Home Loan Mortgage Corporation Act.”.

9 **SEC. 1039. MONITORING AND ENFORCING COMPLIANCE**
10 **WITH HOUSING GOALS.**

11 (a) **ADDITIONAL CREDIT FOR CERTAIN MORT-**
12 **GAGES.**—Section 1336(a) of the Housing and Community
13 Development Act of 1992 (12 U.S.C. 4566(a)) is amend-
14 ed—

15 (1) in paragraph (2), by inserting “, except as
16 provided in paragraph (4),” after “which”; and

17 (2) by adding at the end the following new
18 paragraph:

19 “(5) **ADDITIONAL CREDIT.**—The Director shall
20 assign more than 125 percent credit toward achieve-
21 ment, under this section, of the housing goals for
22 mortgage purchase activities of the enterprises that
23 comply with the requirements of such goals and sup-
24 port—

1 “(A) housing that meets energy efficiency
2 or other environmental standards that are es-
3 tablished by a Federal, State, or local govern-
4 mental authority with respect to the geographic
5 area where the housing is located or are other-
6 wise widely recognized; or

7 “(B) housing that includes a licensed
8 childcare center.

9 The availability of additional credit under this para-
10 graph shall not be used to increase any housing
11 goal, subgoal, or target established under this sub-
12 part.”.

13 (b) MONITORING AND ENFORCEMENT.—Section
14 1336 of the Housing and Community Development Act
15 of 1992 (12 U.S.C. 4566) is amended—

16 (1) in subsection (b)—

17 (A) in the subsection heading, by inserting
18 “PRELIMINARY” before “DETERMINATION”;

19 (B) by striking paragraph (1) and insert-
20 ing the following new paragraph:

21 “(1) NOTICE.—If the Director preliminarily de-
22 termines that an enterprise has failed, or that there
23 is a substantial probability that an enterprise will
24 fail, to meet any housing goal established under this
25 subpart, the Director shall provide written notice to

1 the enterprise of such a preliminary determination,
2 the reasons for such determination, and the informa-
3 tion on which the Director based the determina-
4 tion.”;

5 (C) in paragraph (2)—

6 (i) in subparagraph (A), by inserting
7 “finally” before “determining”;

8 (ii) by striking subparagraphs (B) and
9 (C) and inserting the following new sub-
10 paragraph:

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

13 “(i) extend the period under subpara-
14 graph (A) for good cause for not more
15 than 30 additional days; and

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

18 (iii) by redesignating subparagraph
19 (D) as subparagraph (C); and

20 (D) in paragraph (3)—

21 (i) in subparagraph (A), by striking
22 “determine” and inserting “issue a final
23 determination of”;

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

1 (iii) in subparagraph (C)—

2 (I) by striking “Committee on
3 Banking, Finance and Urban Affairs”
4 and inserting “Committee on Finan-
5 cial Services”; and

6 (II) by inserting “final” before
7 “determination” each place such term
8 appears; and

9 (2) in subsection (c)—

10 (A) by striking the subsection designation
11 and heading and all that follows through the
12 end of paragraph (1) and inserting the fol-
13 lowing:

14 “(c) CEASE AND DESIST ORDERS, CIVIL MONEY
15 PENALTIES, AND REMEDIES INCLUDING HOUSING
16 PLANS.—

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

1 mits an unacceptable plan, fails to comply with the
2 plan or the Director finds that the enterprise has
3 failed to meet any housing goal under this subpart,
4 in addition to requiring an enterprise to submit a
5 housing plan, the Director may issue a cease and de-
6 sist order in accordance with section 1341, impose
7 civil money penalties in accordance with section
8 1345, or order other remedies as set forth in para-
9 graph (7) of this subsection.”;

10 (B) in paragraph (2)—

11 (i) by striking “CONTENTS.—Each
12 housing plan” and inserting “HOUSING
13 PLAN.—If the Director requires a housing
14 plan under this section, such a plan”; and

15 (ii) in subparagraph (B), by inserting
16 “and changes in its operations” after “im-
17 provements”;

18 (C) in paragraph (3)—

19 (i) by inserting “comply with any re-
20 medial action or” before “submit a housing
21 plan”; and

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

24 (D) in paragraph (4), by striking the first
25 two sentences and inserting the following: “The

1 Director shall review each submission by an en-
2 terprise, including a housing plan submitted
3 under this subsection, and not later than 30
4 days after submission, approve or disapprove
5 the plan or other action. The Director may ex-
6 tend the period for approval or disapproval for
7 a single additional 30-day period if the Director
8 determines such extension necessary.”; and

9 (E) by adding at the end the following new
10 paragraph:

11 “(7) ADDITIONAL REMEDIES FOR FAILURE TO
12 MEET GOALS.—In addition to ordering a housing
13 plan under this section, issuing cease and desist or-
14 ders under section 1341, and ordering civil money
15 penalties under section 1345, the Director may seek
16 other actions when an enterprise fails to meet a
17 goal, and exercise appropriate enforcement authority
18 available to the Director under this Act to prohibit
19 the enterprise from initially offering any product (as
20 such term is defined in section 1321(f)) or engaging
21 in any new activities, services, undertakings, and of-
22 ferings and to order the enterprise to suspend prod-
23 ucts and activities, services, undertakings, and offer-
24 ings pending its achievement of the goal.”.

1 **SEC. 1040. CONSISTENCY WITH MISSION.**

2 Subpart B of part 2 of subtitle A of title XIII of the
3 Housing and Community Development Act of 1992 is
4 amended by striking sections 1337 and 1338 (42 U.S.C.
5 4562 note) and inserting the following new section:

6 **“SEC. 1337. CONSISTENCY WITH MISSION.**

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

12 **SEC. 1041. ENFORCEMENT.**

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

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

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

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

25 “(2) the enterprise has failed to submit a report
26 under section 1314, following a notice of such fail-

1 ure, an opportunity for comment by the enterprise,
2 and a final determination by the Director;

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

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

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

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

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

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

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

23 “(C) comply with any provision this part
24 or any order, rule or regulation under such
25 part;

1 “(D) submit a housing plan in compliance
2 with section 1336(c);

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

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

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

13 (4) by striking subsection (d).

14 (b) **AUTHORITY OF DIRECTOR TO ENFORCE NO-**
15 **TICES AND ORDERS.**—Section 1344 of the Housing and
16 Community Development Act of 1992 (12 U.S.C. 4584)
17 is amended by striking subsection (a) and inserting the
18 following new subsection:

19 “(a) **ENFORCEMENT.**—The Director may, in the dis-
20 cretion of the Director, apply to the United States District
21 Court for the District of Columbia, or the United States
22 district court within the jurisdiction of which the head-
23 quarters of the enterprise is located, for the enforcement
24 of any effective and outstanding notice or order issued
25 under section 1341 or 1345, or request that the Attorney

1 General of the United States bring such an action. Such
2 court shall have jurisdiction and power to order and re-
3 quire compliance with such notice or order.”.

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

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

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

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

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

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

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

3 “(5) submit a housing plan pursuant to section
4 1336(e) within the required period; or

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

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

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

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

15 (2) in subsection (c)—

16 (A) in paragraph (1)—

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

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

21 (iii) by striking subparagraph (C);

22 and

23 (B) in paragraph (2), by inserting after
24 the period at the end the following: “In deter-
25 mining the penalty under subsection (a)(1), the

1 Director shall give consideration to the length
2 of time the enterprise should reasonably take to
3 achieve the goal.”;

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

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

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

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

12 (5) by redesignating subsection (g) as sub-
13 section (f).

14 (d) ENFORCEMENT OF SUBPOENAS.—Section
15 1348(c) of the Housing and Community Development Act
16 of 1992 (12 U.S.C. 4588(c)) is amended—

17 (1) by striking “request the Attorney General
18 of the United States to” and inserting “, in the dis-
19 cretion of the Director,”; and

20 (2) by inserting “or request that the Attorney
21 General of the United States bring such an action,”
22 after “District of Columbia,”.

23 (e) CONFORMING AMENDMENT.—The heading for
24 subpart C of part 2 of subtitle A of title XIII of the Hous-

1 ing and Community Development Act of 1992 is amended
2 to read as follows:

3 **“Subpart C—Enforcement”.**

4 **SEC. 1042. CONFORMING AMENDMENTS.**

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

8 (1) by striking “Secretary” each place such
9 term appears in such part and inserting “Director”;

10 (2) in the section heading for section 1323 (12
11 U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-
12 fore the period at the end;

13 (3) by striking section 1327 (12 U.S.C. 4547);

14 (4) by striking section 1328 (12 U.S.C. 4548);

15 (5) by redesignating section 1329 (as amended
16 by section 1035) as section 1327;

17 (6) in sections 1345(c)(1)(A), 1346(a), and
18 1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and
19 4586(b)), by striking “Secretary’s” each place such
20 term appears and inserting “Director’s”; and

21 (7) by striking section 1349 (12 U.S.C. 4589).

1 **CHAPTER 3—PROMPT CORRECTIVE**
2 **ACTION**

3 **SEC. 1045. CAPITAL CLASSIFICATIONS.**

4 (a) IN GENERAL.—Section 1364 of the Housing and
5 Community Development Act of 1992 (12 U.S.C. 4614)
6 is amended—

7 (1) in the heading for subsection (a), by strik-
8 ing “IN GENERAL” and inserting “ENTERPRISES”.

9 (2) in subsection (c)—

10 (A) by striking “subsection (b)” and in-
11 serting “subsection (e)”;

12 (B) by striking “enterprises” and inserting
13 “regulated entities”; and

14 (C) by striking the last sentence;

15 (3) by redesignating subsections (c) (as so
16 amended by paragraph (2) of this subsection) and
17 (d) as subsections (d) and (f), respectively;

18 (4) by striking subsection (b) and inserting the
19 following new subsections:

20 “(b) FEDERAL HOME LOAN BANKS.—

21 “(1) ESTABLISHMENT AND CRITERIA.—For
22 purposes of this subtitle, the Director shall, by regu-
23 lation—

1 “(A) establish the capital classifications
2 specified under paragraph (2) for the Federal
3 home loan banks;

4 “(B) establish criteria for each such cap-
5 ital classification based on the amount and
6 types of capital held by a bank and the risk-
7 based, minimum, and critical capital levels for
8 the banks and taking due consideration of the
9 capital classifications established under sub-
10 section (a) for the enterprises, with such modi-
11 fications as the Director determines to be ap-
12 propriate to reflect the difference in operations
13 between the banks and the enterprises; and

14 “(C) shall classify the Federal home loan
15 banks according to such capital classifications.

16 “(2) CLASSIFICATIONS.—The capital classifica-
17 tions specified under this paragraph are—

18 “(A) adequately capitalized;

19 “(B) undercapitalized;

20 “(C) significantly undercapitalized; and

21 “(D) critically undercapitalized.

22 “(c) DISCRETIONARY CLASSIFICATION.—

23 “(1) GROUNDS FOR RECLASSIFICATION.—The
24 Director may reclassify a regulated entity under
25 paragraph (2) if—

1 “(A) at any time, the Director determines
2 in writing that the regulated entity is engaging
3 in conduct that could result in a rapid depletion
4 of core or total capital or, in the case of an en-
5 terprise, that the value of the property subject
6 to mortgages held or securitized by the enter-
7 prise has decreased significantly;

8 “(B) after notice and an opportunity for
9 hearing, the Director determines that the regu-
10 lated entity is in an unsafe or unsound condi-
11 tion; or

12 “(C) pursuant to section 1371(b), the Di-
13 rector deems the regulated entity to be engag-
14 ing in an unsafe or unsound practice.

15 “(2) RECLASSIFICATION.—In addition to any
16 other action authorized under this title, including
17 the reclassification of a regulated entity for any rea-
18 son not specified in this subsection, if the Director
19 takes any action described in paragraph (1) the Di-
20 rector may classify a regulated entity—

21 “(A) as undercapitalized, if the regulated
22 entity is otherwise classified as adequately cap-
23 italized;

1 “(B) as significantly undercapitalized, if
2 the regulated entity is otherwise classified as
3 undercapitalized; and

4 “(C) as critically undercapitalized, if the
5 regulated entity is otherwise classified as sig-
6 nificantly undercapitalized.”; and

7 (5) by inserting after subsection (d) (as so re-
8 designated by paragraph (3) of this subsection), the
9 following new subsection:

10 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

11 “(1) IN GENERAL.—A regulated entity shall
12 make no capital distribution if, after making the dis-
13 tribution, the regulated entity would be under-
14 capitalized.

15 “(2) EXCEPTION.—Notwithstanding paragraph
16 (1), the Director may permit a regulated entity, to
17 the extent appropriate or applicable, to repurchase,
18 redeem, retire, or otherwise acquire shares or owner-
19 ship interests if the repurchase, redemption, retire-
20 ment, or other acquisition—

21 “(A) is made in connection with the
22 issuance of additional shares or obligations of
23 the regulated entity in at least an equivalent
24 amount; and

1 “(B) will reduce the financial obligations of
2 the regulated entity or otherwise improve the fi-
3 nancial condition of the entity.”.

4 (b) REGULATIONS.—Not later than the expiration of
5 the 180-day period beginning on the effective date under
6 section 1065, the Director of the Federal Housing Fi-
7 nance Agency shall issue regulations to carry out section
8 1364(b) of the Housing and Community Development Act
9 of 1992 (as added by paragraph (4) of this subsection),
10 relating to capital classifications for the Federal home
11 loan banks.

12 **SEC. 1046. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
13 **CAPITALIZED REGULATED ENTITIES.**

14 Section 1365 of the Housing and Community Devel-
15 opment Act of 1992 (12 U.S.C. 4615) is amended—

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

18 (2) in subsection (a)—

19 (A) by redesignating paragraphs (1) and
20 (2) as paragraphs (2) and (3), respectively;

21 (B) by inserting before paragraph (2), as
22 so redesignated by subparagraph (A) of this
23 paragraph, the following paragraph:

24 “(1) **REQUIRED MONITORING.**—The Director
25 shall—

1 “(A) closely monitor the condition of any
2 regulated entity that is classified as under-
3 capitalized;

4 “(B) closely monitor compliance with the
5 capital restoration plan, restrictions, and re-
6 quirements imposed under this section; and

7 “(C) periodically review the plan, restric-
8 tions, and requirements applicable to the under-
9 capitalized regulated entity to determine wheth-
10 er the plan, restrictions, and requirements are
11 achieving the purpose of this section.”; and

12 (C) by inserting at the end the following
13 new paragraphs:

14 “(4) RESTRICTION OF ASSET GROWTH.—A reg-
15 ulated entity that is classified as undercapitalized
16 shall not permit its average total assets (as such
17 term is defined in section 1316(b) during any cal-
18 endar quarter to exceed its average total assets dur-
19 ing the preceding calendar quarter unless—

20 “(A) the Director has accepted the capital
21 restoration plan of the regulated entity;

22 “(B) any increase in total assets is con-
23 sistent with the plan; and

24 “(C) the ratio of total capital to assets for
25 the regulated entity increases during the cal-

1 endar quarter at a rate sufficient to enable the
2 entity to become adequately capitalized within a
3 reasonable time.

4 “(5) PRIOR APPROVAL OF ACQUISITIONS, NEW
5 PRODUCTS, AND NEW ACTIVITIES.—A regulated enti-
6 ty that is classified as undercapitalized shall not, di-
7 rectly or indirectly, acquire any interest in any entity
8 or initially offer any new product (as such term is
9 defined in section 1321(f)) or engage in any new ac-
10 tivity, service, undertaking, or offering unless—

11 “(A) the Director has accepted the capital
12 restoration plan of the regulated entity, the en-
13 tity is implementing the plan, and the Director
14 determines that the proposed action is con-
15 sistent with and will further the achievement of
16 the plan; or

17 “(B) the Director determines that the pro-
18 posed action will further the purpose of this
19 section.”;

20 (3) in the subsection heading for subsection (b),
21 by striking “FROM UNDERCAPITALIZED TO SIGNIFI-
22 CANTLY UNDERCAPITALIZED”; and

23 (4) by striking subsection (c) and inserting the
24 following new subsection:

1 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
2 Director may take, with respect to a regulated entity that
3 is classified as undercapitalized, any of the actions author-
4 ized to be taken under section 1366 with respect to a regu-
5 lated entity that is classified as significantly undercapital-
6 ized, if the Director determines that such actions are nec-
7 essary to carry out the purpose of this subtitle.”.

8 **SEC. 1047. SUPERVISORY ACTIONS APPLICABLE TO SIG-**
9 **NIFICANTLY UNDERCAPITALIZED REGU-**
10 **LATED ENTITIES.**

11 Section 1366 of the Housing and Community Devel-
12 opment Act of 1992 (12 U.S.C. 4616) is amended—

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

15 (2) in subsection (a)(2)(A), by striking “enter-
16 prise” the last place such term appears;

17 (3) in subsection (b)—

18 (A) in the subsection heading, by striking
19 “DISCRETIONARY SUPERVISORY ACTIONS” and
20 inserting “SPECIFIC ACTIONS”.

21 (B) in the matter preceding paragraph (1),
22 by striking “may, at any time, take any” and
23 inserting “shall carry out this section by taking,
24 at any time, one or more”;

1 (C) by redesignating paragraphs (5) and
2 (6) as paragraphs (6) and (7), respectively;

3 (D) by inserting after paragraph (4) the
4 following new paragraph:

5 “(5) IMPROVEMENT OF MANAGEMENT.—Take
6 one or more of the following actions:

7 “(A) NEW ELECTION OF BOARD.—Order a
8 new election for the board of directors of the
9 regulated entity.

10 “(B) DISMISSAL OF DIRECTORS OR EXECU-
11 TIVE OFFICERS.—Require the regulated entity
12 to dismiss from office any director or executive
13 officer who had held office for more than 180
14 days immediately before the entity became
15 undercapitalized. Dismissal under this subpara-
16 graph shall not be construed to be a removal
17 pursuant to the Director’s enforcement powers
18 provided in section 1377.

19 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
20 FICERS.—Require the regulated entity to em-
21 ploy qualified executive officers (who, if the Di-
22 rector so specifies, shall be subject to approval
23 by the Director).”; and

24 (E) by inserting at the end the following
25 new paragraph:

1 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
2 **IZED REGULATED ENTITIES.**

3 “(a) APPOINTMENT OF AGENCY AS CONSERVATOR
4 OR RECEIVER.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of Federal or State law, if any of the
7 grounds under paragraph (3) exist, at the discretion
8 of the Director, the Director may establish a con-
9 servatorship or receivership, as appropriate, for the
10 purpose of reorganizing, rehabilitating, or winding
11 up the affairs of a regulated entity.

12 “(2) APPOINTMENT.—In any conservatorship or
13 receivership established under this section, the Di-
14 rector shall appoint the Agency as conservator or re-
15 ceiver.

16 “(3) GROUNDS FOR APPOINTMENT.—The
17 grounds for appointing a conservator or receiver for
18 a regulated entity are as follows:

19 “(A) ASSETS INSUFFICIENT FOR OBLIGA-
20 TIONS.—The assets of the regulated entity are
21 less than the obligations of the regulated entity
22 to its creditors and others.

23 “(B) SUBSTANTIAL DISSIPATION.—Sub-
24 stantial dissipation of assets or earnings due
25 to—

1 “(i) any violation of any provision of
2 Federal or State law; or

3 “(ii) any unsafe or unsound practice.

4 “(C) UNSAFE OR UNSOUND CONDITION.—
5 An unsafe or unsound condition to transact
6 business.

7 “(D) CEASE-AND-DESIST ORDERS.—Any
8 willful violation of a cease-and-desist order that
9 has become final.

10 “(E) CONCEALMENT.—Any concealment of
11 the books, papers, records, or assets of the reg-
12 ulated entity, or any refusal to submit the
13 books, papers, records, or affairs of the regu-
14 lated entity, for inspection to any examiner or
15 to any lawful agent of the Director.

16 “(F) INABILITY TO MEET OBLIGATIONS.—
17 The regulated entity is likely to be unable to
18 pay its obligations or meet the demands of its
19 creditors in the normal course of business.

20 “(G) LOSSES.—The regulated entity has
21 incurred or is likely to incur losses that will de-
22 plete all or substantially all of its capital, and
23 there is no reasonable prospect for the regu-
24 lated entity to become adequately capitalized
25 (as defined in section 1364(a)(1)).

1 “(H) VIOLATIONS OF LAW.—Any violation
2 of any law or regulation, or any unsafe or un-
3 sound practice or condition that is likely to—

4 “(i) cause insolvency or substantial
5 dissipation of assets or earnings; or

6 “(ii) weaken the condition of the regu-
7 lated entity.

8 “(I) CONSENT.—The regulated entity, by
9 resolution of its board of directors or its share-
10 holders or members, consents to the appoint-
11 ment.

12 “(J) UNDERCAPITALIZATION.—The regu-
13 lated entity is undercapitalized or significantly
14 undercapitalized (as defined in section
15 1364(a)(3) or in regulations issued pursuant to
16 section 1364(b), as applicable), and—

17 “(i) has no reasonable prospect of be-
18 coming adequately capitalized;

19 “(ii) fails to become adequately cap-
20 italized, as required by—

21 “(I) section 1365(a)(1) with re-
22 spect to an undercapitalized regulated
23 entity; or

1 “(II) section 1366(a)(1) with re-
2 spect to a significantly undercapital-
3 ized regulated entity;

4 “(iii) fails to submit a capital restora-
5 tion plan acceptable to the Agency within
6 the time prescribed under section 1369C;
7 or

8 “(iv) materially fails to implement a
9 capital restoration plan submitted and ac-
10 cepted under section 1369C.

11 “(K) CRITICAL UNDERCAPITALIZATION.—
12 The regulated entity is critically undercapital-
13 ized, as defined in section 1364(a)(4) or in reg-
14 ulations issued pursuant to section 1364(b), as
15 applicable.

16 “(L) MONEY LAUNDERING.—The Attorney
17 General notifies the Director in writing that the
18 regulated entity has been found guilty of a
19 criminal offense under section 1956 or 1957 of
20 title 18, United States Code, or section 5322 or
21 5324 of title 31, United States Code.

22 “(4) MANDATORY RECEIVERSHIP.—

23 “(A) IN GENERAL.—The Director shall ap-
24 point the Agency as receiver for a regulated en-

1 tity if the Director determines, in writing,
2 that—

3 “(i) the assets of the regulated entity
4 are, and during the preceding 30 calendar
5 days have been, less than the obligations of
6 the regulated entity to its creditors and
7 others; or

8 “(ii) the regulated entity is not, and
9 during the preceding 30 calendar days has
10 not been, generally paying the debts of the
11 regulated entity (other than debts that are
12 the subject of a bona fide dispute) as such
13 debts become due.

14 “(B) PERIODIC DETERMINATION RE-
15 QUIRED FOR CRITICALLY UNDER CAPITALIZED
16 REGULATED ENTITY.—If a regulated entity is
17 critically undercapitalized, the Director shall
18 make a determination, in writing, as to whether
19 the regulated entity meets the criteria specified
20 in clause (i) or (ii) of subparagraph (A)—

21 “(i) not later than 30 calendar days
22 after the regulated entity initially becomes
23 critically undercapitalized; and

24 “(ii) at least once during each suc-
25 ceeding 30-calendar day period.

1 “(C) DETERMINATION NOT REQUIRED IF
2 RECEIVERSHIP ALREADY IN PLACE.—Subpara-
3 graph (B) shall not apply with respect to a reg-
4 ulated entity in any period during which the
5 Agency serves as receiver for the regulated enti-
6 ty.

7 “(D) RECEIVERSHIP TERMINATES CON-
8 SERVATORSHIP.—The appointment under this
9 section of the Agency as receiver of a regulated
10 entity shall immediately terminate any con-
11 servatorship established under this title for the
12 regulated entity.

13 “(5) JUDICIAL REVIEW.—

14 “(A) IN GENERAL.—If the Agency is ap-
15 pointed conservator or receiver under this sec-
16 tion, the regulated entity may, within 30 days
17 of such appointment, bring an action in the
18 United States District Court for the judicial
19 district in which the principal place of business
20 of such regulated entity is located, or in the
21 United States District Court for the District of
22 Columbia, for an order requiring the Agency to
23 remove itself as conservator or receiver.

24 “(B) REVIEW.—Upon the filing of an ac-
25 tion under subparagraph (A), the court shall,

1 upon the merits, dismiss such action or direct
2 the Agency to remove itself as such conservator
3 or receiver.

4 “(6) DIRECTORS NOT LIABLE FOR ACQUI-
5 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
6 CEIVER.—The members of the board of directors of
7 a regulated entity shall not be liable to the share-
8 holders or creditors of the regulated entity for acqui-
9 escing in or consenting in good faith to the appoint-
10 ment of the Agency as conservator or receiver for
11 that regulated entity.

12 “(7) AGENCY NOT SUBJECT TO ANY OTHER
13 FEDERAL AGENCY.—When acting as conservator or
14 receiver, the Agency shall not be subject to the di-
15 rection or supervision of any other agency of the
16 United States or any State in the exercise of the
17 rights, powers, and privileges of the Agency.

18 “(b) POWERS AND DUTIES OF THE AGENCY AS CON-
19 SERVATOR OR RECEIVER.—

20 “(1) RULEMAKING AUTHORITY OF THE AGEN-
21 CY.—The Agency may prescribe such regulations as
22 the Agency determines to be appropriate regarding
23 the conduct of conservatorships or receiverships.

24 “(2) GENERAL POWERS.—

1 “(A) SUCCESSOR TO REGULATED ENTI-
2 TY.—The Agency shall, as conservator or re-
3 ceiver, and by operation of law, immediately
4 succeed to—

5 “(i) all rights, titles, powers, and
6 privileges of the regulated entity, and of
7 any stockholder, officer, or director of such
8 regulated entity with respect to the regu-
9 lated entity and the assets of the regulated
10 entity; and

11 “(ii) title to the books, records, and
12 assets of any other legal custodian of such
13 regulated entity.

14 “(B) OPERATE THE REGULATED ENTI-
15 TY.—The Agency may, as conservator or re-
16 ceiver—

17 “(i) take over the assets of and oper-
18 ate the regulated entity with all the powers
19 of the shareholders, the directors, and the
20 officers of the regulated entity and conduct
21 all business of the regulated entity;

22 “(ii) collect all obligations and money
23 due the regulated entity;

24 “(iii) perform all functions of the reg-
25 ulated entity in the name of the regulated

1 entity which are consistent with the ap-
2 pointment as conservator or receiver; and

3 “(iv) preserve and conserve the assets
4 and property of such regulated entity.

5 “(C) FUNCTIONS OF OFFICERS, DIREC-
6 TORS, AND SHAREHOLDERS OF A REGULATED
7 ENTITY.—The Agency may, by regulation or
8 order, provide for the exercise of any function
9 by any stockholder, director, or officer of any
10 regulated entity for which the Agency has been
11 named conservator or receiver.

12 “(D) POWERS AS CONSERVATOR.—The
13 Agency may, as conservator, take such action
14 as may be—

15 “(i) necessary to put the regulated en-
16 tity in a sound and solvent condition; and

17 “(ii) appropriate to carry on the busi-
18 ness of the regulated entity and preserve
19 and conserve the assets and property of
20 the regulated entity, including, if two or
21 more Federal home loan banks have been
22 placed in conservatorship contempora-
23 neously, merging two or more such banks
24 into a single Federal home loan bank.

1 “(E) ADDITIONAL POWERS AS RE-
2 CEIVER.—The Agency may, as receiver, place
3 the regulated entity in liquidation and proceed
4 to realize upon the assets of the regulated enti-
5 ty, having due regard to the conditions of the
6 housing finance market.

7 “(F) ORGANIZATION OF NEW REGULATED
8 ENTITIES.—The Agency may, as receiver, orga-
9 nize a successor regulated entity that will oper-
10 ate pursuant to subsection (i).

11 “(G) TRANSFER OF ASSETS AND LIABIL-
12 ITIES.—The Agency may, as conservator or re-
13 ceiver, transfer any asset or liability of the reg-
14 ulated entity in default without any approval,
15 assignment, or consent with respect to such
16 transfer. Any Federal home loan bank may,
17 with the approval of the Agency, acquire the as-
18 sets of any Bank in conservatorship or receiver-
19 ship, and assume the liabilities of such Bank.

20 “(H) PAYMENT OF VALID OBLIGATIONS.—
21 The Agency, as conservator or receiver, shall, to
22 the extent of proceeds realized from the per-
23 formance of contracts or sale of the assets of a
24 regulated entity, pay all valid obligations of the

1 regulated entity in accordance with the pre-
2 scriptions and limitations of this section.

3 “(I) SUBPOENA AUTHORITY.—

4 “(i) IN GENERAL.—

5 “(I) IN GENERAL.—The Agency
6 may, as conservator or receiver, and
7 for purposes of carrying out any
8 power, authority, or duty with respect
9 to a regulated entity (including deter-
10 mining any claim against the regu-
11 lated entity and determining and real-
12 izing upon any asset of any person in
13 the course of collecting money due the
14 regulated entity), exercise any power
15 established under section 1348.

16 “(II) APPLICABILITY OF LAW.—

17 The provisions of section 1348 shall
18 apply with respect to the exercise of
19 any power exercised under this sub-
20 paragraph in the same manner as
21 such provisions apply under that sec-
22 tion.

23 “(ii) AUTHORITY OF DIRECTOR.—A

24 subpoena or subpoena duces tecum may be
25 issued under clause (i) only by, or with the

1 written approval of, the Director, or the
2 designee of the Director.

3 “(iii) RULE OF CONSTRUCTION.—This
4 subsection shall not be construed to limit
5 any rights that the Agency, in any capac-
6 ity, might otherwise have under section
7 1317 or 1379D.

8 “(J) CONTRACTING FOR SERVICES.—The
9 Agency may, as conservator or receiver, provide
10 by contract for the carrying out of any of its
11 functions, activities, actions, or duties as con-
12 servator or receiver.

13 “(K) INCIDENTAL POWERS.—The Agency
14 may, as conservator or receiver—

15 “(i) exercise all powers and authori-
16 ties specifically granted to conservators or
17 receivers, respectively, under this section,
18 and such incidental powers as shall be nec-
19 essary to carry out such powers; and

20 “(ii) take any action authorized by
21 this section, which the Agency determines
22 is in the best interests of the regulated en-
23 tity or the Agency.

24 “(3) AUTHORITY OF RECEIVER TO DETERMINE
25 CLAIMS.—

1 “(A) IN GENERAL.—The Agency may, as
2 receiver, determine claims in accordance with
3 the requirements of this subsection and any
4 regulations prescribed under paragraph (4).

5 “(B) NOTICE REQUIREMENTS.—The re-
6 ceiver, in any case involving the liquidation or
7 winding up of the affairs of a closed regulated
8 entity, shall—

9 “(i) promptly publish a notice to the
10 creditors of the regulated entity to present
11 their claims, together with proof, to the re-
12 ceiver by a date specified in the notice
13 which shall be not less than 90 days after
14 the publication of such notice; and

15 “(ii) republish such notice approxi-
16 mately 1 month and 2 months, respec-
17 tively, after the publication under clause
18 (i).

19 “(C) MAILING REQUIRED.—The receiver
20 shall mail a notice similar to the notice pub-
21 lished under subparagraph (B)(i) at the time of
22 such publication to any creditor shown on the
23 books of the regulated entity—

24 “(i) at the last address of the creditor
25 appearing in such books; or

1 “(ii) upon discovery of the name and
2 address of a claimant not appearing on the
3 books of the regulated entity within 30
4 days after the discovery of such name and
5 address.

6 “(4) RULEMAKING AUTHORITY RELATING TO
7 DETERMINATION OF CLAIMS.—Subject to subsection
8 (c), the Director may prescribe regulations regarding
9 the allowance or disallowance of claims by the re-
10 ceiver and providing for administrative determina-
11 tion of claims and review of such determination.

12 “(5) PROCEDURES FOR DETERMINATION OF
13 CLAIMS.—

14 “(A) DETERMINATION PERIOD.—

15 “(i) IN GENERAL.—Before the end of
16 the 180-day period beginning on the date
17 on which any claim against a regulated en-
18 tity is filed with the Agency as receiver,
19 the Agency shall determine whether to
20 allow or disallow the claim and shall notify
21 the claimant of any determination with re-
22 spect to such claim.

23 “(ii) EXTENSION OF TIME.—The pe-
24 riod described in clause (i) may be ex-

1 tended by a written agreement between the
2 claimant and the Agency.

3 “(iii) MAILING OF NOTICE SUFFI-
4 CIENT.—The notification requirements of
5 clause (i) shall be deemed to be satisfied if
6 the notice of any determination with re-
7 spect to any claim is mailed to the last ad-
8 dress of the claimant which appears—

9 “(I) on the books of the regu-
10 lated entity;

11 “(II) in the claim filed by the
12 claimant; or

13 “(III) in documents submitted in
14 proof of the claim.

15 “(iv) CONTENTS OF NOTICE OF DIS-
16 ALLOWANCE.—If any claim filed under
17 clause (i) is disallowed, the notice to the
18 claimant shall contain—

19 “(I) a statement of each reason
20 for the disallowance; and

21 “(II) the procedures available for
22 obtaining agency review of the deter-
23 mination to disallow the claim or judi-
24 cial determination of the claim.

1 “(B) ALLOWANCE OF PROVEN CLAIM.—

2 The receiver shall allow any claim received on
3 or before the date specified in the notice pub-
4 lished under paragraph (3)(B)(i), or the date
5 specified in the notice required under paragraph
6 (3)(C), which is proved to the satisfaction of
7 the receiver.

8 “(C) DISALLOWANCE OF CLAIMS FILED
9 AFTER END OF FILING PERIOD.—Claims filed
10 after the date specified in the notice published
11 under paragraph (3)(B)(i), or the date specified
12 under paragraph (3)(C), shall be disallowed and
13 such disallowance shall be final.

14 “(D) AUTHORITY TO DISALLOW CLAIMS.—

15 “(i) IN GENERAL.—The receiver may
16 disallow any portion of any claim by a
17 creditor or claim of security, preference, or
18 priority which is not proved to the satisfac-
19 tion of the receiver.

20 “(ii) PAYMENTS TO LESS THAN
21 FULLY SECURED CREDITORS.—In the case
22 of a claim of a creditor against a regulated
23 entity which is secured by any property or
24 other asset of such regulated entity, the re-
25 ceiver—

1 “(I) may treat the portion of
2 such claim which exceeds an amount
3 equal to the fair market value of such
4 property or other asset as an unse-
5 cured claim against the regulated en-
6 tity; and

7 “(II) may not make any payment
8 with respect to such unsecured por-
9 tion of the claim other than in connec-
10 tion with the disposition of all claims
11 of unsecured creditors of the regu-
12 lated entity.

13 “(iii) EXCEPTIONS.—No provision of
14 this paragraph shall apply with respect to
15 any extension of credit from any Federal
16 Reserve Bank, Federal home loan bank, or
17 the Treasury of the United States.

18 “(E) NO JUDICIAL REVIEW OF DETER-
19 MINATION PURSUANT TO SUBPARAGRAPH (d).—
20 No court may review the determination of the
21 Agency under subparagraph (D) to disallow a
22 claim. This subparagraph shall not affect the
23 authority of a claimant to obtain de novo judi-
24 cial review of a claim pursuant to paragraph
25 (6).

1 “(F) LEGAL EFFECT OF FILING.—

2 “ (i) STATUTE OF LIMITATION
3 TOLLED.—For purposes of any applicable
4 statute of limitations, the filing of a claim
5 with the receiver shall constitute a com-
6 mencement of an action.

7 “ (ii) NO PREJUDICE TO OTHER AC-
8 TIONS.—Subject to paragraph (10), the fil-
9 ing of a claim with the receiver shall not
10 prejudice any right of the claimant to con-
11 tinue any action which was filed before the
12 date of the appointment of the receiver,
13 subject to the determination of claims by
14 the receiver.

15 “(6) PROVISION FOR JUDICIAL DETERMINATION
16 OF CLAIMS.—

17 “(A) IN GENERAL.—The claimant may file
18 suit on a claim (or continue an action com-
19 menced before the appointment of the receiver)
20 in the district or territorial court of the United
21 States for the district within which the prin-
22 cipal place of business of the regulated entity is
23 located or the United States District Court for
24 the District of Columbia (and such court shall
25 have jurisdiction to hear such claim), before the

1 end of the 60-day period beginning on the ear-
2 lier of—

3 “(i) the end of the period described in
4 paragraph (5)(A)(i) with respect to any
5 claim against a regulated entity for which
6 the Agency is receiver; or

7 “(ii) the date of any notice of dis-
8 allowance of such claim pursuant to para-
9 graph (5)(A)(i).

10 “(B) STATUTE OF LIMITATIONS.—A claim
11 shall be deemed to be disallowed (other than
12 any portion of such claim which was allowed by
13 the receiver), and such disallowance shall be
14 final, and the claimant shall have no further
15 rights or remedies with respect to such claim,
16 if the claimant fails, before the end of the 60-
17 day period described under subparagraph (A),
18 to file suit on such claim (or continue an action
19 commenced before the appointment of the re-
20 ceiver).

21 “(7) REVIEW OF CLAIMS.—

22 “(A) OTHER REVIEW PROCEDURES.—

23 “(i) IN GENERAL.—The Agency shall
24 establish such alternative dispute resolu-
25 tion processes as may be appropriate for

1 the resolution of claims filed under para-
2 graph (5)(A)(i).

3 “(ii) CRITERIA.—In establishing alter-
4 native dispute resolution processes, the
5 Agency shall strive for procedures which
6 are expeditious, fair, independent, and low
7 cost.

8 “(iii) VOLUNTARY BINDING OR NON-
9 BINDING PROCEDURES.—The Agency may
10 establish both binding and nonbinding
11 processes, which may be conducted by any
12 government or private party. All parties,
13 including the claimant and the Agency,
14 must agree to the use of the process in a
15 particular case.

16 “(B) CONSIDERATION OF INCENTIVES.—
17 The Agency shall seek to develop incentives for
18 claimants to participate in the alternative dis-
19 pute resolution process.

20 “(8) EXPEDITED DETERMINATION OF
21 CLAIMS.—

22 “(A) ESTABLISHMENT REQUIRED.—The
23 Agency shall establish a procedure for expedited
24 relief outside of the routine claims process es-

1 tablished under paragraph (5) for claimants
2 who—

3 “(i) allege the existence of legally
4 valid and enforceable or perfected security
5 interests in assets of any regulated entity
6 for which the Agency has been appointed
7 receiver; and

8 “(ii) allege that irreparable injury will
9 occur if the routine claims procedure is fol-
10 lowed.

11 “(B) DETERMINATION PERIOD.—Before
12 the end of the 90-day period beginning on the
13 date any claim is filed in accordance with the
14 procedures established under subparagraph (A),
15 the Director shall—

16 “(i) determine—

17 “(I) whether to allow or disallow
18 such claim; or

19 “(II) whether such claim should
20 be determined pursuant to the proce-
21 dures established under paragraph
22 (5); and

23 “(ii) notify the claimant of the deter-
24 mination, and if the claim is disallowed,
25 provide a statement of each reason for the

1 disallowance and the procedure for obtain-
2 ing agency review or judicial determina-
3 tion.

4 “(C) PERIOD FOR FILING OR RENEWING
5 SUIT.—Any claimant who files a request for ex-
6 pedited relief shall be permitted to file a suit,
7 or to continue a suit filed before the appoint-
8 ment of the receiver, seeking a determination of
9 the rights of the claimant with respect to such
10 security interest after the earlier of—

11 “(i) the end of the 90-day period be-
12 ginning on the date of the filing of a re-
13 quest for expedited relief; or

14 “(ii) the date the Agency denies the
15 claim.

16 “(D) STATUTE OF LIMITATIONS.—If an
17 action described under subparagraph (C) is not
18 filed, or the motion to renew a previously filed
19 suit is not made, before the end of the 30-day
20 period beginning on the date on which such ac-
21 tion or motion may be filed under subparagraph
22 (B), the claim shall be deemed to be disallowed
23 as of the end of such period (other than any
24 portion of such claim which was allowed by the
25 receiver), such disallowance shall be final, and

1 the claimant shall have no further rights or
2 remedies with respect to such claim.

3 “(E) LEGAL EFFECT OF FILING.—

4 “(i) STATUTE OF LIMITATION
5 TOLLED.—For purposes of any applicable
6 statute of limitations, the filing of a claim
7 with the receiver shall constitute a com-
8 mencement of an action.

9 “(ii) NO PREJUDICE TO OTHER AC-
10 TIONS.—Subject to paragraph (10), the fil-
11 ing of a claim with the receiver shall not
12 prejudice any right of the claimant to con-
13 tinue any action that was filed before the
14 appointment of the receiver, subject to the
15 determination of claims by the receiver.

16 “(9) PAYMENT OF CLAIMS.—

17 “(A) IN GENERAL.—The receiver may, in
18 the discretion of the receiver, and to the extent
19 funds are available from the assets of the regu-
20 lated entity, pay creditor claims, in such man-
21 ner and amounts as are authorized under this
22 section, which are—

23 “(i) allowed by the receiver;

1 “(ii) approved by the Agency pursuant
2 to a final determination pursuant to para-
3 graph (7) or (8); or

4 “(iii) determined by the final judg-
5 ment of any court of competent jurisdic-
6 tion.

7 “(B) AGREEMENTS AGAINST THE INTER-
8 EST OF THE AGENCY.—No agreement that
9 tends to diminish or defeat the interest of the
10 Agency in any asset acquired by the Agency as
11 receiver under this section shall be valid against
12 the Agency unless such agreement is in writing,
13 and executed by an authorized official of the
14 regulated entity, except that such requirements
15 for qualified financial contracts shall be applied
16 in a manner consistent with reasonable business
17 trading practices in the financial contracts mar-
18 ket.

19 “(C) PAYMENT OF DIVIDENDS ON
20 CLAIMS.—The receiver may, in the sole discre-
21 tion of the receiver, pay from the assets of the
22 regulated entity dividends on proved claims at
23 any time, and no liability shall attach to the
24 Agency, by reason of any such payment, for
25 failure to pay dividends to a claimant whose

1 claim is not proved at the time of any such pay-
2 ment.

3 “(D) RULEMAKING AUTHORITY OF THE
4 DIRECTOR.—The Director may prescribe such
5 rules, including definitions of terms, as the Di-
6 rector deems appropriate to establish a single
7 uniform interest rate for, or to make payments
8 of post-insolvency interest to creditors holding
9 proven claims against the receivership estates of
10 regulated entities following satisfaction by the
11 receiver of the principal amount of all creditor
12 claims.

13 “(10) SUSPENSION OF LEGAL ACTIONS.—

14 “(A) IN GENERAL.—After the appointment
15 of a conservator or receiver for a regulated enti-
16 ty, the conservator or receiver may, in any judi-
17 cial action or proceeding to which such regu-
18 lated entity is or becomes a party, request a
19 stay for a period not to exceed—

20 “(i) 45 days, in the case of any con-
21 servator; and

22 “(ii) 90 days, in the case of any re-
23 ceiver.

24 “(B) GRANT OF STAY BY ALL COURTS RE-
25 QUIRED.—Upon receipt of a request by any

1 conservator or receiver under subparagraph (A)
2 for a stay of any judicial action or proceeding
3 in any court with jurisdiction of such action or
4 proceeding, the court shall grant such stay as
5 to all parties.

6 “(11) ADDITIONAL RIGHTS AND DUTIES.—

7 “(A) PRIOR FINAL ADJUDICATION.—The
8 Agency shall abide by any final unappealable
9 judgment of any court of competent jurisdiction
10 which was rendered before the appointment of
11 the Agency as conservator or receiver.

12 “(B) RIGHTS AND REMEDIES OF CONSER-
13 VATOR OR RECEIVER.—In the event of any ap-
14 pealable judgment, the Agency as conservator
15 or receiver shall—

16 “(i) have all the rights and remedies
17 available to the regulated entity (before the
18 appointment of such conservator or re-
19 ceiver) and the Agency, including removal
20 to Federal court and all appellate rights;
21 and

22 “(ii) not be required to post any bond
23 in order to pursue such remedies.

24 “(C) NO ATTACHMENT OR EXECUTION.—

25 No attachment or execution may issue by any

1 court upon assets in the possession of the re-
2 ceiver.

3 “(D) LIMITATION ON JUDICIAL REVIEW.—
4 Except as otherwise provided in this subsection,
5 no court shall have jurisdiction over—

6 “(i) any claim or action for payment
7 from, or any action seeking a determina-
8 tion of rights with respect to, the assets of
9 any regulated entity for which the Agency
10 has been appointed receiver; or

11 “(ii) any claim relating to any act or
12 omission of such regulated entity or the
13 Agency as receiver.

14 “(E) DISPOSITION OF ASSETS.—In exer-
15 cising any right, power, privilege, or authority
16 as conservator or receiver in connection with
17 any sale or disposition of assets of a regulated
18 entity for which the Agency has been appointed
19 conservator or receiver, the Agency shall con-
20 duct its operations in a manner which main-
21 tains stability in the housing finance markets
22 and, to the extent consistent with that goal—

23 “(i) maximizes the net present value
24 return from the sale or disposition of such
25 assets;

1 “(ii) minimizes the amount of any loss
2 realized in the resolution of cases; and

3 “(iii) ensures adequate competition
4 and fair and consistent treatment of
5 offerors.

6 “(12) STATUTE OF LIMITATIONS FOR ACTIONS
7 BROUGHT BY CONSERVATOR OR RECEIVER.—

8 “(A) IN GENERAL.—Notwithstanding any
9 provision of any contract, the applicable statute
10 of limitations with regard to any action brought
11 by the Agency as conservator or receiver shall
12 be—

13 “(i) in the case of any contract claim,
14 the longer of—

15 “(I) the 6-year period beginning
16 on the date the claim accrues; or

17 “(II) the period applicable under
18 State law; and

19 “(ii) in the case of any tort claim, the
20 longer of—

21 “(I) the 3-year period beginning
22 on the date the claim accrues; or

23 “(II) the period applicable under
24 State law.

1 “(B) DETERMINATION OF THE DATE ON
2 WHICH A CLAIM ACCRUES.—For purposes of
3 subparagraph (A), the date on which the stat-
4 ute of limitations begins to run on any claim
5 described in such subparagraph shall be the
6 later of—

7 “(i) the date of the appointment of
8 the Agency as conservator or receiver; or

9 “(ii) the date on which the cause of
10 action accrues.

11 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
12 ACTION.—

13 “(A) IN GENERAL.—In the case of any tort
14 claim described under subparagraph (B) for
15 which the statute of limitations applicable
16 under State law with respect to such claim has
17 expired not more than 5 years before the ap-
18 pointment of the Agency as conservator or re-
19 ceiver, the Agency may bring an action as con-
20 servator or receiver on such claim without re-
21 gard to the expiration of the statute of limita-
22 tion applicable under State law.

23 “(B) CLAIMS DESCRIBED.—A tort claim
24 referred to under subparagraph (A) is a claim
25 arising from fraud, intentional misconduct re-

1 sulting in unjust enrichment, or intentional mis-
2 conduct resulting in substantial loss to the reg-
3 ulated entity.

4 “(14) ACCOUNTING AND RECORDKEEPING RE-
5 QUIREMENTS.—

6 “(A) IN GENERAL.—The Agency as conser-
7 vator or receiver shall, consistent with the ac-
8 counting and reporting practices and proce-
9 dures established by the Agency, maintain a full
10 accounting of each conservatorship and receiv-
11 ership or other disposition of a regulated entity
12 in default.

13 “(B) ANNUAL ACCOUNTING OR REPORT.—
14 With respect to each conservatorship or receiv-
15 ership, the Agency shall make an annual ac-
16 counting or report available to the Board, the
17 Comptroller General of the United States, the
18 Committee on Banking, Housing, and Urban
19 Affairs of the Senate, and the Committee on
20 Financial Services of the House of Representa-
21 tives.

22 “(C) AVAILABILITY OF REPORTS.—Any re-
23 port prepared under subparagraph (B) shall be
24 made available by the Agency upon request to

1 any shareholder of a regulated entity or any
2 member of the public.

3 “(D) RECORDKEEPING REQUIREMENT.—
4 After the end of the 6-year period beginning on
5 the date that the conservatorship or receiver-
6 ship is terminated by the Director, the Agency
7 may destroy any records of such regulated enti-
8 ty which the Agency, in the discretion of the
9 Agency, determines to be unnecessary unless di-
10 rected not to do so by a court of competent ju-
11 risdiction or governmental agency, or prohibited
12 by law.

13 “(15) FRAUDULENT TRANSFERS.—

14 “(A) IN GENERAL.—The Agency, as con-
15 servator or receiver, may avoid a transfer of
16 any interest of a regulated entity-affiliated
17 party, or any person who the conservator or re-
18 ceiver determines is a debtor of the regulated
19 entity, in property, or any obligation incurred
20 by such party or person, that was made within
21 5 years of the date on which the Agency was
22 appointed conservator or receiver, if such party
23 or person voluntarily or involuntarily made such
24 transfer or incurred such liability with the in-

1 tent to hinder, delay, or defraud the regulated
2 entity, the Agency, the conservator, or receiver.

3 “(B) RIGHT OF RECOVERY.—To the extent
4 a transfer is avoided under subparagraph (A),
5 the conservator or receiver may recover, for the
6 benefit of the regulated entity, the property
7 transferred, or, if a court so orders, the value
8 of such property (at the time of such transfer)
9 from—

10 “(i) the initial transferee of such
11 transfer or the regulated entity-affiliated
12 party or person for whose benefit such
13 transfer was made; or

14 “(ii) any immediate or mediate trans-
15 feree of any such initial transferee.

16 “(C) RIGHTS OF TRANSFEREE OR OBLI-
17 GEE.—The conservator or receiver may not re-
18 cover under subparagraph (B) from—

19 “(i) any transferee that takes for
20 value, including satisfaction or securing of
21 a present or antecedent debt, in good faith;
22 or

23 “(ii) any immediate or mediate good
24 faith transferee of such transferee.

1 “(D) RIGHTS UNDER THIS PARAGRAPH.—

2 The rights under this paragraph of the conser-
3 vator or receiver described under subparagraph
4 (A) shall be superior to any rights of a trustee
5 or any other party (other than any party which
6 is a Federal agency) under title 11, United
7 States Code.

8 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
9 JUNCTIVE RELIEF.—Subject to paragraph (17), any
10 court of competent jurisdiction may, at the request
11 of the conservator or receiver, issue an order in ac-
12 cordance with Rule 65 of the Federal Rules of Civil
13 Procedure, including an order placing the assets of
14 any person designated by the Agency or such conser-
15 vator under the control of the court, and appointing
16 a trustee to hold such assets.

17 “(17) STANDARDS OF PROOF.—Rule 65 of the
18 Federal Rules of Civil Procedure shall apply with re-
19 spect to any proceeding under paragraph (16) with-
20 out regard to the requirement of such rule that the
21 applicant show that the injury, loss, or damage is ir-
22 reparable and immediate.

23 “(18) TREATMENT OF CLAIMS ARISING FROM
24 BREACH OF CONTRACTS EXECUTED BY THE RE-
25 CEIVER OR CONSERVATOR.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of this subsection, any final and
3 unappealable judgment for monetary damages
4 entered against a receiver or conservator for the
5 breach of an agreement executed or approved in
6 writing by such receiver or conservator after the
7 date of its appointment, shall be paid as an ad-
8 ministrative expense of the receiver or conser-
9 vator.

10 “(B) NO LIMITATION OF POWER.—Nothing
11 in this paragraph shall be construed to limit the
12 power of a receiver or conservator to exercise
13 any rights under contract or law, including to
14 terminate, breach, cancel, or otherwise dis-
15 continue such agreement.

16 “(19) GENERAL EXCEPTIONS.—

17 “(A) LIMITATIONS.—The rights of a con-
18 servator or receiver appointed under this section
19 shall be subject to the limitations on the powers
20 of a receiver under sections 402 through 407 of
21 the Federal Deposit Insurance Corporation Im-
22 provement Act of 1991 (12 U.S.C. 4402
23 through 4407).

24 “(B) MORTGAGES HELD IN TRUST.—

1 “(i) IN GENERAL.—Any mortgage,
2 pool of mortgages, or interest in a pool of
3 mortgages, held in trust, custodial, or
4 agency capacity by a regulated entity for
5 the benefit of persons other than the regu-
6 lated entity shall not be available to satisfy
7 the claims of creditors generally.

8 “(ii) HOLDING OF MORTGAGES.—Any
9 mortgage, pool of mortgages, or interest in
10 a pool of mortgages, described under
11 clause (i) shall be held by the conservator
12 or receiver appointed under this section for
13 the beneficial owners of such mortgage,
14 pool of mortgages, or interest in a pool of
15 mortgages in accordance with the terms of
16 the agreement creating such trust, custo-
17 dial, or other agency arrangement.

18 “(iii) LIABILITY OF RECEIVER.—The
19 liability of a receiver appointed under this
20 section for damages shall, in the case of
21 any contingent or unliquidated claim relat-
22 ing to the mortgages held in trust, be esti-
23 mated in accordance set forth in the regu-
24 lations of the Director.

1 “(c) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS.—

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

7 “(A) Administrative expenses of the re-
8 ceiver.

9 “(B) Any other general or senior liability
10 of the regulated entity and claims of other Fed-
11 eral home loan banks arising from their pay-
12 ment obligations (including joint and several
13 payment obligations).

14 “(C) Any obligation subordinated to gen-
15 eral creditors.

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

19 “(2) CREDITORS SIMILARLY SITUATED.—All
20 creditors that are similarly situated under paragraph
21 (1) shall be treated in a similar manner, except that
22 the Agency may make such other payments to credi-
23 tors necessary to maximize the present value return
24 from the sale or disposition of such regulated enti-
25 ty’s assets or to minimize the amount of any loss re-

1 alized in the resolution of cases so long as all credi-
2 tors similarly situated receive not less than the
3 amount provided under subsection (e)(2).

4 “(3) DEFINITION.—The term ‘administrative
5 expenses of the receiver’ shall include the actual,
6 necessary costs and expenses incurred by the re-
7 ceiver in preserving the assets of the regulated entity
8 or liquidating or otherwise resolving the affairs of
9 the regulated entity. Such expenses shall include ob-
10 ligations that are incurred by the receiver after ap-
11 pointment as receiver that the Director determines
12 are necessary and appropriate to facilitate the
13 smooth and orderly liquidation or other resolution of
14 the regulated entity.

15 “(d) PROVISIONS RELATING TO CONTRACTS EN-
16 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
17 OR RECEIVER.—

18 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
19 In addition to any other rights a conservator or re-
20 ceiver may have, the conservator or receiver for any
21 regulated entity may disaffirm or repudiate any con-
22 tract or lease—

23 “(A) to which such regulated entity is a
24 party;

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

4 “(C) the disaffirmance or repudiation of
5 which the conservator or receiver determines, in
6 its sole discretion, will promote the orderly ad-
7 ministration of the affairs of the regulated enti-
8 ty.

9 “(2) TIMING OF REPUDIATION.—The conser-
10 vator or receiver shall determine whether or not to
11 exercise the rights of repudiation under this sub-
12 section within a reasonable period following such ap-
13 pointment.

14 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
15 ATION.—

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

22 “(i) limited to actual direct compen-
23 satory damages; and

24 “(ii) determined as of—

1 “(I) the date of the appointment
2 of the conservator or receiver; or

3 “(II) in the case of any contract
4 or agreement referred to in paragraph
5 (8), the date of the disaffirmance or
6 repudiation of such contract or agree-
7 ment.

8 “(B) NO LIABILITY FOR OTHER DAM-
9 AGES.—For purposes of subparagraph (A), the
10 term ‘actual direct compensatory damages’ shall
11 not include—

12 “(i) punitive or exemplary damages;

13 “(ii) damages for lost profits or op-
14 portunity; or

15 “(iii) damages for pain and suffering.

16 “(C) MEASURE OF DAMAGES FOR REPUDI-
17 ATION OF FINANCIAL CONTRACTS.—In the case
18 of any qualified financial contract or agreement
19 to which paragraph (8) applies, compensatory
20 damages shall be—

21 “(i) deemed to include normal and
22 reasonable costs of cover or other reason-
23 able measures of damages utilized in the
24 industries for such contract and agreement
25 claims; and

1 “(ii) paid in accordance with this sub-
2 section and subsection (e), except as other-
3 wise specifically provided in this section.

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

6 “(A) IN GENERAL.—If the conservator or
7 receiver disaffirms or repudiates a lease under
8 which the regulated entity was the lessee, the
9 conservator or receiver shall not be liable for
10 any damages (other than damages determined
11 under subparagraph (B)) for the disaffirmance
12 or repudiation of such lease.

13 “(B) PAYMENTS OF RENT.—Notwith-
14 standing subparagraph (A), the lessor under a
15 lease to which that subparagraph applies
16 shall—

17 “(i) be entitled to the contractual rent
18 accruing before the later of the date—

19 “(I) the notice of disaffirmance
20 or repudiation is mailed; or

21 “(II) the disaffirmance or repudi-
22 ation becomes effective, unless the les-
23 sor is in default or breach of the
24 terms of the lease;

1 “(ii) have no claim for damages under
2 any acceleration clause or other penalty
3 provision in the lease; and

4 “(iii) have a claim for any unpaid
5 rent, subject to all appropriate offsets and
6 defenses, due as of the date of the appoint-
7 ment, which shall be paid in accordance
8 with this subsection and subsection (e).

9 “(5) LEASES UNDER WHICH THE REGULATED
10 ENTITY IS THE LESSOR.—

11 “(A) IN GENERAL.—If the conservator or
12 receiver repudiates an unexpired written lease
13 of real property of the regulated entity under
14 which the regulated entity is the lessor and the
15 lessee is not, as of the date of such repudiation,
16 in default, the lessee under such lease may ei-
17 ther—

18 “(i) treat the lease as terminated by
19 such repudiation; or

20 “(ii) remain in possession of the lease-
21 hold interest for the balance of the term of
22 the lease, unless the lessee defaults under
23 the terms of the lease after the date of
24 such repudiation.

1 “(B) PROVISIONS APPLICABLE TO LESSEE
2 REMAINING IN POSSESSION.—If any lessee
3 under a lease described under subparagraph (A)
4 remains in possession of a leasehold interest
5 under clause (ii) of such subparagraph—

6 “(i) the lessee—

7 “(I) shall continue to pay the
8 contractual rent pursuant to the
9 terms of the lease after the date of
10 the repudiation of such lease; and

11 “(II) may offset against any rent
12 payment which accrues after the date
13 of the repudiation of the lease, and
14 any damages which accrue after such
15 date due to the nonperformance of
16 any obligation of the regulated entity
17 under the lease after such date; and

18 “(ii) the conservator or receiver shall
19 not be liable to the lessee for any damages
20 arising after such date as a result of the
21 repudiation other than the amount of any
22 offset allowed under clause (i)(II).

23 “(6) CONTRACTS FOR THE SALE OF REAL
24 PROPERTY.—

1 “(A) IN GENERAL.—If the conservator or
2 receiver repudiates any contract for the sale of
3 real property and the purchaser of such real
4 property under such contract is in possession,
5 and is not, as of the date of such repudiation,
6 in default, such purchaser may either—

7 “(i) treat the contract as terminated
8 by such repudiation; or

9 “(ii) remain in possession of such real
10 property.

11 “(B) PROVISIONS APPLICABLE TO PUR-
12 CHASER REMAINING IN POSSESSION.—If any
13 purchaser of real property under any contract
14 described under subparagraph (A) remains in
15 possession of such property under clause (ii) of
16 such subparagraph—

17 “(i) the purchaser—

18 “(I) shall continue to make all
19 payments due under the contract after
20 the date of the repudiation of the con-
21 tract; and

22 “(II) may offset against any such
23 payments any damages which accrue
24 after such date due to the non-
25 performance (after such date) of any

1 obligation of the regulated entity
2 under the contract; and

3 “(ii) the conservator or receiver
4 shall—

5 “(I) not be liable to the pur-
6 chaser for any damages arising after
7 such date as a result of the repudi-
8 ation other than the amount of any
9 offset allowed under clause (i)(II);

10 “(II) deliver title to the pur-
11 chaser in accordance with the provi-
12 sions of the contract; and

13 “(III) have no obligation under
14 the contract other than the perform-
15 ance required under subclause (II).

16 “(C) ASSIGNMENT AND SALE ALLOWED.—

17 “(i) IN GENERAL.—No provision of
18 this paragraph shall be construed as lim-
19 iting the right of the conservator or re-
20 ceiver to assign the contract described
21 under subparagraph (A), and sell the prop-
22 erty subject to the contract and the provi-
23 sions of this paragraph.

24 “(ii) NO LIABILITY AFTER ASSIGN-
25 MENT AND SALE.—If an assignment and

1 sale described under clause (i) is con-
2 summated, the conservator or receiver
3 shall have no further liability under the
4 contract described under subparagraph
5 (A), or with respect to the real property
6 which was the subject of such contract.

7 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
8 TRACTS.—

9 “(A) SERVICES PERFORMED BEFORE AP-
10 POINTMENT.—In the case of any contract for
11 services between any person and any regulated
12 entity for which the Agency has been appointed
13 conservator or receiver, any claim of such per-
14 son for services performed before the appoint-
15 ment of the conservator or the receiver shall
16 be—

17 “(i) a claim to be paid in accordance
18 with subsections (b) and (e); and

19 “(ii) deemed to have arisen as of the
20 date the conservator or receiver was ap-
21 pointed.

22 “(B) SERVICES PERFORMED AFTER AP-
23 POINTMENT AND PRIOR TO REPUDIATION.—If,
24 in the case of any contract for services de-
25 scribed under subparagraph (A), the conser-

1 vator or receiver accepts performance by the
2 other person before the conservator or receiver
3 makes any determination to exercise the right
4 of repudiation of such contract under this sec-
5 tion—

6 “(i) the other party shall be paid
7 under the terms of the contract for the
8 services performed; and

9 “(ii) the amount of such payment
10 shall be treated as an administrative ex-
11 pense of the conservatorship or receiver-
12 ship.

13 “(C) ACCEPTANCE OF PERFORMANCE NO
14 BAR TO SUBSEQUENT REPUDIATION.—The ac-
15 ceptance by any conservator or receiver of serv-
16 ices referred to under subparagraph (B) in con-
17 nection with a contract described in such sub-
18 paragraph shall not affect the right of the con-
19 servator or receiver to repudiate such contract
20 under this section at any time after such per-
21 formance.

22 “(8) CERTAIN QUALIFIED FINANCIAL CON-
23 TRACTS.—

24 “(A) RIGHTS OF PARTIES TO CON-
25 TRACTS.—Subject to paragraphs (9) and (10)

1 and notwithstanding any other provision of this
2 Act, any other Federal law, or the law of any
3 State, no person shall be stayed or prohibited
4 from exercising—

5 “(i) any right such person has to
6 cause the termination, liquidation, or accel-
7 eration of any qualified financial contract
8 with a regulated entity that arises upon
9 the appointment of the Agency as receiver
10 for such regulated entity at any time after
11 such appointment;

12 “(ii) any right under any security
13 agreement or arrangement or other credit
14 enhancement relating to one or more quali-
15 fied financial contracts described in clause
16 (i); or

17 “(iii) any right to offset or net out
18 any termination value, payment amount, or
19 other transfer obligation arising under or
20 in connection with 1 or more contracts and
21 agreements described in clause (i), includ-
22 ing any master agreement for such con-
23 tracts or agreements.

24 “(B) APPLICABILITY OF OTHER PROVI-
25 SIONS.—Paragraph (10) of subsection (b) shall

1 apply in the case of any judicial action or pro-
2 ceeding brought against any receiver referred to
3 under subparagraph (A), or the regulated entity
4 for which such receiver was appointed, by any
5 party to a contract or agreement described
6 under subparagraph (A)(i) with such regulated
7 entity.

8 “(C) CERTAIN TRANSFERS NOT AVOID-
9 ABLE.—

10 “(i) IN GENERAL.—Notwithstanding
11 paragraph (11) or any other Federal or
12 State laws relating to the avoidance of
13 preferential or fraudulent transfers, the
14 Agency, whether acting as such or as con-
15 servator or receiver of a regulated entity,
16 may not avoid any transfer of money or
17 other property in connection with any
18 qualified financial contract with a regu-
19 lated entity.

20 “(ii) EXCEPTION FOR CERTAIN
21 TRANSFERS.—Clause (i) shall not apply to
22 any transfer of money or other property in
23 connection with any qualified financial con-
24 tract with a regulated entity if the Agency
25 determines that the transferee had actual

1 intent to hinder, delay, or defraud such
2 regulated entity, the creditors of such reg-
3 ulated entity, or any conservator or re-
4 ceiver appointed for such regulated entity.

5 “(D) CERTAIN CONTRACTS AND AGREE-
6 MENTS DEFINED.—In this subsection:

7 “(i) QUALIFIED FINANCIAL CON-
8 TRACT.—The term ‘qualified financial con-
9 tract’ means any securities contract, com-
10 modity contract, forward contract, repur-
11 chase agreement, swap agreement, and any
12 similar agreement that the Agency deter-
13 mines by regulation, resolution, or order to
14 be a qualified financial contract for pur-
15 poses of this paragraph.

16 “(ii) SECURITIES CONTRACT.—The
17 term ‘securities contract’—

18 “(I) means a contract for the
19 purchase, sale, or loan of a security, a
20 certificate of deposit, a mortgage loan,
21 or any interest in a mortgage loan, a
22 group or index of securities, certifi-
23 cates of deposit, or mortgage loans or
24 interests therein (including any inter-
25 est therein or based on the value

1 thereof) or any option on any of the
2 foregoing, including any option to
3 purchase or sell any such security,
4 certificate of deposit, mortgage loan,
5 interest, group or index, or option,
6 and including any repurchase or re-
7 verse repurchase transaction on any
8 such security, certificate of deposit,
9 mortgage loan, interest, group or
10 index, or option;

11 “(II) does not include any pur-
12 chase, sale, or repurchase obligation
13 under a participation in a commercial
14 mortgage loan unless the Agency de-
15 termines by regulation, resolution, or
16 order to include any such agreement
17 within the meaning of such term;

18 “(III) means any option entered
19 into on a national securities exchange
20 relating to foreign currencies;

21 “(IV) means the guarantee by or
22 to any securities clearing agency of
23 any settlement of cash, securities, cer-
24 tificates of deposit, mortgage loans or
25 interests therein, group or index of se-

1 curities, certificates of deposit, or
2 mortgage loans or interests therein
3 (including any interest therein or
4 based on the value thereof) or option
5 on any of the foregoing, including any
6 option to purchase or sell any such se-
7 curity, certificate of deposit, mortgage
8 loan, interest, group or index, or op-
9 tion;

10 “(V) means any margin loan;

11 “(VI) means any other agree-
12 ment or transaction that is similar to
13 any agreement or transaction referred
14 to in this clause;

15 “(VII) means any combination of
16 the agreements or transactions re-
17 ferred to in this clause;

18 “(VIII) means any option to
19 enter into any agreement or trans-
20 action referred to in this clause;

21 “(IX) means a master agreement
22 that provides for an agreement or
23 transaction referred to in subclause
24 (I), (III), (IV), (V), (VI), (VII), or
25 (VIII), together with all supplements

1 to any such master agreement, with-
2 out regard to whether the master
3 agreement provides for an agreement
4 or transaction that is not a securities
5 contract under this clause, except that
6 the master agreement shall be consid-
7 ered to be a securities contract under
8 this clause only with respect to each
9 agreement or transaction under the
10 master agreement that is referred to
11 in subclause (I), (III), (IV), (V), (VI),
12 (VII), or (VIII); and

13 “(X) means any security agree-
14 ment or arrangement or other credit
15 enhancement related to any agree-
16 ment or transaction referred to in this
17 clause, including any guarantee or re-
18 imbursement obligation in connection
19 with any agreement or transaction re-
20 ferred to in this clause.

21 “(iii) COMMODITY CONTRACT.—The
22 term ‘commodity contract’ means—

23 “(I) with respect to a futures
24 commission merchant, a contract for
25 the purchase or sale of a commodity

1 for future delivery on, or subject to
2 the rules of, a contract market or
3 board of trade;

4 “(II) with respect to a foreign fu-
5 tures commission merchant, a foreign
6 future;

7 “(III) with respect to a leverage
8 transaction merchant, a leverage
9 transaction;

10 “(IV) with respect to a clearing
11 organization, a contract for the pur-
12 chase or sale of a commodity for fu-
13 ture delivery on, or subject to the
14 rules of, a contract market or board
15 of trade that is cleared by such clear-
16 ing organization, or commodity option
17 traded on, or subject to the rules of,
18 a contract market or board of trade
19 that is cleared by such clearing orga-
20 nization;

21 “(V) with respect to a commodity
22 options dealer, a commodity option;

23 “(VI) any other agreement or
24 transaction that is similar to any

1 agreement or transaction referred to
2 in this clause;

3 “(VII) any combination of the
4 agreements or transactions referred to
5 in this clause;

6 “(VIII) any option to enter into
7 any agreement or transaction referred
8 to in this clause;

9 “(IX) a master agreement that
10 provides for an agreement or trans-
11 action referred to in subclause (I),
12 (II), (III), (IV), (V), (VI), (VII), or
13 (VIII), together with all supplements
14 to any such master agreement, with-
15 out regard to whether the master
16 agreement provides for an agreement
17 or transaction that is not a com-
18 modity contract under this clause, ex-
19 cept that the master agreement shall
20 be considered to be a commodity con-
21 tract under this clause only with re-
22 spect to each agreement or trans-
23 action under the master agreement
24 that is referred to in subclause (I),

1 (II), (III), (IV), (V), (VI), (VII), or
2 (VIII); or

3 “(X) any security agreement or
4 arrangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in this clause,
7 including any guarantee or reimburse-
8 ment obligation in connection with
9 any agreement or transaction referred
10 to in this clause.

11 “(iv) FORWARD CONTRACT.—The
12 term ‘forward contract’ means—

13 “(I) a contract (other than a
14 commodity contract) for the purchase,
15 sale, or transfer of a commodity or
16 any similar good, article, service,
17 right, or interest which is presently or
18 in the future becomes the subject of
19 dealing in the forward contract trade,
20 or product or byproduct thereof, with
21 a maturity date more than 2 days
22 after the date the contract is entered
23 into, including, a repurchase trans-
24 action, reverse repurchase transaction,
25 consignment, lease, swap, hedge

1 transaction, deposit, loan, option, allo-
2 cated transaction, unallocated trans-
3 action, or any other similar agree-
4 ment;

5 “(II) any combination of agree-
6 ments or transactions referred to in
7 subclauses (I) and (III);

8 “(III) any option to enter into
9 any agreement or transaction referred
10 to in subclause (I) or (II);

11 “(IV) a master agreement that
12 provides for an agreement or trans-
13 action referred to in subclauses (I),
14 (II), or (III), together with all supple-
15 ments to any such master agreement,
16 without regard to whether the master
17 agreement provides for an agreement
18 or transaction that is not a forward
19 contract under this clause, except that
20 the master agreement shall be consid-
21 ered to be a forward contract under
22 this clause only with respect to each
23 agreement or transaction under the
24 master agreement that is referred to
25 in subclause (I), (II), or (III); or

1 “(V) any security agreement or
2 arrangement or other credit enhance-
3 ment related to any agreement or
4 transaction referred to in subclause
5 (I), (II), (III), or (IV), including any
6 guarantee or reimbursement obliga-
7 tion in connection with any agreement
8 or transaction referred to in any such
9 subclause.

10 “(v) REPURCHASE AGREEMENT.—The
11 term ‘repurchase agreement’ (which defini-
12 tion also applies to a reverse repurchase
13 agreement)—

14 “(I) means an agreement, includ-
15 ing related terms, which provides for
16 the transfer of one or more certifi-
17 cates of deposit, mortgage-related se-
18 curities (as such term is defined in
19 the Securities Exchange Act of 1934),
20 mortgage loans, interests in mortgage-
21 related securities or mortgage loans,
22 eligible bankers’ acceptances, qualified
23 foreign government securities or secu-
24 rities that are direct obligations of, or
25 that are fully guaranteed by, the

1 United States or any agency of the
2 United States against the transfer of
3 funds by the transferee of such certifi-
4 cates of deposit, eligible bankers' ac-
5 ceptances, securities, mortgage loans,
6 or interests with a simultaneous
7 agreement by such transferee to
8 transfer to the transferor thereof cer-
9 tificates of deposit, eligible bankers'
10 acceptances, securities, mortgage
11 loans, or interests as described above,
12 at a date certain not later than 1 year
13 after such transfers or on demand,
14 against the transfer of funds, or any
15 other similar agreement;

16 “(II) does not include any repur-
17 chase obligation under a participation
18 in a commercial mortgage loan unless
19 the Agency determines by regulation,
20 resolution, or order to include any
21 such participation within the meaning
22 of such term;

23 “(III) means any combination of
24 agreements or transactions referred to
25 in subclauses (I) and (IV);

1 “(IV) means any option to enter
2 into any agreement or transaction re-
3 ferred to in subclause (I) or (III);

4 “(V) means a master agreement
5 that provides for an agreement or
6 transaction referred to in subclause
7 (I), (III), or (IV), together with all
8 supplements to any such master
9 agreement, without regard to whether
10 the master agreement provides for an
11 agreement or transaction that is not a
12 repurchase agreement under this
13 clause, except that the master agree-
14 ment shall be considered to be a re-
15 purchase agreement under this sub-
16 clause only with respect to each agree-
17 ment or transaction under the master
18 agreement that is referred to in sub-
19 clause (I), (III), or (IV); and

20 “(VI) means any security agree-
21 ment or arrangement or other credit
22 enhancement related to any agree-
23 ment or transaction referred to in
24 subclause (I), (III), (IV), or (V), in-
25 cluding any guarantee or reimburse-

1 ment obligation in connection with
2 any agreement or transaction referred
3 to in any such subclause.

4 For purposes of this clause, the term
5 ‘qualified foreign government security’
6 means a security that is a direct obligation
7 of, or that is fully guaranteed by, the cen-
8 tral government of a member of the Orga-
9 nization for Economic Cooperation and
10 Development (as determined by regulation
11 or order adopted by the appropriate Fed-
12 eral banking authority).

13 “(vi) SWAP AGREEMENT.—The term
14 ‘swap agreement’ means—

15 “(I) any agreement, including the
16 terms and conditions incorporated by
17 reference in any such agreement,
18 which is an interest rate swap, option,
19 future, or forward agreement, includ-
20 ing a rate floor, rate cap, rate collar,
21 cross-currency rate swap, and basis
22 swap; a spot, same day-tomorrow, to-
23 morrow-next, forward, or other for-
24 eign exchange or precious metals
25 agreement; a currency swap, option,

1 future, or forward agreement; an equity
2 index or equity swap, option, future,
3 or forward agreement; a debt
4 index or debt swap, option, future, or
5 forward agreement; a total return,
6 credit spread or credit swap, option,
7 future, or forward agreement; a commodity
8 index or commodity swap, option,
9 future, or forward agreement; or
10 a weather swap, weather derivative, or
11 weather option;

12 “(II) any agreement or transaction
13 that is similar to any other
14 agreement or transaction referred to
15 in this clause and that is of a type
16 that has been, is presently, or in the
17 future becomes, the subject of recurrent
18 dealings in the swap markets (including
19 terms and conditions incorporated
20 by reference in such agreement) and
21 that is a forward, swap, future, or
22 option on one or more rates, currencies,
23 commodities, equity securities or other
24 equity instruments, debt securities or
25 other debt instruments,

1 quantitative measures associated with
2 an occurrence, extent of an occur-
3 rence, or contingency associated with
4 a financial, commercial, or economic
5 consequence, or economic or financial
6 indices or measures of economic or fi-
7 nancial risk or value;

8 “(III) any combination of agree-
9 ments or transactions referred to in
10 this clause;

11 “(IV) any option to enter into
12 any agreement or transaction referred
13 to in this clause;

14 “(V) a master agreement that
15 provides for an agreement or trans-
16 action referred to in subclause (I),
17 (II), (III), or (IV), together with all
18 supplements to any such master
19 agreement, without regard to whether
20 the master agreement contains an
21 agreement or transaction that is not a
22 swap agreement under this clause, ex-
23 cept that the master agreement shall
24 be considered to be a swap agreement
25 under this clause only with respect to

1 each agreement or transaction under
2 the master agreement that is referred
3 to in subclause (I), (II), (III), or (IV);
4 and

5 “(VI) any security agreement or
6 arrangement or other credit enhance-
7 ment related to any agreements or
8 transactions referred to in subclause
9 (I), (II), (III), (IV), or (V), including
10 any guarantee or reimbursement obli-
11 gation in connection with any agree-
12 ment or transaction referred to in any
13 such subclause.

14 Such term is applicable for purposes of
15 this subsection only and shall not be con-
16 strued or applied so as to challenge or af-
17 fect the characterization, definition, or
18 treatment of any swap agreement under
19 any other statute, regulation, or rule, in-
20 cluding the Securities Act of 1933, the Se-
21 curities Exchange Act of 1934, the Public
22 Utility Holding Company Act of 1935, the
23 Trust Indenture Act of 1939, the Invest-
24 ment Company Act of 1940, the Invest-
25 ment Advisers Act of 1940, the Securities

1 Investor Protection Act of 1970, the Com-
2 modity Exchange Act, the Gramm-Leach-
3 Bliley Act, and the Legal Certainty for
4 Bank Products Act of 2000.

5 “(vii) TREATMENT OF MASTER
6 AGREEMENT AS ONE AGREEMENT.—Any
7 master agreement for any contract or
8 agreement described in any preceding
9 clause of this subparagraph (or any master
10 agreement for such master agreement or
11 agreements), together with all supplements
12 to such master agreement, shall be treated
13 as a single agreement and a single quali-
14 fied financial contract. If a master agree-
15 ment contains provisions relating to agree-
16 ments or transactions that are not them-
17 selves qualified financial contracts, the
18 master agreement shall be deemed to be a
19 qualified financial contract only with re-
20 spect to those transactions that are them-
21 selves qualified financial contracts.

22 “(viii) TRANSFER.—The term ‘trans-
23 fer’ means every mode, direct or indirect,
24 absolute or conditional, voluntary or invol-
25 untary, of disposing of or parting with

1 property or with an interest in property,
2 including retention of title as a security in-
3 terest and foreclosure of the regulated en-
4 tity's equity of redemption.

5 “(E) CERTAIN PROTECTIONS IN EVENT OF
6 APPOINTMENT OF CONSERVATOR.—Notwith-
7 standing any other provision of this Act (other
8 than paragraph (13) of this subsection), any
9 other Federal law, or the law of any State, no
10 person shall be stayed or prohibited from exer-
11 cising—

12 “(i) any right such person has to
13 cause the termination, liquidation, or accel-
14 eration of any qualified financial contract
15 with a regulated entity in a conservator-
16 ship based upon a default under such fi-
17 nancial contract which is enforceable under
18 applicable noninsolvency law;

19 “(ii) any right under any security
20 agreement or arrangement or other credit
21 enhancement relating to one or more such
22 qualified financial contracts; or

23 “(iii) any right to offset or net out
24 any termination values, payment amounts,
25 or other transfer obligations arising under

1 or in connection with such qualified finan-
2 cial contracts.

3 “(F) CLARIFICATION.—No provision of law
4 shall be construed as limiting the right or
5 power of the Agency, or authorizing any court
6 or agency to limit or delay, in any manner, the
7 right or power of the Agency to transfer any
8 qualified financial contract in accordance with
9 paragraphs (9) and (10) of this subsection or to
10 disaffirm or repudiate any such contract in ac-
11 cordance with subsection (d)(1) of this section.

12 “(G) WALKAWAY CLAUSES NOT EFFEC-
13 TIVE.—

14 “(i) IN GENERAL.—Notwithstanding
15 the provisions of subparagraphs (A) and
16 (E), and sections 403 and 404 of the Fed-
17 eral Deposit Insurance Corporation Im-
18 provement Act of 1991, no walkaway
19 clause shall be enforceable in a qualified fi-
20 nancial contract of a regulated entity in
21 default.

22 “(ii) WALKAWAY CLAUSE DEFINED.—
23 For purposes of this subparagraph, the
24 term ‘walkaway clause’ means a provision
25 in a qualified financial contract that, after

1 calculation of a value of a party's position
2 or an amount due to or from 1 of the par-
3 ties in accordance with its terms upon ter-
4 mination, liquidation, or acceleration of the
5 qualified financial contract, either does not
6 create a payment obligation of a party or
7 extinguishes a payment obligation of a
8 party in whole or in part solely because of
9 such party's status as a nondefaulting
10 party.

11 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
12 TRACTS.—In making any transfer of assets or liabil-
13 ities of a regulated entity in default which includes
14 any qualified financial contract, the conservator or
15 receiver for such regulated entity shall either—

16 “(A) transfer to 1 person—

17 “(i) all qualified financial contracts
18 between any person (or any affiliate of
19 such person) and the regulated entity in
20 default;

21 “(ii) all claims of such person (or any
22 affiliate of such person) against such regu-
23 lated entity under any such contract (other
24 than any claim which, under the terms of
25 any such contract, is subordinated to the

1 claims of general unsecured creditors of
2 such regulated entity);

3 “(iii) all claims of such regulated enti-
4 ty against such person (or any affiliate of
5 such person) under any such contract; and

6 “(iv) all property securing or any
7 other credit enhancement for any contract
8 described in clause (i) or any claim de-
9 scribed in clause (ii) or (iii) under any
10 such contract; or

11 “(B) transfer none of the financial con-
12 tracts, claims, or property referred to under
13 subparagraph (A) (with respect to such person
14 and any affiliate of such person).

15 “(10) NOTIFICATION OF TRANSFER.—

16 “(A) IN GENERAL.—If—

17 “(i) the conservator or receiver for a
18 regulated entity in default makes any
19 transfer of the assets and liabilities of such
20 regulated entity, and

21 “(ii) the transfer includes any quali-
22 fied financial contract,

23 the conservator or receiver shall notify any per-
24 son who is a party to any such contract of such
25 transfer by 5:00 p.m. (eastern time) on the

1 business day following the date of the appoint-
2 ment of the receiver in the case of a receiver-
3 ship, or the business day following such trans-
4 fer in the case of a conservatorship.

5 “(B) CERTAIN RIGHTS NOT ENFORCE-
6 ABLE.—

7 “(i) RECEIVERSHIP.—A person who is
8 a party to a qualified financial contract
9 with a regulated entity may not exercise
10 any right that such person has to termi-
11 nate, liquidate, or net such contract under
12 paragraph (8)(A) of this subsection or sec-
13 tion 403 or 404 of the Federal Deposit In-
14 surance Corporation Improvement Act of
15 1991, solely by reason of or incidental to
16 the appointment of a receiver for the regu-
17 lated entity (or the insolvency or financial
18 condition of the regulated entity for which
19 the receiver has been appointed)—

20 “(I) until 5:00 p.m. (eastern
21 time) on the business day following
22 the date of the appointment of the re-
23 ceiver; or

24 “(II) after the person has re-
25 ceived notice that the contract has

1 been transferred pursuant to para-
2 graph (9)(A).

3 “(ii) CONSERVATORSHIP.—A person
4 who is a party to a qualified financial con-
5 tract with a regulated entity may not exer-
6 cise any right that such person has to ter-
7 minate, liquidate, or net such contract
8 under paragraph (8)(E) of this subsection
9 or section 403 or 404 of the Federal De-
10 posit Insurance Corporation Improvement
11 Act of 1991, solely by reason of or inci-
12 dental to the appointment of a conservator
13 for the regulated entity (or the insolvency
14 or financial condition of the regulated enti-
15 ty for which the conservator has been ap-
16 pointed).

17 “(iii) NOTICE.—For purposes of this
18 paragraph, the Agency as receiver or con-
19 servator of a regulated entity shall be
20 deemed to have notified a person who is a
21 party to a qualified financial contract with
22 such regulated entity if the Agency has
23 taken steps reasonably calculated to pro-
24 vide notice to such person by the time
25 specified in subparagraph (A).

1 “(C) BUSINESS DAY DEFINED.—For pur-
2 poses of this paragraph, the term ‘business day’
3 means any day other than any Saturday, Sun-
4 day, or any day on which either the New York
5 Stock Exchange or the Federal Reserve Bank
6 of New York is closed.

7 “(11) DISAFFIRMANCE OR REPUDIATION OF
8 QUALIFIED FINANCIAL CONTRACTS.—In exercising
9 the rights of disaffirmance or repudiation of a con-
10 servator or receiver with respect to any qualified fi-
11 nancial contract to which a regulated entity is a
12 party, the conservator or receiver for such institution
13 shall either—

14 “(A) disaffirm or repudiate all qualified fi-
15 nancial contracts between—

16 “(i) any person or any affiliate of
17 such person; and

18 “(ii) the regulated entity in default; or

19 “(B) disaffirm or repudiate none of the
20 qualified financial contracts referred to in sub-
21 paragraph (A) (with respect to such person or
22 any affiliate of such person).

23 “(12) CERTAIN SECURITY INTERESTS NOT
24 AVOIDABLE.—No provision of this subsection shall
25 be construed as permitting the avoidance of any le-

1 gally enforceable or perfected security interest in any
2 of the assets of any regulated entity, except where
3 such an interest is taken in contemplation of the in-
4 solvency of the regulated entity, or with the intent
5 to hinder, delay, or defraud the regulated entity or
6 the creditors of such regulated entity.

7 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

8 “(A) IN GENERAL.—Notwithstanding any
9 provision of a contract providing for termi-
10 nation, default, acceleration, or exercise of
11 rights upon, or solely by reason of, insolvency
12 or the appointment of a conservator or receiver,
13 the conservator or receiver may enforce any
14 contract or regulated entity bond entered into
15 by the regulated entity.

16 “(B) CERTAIN RIGHTS NOT AFFECTED.—
17 No provision of this paragraph may be con-
18 strued as impairing or affecting any right of the
19 conservator or receiver to enforce or recover
20 under a director’s or officer’s liability insurance
21 contract or surety bond under other applicable
22 law.

23 “(C) CONSENT REQUIREMENT.—

24 “(i) IN GENERAL.—Except as other-
25 wise provided under this section, no person

1 may exercise any right or power to termi-
2 nate, accelerate, or declare a default under
3 any contract to which a regulated entity is
4 a party, or to obtain possession of or exer-
5 cise control over any property of the regu-
6 lated entity, or affect any contractual
7 rights of the regulated entity, without the
8 consent of the conservator or receiver, as
9 appropriate, for a period of—

10 “(I) 45 days after the date of ap-
11 pointment of a conservator; or

12 “(II) 90 days after the date of
13 appointment of a receiver.

14 “(ii) EXCEPTIONS.—This paragraph
15 shall—

16 “(I) not apply to a director’s or
17 officer’s liability insurance contract;

18 “(II) not apply to the rights of
19 parties to any qualified financial con-
20 tracts under subsection (d)(8); and

21 “(III) not be construed as per-
22 mitting the conservator or receiver to
23 fail to comply with otherwise enforce-
24 able provisions of such contracts.

1 “(14) SAVINGS CLAUSE.—The meanings of
2 terms used in this subsection are applicable for pur-
3 poses of this subsection only, and shall not be con-
4 strued or applied so as to challenge or affect the
5 characterization, definition, or treatment of any
6 similar terms under any other statute, regulation, or
7 rule, including the Gramm-Leach-Bliley Act, the
8 Legal Certainty for Bank Products Act of 2000, the
9 securities laws (as that term is defined in section
10 3(a)(47) of the Securities Exchange Act of 1934),
11 and the Commodity Exchange Act.

12 “(15) EXCEPTION FOR FEDERAL RESERVE AND
13 FEDERAL HOME LOAN BANKS.—No provision of this
14 subsection shall apply with respect to—

15 “(A) any extension of credit from any Fed-
16 eral home loan bank or Federal Reserve Bank
17 to any regulated entity; or

18 “(B) any security interest in the assets of
19 the regulated entity securing any such extension
20 of credit.

21 “(e) VALUATION OF CLAIMS IN DEFAULT.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of Federal law or the law of any State, and
24 regardless of the method which the Agency deter-
25 mines to utilize with respect to a regulated entity in

1 default or in danger of default, including trans-
2 actions authorized under subsection (i), this sub-
3 section shall govern the rights of the creditors of
4 such regulated entity.

5 “(2) MAXIMUM LIABILITY.—The maximum li-
6 ability of the Agency, acting as receiver or in any
7 other capacity, to any person having a claim against
8 the receiver or the regulated entity for which such
9 receiver is appointed shall equal the lesser of—

10 “(A) the amount such claimant would have
11 received if the Agency had liquidated the assets
12 and liabilities of such regulated entity without
13 exercising the authority of the Agency under
14 subsection (i) of this section; or

15 “(B) the amount of proceeds realized from
16 the performance of contracts or sale of the as-
17 sets of the regulated entity.

18 “(f) LIMITATION ON COURT ACTION.—Except as
19 provided in this section or at the request of the Director,
20 no court may take any action to restrain or affect the exer-
21 cise of powers or functions of the Agency as a conservator
22 or a receiver.

23 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

24 “(1) IN GENERAL.—A director or officer of a
25 regulated entity may be held personally liable for

1 monetary damages in any civil action by, on behalf
2 of, or at the request or direction of the Agency,
3 which action is prosecuted wholly or partially for the
4 benefit of the Agency—

5 “(A) acting as conservator or receiver of
6 such regulated entity, or

7 “(B) acting based upon a suit, claim, or
8 cause of action purchased from, assigned by, or
9 otherwise conveyed by such receiver or conser-
10 vator,

11 for gross negligence, including any similar conduct
12 or conduct that demonstrates a greater disregard of
13 a duty of care (than gross negligence) including in-
14 tentional tortious conduct, as such terms are defined
15 and determined under applicable State law.

16 “(2) NO LIMITATION.—Nothing in this para-
17 graph shall impair or affect any right of the Agency
18 under other applicable law.

19 “(h) DAMAGES.—In any proceeding related to any
20 claim against a director, officer, employee, agent, attorney,
21 accountant, appraiser, or any other party employed by or
22 providing services to a regulated entity, recoverable dam-
23 ages determined to result from the improvident or other-
24 wise improper use or investment of any assets of the regu-

1 lated entity shall include principal losses and appropriate
2 interest.

3 “(i) LIMITED-LIFE REGULATED ENTITIES.—

4 “(1) ORGANIZATION.—

5 “(A) PURPOSE.—If a regulated entity is in
6 default, or if the Agency anticipates that a reg-
7 ulated entity will default, the Agency may orga-
8 nize a limited-life regulated entity with those
9 powers and attributes of the regulated entity in
10 default or in danger of default that the Director
11 determines necessary, subject to the provisions
12 of this subsection. The Director shall grant a
13 temporary charter to the limited-life regulated
14 entity, and the limited-life regulated entity shall
15 operate subject to that charter.

16 “(B) AUTHORITIES.—Upon the creation of
17 a limited-life regulated entity under subpara-
18 graph (A), the limited-life regulated entity
19 may—

20 “(i) assume such liabilities of the reg-
21 ulated entity that is in default or in danger
22 of default as the Agency may, in its discre-
23 tion, determine to be appropriate, provided
24 that the liabilities assumed shall not exceed

1 the amount of assets of the limited-life reg-
2 ulated entity;

3 “(ii) purchase such assets of the regu-
4 lated entity that is in default, or in danger
5 of default, as the Agency may, in its dis-
6 cretion, determine to be appropriate; and

7 “(iii) perform any other temporary
8 function which the Agency may, in its dis-
9 cretion, prescribe in accordance with this
10 section.

11 “(2) CHARTER.—

12 “(A) CONDITIONS.—The Agency may
13 grant a temporary charter if the Agency deter-
14 mines that the continued operation of the regu-
15 lated entity in default or in danger of default
16 is in the best interest of the national economy
17 and the housing markets.

18 “(B) TREATMENT AS BEING IN DEFAULT
19 FOR CERTAIN PURPOSES.—A limited-life regu-
20 lated entity shall be treated as a regulated enti-
21 ty in default at such times and for such pur-
22 poses as the Agency may, in its discretion, de-
23 termine.

24 “(C) MANAGEMENT.—A limited-life regu-
25 lated entity, upon the granting of its charter,

1 shall be under the management of a board of
2 directors consisting of not fewer than 5 nor
3 more than 10 members appointed by the Agen-
4 cy.

5 “(D) BYLAWS.—The board of directors of
6 a limited-life regulated entity shall adopt such
7 bylaws as may be approved by the Agency.

8 “(3) CAPITAL STOCK.—No capital stock need
9 be paid into a limited-life regulated entity by the
10 Agency.

11 “(4) INVESTMENTS.—Funds of a limited-life
12 regulated entity shall be kept on hand in cash, in-
13 vested in obligations of the United States or obliga-
14 tions guaranteed as to principal and interest by the
15 United States, or deposited with the Agency, or any
16 Federal Reserve bank.

17 “(5) EXEMPT STATUS.—Notwithstanding any
18 other provision of Federal or State law, the limited-
19 life regulated entity, its franchise, property, and in-
20 come shall be exempt from all taxation now or here-
21 after imposed by the United States, by any territory,
22 dependency, or possession thereof, or by any State,
23 county, municipality, or local taxing authority.

24 “(6) WINDING UP.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), unless Congress authorizes the sale
3 of the capital stock of the limited-life regulated
4 entity, not later than 2 years after the date of
5 its organization, the Agency shall wind up the
6 affairs of the limited-life regulated entity.

7 “(B) EXTENSION.—The Director may, in
8 the discretion of the Director, extend the status
9 of the limited-life regulated entity for 3 addi-
10 tional 1-year periods.

11 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

12 “(A) IN GENERAL.—

13 “(i) TRANSFER OF ASSETS AND LI-
14 ABILITIES.—The Agency, as receiver, may
15 transfer any assets and liabilities of a reg-
16 ulated entity in default, or in danger of de-
17 fault, to the limited-life regulated entity in
18 accordance with paragraph (1).

19 “(ii) SUBSEQUENT TRANSFERS.—At
20 any time after a charter is transferred to
21 a limited-life regulated entity, the Agency,
22 as receiver, may transfer any assets and li-
23 abilities of such regulated entity in default,
24 or in danger in default, as the Agency
25 may, in its discretion, determine to be ap-

1 appropriate in accordance with paragraph
2 (1).

3 “(iii) EFFECTIVE WITHOUT AP-
4 PROVAL.—The transfer of any assets or li-
5 abilities of a regulated entity in default, or
6 in danger of default, transferred to a lim-
7 ited-life regulated entity shall be effective
8 without any further approval under Fed-
9 eral or State law, assignment, or consent
10 with respect thereto.

11 “(8) PROCEEDS.—To the extent that available
12 proceeds from the limited-life regulated entity exceed
13 amounts required to pay obligations, such proceeds
14 may be paid to the regulated entity in default, or in
15 danger of default.

16 “(9) POWERS.—

17 “(A) IN GENERAL.—Each limited-life regu-
18 lated entity created under this subsection shall
19 have all corporate powers of, and be subject to
20 the same provisions of law as, the regulated en-
21 tity in default or in danger of default to which
22 it relates, except that—

23 “(i) the Agency may—

24 “(I) remove the directors of a
25 limited-life regulated entity; and

1 “(II) fix the compensation of
2 members of the board of directors and
3 senior management, as determined by
4 the Agency in its discretion, of a lim-
5 ited-life regulated entity;

6 “(ii) the Agency may indemnify the
7 representatives for purposes of paragraph
8 (1)(B), and the directors, officers, employ-
9 ees, and agents of a limited-life regulated
10 entity on such terms as the Agency deter-
11 mines to be appropriate; and

12 “(iii) the board of directors of a lim-
13 ited-life regulated entity—

14 “(I) shall elect a chairperson who
15 may also serve in the position of chief
16 executive officer, except that such per-
17 son shall not serve either as chair-
18 person or as chief executive officer
19 without the prior approval of the
20 Agency; and

21 “(II) may appoint a chief execu-
22 tive officer who is not also the chair-
23 person, except that such person shall
24 not serve as chief executive officer

1 without the prior approval of the
2 Agency.

3 “(B) STAY OF JUDICIAL ACTION.—Any ju-
4 dicial action to which a limited-life regulated
5 entity becomes a party by virtue of its acquisi-
6 tion of any assets or assumption of any liabil-
7 ities of a regulated entity in default shall be
8 stayed from further proceedings for a period of
9 up to 45 days at the request of the limited-life
10 regulated entity. Such period may be modified
11 upon the consent of all parties.

12 “(10) OBTAINING OF CREDIT AND INCURRING
13 OF DEBT.—

14 “(A) IN GENERAL.—The limited-life regu-
15 lated entity may obtain unsecured credit and
16 incur unsecured debt in the ordinary course of
17 business.

18 “(B) INABILITY TO OBTAIN CREDIT.—If
19 the limited-life regulated entity is unable to ob-
20 tain unsecured credit the Director may author-
21 ize the obtaining of credit or the incurring of
22 debt—

23 “(i) with priority over any or all ad-
24 ministrative expenses;

1 “(ii) secured by a lien on property
2 that is not otherwise subject to a lien; or

3 “(iii) secured by a junior lien on prop-
4 erty that is subject to a lien.

5 “(C) LIMITATIONS.—

6 “(i) IN GENERAL.—The Director,
7 after notice and a hearing, may authorize
8 the obtaining of credit or the incurring of
9 debt secured by a senior or equal lien on
10 property that is subject to a lien (other
11 than mortgages that collateralize the mort-
12 gage-backed securities issued or guaran-
13 teed by the regulated entity) only if—

14 “(I) the limited-life regulated en-
15 tity is unable to obtain such credit
16 otherwise; and

17 “(II) there is adequate protection
18 of the interest of the holder of the lien
19 on the property which such senior or
20 equal lien is proposed to be granted.

21 “(ii) BURDEN OF PROOF.—In any
22 hearing under this subsection, the Director
23 has the burden of proof on the issue of
24 adequate protection.

1 “(D) EFFECT ON DEBTS AND LIENS.—The
2 reversal or modification on appeal of an author-
3 ization under this paragraph to obtain credit or
4 incur debt, or of a grant under this section of
5 a priority or a lien, does not affect the validity
6 of any debt so incurred, or any priority or lien
7 so granted, to an entity that extended such
8 credit in good faith, whether or not such entity
9 knew of the pendency of the appeal, unless such
10 authorization and the incurring of such debt, or
11 the granting of such priority or lien, were
12 stayed pending appeal.

13 “(11) ISSUANCE OF PREFERRED DEBT.—A lim-
14 ited-life regulated entity may, subject to the ap-
15 proval of the Director and subject to such terms and
16 conditions as the Director may prescribe, issue
17 notes, bonds, or other debt obligations of a class to
18 which all other debt obligations of the limited-life
19 regulated entity shall be subordinate in right and
20 payment.

21 “(12) NO FEDERAL STATUS.—

22 “(A) AGENCY STATUS.—A limited-life reg-
23 ulated entity is not an agency, establishment, or
24 instrumentality of the United States.

1 “(B) EMPLOYEE STATUS.—Representa-
2 tives for purposes of paragraph (1)(B), interim
3 directors, directors, officers, employees, or
4 agents of a limited-life regulated entity are not,
5 solely by virtue of service in any such capacity,
6 officers or employees of the United States. Any
7 employee of the Agency or of any Federal in-
8 strumentality who serves at the request of the
9 Agency as a representative for purposes of
10 paragraph (1)(B), interim director, director, of-
11 ficer, employee, or agent of a limited-life regu-
12 lated entity shall not—

13 “(i) solely by virtue of service in any
14 such capacity lose any existing status as
15 an officer or employee of the United States
16 for purposes of title 5, United States Code,
17 or any other provision of law; or

18 “(ii) receive any salary or benefits for
19 service in any such capacity with respect to
20 a limited-life regulated entity in addition to
21 such salary or benefits as are obtained
22 through employment with the Agency or
23 such Federal instrumentality.

1 “(13) ADDITIONAL POWERS.—In addition to
2 any other powers granted under this subsection, a
3 limited-life regulated entity may—

4 “(A) extend a maturity date or change in
5 an interest rate or other term of outstanding
6 securities;

7 “(B) issue securities of the limited-life reg-
8 ulated entity, for cash, for property, for existing
9 securities, or in exchange for claims or inter-
10 ests, or for any other appropriate purposes; and

11 “(C) take any other action not inconsistent
12 with this section.

13 “(j) OTHER EXEMPTIONS.—When acting as a re-
14 ceiver, the following provisions shall apply with respect to
15 the Agency:

16 “(1) EXEMPTION FROM TAXATION.—The Agen-
17 cy, including its franchise, its capital, reserves, and
18 surplus, and its income, shall be exempt from all
19 taxation imposed by any State, country, munici-
20 pality, or local taxing authority, except that any real
21 property of the Agency shall be subject to State, ter-
22 ritorial, county, municipal, or local taxation to the
23 same extent according to its value as other real
24 property is taxed, except that, notwithstanding the
25 failure of any person to challenge an assessment

1 under State law of the value of such property, and
2 the tax thereon, shall be determined as of the period
3 for which such tax is imposed.

4 “(2) EXEMPTION FROM ATTACHMENT AND
5 LIENS.—No property of the Agency shall be subject
6 to levy, attachment, garnishment, foreclosure, or sale
7 without the consent of the Agency, nor shall any in-
8 voluntary lien attach to the property of the Agency.

9 “(3) EXEMPTION FROM PENALTIES AND
10 FINES.—The Agency shall not be liable for any
11 amounts in the nature of penalties or fines, includ-
12 ing those arising from the failure of any person to
13 pay any real property, personal property, probate, or
14 recording tax or any recording or filing fees when
15 due.

16 “(k) PROHIBITION OF CHARTER REVOCATION.—In
17 no case may a receiver appointed pursuant to this section
18 revoke, annul, or terminate the charter of a regulated enti-
19 ty.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) HOUSING AND COMMUNITY DEVELOPMENT
22 ACT OF 1992.—Subtitle B of title XIII of the Hous-
23 ing and Community Development Act of 1992 is
24 amended by striking sections 1369 (12 U.S.C.

1 4619), 1369A (12 U.S.C. 4620), and 1369B (12
2 U.S.C. 4621).

3 (2) FEDERAL HOME LOAN BANKS.—Section 25
4 of the Federal Home Loan Bank Act (12 U.S.C.
5 1445) is amended to read as follows:

6 **“SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.**

7 “Each Federal Home Loan Bank shall have succes-
8 sion until it is voluntarily merged with another Bank
9 under this Act, or until it is merged, reorganized, rehabili-
10 tated, liquidated, or otherwise wound up by the Director
11 in accordance with the provisions of section 1367 of the
12 Housing and Community Development Act of 1992, or by
13 further Act of Congress.”.

14 **SEC. 1049. CONFORMING AMENDMENTS.**

15 Title XIII of the Housing and Community Develop-
16 ment Act of 1992, as amended by the preceding provisions
17 of this title, is further amended—

18 (1) in sections 1365 (12 U.S.C. 4615) through
19 1369D (12 U.S.C. 4623), but not including section
20 1367 (12 U.S.C. 4617) as amended by section 1048
21 of this title—

22 (A) by striking “An enterprise” each place
23 such term appears and inserting “A regulated
24 entity”;

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

4 (C) by striking “the enterprise” each place
5 such term appears and inserting “the regulated
6 entity”;

7 (2) in section 1366 (12 U.S.C. 4616)—

8 (A) in subsection (b)(7), by striking “sec-
9 tion 1369 (excluding subsection (a)(1) and
10 (2))” and inserting “section 1367”; and

11 (B) in subsection (d), by striking “the en-
12 terprises” and inserting “the regulated enti-
13 ties”;

14 (3) in section 1368(d) (12 U.S.C. 4618(d)), by
15 striking “Committee on Banking, Finance and
16 Urban Affairs” and inserting “Committee on Finan-
17 cial Services”;

18 (4) in section 1369C (12 U.S.C. 4622)—

19 (A) in subsection (a)(4), by striking “ac-
20 tivities (including existing and new programs)”
21 and inserting “activities, services, undertakings,
22 and offerings (including existing and new prod-
23 ucts (as such term is defined in section
24 1321(f))”; and

1 (B) in subsection (c), by striking “any en-
2 terprise” and inserting “any regulated entity”;
3 and
4 (5) in subsections (a) and (d) of section 1369D,
5 by striking “section 1366 or 1367 or action under
6 section 1369)” each place such phrase appears and
7 inserting “section 1367)”.

8 **CHAPTER 4—ENFORCEMENT ACTIONS**

9 **SEC. 1051. CEASE-AND-DESIST PROCEEDINGS.**

10 Section 1371 of the Housing and Community Devel-
11 opment Act of 1992 (12 U.S.C. 4631) is amended—

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

14 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
15 **TICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the
16 opinion of the Director, a regulated entity or any regulated
17 entity-affiliated party is engaging or has engaged, or the
18 Director has reasonable cause to believe that the regulated
19 entity or any regulated entity-affiliated party is about to
20 engage, in an unsafe or unsound practice in conducting
21 the business of the regulated entity or is violating or has
22 violated, or the Director has reasonable cause to believe
23 that the regulated entity or any regulated entity-affiliated
24 party is about to violate, a law, rule, or regulation, or any
25 condition imposed in writing by the Director in connection

1 with the granting of any application or other request by
2 the regulated entity or any written agreement entered into
3 with the Director, the Director may issue and serve upon
4 the regulated entity or such party a notice of charges in
5 respect thereof. The Director may not, pursuant to this
6 section, enforce compliance with any housing goal estab-
7 lished under subpart B of part 2 of subtitle A of this title,
8 with section 1336 of this title, with subsection (m) or (n)
9 of section 309 of the Federal National Mortgage Associa-
10 tion Charter Act (12 U.S.C. 1723a(m), (n)), with sub-
11 section (e) or (f) of section 307 of the Federal Home Loan
12 Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or
13 with paragraph (5) of section 10(j) of the Federal Home
14 Loan Bank Act (12 U.S.C. 1430(j)).

15 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
16 regulated entity receives, in its most recent report of ex-
17 amination, a less-than-satisfactory rating for asset quality,
18 management, earnings, or liquidity, the Director may (if
19 the deficiency is not corrected) deem the regulated entity
20 to be engaging in an unsafe or unsound practice for pur-
21 poses of this subsection.”;

22 (2) in subsection (c)(2), by striking “enterprise,
23 executive officer, or director” and inserting “regu-
24 lated entity or regulated entity-affiliated party”; and

25 (3) in subsection (d)—

1 (A) in the matter preceding paragraph (1),
2 by striking “enterprise, executive officer, or di-
3 rector” and inserting “regulated entity or regu-
4 lated entity-affiliated party”;

5 (B) in paragraph (1)—

6 (i) by striking “an executive officer or
7 a director” and inserting “a regulated enti-
8 ty affiliated party”; and

9 (ii) by inserting “(including reim-
10 bursement of compensation under section
11 1318)” after “reimbursement”;

12 (C) in paragraph (6), by striking “and” at
13 the end;

14 (D) by redesignating paragraph (7) as
15 paragraph (8); and

16 (E) by inserting after paragraph (6) the
17 following new paragraph:

18 “(7) to effect an attachment on a regulated en-
19 tity or regulated entity-affiliated party subject to an
20 order under this section or section 1372; and”.

21 **SEC. 1052. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

22 Section 1372 of the Housing and Community Devel-
23 opment Act of 1992 (12 U.S.C. 4632) is amended—

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

1 “(a) GROUNDS FOR ISSUANCE.—Whenever the Direc-
2 tor determines that the violation or threatened violation
3 or the unsafe or unsound practice or practices specified
4 in the notice of charges served upon the regulated entity
5 or any regulated entity-affiliated party pursuant to section
6 1371(a), or the continuation thereof, is likely to cause in-
7 solvency or significant dissipation of assets or earnings of
8 the regulated entity, or is likely to weaken the condition
9 of the regulated entity prior to the completion of the pro-
10 ceedings conducted pursuant to sections 1371 and 1373,
11 the Director may issue a temporary order requiring the
12 regulated entity or such party to cease and desist from
13 any such violation or practice and to take affirmative ac-
14 tion to prevent or remedy such insolvency, dissipation,
15 condition, or prejudice pending completion of such pro-
16 ceedings. Such order may include any requirement author-
17 ized under section 1371(d).”;

18 (2) in subsection (b), by striking “enterprise,
19 executive officer, or director” and inserting “regu-
20 lated entity or regulated entity-affiliated party”;

21 (3) in subsection (d)—

22 (A) by striking “An enterprise, executive
23 officer, or director” and inserting “A regulated
24 entity or regulated entity-affiliated party”; and

1 (B) by striking “the enterprise, executive
2 officer, or director” and inserting “the regu-
3 lated entity or regulated entity-affiliated party”;
4 and

5 (4) by striking subsection (e) and in inserting
6 the following new subsection:

7 “(e) ENFORCEMENT.—In the case of violation or
8 threatened violation of, or failure to obey, a temporary
9 cease-and-desist order issued pursuant to this section, the
10 Director may apply to the United States District Court
11 for the District of Columbia or the United States district
12 court within the jurisdiction of which the headquarters of
13 the regulated entity is located, for an injunction to enforce
14 such order, and, if the court determines that there has
15 been such violation or threatened violation or failure to
16 obey, it shall be the duty of the court to issue such injunc-
17 tion.”.

18 **SEC. 1053. PREJUDGMENT ATTACHMENT.**

19 The Housing and Community Development Act of
20 1992 is amended by inserting after section 1375 (12
21 U.S.C. 4635) the following new section:

22 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

23 “(a) IN GENERAL.—In any action brought pursuant
24 to this title, or in actions brought in aid of, or to enforce
25 an order in, any administrative or other civil action for

1 money damages, restitution, or civil money penalties
2 brought pursuant to this title, the court may, upon appli-
3 cation of the Director or Attorney General, as applicable,
4 issue a restraining order that—

5 “(1) prohibits any person subject to the pro-
6 ceeding from withdrawing, transferring, removing,
7 dissipating, or disposing of any funds, assets or
8 other property; and

9 “(2) appoints a person on a temporary basis to
10 administer the restraining order.

11 “(b) STANDARD.—

12 “(1) SHOWING.—Rule 65 of the Federal Rules
13 of Civil Procedure shall apply with respect to any
14 proceeding under subsection (a) without regard to
15 the requirement of such rule that the applicant show
16 that the injury, loss, or damage is irreparable and
17 immediate.

18 “(2) STATE PROCEEDING.—If, in the case of
19 any proceeding in a State court, the court deter-
20 mines that rules of civil procedure available under
21 the laws of such State provide substantially similar
22 protections to a party’s right to due process as Rule
23 65 (as modified with respect to such proceeding by
24 paragraph (1)), the relief sought under subsection
25 (a) may be requested under the laws of such State.”.

1 **SEC. 1054. ENFORCEMENT AND JURISDICTION.**

2 Section 1375 of the Housing and Community Devel-
3 opment Act of 1992 (12 U.S.C. 4635) is amended—

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

6 “(a) ENFORCEMENT.—The Director may, in the dis-
7 cretion of the Director, apply to the United States District
8 Court for the District of Columbia, or the United States
9 district court within the jurisdiction of which the head-
10 quarters of the regulated entity is located, for the enforce-
11 ment of any effective and outstanding notice or order
12 issued under this subtitle or subtitle B, or request that
13 the Attorney General of the United States bring such an
14 action. Such court shall have jurisdiction and power to
15 order and require compliance with such notice or order.”;
16 and

17 (2) in subsection (b), by striking “or 1376” and
18 inserting “1376, or 1377”.

19 **SEC. 1055. CIVIL MONEY PENALTIES.**

20 Section 1376 of the Housing and Community Devel-
21 opment Act of 1992 (12 U.S.C. 4636) is amended—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph (1),
24 by striking “, or any executive officer or direc-
25 tor” and inserting “or any regulated-entity af-
26 filiated party”; and

1 (B) in paragraph (1)—

2 (i) by striking “the Federal National
3 Mortgage Association Charter Act, the
4 Federal Home Loan Mortgage Corporation
5 Act” and inserting “any provision of any
6 of the authorizing statutes”;

7 (ii) by striking “or Act” and inserting
8 “or statute”;

9 (iii) by striking “or subsection” and
10 inserting “, subsection”; and

11 (iv) by inserting “, or paragraph (5)
12 or (12) of section 10(j) of the Federal
13 Home Loan Bank Act” before the semi-
14 colon at the end;

15 (2) by striking subsection (b) and inserting the
16 following new subsection:

17 “(b) AMOUNT OF PENALTY.—

18 “(1) FIRST TIER.—Any regulated entity which,
19 or any regulated entity-affiliated party who—

20 “(A) violates any provision of this title,
21 any provision of any of the authorizing statutes,
22 or any order, condition, rule, or regulation
23 under any such title or statute, except that the
24 Director may not, pursuant to this section, en-
25 force compliance with any housing goal estab-

1 lished under subpart B of part 2 of subtitle A
2 of this title, with section 1336 of this title, with
3 subsection (m) or (n) of section 309 of the Fed-
4 eral National Mortgage Association Charter Act
5 (12 U.S.C. 1723a(m), (n)), with subsection (e)
6 or (f) of section 307 of the Federal Home Loan
7 Mortgage Corporation Act (12 U.S.C. 1456(e),
8 (f)), or with paragraph (5) or (12) of section
9 10(j) of the Federal Home Loan Bank Act;

10 “(B) violates any final or temporary order
11 or notice issued pursuant to this title;

12 “(C) violates any condition imposed in
13 writing by the Director in connection with the
14 grant of any application or other request by
15 such regulated entity; or

16 “(D) violates any written agreement be-
17 tween the regulated entity and the Director,
18 shall forfeit and pay a civil money penalty of not
19 more than \$10,000 for each day during which such
20 violation continues.

21 “(2) SECOND TIER.—Notwithstanding para-
22 graph (1)—

23 “(A) if a regulated entity, or a regulated
24 entity-affiliated party—

1 “(i) commits any violation described
2 in any subparagraph of paragraph (1);

3 “(ii) recklessly engages in an unsafe
4 or unsound practice in conducting the af-
5 fairs of such regulated entity; or

6 “(iii) breaches any fiduciary duty; and
7 “(B) the violation, practice, or breach—

8 “(i) is part of a pattern of mis-
9 conduct;

10 “(ii) causes or is likely to cause more
11 than a minimal loss to such regulated enti-
12 ty; or

13 “(iii) results in pecuniary gain or
14 other benefit to such party,

15 the regulated entity or regulated entity-affiliated
16 party shall forfeit and pay a civil penalty of not
17 more than \$50,000 for each day during which such
18 violation, practice, or breach continues.

19 “(3) THIRD TIER.—Notwithstanding para-
20 graphs (1) and (2), any regulated entity which, or
21 any regulated entity-affiliated party who—

22 “(A) knowingly—

23 “(i) commits any violation or engages
24 in any conduct described in any subpara-
25 graph of paragraph (1);

1 “(ii) engages in any unsafe or un-
2 sound practice in conducting the affairs of
3 such regulated entity; or

4 “(iii) breaches any fiduciary duty; and

5 “(B) knowingly or recklessly causes a sub-
6 stantial loss to such regulated entity or a sub-
7 stantial pecuniary gain or other benefit to such
8 party by reason of such violation, practice, or
9 breach,

10 shall forfeit and pay a civil penalty in an amount not
11 to exceed the applicable maximum amount deter-
12 mined under paragraph (4) for each day during
13 which such violation, practice, or breach continues.

14 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
15 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—

16 The maximum daily amount of any civil penalty
17 which may be assessed pursuant to paragraph (3)
18 for any violation, practice, or breach described in
19 such paragraph is—

20 “(A) in the case of any person other than
21 a regulated entity, an amount not to exceed
22 \$2,000,000; and

23 “(B) in the case of any regulated entity,
24 \$2,000,000.”;

1 (3) in subsection (c)(1)(B), by striking “enter-
2 prise, executive officer, or director” and inserting
3 “regulated entity or regulated entity-affiliated
4 party”;

5 (4) in subsection (d), by striking the first sen-
6 tence and inserting the following: “If a regulated en-
7 tity or regulated entity-affiliated party fails to com-
8 ply with an order of the Director imposing a civil
9 money penalty under this section, after the order is
10 no longer subject to review as provided under sub-
11 section (c)(1) and section 1374, the Director may, in
12 the discretion of the Director, bring an action in the
13 United States District Court for the District of Co-
14 lumbia, or the United States district court within
15 the jurisdiction of which the headquarters of the reg-
16 ulated entity is located, to obtain a monetary judg-
17 ment against the regulated entity or regulated entity
18 affiliated party and such other relief as may be
19 available, or request that the Attorney General of
20 the United States bring such an action.”; and

21 (5) in subsection (g), by striking “subsection
22 (b)(3)” and inserting “this section, unless author-
23 ized by the Director by rule, regulation, or order”.

1 **SEC. 1056. REMOVAL AND PROHIBITION AUTHORITY.**

2 (a) IN GENERAL.—Subtitle C of title XIII of the
3 Housing and Community Development Act of 1992 is
4 amended—

5 (1) by redesignating sections 1377, 1378, 1379,
6 1379A, and 1379B (12 U.S.C. 4637–41) as sections
7 1379, 1379A, 1379B, 1379C, and 1379D, respec-
8 tively; and

9 (2) by inserting after section 1376 (12 U.S.C.
10 4636) the following new section:

11 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

12 “(a) AUTHORITY TO ISSUE ORDER.—Whenever the
13 Director determines that—

14 “(1) any regulated entity-affiliated party has,
15 directly or indirectly—

16 “(A) violated—

17 “(i) any law or regulation;

18 “(ii) any cease-and-desist order which
19 has become final;

20 “(iii) any condition imposed in writing
21 by the Director in connection with the
22 grant of any application or other request
23 by such regulated entity; or

24 “(iv) any written agreement between
25 such regulated entity and the Director;

1 “(B) engaged or participated in any unsafe
2 or unsound practice in connection with any reg-
3 ulated entity; or

4 “(C) committed or engaged in any act,
5 omission, or practice which constitutes a breach
6 of such party’s fiduciary duty;

7 “(2) by reason of the violation, practice, or
8 breach described in any subparagraph of paragraph
9 (1)—

10 “(A) such regulated entity has suffered or
11 will probably suffer financial loss or other dam-
12 age; or

13 “(B) such party has received financial gain
14 or other benefit by reason of such violation,
15 practice, or breach; and

16 “(3) such violation, practice, or breach—

17 “(A) involves personal dishonesty on the
18 part of such party; or

19 “(B) demonstrates willful or continuing
20 disregard by such party for the safety or sound-
21 ness of such regulated entity, the Director may
22 serve upon such party a written notice of the
23 Director’s intention to remove such party from
24 office or to prohibit any further participation by

1 such party, in any manner, in the conduct of
2 the affairs of any regulated entity.

3 “(b) SUSPENSION ORDER.—

4 “(1) SUSPENSION OR PROHIBITION AUTHOR-
5 ITY.—If the Director serves written notice under
6 subsection (a) to any regulated entity-affiliated party
7 of the Director’s intention to issue an order under
8 such subsection, the Director may—

9 “(A) suspend such party from office or
10 prohibit such party from further participation
11 in any manner in the conduct of the affairs of
12 the regulated entity, if the Director—

13 “(i) determines that such action is
14 necessary for the protection of the regu-
15 lated entity; and

16 “(ii) serves such party with written
17 notice of the suspension order; and

18 “(B) prohibit the regulated entity from re-
19 leasing to or on behalf of the regulated entity-
20 affiliated party any compensation or other pay-
21 ment of money or other thing of current or po-
22 tential value in connection with any resignation,
23 removal, retirement, or other termination of
24 employment or office of the party.

1 “(2) EFFECTIVE PERIOD.—Any suspension
2 order issued under this subsection—

3 “(A) shall become effective upon service;
4 and

5 “(B) unless a court issues a stay of such
6 order under subsection (g) of this section, shall
7 remain in effect and enforceable until—

8 “(i) the date the Director dismisses
9 the charges contained in the notice served
10 under subsection (a) with respect to such
11 party; or

12 “(ii) the effective date of an order
13 issued by the Director to such party under
14 subsection (a).

15 “(3) COPY OF ORDER.—If the Director issues a
16 suspension order under this subsection to any regu-
17 lated entity-affiliated party, the Director shall serve
18 a copy of such order on any regulated entity with
19 which such party is affiliated at the time such order
20 is issued.

21 “(c) NOTICE, HEARING, AND ORDER.—A notice of
22 intention to remove a regulated entity-affiliated party
23 from office or to prohibit such party from participating
24 in the conduct of the affairs of a regulated entity shall
25 contain a statement of the facts constituting grounds for

1 such action, and shall fix a time and place at which a hear-
2 ing will be held on such action. Such hearing shall be fixed
3 for a date not earlier than 30 days nor later than 60 days
4 after the date of service of such notice, unless an earlier
5 or a later date is set by the Director at the request of
6 (1) such party, and for good cause shown, or (2) the At-
7 torney General of the United States. Unless such party
8 shall appear at the hearing in person or by a duly author-
9 ized representative, such party shall be deemed to have
10 consented to the issuance of an order of such removal or
11 prohibition. In the event of such consent, or if upon the
12 record made at any such hearing the Director shall find
13 that any of the grounds specified in such notice have been
14 established, the Director may issue such orders of suspen-
15 sion or removal from office, or prohibition from participa-
16 tion in the conduct of the affairs of the regulated entity,
17 as it may deem appropriate, together with an order pro-
18 hibiting compensation described in subsection (b)(1)(B).
19 Any such order shall become effective at the expiration
20 of 30 days after service upon such regulated entity and
21 such party (except in the case of an order issued upon
22 consent, which shall become effective at the time specified
23 therein). Such order shall remain effective and enforceable
24 except to such extent as it is stayed, modified, terminated,
25 or set aside by action of the Director or a reviewing court.

1 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-
2 TIES.—Any person subject to an order issued under this
3 section shall not—

4 “(1) participate in any manner in the conduct
5 of the affairs of any regulated entity;

6 “(2) solicit, procure, transfer, attempt to trans-
7 fer, vote, or attempt to vote any proxy, consent, or
8 authorization with respect to any voting rights in
9 any regulated entity;

10 “(3) violate any voting agreement previously
11 approved by the Director; or

12 “(4) vote for a director, or serve or act as a
13 regulated entity-affiliated party.

14 “(e) INDUSTRY-WIDE PROHIBITION.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), any person who, pursuant to an order
17 issued under this section, has been removed or sus-
18 pended from office in a regulated entity or prohib-
19 ited from participating in the conduct of the affairs
20 of a regulated entity may not, while such order is in
21 effect, continue or commence to hold any office in,
22 or participate in any manner in the conduct of the
23 affairs of, any regulated entity.

24 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
25 TEN CONSENT.—If, on or after the date an order is

1 issued under this section which removes or suspends
2 from office any regulated entity-affiliated party or
3 prohibits such party from participating in the con-
4 duct of the affairs of a regulated entity, such party
5 receives the written consent of the Director, the
6 order shall, to the extent of such consent, cease to
7 apply to such party with respect to the regulated en-
8 tity described in the written consent. If the Director
9 grants such a written consent, it shall publicly dis-
10 close such consent.

11 “(3) VIOLATION OF PARAGRAPH (1) TREATED
12 AS VIOLATION OF ORDER.—Any violation of para-
13 graph (1) by any person who is subject to an order
14 described in such subsection shall be treated as a
15 violation of the order.

16 “(f) APPLICABILITY.—This section shall only apply
17 to a person who is an individual, unless the Director spe-
18 cifically finds that it should apply to a corporation, firm,
19 or other business enterprise.

20 “(g) STAY OF SUSPENSION AND PROHIBITION OF
21 REGULATED ENTITY-AFFILIATED PARTY.—Within 10
22 days after any regulated entity-affiliated party has been
23 suspended from office and/or prohibited from participation
24 in the conduct of the affairs of a regulated entity under
25 this section, such party may apply to the United States

1 District Court for the District of Columbia, or the United
2 States district court for the judicial district in which the
3 headquarters of the regulated entity is located, for a stay
4 of such suspension and/or prohibition and any prohibition
5 under subsection (b)(1)(B) pending the completion of the
6 administrative proceedings pursuant to the notice served
7 upon such party under this section, and such court shall
8 have jurisdiction to stay such suspension and/or prohibi-
9 tion.

10 “(h) SUSPENSION OR REMOVAL OF REGULATED EN-
11 TITY-AFFILIATED PARTY CHARGED WITH FELONY.—

12 “(1) SUSPENSION OR PROHIBITION.—

13 “(A) IN GENERAL.—Whenever any regu-
14 lated entity-affiliated party is charged in any
15 information, indictment, or complaint, with the
16 commission of or participation in a crime in-
17 volving dishonesty or breach of trust which is
18 punishable by imprisonment for a term exceed-
19 ing one year under State or Federal law, the
20 Director may, if continued service or participa-
21 tion by such party may pose a threat to the
22 regulated entity or impair public confidence in
23 the regulated entity, by written notice served
24 upon such party—

1 “(i) suspend such party from office or
2 prohibit such party from further participa-
3 tion in any manner in the conduct of the
4 affairs of any regulated entity; and

5 “(ii) prohibit the regulated entity
6 from releasing to or on behalf of the regu-
7 lated entity-affiliated party any compensa-
8 tion or other payment of money or other
9 thing of current or potential value in con-
10 nection with the period of any such sus-
11 pension or with any resignation, removal,
12 retirement, or other termination of employ-
13 ment or office of the party.

14 “(B) PROVISIONS APPLICABLE TO NO-
15 TICE.—

16 “(i) COPY.—A copy of any notice
17 under paragraph (1)(A) shall also be
18 served upon the regulated entity.

19 “(ii) EFFECTIVE PERIOD.—A suspen-
20 sion or prohibition under subparagraph (A)
21 shall remain in effect until the informa-
22 tion, indictment, or complaint referred to
23 in such subparagraph is finally disposed of
24 or until terminated by the Director.

25 “(2) REMOVAL OR PROHIBITION.—

1 “(A) IN GENERAL.—If a judgment of con-
2 viction or an agreement to enter a pretrial di-
3 version or other similar program is entered
4 against a regulated entity-affiliated party in
5 connection with a crime described in paragraph
6 (1)(A), at such time as such judgment is not
7 subject to further appellate review, the Director
8 may, if continued service or participation by
9 such party may pose a threat to the regulated
10 entity or impair public confidence in the regu-
11 lated entity, issue and serve upon such party an
12 order that—

13 “(i) removes such party from office or
14 prohibits such party from further partici-
15 pation in any manner in the conduct of the
16 affairs of the regulated entity without the
17 prior written consent of the Director; and

18 “(ii) prohibits the regulated entity
19 from releasing to or on behalf of the regu-
20 lated entity-affiliated party any compensa-
21 tion or other payment of money or other
22 thing of current or potential value in con-
23 nection with the termination of employ-
24 ment or office of the party.

1 “(B) PROVISIONS APPLICABLE TO
2 ORDER.—

3 “(i) COPY.—A copy of any order
4 under paragraph (2)(A) shall also be
5 served upon the regulated entity, where-
6 upon the regulated entity-affiliated party
7 who is subject to the order (if a director or
8 an officer) shall cease to be a director or
9 officer of such regulated entity.

10 “(ii) EFFECT OF ACQUITTAL.—A find-
11 ing of not guilty or other disposition of the
12 charge shall not preclude the Director from
13 instituting proceedings after such finding
14 or disposition to remove such party from
15 office or to prohibit further participation in
16 regulated entity affairs, and to prohibit
17 compensation or other payment of money
18 or other thing of current or potential value
19 in connection with any resignation, re-
20 moval, retirement, or other termination of
21 employment or office of the party, pursu-
22 ant to subsections (a), (d), or (e) of this
23 section.

24 “(iii) EFFECTIVE PERIOD.—Any no-
25 tice of suspension or order of removal

1 issued under this subsection shall remain
2 effective and outstanding until the comple-
3 tion of any hearing or appeal authorized
4 under paragraph (4) unless terminated by
5 the Director.

6 “(3) AUTHORITY OF REMAINING BOARD MEM-
7 BERS.—If at any time, because of the suspension of
8 one or more directors pursuant to this section, there
9 shall be on the board of directors of a regulated enti-
10 ty less than a quorum of directors not so suspended,
11 all powers and functions vested in or exercisable by
12 such board shall vest in and be exercisable by the di-
13 rector or directors on the board not so suspended,
14 until such time as there shall be a quorum of the
15 board of directors. In the event all of the directors
16 of a regulated entity are suspended pursuant to this
17 section, the Director shall appoint persons to serve
18 temporarily as directors in their place and stead
19 pending the termination of such suspensions, or
20 until such time as those who have been suspended
21 cease to be directors of the regulated entity and
22 their respective successors take office.

23 “(4) HEARING REGARDING CONTINUED PAR-
24 TICIPATION.—Within 30 days from service of any
25 notice of suspension or order of removal issued pur-

1 suant to paragraph (1) or (2) of this subsection, the
2 regulated entity-affiliated party concerned may re-
3 quest in writing an opportunity to appear before the
4 Director to show that the continued service to or
5 participation in the conduct of the affairs of the reg-
6 ulated entity by such party does not, or is not likely
7 to, pose a threat to the interests of the regulated en-
8 tity or threaten to impair public confidence in the
9 regulated entity. Upon receipt of any such request,
10 the Director shall fix a time (not more than 30 days
11 after receipt of such request, unless extended at the
12 request of such party) and place at which such party
13 may appear, personally or through counsel, before
14 one or more members of the Director or designated
15 employees of the Director to submit written mate-
16 rials (or, at the discretion of the Director, oral testi-
17 mony) and oral argument. Within 60 days of such
18 hearing, the Director shall notify such party whether
19 the suspension or prohibition from participation in
20 any manner in the conduct of the affairs of the reg-
21 ulated entity will be continued, terminated, or other-
22 wise modified, or whether the order removing such
23 party from office or prohibiting such party from fur-
24 ther participation in any manner in the conduct of
25 the affairs of the regulated entity, and prohibiting

1 compensation in connection with termination will be
2 rescinded or otherwise modified. Such notification
3 shall contain a statement of the basis for the Direc-
4 tor's decision, if adverse to such party. The Director
5 is authorized to prescribe such rules as may be nec-
6 essary to effectuate the purposes of this subsection.

7 “(i) HEARINGS AND JUDICIAL REVIEW.—

8 “(1) VENUE AND PROCEDURE.—Any hearing
9 provided for in this section shall be held in the Dis-
10 trict of Columbia or in the Federal judicial district
11 in which the headquarters of the regulated entity is
12 located, unless the party afforded the hearing con-
13 sents to another place, and shall be conducted in ac-
14 cordance with the provisions of chapter 5 of title 5,
15 United States Code. After such hearing, and within
16 90 days after the Director has notified the parties
17 that the case has been submitted to it for final deci-
18 sion, it shall render its decision (which shall include
19 findings of fact upon which its decision is predi-
20 cated) and shall issue and serve upon each party to
21 the proceeding an order or orders consistent with
22 the provisions of this section. Judicial review of any
23 such order shall be exclusively as provided in this
24 subsection. Unless a petition for review is timely
25 filed in a court of appeals of the United States, as

1 provided in paragraph (2), and thereafter until the
2 record in the proceeding has been filed as so pro-
3 vided, the Director may at any time, upon such no-
4 tice and in such manner as it shall deem proper,
5 modify, terminate, or set aside any such order. Upon
6 such filing of the record, the Director may modify,
7 terminate, or set aside any such order with permis-
8 sion of the court.

9 “(2) REVIEW OF ORDER.—Any party to any
10 proceeding under paragraph (1) may obtain a review
11 of any order served pursuant to paragraph (1)
12 (other than an order issued with the consent of the
13 regulated entity or the regulated entity-affiliated
14 party concerned, or an order issued under subsection
15 (h) of this section) by the filing in the United States
16 Court of Appeals for the District of Columbia Cir-
17 cuit or court of appeals of the United States for the
18 circuit in which the headquarters of the regulated
19 entity is located, within 30 days after the date of
20 service of such order, a written petition praying that
21 the order of the Director be modified, terminated, or
22 set aside. A copy of such petition shall be forthwith
23 transmitted by the clerk of the court to the Director,
24 and thereupon the Director shall file in the court the
25 record in the proceeding, as provided in section 2112

1 of title 28, United States Code. Upon the filing of
2 such petition, such court shall have jurisdiction,
3 which upon the filing of the record shall (except as
4 provided in the last sentence of paragraph (1)) be
5 exclusive, to affirm, modify, terminate, or set aside,
6 in whole or in part, the order of the Director. Re-
7 view of such proceedings shall be had as provided in
8 chapter 7 of title 5, United States Code. The judg-
9 ment and decree of the court shall be final, except
10 that the same shall be subject to review by the Su-
11 preme Court upon certiorari, as provided in section
12 1254 of title 28, United States Code.

13 “(3) PROCEEDINGS NOT TREATED AS STAY.—
14 The commencement of proceedings for judicial re-
15 view under paragraph (2) shall not, unless specifi-
16 cally ordered by the court, operate as a stay of any
17 order issued by the Director.”

18 (b) CONFORMING AMENDMENTS.—

19 (1) 1992 ACT.—Section 1317(f) of the Housing
20 and Community Development Act of 1992 (12
21 U.S.C. 4517(f)) is amended by striking “section
22 1379B” and inserting “section 1379D”.

23 (2) FANNIE MAE CHARTER ACT.—The second
24 sentence of subsection (b) of section 308 of the Fed-
25 eral National Mortgage Association Charter Act (12

1 U.S.C. 1723(b)) is amended by striking “The” and
2 inserting “Except to the extent that action under
3 section 1377 of the Housing and Community Devel-
4 opment Act of 1992 temporarily results in a lesser
5 number, the”.

6 (3) FREDDIE MAC ACT.—The second sentence
7 of subparagraph (A) of section 303(a)(2) of the
8 Federal Home Loan Mortgage Corporation Act (12
9 U.S.C. 1452(a)(2)(A)) is amended by striking
10 “The” and inserting “Except to the extent that ac-
11 tion under section 1377 of the Housing and Commu-
12 nity Development Act of 1992 temporarily results in
13 a lesser number, the”.

14 **SEC. 1057. CRIMINAL PENALTY.**

15 Subtitle C of title XIII of the Housing and Commu-
16 nity Development Act of 1992 (12 U.S.C. 4631 et seq.)
17 is amended by inserting after section 1377 (as added by
18 the preceding provisions of this title) the following new
19 section:

20 **“SEC. 1378. CRIMINAL PENALTY.**

21 “Whoever, being subject to an order in effect under
22 section 1377, without the prior written approval of the Di-
23 rector, knowingly participates, directly or indirectly, in any
24 manner (including by engaging in an activity specifically
25 prohibited in such an order) in the conduct of the affairs

1 of any regulated entity shall, notwithstanding section
2 3571 of title 18, be fined not more than \$1,000,000, im-
3 prisoned for not more than 5 years, or both.”.

4 **SEC. 1058. SUBPOENA AUTHORITY.**

5 Section 1379D(e) of the Housing and Community
6 Development Act of 1992 (12 U.S.C. 4641(e)), as so re-
7 designated by section 1056(a)(1) of this title, is further
8 amended—

9 (1) by striking “request the Attorney General
10 of the United States to” and inserting “, in the dis-
11 cretion of the Director,”;

12 (2) by inserting “or request that the Attorney
13 General of the United States bring such an action,”
14 after “District of Columbia,”; and

15 (3) by striking “or may, under the direction
16 and control of the Attorney General, bring such an
17 action”.

18 **SEC. 1059. CONFORMING AMENDMENTS.**

19 Subtitle C of title XIII of the Housing and Commu-
20 nity Development Act of 1992 (12 U.S.C. 4631 et seq.),
21 as amended by the preceding provisions of this title, is
22 amended—

23 (1) in section 1372(c)(1) (12 U.S.C. 4632(c)),
24 by striking “that enterprise” and inserting “that
25 regulated entity”;

1 (2) in section 1379 (12 U.S.C. 4637), as so re-
2 designated by section 1056(a)(1) of this title—

3 (A) by inserting “, or of a regulated entity-
4 affiliated party,” before “shall not affect”; and

5 (B) by striking “such director or executive
6 officer” each place such term appears and in-
7 serting “such director, executive officer, or reg-
8 ulated entity-affiliated party”;

9 (3) in section 1379A (12 U.S.C. 4638), as so
10 redesignated by section 1056(a)(1) of this title, by
11 inserting “or against a regulated entity-affiliated
12 party,” before “or impair”;

13 (4) by striking “An enterprise” each place such
14 term appears in such subtitle and inserting “A regu-
15 lated entity”;

16 (5) by striking “an enterprise” each place such
17 term appears in such subtitle and inserting “a regu-
18 lated entity”;

19 (6) by striking “the enterprise” each place such
20 term appears in such subtitle and inserting “the reg-
21 ulated entity”; and

22 (7) by striking “any enterprise” each place such
23 term appears in such subtitle and inserting “any
24 regulated entity”.

1 **CHAPTER 5—GENERAL PROVISIONS**

2 **SEC. 1061. BOARDS OF ENTERPRISES.**

3 (a) FANNIE MAE.—

4 (1) IN GENERAL.—Section 308(b) of the Fed-
5 eral National Mortgage Association Charter Act (12
6 U.S.C. 1723(b)) is amended—

7 (A) in the first sentence, by striking
8 “eighteen persons, five of whom shall be ap-
9 pointed annually by the President of the United
10 States, and the remainder of whom” and insert-
11 ing “13 persons, or such other number that the
12 Director determines appropriate, who”;

13 (B) in the second sentence, by striking
14 “appointed by the President”;

15 (C) in the third sentence—

16 (i) by striking “appointed or”; and

17 (ii) by striking “, except that any
18 such appointed member may be removed
19 from office by the President for good
20 cause”;

21 (D) in the fourth sentence, by striking
22 “elective”; and

23 (E) by striking the fifth sentence.

24 (2) TRANSITIONAL PROVISION.—The amend-
25 ments made by paragraph (1) shall not apply to any

1 appointed position of the board of directors of the
2 Federal National Mortgage Association until the ex-
3 piration of the annual term for such position during
4 which the effective date under section 1065 occurs.

5 (b) FREDDIE MAC.—

6 (1) IN GENERAL.—Section 303(a)(2) of the
7 Federal Home Loan Mortgage Corporation Act (12
8 U.S.C. 1452(a)(2)) is amended—

9 (A) in subparagraph (A)—

10 (i) in the first sentence, by striking
11 “18 persons, 5 of whom shall be appointed
12 annually by the President of the United
13 States and the remainder of whom” and
14 inserting “13 persons, or such other num-
15 ber as the Director determines appropriate,
16 who”; and

17 (ii) in the second sentence, by striking
18 “appointed by the President of the United
19 States”;

20 (B) in subparagraph (B)—

21 (i) by striking “such or”; and

22 (ii) by striking “, except that any ap-
23 pointed member may be removed from of-
24 fice by the President for good cause”; and

25 (C) in subparagraph (C)—

- 1 (i) by striking the first sentence; and
2 (ii) by striking “elective”.

3 (2) TRANSITIONAL PROVISION.—The amend-
4 ments made by paragraph (1) shall not apply to any
5 appointed position of the board of directors of the
6 Federal Home Loan Mortgage Corporation until the
7 expiration of the annual term for such position dur-
8 ing which the effective date under section 1065 oc-
9 curs.

10 **SEC. 1062. REPORT ON PORTFOLIO OPERATIONS, SAFETY**
11 **AND SOUNDNESS, AND MISSION OF ENTER-**
12 **PRISES.**

13 Not later than the expiration of the 12-month period
14 beginning on the effective date under section 1065, the Di-
15 rector of the Federal Housing Finance Agency shall sub-
16 mit a report to the Congress which shall include—

- 17 (1) a description of the portfolio holdings of the
18 enterprises (as such term is defined in section 1303
19 of the Housing and Community Development Act of
20 1992 (12 U.S.C. 4502) in mortgages (including
21 whole loans and mortgage-backed securities), non-
22 mortgages, and other assets;
- 23 (2) a description of the risk implications for the
24 enterprises of such holdings and the consequent risk
25 management undertaken by the enterprises (includ-

1 ing the use of derivatives for hedging purposes),
2 compared with off-balance sheet liabilities of the en-
3 terprises (including mortgage-backed securities guar-
4 anteed by the enterprises);

5 (3) an analysis of portfolio holdings for safety
6 and soundness purposes;

7 (4) an assessment of whether portfolio holdings
8 fulfill the mission purposes of the enterprises under
9 the Federal National Mortgage Association Charter
10 Act and the Federal Home Loan Mortgage Corpora-
11 tion Act; and

12 (5) an analysis of the potential systemic risk
13 implications for the enterprises, the housing and
14 capital markets, and the financial system of portfolio
15 holdings, and whether such holdings should be lim-
16 ited or reduced over time.

17 **SEC. 1063. CONFORMING AND TECHNICAL AMENDMENTS.**

18 (a) 1992 ACT.—Title XIII of the Housing and Com-
19 munity Development Act of 1992 is amended by striking
20 section 1383 (12 U.S.C. 1451 note).

21 (b) TITLE 18, UNITED STATES CODE.—Section 1905
22 of title 18, United States Code, is amended by striking
23 “Office of Federal Housing Enterprise Oversight” and in-
24 serting “Federal Housing Finance Agency”.

1 (c) FLOOD DISASTER PROTECTION ACT OF 1973.—
2 Section 102(f)(3)(A) of the Flood Disaster Protection Act
3 of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by strik-
4 ing “Director of the Office of Federal Housing Enterprise
5 Oversight of the Department of Housing and Urban De-
6 velopment” and inserting “Director of the Federal Hous-
7 ing Finance Agency”.

8 (d) DEPARTMENT OF HOUSING AND URBAN DEVEL-
9 OPMENT ACT.—Section 5 of the Department of Housing
10 and Urban Development Act (42 U.S.C. 3534) is amended
11 by striking subsection (d).

12 (e) TITLE 5, UNITED STATES CODE.—

13 (1) DIRECTOR’S PAY RATE.—Section 5313 of
14 title 5, United States Code, is amended by striking
15 the item relating to the Director of the Office of
16 Federal Housing Enterprise Oversight, Department
17 of Housing and Urban Development and inserting
18 the following new item:

19 “Director of the Federal Housing Finance
20 Agency.”.

21 (2) EXCLUSION FROM SENIOR EXECUTIVE
22 SERVICE.—Section 3132(a)(1)(D) of title 5, United
23 States Code, is amended—

24 (A) by striking “the Federal Housing Fi-
25 nance Board,”; and

1 (B) by striking “the Office of Federal
2 Housing Enterprise Oversight of the Depart-
3 ment of Housing and Urban Development” and
4 inserting “the Federal Housing Finance Agen-
5 cy”.

6 (f) INSPECTOR GENERAL ACT OF 1978.—Section
7 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.
8 App.) is amended by striking “Federal Housing Finance
9 Board” and inserting “Federal Housing Finance Agency”.

10 (g) FEDERAL DEPOSIT INSURANCE ACT.—Section
11 11(t)(2)(A) of the Federal Deposit Insurance Act (12
12 U.S.C.1821(t)(2)(A)) is amended by adding at the end the
13 following new clause:

14 “(vii) The Federal Housing Finance
15 Agency.”.

16 (h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIA-
17 TIONS ACT.—Section 10001 of the 1997 Emergency Sup-
18 plemental Appropriations Act for Recovery From Natural
19 Disasters, and for Overseas Peacekeeping Efforts, Includ-
20 ing Those In Bosnia (42 U.S.C. 3548) is amended—

21 (1) by striking “the Government National Mort-
22 gage Association, and the Office of Federal Housing
23 Enterprise Oversight” and inserting “and the Gov-
24 ernment National Mortgage Association”; and

1 (2) by striking “, the Government National
2 Mortgage Association, or the Office of Federal
3 Housing Enterprise Oversight” and inserting “or
4 the Government National Mortgage Association”.

5 (i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Sec-
6 tion 302(b)(4) of the Cranston-Gonzalez National Afford-
7 able Housing Act (42 U.S.C. 12851(b)(4)) is amended by
8 striking “the chairperson of the Federal Housing Finance
9 Board” and inserting “the Director of the Federal Hous-
10 ing Finance Agency”.

11 **SEC. 1064. STUDY OF ALTERNATIVE SECONDARY MARKET**
12 **SYSTEMS.**

13 (a) IN GENERAL.—The Director of the Federal
14 Housing Finance Agency, in consultation with the Board
15 of Governors of the Federal Reserve System, the Secretary
16 of the Treasury, and the Secretary of Housing and Urban
17 Development, shall conduct a comprehensive study of the
18 effects on financial and housing finance markets of alter-
19 natives to the current secondary market system for hous-
20 ing finance, taking into consideration changes in the struc-
21 ture of financial and housing finance markets and institu-
22 tions since the creation of the Federal National Mortgage
23 Association and the Federal Home Loan Mortgage Cor-
24 poration.

1 (b) CONTENTS.—The study under this section
2 shall—

3 (1) include, among the alternatives to the cur-
4 rent secondary market system analyzed—

5 (A) repeal of the chartering Acts for the
6 Federal National Mortgage Association and the
7 Federal Home Loan Mortgage Corporation;

8 (B) establishing bank-like mechanisms for
9 granting new charters for limited purposed
10 mortgage securitization entities;

11 (C) permitting the Director of the Federal
12 Housing Finance Agency to grant new charters
13 for limited purpose mortgage securitization en-
14 tities, which shall include analyzing the terms
15 on which such charters should be granted, in-
16 cluding whether such charters should be sold,
17 or whether such charters and the charters for
18 the Federal National Mortgage Association and
19 the Federal Home Loan Mortgage Corporation
20 should be taxed or otherwise assessed a mone-
21 tary price; and

22 (D) such other alternatives as the Director
23 considers appropriate;

1 (2) examine all of the issues involved in making
2 the transition to a completely private secondary
3 mortgage market system;

4 (3) examine the technological advancements the
5 private sector has made in providing liquidity in the
6 secondary mortgage market and how such advance-
7 ments have affected liquidity in the secondary mort-
8 gage market; and

9 (4) examine how taxpayers would be impacted
10 by each alternative system, including the complete
11 privatization of the Federal National Mortgage As-
12 sociation and the Federal Home Loan Mortgage
13 Corporation.

14 (c) REPORT.—The Director of the Federal Housing
15 Finance Agency shall submit a report to the Congress on
16 the study not later than the expiration of the 24-month
17 period beginning on the effective date under section 1065.

18 **SEC. 1065. EFFECTIVE DATE.**

19 Except as specifically provided otherwise in this sub-
20 title, this subtitle shall take effect on and the amendments
21 made by this subtitle shall take effect on, and shall apply
22 beginning on, the expiration of the 6-month period begin-
23 ning on the date of the enactment of this Act.

1 **Subtitle B—Federal Home Loan**
2 **Banks**

3 **SEC. 1071. DEFINITIONS.**

4 Section 2 of the Federal Home Loan Bank Act (12
5 U.S.C. 1422) is amended—

6 (1) by striking paragraphs (1), (10), and (11);

7 (2) by redesignating paragraphs (2) through
8 (9) as paragraphs (1) through (8), respectively;

9 (3) by redesignating paragraphs (12) and (13)
10 as paragraphs (9) and (10), respectively; and

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

12 “(11) DIRECTOR.—The term ‘Director’ means
13 the Director of the Federal Housing Finance Agen-
14 cy.

15 “(12) AGENCY.—The term ‘Agency’ means the
16 Federal Housing Finance Agency.”.

17 **SEC. 1072. DIRECTORS.**

18 (a) ELECTION.—Section 7 of the Federal Home Loan
19 Bank Act (12 U.S.C. 1427) is amended—

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

22 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
23 Flicts of Interest.—

24 “(1) IN GENERAL.—The management of each
25 Federal Home Loan Bank shall be vested in a board

1 of 13 directors, or such other number as the Direc-
2 tor determines appropriate, each of whom shall be a
3 citizen of the United States. All directors of a Bank
4 who are not independent directors pursuant to para-
5 graph (3) shall be elected by the members.

6 “(2) MEMBER DIRECTORS.—A majority of the
7 directors of each Bank shall be officers or directors
8 of a member of such Bank that is located in the dis-
9 trict in which such Bank is located.

10 “(3) INDEPENDENT DIRECTORS.—At least two-
11 fifths of the directors of each Bank shall be inde-
12 pendent directors, who shall be appointed by the Di-
13 rector of the Federal Housing Finance Agency from
14 a list of individuals recommended by the Federal
15 Housing Enterprise Board. The Federal Housing
16 Enterprise Board may recommend individuals who
17 are identified by the Board’s own independent proc-
18 ess or included on a list of individuals recommended
19 by the board of directors of the Bank involved,
20 which shall be submitted to the Federal Housing
21 Enterprise Board by such board of directors. The
22 number of individuals on any such list submitted by
23 a Bank’s board of directors shall be equal to at least
24 two times the number of independent directorships

1 to be filled. All independent directors appointed shall
2 meet the following criteria:

3 “(A) IN GENERAL.—Each independent di-
4 rector shall be a bona fide resident of the dis-
5 trict in which such Bank is located.

6 “(B) PUBLIC INTEREST DIRECTORS.—At
7 least 2 of the independent directors under this
8 paragraph of each Bank shall be representatives
9 chosen from organizations with more than a 2-
10 year history of representing consumer or com-
11 munity interests on banking services, credit
12 needs, housing, community development, eco-
13 nomic development, or financial consumer pro-
14 tections.

15 “(C) OTHER DIRECTORS.—

16 “(i) QUALIFICATIONS.—Each inde-
17 pendent director that is not a public inter-
18 est director under subparagraph (B) shall
19 have demonstrated knowledge of, or experi-
20 ence in, financial management, auditing
21 and accounting, risk management prac-
22 tices, derivatives, project development, or
23 organizational management, or such other
24 knowledge or expertise as the Director may
25 provide by regulation.

1 “(ii) CONSULTATION WITH BANKS.—

2 In appointing other directors to serve on
3 the board of a Federal home loan bank,
4 the Director of the Federal Housing Fi-
5 nance Agency may consult with each Fed-
6 eral home loan bank about the knowledge,
7 skills, and expertise needed to assist the
8 board in better fulfilling its responsibilities.

9 “(D) CONFLICTS OF INTEREST.—Notwith-
10 standing subsection (f)(2), an independent di-
11 rector under this paragraph of a Bank may not,
12 during such director’s term of office, serve as
13 an officer of any Federal Home Loan Bank or
14 as a director or officer of any member of a
15 Bank.

16 “(E) COMMUNITY DEMOGRAPHICS.—In ap-
17 pointing independent directors of a Bank pur-
18 suant to this paragraph, the Director shall take
19 into consideration the demographic makeup of
20 the community most served by the Affordable
21 Housing Program of the Bank pursuant to sec-
22 tion 10(j).”;

23 (2) in the first sentence of subsection (b), by
24 striking “elective directorship” and inserting “mem-

1 ber directorship established pursuant to subsection
2 (a)(2)’’;

3 (3) in subsection (c)—

4 (A) by striking “elective” each place such
5 term appears and inserting “member”, ex-
6 cept—

7 (i) in the second sentence, the second
8 place such term appears; and

9 (ii) each place such term appears in
10 the fifth sentence;

11 (B) in the first sentence, by inserting after
12 “less than one” the following: “or two, as deter-
13 mined by the board of directors of the appro-
14 priate Federal home loan bank,”; and

15 (C) in the second sentence—

16 (i) by inserting “(A) except as pro-
17 vided in clause (B) of this sentence,” be-
18 fore “if at any time”; and

19 (ii) by inserting before the period at
20 the end the following: “, and (B) clause
21 (A) of this sentence shall not apply to the
22 directorships of any Federal home loan
23 bank resulting from the merger of any two
24 or more such banks”; and

1 (4) by striking “elective” each place such term
2 appears (except in subsections (c), (e), and (f)).

3 (b) TERMS.—

4 (1) IN GENERAL.—Section 7(d) of the Federal
5 Home Loan Bank Act (12 U.S.C. 1427(d)) is
6 amended—

7 (A) in the first sentence, by striking “3
8 years” and inserting “4 years”; and

9 (B) in the second sentence—

10 (i) by striking “Federal Home Loan
11 Bank System Modernization Act of 1999”
12 and inserting “Federal Housing Finance
13 Reform Act of 2008”; and

14 (ii) by striking “1/3” and inserting
15 “1/4”.

16 (2) SAVINGS PROVISION.—The amendments
17 made by paragraph (1) shall not apply to the term
18 of office of any director of a Federal home loan bank
19 who is serving as of the effective date of this subtitle
20 under section 1081, including any director elected to
21 fill a vacancy in any such office.

22 (c) CONTINUED SERVICE OF INDEPENDENT DIREC-
23 TORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of
24 the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2))
25 is amended—

1 (1) in the second sentence, by striking “or the
2 term of such office expires, whichever occurs first”;

3 (2) by adding at the end the following new sen-
4 tence: “An independent Bank director may continue
5 to serve as a director after the expiration of the
6 term of such director until a successor is ap-
7 pointed.”;

8 (3) in the paragraph heading, by striking “AP-
9 POINTED” and inserting “INDEPENDENT”; and

10 (4) by striking “appointive” each place such
11 term appears and inserting “independent”.

12 (d) CONFORMING AMENDMENTS.—Section 7(f)(3) of
13 the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(3))
14 is amended—

15 (1) in the paragraph heading, by striking
16 “ELECTED” and inserting “MEMBER”; and

17 (2) by striking “elective” each place such term
18 appears in the first and third sentences and insert-
19 ing “member”.

20 (e) COMPENSATION.—Subsection (i) of section 7 of
21 the Federal Home Loan Bank Act (12 U.S.C. 1427(i))
22 is amended to read as follows:

23 “(i) DIRECTORS’ COMPENSATION.—

24 “(1) IN GENERAL.—Each Federal home loan
25 bank may pay the directors on the board of directors

1 for the bank reasonable and appropriate compensa-
2 tion for the time required of such directors, and rea-
3 sonable and appropriate expenses incurred by such
4 directors, in connection with service on the board of
5 directors, in accordance with resolutions adopted by
6 the board of directors and subject to the approval of
7 the Director.

8 “(2) ANNUAL REPORT BY THE BOARD.—The
9 Director shall include, in the annual report sub-
10 mitted to the Congress pursuant to section 1319B of
11 the Federal Housing Enterprises Financial Safety
12 and Soundness Act of 1992, information regarding
13 the compensation and expenses paid by the Federal
14 home loan banks to the directors on the boards of
15 directors of the banks.”.

16 (f) TRANSITION RULE.—Any member of the board
17 of directors of a Federal Home Loan Bank serving as of
18 the effective date under section 1081 may continue to
19 serve as a member of such board of directors for the re-
20 mainder of the term of such office as provided in section
21 7 of the Federal Home Loan Bank Act, as in effect before
22 such effective date.

1 **SEC. 1073. FEDERAL HOUSING FINANCE AGENCY OVER-**
2 **SIGHT OF FEDERAL HOME LOAN BANKS.**

3 The Federal Home Loan Bank Act (12 U.S.C. 1421
4 et seq.), other than in provisions of that Act added or
5 amended otherwise by this title, is amended—

6 (1) by striking sections 2A and 2B (12 U.S.C.
7 1422a, 1422b);

8 (2) in section 6 (12 U.S.C. 1426(b)(1))—

9 (A) in subsection (b)(1), in the matter pre-
10 ceeding subparagraph (A), by striking “Finance
11 Board approval” and inserting “approval by the
12 Director”; and

13 (B) in each of subsections (c)(4)(B) and
14 (d)(2), by striking “Finance Board regulations”
15 each place that term appears and inserting
16 “regulations of the Director”;

17 (3) in section 8 (12 U.S.C. 1428), in the sec-
18 tion heading, by striking “BY THE BOARD”;

19 (4) in section 10(b) (12 U.S.C. 1430(b)), by
20 striking “by formal resolution”;

21 (5) in section 10 (12 U.S.C. 1430), by adding
22 at the end the following new subsection:

23 “(k) **MONITORING AND ENFORCING COMPLIANCE**
24 **WITH AFFORDABLE HOUSING AND COMMUNITY INVEST-**
25 **MENT PROGRAM REQUIREMENTS.**—The requirements
26 under subsection (i) and (j) that the Banks establish Com-

1 munity Investment and Affordable Housing Programs, re-
2 spectively, and contribute to the Affordable Housing Pro-
3 gram, shall be enforceable by the Director with respect
4 to the Banks in the same manner and to the same extent
5 as the housing goals under subpart B of part 2 of subtitle
6 A of title XIII of the Housing and Community Develop-
7 ment Act of 1992 (12 U.S.C. 4561 et seq.) are enforceable
8 under section 1336 of such Act with respect to the Federal
9 National Mortgage Association and the Federal Home
10 Loan Mortgage Corporation.”;

11 (6) in section 11 (12 U.S.C. 1431)—

12 (A) in subsection (b)—

13 (i) in the first sentence—

14 (I) by striking “The Board” and
15 inserting “The Office of Finance, as
16 agent for the Banks,”; and

17 (II) by striking “the Board” and
18 inserting “such Office”; and

19 (ii) in the second and fourth sen-
20 tences, by striking “the Board” each place
21 such term appears and inserting “the Of-
22 fice of Finance”;

23 (B) in subsection (c)—

24 (i) by striking “the Board” the first
25 place such term appears and inserting “the

1 Office of Finance, as agent for the
2 Banks,”; and

3 (ii) by striking “the Board” the sec-
4 ond place such term appears and inserting
5 “such Office”; and

6 (C) in subsection (f)—

7 (i) by striking the two commas after
8 “permit” and inserting “or”; and

9 (ii) by striking the comma after “re-
10 quire”;

11 (7) in section 15 (12 U.S.C. 1435), by inserting
12 “or the Director” after “the Board”;

13 (8) in section 18 (12 U.S.C. 1438), by striking
14 subsection (b);

15 (9) in section 21 (12 U.S.C. 1441)—

16 (A) in subsection (b)—

17 (i) in paragraph (5), by striking
18 “Chairperson of the Federal Housing Fi-
19 nance Board” and inserting “Director”;
20 and

21 (ii) in the heading for paragraph (8),
22 by striking “FEDERAL HOUSING FINANCE
23 BOARD” and inserting “DIRECTOR”; and

1 (B) in subsection (i), in the heading for
2 paragraph (2), by striking “FEDERAL HOUSING
3 FINANCE BOARD” and inserting “DIRECTOR”;

4 (10) in section 23 (12 U.S.C. 1443), by striking
5 “Board of Directors of the Federal Housing Finance
6 Board” and inserting “Director”;

7 (11) by striking “the Board” each place such
8 term appears in such Act (except in section 15 (12
9 U.S.C. 1435), section 21(f)(2) (12 U.S.C.
10 1441(f)(2)), subsections (a), (k)(2)(B)(i), and
11 (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), sub-
12 sections (f)(2)(C), and (k)(7)(B)(ii) of section 21B
13 (12 U.S.C. 1441b), and the first two places such
14 term appears in section 22 (12 U.S.C. 1442)) and
15 inserting “the Director”;

16 (12) by striking “The Board” each place such
17 term appears in such Act (except in sections 7(e)
18 (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b))
19 and inserting “The Director”;

20 (13) by striking “the Board’s” each place such
21 term appears in such Act and inserting “the Direc-
22 tor’s”;

23 (14) by striking “The Board’s” each place such
24 term appears in such Act and inserting “The Direc-
25 tor’s”;

1 (15) by striking “the Finance Board” each
2 place such term appears in such Act and inserting
3 “the Director”;

4 (16) by striking “Federal Housing Finance
5 Board” each place such term appears and inserting
6 “Director”;

7 (17) in section 11(i) (12 U.S.C. 1431(i), by
8 striking “the Chairperson of”; and

9 (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),
10 by striking “Chairperson of the”.

11 **SEC. 1074. JOINT ACTIVITIES OF BANKS.**

12 Section 11 of the Federal Home Loan Bank Act (12
13 U.S.C. 1431) is amended by adding at the end the fol-
14 lowing new subsection:

15 “(l) JOINT ACTIVITIES.—Subject to the regulation of
16 the Director, any two or more Federal Home Loan Banks
17 may establish a joint office for the purpose of performing
18 functions for, or providing services to, the Banks on a
19 common or collective basis, or may require that the Office
20 of Finance perform such functions or services, but only
21 if the Banks are otherwise authorized to perform such
22 functions or services individually.”.

1 **SEC. 1075. SHARING OF INFORMATION BETWEEN FEDERAL**
2 **HOME LOAN BANKS.**

3 (a) IN GENERAL.—The Federal Home Loan Bank
4 Act is amended by inserting after section 20 (12 U.S.C.
5 1440) the following new section:

6 **“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL**
7 **HOME LOAN BANKS.**

8 “(a) REGULATORY AUTHORITY.—The Director shall
9 prescribe such regulations as may be necessary to ensure
10 that each Federal Home Loan Bank has access to infor-
11 mation that the Bank needs to determine the nature and
12 extent of its joint and several liability.

13 “(b) NO WAIVER OF PRIVILEGE.—The Director shall
14 not be deemed to have waived any privilege applicable to
15 any information concerning a Federal Home Loan Bank
16 by transferring, or permitting the transfer of, that infor-
17 mation to any other Federal Home Loan Bank for the
18 purpose of enabling the recipient to evaluate the nature
19 and extent of its joint and several liability.”.

20 (b) REGULATIONS.—The regulations required under
21 the amendment made by subsection (a) shall be issued in
22 final form not later than 6 months after the effective date
23 under section 1081 of this title.

1 **SEC. 1076. REORGANIZATION OF BANKS AND VOLUNTARY**
2 **MERGER.**

3 Section 26 of the Federal Home Loan Bank Act (12
4 U.S.C. 1446) is amended—

5 (1) by inserting “(a) REORGANIZATION.—” be-
6 fore “Whenever”; and

7 (2) by striking “liquidated or” each place such
8 phrase appears;

9 (3) by striking “liquidation or”; and

10 (4) by adding at the end the following new sub-
11 section:

12 “(b) VOLUNTARY MERGERS.—Any two or more
13 Banks may, with the approval of the Director, and the
14 approval of the boards of directors of the Banks involved,
15 merge. The Director shall promulgate regulations estab-
16 lishing the conditions and procedures for the consideration
17 and approval of any such voluntary merger, including the
18 procedures for Bank member approval.”.

19 **SEC. 1077. SECURITIES AND EXCHANGE COMMISSION DIS-**
20 **CLOSURE.**

21 (a) IN GENERAL.—The Federal Home Loan Banks
22 shall be exempt from compliance with—

23 (1) sections 13(e), 14(a), 14(c), and 17A of the
24 Securities Exchange Act of 1934 and related Com-
25 mission regulations; and

1 (2) section 15 of that Act and related Securities
2 and Exchange Commission regulations with respect
3 to transactions in capital stock of the Banks.

4 (b) MEMBER EXEMPTION.—The members of the
5 Federal Home Loan Banks shall be exempt from compli-
6 ance with sections 13(d), 13(f), 13(g), 14(d), and 16 of
7 the Securities Exchange Act of 1934 and related Securi-
8 ties and Exchange Commission regulations with respect
9 to their ownership of, or transactions in, capital stock of
10 the Federal Home Loan Banks.

11 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

12 (1) CAPITAL STOCK.—The capital stock issued
13 by each of the Federal Home Loan Banks under
14 section 6 of the Federal Home Loan Bank Act are—

15 (A) exempted securities within the mean-
16 ing of section 3(a)(2) of the Securities Act of
17 1933; and

18 (B) “exempted securities” within the
19 meaning of section 3(a)(12)(A) of the Securities
20 Exchange Act of 1934.

21 (2) OTHER OBLIGATIONS.—The debentures,
22 bonds, and other obligations issued under section 11
23 of the Federal Home Loan Bank Act are—

1 (A) exempted securities within the mean-
2 ing of section 3(a)(2) of the Securities Act of
3 1933;

4 (B) “government securities” within the
5 meaning of section 3(a)(42) of the Securities
6 Exchange Act of 1934;

7 (C) excluded from the definition of “gov-
8 ernment securities broker” within section
9 3(a)(43) of the Securities Exchange Act of
10 1934;

11 (D) excluded from the definition of “gov-
12 ernment securities dealer” within section
13 3(a)(44) of the Securities Exchange Act of
14 1934; and

15 (E) “government securities” within the
16 meaning of section 2(a)(16) of the Investment
17 Company Act of 1940.

18 (d) EXEMPTION FROM REPORTING REQUIRE-
19 MENTS.—The Federal Home Loan Banks shall be exempt
20 from periodic reporting requirements pertaining to—

21 (1) the disclosure of related party transactions
22 that occur in the ordinary course of business of the
23 Banks with their members; and

24 (2) the disclosure of unregistered sales of equity
25 securities.

1 (e) TENDER OFFERS.—The Securities and Exchange
2 Commission’s rules relating to tender offers shall not
3 apply in connection with transactions in capital stock of
4 the Federal Home Loan Banks.

5 (f) REGULATIONS.—In issuing any final regulations
6 to implement provisions of this section, the Securities and
7 Exchange Commission shall consider the distinctive char-
8 acteristics of the Federal Home Loan Banks when evalu-
9 ating the accounting treatment with respect to the pay-
10 ment to Resolution Funding Corporation, the role of the
11 combined financial statements of the twelve Banks, the ac-
12 counting classification of redeemable capital stock, and the
13 accounting treatment related to the joint and several na-
14 ture of the obligations of the Banks.

15 **SEC. 1078. COMMUNITY FINANCIAL INSTITUTION MEM-**
16 **BERS.**

17 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)
18 of section 2 of the Federal Home Loan Bank Act (12
19 U.S.C. 1422(10)), as so redesignated by section 1071(3)
20 of this title, is amended by striking “\$500,000,000” each
21 place such term appears and inserting “\$1,000,000,000”.

22 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
23 MENT ACTIVITIES.—Section 10(a) of the Federal Home
24 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

25 (1) in paragraph (2)(B)—

1 (A) by striking “and”; and

2 (B) by inserting “, and community devel-
3 opment activities” before the period at the end;

4 (2) in paragraph (3)(E), by inserting “or com-
5 munity development activities” after “agriculture,”;
6 and

7 (3) in paragraph (6)—

8 (A) by striking “and”; and

9 (B) by inserting “, and ‘community devel-
10 opment activities’” before “shall”.

11 **SEC. 1079. TECHNICAL AND CONFORMING AMENDMENTS.**

12 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—

13 Section 1113(o) of the Right to Financial Privacy Act of
14 1978 (12 U.S.C. 3413(o)) is amended—

15 (1) by striking “Federal Housing Finance
16 Board” and inserting “Federal Housing Finance
17 Agency”; and

18 (2) by striking “Federal Housing Finance
19 Board’s” and inserting “Federal Housing Finance
20 Agency’s”.

21 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
22 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of
23 the Riegle Community Development and Regulatory Im-
24 provement Act of 1994 (12 U.S.C. 4716(e)) is amended

1 by striking “Federal Housing Finance Board” and insert-
2 ing “Federal Housing Finance Agency”.

3 (c) TITLE 18, UNITED STATES CODE.—Title 18,
4 United States Code, is amended by striking “Federal
5 Housing Finance Board” each place such term appears
6 in each of sections 212, 657, 1006, 1014, and inserting
7 “Federal Housing Finance Agency”.

8 (d) MARA ACT OF 1997.—Section 517(b)(4) of the
9 Multifamily Assisted Housing Reform and Affordability
10 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
11 ing “Federal Housing Finance Board” and inserting
12 “Federal Housing Finance Agency”.

13 (e) TITLE 44, UNITED STATES CODE.—Section
14 3502(5) of title 44, United States Code, is amended by
15 striking “Federal Housing Finance Board” and inserting
16 “Federal Housing Finance Agency”.

17 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
18 1004(d)(2)(D)(iii) of the Launching Our Communities’
19 Access to Local Television Act of 2000 (47 U.S.C.
20 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
21 eral Housing Enterprise Oversight, the Federal Housing
22 Finance Board” and inserting “Federal Housing Finance
23 Agency”.

24 (g) SARBANES-OXLEY ACT OF 2002.—Section
25 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002

1 (15 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting
2 “and the Director of the Federal Housing Finance Agen-
3 cy” after “Commission,”.

4 **SEC. 1080. STUDY OF AFFORDABLE HOUSING PROGRAM**
5 **USE FOR LONG-TERM CARE FACILITIES.**

6 The Comptroller General shall conduct a study of the
7 use of affordable housing programs of the Federal home
8 loan banks under section 10(j) of the Federal Home Loan
9 Bank Act to determine how and the extent to which such
10 programs are used to assist long-term care facilities for
11 low- and moderate-income individuals, and the effective-
12 ness and adequacy of such assistance in meeting the needs
13 of affected communities. he Comptroller General shall sub-
14 mit a report to the Director of the Federal Housing Fi-
15 nance Agency and the Congress regarding the results of
16 the study not later than the expiration of the 1-year period
17 beginning on the date of the enactment of this Act. This
18 section shall take effect on the date of the enactment of
19 this Act.

20 **SEC. 1081. EFFECTIVE DATE.**

21 Except as specifically provided otherwise in this sub-
22 title, this subtitle shall take effect on and the amendments
23 made by this subtitle shall take effect on, and shall apply
24 beginning on, the expiration of the 6-month period begin-
25 ning on the date of the enactment of this Act.

1 benefits of any such employee which accrue before
2 the effective date of the transfer of such employee
3 pursuant to section 1087; and

4 (2) may take any other action necessary for the
5 purpose of winding up the affairs of the Office.

6 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

7 The amendments made by title I and the abolishment of
8 the Office of Federal Housing Enterprise Oversight under
9 subsection (a) of this section may not be construed to af-
10 fect the status of any employee of such Office as employ-
11 ees of an agency of the United States for purposes of any
12 other provision of law before the effective date of the
13 transfer of any such employee pursuant to section 1087.

14 (d) USE OF PROPERTY AND SERVICES.—

15 (1) PROPERTY.—The Director of the Federal
16 Housing Finance Agency may use the property of
17 the Office of Federal Housing Enterprise Oversight
18 to perform functions which have been transferred to
19 the Director of the Federal Housing Finance Agency
20 for such time as is reasonable to facilitate the or-
21 derly transfer of functions transferred pursuant to
22 any other provision of this title or any amendment
23 made by this title to any other provision of law.

24 (2) AGENCY SERVICES.—Any agency, depart-
25 ment, or other instrumentality of the United States,

1 and any successor to any such agency, department,
2 or instrumentality, which was providing supporting
3 services to the Office of Federal Housing Enterprise
4 Oversight before the expiration of the period under
5 subsection (a) in connection with functions that are
6 transferred to the Director of the Federal Housing
7 Finance Agency shall—

8 (A) continue to provide such services, on a
9 reimbursable basis, until the transfer of such
10 functions is complete; and

11 (B) consult with any such agency to co-
12 ordinate and facilitate a prompt and reasonable
13 transition.

14 (e) SAVINGS PROVISIONS.—

15 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
16 TIONS NOT AFFECTED.—Subsection (a) shall not af-
17 fect the validity of any right, duty, or obligation of
18 the United States, the Director of the Office of Fed-
19 eral Housing Enterprise Oversight, or any other per-
20 son, which—

21 (A) arises under or pursuant to the title
22 XIII of the Housing and Community Develop-
23 ment Act of 1992, the Federal National Mort-
24 gage Association Charter Act, the Federal
25 Home Loan Mortgage Corporation Act, or any

1 other provision of law applicable with respect to
2 such Office; and

3 (B) existed on the day before the abolish-
4 ment under subsection (a) of this section.

5 (2) CONTINUATION OF SUITS.—No action or
6 other proceeding commenced by or against the Di-
7 rector of the Office of Federal Housing Enterprise
8 Oversight in connection with functions that are
9 transferred to the Director of the Federal Housing
10 Finance Agency shall abate by reason of the enact-
11 ment of this title, except that the Director of the
12 Federal Housing Finance Agency shall be sub-
13 stituted for the Director of the Office of Federal
14 Housing Enterprise Oversight as a party to any
15 such action or proceeding.

16 **SEC. 1086. CONTINUATION AND COORDINATION OF CER-**
17 **TAIN REGULATIONS.**

18 All regulations, orders, determinations, and resolu-
19 tions that—

20 (1) were issued, made, prescribed, or allowed to
21 become effective by—

22 (A) the Office of Federal Housing Enter-
23 prise Oversight; or

1 (B) a court of competent jurisdiction and
2 that relate to functions transferred by this sub-
3 title; and

4 (2) are in effect on the date of the abolishment
5 under section 1085(a) of this title, shall remain in
6 effect according to the terms of such regulations, or-
7 ders, determinations, and resolutions, and shall be
8 enforceable by or against the Director of the Federal
9 Housing Finance Agency until modified, terminated,
10 set aside, or superseded in accordance with applica-
11 ble law by such Director, as the case may be, any
12 court of competent jurisdiction, or operation of law.

13 **SEC. 1087. TRANSFER AND RIGHTS OF EMPLOYEES OF**
14 **OFHEO.**

15 (a) TRANSFER.—Each employee of the Office of Fed-
16 eral Housing Enterprise Oversight shall be transferred to
17 the Federal Housing Finance Agency for employment no
18 later than the date of the abolishment under section
19 1085(a) of this title and such transfer shall be deemed
20 a transfer of function for purposes of section 3503 of title
21 5, United States Code.

22 (b) GUARANTEED POSITIONS.—Each employee trans-
23 ferred under subsection (a) shall be guaranteed a position
24 with the same status, tenure, grade, and pay as that held
25 on the day immediately preceding the transfer. Each such

1 employee holding a permanent position shall not be invol-
2 untarily separated or reduced in grade or compensation
3 for 12 months after the date of transfer, except for cause
4 or, if the employee is a temporary employee, separated in
5 accordance with the terms of the appointment.

6 (c) APPOINTMENT AUTHORITY FOR EXCEPTED
7 SERVICE EMPLOYEES.—

8 (1) IN GENERAL.—In the case of employees oc-
9 cupying positions in the excepted service, any ap-
10 pointment authority established pursuant to law or
11 regulations of the Office of Personnel Management
12 for filling such positions shall be transferred, subject
13 to paragraph (2).

14 (2) DECLINE OF TRANSFER.—The Director of
15 the Federal Housing Finance Agency may decline a
16 transfer of authority under paragraph (1) (and the
17 employees appointed pursuant thereto) to the extent
18 that such authority relates to positions excepted
19 from the competitive service because of their con-
20 fidential, policy-making, policy-determining, or pol-
21 icy-advocating character.

22 (d) REORGANIZATION.—If the Director of the Fed-
23 eral Housing Finance Agency determines, after the end
24 of the 1-year period beginning on the date of the abolish-
25 ment under section 1085(a), that a reorganization of the

1 combined work force is required, that reorganization shall
2 be deemed a major reorganization for purposes of afford-
3 ing affected employees retirement under section
4 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
5 Code.

6 (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee
7 of the Office of Federal Housing Enterprise Oversight ac-
8 cepting employment with the Director of the Federal
9 Housing Finance Agency as a result of a transfer under
10 subsection (a) may retain for 12 months after the date
11 such transfer occurs membership in any employee benefit
12 program of the Federal Housing Finance Agency or the
13 Office of Federal Housing Enterprise Oversight, as appli-
14 cable, including insurance, to which such employee belongs
15 on the date of the abolishment under section 1085(a) if—

16 (1) the employee does not elect to give up the
17 benefit or membership in the program; and

18 (2) the benefit or program is continued by the

19 Director of the Federal Housing Finance Agency,
20 The difference in the costs between the benefits which
21 would have been provided by such agency and those pro-
22 vided by this section shall be paid by the Director of the
23 Federal Housing Finance Agency. If any employee elects
24 to give up membership in a health insurance program or
25 the health insurance program is not continued by such Di-

1 rector, the employee shall be permitted to select an alter-
2 nate Federal health insurance program within 30 days of
3 such election or notice, without regard to any other regu-
4 larly scheduled open season.

5 **SEC. 1088. TRANSFER OF PROPERTY AND FACILITIES.**

6 Upon the abolishment under section 1085(a), all
7 property of the Office of Federal Housing Enterprise
8 Oversight shall transfer to the Director of the Federal
9 Housing Finance Agency.

10 **CHAPTER 2—FEDERAL HOUSING FINANCE**
11 **BOARD**

12 **SEC. 1091. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
13 **NANCE BOARD.**

14 (a) IN GENERAL.—Effective at the end of the 6-
15 month period beginning on the date of enactment of this
16 Act, the Federal Housing Finance Board (in this subtitle
17 referred to as the “Board”) is abolished.

18 (b) DISPOSITION OF AFFAIRS.—During the 6-month
19 period beginning on the date of enactment of this Act, the
20 Board, for the purpose of winding up the affairs of the
21 Board and in addition to carrying out its other responsibil-
22 ities under law—

23 (1) shall manage the employees of such Board
24 and provide for the payment of the compensation
25 and benefits of any such employee which accrue be-

1 fore the effective date of the transfer of such em-
2 ployee under section 1093; and

3 (2) may take any other action necessary for the
4 purpose of winding up the affairs of the Board.

5 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

6 The amendments made by titles I and II and the abolish-
7 ment of the Board under subsection (a) may not be con-
8 strued to affect the status of any employee of such Board
9 as employees of an agency of the United States for pur-
10 poses of any other provision of law before the effective
11 date of the transfer of any such employee under section
12 1093.

13 (d) USE OF PROPERTY AND SERVICES.—

14 (1) PROPERTY.—The Director of the Federal
15 Housing Finance Agency may use the property of
16 the Board to perform functions which have been
17 transferred to the Director of the Federal Housing
18 Finance Agency for such time as is reasonable to fa-
19 cilitate the orderly transfer of functions transferred
20 under any other provision of this title or any amend-
21 ment made by this title to any other provision of
22 law.

23 (2) AGENCY SERVICES.—Any agency, depart-
24 ment, or other instrumentality of the United States,
25 and any successor to any such agency, department,

1 or instrumentality, which was providing supporting
2 services to the Board before the expiration of the pe-
3 riod under subsection (a) in connection with func-
4 tions that are transferred to the Director of the
5 Federal Housing Finance Agency shall—

6 (A) continue to provide such services, on a
7 reimbursable basis, until the transfer of such
8 functions is complete; and

9 (B) consult with any such agency to co-
10 ordinate and facilitate a prompt and reasonable
11 transition.

12 (e) SAVINGS PROVISIONS.—

13 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
14 TIONS NOT AFFECTED.—Subsection (a) shall not af-
15 fect the validity of any right, duty, or obligation of
16 the United States, a member of the Board, or any
17 other person, which—

18 (A) arises under the Federal Home Loan
19 Bank Act or any other provision of law applica-
20 ble with respect to such Board; and

21 (B) existed on the day before the effective
22 date of the abolishment under subsection (a).

23 (2) CONTINUATION OF SUITS.—No action or
24 other proceeding commenced by or against the
25 Board in connection with functions that are trans-

1 ferred to the Director of the Federal Housing Fi-
2 nance Agency shall abate by reason of the enactment
3 of this title, except that the Director of the Federal
4 Housing Finance Agency shall be substituted for the
5 Board or any member thereof as a party to any such
6 action or proceeding.

7 **SEC. 1092. CONTINUATION AND COORDINATION OF CER-**
8 **TAIN REGULATIONS.**

9 (a) IN GENERAL.—All regulations, orders, deter-
10 minations, and resolutions described under subsection (b)
11 shall remain in effect according to the terms of such regu-
12 lations, orders, determinations, and resolutions, and shall
13 be enforceable by or against the Director of the Federal
14 Housing Finance Agency until modified, terminated, set
15 aside, or superseded in accordance with applicable law by
16 such Director, any court of competent jurisdiction, or op-
17 eration of law.

18 (b) APPLICABILITY.—A regulation, order, determina-
19 tion, or resolution is described under this subsection if it—

20 (1) was issued, made, prescribed, or allowed to
21 become effective by—

22 (A) the Board; or

23 (B) a court of competent jurisdiction and
24 relates to functions transferred by this subtitle;

25 and

1 (2) is in effect on the effective date of the abol-
2 ishment under section 1091(a).

3 **SEC. 1093. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
4 **FEDERAL HOUSING FINANCE BOARD.**

5 (a) **TRANSFER.**—Each employee of the Board shall
6 be transferred to the Federal Housing Finance Agency for
7 employment not later than the effective date of the abol-
8 ishment under section 1091(a), and such transfer shall be
9 deemed a transfer of function for purposes of section 3503
10 of title 5, United States Code.

11 (b) **GUARANTEED POSITIONS.**—Each employee trans-
12 ferred under subsection (a) shall be guaranteed a position
13 with the same status, tenure, grade, and pay as that held
14 on the day immediately preceding the transfer. Each such
15 employee holding a permanent position shall not be invol-
16 untarily separated or reduced in grade or compensation
17 for 12 months after the date of transfer, except for cause
18 or, if the employee is a temporary employee, separated in
19 accordance with the terms of the appointment.

20 (c) **APPOINTMENT AUTHORITY FOR EXCEPTED AND**
21 **SENIOR EXECUTIVE SERVICE EMPLOYEES.**—

22 (1) **IN GENERAL.**—In the case of employees oc-
23 cupying positions in the excepted service or the Sen-
24 ior Executive Service, any appointment authority es-
25 tablished under law or by regulations of the Office

1 of Personnel Management for filling such positions
2 shall be transferred, subject to paragraph (2).

3 (2) DECLINE OF TRANSFER.—The Director of
4 the Federal Housing Finance Agency may decline a
5 transfer of authority under paragraph (1) to the ex-
6 tent that such authority relates to positions excepted
7 from the competitive service because of their con-
8 fidential, policymaking, policy-determining, or policy-
9 advocating character, and noncareer positions in the
10 Senior Executive Service (within the meaning of sec-
11 tion 3132(a)(7) of title 5, United States Code).

12 (d) REORGANIZATION.—If the Director of the Fed-
13 eral Housing Finance Agency determines, after the end
14 of the 1-year period beginning on the effective date of the
15 abolishment under section 1091(a), that a reorganization
16 of the combined workforce is required, that reorganization
17 shall be deemed a major reorganization for purposes of
18 affording affected employees retirement under section
19 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
20 Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee of the Board
23 accepting employment with the Federal Housing Fi-
24 nance Agency as a result of a transfer under sub-
25 section (a) may retain for 12 months after the date

1 on which such transfer occurs membership in any
2 employee benefit program of the Federal Housing
3 Finance Agency or the Board, as applicable, includ-
4 ing insurance, to which such employee belongs on
5 the effective date of the abolishment under section
6 1091(a) if—

7 (A) the employee does not elect to give up
8 the benefit or membership in the program; and

9 (B) the benefit or program is continued by
10 the Director of the Federal Housing Finance
11 Agency.

12 (2) COST DIFFERENTIAL.—The difference in
13 the costs between the benefits which would have
14 been provided by the Board and those provided by
15 this section shall be paid by the Director of the Fed-
16 eral Housing Finance Agency. If any employee elects
17 to give up membership in a health insurance pro-
18 gram or the health insurance program is not contin-
19 ued by such Director, the employee shall be per-
20 mitted to select an alternate Federal health insur-
21 ance program within 30 days after such election or
22 notice, without regard to any other regularly sched-
23 uled open season.

1 **SEC. 1094. TRANSFER OF PROPERTY AND FACILITIES.**

2 Upon the effective date of the abolishment under sec-
3 tion 1091(a), all property of the Board shall transfer to
4 the Director of the Federal Housing Finance Agency.

5 **CHAPTER 3—DEPARTMENT OF HOUSING**
6 **AND URBAN DEVELOPMENT**

7 **SEC. 1095. TERMINATION OF ENTERPRISE-RELATED FUNC-**
8 **TIONS.**

9 (a) **TERMINATION DATE.**—For purposes of this sub-
10 title, the term “termination date” means the date that oc-
11 curs 6 months after the date of the enactment of this Act.

12 (b) **DETERMINATION OF TRANSFERRED FUNCTIONS**
13 **AND EMPLOYEES.**—

14 (1) **IN GENERAL.**—Not later than the expira-
15 tion of the 3-month period beginning on the date of
16 the enactment of this Act, the Secretary, in con-
17 sultation with the Director of the Office of Federal
18 Housing Enterprise Oversight, shall determine—

19 (A) the functions, duties, and activities of
20 the Secretary of Housing and Urban Develop-
21 ment regarding oversight or regulation of the
22 enterprises under or pursuant to the author-
23 izing statutes, title XIII of the Housing and
24 Community Development Act of 1992, and any
25 other provisions of law, as in effect before the
26 date of the enactment of this Act, but not in-

1 including any such functions, duties, and activi-
2 ties of the Director of the Office of Federal
3 Housing Enterprise Oversight of the Depart-
4 ment of Housing and Urban Development and
5 such Office; and

6 (B) the employees of the Department of
7 Housing and Urban Development necessary to
8 perform such functions, duties, and activities.

9 (2) ENTERPRISE-RELATED FUNCTIONS.—For
10 purposes of this subtitle, the term “enterprise-re-
11 lated functions of the Department” means the func-
12 tions, duties, and activities of the Department of
13 Housing and Urban Development determined under
14 paragraph (1)(A).

15 (3) ENTERPRISE-RELATED EMPLOYEES.—For
16 purposes of this subtitle, the term “enterprise-re-
17 lated employees of the Department” means the em-
18 ployees of the Department of Housing and Urban
19 Development determined under paragraph (1)(B).

20 (c) DISPOSITION OF AFFAIRS.—During the 6-month
21 period beginning on the date of enactment of this Act, the
22 Secretary of Housing and Urban Development (in this
23 subtitle referred to as the “Secretary”), for the purpose
24 of winding up the affairs of the Secretary regarding the
25 enterprise-related functions of the Department of Housing

1 and Urban Development (in this subtitle referred to as
2 the “Department”) and in addition to carrying out the
3 Secretary’s other responsibilities under law regarding such
4 functions—

5 (1) shall manage the enterprise-related employ-
6 ees of the Department and provide for the payment
7 of the compensation and benefits of any such em-
8 ployee which accrue before the effective date of the
9 transfer of any such employee under section 1097;
10 and

11 (2) may take any other action necessary for the
12 purpose of winding up the enterprise-related func-
13 tions of the Department.

14 (d) STATUS OF EMPLOYEES BEFORE TRANSFER.—
15 The amendments made by titles I and II and the termi-
16 nation of the enterprise-related functions of the Depart-
17 ment under subsection (b) may not be construed to affect
18 the status of any employee of the Department as employ-
19 ees of an agency of the United States for purposes of any
20 other provision of law before the effective date of the
21 transfer of any such employee under section 1097.

22 (e) USE OF PROPERTY AND SERVICES.—

23 (1) PROPERTY.—The Director of the Federal
24 Housing Finance Agency may use the property of
25 the Secretary to perform functions which have been

1 transferred to the Director of the Federal Housing
2 Finance Agency for such time as is reasonable to fa-
3 cilitate the orderly transfer of functions transferred
4 under any other provision of this title or any amend-
5 ment made by this title to any other provision of
6 law.

7 (2) AGENCY SERVICES.—Any agency, depart-
8 ment, or other instrumentality of the United States,
9 and any successor to any such agency, department,
10 or instrumentality, which was providing supporting
11 services to the Secretary regarding enterprise-related
12 functions of the Department before the termination
13 date under subsection (a) in connection with such
14 functions that are transferred to the Director of the
15 Federal Housing Finance Agency shall—

16 (A) continue to provide such services, on a
17 reimbursable basis, until the transfer of such
18 functions is complete; and

19 (B) consult with any such agency to co-
20 ordinate and facilitate a prompt and reasonable
21 transition.

22 (f) SAVINGS PROVISIONS.—

23 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
24 TIONS NOT AFFECTED.—Subsection (a) shall not af-
25 fect the validity of any right, duty, or obligation of

1 the United States, the Secretary, or any other per-
2 son, which—

3 (A) arises under the authorizing statutes,
4 title XIII of the Housing and Community De-
5 velopment Act of 1992, or any other provision
6 of law applicable with respect to the Secretary,
7 in connection with the enterprise-related func-
8 tions of the Department; and

9 (B) existed on the day before the termi-
10 nation date under subsection (a).

11 (2) CONTINUATION OF SUITS.—No action or
12 other proceeding commenced by or against the Sec-
13 retary in connection with the enterprise-related func-
14 tions of the Department shall abate by reason of the
15 enactment of this title, except that the Director of
16 the Federal Housing Finance Agency shall be sub-
17 stituted for the Secretary or any member thereof as
18 a party to any such action or proceeding.

19 **SEC. 1096. CONTINUATION AND COORDINATION OF CER-**
20 **TAIN REGULATIONS.**

21 (a) IN GENERAL.—All regulations, orders, and deter-
22 minations described in subsection (b) shall remain in ef-
23 fect according to the terms of such regulations, orders,
24 determinations, and resolutions, and shall be enforceable
25 by or against the Director of the Federal Housing Finance

1 Agency until modified, terminated, set aside, or super-
2 seded in accordance with applicable law by such Director,
3 any court of competent jurisdiction, or operation of law.

4 (b) APPLICABILITY.—A regulation, order, or deter-
5 mination is described under this subsection if it—

6 (1) was issued, made, prescribed, or allowed to
7 become effective by—

8 (A) the Secretary; or

9 (B) a court of competent jurisdiction and
10 that relate to the enterprise-related functions of
11 the Department; and

12 (2) is in effect on the termination date under
13 section 1095(a).

14 **SEC. 1097. TRANSFER AND RIGHTS OF EMPLOYEES OF DE-**
15 **PARTMENT OF HOUSING AND URBAN DEVEL-**
16 **OPMENT.**

17 (a) TRANSFER.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), each enterprise-related employee of the
20 Department shall be transferred to the Federal
21 Housing Finance Agency for employment not later
22 than the termination date under section 1095(a) and
23 such transfer shall be deemed a transfer of function
24 for purposes of section 3503 of title 5, United States
25 Code.

1 (2) **AUTHORITY TO DECLINE.**—An enterprise-
2 related employee of the Department may, in the dis-
3 cretion of the employee, decline transfer under para-
4 graph (1) to a position in the Federal Housing Fi-
5 nance Agency and shall be guaranteed a position in
6 the Department with the same status, tenure, grade,
7 and pay as that held on the day immediately pre-
8 ceding the date that such declination was made.
9 Each such employee holding a permanent position
10 shall not be involuntarily separated or reduced in
11 grade or compensation for 12 months after the date
12 that the transfer would otherwise have occurred, ex-
13 cept for cause or, if the employee is a temporary em-
14 ployee, separated in accordance with the terms of
15 the appointment.

16 (b) **GUARANTEED POSITIONS.**—Each enterprise-re-
17 lated employee of the Department transferred under sub-
18 section (a) shall be guaranteed a position with the same
19 status, tenure, grade, and pay as that held on the day
20 immediately preceding the transfer. Each such employee
21 holding a permanent position shall not be involuntarily
22 separated or reduced in grade or compensation for 12
23 months after the date of transfer, except for cause or, if
24 the employee is a temporary employee, separated in ac-
25 cordance with the terms of the appointment.

1 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
2 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

3 (1) IN GENERAL.—In the case of employees oc-
4 cupying positions in the excepted service or the Sen-
5 ior Executive Service, any appointment authority es-
6 tablished under law or by regulations of the Office
7 of Personnel Management for filling such positions
8 shall be transferred, subject to paragraph (2).

9 (2) DECLINE OF TRANSFER.—The Director of
10 the Federal Housing Finance Agency may decline a
11 transfer of authority under paragraph (1) (and the
12 employees appointed pursuant thereto) to the extent
13 that such authority relates to positions excepted
14 from the competitive service because of their con-
15 fidential, policymaking, policy-determining, or policy-
16 advocating character, and noncareer positions in the
17 Senior Executive Service (within the meaning of sec-
18 tion 3132(a)(7) of title 5, United States Code).

19 (d) REORGANIZATION.—If the Director of the Fed-
20 eral Housing Finance Agency determines, after the end
21 of the 1-year period beginning on the termination date
22 under section 1095(a), that a reorganization of the com-
23 bined workforce is required, that reorganization shall be
24 deemed a major reorganization for purposes of affording

1 affected employees retirement under section 8336(d)(2) or
2 8414(b)(1)(B) of title 5, United States Code.

3 (e) EMPLOYEE BENEFIT PROGRAMS.—

4 (1) IN GENERAL.—Any enterprise-related em-
5 ployee of the Department accepting employment
6 with the Federal Housing Finance Agency as a re-
7 sult of a transfer under subsection (a) may retain
8 for 12 months after the date on which such transfer
9 occurs membership in any employee benefit program
10 of the Federal Housing Finance Agency or the De-
11 partment, as applicable, including insurance, to
12 which such employee belongs on the termination
13 date under section 1095(a) if—

14 (A) the employee does not elect to give up
15 the benefit or membership in the program; and

16 (B) the benefit or program is continued by
17 the Director of the Federal Housing Finance
18 Agency.

19 (2) COST DIFFERENTIAL.—The difference in
20 the costs between the benefits which would have
21 been provided by the Department and those provided
22 by this section shall be paid by the Director of the
23 Federal Housing Finance Agency. If any employee
24 elects to give up membership in a health insurance
25 program or the health insurance program is not con-

