

HOUSE AMENDMENTS TO THE SENATE
AMENDMENT TO H.R. 3221
OFFERED BY MR. FRANK OF MASSACHUSETTS

In the matter proposed to be inserted by the amendment of the Senate to the text of the bill, strike section 1 and all that follows through the end of title V and insert the following:

1 SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “American Housing Rescue and Foreclosure Prevention
4 Act of 2008”.

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

Sec. 1. Short title and table of contents.

TITLE I—FHA HOUSING STABILIZATION AND HOMEOWNERSHIP
RETENTION

Sec. 101. Short title.

Subtitle A—Homeownership Retention

Sec. 111. Purposes.

Sec. 112. Insurance of homeownership retention mortgages.

Sec. 113. Study of Auction or Bulk Refinance Program.

Sec. 114. Temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by Secretary of Veterans Affairs.

Sec. 115. Study of possible accounting revisions relating to property at risk of foreclosure and the availability of credit for refinancing home mortgages at risk of foreclosure.

Sec. 116. GAO study of the effect of tightening credit markets in communities affected by the subprime mortgage foreclosure crises and predatory lending on prospective first-time homebuyers seeking mortgages.

Subtitle B—Office of Housing Counseling

- Sec. 131. Short title.
- Sec. 132. Establishment of Office of Housing Counseling.
- Sec. 133. Counseling procedures.
- Sec. 134. Grants for housing counseling assistance.
- Sec. 135. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 136. Study of defaults and foreclosures.
- Sec. 137. Definitions for counseling-related programs.
- Sec. 138. Updating and simplification of mortgage information booklet.

Subtitle C—Combating Mortgage Fraud

- Sec. 151. Authorization of appropriations to combat mortgage fraud.

TITLE II—FHA REFORM AND MANUFACTURED HOUSING LOAN
INSURANCE MODERNIZATION

Subtitle A—FHA Reform

- Sec. 201. Short title.
- Sec. 202. Findings and purposes.
- Sec. 203. Maximum principal loan obligation.
- Sec. 204. Extension of mortgage term.
- Sec. 205. Downpayment simplification.
- Sec. 206. Mortgage insurance premiums for qualified homeownership assistance entities and higher-risk borrowers.
- Sec. 207. Risk-based mortgage insurance premiums.
- Sec. 208. Payment incentives for higher-risk borrowers.
- Sec. 209. Protections for higher-risk borrowers.
- Sec. 210. Refinancing mortgages.
- Sec. 211. Annual reports on new programs and loss mitigation.
- Sec. 212. Insurance for single family homes with licensed child care facilities.
- Sec. 213. Rehabilitation loans.
- Sec. 214. Discretionary action.
- Sec. 215. Insurance of condominiums and manufactured housing.
- Sec. 216. Mutual Mortgage Insurance Fund.
- Sec. 217. Hawaiian home lands and Indian reservations.
- Sec. 218. Conforming and technical amendments.
- Sec. 219. Home equity conversion mortgages.
- Sec. 220. Study on participation of mortgage brokers and correspondent lenders.
- Sec. 221. Conforming loan limit in disaster areas.
- Sec. 222. Failure to pay amounts from escrow accounts for single family mortgages.
- Sec. 223. Acceptable identification for FHA mortgagors.
- Sec. 224. Pilot program for automated process for borrowers without sufficient credit history.
- Sec. 225. Sense of Congress regarding technology for financial systems.
- Sec. 226. Clarification of disposition of certain properties.
- Sec. 227. Valuation of multifamily properties in noncompetitive sales by HUD to states and localities.
- Sec. 228. Limitation on mortgage insurance premium increases.
- Sec. 229. Civil money penalties for improperly influencing appraisals.
- Sec. 230. Mortgage insurance premium refunds.
- Sec. 231. Savings provision.

Sec. 232. Implementation.

Subtitle B—FHA Manufactured Housing Loan Insurance Modernization

Sec. 251. Short title.

Sec. 252. Findings and purposes.

Sec. 253. Exception to limitation on financial institution portfolio.

Sec. 254. Insurance benefits.

Sec. 255. Maximum loan limits.

Sec. 256. Insurance premiums.

Sec. 257. Technical corrections.

Sec. 258. Revision of underwriting criteria.

Sec. 259. Requirement of social security account number for assistance.

Sec. 260. GAO study of mitigation of tornado risks to manufactured homes.

TITLE III—REFORM OF GOVERNMENT-SPONSORED ENTITIES FOR HOUSING FINANCE

Sec. 301. Short title.

Sec. 302. Definitions.

Subtitle A—Reform of Regulation of Enterprises and Federal Home Loan Banks

CHAPTER 1—IMPROVEMENT OF SAFETY AND SOUNDNESS

Sec. 311. Establishment of the Federal Housing Finance Agency.

Sec. 312. Duties and authorities of Director.

Sec. 313. Federal Housing Enterprise Board.

Sec. 314. Authority to require reports by regulated entities.

Sec. 315. Disclosure of income and charitable contributions by enterprises.

Sec. 316. Assessments.

Sec. 317. Examiners and accountants.

Sec. 318. Prohibition and withholding of executive compensation.

Sec. 319. Reviews of regulated entities.

Sec. 320. Inclusion of minorities and women; diversity in Agency workforce.

Sec. 321. Regulations and orders.

Sec. 322. Non-waiver of privileges.

Sec. 323. Risk-based capital requirements.

Sec. 324. Minimum and critical capital levels.

Sec. 325. Review of and authority over enterprise assets and liabilities.

Sec. 326. Corporate governance of enterprises.

Sec. 327. Required registration under Securities Exchange Act of 1934.

Sec. 328. Liaison with Financial Institutions Examination Council.

Sec. 329. Guarantee fee study.

Sec. 330. Conforming amendments.

CHAPTER 2—IMPROVEMENT OF MISSION SUPERVISION

Sec. 331. Transfer of product approval and housing goal oversight.

Sec. 332. Review of enterprise products.

Sec. 333. Conforming loan limits.

Sec. 334. Annual housing report regarding regulated entities.

Sec. 335. Annual reports by regulated entities on affordable housing stock.

Sec. 336. Mortgagor identification requirements for mortgages of regulated entities.

Sec. 337. Revision of housing goals.

- Sec. 338. Duty to serve underserved markets.
- Sec. 339. Monitoring and enforcing compliance with housing goals.
- Sec. 340. Affordable Housing Fund.
- Sec. 341. Consistency with mission.
- Sec. 342. Enforcement.
- Sec. 343. Conforming amendments.

CHAPTER 3—PROMPT CORRECTIVE ACTION

- Sec. 345. Capital classifications.
- Sec. 346. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 347. Supervisory actions applicable to significantly undercapitalized regulated entities.
- Sec. 348. Authority over critically undercapitalized regulated entities.
- Sec. 349. Conforming amendments.

CHAPTER 4—ENFORCEMENT ACTIONS

- Sec. 351. Cease-and-desist proceedings.
- Sec. 352. Temporary cease-and-desist proceedings.
- Sec. 353. Prejudgment attachment.
- Sec. 354. Enforcement and jurisdiction.
- Sec. 355. Civil money penalties.
- Sec. 356. Removal and prohibition authority.
- Sec. 357. Criminal penalty.
- Sec. 358. Subpoena authority.
- Sec. 359. Conforming amendments.

CHAPTER 5—GENERAL PROVISIONS

- Sec. 361. Boards of enterprises.
- Sec. 362. Report on portfolio operations, safety and soundness, and mission of enterprises.
- Sec. 363. Conforming and technical amendments.
- Sec. 364. Study of alternative secondary market systems.
- Sec. 365. Effective date.

Subtitle B—Federal Home Loan Banks

- Sec. 371. Definitions.
- Sec. 372. Directors.
- Sec. 373. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
- Sec. 374. Joint activities of Banks.
- Sec. 375. Sharing of information between Federal Home Loan Banks.
- Sec. 376. Reorganization of Banks and voluntary merger.
- Sec. 377. Securities and Exchange Commission disclosure.
- Sec. 378. Community financial institution members.
- Sec. 379. Technical and conforming amendments.
- Sec. 380. Study of affordable housing program use for long-term care facilities.
- Sec. 381. Effective date.

Subtitle C—Transfer of Functions, Personnel, and Property of Office of Federal Housing Enterprise Oversight, Federal Housing Finance Board, and Department of Housing and Urban Development

CHAPTER 1—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

- Sec. 385. Abolishment of OFHEO.
- Sec. 386. Continuation and coordination of certain regulations.
- Sec. 387. Transfer and rights of employees of OFHEO.
- Sec. 388. Transfer of property and facilities.

CHAPTER 2—FEDERAL HOUSING FINANCE BOARD

- Sec. 391. Abolishment of the Federal Housing Finance Board.
- Sec. 392. Continuation and coordination of certain regulations.
- Sec. 393. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 394. Transfer of property and facilities.

CHAPTER 3—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- Sec. 395. Termination of enterprise-related functions.
- Sec. 396. Continuation and coordination of certain regulations.
- Sec. 397. Transfer and rights of employees of Department of Housing and Urban Development.
- Sec. 398. Transfer of appropriations, property, and facilities.

TITLE IV—EMERGENCY MORTGAGE LOAN MODIFICATION

- Sec. 401. Short title.
- Sec. 402. Safe harbor for qualified loan modifications or workout plans for certain residential mortgage loans.

TITLE V—OTHER HOUSING PROVISIONS

- Sec. 501. Depository Institution Community Development Investments Enhancement .
- Sec. 502. Preservation of certain affordable housing dwelling units.
- Sec. 503. Eligibility of certain projects for enhanced voucher assistance.
- Sec. 504. Transfer of certain rental assistance contracts.
- Sec. 505. Protection against discriminatory treatment.

TITLE VI—HOUSING ASSISTANCE AUTHORIZATION

- Sec. 601. Housing assistance authorization.

1 **TITLE I—FHA HOUSING STA-**
 2 **BILIZATION AND HOME-**
 3 **OWNERSHIP RETENTION**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “FHA Housing Sta-
 6 bilization and Homeownership Retention Act of 2008”.

1 **Subtitle A—Homeownership**
2 **Retention**

3 **SEC. 111. PURPOSES.**

4 The purposes of this subtitle are—

5 (1) to create an FHA program, which is vol-
6 untary on the part of borrowers and existing mort-
7 gage loan holders, including both existing senior
8 mortgage loan holders and existing subordinate
9 mortgage loan holders, to insure refinance loans for
10 substantial numbers of borrowers at risk of fore-
11 closure, at levels which are reasonably likely to be
12 sustainable through enhanced affordability of debt
13 service;

14 (2) to provide flexible underwriting for FHA-in-
15 sured loans under such a program to provide refi-
16 nancing opportunities under fiscally responsible
17 terms, including higher fees commensurate with
18 higher risk levels, a seasoning requirement for high-
19 er debt to income loans, and additional program con-
20 trols to limit and control risk;

21 (3) to bar speculators and second home owners
22 from participation in such program;

23 (4) to require existing mortgage loan holders to
24 take substantial loan writedowns in exchange for

1 having the Federal Government and the borrower
2 assume the ongoing risk of the refinanced loan;

3 (5) to set a loan-to-value limit on such loans
4 that provides the FHA with an equity buffer against
5 potential loan losses, provides protections against
6 the risk of future home price declines, and creates
7 incentives for borrowers to maintain payments on
8 the loan;

9 (6) to protect the FHA against losses which
10 may exceed normal FHA loss levels by establishing
11 higher fee levels, including an exit fee and profit
12 sharing during the first five years of the loan, with
13 such higher fee levels effectively being funded
14 through the required lender writedown;

15 (7) to provide a fair level of incentives for jun-
16 ior lien holders to provide the necessary releases of
17 their lien interests, in order to meet program re-
18 quirements that all outstanding liens must be extin-
19 guished, and thereby permit the refinancing to be
20 completed;

21 (8) to enhance the administrative capacity of
22 the FHA to carry out its expanded role under the
23 program through establishment of an Oversight
24 Board which adds expertise from the Federal Re-
25 serve and the Department of the Treasury, through

1 additional funding to contract out for the provision
2 of any needed expertise in designing program re-
3 quirements and oversight, and through additional
4 funding to increase FHA personnel resources as
5 needed to handle the increased loan volume resulting
6 from the program;

7 (9) to sunset the program when it is no longer
8 needed; and

9 (10) to study the need for and efficacy of an
10 auction or bulk refinancing mechanism to facilitate
11 more expeditious refinancing of larger volumes of ex-
12 isting mortgages that are at risk for foreclosure into
13 FHA-insured mortgages.

14 **SEC. 112. INSURANCE OF HOMEOWNERSHIP RETENTION**
15 **MORTGAGES.**

16 (a) MORTGAGE INSURANCE PROGRAM.—Title II of
17 the National Housing Act (12 U.S.C. 1707 et seq.) is
18 amended by adding at the end the following new section:

19 **“SEC. 257. INSURANCE OF HOMEOWNERSHIP RETENTION**
20 **MORTGAGES.**

21 **“(a) OVERSIGHT BOARD.—**

22 **“(1) ESTABLISHMENT.—**There is hereby estab-
23 lished the Refinance Program Oversight Board (in
24 this section referred to as the ‘Oversight Board’).

1 “(2) MEMBERSHIP.—The Oversight Board shall
2 consist of the following members or their designees:

3 “(A) The Secretary of the Treasury.

4 “(B) The Secretary of Housing and Urban
5 Development.

6 “(C) The Chairman of the Board of Gov-
7 ernors of the Federal Reserve System.

8 “(3) NO ADDITIONAL COMPENSATION.—Mem-
9 bers of the Oversight Board shall receive no addi-
10 tional pay by reason of service on the Oversight
11 Board.

12 “(4) RESPONSIBILITIES.—The Oversight Board
13 shall be responsible for establishing program and
14 oversight requirements for the program under this
15 section, which shall include—

16 “(A) detailed program requirements under
17 subsection (c);

18 “(B) flexible underwriting criteria under
19 subsection (d);

20 “(C) a mortgage premium structure under
21 subsection (e);

22 “(D) a reasonable fee and rate limitation
23 under subsection (f);

24 “(E) enhancement of FHA capacity under
25 subsection (i), including oversight of such ac-

1 tivities and personnel as may be contracted for
2 as provided therein;

3 “(F) monitoring of underwriting risk
4 under subsection (j); and

5 “(G) such additional requirements as may
6 be necessary and appropriate to oversee and im-
7 plement the program.

8 “(5) USE OF RESOURCES.—In carrying out its
9 functions under this section, the Oversight Board
10 may utilize, with their consent and to the extent
11 practical, the personnel, services, and facilities of the
12 Department of the Treasury, the Department of
13 Housing and Urban Development, the Board of Gov-
14 ernors of the Federal Reserve System, the Federal
15 Reserve Banks, and other Federal agencies, with or
16 without reimbursement therefore.

17 “(b) AUTHORITY.—

18 “(1) IN GENERAL.—The Secretary shall, sub-
19 ject only to the absence of qualified requests for in-
20 surance under this section and to the limitations
21 under subsection (h) of this section and section
22 531(a), make commitments to insure and insure any
23 mortgage covering a 1- to 4-family residence that is
24 made for the purpose of paying or prepaying out-
25 standing obligations under an existing mortgage or

1 mortgages on the residence if the mortgage being in-
2 sured under this section meets the requirements of
3 this section, as established by the Oversight Board,
4 and of section 203, except as modified by this sec-
5 tion.

6 “(2) ESTABLISHMENT AND IMPLEMENTATION
7 OF PROGRAM REQUIREMENTS.—The Oversight
8 Board shall establish program requirements and
9 standards under this section and the Secretary shall
10 implement such requirements and standards. The
11 Oversight Board and the Secretary may establish
12 and implement any requirements or standards
13 through interim guidance and mortgagee letters.

14 “(c) REQUIREMENTS.—To be eligible for insurance
15 under this section, a mortgage shall comply with all of
16 the following requirements:

17 “(1) OWNER-OCCUPIED PRINCIPAL RESIDENCE
18 REQUIREMENT.—The residence securing the mort-
19 gage insured under this section shall be occupied by
20 the mortgagor as the principal residence of the
21 mortgagor and the mortgagor shall provide a certifi-
22 cation to the originator of the mortgage that such
23 residence securing the mortgage insured under this
24 section is the only residence in which the mortgagor
25 has any present ownership interest. With regard to

1 such certification, the Oversight Board may create
2 exceptions for mortgagors who have only a partial
3 ownership interest in a residence other than the resi-
4 dence securing the mortgage insured under this sec-
5 tion.

6 “(2) LACK OF CAPACITY TO PAY EXISTING
7 MORTGAGE OR MORTGAGES.—

8 “(A) BORROWER CERTIFICATION.—

9 “(i) The mortgagor shall provide a
10 certification to the originator of the mort-
11 gage that the mortgagor—

12 “(I) has not intentionally de-
13 faulted on the existing mortgage or
14 mortgages; and

15 “(II) has not knowingly, or will-
16 fully and with actual knowledge fur-
17 nished material information known to
18 be false for the purpose of obtaining
19 the existing mortgage or mortgages.

20 “(ii) The mortgagor shall agree in
21 writing that the mortgagor shall be liable
22 to repay the FHA any direct financial ben-
23 efit achieved from the reduction of indebt-
24 edness on the existing mortgage or mort-
25 gages on the residence refinanced under

1 this section derived from misrepresenta-
2 tions made in the certifications and docu-
3 mentation required under this subpara-
4 graph, subject to the discretion of the
5 Oversight Board.

6 “(B) CURRENT BORROWER DEBT-TO-IN-
7 COME RATIO.—As of March 1, 2008, the mort-
8 gagor shall have had a ratio of mortgage debt
9 to income, taking into consideration all existing
10 mortgages at such time, greater than 35 per-
11 cent.

12 “(C) LOSS MITIGATION RESPONSIBIL-
13 ITIES.—This section may not be construed to
14 alter or in any way affect the responsibilities of
15 any party (including the mortgage servicer) to
16 engage in any or all loan modification or other
17 loss mitigation strategies to maximize value to
18 investors as established by any applicable con-
19 tract.

20 “(3) ELIGIBILITY OF MORTGAGES BY DATE OF
21 ORIGINATION.—The existing senior mortgage shall
22 have been originated on or before December 31,
23 2007.

24 “(4) MAXIMUM LOAN-TO-VALUE RATIO FOR
25 NEW LOANS.—The mortgage being insured under

1 this section shall involve a principal obligation (in-
2 cluding such initial service charges, appraisal, in-
3 spection, and other fees as the Secretary shall ap-
4 prove and including the mortgage insurance pre-
5 mium paid pursuant to subsection (e)(1)) in an
6 amount not to exceed 90 percent of the current ap-
7 praised value of the property. Section 203(d) shall
8 not apply to mortgages insured under this section.

9 “(5) REQUIRED WAIVER OF PREPAYMENT PEN-
10 ALTIES AND FEES.—All penalties for prepayment of
11 the existing mortgage or mortgages, and all fees and
12 penalties related to default or delinquency on all ex-
13 isting mortgages or mortgages, shall be waived or
14 forgiven.

15 “(6) REQUIRED LOAN REDUCTION.—

16 “(A) REDUCTION OF INDEBTEDNESS
17 UNDER EXISTING SENIOR MORTGAGE.—The
18 amount of indebtedness on the existing mort-
19 gage or mortgages on the residence shall have
20 been substantially reduced by such percentage
21 as the Oversight Board may require, and such
22 reduction shall be at least sufficient to—

23 “(i) provide for the refinancing of
24 such existing mortgage or mortgages in an
25 amount not greater than 90 percent of the

1 current appraised value of the property in-
2 volved;

3 “(ii) pay the full amount of the single
4 premium to be collected pursuant to sub-
5 section (e)(1) (which shall be an amount
6 equal to 3.0 percent of the amount of the
7 original insured principal obligation of the
8 mortgage insured under this section and
9 which shall serve as an additional reserve
10 to cover possible loan losses); and

11 “(iii) pay the full amount of the loan
12 origination fee and any other closing costs,
13 not to exceed 2.0 percent of the amount of
14 the original insured principal obligation of
15 the mortgage insured under this section.

16 “(B) EXTINGUISHMENT OF DEBT BY REFI-
17 NANCING.—

18 “(i) REQUIRED AGREEMENT.—All ex-
19 isting holders of mortgage liens on the
20 property securing the mortgage to be in-
21 sured under this section shall agree to ac-
22 cept the proceeds of the insured loan as
23 payment in full of all indebtedness under
24 all existing mortgages, and all encum-
25 brances related to such mortgages shall be

1 removed. The Oversight Board may take
2 such actions as the Oversight Board con-
3 siders necessary or appropriate to facilitate
4 coordination and agreement between the
5 holders of the existing senior mortgage and
6 any existing subordinate mortgages, taking
7 into consideration the subordinate lien sta-
8 tus of such subordinate mortgages, to com-
9 ply with the requirement under this sub-
10 paragraph.

11 “(ii) TREATMENT OF MULTIPLE
12 MORTGAGE LIENS.—In addition to clause
13 (i), the Oversight Board shall adopt one of
14 the following approaches for all mortgages
15 or such classes of mortgages as the Over-
16 sight Board may determine and may, from
17 time to time, reconsider:

18 “(I) FIXED PRICE.—As a re-
19 quirement for participating in this
20 program, all existing lien holders will
21 agree to not provide any payment to
22 subordinate lien holders other than
23 such payment in accordance with a
24 formula established by the Oversight
25 Board as set forth in clause (iii); ex-

1 cept that the Oversight Board may es-
2 tablish a short period within which
3 first and subordinate lien holders may
4 negotiate to extinguish all subordinate
5 liens for compensation that may be
6 different from the amount determined
7 under such formula set forth in clause
8 (iii).

9 “(II) SHARED EQUITY.—The
10 Oversight Board may require the
11 mortgagor under a mortgage insured
12 under this section to agree to share a
13 portion of any future equity in the
14 mortgaged property with holders of
15 existing subordinate mortgages, in ac-
16 cordance with a formula for such
17 shared equity established by the Over-
18 sight Board as set forth in clause (iii),
19 except that payments of such shared
20 equity may be made only after the
21 Secretary recovers all amounts owed
22 to the Secretary with respect to such
23 mortgage pursuant to the program
24 under this section (including amounts
25 owed pursuant to paragraph (8)).

1 “(iii) FORMULA.—In determining a
2 formula for determining any payments to
3 subordinate lien holders pursuant to sub-
4 clauses (I) and (II) of clause (ii), and in
5 any reconsideration of such formula as the
6 Oversight Board may from time to time
7 undertake, the Oversight Board shall take
8 into consideration the current market value
9 of such liens. In no case may a formula
10 provide for the payment of more than 1
11 percent of the current appraised value of
12 the mortgaged property to a subordinate
13 lien holder if the outstanding balance owed
14 to more senior lien holders is equal to or
15 exceeds such current appraised value.

16 “(iv) VOLUNTARY PROGRAM.—This
17 section may not be construed to require
18 any holder of any existing mortgage to
19 participate in the program under this sec-
20 tion generally, or with respect to any par-
21 ticular loan.

22 “(v) SOURCE OF PAYMENTS FOR SUB-
23 ORDINATE LOANS.—Any amounts paid to
24 holders of any existing subordinate mort-
25 gages in connection with the origination

1 and insurance of a mortgage under this
2 section shall derive only from—

3 “(I) the holder of the existing
4 senior mortgage; or

5 “(II) in the case only of the
6 shared equity approach under clause
7 (ii)(II), the mortgagor under the
8 mortgage insured under this section

9 “(7) REQUIRED REDUCTION OF DEBT SERV-
10 ICE.—The debt service payments due under the
11 mortgage insured under this section shall be in an
12 amount that is substantially reduced from the debt
13 service payments due under the existing mortgage or
14 mortgages, which reduction may be achieved through
15 a reduction of indebtedness, a reduction in the inter-
16 est rate being paid, or an extension of the term of
17 the mortgage, or any combination thereof.

18 “(8) FINANCIAL RECOVERY TO FEDERAL GOV-
19 ERNMENT THROUGH EXIT PREMIUM.—

20 “(A) SUBORDINATE LIEN.—The mortgage
21 shall provide that the Secretary shall retain a
22 lien on the residence involved, which shall be
23 subordinate to the mortgage insured under this
24 section but senior to all other mortgages on the
25 residence that may exist at any time, and which

1 shall secure the repayment of the amount due
2 under subparagraph (D).

3 “(B) NO INTEREST OR PAYMENT DURING
4 MORTGAGE.—The amount secured by the lien
5 retained by the Secretary pursuant to subpara-
6 graph (A) shall not bear interest and shall not
7 be repayable to the Secretary except as pro-
8 vided in subparagraph (D) of this paragraph.

9 “(C) NET PROCEEDS AVAILABLE FOR EXIT
10 PREMIUM.—Upon the sale, refinancing, or other
11 disposition of the residence securing a mortgage
12 insured under this section, any proceeds result-
13 ing from such disposition that remain after de-
14 ducting the remaining insured principal balance
15 of the mortgage insured under this section shall
16 be available to meet the obligation under sub-
17 paragraph (D). In the case of a refinance, non-
18 arms length transaction, or such other trans-
19 action as the Oversight Board shall determine,
20 the proceeds shall be based on the current ap-
21 praised value at the time of the refinance or
22 transaction.

23 “(D) EXIT PREMIUM.—Upon any refi-
24 nancing of the mortgage insured under this sec-
25 tion or any sale or disposition of the residence

1 securing the mortgage, the Secretary shall, sub-
2 ject to the availability of sufficient net proceeds
3 described in subparagraph (C), receive the
4 greater of—

5 “(i) 3 percent of the amount of the
6 original insured principal obligation of the
7 mortgage (or the entire amount of the net
8 proceeds described in subparagraph (C) if
9 such net proceeds are less than 3 percent
10 of the amount of the original insured prin-
11 cipal obligation of the mortgage); or

12 “(ii) a percentage of the portion of
13 the net proceeds available for profit-shar-
14 ing, as described in subparagraph (E),
15 which shall be—

16 “(I) in the case of any refi-
17 nancing, sale, or disposition occurring
18 during the first year of the term of
19 the mortgage, 100 percent of such net
20 proceeds;

21 “(II) in the case of any refi-
22 nancing, sale, or disposition occurring
23 during the second year of the term of
24 the mortgage, 80 percent;

1 “(III) in the case of any refi-
2 nancing, sale, or disposition occurring
3 during the third year of the term of
4 the mortgage, 60 percent; and

5 “(IV) in the case of any refi-
6 nancing, sale, or disposition occurring
7 during the fourth year of the term of
8 the mortgage or at any time there-
9 after, 50 percent;

10 except that such percentage of proceeds shall be
11 reduced by all fees the Secretary has collected
12 for the mortgage prior to such refinancing, sale,
13 or disposition.

14 “(E) NET PROCEEDS AVAILABLE FOR
15 PROFIT-SHARING.—With respect to any mort-
16 gage insured under this section, the net pro-
17 ceeds available for purposes of subparagraph
18 (D)(ii) shall be any proceeds resulting from the
19 sale, refinancing, or other disposition of the res-
20 idence securing the mortgage that remain after
21 deducting the original insured principal obliga-
22 tion of the mortgage. In the case of a refinance,
23 non-arms length transaction, or such other
24 transaction as the Oversight Board shall deter-
25 mine, the proceeds shall be based on the cur-

1 rent appraised value at the time of the refi-
2 nance or transaction.

3 “(F) AUTHORITY TO PROHIBIT NEW SEC-
4 OND LIENS.—The Oversight Board shall pro-
5 hibit borrowers from granting a new second lien
6 on the mortgaged property during the first five
7 years of the term of the mortgage insured
8 under this section, except as the Oversight
9 Board determines to be necessary to ensure the
10 appropriate maintenance of the mortgaged
11 property.

12 “(9) DOCUMENTATION AND VERIFICATION OF
13 INCOME.—In complying with the FHA underwriting
14 requirements under the program under this section,
15 the mortgagee shall document and verify the income
16 of the mortgagor or non-filing status by procuring
17 (A) an income tax return transcript of the income
18 tax returns of the mortgagor, or (B) a copy of the
19 income tax returns for the Internal Revenue Service,
20 for the two most recent years for which the filing
21 deadline for such years has passed and by any other
22 method, in accordance with procedures and stand-
23 ards that the Oversight Board shall establish.

24 “(10) FIXED RATE MORTGAGE.—The mortgage
25 insured under this section shall bear interest at a

1 single rate that is fixed for the entire term of the
2 mortgage.

3 “(11) MAXIMUM LOAN AMOUNT.—Notwith-
4 standing section 203(b)(2), the mortgage being in-
5 sured under this section shall involve a principal ob-
6 ligation in an amount that does not exceed the limi-
7 tation (for a property of the applicable size) on the
8 amount of the principal obligation that would be al-
9 lowable under the terms of section 202(a) of the
10 Economic Stimulus Act of 2008 if the mortgage
11 were insured pursuant to such section. The limita-
12 tion on the amount of the principal obligation allow-
13 able under such Act shall apply for the purposes of
14 this section until the termination under subsection
15 (n) of the program under this section.

16 “(12) INELIGIBILITY FOR FRAUD CONVIC-
17 TION.—The mortgagor shall not have been convicted
18 under Federal or State law for mortgage fraud dur-
19 ing the 7-year period ending upon the insurance of
20 the mortgage under this section.

21 “(13) LENDER REVIEW.—The mortgagee under
22 the mortgage shall conduct an electronic database
23 search of the mortgagor’s criminal history to deter-
24 mine if the mortgagor has had a conviction de-
25 scribed in paragraph (12). The mortgagee may

1 charge the mortgagor a reasonable fee for the actual
2 cost of the search not to exceed a maximum rate es-
3 tablished by the Oversight Board. The Oversight
4 Board may provide clarification, if needed, to help
5 mortgagees identify any differences among the
6 States in how they report mortgage fraud convic-
7 tions. The Oversight Board shall establish proce-
8 dures sufficient to allow the mortgagor to challenge
9 a mortgagee's determination with respect to para-
10 graph (12) (including to correct inaccuracies result-
11 ing from theft of the mortgagor's identity or person-
12 ally identifiable information).

13 “(14) APPRAISALS.—Any appraisal conducted
14 in connection with a mortgage insured under this
15 section shall—

16 “(A) be based on the current value of the
17 property;

18 “(B) be conducted in accordance with title
19 XI of the Financial Institutions Reform, Recov-
20 ery, and Enforcement Act of 1989 (12 U.S.C.
21 3331 et seq.);

22 “(C) be completed by an appraiser who
23 meets the competency requirements of the Uni-
24 form Standards of Professional Appraisal Prac-
25 tice;

1 “(D) be wholly consistent with the ap-
2 praisal standards, practices, and procedures
3 under section 202(e) of this Act that apply to
4 all loans insured under this Act; and

5 “(E) comply with the requirements of sub-
6 section (g) of this section (relating to appraisal
7 independence).

8 “(15) STATEMENT OF LOAN TERMS.—

9 “(A) REQUIREMENT.—The mortgagor
10 shall have been provided by the mortgagee, not
11 later than three days before closing for the
12 mortgage, a form described in subparagraph
13 (B) appropriately and accurately completed by
14 the mortgagee.

15 “(B) FORM.—The form described in this
16 subparagraph shall be a single page, written
17 disclosure regarding the mortgage loan to be in-
18 sured under this section that, when completed
19 by the mortgagee, sets forth, in accordance with
20 such requirements as the Secretary shall by
21 regulation establish a best possible estimate
22 of—

23 “(i) the total loan amount under the
24 mortgage;

1 “(ii) the loan-to-value ratio for the
2 mortgage;

3 “(iii) the final maturity date for the
4 mortgage;

5 “(iv) the amount of any prepayment
6 fee to be charged if the mortgage is paid
7 in full before the final maturity date for
8 the mortgage, including the percentages of
9 any net proceeds to be received by the Sec-
10 retary pursuant to paragraph (8)(D)(ii);

11 “(v) the amount of the exit premium
12 under the mortgage pursuant to subsection
13 (e)(3);

14 “(vi) the interest rate under the mort-
15 gage expressed as an annual percentage
16 rate, and the amount of the monthly pay-
17 ment due under such rate;

18 “(vii) the fully indexed rate of interest
19 under the mortgage expressed as an an-
20 nual percentage rate and the amount of
21 the monthly payment due under such rate;

22 “(viii) the monthly household income
23 of the borrower upon which the mortgage
24 is based;

1 “(ix) the amount of the monthly pay-
2 ment due under the mortgage, and the
3 amount of such initial monthly payment
4 plus monthly amounts due for taxes and
5 insurance on the property for which the
6 mortgage is made, both expressed as a per-
7 centage of the monthly household income
8 of the borrower; and

9 “(x) the aggregate amount of settle-
10 ment charges for all settlement services
11 provided in connection with the mortgage,
12 the amount of such charges that are in-
13 cluded in the principal amount and the
14 amount of such charges the borrower must
15 pay at closing, the aggregate amount of
16 mortgagee’s fees connection with the mort-
17 gage, and the aggregate amount of other
18 fees or required payments in connection
19 with the mortgage.

20 “(d) FLEXIBLE UNDERWRITING CRITERIA.—

21 “(1) IN GENERAL.—The Oversight Board shall
22 establish, and the Secretary acting on behalf of the
23 Oversight Board shall implement, underwriting
24 standards for mortgages insured under this section
25 that—

1 “(A) ensure that each mortgagor under a
2 mortgage insured under this section has a rea-
3 sonable expectation of repaying the mortgage,
4 taking into consideration the mortgagor’s in-
5 come, assets, liabilities, payment history, and
6 other applicable criteria, but which shall not re-
7 sult in a denial of insurance solely on the basis
8 of the mortgagor’s current FICO or other cred-
9 it scores, or any delinquency or default by the
10 mortgagor under the existing mortgage or
11 mortgages, or any case filed under title 11,
12 United States Code, by the mortgagor; and

13 “(B) subject to the provisions of subpara-
14 graph (A), permit a total debt-to-income ratio
15 of up to 43 percent.

16 “(2) EXCEPTION.—

17 “(A) IN GENERAL.—Subject to the under-
18 writing standards established under paragraph
19 (1)(A) and any additional requirements that the
20 Oversight Board considers appropriate, the
21 Oversight Board shall permit a total debt-to-in-
22 come ratio of more than 43 percent, but not
23 more than 50 percent, if the mortgagor has
24 made, on a timely basis before the endorsement
25 of the mortgage insured under this section, not

1 less than six months of payments in an amount
2 not less than the amount of the monthly pay-
3 ment due under the mortgage to be insured
4 under this section. The holder of the existing
5 senior mortgage shall exercise forbearance with
6 respect to such mortgage during the period in
7 which such payments are made.

8 “(B) COMPUTATION OF DEBT-TO-INCOME
9 RATIO.— In computing the mortgagor’s total
10 debt-to-income ratio for purposes of mortgage
11 qualification under the underwriting standards
12 established pursuant to this section—

13 “(i) if the mortgagor is a debtor in a
14 case under chapter 13 of title 11, United
15 States Code, payments on recurring debts
16 other than housing expenses shall be based
17 on the amounts being paid on such debts
18 under the mortgagor’s confirmed plan
19 under such chapter; and

20 “(ii) if the mortgagor is a debtor in a
21 case under chapter 7 of title 11, United
22 States Code, recurring debts that are to be
23 discharged in that case shall not be consid-
24 ered.

1 “(3) AUTHORITY.—The Oversight Board may
2 alter the ratios under this subsection for a particular
3 class of borrowers subject to such requirements as
4 the Board determines is necessary and appropriate
5 to fulfill the purposes of this Act.

6 “(4) REPRESENTATIONS AND WARRANTIES.—
7 The Oversight Board shall require the underwriter
8 of the insured loan to provide such representations
9 and warranties as the Oversight Board considers
10 necessary or appropriate for the Secretary to enforce
11 compliance with all underwriting and appraisal
12 standards of the program.

13 “(e) PREMIUMS.—For each mortgage insured under
14 this section, the Oversight Board shall establish and the
15 Secretary shall collect—

16 “(1) at the time of insurance, a single premium
17 payment in an amount equal to 3.0 percent of the
18 amount of the original insured principal obligation of
19 the mortgage, which shall be paid from the proceeds
20 of the mortgage being insured under this section,
21 through the reduction of the amount of indebtedness
22 on the existing senior mortgage required under sub-
23 section (c)(6)(A);

24 “(2) in addition to the premium under para-
25 graph (1), annual premium payments in an amount

1 equal to 1.50 percent of the remaining insured prin-
2 cipal balance of the mortgage; and

3 “(3) an exit premium in the amount determined
4 under subsection (c)(8), but which shall not be less
5 than 3.0 percent of the original insured principal ob-
6 ligation of the mortgage, subject only to the avail-
7 ability of sufficient net proceeds from sale, refi-
8 nancing, or other disposition of the property, as de-
9 termined in subsection (c)(8).

10 “(f) ORIGINATION FEES AND MORTGAGE RATE.—

11 The Oversight Board shall establish and the Secretary
12 shall implement a reasonable limitation on origination fees
13 for mortgages insured under this section and shall estab-
14 lish procedures to ensure that interest rates on such mort-
15 gages shall be commensurate with market rate interest
16 rates on such types of loans.

17 “(g) APPRAISAL INDEPENDENCE.—

18 “(1) PROHIBITIONS ON INTERESTED PARTIES
19 IN A REAL ESTATE TRANSACTION.—No mortgage
20 lender, mortgage broker, mortgage banker, real es-
21 tate broker, appraisal management company, em-
22 ployee of an appraisal management company, nor
23 any other person with an interest in a real estate
24 transaction involving an appraisal in connection with
25 a mortgage insured under this section shall impro-

1 erly influence, or attempt to improperly influence,
2 through coercion, extortion, collusion, compensation,
3 instruction, inducement, intimidation, non-payment
4 for services rendered, or bribery, the development,
5 reporting, result, or review of a real estate appraisal
6 sought in connection with the mortgage.

7 “(2) EXCEPTIONS.—The requirements of para-
8 graph (1) shall not be construed as prohibiting a
9 mortgage lender, mortgage broker, mortgage banker,
10 real estate broker, appraisal management company,
11 employee of an appraisal management company, or
12 any other person with an interest in a real estate
13 transaction from asking an appraiser to provide 1 or
14 more of the following services:

15 “(A) Consider additional, appropriate
16 property information, including the consider-
17 ation of additional comparable properties to
18 make or support an appraisal.

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

22 “(C) Correct errors in the appraisal report.

23 “(3) CIVIL MONETARY PENALTIES.—The Sec-
24 retary may impose a civil money penalty for any
25 knowing and material violation of paragraph (1)

1 under the same terms and conditions as are author-
2 ized in section 536(a) of this Act.

3 “(h) LIMITATION ON AGGREGATE INSURANCE AU-
4 THORITY.—The aggregate original principal obligation of
5 all mortgages insured under this section may not exceed
6 \$300,000,000,000.

7 “(i) ENHANCEMENT OF FHA CAPACITY.—Under the
8 direction of the Oversight Board, the Secretary shall take
9 such actions as may be necessary to—

10 “(1) contract for the establishment of under-
11 writing criteria, automated underwriting systems,
12 pricing standards, and other factors relating to eligi-
13 bility for mortgages insured under this section;

14 “(2) contract for independent quality reviews of
15 underwriting, including appraisal reviews and fraud
16 detection, of mortgages insured under this section or
17 pools of such mortgages; and

18 “(3) increase personnel of the Department as
19 necessary to process or monitor the processing of
20 mortgages insured under this section.

21 “(j) MONITORING OF UNDERWRITING RISK.—

22 “(1) MONITORING OF DESIGNATED UNDER-
23 WRITERS.—The Oversight Board and the Secretary
24 shall monitor independent quality reviews as estab-
25 lished pursuant to subsection (i)(2) to—

1 “(A) determine compliance of designated
2 underwriters with underwriting standards;

3 “(B) determine rates of delinquency,
4 claims rates, and loss rates of designated un-
5 derwriters; and

6 “(C) terminate eligibility of designated un-
7 derwriters that do not meet minimum perform-
8 ance standards as the Oversight Board may es-
9 tablish and the Secretary implements.

10 “(2) REPORTS BY OVERSIGHT BOARD.—The
11 Oversight Board shall submit monthly reports to the
12 Congress identifying the progress of the program for
13 mortgage insurance under this section, which shall
14 contain the following information for each month:

15 “(A) The number of new mortgages in-
16 sured under this section, including the location
17 of the properties subject to such mortgages by
18 census tract.

19 “(B) The aggregate principal obligation of
20 new mortgages insured under this section.

21 “(C) The average amount by which the in-
22 debtedness on existing mortgages is reduced in
23 accordance with subsection (c)(6).

1 “(D) The average amount by which the
2 debt service payments on existing mortgages is
3 reduced in accordance with subsection (c)(7).

4 “(E) The amount of premiums collected
5 for insurance of mortgages under this section.

6 “(F) The claim and loss rates for mort-
7 gages insured under this section.

8 “(G) The race, ethnicity, gender, and in-
9 come of the mortgagors, aggregated by geo-
10 graphical areas at least as specific as census
11 tracts, except where necessary to protect pri-
12 vacy of the borrower.

13 “(H) Any other information that the Over-
14 sight Board considers appropriate.

15 “(3) REPORT BY INSPECTOR GENERAL.—The
16 Inspector General of the Department of Housing
17 and Urban Development shall conduct an annual
18 audit of the program for mortgage insurance under
19 this section to determine compliance with this sec-
20 tion and program rules.

21 “(k) GNMA COMMITMENT AUTHORITY.—

22 “(1) GUARANTEES.—The Secretary shall take
23 such actions as may be necessary to ensure that se-
24 curities based on and backed by a trust or pool com-
25 posed of mortgages insured under this section are

1 available to be guaranteed by the Government Na-
2 tional Mortgage Association as to the timely pay-
3 ment of principal and interest.

4 “(2) GUARANTEE AUTHORITY.—To carry out
5 the purposes of section 306 of the National Housing
6 Act (12 U.S.C. 1721), the Government National
7 Mortgage Association may enter into new commit-
8 ments to issue guarantees of securities based on or
9 backed by mortgages insured under this section, not
10 exceeding \$300,000,000,000. The amount of author-
11 ity provided under the preceding sentence to enter
12 into new commitments to issue guarantees is in ad-
13 dition to any amount of authority to make new com-
14 mitments to issue guarantees that is provided to the
15 Association under any other provision of law.

16 “(l) SPECIAL RISK INSURANCE FUND.—The insur-
17 ance of each mortgage under this section shall be the obli-
18 gation of the Special Risk Insurance Fund established by
19 section 238.

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

22 “(1) EXISTING MORTGAGE.—The term ‘existing
23 mortgage’ means, with respect to a mortgage in-
24 sured under this section, a mortgage that is to be

1 extinguished, and paid or prepaid, from the proceeds
2 of the mortgage insured under this section.

3 “(2) EXISTING SENIOR MORTGAGE.—The term
4 ‘existing senior mortgage’ means, with respect to a
5 mortgage insured under this section, the existing
6 mortgage that has superior priority.

7 “(3) EXISTING SUBORDINATE MORTGAGE.—The
8 term ‘existing subordinate mortgage’ means, with re-
9 spect to a mortgage insured under this section, an
10 existing mortgage that has subordinate priority to
11 the existing senior mortgage.

12 “(n) SUNSET.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), the authority of the Secretary to make
15 any new commitment to insure any mortgage under
16 this section shall terminate upon the expiration of
17 the 2-year period beginning on the date of the enact-
18 ment of the FHA Housing Stabilization and Home-
19 ownership Retention Act of 2008.

20 “(2) EXTENSIONS.—The Oversight Board may,
21 not more than four times, extend the authority to
22 enter into new commitments to insure mortgages
23 under this section beyond the date specified in para-
24 graph (1), except that each such extension shall—

1 “(A) be effective only if, before the pro-
2 gram terminates pursuant to paragraph (1) or
3 any previous extension pursuant to this para-
4 graph, the Oversight Board—

5 “(i) certifies the need for such exten-
6 sion in writing to the Congress; and

7 “(ii) causes notice of such extension
8 to be published in the Federal Register no
9 later than the beginning of the 3-month
10 period that ends upon the scheduled termi-
11 nation date of the program; and

12 “(B) be for a period of not more than 6
13 months.

14 “(o) AUTHORIZATIONS OF APPROPRIATIONS.—There
15 is authorized to be appropriated for each of fiscal years
16 2008 and 2009—

17 “(1) \$230,000,000 for providing counseling re-
18 garding loss mitigation for mortgagors with 1- to 4-
19 family residences, including determining eligibility
20 for the program under this section, with grants to
21 be administered through the Neighborhood Reinvest-
22 ment Corporation, except that—

23 “(A) funds shall be targeted to States and
24 communities based on their levels of fore-
25 closures and delinquencies in 2007 and 2008;

1 “(B) not less than 15 percent of the funds
2 made available pursuant to this paragraph shall
3 be provided to counseling organizations that
4 target counseling services regarding loss mitiga-
5 tion to minority and low-income homeowners or
6 provide such services in neighborhoods with
7 high concentrations of minority and low-income
8 homeowners;

9 “(C) \$35,000,000 of the funds made avail-
10 able pursuant to this paragraph shall be used
11 by the Neighborhood Reinvestment Corporation
12 (referred to in this subparagraph as the ‘NRC’)
13 to make grants to State and local legal organi-
14 zations or attorneys that have demonstrated
15 legal experience in home foreclosure or eviction
16 law to provide legal assistance related to home
17 ownership preservation, home foreclosure pre-
18 vention, and tenancy associated with home fore-
19 closure or to counseling intermediaries that
20 have been approved by the Department of
21 Housing and Urban Development for the pur-
22 pose of making such grants or contracting for
23 such legal assistance; of the amount provided
24 under this subparagraph, at least 60 percent
25 shall be allocated for legal assistance to low-in-

1 come homeowners or tenants; such attorneys
2 shall be capable of assisting homeowners in
3 owner-occupied homes or tenants who live in
4 homes with mortgages in default, in danger of
5 default, or subject to or at risk of foreclosure
6 or eviction and who have legal issues that can-
7 not be handled by counselors employed by NRC
8 intermediaries; in using the amount made avail-
9 able under this subparagraph, the NRC shall
10 give priority consideration to State and local
11 legal organizations and attorneys that (i) pro-
12 vide legal assistance in the 100 metropolitan
13 statistical areas (as defined by the Director of
14 the Office of Management and Budget) with the
15 highest home foreclosure rates, and (ii) have
16 the capacity to begin using the financial assist-
17 ance within 90 days after receipt of the assist-
18 ance; as a condition of the receipt of a grant
19 under this subparagraph, the grantee shall sub-
20 mit to NRC information relating to the demo-
21 graphic characteristics of the assisted home-
22 owners or tenants, the dollar amount and terms
23 of the relevant mortgages and the outcome of
24 legal proceedings related to the foreclosure or
25 eviction proceedings, including the resolutions

1 thereof; except that no funds under this sub-
2 paragraph shall be used for class action litiga-
3 tion;

4 “(D) \$20,000,000 of the funds made avail-
5 able pursuant to this paragraph shall be used
6 for such counseling for veterans recently return-
7 ing from active duty in the Armed Forces;

8 “(E) the NRC shall give priority consider-
9 ation for funding with amounts made available
10 pursuant to this paragraph, except for funds
11 made available under subparagraphs (B), (C),
12 and (D), to entities that have an effective plan
13 in place for making contact, including personal
14 contact, with defaulted mortgagors, and such a
15 plan may include use of third parties (including
16 both for-profit and not-for-profit entities) to
17 make personal contact with defaulted mortga-
18 gors, or visits to such mortgagors, or both;

19 “(F) except with respect to funds reserved
20 under subparagraphs (B), (C), and (D), the
21 NRC shall give priority consideration for fund-
22 ing with amounts made available pursuant to
23 this paragraph to entities that have a written
24 plan that has been implemented for providing
25 in-person counseling and for making contact,

1 including personal contact, with defaulted mort-
2 gators, for the purpose of providing counseling
3 or providing information about available coun-
4 seling, both (i) prior to commencement of any
5 foreclosure proceedings, and (ii) in the event ef-
6 fective in person or phone contact has not been
7 made with such defaulted mortgagors prior
8 thereto, then prior to the conclusion of the fore-
9 closure process; and

10 “(G) not less than 2 percent of the funds
11 made available pursuant to this paragraph shall
12 be used only for identifying and notifying bor-
13 rowers under existing mortgages who are eligi-
14 ble under this section for insurance of refi-
15 nancing mortgages, and in making funds re-
16 served under this subparagraph available for
17 such purpose, the Secretary shall give pref-
18 erence to assistance for programs that have a
19 proven history of outreach within minority com-
20 munities; and

21 “(2) \$150,000,000 for costs of activities under
22 subsection (i).

23 “(p) AUDIT AND REPORT BY INSPECTOR GEN-
24 ERAL.—

1 “(1) AUDIT.—The Inspector General of the De-
2 partment of Housing and Urban Development shall
3 conduct an audit of the program for loss mitigation
4 counseling funded with amounts made available
5 under subsection (o)(1) to determine compliance
6 with such subsection.

7 “(2) REPORTS TO CONGRESS.—Not later than
8 March 30, 2009, and every calendar quarter there-
9 after, the Inspector General shall submit to the ap-
10 propriate committees of the Congress a report sum-
11 marizing the activities of the Inspector General and
12 the Neighborhood Reinvestment Corporation during
13 the 120-day period ending on the date of such re-
14 port. Each report shall include, for the period cov-
15 ered by such report, a detailed statement of all obli-
16 gations, expenditures, and revenues associated with
17 paragraphs (1) and (2) of subsection (o), includ-
18 ing—

19 “(A) obligations and expenditures of ap-
20 propriated funds;

21 “(B) the number of homeowners eligible in
22 such program;

23 “(C) the number of homeowners partici-
24 pating in such program;

1 “(D) the status of homeowners within such
2 program;

3 “(E) the number of homeowners who have
4 rejected assistance from the Neighborhood Re-
5 investment Corporation; and

6 “(F) information on participating coun-
7 seling services.”.

8 (b) SPECIAL RISK INSURANCE FUND.—Section 238
9 of the National Housing Act (12 U.S.C. 1715z–3) is
10 amended—

11 (1) in subsection (a)(1), by striking “or 243”
12 each place such term appears and inserting “243, or
13 257”; and

14 (2) in subsection (b), by striking “and 243”
15 each place such term appears and inserting “243,
16 and 257”.

17 (c) FHA REVERSE MORTGAGE PROGRAM.—Section
18 255(g) of the National Housing Act (12 U.S.C. 1715z–
19 20(g)) is amended by striking the first sentence.

20 **SEC. 113. STUDY OF AUCTION OR BULK REFINANCE PRO-**
21 **GRAM.**

22 (a) STUDY.—The Board of Governors of the Federal
23 Reserve System (in this section referred to as the “Board
24 of Governors”), in consultation with other members of the
25 Oversight Board established by section 257(a) of the Na-

1 tional Housing Act (as added by the amendment made by
2 section 112(a) of this title), shall conduct a study of the
3 need for and efficacy of an auction or bulk refinancing
4 mechanism to facilitate refinancing of existing residential
5 mortgages that are at risk for foreclosure into mortgages
6 insured under the mortgage insurance program under title
7 II of the National Housing Act. The study shall identify
8 and examine various options for mechanisms under which
9 lenders and servicers of such mortgages may make bids
10 for forward commitments for such insurance in an expe-
11 dited manner.

12 (b) CONTENT.—

13 (1) ANALYSIS.—The study required under sub-
14 section (a) shall analyze—

15 (A) the feasibility of establishing a mecha-
16 nism that would facilitate the more rapid refi-
17 nancing of borrowers at risk of foreclosure into
18 performing mortgages insured under title II of
19 the National Housing Act;

20 (B) whether such a mechanism would pro-
21 vide an effective and efficient mechanism to re-
22 duce foreclosures on qualified existing mort-
23 gages;

24 (C) whether the use of an auction or bulk
25 refinance program is necessary to stabilize the

1 housing market and reduce the impact of tur-
2 moil in that market on the economy of the
3 United States;

4 (D) whether there are other mechanisms
5 or authority that would be useful to reduce
6 foreclosure; and

7 (E) and any other factors that the Board
8 of Governors considers relevant.

9 (2) DETERMINATIONS.—To the extent that the
10 Board of Governors finds that a facility of the type
11 described in paragraph (1) is feasible and useful, the
12 study shall—

13 (A) determine and identify any additional
14 authority or resources needed to establish and
15 operate such a mechanism;

16 (B) determine whether there is a need for
17 additional authority with respect to the loan un-
18 derwriting criteria included in the amendment
19 made by section 112(a) of this title or with re-
20 spect to eligibility of participating borrowers,
21 lenders, or holders of liens;

22 (C) determine whether such underwriting
23 criteria should be established on the basis of in-
24 dividual loans, in the aggregate, or otherwise to
25 facilitate the goal of refinancing borrowers at

1 risk of foreclosure into viable loans insured
2 under the National Housing Act.

3 (c) REPORT.—Not later than the expiration of the
4 60-day period beginning on the date of the enactment of
5 this Act, the Board of Governors shall submit a report
6 regarding the results of the study conducted under this
7 section to the Committee on Financial Services of the
8 House of Representatives and the Committee on Banking,
9 Housing, and Urban Affairs of the Senate. The report
10 shall include a detailed description of the analysis required
11 under subsection (b)(1) and of the determinations made
12 pursuant to subsection (b)(2), and shall include any other
13 findings and recommendations of the Board of Governors
14 pursuant to the study, including identifying various op-
15 tions for mechanisms described in subsection (a).

16 **SEC. 114. TEMPORARY INCREASE IN MAXIMUM LOAN GUAR-**
17 **ANTY AMOUNT FOR CERTAIN HOUSING**
18 **LOANS GUARANTEED BY SECRETARY OF VET-**
19 **ERANS AFFAIRS.**

20 Notwithstanding subparagraph (C) of section
21 3703(a)(1) of title 38, United States Code, for purposes
22 of any loan described in subparagraph (A)(i)(IV) of such
23 section that is originated during the period beginning on
24 the date of the enactment of this Act and ending on De-
25 cember 31, 2008, the term “maximum guaranty amount”

1 shall mean an amount equal to 25 percent of the higher
2 of—

3 (1) the limitation determined under section
4 305(a)(2) of the Federal Home Loan Mortgage Cor-
5 poration Act (12 U.S.C. 1454(a)(2)) for the cal-
6 endar year in which the loan is originated for a sin-
7 gle-family residence; or

8 (2) 125 percent of the area median price for a
9 single-family residence, but in no case to exceed 175
10 percent of the limitation determined under such sec-
11 tion 305(a)(2) for the calendar year in which the
12 loan is originated for a single-family residence.

13 **SEC. 115. STUDY OF POSSIBLE ACCOUNTING REVISIONS RE-**
14 **LATING TO PROPERTY AT RISK OF FORE-**
15 **CLOSURE AND THE AVAILABILITY OF CREDIT**
16 **FOR REFINANCING HOME MORTGAGES AT**
17 **RISK OF FORECLOSURE.**

18 (a) **STUDY REQUIRED.**—The Securities and Ex-
19 change Commission, in consultation with the Board of
20 Governors of the Federal Reserve System, shall conduct
21 a study on fair value accounting standards applicable to
22 financial institutions, including depository institutions,
23 with respect to their residential mortgages that are at risk
24 of foreclosure and mortgage-backed securities involving
25 such mortgages, the effects of such accounting standards

1 on a financial institution's balance sheet and capacity to
2 provide refinancing to residential mortgagors that are at
3 risk of foreclosure and to residential mortgagors during
4 periods of market value declines and increased fore-
5 closures, and the advisability and feasibility of modifica-
6 tions of such standards during periods of market fluctua-
7 tion in order to maintain the ability of the institution to
8 continue to carry mortgages on residential property at risk
9 of foreclosure and assure the availability of credit to refi-
10 nance at-risk residential mortgages.

11 (b) REPORT REQUIRED.—The Securities and Ex-
12 change Commission shall submit a report to the Congress
13 before the end of the 90-day period beginning on the date
14 of the enactment of this Act containing the findings and
15 determinations of the Commission with respect to the
16 study conducted under subsection (a) and such adminis-
17 trative and legislative recommendations as the Commis-
18 sion may determine to be appropriate.

1 **SEC. 116. GAO STUDY OF THE EFFECT OF TIGHTENING**
2 **CREDIT MARKETS IN COMMUNITIES AF-**
3 **FECTED BY THE SUBPRIME MORTGAGE**
4 **FORECLOSURE CRISES AND PREDATORY**
5 **LENDING ON PROSPECTIVE FIRST-TIME**
6 **HOMEBUYERS SEEKING MORTGAGES.**

7 The Comptroller General of the United States shall
8 conduct a study to analyze the effects of tightening credit
9 markets on prospective first-time home buyers who reside
10 in selected communities that have been most detrimentally
11 affected by both the current subprime mortgage fore-
12 closure crisis and predatory mortgage lending. Such study
13 shall also analyze the adequacy of financial literacy out-
14 reach efforts by agencies of the Federal Government
15 tasked with implementing financial literacy education in
16 such communities and shall assess whether the current
17 funding levels for such efforts are at sufficient levels to
18 reduce the levels of subprime mortgage delinquencies and
19 foreclosures and to increase the level of financial literacy
20 in the selected communities so as to minimize the
21 incidences of predatory mortgage lending. Not later than
22 the expiration of the 6-month period beginning on the date
23 of the enactment of this Act, the Comptroller General shall
24 submit a report to the Congress setting forth the results
25 of the study and including recommendations regarding
26 such funding levels.

1 **Subtitle B—Office of Housing**
2 **Counseling**

3 **SEC. 131. SHORT TITLE.**

4 This subtitle may be cited as the “Expand and Pre-
5 serve Home Ownership Through Counseling Act”.

6 **SEC. 132. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
7 **SELING.**

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

11 “(g) OFFICE OF HOUSING COUNSELING.—

12 “(1) ESTABLISHMENT.—There is established,
13 in the Office of the Secretary, the Office of Housing
14 Counseling.

15 “(2) DIRECTOR.—There is established the posi-
16 tion of Director of Housing Counseling. The Direc-
17 tor shall be the head of the Office of Housing Coun-
18 seling and shall be appointed by the Secretary. Such
19 position shall be a career-reserved position in the
20 Senior Executive Service.

21 “(3) FUNCTIONS.—

22 “(A) IN GENERAL.—The Director shall
23 have ultimate responsibility within the Depart-
24 ment, except for the Secretary, for all activities
25 and matters relating to homeownership coun-

1 seling and rental housing counseling, includ-
2 ing—

3 “(i) research, grant administration,
4 public outreach, and policy development re-
5 lating to such counseling; and

6 “(ii) establishment, coordination, and
7 administration of all regulations, require-
8 ments, standards, and performance meas-
9 ures under programs and laws adminis-
10 tered by the Department that relate to
11 housing counseling, homeownership coun-
12 seling (including maintenance of homes),
13 mortgage-related counseling (including
14 home equity conversion mortgages and
15 credit protection options to avoid fore-
16 closure), and rental housing counseling, in-
17 cluding the requirements, standards, and
18 performance measures relating to housing
19 counseling.

20 “(B) SPECIFIC FUNCTIONS.—The Director
21 shall carry out the functions assigned to the Di-
22 rector and the Office under this section and any
23 other provisions of law. Such functions shall in-
24 clude establishing rules necessary for—

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

5 “(ii) carrying out all other functions
6 of the Secretary under section 106(g) of
7 the Housing and Urban Development Act
8 of 1968, including the establishment, oper-
9 ation, and publication of the availability of
10 the toll-free telephone number under para-
11 graph (2) of such section;

12 “(iii) carrying out section 5 of the
13 Real Estate Settlement Procedures Act of
14 1974 (12 U.S.C. 2604) for home buying
15 information booklets prepared pursuant to
16 such section;

17 “(iv) carrying out the certification
18 program under section 106(e) of the Hous-
19 ing and Urban Development Act of 1968
20 (12 U.S.C. 1701x(e));

21 “(v) carrying out the assistance pro-
22 gram under section 106(a)(4) of the Hous-
23 ing and Urban Development Act of 1968,
24 including criteria for selection of applica-
25 tions to receive assistance;

1 “(vi) carrying out any functions re-
2 garding abusive, deceptive, or unscrupulous
3 lending practices relating to residential
4 mortgage loans that the Secretary con-
5 siders appropriate, which shall include con-
6 ducting the study under section 136 of the
7 Expand and Preserve Home Ownership
8 Through Counseling Act;

9 “(vii) providing for operation of the
10 advisory committee established under para-
11 graph (4) of this subsection;

12 “(viii) collaborating with community-
13 based organizations with expertise in the
14 field of housing counseling; and

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

18 “(4) ADVISORY COMMITTEE.—

19 “(A) IN GENERAL.—The Secretary shall
20 appoint an advisory committee to provide advice
21 regarding the carrying out of the functions of
22 the Director.

23 “(B) MEMBERS.—Such advisory committee
24 shall consist of not more than 12 individuals,
25 and the membership of the committee shall

1 equally represent all aspects of the mortgage
2 and real estate industry, including consumers.

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

8 “(D) TERMS OF INITIAL APPOINTEES.—As
9 designated by the Secretary at the time of ap-
10 pointment, of the members first appointed to
11 the advisory committee, 4 shall be appointed for
12 a term of 1 year and 4 shall be appointed for
13 a term of 2 years.

14 “(E) PROHIBITION OF PAY; TRAVEL EX-
15 PENSES.—Members of the advisory committee
16 shall serve without pay, but shall receive travel
17 expenses, including per diem in lieu of subsist-
18 ence, in accordance with applicable provisions
19 under subchapter I of chapter 57 of title 5,
20 United States Code.

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

24 “(5) SCOPE OF HOMEOWNERSHIP COUN-
25 SELING.—In carrying out the responsibilities of the

1 Director, the Director shall ensure that homeowner-
2 ship counseling provided by, in connection with, or
3 pursuant to any function, activity, or program of the
4 Department addresses the entire process of home-
5 ownership, including the decision to purchase a
6 home, the selection and purchase of a home, issues
7 arising during or affecting the period of ownership
8 of a home (including refinancing, default and fore-
9 closure, and other financial decisions), and the sale
10 or other disposition of a home.”.

11 **SEC. 133. COUNSELING PROCEDURES.**

12 (a) IN GENERAL.—Section 106 of the Housing and
13 Urban Development Act of 1968 (12 U.S.C. 1701x) is
14 amended by adding at the end the following new sub-
15 section:

16 “(g) PROCEDURES AND ACTIVITIES.—

17 “(1) COUNSELING PROCEDURES.—

18 “(A) IN GENERAL.—The Secretary shall
19 establish, coordinate, and monitor the adminis-
20 tration by the Department of Housing and
21 Urban Development of the counseling proce-
22 dures for homeownership counseling and rental
23 housing counseling provided in connection with
24 any program of the Department, including all
25 requirements, standards, and performance

1 measures that relate to homeownership and
2 rental housing counseling.

3 “(B) HOMEOWNERSHIP COUNSELING.—
4 For purposes of this subsection and as used in
5 the provisions referred to in this subparagraph,
6 the term ‘homeownership counseling’ means
7 counseling related to homeownership and resi-
8 dential mortgage loans. Such term includes
9 counseling related to homeownership and resi-
10 dential mortgage loans that is provided pursu-
11 ant to—

12 “(i) section 105(a)(20) of the Housing
13 and Community Development Act of 1974
14 (42 U.S.C. 5305(a)(20));

15 “(ii) in the United States Housing
16 Act of 1937—

17 “(I) section 9(e) (42 U.S.C.
18 1437g(e));

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

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

23 “(IV) section 23(c)(4) (42 U.S.C.
24 1437u(c)(4));

1 “(V) section 32(e)(4) (42 U.S.C.
2 1437z-4(e)(4));

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

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

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

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

13 “(iv) sections 233(b)(2) and 258(b) of
14 the Cranston-Gonzalez National Affordable
15 Housing Act (42 U.S.C. 12773(b)(2),
16 12808(b));

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

20 “(vi) section 220(d)(2)(G) of the Low-
21 Income Housing Preservation and Resident
22 Homeownership Act of 1990 (12 U.S.C.
23 4110(d)(2)(G));

24 “(vii) sections 422(b)(6), 423(b)(7),
25 424(c)(4), 442(b)(6), and 443(b)(6) of the

1 Cranston-Gonzalez National Affordable
2 Housing Act (42 U.S.C. 12872(b)(6),
3 12873(b)(7), 12874(c)(4), 12892(b)(6),
4 and 12893(b)(6));

5 “(viii) section 491(b)(1)(F)(iii) of the
6 McKinney-Vento Homeless Assistance Act
7 (42 U.S.C. 11408(b)(1)(F)(iii));

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

12 “(x) in the National Housing Act—

13 “(I) in section 203 (12 U.S.C.
14 1709), the penultimate undesignated
15 paragraph of paragraph (2) of sub-
16 section (b), subsection (c)(2)(A), and
17 subsection (r)(4);

18 “(II) subsections (a) and (c)(3)
19 of section 237 (12 U.S.C. 1715z–2);
20 and

21 “(III) subsections (d)(2)(B) and
22 (m)(1) of section 255 (12 U.S.C.
23 1715z–20);

1 “(xi) section 502(h)(4)(B) of the
2 Housing Act of 1949 (42 U.S.C.
3 1472(h)(4)(B)); and

4 “(xii) section 508 of the Housing and
5 Urban Development Act of 1970 (12
6 U.S.C. 1701z-7).

7 “(C) RENTAL HOUSING COUNSELING.—
8 For purposes of this subsection, the term ‘rent-
9 al housing counseling’ means counseling related
10 to rental of residential property, which may in-
11 clude counseling regarding future homeown-
12 ership opportunities and providing referrals for
13 renters and prospective renters to entities pro-
14 viding counseling and shall include counseling
15 related to such topics that is provided pursuant
16 to—

17 “(i) section 105(a)(20) of the Housing
18 and Community Development Act of 1974
19 (42 U.S.C. 5305(a)(20));

20 “(ii) in the United States Housing
21 Act of 1937—

22 “(I) section 9(e) (42 U.S.C.
23 1437g(e));

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

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

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

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

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

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

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

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

18 “(vi) 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 “(vii) 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 and

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

4 “(2) STANDARDS FOR MATERIALS.—The Sec-
5 retary, in conjunction with the advisory committee
6 established under subsection (g)(4) of the Depart-
7 ment of Housing and Urban Development Act, shall
8 establish standards for materials and forms to be
9 used, as appropriate, by organizations providing
10 homeownership counseling services, including any re-
11 cipients of assistance pursuant to subsection (a)(4).

12 “(3) MORTGAGE SOFTWARE SYSTEMS.—

13 “(A) CERTIFICATION.—The Secretary shall
14 provide for the certification of various computer
15 software programs for consumers to use in eval-
16 uating different residential mortgage loan pro-
17 posals. The Secretary shall require, for such
18 certification, that the mortgage software sys-
19 tems take into account—

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

23 “(ii) the amount of time the consumer
24 expects to remain in the home or expected
25 time to maturity of the loan;

1 “(iii) such other factors as the Sec-
2 retary considers appropriate to assist the
3 consumer in evaluating whether to pay
4 points, to lock in an interest rate, to select
5 an adjustable or fixed rate loan, to select
6 a conventional or government-insured or
7 guaranteed loan and to make other choices
8 during the loan application process.

9 If the Secretary determines that available exist-
10 ing software is inadequate to assist consumers
11 during the residential mortgage loan application
12 process, the Secretary shall arrange for the de-
13 velopment by private sector software companies
14 of new mortgage software systems that meet
15 the Secretary’s specifications.

16 “(B) USE AND INITIAL AVAILABILITY.—
17 Such certified computer software programs
18 shall be used to supplement, not replace, hous-
19 ing counseling. The Secretary shall provide that
20 such programs are initially used only in connec-
21 tion with the assistance of housing counselors
22 certified pursuant to subsection (e).

23 “(C) AVAILABILITY.—After a period of ini-
24 tial availability under subparagraph (B) as the
25 Secretary considers appropriate, the Secretary

1 shall take reasonable steps to make mortgage
2 software systems certified pursuant to this
3 paragraph widely available through the Internet
4 and at public locations, including public librar-
5 ies, senior-citizen centers, public housing sites,
6 offices of public housing agencies that admin-
7 ister rental housing assistance vouchers, and
8 housing counseling centers.

9 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
10 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

11 “(A) IN GENERAL.—The Director of Hous-
12 ing Counseling shall develop, implement, and
13 conduct national public service multimedia cam-
14 paigns designed to make persons facing mort-
15 gage foreclosure, persons considering a
16 subprime mortgage loan to purchase a home, el-
17 derly persons, persons who face language bar-
18 riers, low-income persons, and other potentially
19 vulnerable consumers aware that it is advisable,
20 before seeking or maintaining a residential
21 mortgage loan, to obtain homeownership coun-
22 seling from an unbiased and reliable sources
23 and that such homeownership counseling is
24 available, including through programs spon-

1 sored by the Secretary of Housing and Urban
2 Development.

3 “(B) CONTACT INFORMATION.—Each seg-
4 ment of the multimedia campaign under sub-
5 paragraph (A) shall publicize the toll-free tele-
6 phone number and web site of the Department
7 of Housing and Urban Development through
8 which persons seeking housing counseling can
9 locate a housing counseling agency in their
10 State that is certified by the Secretary of Hous-
11 ing and Urban Development and can provide
12 advice on buying a home, renting, defaults,
13 foreclosures, credit issues, and reverse mort-
14 gages.

15 “(C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There are authorized to be appro-
17 priated to the Secretary, not to exceed
18 \$3,000,000 for fiscal years 2008, 2009, and
19 2010, for the develop, implement, and conduct
20 of national public service multimedia campaigns
21 under this paragraph.

22 “(5) EDUCATION PROGRAMS.—The Secretary
23 shall provide advice and technical assistance to
24 States, units of general local government, and non-
25 profit organizations regarding the establishment and

1 operation of, including assistance with the develop-
2 ment of content and materials for, educational pro-
3 grams to inform and educate consumers, particularly
4 those most vulnerable with respect to residential
5 mortgage loans (such as elderly persons, persons
6 facing language barriers, low-income persons, and
7 other potentially vulnerable consumers), regarding
8 home mortgages, mortgage refinancing, home equity
9 loans, and home repair loans.”.

10 (b) CONFORMING AMENDMENTS TO GRANT PRO-
11 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
12 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
13 Urban Development Act of 1968 (12 U.S.C.
14 1701x(c)(5)(A)(ii)) is amended—

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

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

19 (3) by inserting after subclause (IV) the fol-
20 lowing new subclause:

21 “(V) notify the housing or mort-
22 gage applicant of the availability of
23 mortgage software systems provided
24 pursuant to subsection (g)(3).”.

1 **SEC. 134. GRANTS FOR HOUSING COUNSELING ASSIST-**
2 **ANCE.**

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

6 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
7 ASSISTANCE.—

8 “(A) IN GENERAL.—The Secretary shall make
9 financial assistance available under this paragraph
10 to States, units of general local governments, and
11 nonprofit organizations providing homeownership or
12 rental counseling (as such terms are defined in sub-
13 section (g)(1)).

14 “(B) QUALIFIED ENTITIES.—The Secretary
15 shall establish standards and guidelines for eligibility
16 of organizations (including governmental and non-
17 profit organizations) to receive assistance under this
18 paragraph.

19 “(C) DISTRIBUTION.—Assistance made avail-
20 able under this paragraph shall be distributed in a
21 manner that encourages efficient and successful
22 counseling programs.

23 “(D) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated
25 \$45,000,000 for each of fiscal years 2008 through
26 2011 for—

1 “(i) the operations of the Office of Hous-
2 ing Counseling of the Department of Housing
3 and Urban Development;

4 “(ii) the responsibilities of the Secretary
5 under paragraphs (2) through (5) of subsection
6 (g); and

7 “(iii) assistance pursuant to this para-
8 graph for entities providing homeownership and
9 rental counseling.”.

10 **SEC. 135. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
11 **SELORS UNDER HUD PROGRAMS.**

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

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

16 “(1) REQUIREMENT FOR ASSISTANCE.—An or-
17 ganization may not receive assistance for counseling
18 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
19 (c), or (d) of this section, or under section 101(e),
20 unless the organization, or the individuals through
21 which the organization provides such counseling, has
22 been certified by the Secretary under this subsection
23 as competent to provide such counseling.”;

24 (2) in paragraph (2)—

1 (A) by inserting “and for certifying organi-
2 zations” before the period at the end of the
3 first sentence; and

4 (B) in the second sentence by striking “for
5 certification” and inserting “, for certification
6 of an organization, that each individual through
7 which the organization provides counseling shall
8 demonstrate, and, for certification of an indi-
9 vidual,”;

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

12 (4) by redesignating paragraph (3) as para-
13 graph (5); and

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

16 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
17 Any homeownership counseling or rental housing
18 counseling (as such terms are defined in subsection
19 (g)(1)) required under, or provided in connection
20 with, any program administered by the Department
21 of Housing and Urban Development shall be pro-
22 vided only by organizations or counselors certified by
23 the Secretary under this subsection as competent to
24 provide such counseling.

1 “(4) OUTREACH.—The Secretary shall take
2 such actions as the Secretary considers appropriate
3 to ensure that individuals and organizations pro-
4 viding homeownership or rental housing counseling
5 are aware of the certification requirements and
6 standards of this subsection and of the training and
7 certification programs under subsection (f).”.

8 **SEC. 136. STUDY OF DEFAULTS AND FORECLOSURES.**

9 The Secretary of Housing and Urban Development
10 shall conduct an extensive study of the root causes of de-
11 fault and foreclosure of home loans, using as much empir-
12 ical data as are available. The study shall also examine
13 the role of escrow accounts in helping prime and nonprime
14 borrowers to avoid defaults and foreclosures. Not later
15 than 12 months after the date of the enactment of this
16 Act, the Secretary shall submit to the Congress a prelimi-
17 nary report regarding the study. Not later than 24 months
18 after such date of enactment, the Secretary shall submit
19 a final report regarding the results of the study, which
20 shall include any recommended legislation relating to the
21 study, and recommendations for best practices and for a
22 process to identify populations that need counseling the
23 most.

1 **SEC. 137. DEFINITIONS FOR COUNSELING-RELATED PRO-**
2 **GRAMS.**

3 Section 106 of the Housing and Urban Development
4 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
5 ceding provisions of this subtitle, is further amended by
6 adding at the end the following new subsection:

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

8 “(1) NONPROFIT ORGANIZATION.—The term
9 ‘nonprofit organization’ has the meaning given such
10 term in section 104(5) of the Cranston-Gonzalez Na-
11 tional Affordable Housing Act (42 U.S.C.
12 12704(5)), except that subparagraph (D) of such
13 section shall not apply for purposes of this section.

14 “(2) STATE.—The term ‘State’ means each of
15 the several States, the Commonwealth of Puerto
16 Rico, the District of Columbia, the Commonwealth
17 of the Northern Mariana Islands, Guam, the Virgin
18 Islands, American Samoa, the Trust Territories of
19 the Pacific, or any other possession of the United
20 States.

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

1 **SEC. 138. UPDATING AND SIMPLIFICATION OF MORTGAGE**
2 **INFORMATION BOOKLET.**

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

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

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

9 “(a) **PREPARATION AND DISTRIBUTION.**—The Sec-
10 retary shall prepare, at least once every 5 years, a booklet
11 to help consumers applying for federally related mortgage
12 loans to understand the nature and costs of real estate
13 settlement services. The Secretary shall prepare the book-
14 let in various languages and cultural styles, as the Sec-
15 retary determines to be appropriate, so that the booklet
16 is understandable and accessible to homebuyers of dif-
17 ferent ethnic and cultural backgrounds. The Secretary
18 shall distribute such booklets to all lenders that make fed-
19 erally related mortgage loans. The Secretary shall also dis-
20 tribute to such lenders lists, organized by location, of
21 homeownership counselors certified under section 106(e)
22 of the Housing and Urban Development Act of 1968 (12
23 U.S.C. 1701x(e)) for use in complying with the require-
24 ment under subsection (c) of this section.

25 “(b) **CONTENTS.**—Each booklet shall be in such form
26 and detail as the Secretary shall prescribe and, in addition

1 to such other information as the Secretary may provide,
2 shall include in plain and understandable language the fol-
3 lowing information:

4 “(1) A description and explanation of the na-
5 ture and purpose of the costs incident to a real es-
6 tate settlement or a federally related mortgage loan.
7 The description and explanation shall provide gen-
8 eral information about the mortgage process as well
9 as specific information concerning, at a minimum—

10 “(A) balloon payments;

11 “(B) prepayment penalties; and

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

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

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

22 “(4) A list and explanation of questions a con-
23 sumer obtaining a federally related mortgage loan
24 should ask regarding the loan, including whether the
25 consumer will have the ability to repay the loan,

1 whether the consumer sufficiently shopped for the
2 loan, whether the loan terms include prepayment
3 penalties or balloon payments, and whether the loan
4 will benefit the borrower.

5 “(5) An explanation of the right of rescission as
6 to certain transactions provided by sections 125 and
7 129 of the Truth in Lending Act.

8 “(6) A brief explanation of the nature of a vari-
9 able rate mortgage and a reference to the booklet
10 entitled ‘Consumer Handbook on Adjustable Rate
11 Mortgages’, published by the Board of Governors of
12 the Federal Reserve System pursuant to section
13 226.19(b)(1) of title 12, Code of Federal Regula-
14 tions, or to any suitable substitute of such booklet
15 that such Board of Governors may subsequently
16 adopt pursuant to such section.

17 “(7) A brief explanation of the nature of a
18 home equity line of credit and a reference to the
19 pamphlet required to be provided under section
20 127A of the Truth in Lending Act.

21 “(8) Information about homeownership coun-
22 seling services made available pursuant to section
23 106(a)(4) of the Housing and Urban Development
24 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
25 ommendation that the consumer use such services,

1 and notification that a list of certified providers of
2 homeownership counseling in the area, and their
3 contact information, is available.

4 “(9) An explanation of the nature and purpose
5 of escrow accounts when used in connection with
6 loans secured by residential real estate and the re-
7 quirements under section 10 of this Act regarding
8 such accounts.

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

13 “(11) An explanation of a consumer’s respon-
14 sibilities, liabilities, and obligations in a mortgage
15 transaction.

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

19 “(13) Notice that the Office of Housing of the
20 Department of Housing and Urban Development has
21 made publicly available a brochure regarding loan
22 fraud and a World Wide Web address and toll-free
23 telephone number for obtaining the brochure.

24 The booklet prepared pursuant to this section shall take
25 into consideration differences in real estate settlement pro-

1 cedures that may exist among the several States and terri-
2 tories of the United States and among separate political
3 subdivisions within the same State and territory.”;

4 (3) in subsection (c), by inserting at the end
5 the following new sentence: “Each lender shall also
6 include with the booklet a reasonably complete or
7 updated list of homeownership counselors who are
8 certified pursuant to section 106(e) of the Housing
9 and Urban Development Act of 1968 (12 U.S.C.
10 1701x(e)) and located in the area of the lender.”;
11 and

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

17 **Subtitle C—Combating Mortgage** 18 **Fraud**

19 **SEC. 151. AUTHORIZATION OF APPROPRIATIONS TO COM-** 20 **BAT MORTGAGE FRAUD.**

21 For fiscal years 2008, 2009, 2010, 2011, and 2012,
22 there are authorized to be appropriated to the Attorney
23 General a total of—

24 (1) \$31,250,000 to support the employment of
25 30 additional agents of the Federal Bureau of Inves-

1 tigation and 2 additional dedicated prosecutors at
2 the Department of Justice to coordinate prosecution
3 of mortgage fraud efforts with the offices of the
4 United States Attorneys; and

5 (2) \$750,000 to support the operations of inter-
6 agency task forces of the Federal Bureau of Inves-
7 tigation in the areas with the 15 highest concentra-
8 tions of mortgage fraud.

9 **TITLE II—FHA REFORM AND**
10 **MANUFACTURED HOUSING**
11 **LOAN INSURANCE MOD-**
12 **ERNIZATION**

13 **Subtitle A—FHA Reform**

14 **SEC. 201. SHORT TITLE.**

15 This subtitle may be cited as the “Expanding Amer-
16 ican Homeownership Act of 2008”.

17 **SEC. 202. FINDINGS AND PURPOSES.**

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

19 (1) one of the primary missions of the Federal
20 Housing Administration (FHA) single family mort-
21 gage insurance program is to reach borrowers who
22 are underserved, or not served, by the existing con-
23 ventional mortgage marketplace;

24 (2) the FHA program has a long history of in-
25 novation, which includes pioneering the 30-year self-

1 amortizing mortgage and a safe-to-seniors reverse
2 mortgage product, both of which were once thought
3 too risky to private lenders;

4 (3) the FHA single family mortgage insurance
5 program traditionally has been a major provider of
6 mortgage insurance for home purchases;

7 (4) the FHA mortgage insurance premium
8 structure, as well as FHA's product offerings,
9 should be revised to reflect FHA's enhanced ability
10 to determine risk at the loan level and to allow FHA
11 to better respond to changes in the mortgage mar-
12 ket;

13 (5) during past recessions, including the oil-
14 patch downturns in the mid-1980s, FHA remained
15 a viable credit enhancer and was therefore instru-
16 mental in preventing a more catastrophic collapse in
17 housing markets and a greater loss of homeowner
18 equity; and

19 (6) as housing price appreciation slows and in-
20 terest rates rise, many homeowners and prospective
21 homebuyers will need the less-expensive, safer fi-
22 nancing alternative that FHA mortgage insurance
23 provides.

24 (b) PURPOSES.—The purposes of this subtitle are—

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

5 (2) to modernize the FHA single family mort-
6 gage insurance program by making it more reflective
7 of enhancements to loan-level risk assessments and
8 changes to the mortgage market; and

9 (3) to adjust the loan limits for the single fam-
10 ily mortgage insurance program to reflect rising
11 house prices and the increased costs associated with
12 new construction.

13 **SEC. 203. MAXIMUM PRINCIPAL LOAN OBLIGATION.**

14 (a) IN GENERAL.—Section 203(b)(2) of the National
15 Housing Act (12 U.S.C. 1709(b)(2)(A)) is amended by
16 striking subparagraph (A) and inserting the following new
17 subparagraph:

18 “(A) not to exceed the lesser of—

19 “(i) in the case of a 1-family resi-
20 dence, 125 percent of the median 1-family
21 house price in the area, as determined by
22 the Secretary; and in the case of a 2-, 3-
23 , or 4-family residence, the percentage of
24 such median price that bears the same
25 ratio to such median price as the dollar

1 amount limitation determined under sec-
2 tion 305(a)(2) of the Federal Home Loan
3 Mortgage Corporation Act (12 U.S.C.
4 1454(a)(2)) for a 2-, 3-, or 4-family resi-
5 dence, respectively, bears to the dollar
6 amount limitation determined under such
7 section for a 1-family residence; or

8 “(ii) 175 percent of the dollar amount
9 limitation determined under such section
10 305(a)(2)(A) for a residence of the appli-
11 cable size (without regard to any authority
12 to increase such limitations with respect to
13 properties located in Alaska, Guam, Ha-
14 waii, or the Virgin Islands and without re-
15 gard to the high-cost area limitation under
16 such section 305(a)(2)(B));

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

1 mines that market conditions warrant such an
2 increase, the Secretary may, for such period as
3 the Secretary considers appropriate, increase
4 the maximum dollar amount limitation deter-
5 mined pursuant to the preceding provisions of
6 this subparagraph with respect to any par-
7 ticular size or sizes of residences, or with re-
8 spect to residences located in any particular
9 area or areas, to an amount that does not ex-
10 ceed the maximum dollar amount then other-
11 wise in effect pursuant to the preceding provi-
12 sions of this subparagraph for such size resi-
13 dence, or for such area (if applicable), by not
14 more than \$100,000; and”.

15 (b) TREATMENT OF TEMPORARY LOAN LIMIT IN-
16 CREASE.—Subsection (a) and the amendment made by
17 such subsection may not be construed to in any way affect
18 the effectiveness of section 202 of the Economic Stimulus
19 Act of 2008 (Public Law 110-185; 122 Stat. 620).

20 **SEC. 204. EXTENSION OF MORTGAGE TERM.**

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

23 (1) by striking “thirty-five years” and inserting
24 “forty years”; and

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

4 **SEC. 205. DOWNPAYMENT SIMPLIFICATION.**

5 Section 203(b) of the National Housing Act (12
6 U.S.C. 1709(b)) is amended—

7 (1) in paragraph (2)—

8 (A) by striking subparagraph (B) and in-
9 serting the following new subparagraph:

10 “(B) not to exceed an amount equal to the
11 sum of—

12 “(i) the amount of the mortgage pre-
13 mium paid at the time the mortgage is in-
14 sured; and

15 “(ii) 97.75 percent of the appraised
16 value of the property.”;

17 (B) in the matter after and below subpara-
18 graph (B), by striking the second sentence (re-
19 lating to a definition of “average closing cost”)
20 and all that follows through “title 38, United
21 States Code.”; and

22 (C) by striking the last undesignated para-
23 graph (relating to counseling with respect to
24 the responsibilities and financial management
25 involved in homeownership); and

1 (2) in paragraph (9)—

2 (A) by striking the paragraph designation
3 and all that follows through “*Provided further,*
4 That for” and inserting the following:

5 “(9) Be executed by a mortgagor who shall
6 have paid on account of the property, in cash or its
7 equivalent, at least 3 percent of the Secretary’s esti-
8 mate of the cost of acquisition (excluding the mort-
9 gage insurance premium paid at the time the mort-
10 gage is insured). For”; and

11 (B) by inserting after the period at the end
12 the following: “For purposes of this paragraph,
13 the Secretary shall consider as cash or its
14 equivalent any amounts gifted by a family
15 member (as such term is defined in section
16 201), the mortgagor’s employer or labor union,
17 or a qualified homeownership assistance entity,
18 but only if there is no obligation on the part of
19 the mortgagor to repay the gift: For purposes
20 of the preceding sentence, the term ‘qualified
21 homeownership assistance entity’ means any
22 governmental agency or charity that has a pro-
23 gram to provide homeownership assistance to
24 low- and moderate-income families or first-time
25 home buyers, or any private nonprofit organiza-

1 tion that has such a program and evidences suf-
2 ficient fiscal soundness to protect the fiscal in-
3 tegrity of the Mutual Mortgage Insurance Fund
4 by maintaining a minimum net worth of
5 \$4,000,000 of acceptable assets.”.

6 **SEC. 206. MORTGAGE INSURANCE PREMIUMS FOR QUALI-**
7 **FIED HOMEOWNERSHIP ASSISTANCE ENTI-**
8 **TIES AND HIGHER-RISK BORROWERS.**

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

11 (1) in subparagraph (A), in the matter pre-
12 ceding subparagraph (A), by striking the first
13 comma after “section 234(c)”;

14 (2) in subparagraph (A), by inserting after the
15 period at the end of the second sentence the fol-
16 lowing: “In the case of a mortgage for which any
17 amounts gifted by a qualified homeownership assist-
18 ance entity (as such term is defined in paragraph
19 (9) of subsection (b)) that is a private nonprofit or-
20 ganization are treated as cash or its equivalent for
21 purposes of meeting the 3 percent requirement
22 under such paragraph, the premium payment under
23 this subparagraph shall not exceed 3.0 percent of
24 the amount of the original insured principal obliga-
25 tion of the mortgage.”; and

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

3 “(C) HIGHER-RISK BORROWERS.—The Sec-
4 retary shall establish underwriting standards that
5 provide for insurance under this section of mort-
6 gages described in the matter in this paragraph pre-
7 ceding subparagraph (A) for which the mortgagor
8 has a credit score equivalent to a FICO score of less
9 than 560, and may insure, and make commitments
10 to insure, such mortgages. Such underwriting stand-
11 ards shall include establishing and collecting pre-
12 mium payments that comply with the requirements
13 of this paragraph, except that notwithstanding sub-
14 paragraph (A), the single premium payment col-
15 lected at the time of insurance may be established
16 in an amount that does not exceed 3.0 percent of the
17 amount of the original insured principal obligation of
18 the mortgage.”.

19 **SEC. 207. RISK-BASED MORTGAGE INSURANCE PREMIUMS.**

20 Section 203(c) of the National Housing Act (12
21 U.S.C. 1709(c)), as amended by the preceding provisions
22 of this subtitle, is further amended by adding at the end
23 the following new paragraphs:

24 “(4) FLEXIBLE RISK-BASED PREMIUMS.—In the
25 case of a mortgage referred to in paragraph (2)(C) or a

1 mortgage described in the third sentence of subparagraph
2 (A) of paragraph (2) (relating to mortgages for which
3 amounts are gifted by a nonprofit qualified homeowner-
4 ship assistance entity), for which the loan application is
5 received by the mortgagee on or after the date of the en-
6 actment of the Expanding American Homeownership Act
7 of 2008:

8 “(A) IN GENERAL.—The Secretary may estab-
9 lish a mortgage insurance premium structure involv-
10 ing a single premium payment collected prior to the
11 insurance of the mortgage or annual payments
12 (which may be collected on a periodic basis), or both,
13 subject to the requirements of subparagraph (B) and
14 paragraph (5). Under such structure, the rate of
15 premiums for such a mortgage may vary according
16 to the credit risk associated with the mortgage and
17 the rate of any annual premium for such a mortgage
18 may vary during the mortgage term as long as the
19 basis for determining the variable rate is established
20 before the execution of the mortgage. The Secretary
21 may change a premium structure established under
22 this subclause but only to the extent that such
23 change is not applied to any mortgage already exe-
24 cuted.

1 “(B) ESTABLISHMENT AND ALTERATION OF
2 PREMIUM STRUCTURE.—A premium structure shall
3 be established or changed under subparagraph (A)
4 only by providing notice to mortgagees and to the
5 Congress, at least 30 days before the premium
6 structure is established or changed.

7 “(C) ANNUAL REPORT REGARDING PRE-
8 MIUMS.—The Secretary shall submit a report to the
9 Congress annually setting forth the rate structures
10 and rates established and altered pursuant to this
11 paragraph during the preceding 12-month period
12 and describing how such rates were determined.

13 “(5) CONSIDERATIONS FOR PREMIUM STRUCTURE.—
14 When establishing premiums for mortgages referred to in
15 paragraph (2)(C), establishing premiums pursuant to
16 paragraph (3), establishing a premium structure under
17 paragraph (4), and when changing such a premium struc-
18 ture, the Secretary shall consider the following:

19 “(A) The effect of the proposed premiums or
20 structure on the Secretary’s ability to meet the oper-
21 ational goals of the Mutual Mortgage Insurance
22 Fund as provided in section 202(a).

23 “(B) Underwriting variables.

1 “(C) The extent to which new pricing under the
2 proposed premiums or structure has potential for ac-
3 ceptance in the private market.

4 “(D) The administrative capability of the Sec-
5 retary to administer the proposed premiums or
6 structure.

7 “(E) The effect of the proposed premiums or
8 structure on the Secretary’s ability to maintain the
9 availability of mortgage credit and provide stability
10 to mortgage markets.

11 “(6) AUTHORITY TO BASE PREMIUM PRICES ON
12 PRODUCT RISK.—

13 “(A) AUTHORITY.—In establishing premium
14 rates under paragraphs (2), (3), and (4), the Sec-
15 retary may provide for variations in such rates ac-
16 cording to the credit risk associated with the type of
17 mortgage product that is being insured under this
18 title, which may include providing that premium
19 rates differ between fixed-rate mortgages and ad-
20 justable-rate mortgages insured pursuant to section
21 251, between mortgages insured pursuant to section
22 203(b) and mortgages for condominiums insured
23 pursuant to section 234, and between such other
24 products as the Secretary considers appropriate.

1 “(B) LIMITATION.—Subparagraph (A) may not
2 be construed to authorize the Secretary to establish,
3 for any mortgage product, any mortgage insurance
4 premium rate that does not comply with the require-
5 ments and limitations under paragraphs (2) through
6 (5).”.

7 **SEC. 208. PAYMENT INCENTIVES FOR HIGHER-RISK BOR-**
8 **ROWERS.**

9 Section 203(c) of the National Housing Act (12
10 U.S.C. 1709(c)), as amended by the preceding provisions
11 of this subtitle, is further amended by adding at the end
12 the following new paragraph:

13 “(7) PAYMENT INCENTIVES.—

14 “(A) AUTHORITY.—With respect to mortgages
15 referred to in paragraph (2)(C):

16 “(i) DISCRETIONARY 3-YEAR PAYMENT IN-
17 CENTIVE.—The Secretary may provide, in the
18 discretion of the Secretary, that the payment
19 incentive under subparagraph (B) shall apply
20 upon the expiration of the 3-year period begin-
21 ning upon the time of insurance of such a mort-
22 gage.

23 “(ii) MANDATORY 5-YEAR PAYMENT INCEN-
24 TIVE.—The Secretary shall provide that the
25 payment incentive under subparagraph (B) ap-

1 plies upon the expiration of the 5-year period
2 beginning upon the time of insurance of such a
3 mortgage.

4 “(B) PAYMENT INCENTIVE.—In the case of any
5 mortgage to which the payment incentive under this
6 subparagraph applies, if, during the period referred
7 to in clause (i) or (ii) of subparagraph (A), as appli-
8 cable, all mortgage insurance premiums for such
9 mortgage have been paid on a timely basis, upon the
10 expiration of such period the Secretary shall—

11 “(i) reduce the amount of the annual pre-
12 mium payments otherwise due thereafter under
13 such mortgage to an amount that does not ex-
14 ceed the amount of the annual premium pay-
15 able at the time of insurance of the mortgage
16 on a mortgage of the same product type having
17 the same terms, but for which the mortgagor
18 has a credit score equivalent to a FICO score
19 of 560 or more; and

20 “(ii) refund to the mortgagor, upon pay-
21 ment in full of the obligation of the mortgage,
22 any amount by which the single premium pay-
23 ment for such mortgage collected at the time of
24 insurance exceeded the amount of the single
25 premium payment chargeable under paragraph

1 (2)(A) at the time of insurance for a mortgage
2 of the same product type having the same
3 terms, but for which the mortgagor has a credit
4 score equivalent to a FICO score of 560 or
5 more.”.

6 **SEC. 209. PROTECTIONS FOR HIGHER-RISK BORROWERS.**

7 Section 203(b) of the National Housing Act (12
8 U.S.C. 1709(b)) is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(10) PROTECTIONS FOR HIGHER-RISK BOR-
11 ROWERS.—Except as otherwise specifically provided
12 in this paragraph, in the case of any mortgage re-
13 ferred to in paragraph (2)(C) of subsection (c), the
14 following requirements shall apply:

15 “(A) DISCLOSURES.—

16 “(i) REQUIRED DISCLOSURES.—In ad-
17 dition to any disclosures that are otherwise
18 required by law or by the Secretary for
19 single family mortgages, the mortgagee
20 shall disclose to the mortgagor the fol-
21 lowing information:

22 “(I) AT APPLICATION.—At the
23 time of application for the loan in-
24 volved in the mortgage, a list of coun-

1 seling agencies, approved by the Sec-
2 retary, in the area of the applicant.

3 “(II) AT EXECUTION.—At the
4 time of entering into the mortgage—

5 “(aa) the terms of the man-
6 datory 5-year payment incentive
7 required under subsection
8 (c)(7)(A)(ii); and

9 “(bb) a statement that the
10 mortgagor has a right under con-
11 tract to loss mitigation.

12 “(III) OTHER INFORMATION.—
13 Any other additional information that
14 the Secretary determines is appro-
15 priate to ensure that the mortgagor
16 has received timely and accurate in-
17 formation about the program under
18 paragraph (2)(C) of subsection (c).

19 “(ii) PENALTIES FOR FAILURE TO
20 PROVIDE REQUIRED DISCLOSURES.—The
21 Secretary may establish and impose appro-
22 priate penalties for failure of a mortgagee
23 to provide any disclosure required under
24 clause (i).

1 “(iii) NO PRIVATE RIGHT OF AC-
2 TION.—This subparagraph shall not create
3 any private right of action on behalf of the
4 mortgagor.

5 “(B) COUNSELING.—

6 “(i) REQUIREMENT.—The Secretary
7 shall require that the mortgagor shall have
8 received counseling that complies with the
9 requirements of this subparagraph.

10 “(ii) TERMS OF COUNSELING.—Coun-
11 seling under this subparagraph shall be
12 provided—

13 “(I) prior to closing for the loan
14 involved in the mortgage;

15 “(II) by a third party (other than
16 the mortgagee) who is approved by
17 the Secretary, with respect to the re-
18 sponsibilities and financial manage-
19 ment involved in homeownership;

20 “(III) on an individual basis to
21 the mortgagor by a representative of
22 the approved third-party counseling
23 entity; and

24 “(IV) in person, to the maximum
25 extent possible.

1 “(iii) 2- AND 3-FAMILY RESI-
2 DENCES.—In the case of a mortgage in-
3 volving a 2- or 3-family residence, coun-
4 seling under this subparagraph shall in-
5 clude (in addition to the information re-
6 quired under clause (iii)) information re-
7 garding real estate property management.

8 “(C) NOTICE OF FORECLOSURE PREVEN-
9 TION COUNSELING AVAILABILITY.—

10 “(i) WRITTEN AGREEMENT.—To be
11 eligible for insurance under this subsection,
12 the mortgagee shall provide the mortgagor,
13 at the time of the execution of the mort-
14 gage, a written agreement which shall be
15 signed by the mortgagor and under which
16 the mortgagee shall provide notice de-
17 scribed in clause (ii) to a housing coun-
18 seling entity that has agreed to provide the
19 notice and counseling required under
20 clause (iii) and is approved by the Sec-
21 retary.

22 “(ii) NOTICE TO COUNSELING AGEN-
23 CY.—The notice described in this clause,
24 with respect to a mortgage, is notice, pro-
25 vided at the earliest time practicable after

1 the mortgagor becomes 60 days delinquent
2 with respect to any payment due under the
3 mortgage, that the mortgagor is so delin-
4 quent and of how to contact the mort-
5 gagor. Such notice may only be provided
6 once with respect to each delinquency pe-
7 riod for a mortgage.

8 “(iii) NOTICE TO MORTGAGOR.—Upon
9 notice from a mortgagee that a mortgagor
10 is 60 days delinquent with respect to pay-
11 ments due under the mortgage, the hous-
12 ing counseling entity shall at the earliest
13 time practicable notify the mortgagor of
14 such delinquency, that the entity makes
15 available foreclosure prevention counseling
16 that may assist the mortgagor in resolving
17 the delinquency, and of how to contact the
18 entity to arrange for such counseling.

19 “(iv) ABILITY TO CURE.—Failure to
20 provide the written agreement required
21 under clause (i) may be corrected by send-
22 ing such agreement to the mortgagor not
23 later than the earliest time practicable
24 after the mortgagor first becomes 60 days
25 delinquent with respect to payments due

1 under the mortgage. Insurance provided
2 under this subsection may not be termi-
3 nated and penalties for such failure may
4 not be prospectively or retroactively im-
5 posed if such failure is corrected in accord-
6 ance with this clause.

7 “(v) PENALTIES FOR FAILURE TO
8 PROVIDE AGREEMENT.—The Secretary
9 may establish and impose appropriate pen-
10 alties for failure of a mortgagee to provide
11 the written agreement required under
12 clause (i).

13 “(vi) LIMITATION ON LIABILITY OF
14 MORTGAGEE.—A mortgagee shall not incur
15 any liability or penalties for any failure of
16 a housing counseling entity to provide no-
17 tice under clause (iii).

18 “(vii) NO PRIVATE RIGHT OF AC-
19 TION.—This subparagraph shall not create
20 any private right of action on behalf of the
21 mortgagor.

22 “(viii) DELINQUENCY PERIOD.—For
23 purposes of this subparagraph, the term
24 ‘delinquency period’ means, with respect to
25 a mortgage, a period that begins upon the

1 mortgagor becoming delinquent with re-
2 spect to payments due under the mortgage
3 and ends upon the first subsequent occur-
4 rence of such payments under the mort-
5 gage becoming current or the property
6 subject to the mortgage being foreclosed or
7 otherwise disposed of.”.

8 **SEC. 210. REFINANCING MORTGAGES.**

9 Section 203 of the National Housing Act (12 U.S.C.
10 1709) is amended by inserting after subsection (k) the fol-
11 lowing new subsection:

12 “(1) REFINANCING MORTGAGES.—

13 “(1) ESTABLISHMENT OF UNDERWRITING
14 STANDARDS.—The Secretary shall establish under-
15 writing standards that provide for insurance under
16 this title of mortgage loans, and take actions to fa-
17 cilitate the availability of mortgage loans insured
18 under this title, for qualified borrowers that are
19 made for the purpose of paying or prepaying out-
20 standing obligations under existing mortgages for
21 borrowers that—

22 “(A) have existing mortgages with adverse
23 terms or rates, or

1 **SEC. 212. INSURANCE FOR SINGLE FAMILY HOMES WITH LI-**
2 **CENSED CHILD CARE FACILITIES.**

3 (a) DEFINITION OF CHILD CARE FACILITY.—Section
4 201 of the National Housing Act (12 U.S.C. 1707) is
5 amended by adding at the end the following new sub-
6 section:

7 “(g) The term ‘child care facility’ means a facility
8 that—

9 “(A) has as its purpose the care of children who
10 are less than 12 years of age; and

11 “(B) is licensed or regulated by the State in
12 which it is located (or, if there is no State law pro-
13 viding for such licensing and regulation by the State,
14 by the municipality or other political subdivision in
15 which the facility is located).

16 Such term does not include facilities for school-age chil-
17 dren primarily for use during normal school hours.”.

18 (b) INCREASE IN MAXIMUM MORTGAGE AMOUNT
19 LIMITATION.—Paragraph (2) of section 203(b) of the Na-
20 tional Housing Act (12 U.S.C. 1709(b)(2)), as amended
21 by the preceding provisions of this subtitle, is further
22 amended by adding at end the following new undesignated
23 paragraph:

24 “Notwithstanding any other provision of this
25 paragraph, the amount that may be insured under
26 this section may be increased by up to 25 percent

1 if such increase is necessary to account for the in-
2 creased cost of the residence due to an increased
3 need of space in the residence for locating and oper-
4 ating a child care facility (as such term is defined
5 in section 201) within the residence, but only if a
6 valid license or certificate of compliance with regula-
7 tions described in section 201(g)(2) has been issued
8 for such facility as of the date of the execution of
9 the mortgage, and only if such increase in the
10 amount insured is proportional to the amount of
11 space of such residence that will be used for such fa-
12 cility.”.

13 **SEC. 213. REHABILITATION LOANS.**

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

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

18 (2) in paragraph (5)—

19 (A) by striking “General Insurance Fund”
20 the first place it appears and inserting “Mutual
21 Mortgage Insurance Fund”; and

22 (B) in the second sentence, by striking the
23 comma and all that follows through “General
24 Insurance Fund”.

1 **SEC. 214. DISCRETIONARY ACTION.**

2 The National Housing Act is amended—

3 (1) in subsection (e) of section 202 (12 U.S.C.
4 1708(e))—

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

8 (B) by redesignating such subsection as
9 subsection (f);

10 (2) by striking paragraph (4) of section 203(s)
11 (12 U.S.C. 1709(s)(4)) and inserting the following
12 new paragraph:

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

14 (3) by transferring subsection (s) of section 203
15 (as amended by paragraph (2) of this section) to
16 section 202, inserting such subsection after sub-
17 section (d) of section 202, and redesignating such
18 subsection as subsection (e).

19 **SEC. 215. INSURANCE OF CONDOMINIUMS AND MANUFAC-**
20 **TURED HOUSING.**

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

23 (1) in subsection (c)—

24 (A) in the first sentence—

25 (i) by striking “and” before “(2)”;
26 and

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

5 (B) in clause (B) of the third sentence, by
6 striking “thirty-five years” and inserting “forty
7 years”; and

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

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

13 (1) before “ a first mortgage” insert “(A)”;

14 (2) by striking “or on a leasehold (1)” and in-
15 serting “(B) a first mortgage on a leasehold on real
16 estate (i)”;

17 (3) by striking “or (2)” and inserting “, or
18 (ii)”;

19 (4) by inserting before the semicolon the fol-
20 lowing: “, or (C) a first mortgage given to secure the
21 unpaid purchase price of a fee interest in, or long-
22 term leasehold interest in, real estate consisting of
23 a one-family unit in a multifamily project, including
24 a project in which the dwelling units are attached,
25 or are manufactured housing units, semi-detached,

1 or detached, and an undivided interest in the com-
2 mon areas and facilities which serve the project”.

3 (c) DEFINITION OF REAL ESTATE.—Section 201 of
4 the National Housing Act (12 U.S.C. 1707), as amended
5 by the preceding provisions of this subtitle, is further
6 amended by adding at the end the following new sub-
7 section:

8 “(h) The term ‘real estate’ means land and all nat-
9 ural resources and structures permanently affixed to the
10 land, including residential buildings and stationary manu-
11 factured housing. The Secretary may not require, for
12 treatment of any land or other property as real estate for
13 purposes of this title, that such land or property be treated
14 as real estate for purposes of State taxation.”.

15 **SEC. 216. MUTUAL MORTGAGE INSURANCE FUND.**

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

19 “(a) MUTUAL MORTGAGE INSURANCE FUND.—

20 “(1) ESTABLISHMENT.—Subject to the provi-
21 sions of the Federal Credit Reform Act of 1990,
22 there is hereby created a Mutual Mortgage Insur-
23 ance Fund (in this title referred to as the ‘Fund’),
24 which shall be used by the Secretary to carry out the
25 provisions of this title with respect to mortgages in-

1 sured under section 203. The Secretary may enter
2 into commitments to guarantee, and may guarantee,
3 such insured mortgages.

4 “(2) LIMIT ON LOAN GUARANTEES.—The au-
5 thority of the Secretary to enter into commitments
6 to guarantee such insured mortgages shall be effec-
7 tive for any fiscal year only to the extent that the
8 aggregate original principal loan amount under such
9 mortgages, any part of which is guaranteed, does
10 not exceed the amount specified in appropriations
11 Acts for such fiscal year.

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

15 “(4) ANNUAL INDEPENDENT ACTUARIAL
16 STUDY.—The Secretary shall provide for an inde-
17 pendent actuarial study of the Fund to be conducted
18 annually, which shall analyze the financial position
19 of the Fund. The Secretary shall submit a report
20 annually to the Congress describing the results of
21 such study and assessing the financial status of the
22 Fund. The report shall recommend adjustments to
23 underwriting standards, program participation, or
24 premiums, if necessary, to ensure that the Fund re-
25 mains financially sound.

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

5 “(A) the cumulative volume of loan guar-
6 antee commitments that have been made during
7 such fiscal year through the end of the quarter
8 for which the report is submitted;

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

11 “(C) any significant changes between ac-
12 tual and projected claim and prepayment activ-
13 ity;

14 “(D) projected versus actual loss rates;
15 and

16 “(E) updated projections of the annual
17 subsidy rates to ensure that increases in risk to
18 the Fund are identified and mitigated by ad-
19 justments to underwriting standards, program
20 participation, or premiums, and the financial
21 soundness of the Fund is maintained.

22 The first quarterly report under this paragraph shall
23 be submitted on the last day of the first quarter of
24 fiscal year 2008, or upon the expiration of the 90-
25 day period beginning on the date of the enactment

1 of the Expanding American Homeownership Act of
2 2008, whichever is later.

3 “(6) ADJUSTMENT OF PREMIUMS.—If, pursu-
4 ant to the independent actuarial study of the Fund
5 required under paragraph (5), the Secretary deter-
6 mines that the Fund is not meeting the operational
7 goals established under paragraph (8) or there is a
8 substantial probability that the Fund will not main-
9 tain its established target subsidy rate, the Secretary
10 may either make programmatic adjustments under
11 section 203 as necessary to reduce the risk to the
12 Fund, or make appropriate premium adjustments.

13 “(7) OPERATIONAL GOALS.—The operational
14 goals for the Fund are—

15 “(A) to charge borrowers under loans that
16 are obligations of the Fund an appropriate pre-
17 mium for the risk that such loans pose to the
18 Fund;

19 “(B) to minimize the default risk to the
20 Fund and to homeowners;

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

23 “(D) to meet the housing needs of the bor-
24 rowers that the single family mortgage insur-

1 ance program under this title is designed to
2 serve.”.

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

5 (1) HOMEOWNERSHIP VOUCHER PROGRAM
6 MORTGAGES.—In section 203(v) (12 U.S.C.
7 1709(v))—

8 (A) by striking “Notwithstanding section
9 202 of this title, the” and inserting “The”; and

10 (B) by striking “General Insurance Fund”
11 the first place such term appears and all that
12 follows and inserting “Mutual Mortgage Insur-
13 ance Fund.”.

14 (2) HOME EQUITY CONVERSION MORTGAGES.—
15 Section 255(i)(2)(A) of the National Housing Act
16 (12 U.S.C. 1715z–20(i)(2)(A)) is amended by strik-
17 ing “General Insurance Fund” and inserting “Mu-
18 tual Mortgage Insurance Fund”.

19 (c) CONFORMING AMENDMENTS.—The National
20 Housing Act is amended—

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

23 (2) in section 519(e) (12 U.S.C. 1735c(e)), by
24 striking “203(b)” and all that follows through

1 “203(i)” and inserting “203, except as determined
2 by the Secretary”.

3 **SEC. 217. HAWAIIAN HOME LANDS AND INDIAN RESERVA-**
4 **TIONS.**

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

8 (1) by striking “General Insurance Fund estab-
9 lished in section 519” and inserting “Mutual Mort-
10 gage Insurance Fund”; and

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

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

16 (1) by striking “General Insurance Fund” the
17 first place it appears and all that follows through
18 “519” and inserting “Mutual Mortgage Insurance
19 Fund”; and

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

22 **SEC. 218. CONFORMING AND TECHNICAL AMENDMENTS.**

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

1 (1) Subsection (i) of section 203 (12 U.S.C.
2 1709(i)).

3 (2) Subsection (o) of section 203 (12 U.S.C.
4 1709(o)).

5 (3) Subsection (p) of section 203 (12 U.S.C.
6 1709(p)).

7 (4) Subsection (q) of section 203 (12 U.S.C.
8 1709(q)).

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

10 (6) Section 237 (12 U.S.C. 1715z-2).

11 (7) Section 245 (12 U.S.C. 1715z-10).

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

17 (c) DEFINITION OF STATE.—Section 201(d) of the
18 National Housing Act (12 U.S.C. 1707(d)) is amended by
19 striking “the Trust Territory of the Pacific Islands” and
20 inserting “the Commonwealth of the Northern Mariana
21 Islands”.

22 **SEC. 219. HOME EQUITY CONVERSION MORTGAGES.**

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

1 (1) in subsection (b)(2), insert “‘real estate,’”
2 after “‘mortgagor,’”;

3 (2) in subsection (b)(4), by striking subpara-
4 graph (B) and inserting the following new subpara-
5 graph:

6 “(B) under a lease that has a term that
7 ends no earlier than the minimum number of
8 years, as specified by the Secretary, beyond the
9 actuarial life expectancy of the mortgagor or co-
10 mortgagor, whichever is the later date.”.

11 (3) in the second sentence of subsection (g), by
12 striking “the maximum dollar amount established
13 under section 203(b)(2)” and all that follows
14 through “located” and inserting “132 percent of the
15 dollar amount limitation determined under section
16 305(a)(2)(A) of the Federal Home Loan Mortgage
17 Corporation Act for a 1-family residence (without re-
18 gard to any authority to increase such limitations
19 with respect to properties located in Alaska, Guam,
20 Hawaii, or the Virgin Islands and without regard to
21 the high-cost area limitation under such section
22 305(a)(2)(B))”;

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

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

3 “(o) AUTHORITY TO INSURE HOME PURCHASE
4 MORTGAGES.—

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

14 “(2) LIMITATION ON PRINCIPAL OBLIGATION.—
15 A home equity conversion mortgage insured pursu-
16 ant to paragraph (1) shall involve a principal obliga-
17 tion that does not exceed the limitation under sub-
18 section (g) of this section on the maximum amount
19 of the benefits of insurance under this section.”.

20 (b) MORTGAGES FOR COOPERATIVES.—Subsection
21 (b) of section 255 of the National Housing Act (12 U.S.C.
22 1715z–20(b)) is amended—

23 (1) in paragraph (4)—

24 (A) by inserting “a first or subordinate
25 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) PROHIBITION ON REQUIRED PURCHASE OF AN

8 ANNUITY.—Section 255 of the National Housing Act of

9 1937 (12 U.S.C. 1715z–20) is amended—

10 (1) by striking subparagraph (B) of subsection

11 (d)(2) and inserting the following new subparagraph:

12 “(B) has received adequate counseling by a

13 third party (other than a reverse mortgage

14 lender, servicer or investor, or an entity en-

15 gaged in the sale of annuities, investments,

16 long-term care insurance, or any other type of

17 financial or insurance product) as provided in

18 subsection (f);”;

19 (2) by striking the first sentence of subsection

20 (f) and inserting the following new sentence: “The

21 Secretary shall provide or cause to be provided and

22 paid for by entities other than a reverse mortgage

23 lender, servicer or investor, or an entity engaged in

24 the sale of annuities, investments, long-term care in-

25 surance, or any other type of financial or insurance

1 product the information required in subsection
2 (d)(2)(B).”; and

3 (3) by striking subsections (l) and (m) and in-
4 serting the following new subsection:

5 “(1) REGULATIONS TO PROTECT ELDERLY HOME-
6 OWNERS.—

7 “(1) IN GENERAL.—Not later than 6 months
8 after the date of the enactment of the Expanding
9 American Homeownership Act of 2008, the Sec-
10 retary shall, in consultation with other relevant Fed-
11 eral departments and agencies, prescribe regulations
12 to help protect elderly homeowners from the mar-
13 keting of financial and insurance products not in the
14 interest of such homeowners, including the mar-
15 keting or sale of an annuity as a condition of obtain-
16 ing any home equity conversion mortgage.

17 “(2) CONSULTATION.—In developing the regu-
18 lations required under paragraph (1), the Secretary
19 shall consult with consumer advocates (including
20 recognized experts in consumer protection), industry
21 representatives, representatives of counseling organi-
22 zations, and other interested parties.”.

23 (d) LIMITATION ON ORIGINATION FEES.—Section
24 255 of the National Housing Act (12 U.S.C. 1715z–20),

1 as amended by the preceding provisions of this section,
2 is further amended—

3 (1) by redesignating subsections (k), (l), and
4 (m) as subsections (l), (m), and (n), respectively;
5 and

6 (2) by inserting after subsection (j) the fol-
7 lowing new subsection:

8 “(k) LIMITATION ON ORIGINATION FEES.—The Sec-
9 retary shall establish limits on the origination fee that may
10 be charged to a mortgagor under a mortgage insured
11 under this section, which limitations shall—

12 “(1) be equal to 2.0 percent of the maximum
13 claim amount of the mortgage up to a maximum
14 claim amount of \$200,000 plus 1 percent of any
15 portion of the maximum claim amount that is great-
16 er than \$200,000, unless adjusted thereafter on the
17 basis of an analysis of (A) costs to mortgagors, and
18 (B) the impact on the reverse mortgage market;

19 “(2) be subject to a minimum allowable
20 amount;

21 “(3) provide that the origination fee may be
22 fully financed with the mortgage;

23 “(4) include any fees paid to correspondent
24 mortgagees approved by the Secretary or to mort-
25 gage brokers;

1 “(5) apply beginning upon the date that the
2 maximum dollar amount limitation on the benefits of
3 insurance under this section is first increased pursu-
4 ant to the amendments made by section 219(a)(3) of
5 the Expanding American Homeownership Act of
6 2008; and

7 “(6) be subject to a maximum origination fee of
8 \$6,000, except that such maximum limit shall be ad-
9 justed in accordance with the annual percentage in-
10 crease in the Consumer Price Index of the Bureau
11 of Labor Statistics of the Department of Labor in
12 increments of \$500 only when the percentage in-
13 crease in such index, when applied to the maximum
14 origination fee, produce dollar increases that exceed
15 \$500.”.

16 (e) STUDY REGARDING MORTGAGE INSURANCE PRE-
17 MIUMS.—The Secretary of Housing and Urban Develop-
18 ment shall conduct a study regarding mortgage insurance
19 premiums charged under the program under section 255
20 of the National Housing Act (12 U.S.C. 1715z–20) for
21 insurance of home equity conversion mortgages to analyze
22 and determine the effects of reducing the amounts of such
23 premiums from the amounts charged as of the date of the
24 enactment of this Act on: (1) costs to mortgagors; and
25 (2) the financial soundness of the program. Not later than

1 the expiration of the 12-month period beginning on the
2 date of the enactment of this Act, the Secretary shall sub-
3 mit a report to the Congress setting forth the results and
4 conclusions of the study.

5 (f) PURCHASE AUTHORITY OF FANNIE MAE AND
6 FREDDIE MAC.—

7 (1) FANNIE MAE.—Section 302(b) of the Fed-
8 eral National Mortgage Association Charter Act (12
9 U.S.C. 1717(b)) is amended by adding at the end
10 the following:

11 “(7) The corporation is authorized to purchase, serv-
12 ice, sell, lend on the security of, and otherwise deal in any
13 mortgage insured under section 255 of the National Hous-
14 ing Act (12 U.S.C. 1715z–20), notwithstanding the limita-
15 tions under paragraph (2) on the maximum original prin-
16 cipal obligations of mortgages.”.

17 (2) FREDDIE MAC.—Section 305(a) of the Fed-
18 eral Home Loan Mortgage Corporation Act (12
19 U.S.C. 1454(a)) is amended by adding at the end
20 the following:

21 “(6) The Corporation is authorized to purchase, serv-
22 ice, sell, lend on the security of, and otherwise deal in any
23 mortgage insured under section 255 of the National Hous-
24 ing Act (12 U.S.C. 1715z–20), notwithstanding the limita-

1 tions under paragraph (2) on the maximum original prin-
2 cipal obligations of mortgages.”.

3 **SEC. 220. STUDY ON PARTICIPATION OF MORTGAGE BRO-**
4 **KERS AND CORRESPONDENT LENDERS.**

5 (a) STUDY.—The Comptroller General of the United
6 States shall conduct a study, which shall be completed not
7 later than the expiration of the 12-month period beginning
8 on the date of the enactment of this Act, which shall ana-
9 lyze and determine—

10 (1) the extent to which the financial audit and
11 net worth requirements impede participation by
12 mortgage brokers and correspondent lenders in the
13 mortgage insurance programs under the National
14 Housing Act, as measured by the number and value
15 of such insured mortgages, disaggregated by the
16 States in which the properties subject to such mort-
17 gages are located;

18 (2) the extent and effectiveness of the financial
19 audit and net worth requirements in protecting the
20 Mutual Mortgage Insurance Fund;

21 (3) the extent and effectiveness of the super-
22 vision and quality control enforcement, by the Sec-
23 retary, of mortgagees in the FHA program, separate
24 from the financial audit and net worth requirements

1 for participation, in protecting the Mutual Mortgage
2 Insurance Fund;

3 (4) the extent to which allowing a mortgage
4 broker to secure a surety bond in lieu of the finan-
5 cial audit and net worth requirements would in-
6 crease participation by mortgage brokers and cor-
7 respondent lenders in the mortgage insurance pro-
8 grams under the National Housing Act;

9 (5) the extent to which allowing a mortgage
10 broker to secure a surety bond in lieu of the finan-
11 cial audit and net worth requirements would protect
12 the Mutual Mortgage Insurance Fund; and

13 (6) the potential impact of such changes on the
14 costs incurred by the Secretary of Housing and
15 Urban Development in administering the mortgage
16 insurance programs under such Act.

17 (b) GAO REPORT.—Not later than the expiration of
18 the 12-month period beginning on the date of the enact-
19 ment of this Act, the Comptroller General shall submit
20 a report to the Congress and the Secretary of Housing
21 and Urban Development setting forth the results and con-
22 clusions of the study conducted pursuant to subsection (a).

23 (c) HUD REPORT.—Not later than the expiration of
24 the 18-month period beginning upon the date of the enact-
25 ment of this Act, the Secretary of Housing and Urban

1 Development may submit a report to the Congress making
2 recommendations regarding any changes in requirements
3 for participation of mortgage brokers and correspondent
4 lenders in the mortgage insurance programs under the
5 National Housing Act arising from a review of the study
6 conducted pursuant to subsection (a).

7 **SEC. 221. CONFORMING LOAN LIMIT IN DISASTER AREAS.**

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

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

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

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

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

9 **SEC. 222. FAILURE TO PAY AMOUNTS FROM ESCROW AC-**
10 **COUNTS FOR SINGLE FAMILY MORTGAGES.**

11 (a) PENALTIES.—Section 536 of the National Hous-
12 ing Act (12 U.S.C. 1735f–14) is amended—

13 (1) in subsection (a)(1), by inserting “servicers
14 (including escrow account servicers),” after “ap-
15 praisers,”;

16 (2) in subsection (b)(1)—

17 (A) in the matter preceding subparagraph
18 (A), by inserting “or other participant referred
19 to in subsection (a),” after “lender,”; and

20 (B) by inserting at the end the following
21 new subparagraphs:

22 “(K) In the case of a mortgage for a 1- to
23 4-family residence insured under title II that
24 requires the mortgagor to make payments to
25 the mortgagee or other servicer of the mortgage

1 for deposit into an escrow account for the pur-
2 pose of assuring payment of taxes, insurance
3 premiums, and other charges with respect to
4 the property, failure on the part of the servicer
5 to make any such payment from the escrow ac-
6 count by the deadline to avoid a penalty with
7 respect to such payment provided for in the
8 mortgage, unless the servicer was not provided
9 notice of such deadline.

10 “(L) In the case of any failure to make
11 any payment as described in subparagraph (K),
12 submitting any information to a consumer re-
13 porting agency (as such term is defined in sec-
14 tion 603(f) of the Fair Credit Reporting Act
15 (15 U.S.C. 1681a(f))) regarding such failure
16 that is adverse to the credit rating or interest
17 of the mortgagor.”; and

18 (3) in subsection (c)(3), by adding at the end
19 the following: “In the case of any failure to make a
20 payment described in subsection (b)(1)(K) for which
21 the servicer fails to reimburse the mortgagor (A) be-
22 fore the expiration of the 60-day period beginning on
23 the deadline to avoid a penalty with respect to such
24 payment, in the sum of the amount not paid from
25 the escrow account by such deadline and the amount

1 of any penalties accruing to the mortgagor that are
2 attributable to such failure, or (B) in the amount of
3 any attorneys fees incurred by the mortgagor and
4 attributable to such failure, the Secretary shall in-
5 crease the amount of the penalty under subsection
6 (a) for any such failure to reimburse, unless the Sec-
7 retary determines there are mitigating cir-
8 cumstances.”.

9 (b) PROHIBITION ON SUBMISSION OF INFORMATION
10 BY HUD.—Title II of the National Housing Act (12
11 U.S.C. 1707 et seq.) is amended by adding at the end
12 the following new section:

13 **“SEC. 257. PROHIBITION REGARDING FAILURE ON PART OF**
14 **SERVICER TO MAKE ESCROW PAYMENTS.**

15 “In the case of any failure to make any payment as
16 described in section 536(b)(1)(K), the Secretary may not
17 submit any information to a consumer reporting agency
18 (as such term is defined in section 603(f) of the Fair Cred-
19 it Reporting Act (15 U.S.C. 1681a(f))) regarding such
20 failure that is adverse to the credit rating or interest of
21 the mortgagor.”.

1 **SEC. 223. ACCEPTABLE IDENTIFICATION FOR FHA MORTGA-**
2 **GORS.**

3 (a) IN GENERAL.—Title II of the National Housing
4 Act is amended by inserting after section 209 (12 U.S.C.
5 1715) the following new section:

6 **“SEC. 210. FORMS OF ACCEPTABLE IDENTIFICATION.**

7 “The Secretary may not insure a mortgage under any
8 provision of this title unless the mortgagor under the
9 mortgage provides personal identification in one of the fol-
10 lowing forms:

11 “(1) A valid social security number verified in
12 accordance with paragraph 3-1 C of chapter 3 of
13 HUD Handbook 4155.1 REV-5.

14 “(2) A driver’s license or identification card
15 issued by a State in the case of a State that is in
16 compliance with title II of the REAL ID Act of
17 2005 (title II of division B of Public Law 109–13;
18 49 U.S.C. 30301 note).

19 “(3) A passport issued by the United States or
20 a foreign government.

21 “(4) A photo identification card issued by the
22 Secretary of Homeland Security (acting through the
23 Director of the United States Citizenship and Immi-
24 gration Services).”.

25 (b) EFFECTIVE DATE.—The requirements of section
26 210 of the National Housing Act (as added by subsection

1 (a) of this section) shall take effect 6 months after the
2 date of the enactment of this Act.

3 **SEC. 224. PILOT PROGRAM FOR AUTOMATED PROCESS FOR**
4 **BORROWERS WITHOUT SUFFICIENT CREDIT**
5 **HISTORY.**

6 (a) ESTABLISHMENT.—Title II of the National Hous-
7 ing Act (12 U.S.C. 1707 et seq.), as amended by the pre-
8 ceding provisions of this subtitle, is further amended by
9 adding at the end the following new section:

10 **“SEC. 258. PILOT PROGRAM FOR AUTOMATED PROCESS**
11 **FOR BORROWERS WITHOUT SUFFICIENT**
12 **CREDIT HISTORY.**

13 “(a) ESTABLISHMENT.—The Secretary shall carry
14 out a pilot program to establish, and make available to
15 mortgagees, an automated process for providing alter-
16 native credit rating information for mortgagors and pro-
17 spective mortgagors under mortgages on 1- to 4-family
18 residences to be insured under this title who have insuffi-
19 cient credit histories for determining their creditworthi-
20 ness. Such alternative credit rating information may in-
21 clude rent, utilities, and insurance payment histories, and
22 such other information as the Secretary considers appro-
23 priate.

1 “(b) SCOPE.—The Secretary may carry out the pilot
2 program under this section on a limited basis or scope,
3 and may consider limiting the program—

4 “(1) to first-time homebuyers; or

5 “(2) metropolitan statistical areas significantly
6 impacted by subprime lending.

7 “(c) LIMITATION.—In any fiscal year, the aggregate
8 number of mortgages insured pursuant to the automated
9 process established under this section may not exceed 5
10 percent of the aggregate number of mortgages for 1- to
11 4-family residences insured by the Secretary under this
12 title during the preceding fiscal year.

13 “(d) SUNSET.—After the expiration of the 5-year pe-
14 riod beginning on the date of the enactment of the Ex-
15 panding American Homeownership Act of 2008, the Sec-
16 retary may not enter into any new commitment to insure
17 any mortgage, or newly insure any mortgage, pursuant to
18 the automated process established under this section.”.

19 (b) GAO REPORT.—Not later than the expiration of
20 the 4-year period beginning on the date that the Secretary
21 of Housing and Urban Development first insures any
22 mortgage pursuant to the automated process established
23 under pilot program under section 258 of the National
24 Housing Act (as added by the amendment made by sub-
25 section (a) of this section), the Comptroller General of the

1 United States shall submit to the Congress a report identi-
2 fying the number of additional mortgagors served using
3 such automated process and the impact of such process
4 and the insurance of mortgages pursuant to such process
5 on the safety and soundness of the insurance funds under
6 the National Housing Act of which such mortgages are
7 obligations.

8 **SEC. 225. SENSE OF CONGRESS REGARDING TECHNOLOGY**
9 **FOR FINANCIAL SYSTEMS.**

10 (a) CONGRESSIONAL FINDINGS.—The Congress finds
11 the following:

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

17 (2) The “Audit of the Federal Housing Admin-
18 istration’s Financial Statements for Fiscal Years
19 2004 and 2003”, conducted by the Inspector Gen-
20 eral of the Department of Housing and Urban De-
21 velopment reported as a material weakness that
22 “HUD/FHA’s automated data processing [ADP]
23 system environment must be enhanced to more effec-
24 tively support FHA’s business and budget proc-
25 esses”.

1 (3) Existing technology systems for the FHA
2 program have not been updated to meet the latest
3 standards of the Mortgage Industry Standards
4 Maintenance Organization and have numerous defi-
5 ciencies that lenders have outlined.

6 (4) Improvements to technology used in the
7 FHA program will—

8 (A) allow the FHA program to improve the
9 management of the FHA portfolio, garner
10 greater efficiencies in its operations, and lower
11 costs across the program;

12 (B) result in efficiencies and lower costs
13 for lenders participating in the program, allow-
14 ing them to better use the FHA products in ex-
15 tending homeownership opportunities to higher
16 credit risk or lower-income families, in a sound
17 manner.

18 (5) The Mutual Mortgage Insurance Fund op-
19 erates without cost to the taxpayers and generates
20 revenues for the Federal Government.

21 (b) SENSE OF CONGRESS.—It is the sense of the
22 Congress that—

23 (1) the Secretary of Housing and Urban Devel-
24 opment should use a portion of the funds received
25 from premiums paid for FHA single family housing

1 mortgage insurance that are in excess of the
2 amounts paid out in claims to substantially increase
3 the funding for technology used in such FHA pro-
4 gram;

5 (2) the goal of this investment should be to
6 bring the technology used in such FHA program to
7 the level and sophistication of the technology used in
8 the conventional mortgage lending market, or to ex-
9 ceed such level; and

10 (3) the Secretary of Housing and Urban Devel-
11 opment should report to the Congress not later than
12 180 days after the date of the enactment of this Act
13 regarding the progress the Department is making
14 toward such goal and if progress is not sufficient,
15 the resources needed to make greater progress.

16 **SEC. 226. CLARIFICATION OF DISPOSITION OF CERTAIN**
17 **PROPERTIES.**

18 Notwithstanding any other provision of law, subtitle
19 A of title II of the Deficit Reduction Act of 2005 (12
20 U.S.C. 1701z-11 note) and the amendments made by such
21 title shall not apply to any transaction regarding a multi-
22 family real property for which—

23 (1) the Secretary of Housing and Urban Devel-
24 opment has received, before the date of the enact-
25 ment of such Act, written expressions of interest in

1 purchasing the property from both a city govern-
2 ment and the housing commission of such city;

3 (2) after such receipt, the Secretary acquires
4 title to the property at a foreclosure sale; and

5 (3) such city government and housing commis-
6 sion have resolved a previous disagreement with re-
7 spect to the disposition of the property.

8 **SEC. 227. VALUATION OF MULTIFAMILY PROPERTIES IN**
9 **NONCOMPETITIVE SALES BY HUD TO STATES**
10 **AND LOCALITIES.**

11 Subtitle A of title II of the Deficit Reduction Act of
12 2005 (Public Law 109–171; 120 Stat. 7) is amended by
13 adding at the end the following new section:

14 **“SEC. 2004. VALUATION OF MULTIFAMILY PROPERTIES IN**
15 **NONCOMPETITIVE SALES BY HUD TO STATES**
16 **AND LOCALITIES.**

17 “Notwithstanding any other provision of law, in de-
18 termining the market value of any multifamily real prop-
19 erty or multifamily loan for any noncompetitive sale to a
20 State or local government entity occurring during fiscal
21 year 2008, the Secretary shall consider, but not be limited
22 to, industry standard appraisal practices, including the
23 cost of repairs needed to bring the property at least to
24 minimum State and local code standards and of maintain-
25 ing the existing affordability restrictions imposed by the

1 Secretary on the multifamily real property or multifamily
2 loan.'.'.

3 **SEC. 228. LIMITATION ON MORTGAGE INSURANCE PRE-**
4 **MIUM INCREASES.**

5 Notwithstanding any other provision of law, including
6 any provision of this subtitle and any amendment made
7 by this subtitle—

8 (1) the premiums charged for mortgage insur-
9 ance under any program under the National Hous-
10 ing Act may not be increased above the premium
11 amounts in effect under such program on October 1,
12 2006, unless the Secretary of Housing and Urban
13 Development determines that, absent such increase,
14 insurance of additional mortgages under such pro-
15 gram would, under the Federal Credit Reform Act
16 of 1990, require the appropriation of new budget au-
17 thority to cover the costs (as such term is defined
18 in section 502 of the Federal Credit Reform Act of
19 1990 (2 U.S.C. 661a) of such insurance; and

20 (2) a premium increase pursuant to paragraph
21 (1) may be made only by rule making in accordance
22 with the procedures under section 553 of title 5,
23 United States Code (notwithstanding subsections
24 (a)(2), (b)(B), and (d)(3) of such section).

1 **SEC. 229. CIVIL MONEY PENALTIES FOR IMPROPERLY IN-**
2 **FLUENCING APPRAISALS.**

3 Paragraph (2) of section 536(b) of the National
4 Housing Act (12 U.S.C. 1735f–14(b)(2)) is amended—

5 (1) in subparagraph (B), by striking “or” at
6 the end;

7 (2) in subparagraph (C), by striking the period
8 at the end and inserting “; or”; and

9 (3) by adding at the end the following new sub-
10 paragraph:

11 “(D) in the case of an insured mortgage
12 under title II for a 1- to 4-family residence,
13 compensating, instructing, inducing, coercing,
14 or intimidating any person who conducts an ap-
15 praisal of the property in connection with such
16 mortgage, or attempting to compensate, in-
17 struct, induce, coerce, or intimidate such a per-
18 son, for the purpose of causing the appraised
19 value assigned to the property under the ap-
20 praisal to be based on any other factor other
21 than the independent judgment of such person
22 exercised in accordance with applicable profes-
23 sional standards.”.

24 **SEC. 230. MORTGAGE INSURANCE PREMIUM REFUNDS.**

25 (a) **AUTHORITY.**—The Secretary of Housing and
26 Urban Development shall, to the extent that amounts are

1 made available pursuant to subsection (c), provide refunds
2 of unearned premium charges paid, at the time of insur-
3 ance, for mortgage insurance under title II of the National
4 Housing Act (12 U.S.C. 1707 et seq.) to or on behalf of
5 mortgagors under mortgages described in subsection (b).

6 (b) ELIGIBLE MORTGAGES.—A mortgage described
7 in this section is a mortgage on a one- to four-family
8 dwelling that—

9 (1) was insured under title II of the National
10 Housing Act (12 U.S.C. 1707 et seq.);

11 (2) is otherwise eligible, under the last sentence
12 of subparagraph (A) of section 203(c)(2) of such Act
13 (12 U.S.C. 1709(c)(2)(A)), for a refund of all un-
14 earned premium charges paid on the mortgage pur-
15 suant to such subparagraph, except that the mort-
16 gage—

17 (A) was closed before December 8, 2004;

18 and

19 (B) was endorsed on or after such date.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated for each fiscal year such
22 sums as may be necessary to provide refunds of unearned
23 mortgage insurance premiums pursuant to this section.

1 **SEC. 231. SAVINGS PROVISION.**

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

7 **SEC. 232. IMPLEMENTATION.**

8 Except as provided in section 223(b), the Secretary
9 of Housing and Urban Development shall by notice estab-
10 lish any additional requirements that may be necessary to
11 immediately carry out the provisions of this subtitle. The
12 notice shall take effect upon issuance.

13 **Subtitle B—FHA Manufactured**
14 **Housing Loan Insurance Mod-**
15 **ernization**

16 **SECTION 251. SHORT TITLE.**

17 This subtitle may be cited as the “FHA Manufac-
18 tured Housing Loan Modernization Act of 2008”.

19 **SEC. 252. FINDINGS AND PURPOSES.**

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

21 (1) manufactured housing plays a vital role in
22 providing housing for low- and moderate-income
23 families in the United States;

24 (2) the FHA title I insurance program for man-
25 ufactured home loans traditionally has been a major

1 provider of mortgage insurance for home-only trans-
2 actions;

3 (3) the manufactured housing market is in the
4 midst of a prolonged downturn which has resulted in
5 a severe contraction of traditional sources of private
6 lending for manufactured home purchases;

7 (4) during past downturns the FHA title I in-
8 surance program for manufactured homes has filled
9 the lending void by providing stability until the pri-
10 vate markets could recover;

11 (5) in 1992, during the manufactured housing
12 industry's last major recession, over 30,000 manu-
13 factured home loans were insured under title I;

14 (6) in 2006, fewer than 1,500 manufactured
15 housing loans were insured under title I;

16 (7) the loan limits for title I manufactured
17 housing loans have not been adjusted for inflation
18 since 1992; and

19 (8) these problems with the title I program
20 have resulted in an atrophied market for manufac-
21 tured housing loans, leaving American families who
22 have the most difficulty achieving homeownership
23 without adequate financing options for home-only
24 manufactured home purchases.

25 (b) PURPOSES.—The purposes of this subtitle are—

1 (1) to provide adequate funding for FHA-in-
2 sured manufactured housing loans for low- and mod-
3 erate-income homebuyers during all economic cycles
4 in the manufactured housing industry;

5 (2) to modernize the FHA title I insurance pro-
6 gram for manufactured housing loans to enhance
7 participation by Ginnie Mae and the private lending
8 markets; and

9 (3) to adjust the low loan limits for title I man-
10 ufactured home loan insurance to reflect the increase
11 in costs since such limits were last increased in 1992
12 and to index the limits to inflation.

13 **SEC. 253. EXCEPTION TO LIMITATION ON FINANCIAL INSTI-**
14 **TUTION PORTFOLIO.**

15 The second sentence of section 2(a) of the National
16 Housing Act (12 U.S.C. 1703(a)) is amended—

17 (1) by striking “In no case” and inserting
18 “Other than in connection with a manufactured
19 home or a lot on which to place such a home (or
20 both), in no case”; and

21 (2) by striking “: *Provided*, That with” and in-
22 serting “. With”.

1 **SEC. 254. INSURANCE BENEFITS.**

2 (a) IN GENERAL.—Subsection (b) of section 2 of the
3 National Housing Act (12 U.S.C. 1703(b)), is amended
4 by adding at the end the following new paragraph:

5 “(8) INSURANCE BENEFITS FOR MANUFAC-
6 TURED HOUSING LOANS.—Any contract of insurance
7 with respect to loans, advances of credit, or pur-
8 chases in connection with a manufactured home or
9 a lot on which to place a manufactured home (or
10 both) for a financial institution that is executed
11 under this title after the date of the enactment of
12 the by the Secretary shall be conclusive evidence of
13 the eligibility of such financial institution for insur-
14 ance, and the validity of any contract of insurance
15 so executed shall be incontestable in the hands of
16 the bearer from the date of the execution of such
17 contract, except for fraud or misrepresentation on
18 the part of such institution.”.

19 (b) APPLICABILITY.—The amendment made by sub-
20 section (a) shall only apply to loans that are registered
21 or endorsed for insurance after the date of the enactment
22 of this Act.

23 **SEC. 255. MAXIMUM LOAN LIMITS.**

24 (a) DOLLAR AMOUNTS.—Paragraph (1) of section
25 2(b) of the National Housing Act (12 U.S.C. 1703(b)(1))
26 is amended—

1 (1) in clause (ii) of subparagraph (A), by strik-
2 ing “\$17,500” and inserting “\$25,090”;

3 (2) in subparagraph (C) by striking “\$48,600”
4 and inserting “\$69,678”;

5 (3) in subparagraph (D) by striking “\$64,800”
6 and inserting “\$92,904”;

7 (4) in subparagraph (E) by striking “\$16,200”
8 and inserting “\$23,226”; and

9 (5) by realigning subparagraphs (C), (D), and
10 (E) 2 ems to the left so that the left margins of
11 such subparagraphs are aligned with the margins of
12 subparagraphs (A) and (B).

13 (b) ANNUAL INDEXING.—Subsection (b) of section 2
14 of the National Housing Act (12 U.S.C. 1703(b)), as
15 amended by the preceding provisions of this subtitle, is
16 further amended by adding at the end the following new
17 paragraph:

18 “(9) ANNUAL INDEXING OF MANUFACTURED
19 HOUSING LOANS.—The Secretary shall develop a
20 method of indexing in order to annually adjust the
21 loan limits established in subparagraphs (A)(ii), (C),
22 (D), and (E) of this subsection. Such index shall be
23 based on the manufactured housing price data col-
24 lected by the United States Census Bureau. The
25 Secretary shall establish such index no later than

1 one year after the date of the enactment of the FHA
2 Manufactured Housing Loan Modernization Act of
3 2008.”.

4 (c) TECHNICAL AND CONFORMING CHANGES.—Para-
5 graph (1) of section 2(b) of the National Housing Act (12
6 U.S.C. 1703(b)(1)) is amended—

7 (1) by striking “No” and inserting “Except as
8 provided in the last sentence of this paragraph, no”;
9 and

10 (2) by adding after and below subparagraph
11 (G) the following:

12 “The Secretary shall, by regulation, annually increase the
13 dollar amount limitations in subparagraphs (A)(ii), (C),
14 (D), and (E) (as such limitations may have been pre-
15 viously adjusted under this sentence) in accordance with
16 the index established pursuant to paragraph (9).”.

17 **SEC. 256. INSURANCE PREMIUMS.**

18 Subsection (f) of section 2 of the National Housing
19 Act (12 U.S.C. 1703(f)) is amended—

20 (1) by inserting “(1) PREMIUM CHARGES.—”
21 after “(f)”; and

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

24 “(2) MANUFACTURED HOME LOANS.—Notwith-
25 standing paragraph (1), in the case of a loan, advance of

1 credit, or purchase in connection with a manufactured
2 home or a lot on which to place such a home (or both),
3 the premium charge for the insurance granted under this
4 section shall be paid by the borrower under the loan or
5 advance of credit, as follows:

6 “(A) At the time of the making of the loan, advance
7 of credit, or purchase, a single premium payment in an
8 amount not to exceed 2.25 percent of the amount of the
9 original insured principal obligation.

10 “(B) In addition to the premium under subparagraph
11 (A), annual premium payments during the term of the
12 loan, advance, or obligation purchased in an amount not
13 exceeding 1.0 percent of the remaining insured principal
14 balance (excluding the portion of the remaining balance
15 attributable to the premium collected under subparagraph
16 (A) and without taking into account delinquent payments
17 or prepayments).

18 “(C) Premium charges under this paragraph shall be
19 established in amounts that are sufficient, but do not ex-
20 ceed the minimum amounts necessary, to maintain a nega-
21 tive credit subsidy for the program under this section for
22 insurance of loans, advances of credit, or purchases in con-
23 nection with a manufactured home or a lot on which to
24 place such a home (or both), as determined based upon

1 risk to the Federal Government under existing under-
2 writing requirements.

3 “(D) The Secretary may increase the limitations on
4 premium payments to percentages above those set forth
5 in subparagraphs (A) and (B), but only if necessary, and
6 not in excess of the minimum increase necessary, to main-
7 tain a negative credit subsidy as described in subpara-
8 graph (C).”.

9 **SEC. 257. TECHNICAL CORRECTIONS.**

10 (a) DATES.—Subsection (a) of section 2 of the Na-
11 tional Housing Act (12 U.S.C. 1703(a)) is amended—

12 (1) by striking “on and after July 1, 1939,”
13 each place such term appears; and

14 (2) by striking “made after the effective date of
15 the Housing Act of 1954”.

16 (b) AUTHORITY OF SECRETARY.—Subsection (c) of
17 section 2 of the National Housing Act (12 U.S.C. 1703(c))
18 is amended to read as follows:

19 “(c) HANDLING AND DISPOSAL OF PROPERTY.—

20 “(1) AUTHORITY OF SECRETARY.—Notwith-
21 standing any other provision of law, the Secretary
22 may—

23 “(A) deal with, complete, rent, renovate,
24 modernize, insure, or assign or sell at public or
25 private sale, or otherwise dispose of, for cash or

1 credit in the Secretary's discretion, and upon
2 such terms and conditions and for such consid-
3 eration as the Secretary shall determine to be
4 reasonable, any real or personal property con-
5 veyed to or otherwise acquired by the Secretary,
6 in connection with the payment of insurance
7 heretofore or hereafter granted under this title,
8 including any evidence of debt, contract, claim,
9 personal property, or security assigned to or
10 held by him in connection with the payment of
11 insurance heretofore or hereafter granted under
12 this section; and

13 “(B) pursue to final collection, by way of
14 compromise or otherwise, all claims assigned to
15 or held by the Secretary and all legal or equi-
16 table rights accruing to the Secretary in con-
17 nection with the payment of such insurance, in-
18 cluding unpaid insurance premiums owed in
19 connection with insurance made available by
20 this title.

21 “(2) ADVERTISEMENTS FOR PROPOSALS.—Sec-
22 tion 3709 of the Revised Statutes shall not be con-
23 strued to apply to any contract of hazard insurance
24 or to any purchase or contract for services or sup-

1 plies on account of such property if the amount
2 thereof does not exceed \$25,000.

3 “(3) DELEGATION OF AUTHORITY.—The power
4 to convey and to execute in the name of the Sec-
5 retary, deeds of conveyance, deeds of release, assign-
6 ments and satisfactions of mortgages, and any other
7 written instrument relating to real or personal prop-
8 erty or any interest therein heretofore or hereafter
9 acquired by the Secretary pursuant to the provisions
10 of this title may be exercised by an officer appointed
11 by the Secretary without the execution of any ex-
12 press delegation of power or power of attorney.
13 Nothing in this subsection shall be construed to pre-
14 vent the Secretary from delegating such power by
15 order or by power of attorney, in the Secretary’s dis-
16 cretion, to any officer or agent the Secretary may
17 appoint.”.

18 **SEC. 258. REVISION OF UNDERWRITING CRITERIA.**

19 (a) IN GENERAL.—Subsection (b) of section 2 of the
20 National Housing Act (12 U.S.C. 1703(b)), as amended
21 by the preceding provisions of this subtitle, is further
22 amended by adding at the end the following new para-
23 graph:

24 “(10) FINANCIAL SOUNDNESS OF MANUFAC-
25 TURED HOUSING PROGRAM.—The Secretary shall es-

1 resenting any loan, advance of credit, or purchase by a
2 financial institution unless the borrower to which the loan
3 or advance of credit was made has a valid social security
4 number.”.

5 **SEC. 260. GAO STUDY OF MITIGATION OF TORNADO RISKS**
6 **TO MANUFACTURED HOMES.**

7 The Comptroller General of the United States shall
8 assess how the Secretary of Housing and Urban Develop-
9 ment utilizes the FHA manufactured housing loan insur-
10 ance program under title I of the National Housing Act,
11 the community development block grant program under
12 title I of the Housing and Community Development Act
13 of 1974, and other programs and resources available to
14 the Secretary to mitigate the risks to manufactured hous-
15 ing residents and communities resulting from tornados.
16 The Comptroller General shall submit to the Congress a
17 report on the conclusions and recommendations of the as-
18 sessment conducted pursuant to this section not later than
19 the expiration of the 12-month period beginning on the
20 date of the enactment of this Act.

1 **TITLE III—REFORM OF GOVERN-**
2 **MENT-SPONSORED ENTITIES**
3 **FOR HOUSING FINANCE**

4 **SEC. 301. SHORT TITLE.**

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

7 **SEC. 302. DEFINITIONS.**

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

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

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

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

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

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

24 (6) by redesignating paragraphs (16) through
25 (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. 311. 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. 312. 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. 313. 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 the preceding provisions of this title, the fol-
6 lowing new section:

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 the actions taken
23 pursuant to section 1319A(b) to provide for diversity
24 in the workforce; and

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

3 **SEC. 314. AUTHORITY TO REQUIRE REPORTS BY REGU-**
4 **LATED ENTITIES.**

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

7 (1) in the section heading, by striking “**ENTER-**
8 **PRISES**” and inserting “**REGULATED ENTITIES**”;
9 (2) in subsection (a)—

10 (A) in the subsection heading, by striking
11 “SPECIAL REPORTS AND REPORTS OF FINAN-
12 CIAL CONDITION” and inserting “REGULAR
13 AND SPECIAL REPORTS”;

14 (B) in paragraph (1)—

15 (i) in the paragraph heading, by strik-
16 ing “FINANCIAL CONDITION” and inserting
17 “REGULAR REPORTS”; and

18 (ii) by striking “reports of financial
19 condition and operations” and inserting
20 “regular reports on the condition (includ-
21 ing financial condition), management, ac-
22 tivities, or operations of the regulated enti-
23 ty, as the Director considers appropriate”;
24 and

1 (C) in paragraph (2), after “submit special
2 reports” insert “on any of the topics specified
3 in paragraph (1) or such other topics”; and
4 (3) by adding at the end the following new sub-
5 section:

6 “(c) REPORTS OF FRAUDULENT FINANCIAL TRANS-
7 ACTIONS.—

8 “(1) REQUIREMENT TO REPORT.—The Director
9 shall require a regulated entity to submit to the Di-
10 rector a timely report upon discovery by the regu-
11 lated entity that it has purchased or sold a fraudu-
12 lent loan or financial instrument or suspects a pos-
13 sible fraud relating to a purchase or sale of any loan
14 or financial instrument. The Director shall require
15 the regulated entities to establish and maintain pro-
16 cedures designed to discover any such transactions.

17 “(2) PROTECTION FROM LIABILITY FOR RE-
18 PORTS.—

19 “(A) IN GENERAL.—If a regulated entity
20 makes a report pursuant to paragraph (1), or
21 a regulated entity-affiliated party makes, or re-
22 quires another to make, such a report, and such
23 report is made in a good faith effort to comply
24 with the requirements of paragraph (1), such
25 regulated entity or regulated entity-affiliated

1 party shall not be liable to any person under
2 any law or regulation of the United States, any
3 constitution, law, or regulation of any State or
4 political subdivision of any State, or under any
5 contract or other legally enforceable agreement
6 (including any arbitration agreement), for such
7 report or for any failure to provide notice of
8 such report to the person who is the subject of
9 such report or any other person identified in
10 the report.

11 “(B) RULE OF CONSTRUCTION.—Subpara-
12 graph (A) shall not be construed as creating—

13 “(i) any inference that the term ‘per-
14 son’, as used in such subparagraph, may
15 be construed more broadly than its ordi-
16 nary usage so as to include any govern-
17 ment or agency of government; or

18 “(ii) any immunity against, or other-
19 wise affecting, any civil or criminal action
20 brought by any government or agency of
21 government to enforce any constitution,
22 law, or regulation of such government or
23 agency.”.

1 **SEC. 315. DISCLOSURE OF INCOME AND CHARITABLE CON-**
2 **TRIBUTIONS BY ENTERPRISES.**

3 Section 1314 of the Housing and Community Devel-
4 opment Act of 1992 (12 U.S.C. 4514), as amended by
5 the preceding provisions of this title, is further amended
6 by adding at the end the following new subsections:

7 “(d) DISCLOSURE OF CHARITABLE CONTRIBUTIONS
8 BY ENTERPRISES.—

9 “(1) REQUIRED DISCLOSURE.—The Director
10 shall, by regulation, require each enterprise to sub-
11 mit a report annually, in a format designated by the
12 Director, containing the following information:

13 “(A) TOTAL VALUE.—The total value of
14 contributions made by the enterprise to non-
15 profit organizations during its previous fiscal
16 year.

17 “(B) SUBSTANTIAL CONTRIBUTIONS.—If
18 the value of contributions made by the enter-
19 prise to any nonprofit organization during its
20 previous fiscal year exceeds the designated
21 amount, the name of that organization and the
22 value of contributions.

23 “(C) SUBSTANTIAL CONTRIBUTIONS TO IN-
24 SIDER-AFFILIATED CHARITIES.—Identification
25 of each contribution whose value exceeds the
26 designated amount that were made by the en-

1 terprise during the enterprise’s previous fiscal
2 year to any nonprofit organization of which a
3 director, officer, or controlling person of the en-
4 terprise, or a spouse thereof, was a director or
5 trustee, the name of such nonprofit organiza-
6 tion, and the value of the contribution.

7 “(2) DEFINITIONS.—For purposes of this sub-
8 section—

9 “(A) the term ‘designated amount’ means
10 such amount as may be designated by the Di-
11 rector by regulation, consistent with the public
12 interest and the protection of investors for pur-
13 poses of this subsection; and

14 “(B) the Director may, by such regulations
15 as the Director deems necessary or appropriate
16 in the public interest, define the terms officer
17 and controlling person.

18 “(3) PUBLIC AVAILABILITY.—The Director
19 shall make the information submitted pursuant to
20 this subsection publicly available.

21 “(e) DISCLOSURE OF INCOME.—Each enterprise
22 shall include, in each annual report filed under section 13
23 of the Securities Exchange Act of 1934 (15 U.S.C. 78m),
24 the income reported by the issuer to the Internal Revenue

1 Service for the most recent taxable year. Such income
2 shall—

3 “(1) be presented in a prominent location in
4 each such report and in a manner that permits a
5 ready comparison of such income to income other-
6 wise required to be included in such reports under
7 regulations issued under such section; and

8 “(2) be submitted to the Securities and Ex-
9 change Commission in a form and manner suitable
10 for entry into the EDGAR system of such Commis-
11 sion for public availability under such system.”.

12 **SEC. 316. ASSESSMENTS.**

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

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

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

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

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

3 “(3) such amounts in excess of actual expenses
4 for any given year as deemed necessary by the Di-
5 rector to maintain a working capital fund in accord-
6 ance with subsection (e); and

7 “(4) the wind up of the affairs of the Office of
8 Federal Housing Enterprise Oversight and the Fed-
9 eral Housing Finance Board under subtitle C of the
10 Federal Housing Finance Reform Act of 2008.”;

11 (2) in subsection (b)—

12 (A) in the subsection heading, by striking
13 “ENTERPRISES” and inserting “REGULATED
14 ENTITIES” ;

15 (B) by realigning paragraph (2) two ems
16 from the left margin, so as to align the left
17 margin of such paragraph with the left margins
18 of paragraph (1);

19 (C) in paragraph (1)—

20 (i) by striking “Each enterprise” and
21 inserting “Each regulated entity”;

22 (ii) by striking “each enterprise” and
23 inserting “each regulated entity”; and

1 (iii) by striking “both enterprises”
2 and inserting “all of the regulated enti-
3 ties”; and

4 (D) in paragraph (3)—

5 (i) in subparagraph (B), by striking
6 “subparagraph (A)” and inserting “clause
7 (i)”;

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

13 (iii) by striking the matter that pre-
14 cedes clause (i), as so redesignated, and in-
15 serting the following:

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

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

21 (iv) by adding at the end the following
22 new subparagraph:

23 “(B) FEDERAL HOME LOAN BANKS.—With
24 respect to a Federal home loan bank, the total
25 assets of the Bank, as determined by the Direc-

1 tor in accordance with generally accepted ac-
2 counting principles.”;

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

5 “(c) INCREASED COSTS OF REGULATION.—

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

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

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

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

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

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

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

1 “(f) TREATMENT OF ASSESSMENTS.—

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

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

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

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

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

1 law, any amounts remaining in the Federal Housing
2 Enterprises Oversight Fund established under this
3 section (as in effect before the effective date under
4 section 365 of the Federal Housing Finance Reform
5 Act of 2008), and any amounts remaining from as-
6 sessments on the Federal Home Loan banks pursu-
7 ant to section 18(b) of the Federal Home Loan
8 Bank Act (12 U.S.C. 1438(b)), shall, upon such ef-
9 fective date, be treated for purposes of this sub-
10 section as amounts received from assessments under
11 this section.

12 “(6) TREASURY INVESTMENTS.—

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

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

1 Agency and bearing interest at a rate deter-
2 mined by the Secretary of the Treasury taking
3 into consideration current market yields on out-
4 standing marketable obligations of the United
5 States of comparable maturity.

6 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

17 “(2) FINANCIAL STATEMENTS.—The Agency
18 shall prepare annually a statement of assets and li-
19 abilities and surplus or deficit; a statement of in-
20 come and expenses; and a statement of sources and
21 application of funds.

22 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
23 Agency shall implement and maintain financial man-
24 agement systems that comply substantially with
25 Federal financial management systems require-

1 ments, applicable Federal accounting standards, and
2 that uses a general ledger system that accounts for
3 activity at the transaction level.

4 “(4) ASSERTION OF INTERNAL CONTROLS.—
5 The Director shall provide to the Comptroller Gen-
6 eral an assertion as to the effectiveness of the inter-
7 nal controls that apply to financial reporting by the
8 Agency, using the standards established in section
9 3512(c) of title 31, United States Code.

10 “(5) RULE OF CONSTRUCTION.—This sub-
11 section may not be construed as implying any obliga-
12 tion on the part of the Director to consult with or
13 obtain the consent or approval of the Director of the
14 Office of Management and Budget with respect to
15 any reports, plans, forecasts, or other information
16 referred to in paragraph (1) or any jurisdiction or
17 oversight over the affairs or operations of the Agen-
18 cy.

19 “(h) AUDIT OF AGENCY.—

20 “(1) IN GENERAL.—The Comptroller General
21 shall annually audit the financial transactions of the
22 Agency in accordance with the U.S. generally accept-
23 ed government auditing standards as may be pre-
24 scribed by the Comptroller General of the United
25 States. The audit shall be conducted at the place or

1 places where accounts of the Agency are normally
2 kept. The representatives of the Government Ac-
3 countability Office shall have access to the personnel
4 and to all books, accounts, documents, papers,
5 records (including electronic records), reports, files,
6 and all other papers, automated data, things, or
7 property belonging to or under the control of or used
8 or employed by the Agency pertaining to its financial
9 transactions and necessary to facilitate the audit,
10 and such representatives shall be afforded full facili-
11 ties for verifying transactions with the balances or
12 securities held by depositories, fiscal agents, and
13 custodians. All such books, accounts, documents,
14 records, reports, files, papers, and property of the
15 Agency shall remain in possession and custody of
16 the Agency. The Comptroller General may obtain
17 and duplicate any such books, accounts, documents,
18 records, working papers, automated data and files,
19 or other information relevant to such audit without
20 cost to the Comptroller General and the Comptroller
21 General's right of access to such information shall
22 be enforceable pursuant to section 716(c) of title 31,
23 United States Code.

24 “(2) REPORT.—The Comptroller General shall
25 submit to the Congress a report of each annual

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

14 “(3) ASSISTANCE AND COSTS.—For the purpose
15 of conducting an audit under this subsection, the
16 Comptroller General may, in the discretion of the
17 Comptroller General, employ by contract, without re-
18 gard to section 5 of title 41, United States Code,
19 professional services of firms and organizations of
20 certified public accountants for temporary periods or
21 for special purposes. Upon the request of the Comp-
22 troller General, the Director of the Agency shall
23 transfer to the Government Accountability Office
24 from funds available, the amount requested by the
25 Comptroller General to cover the full costs of any

1 audit and report conducted by the Comptroller Gen-
2 eral. The Comptroller General shall credit funds
3 transferred to the account established for salaries
4 and expenses of the Government Accountability Of-
5 fice, and such amount shall be available upon receipt
6 and without fiscal year limitation to cover the full
7 costs of the audit and report.”.

8 **SEC. 317. EXAMINERS AND ACCOUNTANTS.**

9 (a) EXAMINATIONS.—Section 1317 of the Housing
10 and Community Development Act of 1992 (12 U.S.C.
11 4517) is amended—

12 (1) in subsection (a), by adding after the period
13 at the end the following: “Each examination under
14 this subsection of a regulated entity shall include a
15 review of the procedures required to be established
16 and maintained by the regulated entity pursuant to
17 section 1314(c) (relating to fraudulent financial
18 transactions) and the report regarding each such ex-
19 amination shall describe any problems with such
20 procedures maintained by the regulated entity.”;

21 (2) in subsection (b)—

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

24 (B) by striking “to determine the condition
25 of an enterprise for the purpose of ensuring its

1 financial safety and soundness” and inserting
2 “or appropriate”; and
3 (3) in subsection (c)—

4 (A) in the second sentence, by inserting
5 “to conduct examinations under this section”
6 before the period; and

7 (B) in the third sentence, by striking
8 “from amounts available in the Federal Hous-
9 ing Enterprises Oversight Fund”.

10 (b) ENHANCED AUTHORITY TO HIRE EXAMINERS
11 AND ACCOUNTANTS.—Section 1317 of the Housing and
12 Community Development Act of 1992 (12 U.S.C. 4517)
13 is amended by adding at the end the following new sub-
14 section:

15 “(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
16 SPECIALISTS, AND EXAMINERS.—

17 “(1) APPLICABILITY.—This section applies with
18 respect to any position of examiner, accountant, spe-
19 cialist in financial markets, specialist in information
20 technology, and economist at the Agency, with re-
21 spect to supervision and regulation of the regulated
22 entities, that is in the competitive service.

23 “(2) APPOINTMENT AUTHORITY.—The Director
24 may appoint candidates to any position described in
25 paragraph (1)—

1 “(A) in accordance with the statutes, rules,
2 and regulations governing appointments in the
3 excepted service; and

4 “(B) notwithstanding any statutes, rules,
5 and regulations governing appointments in the
6 competitive service.

7 “(3) RULE OF CONSTRUCTION.—The appoint-
8 ment of a candidate to a position under the author-
9 ity of this subsection shall not be considered to
10 cause such position to be converted from the com-
11 petitive service to the excepted service.”.

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

14 (1) by striking the section heading and insert-
15 ing the following: “EXAMINATIONS AND GAO AU-
16 DITS”;

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

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

1 **SEC. 318. PROHIBITION AND WITHHOLDING OF EXECUTIVE**
2 **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. 319. 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. 320. INCLUSION OF MINORITIES AND WOMEN; DIVER-**
11 **SITY IN AGENCY WORKFORCE.**

12 Section 1319A of the Housing and Community De-
13 velopment Act of 1992 (12 U.S.C. 4520) is amended—

14 (1) in the section heading, by striking “**EQUAL**
15 **OPPORTUNITY IN SOLICITATION OF CON-**
16 **TRACTS**” and inserting “**MINORITY AND WOMEN**
17 **INCLUSION; DIVERSITY REQUIREMENTS**”;

18 (2) in subsection (a), by striking “(a) IN GEN-
19 ERAL.—Each enterprise” and inserting “(e) OUT-
20 REACH.—Each regulated entity”; and

21 (3) by striking subsection (b);

22 (4) by inserting before subsection (e), as so re-
23 designated by paragraph (2) of this section, the fol-
24 lowing new subsections:

25 “(a) **OFFICE OF MINORITY AND WOMEN INCLU-**
26 **SION.**—Each regulated entity shall establish an Office of

1 Minority and Women Inclusion, or designate an office of
2 the entity, that shall be responsible for carrying out this
3 section and all matters of the entity relating to diversity
4 in management, employment, and business activities in ac-
5 cordance with such standards and requirements as the Di-
6 rector shall establish.

7 “(b) INCLUSION IN ALL LEVELS OF BUSINESS AC-
8 TIVITIES.—Each regulated entity shall develop and imple-
9 ment standards and procedures to ensure, to the max-
10 imum extent possible, the inclusion and utilization of mi-
11 norities (as such term is defined in section 1204(c) of the
12 Financial Institutions Reform, Recovery, and Enforce-
13 ment Act of 1989 (12 U.S.C. 1811 note)) and women,
14 and minority- and women-owned businesses (as such
15 terms are defined in section 21A(r)(4) of the Federal
16 Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including
17 financial institutions, investment banking firms, mortgage
18 banking firms, asset management firms, broker-dealers, fi-
19 nancial services firms, underwriters, accountants, brokers,
20 investment consultants, and providers of legal services) in
21 all business and activities of the regulated entity at all
22 levels, including in procurement, insurance, and all types
23 of contracts (including contracts for the issuance or guar-
24 antee of any debt, equity, or mortgage-related securities,
25 the management of its mortgage and securities portfolios,

1 the making of its equity investments, the purchase, sale
2 and servicing of single- and multi-family mortgage loans,
3 and the implementation of its affordable housing program
4 and initiatives). The processes established by each regu-
5 lated entity for review and evaluation for contract pro-
6 posals and to hire service providers shall include a compo-
7 nent that gives consideration to the diversity of the appli-
8 cant.

9 “(c) APPLICABILITY.—This section shall apply to all
10 contracts of a regulated entity for services of any kind,
11 including services that require the services of investment
12 banking, asset management entities, broker-dealers, finan-
13 cial services entities, underwriters, accountants, invest-
14 ment consultants, and providers of legal services.

15 “(d) INCLUSION IN ANNUAL REPORTS.—Each regu-
16 lated entity shall include, in the annual report submitted
17 by the entity to the Director pursuant to section 309(k)
18 of the Federal National Mortgage Association Charter Act
19 (12 U.S.C. 1723a(k)), section 307(c) of the Federal Home
20 Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and
21 section 20 of the Federal Home Loan Bank Act (12
22 U.S.C. 1440), as applicable, detailed information describ-
23 ing the actions taken by the entity pursuant to this sec-
24 tion, which shall include a statement of the total amounts
25 paid by the entity to third party contractors since the last

1 such report and the percentage of such amounts paid to
2 businesses described in subsection (b) of this section.”;
3 and

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

6 “(f) DIVERSITY IN AGENCY WORKFORCE.—The
7 Agency shall take affirmative steps to seek diversity in its
8 workforce at all levels of the agency consistent with the
9 demographic diversity of the United States, which shall
10 include—

11 “(1) heavily recruiting at historically Black col-
12 leges and universities, Hispanic-serving institutions,
13 women’s colleges, and colleges that typically serve
14 majority minority populations;

15 “(2) sponsoring and recruiting at job fairs in
16 urban communities, and placing employment adver-
17 tisements in newspapers and magazines oriented to-
18 ward women and people of color;

19 “(3) partnering with organizations that are fo-
20 cused on developing opportunities for minorities and
21 women to place talented young minorities and
22 women in industry internships, summer employment,
23 and full-time positions; and

24 “(4) where feasible, partnering with inner-city
25 high schools, girls’ high schools, and high schools

1 with majority minority populations to establish or
2 enhance financial literacy programs and provide
3 mentoring.”.

4 **SEC. 321. REGULATIONS AND ORDERS.**

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

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

9 “(a) **AUTHORITY.**—The Director shall issue any reg-
10 ulations, guidelines, and orders necessary to carry out the
11 duties of the Director under this title and each of the au-
12 thorizing statutes to ensure that the purposes of this title
13 and such statutes are accomplished.”;

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

17 (3) by striking subsection (c).

18 **SEC. 322. NON-WAIVER OF PRIVILEGES.**

19 Part 1 of subtitle A of title XIII of the Housing and
20 Community Development Act of 1992 (12 U.S.C. 4511)
21 is amended by adding at the end the following new section:

22 **“SEC. 1319H. PRIVILEGES NOT AFFECTED BY DISCLOSURE.**

23 “(a) **IN GENERAL.**—The submission by any person
24 of any information to the Agency for any purpose in the
25 course of any supervisory or regulatory process of the

1 Agency shall not be construed as waiving, destroying, or
2 otherwise affecting any privilege such person may claim
3 with respect to such information under Federal or State
4 law as to any person or entity other than the Agency.

5 “(b) RULE OF CONSTRUCTION.—No provision of sub-
6 section (a) may be construed as implying or establishing
7 that—

8 “(1) any person waives any privilege applicable
9 to information that is submitted or transferred
10 under any circumstance to which subsection (a) does
11 not apply; or

12 “(2) any person would waive any privilege ap-
13 plicable to any information by submitting the infor-
14 mation to the Agency, but for this subsection.”.

15 **SEC. 323. RISK-BASED CAPITAL REQUIREMENTS.**

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

19 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**
20 **ENTITIES.**

21 “(a) IN GENERAL.—

22 “(1) ENTERPRISES.—The Director shall, by
23 regulation, establish risk-based capital requirements
24 for the enterprises to ensure that the enterprises op-
25 erate in a safe and sound manner, maintaining suffi-

1 cient capital and reserves to support the risks that
2 arise in the operations and management of the en-
3 terprises.

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

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

13 “(1) maintain the confidentiality of the book,
14 record, or information in a manner that is generally
15 consistent with the level of confidentiality established
16 for the material by the Director or the regulated en-
17 tity; and

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

21 “(c) NO LIMITATION.—Nothing in this section shall
22 limit the authority of the Director to require other reports
23 or undertakings, or take other action, in furtherance of
24 the responsibilities of the Director under this Act.”.

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

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

6 “(A) RISK-BASED CAPITAL STANDARDS.—
7 The Director shall, by regulation, establish risk-
8 based capital standards for the Federal home
9 loan banks to ensure that the Federal home
10 loan banks operate in a safe and sound manner,
11 with sufficient permanent capital and reserves
12 to support the risks that arise in the operations
13 and management of the Federal home loans
14 banks.”; and

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

17 **SEC. 324. MINIMUM AND CRITICAL CAPITAL LEVELS.**

18 (a) MINIMUM CAPITAL LEVEL.—Section 1362 of the
19 Housing and Community Development Act of 1992 (12
20 U.S.C. 4612) is amended—

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

23 (2) by striking subsection (b) and inserting the
24 following new subsections:

1 “(b) FEDERAL HOME LOAN BANKS.—For purposes
2 of this subtitle, the minimum capital level for each Federal
3 home loan bank shall be the minimum capital required to
4 be maintained to comply with the leverage requirement for
5 the bank established under section 6(a)(2) of the Federal
6 Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

7 “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-
8 ITAL LEVELS.—Notwithstanding subsections (a) and (b)
9 and notwithstanding the capital classifications of the regu-
10 lated entities, the Director may, by regulations issued
11 under section 1319G, establish a minimum capital level
12 for the enterprises, for the Federal home loan banks, or
13 for both the enterprises and the banks, that is higher than
14 the level specified in subsection (a) for the enterprises or
15 the level specified in subsection (b) for the Federal home
16 loan banks, to the extent needed to ensure that the regu-
17 lated entities operate in a safe and sound manner.

18 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-
19 CREASE.—Notwithstanding subsections (a) and (b) and
20 any minimum capital level established pursuant to sub-
21 section (c), the Director may, by order, increase the min-
22 imum capital level for a regulated entity on a temporary
23 basis for such period as the Director may provide if the
24 Director—

1 “(1) makes any determination specified in sub-
2 paragraphs (A) through (C) of section 1364(c)(1);

3 “(2) determines that the regulated entity has
4 violated any of the prudential standards established
5 pursuant to section 1313A and, as a result of such
6 violation, determines that an unsafe and unsound
7 condition exists; or

8 “(3) determines that an unsafe and unsound
9 condition exists, except that a temporary increase in
10 minimum capital imposed on a regulated entity pur-
11 suant to this paragraph shall not remain in place for
12 a period of more than 6 months unless the Director
13 makes a renewed determination of the existence of
14 an unsafe and unsound condition.

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

1 “(f) PERIODIC REVIEW.—The Director shall periodi-
2 cally review the amount of core capital maintained by the
3 enterprises, the amount of capital retained by the Federal
4 home loan banks, and the minimum capital levels estab-
5 lished for such regulated entities pursuant to this section.
6 The Director shall rescind any temporary minimum cap-
7 ital level increase if the Director determines that the cir-
8 cumstances or facts justifying the temporary increase are
9 no longer present.”.

10 (b) CRITICAL CAPITAL LEVELS.—

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

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

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

18 “(b) FEDERAL HOME LOAN BANKS.—

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

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

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

7 (2) REGULATIONS.—Not later than the expira-
8 tion of the 180-day period beginning on the effective
9 date under section 365, the Director of the Federal
10 Housing Finance Agency shall issue regulations pur-
11 suant to section 1363(b) of the Housing and Com-
12 munity Development Act of 1992 (as added by para-
13 graph (1) of this subsection) establishing the critical
14 capital level under such section.

15 **SEC. 325. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
16 **ASSETS AND LIABILITIES.**

17 (a) IN GENERAL.—Subtitle B of title XIII of the
18 Housing and Community Development Act of 1992 (12
19 U.S.C. 4611 et seq.) is amended—

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

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

6 and

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

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

11 “(a) IN GENERAL.—The Director shall, by regula-
12 tion, establish standards by which the portfolio holdings,
13 or rate of growth of the portfolio holdings, of the enter-
14 prises will be deemed to be consistent with the mission
15 and the safe and sound operations of the enterprises. In
16 developing such standards, the Director shall consider—

17 “(1) the size or growth of the mortgage market;

18 “(2) the need for the portfolio in maintaining li-
19 quidity or stability of the secondary mortgage mar-
20 ket (including the market for the mortgage-backed
21 securities the enterprises issue);

22 “(3) the need for an inventory of mortgages in
23 connection with securitizations;

1 “(4) the need for the portfolio to directly sup-
2 port the affordable housing mission of the enter-
3 prises;

4 “(5) the liquidity needs of the enterprises;

5 “(6) any potential risks posed to the enterprises
6 by the nature of the portfolio holdings; and

7 “(7) any additional factors that the Director
8 determines to be necessary to carry out the purpose
9 under the first sentence of this subsection to estab-
10 lish standards for assessing whether the portfolio
11 holdings are consistent with the mission and safe
12 and sound operations of the enterprises.

13 “(b) TEMPORARY ADJUSTMENTS.—The Director
14 may, by order, make temporary adjustments to the estab-
15 lished standards for an enterprise or both enterprises,
16 such as during times of economic distress or market dis-
17 ruption.

18 “(c) AUTHORITY TO REQUIRE DISPOSITION OR AC-
19 QUISITION.—The Director shall monitor the portfolio of
20 each enterprise. Pursuant to subsection (a) and notwith-
21 standing the capital classifications of the enterprises, the
22 Director may, by order, require an enterprise, under such
23 terms and conditions as the Director determines to be ap-
24 propriate, to dispose of or acquire any asset, if the Direc-

1 tor determines that such action is consistent with the pur-
2 poses of this Act or any of the authorizing statutes.”.

3 (b) REGULATIONS.—Not later than the expiration of
4 the 180-day period beginning on the effective date under
5 section 365, the Director of the Federal Housing Finance
6 Agency shall issue regulations pursuant to section
7 1369E(a) of the Housing and Community Development
8 Act of 1992 (as added by subsection (a) of this section)
9 establishing the portfolio holdings standards under such
10 section.

11 **SEC. 326. CORPORATE GOVERNANCE OF ENTERPRISES.**

12 The Housing and Community Development Act of
13 1992 is amended by inserting before section 1323 (12
14 U.S.C. 4543) the following new section:

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

16 “(a) BOARD OF DIRECTORS.—

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

23 “(2) FREQUENCY OF MEETINGS.—To carry out
24 its obligations and duties under applicable laws,
25 rules, regulations, and guidelines, the board of direc-

1 tors of an enterprise shall meet at least eight times
2 a year and not less than once a calendar quarter.

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

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

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

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

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

24 “(1) FREQUENCY OF MEETINGS.—Any com-
25 mittee of the board of directors of an enterprise

1 shall meet with sufficient frequency to carry out its
2 obligations and duties under applicable laws, rules,
3 regulations, and guidelines.

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

7 “(A) Audit committee.

8 “(B) Compensation committee.

9 “(C) Nominating/corporate governance
10 committee.

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

19 “(c) COMPENSATION.—

20 “(1) IN GENERAL.—The compensation of board
21 members, executive officers, and employees of an en-
22 terprise—

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

1 “(B) shall be commensurate with the du-
2 ties and responsibilities of such persons;

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

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

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

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

24 “(d) CODE OF CONDUCT AND ETHICS.—

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

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

16 “(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF
17 DIRECTORS.—The board of directors of an enterprise shall
18 be responsible for directing the conduct and affairs of the
19 enterprise in furtherance of the safe and sound operation
20 of the enterprise and shall remain reasonably informed of
21 the condition, activities, and operations of the enterprise.
22 The responsibilities of the board of directors shall include
23 having in place adequate policies and procedures to assure
24 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. 327. 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. 328. 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. 329. 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. 330. 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

24 (ii) by striking “The” and inserting
25 “Subject to subtitle C of the Federal

1 Housing Finance Reform Act of 2008,
2 the”;

3 (B) by striking subsections (d) and (f);
4 and

5 (C) by redesignating subsection (e) as sub-
6 section (d);

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

11 (8) in section 1319F (12 U.S.C. 4525), striking
12 all that follows “United States Code” and inserting
13 “, the Agency shall be considered an agency respon-
14 sible for the regulation or supervision of financial in-
15 stitutions.”.

16 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
17 The Federal National Mortgage Association Charter Act
18 (12 U.S.C. 1716 et seq.) is amended—

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

24 (A) section 303(c)(2) (12 U.S.C.
25 1718(c)(2));

1 (B) section 309(d)(3)(B) (12 U.S.C.
2 1723a(d)(3)(B)); and

3 (C) section 309(k)(1); and
4 (2) in section 309—

5 (A) in subsections (d)(3)(A) and (n)(1), by
6 striking “Banking, Finance and Urban Affairs”
7 each place such term appears and inserting
8 “Financial Services”; and

9 (B) in subsection (m)—

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

13 (ii) in paragraph (2), by striking
14 “Secretary” the second place such term
15 appears and inserting “Director”; and

16 (iii) by striking “Secretary” each
17 other place such term appears and insert-
18 ing “Director of the Federal Housing Fi-
19 nance Agency”; and

20 (C) in subsection (n), by striking “Sec-
21 retary” each place such term appears and in-
22 serting “Director of the Federal Housing Fi-
23 nance Agency”.

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

1 (1) by striking “Director of the Office of Fed-
2 eral Housing Enterprise Oversight of the Depart-
3 ment of Housing and Urban Development” each
4 place such term appears, and inserting “Director of
5 the Federal Housing Finance Agency”, in—

6 (A) section 303(b)(2) (12 U.S.C.
7 1452(b)(2));

8 (B) section 303(h)(2) (12 U.S.C.
9 1452(h)(2)); and

10 (C) section 307(c)(1) (12 U.S.C.
11 1456(c)(1));

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

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

17 (A) by striking “1316(c)” and inserting
18 “306(c)”; and

19 (B) by striking “section 106” and insert-
20 ing “section 1316”; and

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

22 (A) in subsection (e)—

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

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

4 (iii) by striking “Secretary” each
5 other place such term appears and insert-
6 ing “Director of the Federal Housing Fi-
7 nance Agency”; and

8 (B) in subsection (f), by striking “Sec-
9 retary” each place such term appears and in-
10 serting “Director of the Federal Housing Fi-
11 nance Agency”.

12 **CHAPTER 2—IMPROVEMENT OF MISSION**
13 **SUPERVISION**

14 **SEC. 331. TRANSFER OF PRODUCT APPROVAL AND HOUS-**
15 **ING GOAL OVERSIGHT.**

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

19 (1) by striking the designation and heading for
20 the part and inserting the following:

21 **“PART 2—PRODUCT APPROVAL BY DIRECTOR,**
22 **CORPORATE GOVERNANCE, AND ESTABLISH-**
23 **MENT OF HOUSING GOALS”;**

24 and

25 (2) by striking sections 1321 and 1322.

1 **SEC. 332. REVIEW OF ENTERPRISE PRODUCTS.**

2 (a) IN GENERAL.—Part 2 of subtitle A of title XIII
3 of the Housing and Community Development Act of 1992
4 is amended by inserting before section 1323 (12 U.S.C.
5 4543) the following new section:

6 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS**
7 **OF ENTERPRISES.**

8 “(a) IN GENERAL.—The Director shall require each
9 enterprise to obtain the approval of the Director for any
10 product of the enterprise before initially offering the prod-
11 uct.

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

15 “(1) in the case of a product of the Federal Na-
16 tional Mortgage Association, the Director determines
17 that the product is authorized under paragraph (2),
18 (3), (4), or (5) of section 302(b) or section 304 of
19 the Federal National Mortgage Association Charter
20 Act, (12 U.S.C. 1717(b), 1719);

21 “(2) in the case of a product of the Federal
22 Home Loan Mortgage Corporation, the Director de-
23 termines that the product is authorized under para-
24 graph (1), (4), or (5) of section 305(a) of the Fed-
25 eral Home Loan Mortgage Corporation Act (12
26 U.S.C. 1454(a));

1 “(3) the product is in the public interest;

2 “(4) the product is consistent with the safety
3 and soundness of the enterprise or the mortgage fi-
4 nance system; and

5 “(5) the product does not materially impair the
6 efficiency of the mortgage finance system.

7 “(c) PROCEDURE FOR APPROVAL.—

8 “(1) SUBMISSION OF REQUEST.—An enterprise
9 shall submit to the Director a written request for
10 approval of a product that describes the product in
11 such form as prescribed by order or regulation of the
12 Director.

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

22 “(3) PUBLIC COMMENT PERIOD.—During the
23 30-day period beginning on the date of publication
24 pursuant to paragraph (2) of a request for approval

1 of a product, the Director shall receive public com-
2 ments regarding the proposed product.

3 “(4) OFFERING OF PRODUCT.—

4 “(A) IN GENERAL.—Not later than 30
5 days after the close of the public comment pe-
6 riod described in paragraph (3), the Director
7 shall approve or deny the product, specifying
8 the grounds for such decision in writing.

9 “(B) FAILURE TO ACT.—If the Director
10 fails to act within the 30-day period described
11 in subparagraph (A), the enterprise may offer
12 the product.

13 “(d) EXPEDITED REVIEW.—

14 “(1) DETERMINATION AND NOTICE.—If an en-
15 terprise determines that any new activity, service,
16 undertaking, or offering is not a product, as defined
17 in subsection (f), the enterprise shall provide written
18 notice to the Director prior to the commencement of
19 such activity, service, undertaking, or offering.

20 “(2) DIRECTOR DETERMINATION OF APPLICA-
21 BLE PROCEDURE.—Immediately upon receipt of any
22 notice pursuant to paragraph (1), the Director shall
23 make a determination under paragraph (3).

24 “(3) DETERMINATION AND TREATMENT AS
25 PRODUCT.—If the Director determines that any new

1 activity, service, undertaking, or offering consists of,
2 relates to, or involves a product—

3 “(A) the Director shall notify the enter-
4 prise of the determination;

5 “(B) the new activity, service, undertaking,
6 or offering described in the notice under para-
7 graph (1) shall be considered a product for pur-
8 poses of this section; and

9 “(C) the enterprise shall withdraw its re-
10 quest or submit a written request for approval
11 of the product pursuant to subsection (e).

12 “(e) **CONDITIONAL APPROVAL.**—The Director may
13 conditionally approve the offering of any product by an
14 enterprise, and may establish terms, conditions, or limita-
15 tions with respect to such product with which the enter-
16 prise must comply in order to offer such product.

17 “(f) **DEFINITION OF PRODUCT.**—For purposes of
18 this section, the term ‘product’ does not include—

19 “(1) the automated loan underwriting system of
20 an enterprise in existence as of the date of the en-
21 actment of the Federal Housing Finance Reform
22 Act of 2008, including any upgrade to the tech-
23 nology, operating system, or software to operate the
24 underwriting system; or

1 “(2) any modification to the mortgage terms
2 and conditions or mortgage underwriting criteria re-
3 lating to the mortgages that are purchased or guar-
4 anteed by an enterprise: *Provided*, That such modi-
5 fications do not alter the underlying transaction so
6 as to include services or financing, other than resi-
7 dential mortgage financing, or create significant new
8 exposure to risk for the enterprise or the holder of
9 the mortgage.

10 “(g) NO LIMITATION.—Nothing in this section shall
11 be deemed to restrict—

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

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

19 (b) CONFORMING AMENDMENTS.—

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

23 (A) by striking “implement any new pro-
24 gram” and inserting “initially offer any prod-
25 uct”;

1 (B) by striking “section 1303” and insert-
2 ing “section 1321(f)”; and

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

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

10 (A) by striking “implement any new pro-
11 gram” and inserting “initially offer any prod-
12 uct”;

13 (B) by striking “section 1303” and insert-
14 ing “section 1321(f)”; and

15 (C) by striking “before obtaining the ap-
16 proval of the Secretary under section 1322”
17 and inserting “except in accordance with sec-
18 tion 1321”.

19 (3) 1992 ACT.—Section 1303 of the Housing
20 and Community Development Act of 1992 (12
21 U.S.C. 4502), as amended by the preceding provi-
22 sions of this title, is further amended—

23 (A) by striking paragraph (17) (relating to
24 the definition of “new program”); and

1 (B) by redesignating paragraphs (18)
2 through (23) as paragraphs (17) through (22),
3 respectively.

4 **SEC. 333. CONFORMING LOAN LIMITS.**

5 (a) FANNIE MAE.—Section 302(b)(2) of the Federal
6 National Mortgage Association Charter Act (12 U.S.C.
7 1717(b)(2)) is amended—

8 (1) in the second sentence, by redesignating
9 clause (A) through (C) as clauses (i) through (iii),
10 respectively;

11 (2) in the third sentence, by striking “clause
12 (A)” and inserting “clause (i)”;

13 (3) in the 4th sentence, by striking “the Reso-
14 lution Trust Corporation,”;

15 (4) by striking the 7th and 8th sentences and
16 inserting the following new sentences: “For 2008,
17 such limitations shall not exceed \$417,000 for a
18 mortgage secured by a single-family residence,
19 \$533,850 for a mortgage secured by a 2-family resi-
20 dence, \$645,300 for a mortgage secured by a 3-fam-
21 ily residence, and \$801,950 for a mortgage secured
22 by a 4-family residence, except that such maximum
23 limitations shall be adjusted effective January 1 of
24 each year beginning with 2009, subject to the limita-
25 tions in this paragraph. Each adjustment shall be

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

11 (5) by inserting “(A)” after “(2)”; and

12 (6) by adding at the end the following new sub-
13 paragraph:

14 “(B)(i) Notwithstanding subparagraph (A), for mort-
15 gages originated on or after January 1, 2009, the limita-
16 tion on the maximum original principal obligation of a
17 mortgage that may be purchased by the corporation shall
18 be the higher of—

19 “(I) the limitation determined under subpara-
20 graph (A) for a residence of the applicable size; or

21 “(II) 125 percent of the area median price for
22 a residence of the applicable size, but in no case to
23 exceed 175 percent of the limitation determined
24 under subparagraph (A) for a residence of the appli-
25 cable size.

1 “(ii) The areas and area median prices used for pur-
2 poses of the determination under this subparagraph shall
3 be the areas and area median prices used by the Secretary
4 of Housing and Urban Development in determining the
5 applicable limits under section 203(b)(2) of the National
6 Housing Act (12 U.S.C. 1709(b)(2)). A mortgage that is
7 eligible for purchase by the corporation at the time the
8 mortgage is originated under this subparagraph shall be
9 eligible for such purchase for the duration of the term of
10 the mortgage.”.

11 (b) FREDDIE MAC.—Section 305(a)(2) of the Fed-
12 eral Home Loan Mortgage Corporation Act (12 U.S.C.
13 1454(a)(2)) is amended—

14 (1) in the first sentence, by redesignating clause
15 (A) through (C) as clauses (i) through (iii), respec-
16 tively;

17 (2) in the second sentence, by striking “clause
18 (A)” and inserting “clause (i)”;

19 (3) in the third sentence by striking “the Reso-
20 lution Trust Corporation”;

21 (4) by striking the 6th and 7th sentence and in-
22 serting the following new sentences: “For 2008,
23 such limitations shall not exceed \$417,000 for a
24 mortgage secured by a single-family residence,
25 \$533,850 for a mortgage secured by a 2-family resi-

1 dence, \$645,300 for a mortgage secured by a 3-fam-
2 ily residence, and \$801,950 for a mortgage secured
3 by a 4-family residence, except that such maximum
4 limitations shall be adjusted effective January 1 of
5 each year beginning with 2009, subject to the limita-
6 tions in this paragraph. Each adjustment shall be
7 made by adding to or subtracting from each such
8 amount (as it may have been previously adjusted) a
9 percentage thereof equal to the percentage increase
10 or decrease, during the most recent 12-month or
11 four-quarter period ending before the time of deter-
12 mining such annual adjustment, in the housing price
13 index maintained by the Director of the Federal
14 Housing Finance Agency (pursuant to section 1322
15 of the Housing and Community Development Act of
16 1992 (12 U.S.C. 4541)).”;

17 (5) by inserting “(A)” after “(2)”; and

18 (6) by adding at the end the following new sub-
19 paragraph:

20 “(B)(i) Notwithstanding subparagraph (A), for mort-
21 gages originated on or after January 1, 2009, the limita-
22 tion on the maximum original principal obligation of a
23 mortgage that may be purchased by the Corporation shall
24 be the higher of—

1 “(I) the limitation determined under subpara-
2 graph (A) for a residence of the applicable size; or

3 “(II) 125 percent of the area median price for
4 a residence of the applicable size, but in no case to
5 exceed 175 percent of the limitation determined
6 under subparagraph (A) for a residence of the appli-
7 cable size.

8 “(ii) The areas and area median prices used for pur-
9 poses of the determination under this subparagraph shall
10 be the areas and area median prices used by the Secretary
11 of Housing and Urban Development in determining the
12 applicable limits under section 203(b)(2) of the National
13 Housing Act (12 U.S.C. 1709(b)(2)). A mortgage that is
14 eligible for purchase by the Corporation at the time the
15 mortgage is originated under this subparagraph shall be
16 eligible for such purchase for the duration of the term of
17 the mortgage.”.

18 (c) HOUSING PRICE INDEX.—Subpart A of part 2 of
19 subtitle A of title XIII of the Housing and Community
20 Development Act of 1992 (as amended by the preceding
21 provisions of this title) is amended by inserting after sec-
22 tion 1321 (as added by the preceding provisions of this
23 title) the following new section:

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

2 “(a) IN GENERAL.—The Director shall establish and
3 maintain a method of assessing the national average 1-
4 family house price for use for adjusting the conforming
5 loan limitations of the enterprises. In establishing such
6 method, the Director shall take into consideration the
7 monthly survey of all major lenders conducted by the Fed-
8 eral Housing Finance Agency to determine the national
9 average 1-family house price, the House Price Index main-
10 tained by the Office of Federal Housing Enterprise Over-
11 sight of the Department of Housing and Urban Develop-
12 ment before the effective date under section 365 of the
13 Federal Housing Finance Reform Act of 2008, any appro-
14 priate house price indexes of the Bureau of the Census
15 of the Department of Commerce, and any other indexes
16 or measures that the Director considers appropriate.

17 “(b) GAO AUDIT.—

18 “(1) IN GENERAL.—At such times as are re-
19 quired under paragraph (2), the Comptroller Gen-
20 eral of the United States shall conduct an audit of
21 the methodology established by the Director under
22 subsection (a) to determine whether the methodology
23 established is an accurate and appropriate means of
24 measuring changes to the national average 1-family
25 house price.

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

5 “(A) ESTABLISHMENT.—The date upon
6 which such methodology is initially established
7 under subsection (a) in final form by the Direc-
8 tor.

9 “(B) MODIFICATION OR AMENDMENT.—
10 Each date upon which any modification or
11 amendment to such methodology is adopted in
12 final form by the Director.

13 “(3) REPORT.—Within 30 days of the comple-
14 tion of any audit conducted under this subsection,
15 the Comptroller General shall submit a report detail-
16 ing the results and conclusions of the audit to the
17 Director, the Committee on Financial Services of the
18 House of Representatives, and the Committee on
19 Banking, Housing, and Urban Affairs of the Sen-
20 ate.”.

21 (d) SENSE OF CONGRESS.—It is the sense of the
22 Congress that the securitization of mortgages by the Fed-
23 eral National Mortgage Association and the Federal Home
24 Loan Mortgage Corporation plays an important role in
25 providing liquidity to the United States housing markets.

1 Therefore, the Congress encourages the Federal National
2 Mortgage Association and the Federal Home Loan Mort-
3 gage Corporation to securitize mortgages acquired under
4 the increased conforming loan limits established by the
5 amendments made by this section, to the extent that such
6 securitizations can be effected in a timely and efficient
7 manner that does not impose additional costs for mort-
8 gages originated, purchased, or securitized under the ex-
9 isting limits or interfere with the goal of adding liquidity
10 to the market.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on, and shall apply beginning
13 on, January 1, 2009.

14 **SEC. 334. ANNUAL HOUSING REPORT REGARDING REGU-**
15 **LATED ENTITIES.**

16 (a) IN GENERAL.—The Housing and Community De-
17 velopment Act of 1992 is amended by striking section
18 1324 (12 U.S.C. 4544) and inserting the following new
19 section:

20 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**
21 **LATED ENTITIES.**

22 “(a) IN GENERAL.—After reviewing and analyzing
23 the reports submitted under section 309(n) of the Federal
24 National Mortgage Association Charter Act, section
25 307(f) of the Federal Home Loan Mortgage Corporation

1 Act, and section 10(j)(11) of the Federal Home Loan
2 Bank Act (12 U.S.C. 1430(j)(11)), the Director shall sub-
3 mit a report, not later than October 30 of each year, to
4 the Committee on Financial Services of the House of Rep-
5 resentatives and the Committee on Banking, Housing, and
6 Urban Affairs of the Senate, on the activities of each regu-
7 lated entity.

8 “(b) CONTENTS.—The report shall—

9 “(1) discuss the extent to which—

10 “(A) each enterprise is achieving the an-
11 nual housing goals established under subpart B
12 of this part;

13 “(B) each enterprise is complying with sec-
14 tion 1337;

15 “(C) each Federal home loan bank is com-
16 plying with section 10(j) of the Federal Home
17 Loan Bank Act; and

18 “(D) each regulated entity is achieving the
19 purposes of the regulated entity established by
20 law;

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

24 “(3) aggregate and analyze data on income,
25 race, and gender by census tract and other relevant

1 classifications, and compare such data with larger
2 demographic, housing, and economic trends;

3 “(4) examine actions that—

4 “(A) each enterprise has undertaken or
5 could undertake to promote and expand the an-
6 nual goals established under subpart B and the
7 purposes of the enterprise established by law;
8 and

9 “(B) each Federal home loan bank has
10 taken or could undertake to promote and ex-
11 pand the community investment program and
12 affordable housing program of the bank estab-
13 lished under subsections (i) and (j) of section
14 10 of the Federal Home Loan Bank Act;

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

17 “(A) the availability and liquidity of mort-
18 gage credit;

19 “(B) the status of efforts to provide stand-
20 ard credit terms and underwriting guidelines
21 for multifamily housing and to securitize such
22 mortgage products; and

23 “(C) any factors inhibiting such standard-
24 ization and securitization;

1 “(6) examine actions each regulated entity has
2 undertaken and could undertake to promote and ex-
3 pand opportunities for first-time homebuyers, includ-
4 ing the use of alternative credit scoring;

5 “(7) describe any actions taken under section
6 1325(5) with respect to originators found to violate
7 fair lending procedures;

8 “(8) discuss and analyze existing conditions and
9 trends, including conditions and trends relating to
10 pricing, in the housing markets and mortgage mar-
11 kets; and

12 “(9) identify the extent to which each enter-
13 prise is involved in mortgage purchases and sec-
14 ondary market activities involving subprime loans
15 (as identified in accordance with the regulations
16 issued pursuant to section 334(b) of the Federal
17 Housing Finance Reform Act of 2008) and compare
18 the characteristics of subprime loans purchased and
19 securitized by the enterprises to other loans pur-
20 chased and securitized by the enterprises.

21 “(c) DATA COLLECTION AND REPORTING.—

22 “(1) IN GENERAL.—To assist the Director in
23 analyzing the matters described in subsection (b)
24 and establishing the methodology described in sec-
25 tion 1322, the Director shall conduct, on a monthly

1 basis, a survey of mortgage markets in accordance
2 with this subsection.

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

6 “(A) the characteristics of individual mort-
7 gages that are eligible for purchase by the en-
8 terprises and the characteristics of individual
9 mortgages that are not eligible for purchase by
10 the enterprises including, in both cases, infor-
11 mation concerning—

12 “(i) the price of the house that se-
13 cures the mortgage;

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

17 “(iii) the terms of the mortgage;

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

20 “(v) whether the mortgage, in the
21 case of a conforming mortgage, was pur-
22 chased by an enterprise; and

23 “(B) such other matters as the Director
24 determines to be appropriate.

1 “(3) PUBLIC AVAILABILITY.—The Director
2 shall make any data collected by the Director in con-
3 nection with the conduct of a monthly survey avail-
4 able to the public in a timely manner, provided that
5 the Director may modify the data released to the
6 public to ensure that the data is not released in an
7 identifiable form.

8 “(4) DEFINITION.—For purposes of this sub-
9 section, the term ‘identifiable form’ means any rep-
10 resentation of information that permits the identity
11 of a borrower to which the information relates to be
12 reasonably inferred by either direct or indirect
13 means.”.

14 (b) STANDARDS FOR SUBPRIME LOANS.—The Direc-
15 tor shall, not later than one year after the effective date
16 under section 365, by regulations issued under section
17 1316G of the Housing and Community Development Act
18 of 1992, establish standards by which mortgages pur-
19 chased and mortgages purchased and securitized shall be
20 characterized as subprime for the purpose of, and only for
21 the purpose of, complying with the reporting requirement
22 under section 1324(b)(9) of such Act.

1 **SEC. 335. ANNUAL REPORTS BY REGULATED ENTITIES ON**
2 **AFFORDABLE HOUSING STOCK.**

3 The Housing and Community Development Act of
4 1992 is amended by inserting after section 1328 (12
5 U.S.C. 4548) the following new section:

6 **“SEC. 1329. ANNUAL REPORTS ON AFFORDABLE HOUSING**
7 **STOCK.**

8 “(a) IN GENERAL.—To obtain information helpful in
9 applying the formula under section 1337(c)(2) for the af-
10 fordable housing program under such section and for
11 other appropriate uses, the regulated entities shall con-
12 duct, or provide for the conducting of, a study on an an-
13 nual basis to determine the levels of affordable housing
14 inventory, and the changes in such levels, in communities
15 throughout the United States.

16 “(b) CONTENTS.—The annual study under this sec-
17 tion shall determine, for the United States, each State,
18 and each community within each State—

19 “(1) the level of affordable housing inventory,
20 including affordable rental dwelling units and afford-
21 able homeownership dwelling units;

22 “(2) any changes to the level of such inventory
23 during the 12-month period of the study under this
24 section, including—

25 “(A) any additions to such inventory,
26 disaggregated by the category of such additions

1 (including new construction or housing conver-
2 sion);

3 “(B) any subtractions from such inventory,
4 disaggregated by the category of such subtrac-
5 tions (including abandonment, demolition, or
6 upgrade to market-rate housing);

7 “(C) the number of new affordable dwell-
8 ing units placed in service; and

9 “(D) the number of affordable housing
10 dwelling units withdrawn from service;

11 “(3) the types of financing used to build any
12 dwelling units added to such inventory level and the
13 period during which such units are required to re-
14 main affordable;

15 “(4) any excess demand for affordable housing,
16 including the number of households on rental hous-
17 ing waiting lists and the tenure of the wait on such
18 lists; and

19 “(5) such other information as the Director
20 may require.

21 “(c) REPORT.—For each annual study conducted
22 pursuant to this section, the regulated entities shall sub-
23 mit to the Congress, and make publicly available, a report
24 setting forth the findings of the study.

1 “(d) REGULATIONS AND TIMING.—The Director
2 shall, by regulation, establish requirements for the studies
3 and reports under this section, including deadlines for the
4 submission of such annual reports and standards for de-
5 termining affordable housing.”.

6 **SEC. 336. MORTGAGOR IDENTIFICATION REQUIREMENTS**
7 **FOR MORTGAGES OF REGULATED ENTITIES.**

8 (a) IN GENERAL.—Subpart A of part 2 of subtitle
9 A of title XIII of the Housing and Community Develop-
10 ment Act of 1992 (12 U.S.C. 4541 et seq.), as amended
11 by the preceding provisions of this title, is further amend-
12 ed by adding at the end the following new section:

13 **“SEC. 1330. MORTGAGOR IDENTIFICATION REQUIREMENTS**
14 **FOR MORTGAGES OF REGULATED ENTITIES.**

15 “(a) LIMITATION.—The Director shall by regulation
16 establish standards, and shall enforce compliance with
17 such standards, that—

18 “(1) prohibit the enterprises from the purchase,
19 service, holding, selling, lending on the security of,
20 or otherwise dealing with any mortgage on a one- to
21 four-family residence that will be used as the prin-
22 cipal residence of the mortgagor that does not meet
23 the requirements under subsection (b); and

24 “(2) prohibit the Federal home loan banks from
25 providing any advances to a member for use in fi-

1 nancing, and from accepting as collateral for any ad-
2 vance to a member, any mortgage on a one- to four-
3 family residence that will be used as the principal
4 residence of the mortgagor that does not meet the
5 requirements under subsection (b).

6 “(b) IDENTIFICATION REQUIREMENTS.—The re-
7 quirements under this subsection with respect to a mort-
8 gage are that the mortgagor have, at the time of settle-
9 ment on the mortgage, a Social Security account num-
10 ber.”.

11 (b) FANNIE MAE.—Section 304 of the Federal Na-
12 tional Mortgage Association Charter Act (12 U.S.C. 1719)
13 is amended by adding at the end the following new sub-
14 section:

15 “(g) PROHIBITION REGARDING MORTGAGOR IDENTI-
16 FICATION REQUIREMENT.—Nothing in this Act may be
17 construed to authorize the corporation to purchase, serv-
18 ice, hold, sell, lend on the security of, or otherwise deal
19 with any mortgage that the corporation is prohibited from
20 so dealing with under the standards issued under section
21 1330 of the Housing and Community Development Act
22 of 1992 by the Director of the Federal Housing Finance
23 Agency.”.

24 (c) FREDDIE MAC.—Section 305 of the Federal
25 Home Loan Mortgage Corporation Act (12 U.S.C. 1454)

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

3 “(d) PROHIBITION REGARDING MORTGAGOR IDENTI-
4 FICATION REQUIREMENTS.—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 (d) FEDERAL HOME LOAN BANKS.—Section 10(a) of
13 the Federal Home Loan Bank Act (12 U.S.C. 1430(a))
14 is amended—

15 (1) by redesignating paragraph (6) as para-
16 graph (7); and

17 (2) by inserting after paragraph (5) the fol-
18 lowing new paragraph:

19 “(6) PROHIBITION REGARDING MORTGAGOR
20 IDENTIFICATION REQUIREMENTS.—Nothing in this
21 Act may be construed to authorize a Federal Home
22 Loan Bank to provide any advance to a member for
23 use in financing, or accept as collateral for an ad-
24 vance under this section, any mortgage that a Bank
25 is prohibited from so accepting under the standards

1 issued under section 1330 of the Housing and Com-
2 munity Development Act of 1992 by the Director of
3 the Federal Housing Finance Agency.”.

4 **SEC. 337. REVISION OF HOUSING GOALS.**

5 (a) HOUSING GOALS.—The Housing and Community
6 Development Act of 1992 is amended by striking sections
7 1331 through 1334 (12 U.S.C. 4561–4) and inserting the
8 following new sections:

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

10 “(a) IN GENERAL.—The Director shall establish, ef-
11 fective for the first year that begins after the effective date
12 under section 365 of the Federal Housing Finance Reform
13 Act of 2008 and each year thereafter, annual housing
14 goals, with respect to the mortgage purchases by the en-
15 terprises, as follows:

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

18 “(2) MULTIFAMILY SPECIAL AFFORDABLE
19 HOUSING GOALS.—A multifamily special affordable
20 housing goal under section 1333.

21 “(b) ELIMINATING INTEREST RATE DISPARITIES.—

22 “(1) IN GENERAL.—Upon request by the Direc-
23 tor, an enterprise shall provide to the Director, in a
24 form determined by the Director, data the Director
25 may review to determine whether there exist dispari-

1 ties in interest rates charged on mortgages to bor-
2 rowers who are minorities as compared with com-
3 parable mortgages to borrowers of similar credit-
4 worthiness who are not minorities.

5 “(2) REMEDIAL ACTIONS UPON PRELIMINARY
6 FINDING.—Upon a preliminary finding by the Direc-
7 tor that a pattern of disparities in interest rates
8 with respect to any lender or lenders exists pursuant
9 to the data provided by an enterprise in paragraph
10 (1), the Director shall—

11 “(A) refer the preliminary finding to the
12 appropriate regulatory or enforcement agency
13 for further review;

14 “(B) require the enterprise to submit addi-
15 tional data with respect to any lender or lend-
16 ers, as appropriate and to the extent prac-
17 ticable, to the Director who shall submit any
18 such additional data to the regulatory or en-
19 forcement agency for appropriate action; and

20 “(C) require the enterprise to undertake
21 remedial actions, as appropriate, pursuant to
22 section 1325(5) (12 U.S.C. 4545(5)).

23 “(3) ANNUAL REPORT TO CONGRESS.—The Di-
24 rector shall submit to the Committee on Financial
25 Services of the House of Representatives and the

1 Committee on Banking, Housing, and Urban Affairs
2 of the Senate a report describing the actions taken,
3 and being taken, by the Director to carry out this
4 subsection. No such report shall identify any lender
5 or lenders who have not been found to have engaged
6 in discriminatory lending practices pursuant to a
7 final adjudication on the record, and after oppor-
8 tunity for an administrative hearing, in accordance
9 with subchapter II of chapter 5 of title 5, United
10 States Code.

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

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

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

24 “(a) IN GENERAL.—The Director shall establish an-
25 nual goals for the purchase by each enterprise of conven-

1 tional, conforming, single-family, purchase money mort-
2 gages financing owner-occupied and rental housing for
3 each of the following categories of families:

4 “(1) Low-income families.

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

6 “(3) Very low-income families.

7 “(b) REFINANCE SUBGOAL.—

8 “(1) IN GENERAL.—The Director shall establish
9 a separate subgoal within each goal under subsection
10 (a)(1) for the purchase by each enterprise of mort-
11 gages for low-income families on single family hous-
12 ing given to pay off or prepay an existing loan se-
13 cured by the same property. The Director shall, for
14 each year, determine whether each enterprise has
15 complied with the subgoal under this subsection in
16 the same manner provided under this section for de-
17 termining compliance with the housing goals.

18 “(2) ENFORCEMENT.—For purposes of section
19 1336, the subgoal established under paragraph (1)
20 of this subsection shall be considered to be a housing
21 goal established under this section. Such subgoal
22 shall not be enforceable under any other provision of
23 this title (including subpart C of this part) other
24 than section 1336 or under any provision of the
25 Federal National Mortgage Association Charter Act

1 or the Federal Home Loan Mortgage Corporation
2 Act.

3 “(c) DETERMINATION OF COMPLIANCE.—The Direc-
4 tor shall determine, for each year that the housing goals
5 under this section are in effect pursuant to section
6 1331(a), whether each enterprise has complied with the
7 single-family housing goals established under this section
8 for such year. An enterprise shall be considered to be in
9 compliance with such a goal for a year only if, for each
10 of the types of families described in subsection (a), the
11 percentage of the number of conventional, conforming,
12 single-family, owner-occupied or rental, as applicable, pur-
13 chase money mortgages purchased by each enterprise in
14 such year that serve such families, meets or exceeds the
15 target for the year for such type of family that is estab-
16 lished under subsection (d).

17 “(d) ANNUAL TARGETS.—

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

1 owner-occupied or rental, as applicable, purchase
2 money mortgages originated in such year that serves
3 such type of family, as determined by the Director
4 using the information obtained and determined pur-
5 suant to paragraphs (3) and (4).

6 “(2) AUTHORITY TO INCREASE TARGETS.—

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

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

19 “(i) National housing needs.

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

22 “(iii) The performance and effort of
23 the enterprises toward achieving the hous-
24 ing goals under this section in previous
25 years.

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

6 “(v) The ability of the enterprise to
7 lead the industry in making mortgage
8 credit available.

9 “(vi) The need to maintain the sound
10 financial condition of the enterprises.

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

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

1 “(e) NOTICE OF DETERMINATION AND ENTERPRISE
2 COMMENT.—

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

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

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

22 “(g) CONSIDERATION OF UNITS IN SINGLE-FAMILY
23 RENTAL HOUSING.—In establishing any goal under this
24 subpart, the Director may take into consideration the

1 number of housing units financed by any mortgage on sin-
2 gle-family rental housing purchased by an enterprise.

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

4 **GOAL.**

5 “(a) ESTABLISHMENT.—

6 “(1) IN GENERAL.—The Director shall estab-
7 lish, by regulation, an annual goal for the purchase
8 by each enterprise of each of the following types of
9 mortgages on multifamily housing:

10 “(A) Mortgages that finance dwelling units
11 for low-income families.

12 “(B) Mortgages that finance dwelling units
13 for very low-income families.

14 “(C) Mortgages that finance dwelling units
15 assisted by the low-income housing tax credit
16 under section 42 of the Internal Revenue Code
17 of 1986.

18 “(2) ADDITIONAL REQUIREMENTS FOR SMALL-
19 ER PROJECTS.—The Director shall establish, within
20 the goal under this section, additional requirements
21 for the purchase by each enterprise of mortgages de-
22 scribed in paragraph (1) for multifamily housing
23 projects of a smaller or limited size, which may be
24 based on the number of dwelling units in the project
25 or the amount of the mortgage, or both, and shall

1 include multifamily housing projects of such smaller
2 sizes as are typical among such projects that serve
3 rural areas.

4 “(3) FACTORS.—In establishing the goal under
5 this section relating to mortgages on multifamily
6 housing for an enterprise for a year, the Director
7 shall consider—

8 “(A) national multifamily mortgage credit
9 needs;

10 “(B) the performance and effort of the en-
11 terprise in making mortgage credit available for
12 multifamily housing in previous years;

13 “(C) the size of the multifamily mortgage
14 market;

15 “(D) the ability of the enterprise to lead
16 the industry in making mortgage credit avail-
17 able, especially for underserved markets, such
18 as for small multifamily projects of 5 to 50
19 units, multifamily properties in need of rehabili-
20 tation, and multifamily properties located in
21 rural areas; and

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

24 “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-
25 CY BONDS.—The Director shall give credit toward the

1 achievement of the multifamily special affordable housing
2 goal under this section (for purposes of section 1336) to
3 dwelling units in multifamily housing that otherwise quali-
4 fies under such goal and that is financed by tax-exempt
5 or taxable bonds issued by a State or local housing finance
6 agency, but only if such bonds—

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

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

11 “(c) USE OF TENANT INCOME OR RENT.—The Di-
12 rector shall monitor the performance of each enterprise
13 in meeting the goals established under this section and
14 shall evaluate such performance (for purposes of section
15 1336) based on—

16 “(1) the income of the prospective or actual
17 tenants of the property, where such data are avail-
18 able; or

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

22 A rent level shall be considered to be affordable for pur-
23 poses of this subsection for an income category referred
24 to in this subsection if it does not exceed 30 percent of
25 the maximum income level of such income category, with

1 appropriate adjustments for unit size as measured by the
2 number of bedrooms.

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

8 **“SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING**
9 **GOALS.**

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

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

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

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

1 eral Home Loan Mortgage Corporation Act (12
2 U.S.C. 1451 note), as applicable.

3 “(c) DETERMINATION.—The Director shall make a
4 determination regarding any proposed reduction within 30
5 days of receipt of the petition regarding the reduction. The
6 Director may extend such period for a single additional
7 15-day period, but only if the Director requests additional
8 information from the enterprise. A denial by the Director
9 to reduce the level of any goal under this section may be
10 appealed to the United States District Court for the Dis-
11 trict of Columbia or the United States district court in
12 the jurisdiction in which the headquarters of an enterprise
13 is located.”.

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

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

21 (2) in section 1336(a)(1) (12 U.S.C.
22 4566(a)(1)), by striking “sections 1332, 1333, and
23 1334,” and inserting “this subpart”.

24 (c) DEFINITIONS.—Section 1303 of the Housing and
25 Community Development Act of 1992 (12 U.S.C. 4502),

1 as amended by the preceding provisions of this title, is
2 further amended—

3 (1) in paragraph (22) (relating to the definition
4 of “very low-income”), by striking “60 percent” each
5 place such term appears and inserting “50 percent”;

6 (2) by redesignating paragraphs (19) through
7 (22) as paragraphs (23) through (26), respectively;

8 (3) by inserting after paragraph (18) the fol-
9 lowing new paragraph:

10 “(22) RURAL AREA.—The term ‘rural area’ has
11 the meaning given such term in section 520 of the
12 Housing Act of 1949 (42 U.S.C. 1490), except that
13 such term includes micropolitan areas and tribal
14 trust lands.”.

15 (4) by redesignating paragraphs (13) through
16 (18) as paragraphs (16) through (21), respectively;

17 (5) by inserting after paragraph (12) the fol-
18 lowing new paragraph:

19 “(15) LOW-INCOME AREA.—The term ‘low in-
20 come area’ means a census tract or block numbering
21 area in which the median income does not exceed 80
22 percent of the median income for the area in which
23 such census tract or block numbering area is lo-
24 cated, and, for the purposes of section 1332(a)(2),
25 shall include families having incomes not greater

1 than 100 percent of the area median income who re-
2 side in minority census tracts.”;

3 (6) by redesignating paragraphs (11) and (12)
4 as paragraphs (13) and (14), respectively;

5 (7) by inserting after paragraph (10) the fol-
6 lowing new paragraph:

7 “(12) EXTREMELY LOW-INCOME.—The term
8 ‘extremely low-income’ means—

9 “(A) in the case of owner-occupied units,
10 income not in excess of 30 percent of the area
11 median income; and

12 “(B) in the case of rental units, income
13 not in excess of 30 percent of the area median
14 income, with adjustments for smaller and larger
15 families, as determined by the Secretary.”;

16 (8) by redesignating paragraphs (7) through
17 (10) as paragraphs (8) through (11), respectively;
18 and

19 (9) by inserting after paragraph (6) the fol-
20 lowing new paragraph:

21 “(7) CONFORMING MORTGAGE.—The term ‘con-
22 forming mortgage’ means, with respect to an enter-
23 prise, a conventional mortgage having an original
24 principal obligation that does not exceed the dollar

1 limitation, in effect at the time of such origination,
2 under, as applicable—

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

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

7 **SEC. 338. DUTY TO SERVE UNDERSERVED MARKETS.**

8 (a) ESTABLISHMENT AND EVALUATION OF PER-
9 FORMANCE.—Section 1335 of the Housing and Commu-
10 nity Development Act of 1992 (12 U.S.C. 4565) is amend-
11 ed—

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

15 (2) by striking subsection (b);

16 (3) in subsection (a)—

17 (A) in the matter preceding paragraph (1),
18 by inserting “and to carry out the duty under
19 subsection (a) of this section” before “, each
20 enterprise shall”;

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

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

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

1 (E) by redesignating such subsection as
2 subsection (b);

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

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

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

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

1 “(A) MANUFACTURED HOUSING.—The en-
2 terprise shall lead the industry in developing
3 loan products and flexible underwriting guide-
4 lines to facilitate a secondary market for mort-
5 gages on manufactured homes for very low-,
6 low-, and moderate-income families.

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

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

18 “(ii) the program under section 236
19 of the National Housing Act;

20 “(iii) the below-market interest rate
21 mortgage program under section 221(d)(4)
22 of the National Housing Act;

23 “(iv) the supportive housing for the
24 elderly program under section 202 of the
25 Housing Act of 1959;

1 “(v) the supportive housing program
2 for persons with disabilities under section
3 811 of the Cranston-Gonzalez National Af-
4 fordable Housing Act;

5 “(vi) the programs under title IV of
6 the McKinney-Vento Homeless Assistance
7 Act (42 U.S.C. 11361 et seq.), but only
8 permanent supportive housing projects
9 subsidized under such programs; and

10 “(vii) the rural rental housing pro-
11 gram under section 515 of the Housing
12 Act of 1949.

13 “(C) RURAL AND OTHER UNDERSERVED
14 MARKETS.—The enterprise shall lead the indus-
15 try in developing loan products and flexible un-
16 derwriting guidelines to facilitate a secondary
17 market for mortgages on housing for very low-
18 , low-, and moderate-income families in rural
19 areas, and for mortgages for housing for any
20 other underserved market for very low-, low-,
21 and moderate-income families that the Sec-
22 retary identifies as lacking adequate credit
23 through conventional lending sources. Such un-
24 derserved markets may be identified by bor-

1 rower type, market segment, or geographic
2 area.”; and

3 (5) by adding at the end the following new sub-
4 section:

5 “(c) EVALUATION AND REPORTING OF COMPLI-
6 ANCE.—

7 “(1) IN GENERAL.—Not later than 6 months
8 after the effective date under section 365 of the
9 Federal Housing Finance Reform Act of 2008, the
10 Director shall establish a manner for evaluating
11 whether, and the extent to which, the enterprises
12 have complied with the duty under subsection (a) to
13 serve underserved markets and for rating the extent
14 of such compliance. Using such method, the Director
15 shall, for each year, evaluate such compliance and
16 rate the performance of each enterprise as to extent
17 of compliance. The Director shall include such eval-
18 uation and rating for each enterprise for a year in
19 the report for that year submitted pursuant to sec-
20 tion 1319B(a).

21 “(2) SEPARATE EVALUATIONS.—In determining
22 whether an enterprise has complied with the duty re-
23 ferred to in paragraph (1), the Director shall sepa-
24 rately evaluate whether the enterprise has complied
25 with such duty with respect to each of the under-

1 served markets identified in subsection (a), taking
2 into consideration—

3 “(A) the development of loan products and
4 more flexible underwriting guidelines;

5 “(B) the extent of outreach to qualified
6 loan sellers in each of such underserved mar-
7 kets; and

8 “(C) the volume of loans purchased in each
9 of such underserved markets.

10 “(3) MANUFACTURED HOUSING MARKET.—In
11 determining whether an enterprise has complied with
12 the duty under subparagraph (A) of subsection
13 (a)(2), the Director may consider loans secured by
14 both real and personal property.”.

15 (b) ENFORCEMENT.—Subsection (a) of section 1336
16 of the Housing and Community Development Act of 1992
17 (12 U.S.C. 4566(a)) is amended—

18 (1) in paragraph (1), by inserting “and with
19 the duty under section 1335(a) of each enterprise
20 with respect to underserved markets,” before “as
21 provided in this section”; and

22 (2) by adding at the end of such subsection, as
23 amended by the preceding provisions of this subtitle,
24 the following new paragraph:

1 “(4) ENFORCEMENT OF DUTY TO PROVIDE
2 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—
3 The duty under section 1335(a) of each enterprise
4 to serve underserved markets (as determined in ac-
5 cordance with section 1335(c)) shall be enforceable
6 under this section to the same extent and under the
7 same provisions that the housing goals established
8 under this subpart are enforceable. Such duty shall
9 not be enforceable under any other provision of this
10 title (including subpart C of this part) other than
11 this section or under any provision of the Federal
12 National Mortgage Association Charter Act or the
13 Federal Home Loan Mortgage Corporation Act.”.

14 **SEC. 339. MONITORING AND ENFORCING COMPLIANCE**
15 **WITH HOUSING GOALS.**

16 (a) ADDITIONAL CREDIT FOR CERTAIN MORT-
17 GAGES.—Section 1336(a) of the Housing and Community
18 Development Act of 1992 (12 U.S.C. 4566(a)) is amend-
19 ed—

20 (1) in paragraph (2), by inserting “, except as
21 provided in paragraph (4),” after “which”; and

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

24 “(5) ADDITIONAL CREDIT.—The Director shall
25 assign more than 125 percent credit toward achieve-

1 ment, under this section, of the housing goals for
2 mortgage purchase activities of the enterprises that
3 comply with the requirements of such goals and sup-
4 port—

5 “(A) housing that meets energy efficiency
6 or other environmental standards that are es-
7 tablished by a Federal, State, or local govern-
8 mental authority with respect to the geographic
9 area where the housing is located or are other-
10 wise widely recognized; or

11 “(B) housing that includes a licensed
12 childcare center.

13 The availability of additional credit under this para-
14 graph shall not be used to increase any housing
15 goal, subgoal, or target established under this sub-
16 part.”.

17 (b) MONITORING AND ENFORCEMENT.—Section
18 1336 of the Housing and Community Development Act
19 of 1992 (12 U.S.C. 4566) is amended—

20 (1) in subsection (b)—

21 (A) in the subsection heading, by inserting
22 “PRELIMINARY” before “DETERMINATION”;

23 (B) by striking paragraph (1) and insert-
24 ing the following new paragraph:

1 “(1) NOTICE.—If the Director preliminarily de-
2 termines that an enterprise has failed, or that there
3 is a substantial probability that an enterprise will
4 fail, to meet any housing goal established under this
5 subpart, the Director shall provide written notice to
6 the enterprise of such a preliminary determination,
7 the reasons for such determination, and the informa-
8 tion on which the Director based the determina-
9 tion.”;

10 (C) in paragraph (2)—

11 (i) in subparagraph (A), by inserting
12 “finally” before “determining”;

13 (ii) by striking subparagraphs (B) and
14 (C) and inserting the following new sub-
15 paragraph:

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

18 “(i) extend the period under subpara-
19 graph (A) for good cause for not more
20 than 30 additional days; and

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

23 (iii) by redesignating subparagraph
24 (D) as subparagraph (C); and

25 (D) in paragraph (3)—

1 (i) in subparagraph (A), by striking
2 “determine” and inserting “issue a final
3 determination of”;

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

6 (iii) in subparagraph (C)—

7 (I) by striking “Committee on
8 Banking, Finance and Urban Affairs”
9 and inserting “Committee on Finan-
10 cial Services”; and

11 (II) by inserting “final” before
12 “determination” each place such term
13 appears; and

14 (2) in subsection (c)—

15 (A) by striking the subsection designation
16 and heading and all that follows through the
17 end of paragraph (1) and inserting the fol-
18 lowing:

19 “(c) CEASE AND DESIST ORDERS, CIVIL MONEY
20 PENALTIES, AND REMEDIES INCLUDING HOUSING
21 PLANS.—

22 “(1) REQUIREMENT.—If the Director finds,
23 pursuant to subsection (b), that there is a substan-
24 tial probability that an enterprise will fail, or has ac-
25 tually failed, to meet any housing goal under this

1 subpart and that the achievement of the housing
2 goal was or is feasible, the Director may require that
3 the enterprise submit a housing plan under this sub-
4 section. If the Director makes such a finding and
5 the enterprise refuses to submit such a plan, sub-
6 mits an unacceptable plan, fails to comply with the
7 plan or the Director finds that the enterprise has
8 failed to meet any housing goal under this subpart,
9 in addition to requiring an enterprise to submit a
10 housing plan, the Director may issue a cease and de-
11 sist order in accordance with section 1341, impose
12 civil money penalties in accordance with section
13 1345, or order other remedies as set forth in para-
14 graph (7) of this subsection.”;

15 (B) in paragraph (2)—

16 (i) by striking “CONTENTS.—Each
17 housing plan” and inserting “HOUSING
18 PLAN.—If the Director requires a housing
19 plan under this section, such a plan”; and

20 (ii) in subparagraph (B), by inserting
21 “and changes in its operations” after “im-
22 provements”;

23 (C) in paragraph (3)—

1 (i) by inserting “comply with any re-
2 medial action or” before “submit a housing
3 plan”; and

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

6 (D) in paragraph (4), by striking the first
7 two sentences and inserting the following: “The
8 Director shall review each submission by an en-
9 terprise, including a housing plan submitted
10 under this subsection, and not later than 30
11 days after submission, approve or disapprove
12 the plan or other action. The Director may ex-
13 tend the period for approval or disapproval for
14 a single additional 30-day period if the Director
15 determines such extension necessary.”; and

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

18 “(7) ADDITIONAL REMEDIES FOR FAILURE TO
19 MEET GOALS.—In addition to ordering a housing
20 plan under this section, issuing cease and desist or-
21 ders under section 1341, and ordering civil money
22 penalties under section 1345, the Director may seek
23 other actions when an enterprise fails to meet a
24 goal, and exercise appropriate enforcement authority
25 available to the Director under this Act to prohibit

1 the enterprise from initially offering any product (as
2 such term is defined in section 1321(f)) or engaging
3 in any new activities, services, undertakings, and of-
4 ferings and to order the enterprise to suspend prod-
5 ucts and activities, services, undertakings, and offer-
6 ings pending its achievement of the goal.”.

7 **SEC. 340. AFFORDABLE HOUSING FUND.**

8 (a) IN GENERAL.—The Housing and Community De-
9 velopment Act of 1992 is amended by striking sections
10 1337 and 1338 (12 U.S.C. 4562 note) and inserting the
11 following new section:

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

13 “(a) ESTABLISHMENT AND PURPOSE.—The Direc-
14 tor, in consultation with the Secretary of Housing and
15 Urban Development, shall establish and manage an af-
16 fordable housing fund in accordance with this section,
17 which shall be funded with amounts allocated by the enter-
18 prises under subsection (b). The purpose of the affordable
19 housing fund shall be to provide formula grants to grant-
20 ees for use—

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

23 “(2) to increase investment in housing in low-
24 income areas, and areas designated as qualified cen-
25 sus tracts or an area of chronic economic distress

1 pursuant to section 143(j) of the Internal Revenue
2 Code of 1986 (26 U.S.C. 143(j));

3 “(3) to increase and preserve the supply of
4 rental and owner-occupied housing for extremely
5 low- and very low-income families;

6 “(4) to increase investment in public infrastruc-
7 ture development in connection with housing assisted
8 under this section; and

9 “(5) to leverage investments from other sources
10 in affordable housing and in public infrastructure
11 development in connection with housing assisted
12 under this section.

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

14 “(1) IN GENERAL.—In accordance with regula-
15 tions issued by the Director under subsection (m)
16 and subject to paragraph (2) of this subsection and
17 subsection (i)(5), each enterprise shall allocate to the
18 affordable housing fund established under subsection
19 (a), in each of the years 2008 through 2012, an
20 amount equal to 1.2 basis points for each dollar of
21 the average total mortgage portfolio of the enter-
22 prise during the preceding year.

23 “(2) SUSPENSION OF CONTRIBUTIONS.—The
24 Director shall temporarily suspend the allocation
25 under paragraph (1) by an enterprise to the afford-

1 able housing fund upon a finding by the Director
2 that such allocations—

3 “(A) are contributing, or would contribute,
4 to the financial instability of the enterprise;

5 “(B) are causing, or would cause, the en-
6 terprise to be classified as undercapitalized; or

7 “(C) are preventing, or would prevent, the
8 enterprise from successfully completing a cap-
9 ital restoration plan under section 1369C.

10 “(3) 5-YEAR SUNSET AND REPORT.—

11 “(A) SUNSET.—The enterprises shall not
12 be required to make allocations to the afford-
13 able housing fund in 2012 or in any year there-
14 after.

15 “(B) REPORT ON PROGRAM CONTINU-
16 ANCE.—Not later than June 30, 2011, the Di-
17 rector shall submit to the Committee on Finan-
18 cial Services of the House of Representatives
19 and the Committee on Banking, Housing, and
20 Urban Affairs of the Senate a report making
21 recommendations on whether the program
22 under this section, including the requirement
23 for the enterprises to make allocations to the
24 affordable housing fund, should be extended
25 and on any modifications for the program.

1 “(4) PROHIBITION OF PASS-THROUGH OF COST
2 OF ALLOCATIONS.—The Director shall, by regula-
3 tion, prohibit each enterprise from redirecting such
4 costs, through increased charges or fees, or de-
5 creased premiums, or in any other manner, to the
6 originators of mortgages purchased or securitized by
7 the enterprise.

8 “(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

9 “(1) ALLOCATION FOR 2008.—

10 “(A) ALLOCATION PERCENTAGES FOR
11 LOUISIANA AND MISSISSIPPI.—For purposes of
12 subsection (d)(1)(A), the allocation percentages
13 for 2008 for the grantees under this section for
14 such year shall be as follows:

15 “(i) The allocation percentage for the
16 Louisiana Housing Finance Agency shall
17 be 75 percent.

18 “(ii) The allocation percentage for the
19 Mississippi Development Authority shall be
20 25 percent.

21 “(B) USE IN DISASTER AREAS.—Afford-
22 able housing grant amounts for 2008 shall be
23 used only as provided in subsection (g) only for
24 such eligible activities in areas that were sub-
25 ject to a declaration by the President of a

1 major disaster or emergency under the Robert
2 T. Stafford Disaster Relief and Emergency As-
3 sistance Act (42 U.S.C. 5121 et seq.) in con-
4 nection with Hurricane Katrina or Rita of
5 2005.

6 “(2) ALLOCATION FORMULA FOR OTHER
7 YEARS.—The Secretary of Housing and Urban De-
8 velopment shall, by regulation, establish a formula to
9 allocate, among the States (as such term is defined
10 in section 1303) and federally recognized Indian
11 tribes, the amounts provided by the enterprises in
12 each year referred to subsection (b)(1), other than
13 2008, to the affordable housing fund established
14 under this section. The formula shall be based on
15 the following factors, with respect to each State and
16 tribe:

17 “(A) The ratio of the population of the
18 State or federally recognized Indian tribe to the
19 aggregate population of all the States and
20 tribes.

21 “(B) The percentage of families in the
22 State or federally recognized Indian tribe that
23 pay more than 50 percent of their annual in-
24 come for housing costs.

1 “(C) The percentage of persons in the
2 State or federally recognized Indian tribe that
3 are members of extremely low- or very low-in-
4 come families.

5 “(D) The cost of developing or carrying
6 out rehabilitation of housing in the State or for
7 the federally recognized Indian tribe.

8 “(E) The percentage of families in the
9 State or federally recognized Indian tribe that
10 live in substandard housing.

11 “(F) The percentage of housing stock in
12 the State or for the federally recognized Indian
13 tribe that is extremely old housing.

14 “(G) Any other factors that the Secretary
15 determines to be appropriate.

16 “(3) FAILURE TO ESTABLISH.—If, in any year
17 referred to in subsection (b)(1), other than 2008,
18 the regulations establishing the formula required
19 under paragraph (2) of this subsection have not
20 been issued by the date that the Director determines
21 the amounts described in subsection (d)(1) to be
22 available for affordable housing fund grants in such
23 year, for purposes of such year any amounts for a
24 State (as such term is defined in section 1303 of
25 this Act) that would otherwise be determined under

1 subsection (d) by applying the formula established
2 pursuant to paragraph (2) of this subsection shall be
3 determined instead by applying, for such State, the
4 percentage that is equal to the percentage of the
5 total amounts made available for such year for allo-
6 cation under subtitle A of title II of the Cranston-
7 Gonzalez National Affordable Housing Act (42
8 U.S.C. 12741 et seq.) that are allocated in such
9 year, pursuant to such subtitle, to such State (in-
10 cluding any insular area or unit of general local gov-
11 ernment, as such terms are defined in section 104
12 of such Act (42 U.S.C. 12704), that is treated as a
13 State under section 1303 of this Act) and to partici-
14 pating jurisdictions and other eligible entities within
15 such State.

16 “(d) ALLOCATION OF FORMULA AMOUNT;
17 GRANTS.—

18 “(1) FORMULA AMOUNT.—For each year re-
19 ferred to in subsection (b)(1), the Director shall de-
20 termine the formula amount under this section for
21 each grantee, which shall be the amount determined
22 for such grantee—

23 “(A) for 2008, by applying the allocation
24 percentages under subparagraph (A) of sub-
25 section (c)(1) to the sum of the total amounts

1 allocated by the enterprises to the affordable
2 housing fund for such year, less any amounts
3 used pursuant to subsection (i)(1); and

4 “(B) for any other year referred to in sub-
5 section (b)(1) (other than 2008), by applying
6 the formula established pursuant to paragraph
7 (2) of subsection (c) to the sum of the total
8 amounts allocated by the enterprises to the af-
9 fordable housing fund for such year and any re-
10 captured amounts available pursuant to sub-
11 section (i)(4), less any amounts used pursuant
12 to subsection (i)(1).

13 “(2) NOTICE.—In each year referred to in sub-
14 section (b)(1), not later than 60 days after the date
15 that the Director determines the amounts described
16 in paragraph (1) to be available for affordable hous-
17 ing fund grants to grantees in such year, the Direc-
18 tor shall cause to be published in the Federal Reg-
19 ister a notice that such amounts shall be so avail-
20 able.

21 “(3) GRANT AMOUNT.—

22 “(A) IN GENERAL.—For each year re-
23 ferred to in subsection (b)(1), the Director shall
24 make a grant from amounts in the affordable
25 housing fund to each grantee in an amount that

1 is, except as provided in subparagraph (B),
2 equal to the formula amount under this section
3 for the grantee. A grantee may designate a
4 State housing finance agency, housing and com-
5 munity development entity, tribally designated
6 housing entity (as such term is defined in sec-
7 tion 4 of the Native American Housing Assist-
8 ance and Self-Determination Act of 1997 (25
9 U.S.C. 4103)) or other qualified instrumentality
10 of the grantee to receive such grant amounts.

11 “(B) REDUCTION FOR FAILURE TO OBTAIN
12 RETURN OF MISUSED FUNDS.—If in any year a
13 grantee fails to obtain reimbursement or return
14 of the full amount required under subsection
15 (j)(1)(B) to be reimbursed or returned to the
16 grantee during such year—

17 “(i) except as provided in clause (ii)—

18 “(I) the amount of the grant for
19 the grantee for the succeeding year,
20 as determined pursuant to subpara-
21 graph (A), shall be reduced by the
22 amount by which such amounts re-
23 quired to be reimbursed or returned
24 exceed the amount actually reim-
25 bursed or returned; and

1 “(II) the amount of the grant for
2 the succeeding year for each other
3 grantee whose grant is not reduced
4 pursuant to subclause (I) shall be in-
5 creased by the amount determined by
6 applying the formula established pur-
7 suant to subsection (c)(2) to the total
8 amount of all reductions for all grant-
9 ees for such year pursuant to sub-
10 clause (I); or

11 “(ii) in any case in which such failure
12 to obtain reimbursement or return occurs
13 during a year immediately preceding a
14 year in which grants under this subsection
15 will not be made, the grantee shall pay to
16 the Director for reallocation among the
17 other grantees an amount equal to the
18 amount of the reduction for the grantee
19 that would otherwise apply under clause
20 (i)(I).

21 “(e) GRANTEE ALLOCATION PLANS.—

22 “(1) IN GENERAL.—For each year that a grant-
23 ee receives affordable housing fund grant amounts,
24 the grantee shall establish an allocation plan in ac-
25 cordance with this subsection, which shall be a plan

1 for the distribution of such grant amounts of the
2 grantee for such year that—

3 “(A) is based on priority housing needs, as
4 determined by the grantee in accordance with
5 the regulations established under subsection
6 (m)(2)(C);

7 “(B) complies with subsection (f); and

8 “(C) includes performance goals, bench-
9 marks, and timetables for the grantee for the
10 production, preservation, and rehabilitation of
11 affordable rental and homeownership housing
12 with such grant amounts that comply with the
13 requirements established by the Director pursu-
14 ant to subsection (m)(2)(F).

15 “(2) ESTABLISHMENT.—In establishing an allo-
16 cation plan, a grantee shall notify the public of the
17 establishment of the plan, provide an opportunity for
18 public comments regarding the plan, consider any
19 public comments received, and make the completed
20 plan available to the public.

21 “(3) CONTENTS.—An allocation plan of a
22 grantee shall set forth the requirements for eligible
23 recipients under subsection (h) to apply to the
24 grantee to receive assistance from affordable housing

1 fund grant amounts, including a requirement that
2 each such application include—

3 “(A) a description of the eligible activities
4 to be conducted using such assistance; and

5 “(B) a certification by the eligible recipient
6 applying for such assistance that any housing
7 units assisted with such assistance will comply
8 with the requirements under this section.

9 “(f) SELECTION OF ACTIVITIES FUNDED USING AF-
10 FORDABLE HOUSING FUND GRANT AMOUNTS.—Afford-
11 able housing fund grant amounts of a grantee may be
12 used, or committed for use, only for activities that—

13 “(1) are eligible under subsection (g) for such
14 use;

15 “(2) comply with the applicable allocation plan
16 under subsection (e) of the grantee; and

17 “(3) are selected for funding by the grantee in
18 accordance with the process and criteria for such se-
19 lection established pursuant to subsection (m)(2)(C).

20 “(g) ELIGIBLE ACTIVITIES.—Affordable housing
21 fund grant amounts of a grantee shall be eligible for use,
22 or for commitment for use, only for assistance for—

23 “(1) the production, preservation, and rehabili-
24 tation of rental housing, including housing under the
25 programs identified in section 1335(a)(2)(B), except

1 that such grant amounts may be used for the benefit
2 only of extremely low- and very low-income families;

3 “(2) the production, preservation, and rehabili-
4 tation of housing for homeownership, including such
5 forms as downpayment assistance, closing cost as-
6 sistance, and assistance for interest-rate buy-downs,
7 that—

8 “(A) is available for purchase only for use
9 as a principal residence by families that qualify
10 both as—

11 “(i) extremely low- and very-low in-
12 come families at the times described in
13 subparagraphs (A) through (C) of section
14 215(b)(2) of the Cranston-Gonzalez Na-
15 tional Affordable Housing Act (42 U.S.C.
16 12745(b)(2)); and

17 “(ii) first-time homebuyers, as such
18 term is defined in section 104 of the Cran-
19 ston-Gonzalez National Affordable Housing
20 Act (42 U.S.C. 12704), except that any
21 reference in such section to assistance
22 under title II of such Act shall for pur-
23 poses of this section be considered to refer
24 to assistance from affordable housing fund
25 grant amounts;

1 “(B) has an initial purchase price that
2 meets the requirements of section 215(b)(1) of
3 the Cranston-Gonzalez National Affordable
4 Housing Act;

5 “(C) is subject to the same resale restric-
6 tions established under section 215(b)(3) of the
7 Cranston-Gonzalez National Affordable Hous-
8 ing Act and applicable to the participating ju-
9 risdiction that is the State in which such hous-
10 ing is located; and

11 “(D) is made available for purchase only
12 by, or in the case of assistance under this para-
13 graph, is made available only to, homebuyers
14 who have, before purchase—

15 “(i) completed a program of coun-
16 seling with respect to the responsibilities
17 and financial management involved in
18 homeownership that is approved by the Di-
19 rector; except that the Director may, at
20 the request of a State, waive the require-
21 ments of this subparagraph with respect to
22 a geographic area or areas within the State
23 if: (I) the travel time or distance involved
24 in providing counseling with respect to
25 such area or areas, as otherwise required

1 under this subparagraph, on an in-person
2 basis is excessive or the cost of such travel
3 is prohibitive; and (II) the State provides
4 alternative forms of counseling for such
5 area or areas, which may include inter-
6 active telephone counseling, on-line coun-
7 seling, interactive video counseling, and
8 interactive home study counseling and a
9 program of financial literacy and education
10 to promote an understanding of consumer,
11 economic, and personal finance issues and
12 concepts, including saving for retirement,
13 managing credit, long-term care, and es-
14 tate planning and education on predatory
15 lending, identity theft, and financial abuse
16 schemes relating to homeownership that is
17 approved by the Director, except that enti-
18 ties providing such counseling shall not
19 discriminate against any particular form of
20 housing; and

21 “(ii) demonstrated, in accordance with
22 regulations as the Director shall issue set-
23 ting forth requirements for sufficient evi-
24 dence, that they are lawfully present in the
25 United States; and

1 “(3) public infrastructure development activities
2 in connection with housing activities funded under
3 paragraph (1) or (2).

4 “(h) ELIGIBLE RECIPIENTS.—Affordable housing
5 fund grant amounts of a grantee may be provided only
6 to a recipient that is an organization, agency, or other en-
7 tity (including a for-profit entity, a nonprofit entity, and
8 a faith-based organization) that—

9 “(1) has demonstrated experience and capacity
10 to conduct an eligible activity under (g), as evi-
11 denced by its ability to—

12 “(A) own, construct or rehabilitate, man-
13 age, and operate an affordable multifamily rent-
14 al housing development;

15 “(B) design, construct or rehabilitate, and
16 market affordable housing for homeownership;

17 “(C) provide forms of assistance, such as
18 downpayments, closing costs, or interest-rate
19 buy-downs, for purchasers; or

20 “(D) construct related public infrastruc-
21 ture development activities in connection with
22 such housing activities;

23 “(2) demonstrates the ability and financial ca-
24 pacity to undertake, comply, and manage the eligible
25 activity;

1 “(3) demonstrates its familiarity with the re-
2 quirements of any other Federal, State or local
3 housing program that will be used in conjunction
4 with such grant amounts to ensure compliance with
5 all applicable requirements and regulations of such
6 programs; and

7 “(4) makes such assurances to the grantee as
8 the Director shall, by regulation, require to ensure
9 that the recipient will comply with the requirements
10 of this section during the entire period that begins
11 upon selection of the recipient to receive such grant
12 amounts and ending upon the conclusion of all ac-
13 tivities under subsection (g) that are engaged in by
14 the recipient and funded with such grant amounts.

15 “(i) LIMITATIONS ON USE.—

16 “(1) REQUIRED AMOUNT FOR REFCORP.—Of
17 the aggregate amount allocated pursuant to sub-
18 section (b) in each year to the affordable housing
19 fund, 25 percent shall be used as provided in section
20 21B(f)(2)(E) of the Federal Home Loan Bank Act
21 (12 U.S.C. 1441b(f)(2)(E)).

22 “(2) REQUIRED AMOUNT FOR HOMEOWNERSHIP
23 ACTIVITIES.—Of the aggregate amount of affordable
24 housing fund grant amounts provided in each year

1 to a grantee, not less than 10 percent shall be used
2 for activities under paragraph (2) of subsection (g).

3 “(3) MAXIMUM AMOUNT FOR PUBLIC INFRA-
4 STRUCTURE DEVELOPMENT ACTIVITIES IN CONNEC-
5 TION WITH AFFORDABLE HOUSING ACTIVITIES.—Of
6 the aggregate amount of affordable housing fund
7 grant amounts provided in each year to a grantee,
8 not more than 12.5 percent may be used for activi-
9 ties under paragraph (3) of subsection (g).

10 “(4) DEADLINE FOR COMMITMENT OR USE.—
11 Any affordable housing fund grant amounts of a
12 grantee shall be used or committed for use within
13 two years of the date of that such grant amounts
14 are made available to the grantee. The Director shall
15 recapture into the affordable housing fund any such
16 amounts not so used or committed for use and allo-
17 cate such amounts under subsection (d)(1) in the
18 first year after such recapture.

19 “(5) USE OF RETURNS.—The Director shall, by
20 regulation provide that any return on a loan or other
21 investment of any affordable housing fund grant
22 amounts of a grantee shall be treated, for purposes
23 of availability to and use by the grantee, as afford-
24 able housing fund grant amounts.

25 “(6) PROHIBITED USES.—The Director shall—

1 “(A) by regulation, set forth prohibited
2 uses of affordable housing fund grant amounts,
3 which shall include use for—

4 “(i) political activities;

5 “(ii) advocacy;

6 “(iii) lobbying, whether directly or
7 through other parties;

8 “(iv) counseling services;

9 “(v) travel expenses; and

10 “(vi) preparing or providing advice on
11 tax returns;

12 “(B) by regulation, provide that, except as
13 provided in subparagraph (C), affordable hous-
14 ing fund grant amounts of a grantee may not
15 be used for administrative, outreach, or other
16 costs of—

17 “(i) the grantee; or

18 “(ii) any recipient of such grant
19 amounts; and

20 “(C) by regulation, limit the amount of
21 any affordable housing fund grant amounts of
22 the grantee for a year that may be used for ad-
23 ministrative costs of the grantee of carrying out
24 the program required under this section to a
25 percentage of such grant amounts of the grant-

1 ee for such year, which may not exceed 10 per-
2 cent.

3 “(7) PROHIBITION OF CONSIDERATION OF USE
4 FOR MEETING HOUSING GOALS OR DUTY TO
5 SERVE.—In determining compliance with the hous-
6 ing goals under this subpart and the duty to serve
7 underserved markets under section 1335, the Direc-
8 tor may not consider any affordable housing fund
9 grant amounts used under this section for eligible
10 activities under subsection (g). The Director shall
11 give credit toward the achievement of such housing
12 goals and such duty to serve underserved markets to
13 purchases by the enterprises of mortgages for hous-
14 ing that receives funding from affordable housing
15 fund grant amounts, but only to the extent that
16 such purchases by the enterprises are funded other
17 than with such grant amounts.

18 “(8) ACCEPTABLE IDENTIFICATION REQUIRE-
19 MENT FOR OCCUPANCY OR ASSISTANCE.—

20 “(A) IN GENERAL.—Any assistance pro-
21 vided with any affordable housing grant
22 amounts may not be made available to, or on
23 behalf of, any individual or household unless the
24 individual provides, or, in the case of a house-
25 hold, all adult members of the household pro-

1 vide, personal identification in one of the fol-
2 lowing forms:

3 “(i) SOCIAL SECURITY CARD WITH
4 PHOTO IDENTIFICATION CARD OR REAL ID
5 ACT IDENTIFICATION.—

6 “(I) A social security card ac-
7 companied by a photo identification
8 card issued by the Federal Govern-
9 ment or a State Government; or

10 “(II) A driver’s license or identi-
11 fication card issued by a State in the
12 case of a State that is in compliance
13 with title II of the REAL ID Act of
14 2005 (title II of division B of Public
15 Law 109–13; 49 U.S.C. 30301 note).

16 “(ii) PASSPORT.—A passport issued
17 by the United States or a foreign govern-
18 ment.

19 “(iii) USCIS PHOTO IDENTIFICATION
20 CARD.—A photo identification card issued
21 by the Secretary of Homeland Security
22 (acting through the Director of the United
23 States Citizenship and Immigration Serv-
24 ices).

1 “(B) REGULATIONS.—The Director shall,
2 by regulation, require that each grantee and re-
3 cipient take such actions as the Director con-
4 siders necessary to ensure compliance with the
5 requirements of subparagraph (A).

6 “(j) ACCOUNTABILITY OF RECIPIENTS AND GRANT-
7 EES.—

8 “(1) RECIPIENTS.—

9 “(A) TRACKING OF FUNDS.—The Director
10 shall—

11 “(i) require each grantee to develop
12 and maintain a system to ensure that each
13 recipient of assistance from affordable
14 housing fund grant amounts of the grantee
15 uses such amounts in accordance with this
16 section, the regulations issued under this
17 section, and any requirements or condi-
18 tions under which such amounts were pro-
19 vided; and

20 “(ii) establish minimum requirements
21 for agreements, between the grantee and
22 recipients, regarding assistance from the
23 affordable housing fund grant amounts of
24 the grantee, which shall include—

1 “(I) appropriate continuing fi-
2 nancial and project reporting, record
3 retention, and audit requirements for
4 the duration of the grant to the re-
5 cipient to ensure compliance with the
6 limitations and requirements of this
7 section and the regulations under this
8 section; and

9 “(II) any other requirements that
10 the Director determines are necessary
11 to ensure appropriate grant adminis-
12 tration and compliance.

13 “(B) MISUSE OF FUNDS.—

14 “(i) REIMBURSEMENT REQUIRE-
15 MENT.—If any recipient of assistance from
16 affordable housing fund grant amounts of
17 a grantee is determined, in accordance
18 with clause (ii), to have used any such
19 amounts in a manner that is materially in
20 violation of this section, the regulations
21 issued under this section, or any require-
22 ments or conditions under which such
23 amounts were provided, the grantee shall
24 require that, within 12 months after the
25 determination of such misuse, the recipient

1 shall reimburse the grantee for such mis-
2 used amounts and return to the grantee
3 any amounts from the affordable housing
4 fund grant amounts of the grantee that re-
5 main unused or uncommitted for use. The
6 remedies under this clause are in addition
7 to any other remedies that may be avail-
8 able under law.

9 “(ii) DETERMINATION.—A determina-
10 tion is made in accordance with this clause
11 if the determination is—

12 “(I) made by the Director; or

13 “(II)(aa) made by the grantee;

14 “(bb) the grantee provides notifi-
15 cation of the determination to the Di-
16 rector for review, in the discretion of
17 the Director, of the determination;
18 and

19 “(cc) the Director does not sub-
20 sequently reverse the determination.

21 “(2) GRANTEES.—

22 “(A) REPORT.—

23 “(i) IN GENERAL.—The Director shall
24 require each grantee receiving affordable
25 housing fund grant amounts for a year to

1 submit a report, for such year, to the Di-
2 rector that—

3 “(I) describes the activities fund-
4 ed under this section during such year
5 with the affordable housing fund
6 grant amounts of the grantee; and

7 “(II) the manner in which the
8 grantee complied during such year
9 with the allocation plan established
10 pursuant to subsection (e) for the
11 grantee.

12 “(ii) PUBLIC AVAILABILITY.—The Di-
13 rector shall make such reports pursuant to
14 this subparagraph publicly available.

15 “(B) MISUSE OF FUNDS.—If the Director
16 determines, after reasonable notice and oppor-
17 tunity for hearing, that a grantee has failed to
18 comply substantially with any provision of this
19 section and until the Director is satisfied that
20 there is no longer any such failure to comply,
21 the Director shall—

22 “(i) reduce the amount of assistance
23 under this section to the grantee by an
24 amount equal to the amount affordable

1 housing fund grant amounts which were
2 not used in accordance with this section;

3 “(ii) require the grantee to repay the
4 Director an amount equal to the amount of
5 the amount affordable housing fund grant
6 amounts which were not used in accord-
7 ance with this section;

8 “(iii) limit the availability of assist-
9 ance under this section to the grantee to
10 activities or recipients not affected by such
11 failure to comply; or

12 “(iv) terminate any assistance under
13 this section to the grantee.

14 “(k) CAPITAL REQUIREMENTS.—The utilization or
15 commitment of amounts from the affordable housing fund
16 shall not be subject to the risk-based capital requirements
17 established pursuant to section 1361(a).

18 “(l) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 “(1) AFFORDABLE HOUSING FUND GRANT
21 AMOUNTS.—The term ‘affordable housing fund
22 grant amounts’ means amounts from the affordable
23 housing fund established under subsection (a) that
24 are provided to a grantee pursuant to subsection
25 (d)(3).

1 “(2) GRANTEE.—The term ‘grantee’ means—

2 “(A) with respect to 2008, the Louisiana
3 Housing Finance Agency and the Mississippi
4 Development Authority; and

5 “(B) with respect to the years referred to
6 in subsection (b)(1), other than 2008, each
7 State (as such term is defined in section 1303)
8 and each federally recognized Indian tribe.

9 “(3) RECIPIENT.—The term ‘recipient’ means
10 an entity meeting the requirements under subsection
11 (h) that receives assistance from a grantee from af-
12 fordable housing fund grant amounts of the grantee.

13 “(4) TOTAL MORTGAGE PORTFOLIO.—The term
14 ‘total mortgage portfolio’ means, with respect to a
15 year, the sum, for all mortgages outstanding during
16 that year in any form, including whole loans, mort-
17 gage-backed securities, participation certificates, or
18 other structured securities backed by mortgages, of
19 the dollar amount of the unpaid outstanding prin-
20 cipal balances under such mortgages. Such term in-
21 cludes all such mortgages or securitized obligations,
22 whether retained in portfolio, or sold in any form.
23 The Director is authorized to promulgate rules fur-
24 ther defining such term as necessary to implement
25 this section and to address market developments.

1 “(5) VERY-LOW INCOME FAMILY.—The term
2 ‘very low-income family’ has the meaning given such
3 term in section 1303, except that such term includes
4 any family that resides in a rural area that has an
5 income that does not exceed the poverty line (as
6 such term is defined in section 673(2) of the Omni-
7 bus Budget Reconciliation Act of 1981 (42 U.S.C.
8 9902(2)), including any revision required by such
9 section) applicable to a family of the size involved.

10 “(m) REGULATIONS.—

11 “(1) IN GENERAL.—The Director, in consulta-
12 tion with the Secretary of Housing and Urban De-
13 velopment, shall issue regulations to carry out this
14 section.

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

17 “(A) a requirement that the Director en-
18 sure that the program of each grantee for use
19 of affordable housing fund grant amounts of
20 the grantee is audited not less than annually to
21 ensure compliance with this section;

22 “(B) authority for the Director to audit,
23 provide for an audit, or otherwise verify a
24 grantee’s activities, to ensure compliance with
25 this section;

1 “(C) requirements for a process for appli-
2 cation to, and selection by, each grantee for ac-
3 tivities meeting the grantee’s priority housing
4 needs to be funded with affordable housing
5 fund grant amounts of the grantee, which shall
6 provide for priority in funding to be based
7 upon—

8 “(i) greatest impact;

9 “(ii) geographic diversity;

10 “(iii) ability to obligate amounts and
11 undertake activities so funded in a timely
12 manner;

13 “(iv) in the case of rental housing
14 projects under subsection (g)(1), the extent
15 to which rents for units in the project
16 funded are affordable, especially for ex-
17 tremely low-income families;

18 “(v) in the case of rental housing
19 projects under subsection (g)(1), the extent
20 of the duration for which such rents will
21 remain affordable;

22 “(vi) the extent to which the applica-
23 tion makes use of other funding sources;
24 and

1 “(vii) the merits of an applicant’s pro-
2 posed eligible activity;

3 “(D) requirements to ensure that amounts
4 provided to a grantee from the affordable hous-
5 ing fund that are used for rental housing under
6 subsection (g)(1) are used only for the benefit
7 of extremely low- and very-low income families;

8 “(E) limitations on public infrastructure
9 development activities that are eligible pursuant
10 to subsection (g)(3) for funding with affordable
11 housing fund grant amounts and requirements
12 for the connection between such activities and
13 housing activities funded under paragraph (1)
14 or (2) of subsection (g); and

15 “(F) requirements and standards for es-
16 tablishment, by grantees (including the grantees
17 for 2008 pursuant to subsection (l)(2)(A)), of
18 performance goals, benchmarks, and timetables
19 for the production, preservation, and rehabilita-
20 tion of affordable rental and homeownership
21 housing with affordable housing fund grant
22 amounts.

23 “(n) ENFORCEMENT OF REQUIREMENTS ON ENTER-
24 PRISE.—Compliance by the enterprises with the require-
25 ments under this section shall be enforceable under sub-

1 part C. Any reference in such subpart to this part or to
2 an order, rule, or regulation under this part specifically
3 includes this section and any order, rule, or regulation
4 under this section.

5 “(o) AFFORDABLE HOUSING TRUST FUND.—If,
6 after the enactment of the Federal Housing Finance Re-
7 form Act of 2008, in any year, there is enacted any provi-
8 sion of Federal law establishing an affordable housing
9 trust fund other than under this title for use only for
10 grants to provide affordable rental housing and affordable
11 homeownership opportunities, and the subsequent year is
12 a year referred to in subsection (b)(1), the Director shall
13 in such subsequent year and any remaining years referred
14 to in subsection (b)(1) transfer to such affordable housing
15 trust fund the aggregate amount allocated pursuant to
16 subsection (b) in such year to the affordable housing fund
17 under this section, less any amounts used pursuant to sub-
18 section (i)(1). For such subsequent and remaining years,
19 the provisions of subsections (c) and (d) shall not apply.
20 Notwithstanding any other provision of law, assistance
21 provided using amounts transferred to such affordable
22 housing trust fund pursuant to this subsection may not
23 be used for any of the activities specified in clauses (i)
24 through (vi) of subsection (i)(6). Nothing in this sub-
25 section shall be construed to alter the terms and condi-

1 tions of the affordable housing fund under this section or
2 to extend the life of such fund.

3 “(p) FUNDING ACCOUNTABILITY AND TRANS-
4 PARENCY.—Any grant under this section to a grantee
5 from the affordable housing fund established under sub-
6 section (a), any assistance provided to a recipient by a
7 grantee from affordable housing fund grant amounts, and
8 any grant, award, or other assistance from an affordable
9 housing trust fund referred to in subsection (o) shall be
10 considered a Federal award for purposes of the Federal
11 Funding Accountability and Transparency Act of 2006
12 (31 U.S.C. 6101 note). Upon the request of the Director
13 of the Office of Management and Budget, the Director of
14 the Federal Housing Finance Agency shall obtain and pro-
15 vide such information regarding any such grants, assist-
16 ance, and awards as the Director of the Office of Manage-
17 ment and Budget considers necessary to comply with the
18 requirements of such Act, as applicable pursuant to the
19 preceding sentence.”.

20 (b) TIMELY ESTABLISHMENT OF AFFORDABLE
21 HOUSING NEEDS FORMULA.—

22 (1) IN GENERAL.—The Secretary of Housing
23 and Urban Development shall, not later than the ef-
24 fective date under section 365 of this title, issue the
25 regulations establishing the affordable housing needs

1 formulas in accordance with the provisions of section
2 1337(c)(2) of the Housing and Community Develop-
3 ment Act of 1992, as such section is amended by
4 subsection (a) of this section.

5 (2) EFFECTIVE DATE.—This subsection shall
6 take effect on the date of the enactment of this Act.

7 (c) REFCORP PAYMENTS.—Section 21B(f)(2) of
8 the Federal Home Loan Bank Act (12 U.S.C.
9 1441b(f)(2)) is amended—

10 (1) in subparagraph (E), by striking “and (D)”
11 and inserting “(D), and (E)”;

12 (2) by redesignating subparagraph (E) as sub-
13 paragraph (F); and

14 (3) by inserting after subparagraph (D) the fol-
15 lowing new subparagraph:

16 “(E) PAYMENTS BY FANNIE MAE AND
17 FREDDIE MAC.—To the extent that the
18 amounts available pursuant to subparagraphs
19 (A), (B), (C), and (D) are insufficient to cover
20 the amount of interest payments, each enter-
21 prise (as such term is defined in section 1303
22 of the Housing and Community Development
23 Act of 1992 (42 U.S.C. 4502)) shall transfer to
24 the Funding Corporation in each calendar year
25 the amounts allocated for use under this sub-

1 paragraph pursuant to section 1337(i)(1) of
2 such Act.”.

3 (d) GAO REPORT.—The Comptroller General shall
4 conduct a study to determine the effects that the afford-
5 able housing fund established under section 1337 of the
6 Housing and Community Development Act of 1992, as
7 added by the amendment made by subsection (a) of this
8 section, will have on the availability and affordability of
9 credit for homebuyers, including the effects on such credit
10 of the requirement under such section 1337(b) that the
11 Federal National Mortgage Association and Federal Home
12 Loan Mortgage Corporation make allocations of amounts
13 to such fund based on the average total mortgage port-
14 folios, and the extent to which the costs of such allocation
15 requirement will be borne by such entities or will be passed
16 on to homebuyers. Not later than the expiration of the
17 12-month period beginning on the date of the enactment
18 of this Act, the Comptroller General shall submit a report
19 to the Congress setting forth the results and conclusions
20 of such study. This subsection shall take effect on the date
21 of the enactment of this Act.

22 **SEC. 341. CONSISTENCY WITH MISSION.**

23 Subpart B of part 2 of subtitle A of title XIII of the
24 Housing and Community Development Act of 1992 (12
25 U.S.C. 4561 et seq.) is amended by adding after section

1 1337, as added by the preceding provisions of this title,
2 the following new section:

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

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

9 **SEC. 342. ENFORCEMENT.**

10 (a) CEASE-AND-DESIST PROCEEDINGS.—Section
11 1341 of the Housing and Community Development Act
12 of 1992 (12 U.S.C. 4581) is amended—

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

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

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

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

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

7 “(4) the enterprise has violated any provision of
8 this part or any order, rule or regulation under this
9 part;

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

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

15 (2) in subsection (b)(2), by striking “requiring
16 the enterprise to” and all that follows through the
17 end of the paragraph and inserting the following:
18 “requiring the enterprise to—

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

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

21 “(C) comply with any provision this part
22 or any order, rule or regulation under such
23 part;

24 “(D) submit a housing plan in compliance
25 with section 1336(c);

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

3 “(F) provide the information required
4 under subsection (m) or (n) of section 309 of
5 the Federal National Mortgage Association
6 Charter Act or subsection (e) or (f) of section
7 307 of the Federal Home Loan Mortgage Cor-
8 poration Act, as applicable.”;

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

11 (4) by striking subsection (d).

12 (b) **AUTHORITY OF DIRECTOR TO ENFORCE NO-**
13 **TICES AND ORDERS.**—Section 1344 of the Housing and
14 Community Development Act of 1992 (12 U.S.C. 4584)
15 is amended by striking subsection (a) and inserting the
16 following new subsection:

17 “(a) **ENFORCEMENT.**—The Director may, in the dis-
18 cretion of the Director, apply to the United States District
19 Court for the District of Columbia, or the United States
20 district court within the jurisdiction of which the head-
21 quarters of the enterprise is located, for the enforcement
22 of any effective and outstanding notice or order issued
23 under section 1341 or 1345, or request that the Attorney
24 General of the United States bring such an action. Such

1 court shall have jurisdiction and power to order and re-
2 quire compliance with such notice or order.”.

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

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

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

11 “(1) meet any housing goal established under
12 subpart B, following a written notice and determina-
13 tion of such failure in accordance with section
14 1336(b);

15 “(2) submit a report under section 1314, fol-
16 lowing a notice of such failure, an opportunity for
17 comment by the enterprise, and a final determina-
18 tion by the Director;

19 “(3) submit the information required under
20 subsection (m) or (n) of section 309 of the Federal
21 National Mortgage Association Charter Act, or sub-
22 section (e) or (f) of section 307 of the Federal Home
23 Loan Mortgage Corporation Act;

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

1 “(5) submit a housing plan pursuant to section
2 1336(e) within the required period; or

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

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

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

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

13 (2) in subsection (c)—

14 (A) in paragraph (1)—

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

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

19 (iii) by striking subparagraph (C);
20 and

21 (B) in paragraph (2), by inserting after
22 the period at the end the following: “In deter-
23 mining the penalty under subsection (a)(1), the
24 Director shall give consideration to the length

1 of time the enterprise should reasonably take to
2 achieve the goal.”;

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

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

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

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

11 (5) by redesignating subsection (g) as sub-
12 section (f).

13 (d) ENFORCEMENT OF SUBPOENAS.—Section
14 1348(c) of the Housing and Community Development Act
15 of 1992 (12 U.S.C. 4588(c)) is amended—

16 (1) by striking “request the Attorney General
17 of the United States to” and inserting “, in the dis-
18 cretion of the Director,”; and

19 (2) by inserting “or request that the Attorney
20 General of the United States bring such an action,”
21 after “District of Columbia,”.

22 (e) CONFORMING AMENDMENT.—The heading for
23 subpart C of part 2 of subtitle A of title XIII of the Hous-
24 ing and Community Development Act of 1992 is amended
25 to read as follows:

1 **“Subpart C—Enforcement”.**

2 **SEC. 343. CONFORMING AMENDMENTS.**

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

6 (1) by striking “Secretary” each place such
7 term appears in such part and inserting “Director”;

8 (2) in the section heading for section 1323 (12
9 U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-
10 fore the period at the end;

11 (3) by striking section 1327 (12 U.S.C. 4547);

12 (4) by striking section 1328 (12 U.S.C. 4548);

13 (5) by redesignating section 1329 (as amended
14 by section 335) as section 1327;

15 (6) in sections 1345(c)(1)(A), 1346(a), and
16 1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and
17 4586(b)), by striking “Secretary’s” each place such
18 term appears and inserting “Director’s”; and

19 (7) by striking section 1349 (12 U.S.C. 4589).

20 **CHAPTER 3—PROMPT CORRECTIVE**
21 **ACTION**

22 **SEC. 345. CAPITAL CLASSIFICATIONS.**

23 (a) **IN GENERAL.**—Section 1364 of the Housing and
24 Community Development Act of 1992 (12 U.S.C. 4614)
25 is amended—

1 (1) in the heading for subsection (a), by strik-
2 ing “IN GENERAL” and inserting “ENTERPRISES”.

3 (2) in subsection (c)—

4 (A) by striking “subsection (b)” and in-
5 serting “subsection (e)”;

6 (B) by striking “enterprises” and inserting
7 “regulated entities”; and

8 (C) by striking the last sentence;

9 (3) by redesignating subsections (c) (as so
10 amended by paragraph (2) of this subsection) and
11 (d) as subsections (d) and (f), respectively;

12 (4) by striking subsection (b) and inserting the
13 following new subsections:

14 “(b) FEDERAL HOME LOAN BANKS.—

15 “(1) ESTABLISHMENT AND CRITERIA.—For
16 purposes of this subtitle, the Director shall, by regu-
17 lation—

18 “(A) establish the capital classifications
19 specified under paragraph (2) for the Federal
20 home loan banks;

21 “(B) establish criteria for each such cap-
22 ital classification based on the amount and
23 types of capital held by a bank and the risk-
24 based, minimum, and critical capital levels for
25 the banks and taking due consideration of the

1 capital classifications established under sub-
2 section (a) for the enterprises, with such modi-
3 fications as the Director determines to be ap-
4 propriate to reflect the difference in operations
5 between the banks and the enterprises; and

6 “(C) shall classify the Federal home loan
7 banks according to such capital classifications.

8 “(2) CLASSIFICATIONS.—The capital classifica-
9 tions specified under this paragraph are—

10 “(A) adequately capitalized;

11 “(B) undercapitalized;

12 “(C) significantly undercapitalized; and

13 “(D) critically undercapitalized.

14 “(c) DISCRETIONARY CLASSIFICATION.—

15 “(1) GROUNDS FOR RECLASSIFICATION.—The
16 Director may reclassify a regulated entity under
17 paragraph (2) if—

18 “(A) at any time, the Director determines
19 in writing that the regulated entity is engaging
20 in conduct that could result in a rapid depletion
21 of core or total capital or, in the case of an en-
22 terprise, that the value of the property subject
23 to mortgages held or securitized by the enter-
24 prise has decreased significantly;

1 “(B) after notice and an opportunity for
2 hearing, the Director determines that the regu-
3 lated entity is in an unsafe or unsound condi-
4 tion; or

5 “(C) pursuant to section 1371(b), the Di-
6 rector deems the regulated entity to be engag-
7 ing in an unsafe or unsound practice.

8 “(2) RECLASSIFICATION.—In addition to any
9 other action authorized under this title, including
10 the reclassification of a regulated entity for any rea-
11 son not specified in this subsection, if the Director
12 takes any action described in paragraph (1) the Di-
13 rector may classify a regulated entity—

14 “(A) as undercapitalized, if the regulated
15 entity is otherwise classified as adequately cap-
16 italized;

17 “(B) as significantly undercapitalized, if
18 the regulated entity is otherwise classified as
19 undercapitalized; and

20 “(C) as critically undercapitalized, if the
21 regulated entity is otherwise classified as sig-
22 nificantly undercapitalized.”; and

23 (5) by inserting after subsection (d) (as so re-
24 designated by paragraph (3) of this subsection), the
25 following new subsection:

1 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

2 “(1) IN GENERAL.—A regulated entity shall
3 make no capital distribution if, after making the dis-
4 tribution, the regulated entity would be under-
5 capitalized.

6 “(2) EXCEPTION.—Notwithstanding paragraph
7 (1), the Director may permit a regulated entity, to
8 the extent appropriate or applicable, to repurchase,
9 redeem, retire, or otherwise acquire shares or owner-
10 ship interests if the repurchase, redemption, retire-
11 ment, or other acquisition—

12 “(A) is made in connection with the
13 issuance of additional shares or obligations of
14 the regulated entity in at least an equivalent
15 amount; and

16 “(B) will reduce the financial obligations of
17 the regulated entity or otherwise improve the fi-
18 nancial condition of the entity.”.

19 (b) REGULATIONS.—Not later than the expiration of
20 the 180-day period beginning on the effective date under
21 section 365, the Director of the Federal Housing Finance
22 Agency shall issue regulations to carry out section 1364(b)
23 of the Housing and Community Development Act of 1992
24 (as added by paragraph (4) of this subsection), relating
25 to capital classifications for the Federal home loan banks.

1 **SEC. 346. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
2 **CAPITALIZED REGULATED ENTITIES.**

3 Section 1365 of the Housing and Community Devel-
4 opment Act of 1992 (12 U.S.C. 4615) is amended—

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

7 (2) in subsection (a)—

8 (A) by redesignating paragraphs (1) and
9 (2) as paragraphs (2) and (3), respectively;

10 (B) by inserting before paragraph (2), as
11 so redesignated by subparagraph (A) of this
12 paragraph, the following paragraph:

13 “(1) **REQUIRED MONITORING.**—The Director
14 shall—

15 “(A) closely monitor the condition of any
16 regulated entity that is classified as under-
17 capitalized;

18 “(B) closely monitor compliance with the
19 capital restoration plan, restrictions, and re-
20 quirements imposed under this section; and

21 “(C) periodically review the plan, restric-
22 tions, and requirements applicable to the under-
23 capitalized regulated entity to determine wheth-
24 er the plan, restrictions, and requirements are
25 achieving the purpose of this section.”; and

1 (C) by inserting at the end the following
2 new paragraphs:

3 “(4) RESTRICTION OF ASSET GROWTH.—A reg-
4 ulated entity that is classified as undercapitalized
5 shall not permit its average total assets (as such
6 term is defined in section 1316(b) during any cal-
7 endar quarter to exceed its average total assets dur-
8 ing the preceding calendar quarter unless—

9 “(A) the Director has accepted the capital
10 restoration plan of the regulated entity;

11 “(B) any increase in total assets is con-
12 sistent with the plan; and

13 “(C) the ratio of total capital to assets for
14 the regulated entity increases during the cal-
15 endar quarter at a rate sufficient to enable the
16 entity to become adequately capitalized within a
17 reasonable time.

18 “(5) PRIOR APPROVAL OF ACQUISITIONS, NEW
19 PRODUCTS, AND NEW ACTIVITIES.—A regulated enti-
20 ty that is classified as undercapitalized shall not, di-
21 rectly or indirectly, acquire any interest in any entity
22 or initially offer any new product (as such term is
23 defined in section 1321(f)) or engage in any new ac-
24 tivity, service, undertaking, or offering unless—

1 “(A) the Director has accepted the capital
2 restoration plan of the regulated entity, the en-
3 tity is implementing the plan, and the Director
4 determines that the proposed action is con-
5 sistent with and will further the achievement of
6 the plan; or

7 “(B) the Director determines that the pro-
8 posed action will further the purpose of this
9 section.”;

10 (3) in the subsection heading for subsection (b),
11 by striking “FROM UNDERCAPITALIZED TO SIGNIFI-
12 CANTLY UNDERCAPITALIZED”; and

13 (4) by striking subsection (c) and inserting the
14 following new subsection:

15 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
16 Director may take, with respect to a regulated entity that
17 is classified as undercapitalized, any of the actions author-
18 ized to be taken under section 1366 with respect to a regu-
19 lated entity that is classified as significantly undercapital-
20 ized, if the Director determines that such actions are nec-
21 essary to carry out the purpose of this subtitle.”.

1 **SEC. 347. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
2 **CANTLY UNDERCAPITALIZED REGULATED**
3 **ENTITIES.**

4 Section 1366 of the Housing and Community Devel-
5 opment Act of 1992 (12 U.S.C. 4616) is amended—

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

8 (2) in subsection (a)(2)(A), by striking “enter-
9 prise” the last place such term appears;

10 (3) in subsection (b)—

11 (A) in the subsection heading, by striking
12 “DISCRETIONARY SUPERVISORY ACTIONS” and
13 inserting “SPECIFIC ACTIONS”.

14 (B) in the matter preceding paragraph (1),
15 by striking “may, at any time, take any” and
16 inserting “shall carry out this section by taking,
17 at any time, one or more”;

18 (C) by redesignating paragraphs (5) and
19 (6) as paragraphs (6) and (7), respectively;

20 (D) by inserting after paragraph (4) the
21 following new paragraph:

22 “(5) IMPROVEMENT OF MANAGEMENT.—Take
23 one or more of the following actions:

24 “(A) NEW ELECTION OF BOARD.—Order a
25 new election for the board of directors of the
26 regulated entity.

1 “(B) DISMISSAL OF DIRECTORS OR EXECU-
2 TIVE OFFICERS.—Require the regulated entity
3 to dismiss from office any director or executive
4 officer who had held office for more than 180
5 days immediately before the entity became
6 undercapitalized. Dismissal under this subpara-
7 graph shall not be construed to be a removal
8 pursuant to the Director’s enforcement powers
9 provided in section 1377.

10 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
11 FICERS.—Require the regulated entity to em-
12 ploy qualified executive officers (who, if the Di-
13 rector so specifies, shall be subject to approval
14 by the Director).”; and

15 (E) by inserting at the end the following
16 new paragraph:

17 “(8) OTHER ACTION.—Require the regulated
18 entity to take any other action that the Director de-
19 termines will better carry out the purpose of this
20 section than any of the actions specified in this
21 paragraph.”;

22 (4) by redesignating subsection (c) as sub-
23 section (d); and

24 (5) by inserting after subsection (b) the fol-
25 lowing new subsection:

1 “(c) RESTRICTION ON COMPENSATION OF EXECU-
2 TIVE OFFICERS.—A regulated entity that is classified as
3 significantly undercapitalized may not, without prior writ-
4 ten approval by the Director—

5 “(1) pay any bonus to any executive officer; or

6 “(2) provide compensation to any executive offi-
7 cer at a rate exceeding that officer’s average rate of
8 compensation (excluding bonuses, stock options, and
9 profit sharing) during the 12 calendar months pre-
10 ceding the calendar month in which the regulated
11 entity became undercapitalized.”.

12 **SEC. 348. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
13 **IZED REGULATED ENTITIES.**

14 (a) IN GENERAL.—Section 1367 of the Housing and
15 Community Development Act of 1992 (12 U.S.C. 4617)
16 is amended to read as follows:

17 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
18 **IZED REGULATED ENTITIES.**

19 “(a) APPOINTMENT OF AGENCY AS CONSERVATOR
20 OR RECEIVER.—

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of Federal or State law, if any of the
23 grounds under paragraph (3) exist, at the discretion
24 of the Director, the Director may establish a con-
25 servatorship or receivership, as appropriate, for the

1 purpose of reorganizing, rehabilitating, or winding
2 up the affairs of a regulated entity.

3 “(2) APPOINTMENT.—In any conservatorship or
4 receivership established under this section, the Di-
5 rector shall appoint the Agency as conservator or re-
6 ceiver.

7 “(3) GROUNDS FOR APPOINTMENT.—The
8 grounds for appointing a conservator or receiver for
9 a regulated entity are as follows:

10 “(A) ASSETS INSUFFICIENT FOR OBLIGA-
11 TIONS.—The assets of the regulated entity are
12 less than the obligations of the regulated entity
13 to its creditors and others.

14 “(B) SUBSTANTIAL DISSIPATION.—Sub-
15 stantial dissipation of assets or earnings due
16 to—

17 “(i) any violation of any provision of
18 Federal or State law; or

19 “(ii) any unsafe or unsound practice.

20 “(C) UNSAFE OR UNSOUND CONDITION.—
21 An unsafe or unsound condition to transact
22 business.

23 “(D) CEASE-AND-DESIST ORDERS.—Any
24 willful violation of a cease-and-desist order that
25 has become final.

1 “(E) CONCEALMENT.—Any concealment of
2 the books, papers, records, or assets of the reg-
3 ulated entity, or any refusal to submit the
4 books, papers, records, or affairs of the regu-
5 lated entity, for inspection to any examiner or
6 to any lawful agent of the Director.

7 “(F) INABILITY TO MEET OBLIGATIONS.—
8 The regulated entity is likely to be unable to
9 pay its obligations or meet the demands of its
10 creditors in the normal course of business.

11 “(G) LOSSES.—The regulated entity has
12 incurred or is likely to incur losses that will de-
13 plete all or substantially all of its capital, and
14 there is no reasonable prospect for the regu-
15 lated entity to become adequately capitalized
16 (as defined in section 1364(a)(1)).

17 “(H) VIOLATIONS OF LAW.—Any violation
18 of any law or regulation, or any unsafe or un-
19 sound practice or condition that is likely to—

20 “(i) cause insolvency or substantial
21 dissipation of assets or earnings; or

22 “(ii) weaken the condition of the regu-
23 lated entity.

24 “(I) CONSENT.—The regulated entity, by
25 resolution of its board of directors or its share-

1 holders or members, consents to the appoint-
2 ment.

3 “(J) UNDERCAPITALIZATION.—The regu-
4 lated entity is undercapitalized or significantly
5 undercapitalized (as defined in section
6 1364(a)(3) or in regulations issued pursuant to
7 section 1364(b), as applicable), and—

8 “(i) has no reasonable prospect of be-
9 coming adequately capitalized;

10 “(ii) fails to become adequately cap-
11 italized, as required by—

12 “(I) section 1365(a)(1) with re-
13 spect to an undercapitalized regulated
14 entity; or

15 “(II) section 1366(a)(1) with re-
16 spect to a significantly undercapital-
17 ized regulated entity;

18 “(iii) fails to submit a capital restora-
19 tion plan acceptable to the Agency within
20 the time prescribed under section 1369C;
21 or

22 “(iv) materially fails to implement a
23 capital restoration plan submitted and ac-
24 cepted under section 1369C.

1 “(K) CRITICAL UNDERCAPITALIZATION.—

2 The regulated entity is critically undercapital-
3 ized, as defined in section 1364(a)(4) or in reg-
4 ulations issued pursuant to section 1364(b), as
5 applicable.

6 “(L) MONEY LAUNDERING.—The Attorney
7 General notifies the Director in writing that the
8 regulated entity has been found guilty of a
9 criminal offense under section 1956 or 1957 of
10 title 18, United States Code, or section 5322 or
11 5324 of title 31, United States Code.

12 “(4) MANDATORY RECEIVERSHIP.—

13 “(A) IN GENERAL.—The Director shall ap-
14 point the Agency as receiver for a regulated en-
15 tity if the Director determines, in writing,
16 that—

17 “(i) the assets of the regulated entity
18 are, and during the preceding 30 calendar
19 days have been, less than the obligations of
20 the regulated entity to its creditors and
21 others; or

22 “(ii) the regulated entity is not, and
23 during the preceding 30 calendar days has
24 not been, generally paying the debts of the
25 regulated entity (other than debts that are

1 the subject of a bona fide dispute) as such
2 debts become due.

3 “(B) PERIODIC DETERMINATION RE-
4 QUIRED FOR CRITICALLY UNDER CAPITALIZED
5 REGULATED ENTITY.—If a regulated entity is
6 critically undercapitalized, the Director shall
7 make a determination, in writing, as to whether
8 the regulated entity meets the criteria specified
9 in clause (i) or (ii) of subparagraph (A)—

10 “(i) not later than 30 calendar days
11 after the regulated entity initially becomes
12 critically undercapitalized; and

13 “(ii) at least once during each suc-
14 ceeding 30-calendar day period.

15 “(C) DETERMINATION NOT REQUIRED IF
16 RECEIVERSHIP ALREADY IN PLACE.—Subpara-
17 graph (B) shall not apply with respect to a reg-
18 ulated entity in any period during which the
19 Agency serves as receiver for the regulated enti-
20 ty.

21 “(D) RECEIVERSHIP TERMINATES CON-
22 SERVATORSHIP.—The appointment under this
23 section of the Agency as receiver of a regulated
24 entity shall immediately terminate any con-

1 servatorship established under this title for the
2 regulated entity.

3 “(5) JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—If the Agency is ap-
5 pointed conservator or receiver under this sec-
6 tion, the regulated entity may, within 30 days
7 of such appointment, bring an action in the
8 United States District Court for the judicial
9 district in which the principal place of business
10 of such regulated entity is located, or in the
11 United States District Court for the District of
12 Columbia, for an order requiring the Agency to
13 remove itself as conservator or receiver.

14 “(B) REVIEW.—Upon the filing of an ac-
15 tion under subparagraph (A), the court shall,
16 upon the merits, dismiss such action or direct
17 the Agency to remove itself as such conservator
18 or receiver.

19 “(6) DIRECTORS NOT LIABLE FOR ACQUI-
20 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
21 CEIVER.—The members of the board of directors of
22 a regulated entity shall not be liable to the share-
23 holders or creditors of the regulated entity for acqui-
24 escing in or consenting in good faith to the appoint-

1 ment of the Agency as conservator or receiver for
2 that regulated entity.

3 “(7) AGENCY NOT SUBJECT TO ANY OTHER
4 FEDERAL AGENCY.—When acting as conservator or
5 receiver, the Agency shall not be subject to the di-
6 rection or supervision of any other agency of the
7 United States or any State in the exercise of the
8 rights, powers, and privileges of the Agency.

9 “(b) POWERS AND DUTIES OF THE AGENCY AS CON-
10 SERVATOR OR RECEIVER.—

11 “(1) RULEMAKING AUTHORITY OF THE AGEN-
12 CY.—The Agency may prescribe such regulations as
13 the Agency determines to be appropriate regarding
14 the conduct of conservatorships or receiverships.

15 “(2) GENERAL POWERS.—

16 “(A) SUCCESSOR TO REGULATED ENTI-
17 TY.—The Agency shall, as conservator or re-
18 ceiver, and by operation of law, immediately
19 succeed to—

20 “(i) all rights, titles, powers, and
21 privileges of the regulated entity, and of
22 any stockholder, officer, or director of such
23 regulated entity with respect to the regu-
24 lated entity and the assets of the regulated
25 entity; and

1 “(ii) title to the books, records, and
2 assets of any other legal custodian of such
3 regulated entity.

4 “(B) OPERATE THE REGULATED ENTI-
5 TY.—The Agency may, as conservator or re-
6 ceiver—

7 “(i) take over the assets of and oper-
8 ate the regulated entity with all the powers
9 of the shareholders, the directors, and the
10 officers of the regulated entity and conduct
11 all business of the regulated entity;

12 “(ii) collect all obligations and money
13 due the regulated entity;

14 “(iii) perform all functions of the reg-
15 ulated entity in the name of the regulated
16 entity which are consistent with the ap-
17 pointment as conservator or receiver; and

18 “(iv) preserve and conserve the assets
19 and property of such regulated entity.

20 “(C) FUNCTIONS OF OFFICERS, DIREC-
21 TORS, AND SHAREHOLDERS OF A REGULATED
22 ENTITY.—The Agency may, by regulation or
23 order, provide for the exercise of any function
24 by any stockholder, director, or officer of any

1 regulated entity for which the Agency has been
2 named conservator or receiver.

3 “(D) POWERS AS CONSERVATOR.—The
4 Agency may, as conservator, take such action
5 as may be—

6 “(i) necessary to put the regulated en-
7 tity in a sound and solvent condition; and

8 “(ii) appropriate to carry on the busi-
9 ness of the regulated entity and preserve
10 and conserve the assets and property of
11 the regulated entity, including, if two or
12 more Federal home loan banks have been
13 placed in conservatorship contempora-
14 neously, merging two or more such banks
15 into a single Federal home loan bank.

16 “(E) ADDITIONAL POWERS AS RE-
17 CEIVER.—The Agency may, as receiver, place
18 the regulated entity in liquidation and proceed
19 to realize upon the assets of the regulated enti-
20 ty, having due regard to the conditions of the
21 housing finance market.

22 “(F) ORGANIZATION OF NEW REGULATED
23 ENTITIES.—The Agency may, as receiver, orga-
24 nize a successor regulated entity that will oper-
25 ate pursuant to subsection (i).

1 “(G) TRANSFER OF ASSETS AND LIABIL-
2 ITIES.—The Agency may, as conservator or re-
3 ceiver, transfer any asset or liability of the reg-
4 ulated entity in default without any approval,
5 assignment, or consent with respect to such
6 transfer. Any Federal home loan bank may,
7 with the approval of the Agency, acquire the as-
8 sets of any Bank in conservatorship or receiver-
9 ship, and assume the liabilities of such Bank.

10 “(H) PAYMENT OF VALID OBLIGATIONS.—
11 The Agency, as conservator or receiver, shall, to
12 the extent of proceeds realized from the per-
13 formance of contracts or sale of the assets of a
14 regulated entity, pay all valid obligations of the
15 regulated entity in accordance with the pre-
16 scriptions and limitations of this section.

17 “(I) SUBPOENA AUTHORITY.—

18 “(i) IN GENERAL.—

19 “(I) IN GENERAL.—The Agency
20 may, as conservator or receiver, and
21 for purposes of carrying out any
22 power, authority, or duty with respect
23 to a regulated entity (including deter-
24 mining any claim against the regu-
25 lated entity and determining and real-

1 izing upon any asset of any person in
2 the course of collecting money due the
3 regulated entity), exercise any power
4 established under section 1348.

5 “(II) APPLICABILITY OF LAW.—
6 The provisions of section 1348 shall
7 apply with respect to the exercise of
8 any power exercised under this sub-
9 paragraph in the same manner as
10 such provisions apply under that sec-
11 tion.

12 “(ii) AUTHORITY OF DIRECTOR.—A
13 subpoena or subpoena duces tecum may be
14 issued under clause (i) only by, or with the
15 written approval of, the Director, or the
16 designee of the Director.

17 “(iii) RULE OF CONSTRUCTION.—This
18 subsection shall not be construed to limit
19 any rights that the Agency, in any capac-
20 ity, might otherwise have under section
21 1317 or 1379D.

22 “(J) CONTRACTING FOR SERVICES.—The
23 Agency may, as conservator or receiver, provide
24 by contract for the carrying out of any of its

1 functions, activities, actions, or duties as con-
2 servator or receiver.

3 “(K) INCIDENTAL POWERS.—The Agency
4 may, as conservator or receiver—

5 “(i) exercise all powers and authori-
6 ties specifically granted to conservators or
7 receivers, respectively, under this section,
8 and such incidental powers as shall be nec-
9 essary to carry out such powers; and

10 “(ii) take any action authorized by
11 this section, which the Agency determines
12 is in the best interests of the regulated en-
13 tity or the Agency.

14 “(3) AUTHORITY OF RECEIVER TO DETERMINE
15 CLAIMS.—

16 “(A) IN GENERAL.—The Agency may, as
17 receiver, determine claims in accordance with
18 the requirements of this subsection and any
19 regulations prescribed under paragraph (4).

20 “(B) NOTICE REQUIREMENTS.—The re-
21 ceiver, in any case involving the liquidation or
22 winding up of the affairs of a closed regulated
23 entity, shall—

24 “(i) promptly publish a notice to the
25 creditors of the regulated entity to present

1 their claims, together with proof, to the re-
2 ceiver by a date specified in the notice
3 which shall be not less than 90 days after
4 the publication of such notice; and

5 “(ii) republish such notice approxi-
6 mately 1 month and 2 months, respec-
7 tively, after the publication under clause
8 (i).

9 “(C) MAILING REQUIRED.—The receiver
10 shall mail a notice similar to the notice pub-
11 lished under subparagraph (B)(i) at the time of
12 such publication to any creditor shown on the
13 books of the regulated entity—

14 “(i) at the last address of the creditor
15 appearing in such books; or

16 “(ii) upon discovery of the name and
17 address of a claimant not appearing on the
18 books of the regulated entity within 30
19 days after the discovery of such name and
20 address.

21 “(4) RULEMAKING AUTHORITY RELATING TO
22 DETERMINATION OF CLAIMS.—Subject to subsection
23 (c), the Director may prescribe regulations regarding
24 the allowance or disallowance of claims by the re-

1 ceiver and providing for administrative determina-
2 tion of claims and review of such determination.

3 “(5) PROCEDURES FOR DETERMINATION OF
4 CLAIMS.—

5 “(A) DETERMINATION PERIOD.—

6 “(i) IN GENERAL.—Before the end of
7 the 180-day period beginning on the date
8 on which any claim against a regulated en-
9 tity is filed with the Agency as receiver,
10 the Agency shall determine whether to
11 allow or disallow the claim and shall notify
12 the claimant of any determination with re-
13 spect to such claim.

14 “(ii) EXTENSION OF TIME.—The pe-
15 riod described in clause (i) may be ex-
16 tended by a written agreement between the
17 claimant and the Agency.

18 “(iii) MAILING OF NOTICE SUFFI-
19 CIENT.—The notification requirements of
20 clause (i) shall be deemed to be satisfied if
21 the notice of any determination with re-
22 spect to any claim is mailed to the last ad-
23 dress of the claimant which appears—

24 “(I) on the books of the regu-
25 lated entity;

1 “(II) in the claim filed by the
2 claimant; or

3 “(III) in documents submitted in
4 proof of the claim.

5 “(iv) CONTENTS OF NOTICE OF DIS-
6 ALLOWANCE.—If any claim filed under
7 clause (i) is disallowed, the notice to the
8 claimant shall contain—

9 “(I) a statement of each reason
10 for the disallowance; and

11 “(II) the procedures available for
12 obtaining agency review of the deter-
13 mination to disallow the claim or judi-
14 cial determination of the claim.

15 “(B) ALLOWANCE OF PROVEN CLAIM.—
16 The receiver shall allow any claim received on
17 or before the date specified in the notice pub-
18 lished under paragraph (3)(B)(i), or the date
19 specified in the notice required under paragraph
20 (3)(C), which is proved to the satisfaction of
21 the receiver.

22 “(C) DISALLOWANCE OF CLAIMS FILED
23 AFTER END OF FILING PERIOD.—Claims filed
24 after the date specified in the notice published
25 under paragraph (3)(B)(i), or the date specified

1 under paragraph (3)(C), shall be disallowed and
2 such disallowance shall be final.

3 “(D) AUTHORITY TO DISALLOW CLAIMS.—

4 “(i) IN GENERAL.—The receiver may
5 disallow any portion of any claim by a
6 creditor or claim of security, preference, or
7 priority which is not proved to the satisfac-
8 tion of the receiver.

9 “(ii) PAYMENTS TO LESS THAN
10 FULLY SECURED CREDITORS.—In the case
11 of a claim of a creditor against a regulated
12 entity which is secured by any property or
13 other asset of such regulated entity, the re-
14 ceiver—

15 “(I) may treat the portion of
16 such claim which exceeds an amount
17 equal to the fair market value of such
18 property or other asset as an unse-
19 cured claim against the regulated en-
20 tity; and

21 “(II) may not make any payment
22 with respect to such unsecured por-
23 tion of the claim other than in connec-
24 tion with the disposition of all claims

1 of unsecured creditors of the regu-
2 lated entity.

3 “(iii) EXCEPTIONS.—No provision of
4 this paragraph shall apply with respect to
5 any extension of credit from any Federal
6 Reserve Bank, Federal home loan bank, or
7 the Treasury of the United States.

8 “(E) NO JUDICIAL REVIEW OF DETER-
9 MINATION PURSUANT TO SUBPARAGRAPH (d).—
10 No court may review the determination of the
11 Agency under subparagraph (D) to disallow a
12 claim. This subparagraph shall not affect the
13 authority of a claimant to obtain de novo judi-
14 cial review of a claim pursuant to paragraph
15 (6).

16 “(F) LEGAL EFFECT OF FILING.—

17 “(i) STATUTE OF LIMITATION
18 TOLLED.—For purposes of any applicable
19 statute of limitations, the filing of a claim
20 with the receiver shall constitute a com-
21 mencement of an action.

22 “(ii) NO PREJUDICE TO OTHER AC-
23 TIONS.—Subject to paragraph (10), the fil-
24 ing of a claim with the receiver shall not
25 prejudice any right of the claimant to con-

1 tinue any action which was filed before the
2 date of the appointment of the receiver,
3 subject to the determination of claims by
4 the receiver.

5 “(6) PROVISION FOR JUDICIAL DETERMINATION
6 OF CLAIMS.—

7 “(A) IN GENERAL.—The claimant may file
8 suit on a claim (or continue an action com-
9 menced before the appointment of the receiver)
10 in the district or territorial court of the United
11 States for the district within which the prin-
12 cipal place of business of the regulated entity is
13 located or the United States District Court for
14 the District of Columbia (and such court shall
15 have jurisdiction to hear such claim), before the
16 end of the 60-day period beginning on the ear-
17 lier of—

18 “(i) the end of the period described in
19 paragraph (5)(A)(i) with respect to any
20 claim against a regulated entity for which
21 the Agency is receiver; or

22 “(ii) the date of any notice of dis-
23 allowance of such claim pursuant to para-
24 graph (5)(A)(i).

1 “(B) STATUTE OF LIMITATIONS.—A claim
2 shall be deemed to be disallowed (other than
3 any portion of such claim which was allowed by
4 the receiver), and such disallowance shall be
5 final, and the claimant shall have no further
6 rights or remedies with respect to such claim,
7 if the claimant fails, before the end of the 60-
8 day period described under subparagraph (A),
9 to file suit on such claim (or continue an action
10 commenced before the appointment of the re-
11 ceiver).

12 “(7) REVIEW OF CLAIMS.—

13 “(A) OTHER REVIEW PROCEDURES.—

14 “(i) IN GENERAL.—The Agency shall
15 establish such alternative dispute resolu-
16 tion processes as may be appropriate for
17 the resolution of claims filed under para-
18 graph (5)(A)(i).

19 “(ii) CRITERIA.—In establishing alter-
20 native dispute resolution processes, the
21 Agency shall strive for procedures which
22 are expeditious, fair, independent, and low
23 cost.

24 “(iii) VOLUNTARY BINDING OR NON-
25 BINDING PROCEDURES.—The Agency may

1 establish both binding and nonbinding
2 processes, which may be conducted by any
3 government or private party. All parties,
4 including the claimant and the Agency,
5 must agree to the use of the process in a
6 particular case.

7 “(B) CONSIDERATION OF INCENTIVES.—
8 The Agency shall seek to develop incentives for
9 claimants to participate in the alternative dis-
10 pute resolution process.

11 “(8) EXPEDITED DETERMINATION OF
12 CLAIMS.—

13 “(A) ESTABLISHMENT REQUIRED.—The
14 Agency shall establish a procedure for expedited
15 relief outside of the routine claims process es-
16 tablished under paragraph (5) for claimants
17 who—

18 “(i) allege the existence of legally
19 valid and enforceable or perfected security
20 interests in assets of any regulated entity
21 for which the Agency has been appointed
22 receiver; and

23 “(ii) allege that irreparable injury will
24 occur if the routine claims procedure is fol-
25 lowed.

1 “(B) DETERMINATION PERIOD.—Before
2 the end of the 90-day period beginning on the
3 date any claim is filed in accordance with the
4 procedures established under subparagraph (A),
5 the Director shall—

6 “(i) determine—

7 “(I) whether to allow or disallow
8 such claim; or

9 “(II) whether such claim should
10 be determined pursuant to the proce-
11 dures established under paragraph
12 (5); and

13 “(ii) notify the claimant of the deter-
14 mination, and if the claim is disallowed,
15 provide a statement of each reason for the
16 disallowance and the procedure for obtain-
17 ing agency review or judicial determina-
18 tion.

19 “(C) PERIOD FOR FILING OR RENEWING
20 SUIT.—Any claimant who files a request for ex-
21 pedited relief shall be permitted to file a suit,
22 or to continue a suit filed before the appoint-
23 ment of the receiver, seeking a determination of
24 the rights of the claimant with respect to such
25 security interest after the earlier of—

1 “(i) the end of the 90-day period be-
2 ginning on the date of the filing of a re-
3 quest for expedited relief; or

4 “(ii) the date the Agency denies the
5 claim.

6 “(D) STATUTE OF LIMITATIONS.—If an
7 action described under subparagraph (C) is not
8 filed, or the motion to renew a previously filed
9 suit is not made, before the end of the 30-day
10 period beginning on the date on which such ac-
11 tion or motion may be filed under subparagraph
12 (B), the claim shall be deemed to be disallowed
13 as of the end of such period (other than any
14 portion of such claim which was allowed by the
15 receiver), such disallowance shall be final, and
16 the claimant shall have no further rights or
17 remedies with respect to such claim.

18 “(E) LEGAL EFFECT OF FILING.—

19 “(i) STATUTE OF LIMITATION
20 TOLLED.—For purposes of any applicable
21 statute of limitations, the filing of a claim
22 with the receiver shall constitute a com-
23 mencement of an action.

24 “(ii) NO PREJUDICE TO OTHER AC-
25 TIONS.—Subject to paragraph (10), the fil-

1 ing of a claim with the receiver shall not
2 prejudice any right of the claimant to con-
3 tinue any action that was filed before the
4 appointment of the receiver, subject to the
5 determination of claims by the receiver.

6 “(9) PAYMENT OF CLAIMS.—

7 “(A) IN GENERAL.—The receiver may, in
8 the discretion of the receiver, and to the extent
9 funds are available from the assets of the regu-
10 lated entity, pay creditor claims, in such man-
11 ner and amounts as are authorized under this
12 section, which are—

13 “(i) allowed by the receiver;

14 “(ii) approved by the Agency pursuant
15 to a final determination pursuant to para-
16 graph (7) or (8); or

17 “(iii) determined by the final judg-
18 ment of any court of competent jurisdic-
19 tion.

20 “(B) AGREEMENTS AGAINST THE INTER-
21 EST OF THE AGENCY.—No agreement that
22 tends to diminish or defeat the interest of the
23 Agency in any asset acquired by the Agency as
24 receiver under this section shall be valid against
25 the Agency unless such agreement is in writing,

1 and executed by an authorized official of the
2 regulated entity, except that such requirements
3 for qualified financial contracts shall be applied
4 in a manner consistent with reasonable business
5 trading practices in the financial contracts mar-
6 ket.

7 “(C) PAYMENT OF DIVIDENDS ON
8 CLAIMS.—The receiver may, in the sole discre-
9 tion of the receiver, pay from the assets of the
10 regulated entity dividends on proved claims at
11 any time, and no liability shall attach to the
12 Agency, by reason of any such payment, for
13 failure to pay dividends to a claimant whose
14 claim is not proved at the time of any such pay-
15 ment.

16 “(D) RULEMAKING AUTHORITY OF THE
17 DIRECTOR.—The Director may prescribe such
18 rules, including definitions of terms, as the Di-
19 rector deems appropriate to establish a single
20 uniform interest rate for, or to make payments
21 of post-insolvency interest to creditors holding
22 proven claims against the receivership estates of
23 regulated entities following satisfaction by the
24 receiver of the principal amount of all creditor
25 claims.

1 “(10) SUSPENSION OF LEGAL ACTIONS.—

2 “(A) IN GENERAL.—After the appointment
3 of a conservator or receiver for a regulated enti-
4 ty, the conservator or receiver may, in any judi-
5 cial action or proceeding to which such regu-
6 lated entity is or becomes a party, request a
7 stay for a period not to exceed—

8 “(i) 45 days, in the case of any con-
9 servator; and

10 “(ii) 90 days, in the case of any re-
11 ceiver.

12 “(B) GRANT OF STAY BY ALL COURTS RE-
13 QUIRED.—Upon receipt of a request by any
14 conservator or receiver under subparagraph (A)
15 for a stay of any judicial action or proceeding
16 in any court with jurisdiction of such action or
17 proceeding, the court shall grant such stay as
18 to all parties.

19 “(11) ADDITIONAL RIGHTS AND DUTIES.—

20 “(A) PRIOR FINAL ADJUDICATION.—The
21 Agency shall abide by any final unappealable
22 judgment of any court of competent jurisdiction
23 which was rendered before the appointment of
24 the Agency as conservator or receiver.

1 “(B) RIGHTS AND REMEDIES OF CONSER-
2 VATOR OR RECEIVER.—In the event of any ap-
3 pealable judgment, the Agency as conservator
4 or receiver shall—

5 “(i) have all the rights and remedies
6 available to the regulated entity (before the
7 appointment of such conservator or re-
8 ceiver) and the Agency, including removal
9 to Federal court and all appellate rights;
10 and

11 “(ii) not be required to post any bond
12 in order to pursue such remedies.

13 “(C) NO ATTACHMENT OR EXECUTION.—
14 No attachment or execution may issue by any
15 court upon assets in the possession of the re-
16 ceiver.

17 “(D) LIMITATION ON JUDICIAL REVIEW.—
18 Except as otherwise provided in this subsection,
19 no court shall have jurisdiction over—

20 “(i) any claim or action for payment
21 from, or any action seeking a determina-
22 tion of rights with respect to, the assets of
23 any regulated entity for which the Agency
24 has been appointed receiver; or

1 “(ii) any claim relating to any act or
2 omission of such regulated entity or the
3 Agency as receiver.

4 “(E) DISPOSITION OF ASSETS.—In exer-
5 cising any right, power, privilege, or authority
6 as conservator or receiver in connection with
7 any sale or disposition of assets of a regulated
8 entity for which the Agency has been appointed
9 conservator or receiver, the Agency shall con-
10 duct its operations in a manner which main-
11 tains stability in the housing finance markets
12 and, to the extent consistent with that goal—

13 “(i) maximizes the net present value
14 return from the sale or disposition of such
15 assets;

16 “(ii) minimizes the amount of any loss
17 realized in the resolution of cases; and

18 “(iii) ensures adequate competition
19 and fair and consistent treatment of
20 offerors.

21 “(12) STATUTE OF LIMITATIONS FOR ACTIONS
22 BROUGHT BY CONSERVATOR OR RECEIVER.—

23 “(A) IN GENERAL.—Notwithstanding any
24 provision of any contract, the applicable statute
25 of limitations with regard to any action brought

1 by the Agency as conservator or receiver shall
2 be—

3 “(i) in the case of any contract claim,
4 the longer of—

5 “(I) the 6-year period beginning
6 on the date the claim accrues; or

7 “(II) the period applicable under
8 State law; and

9 “(ii) in the case of any tort claim, the
10 longer of—

11 “(I) the 3-year period beginning
12 on the date the claim accrues; or

13 “(II) the period applicable under
14 State law.

15 “(B) DETERMINATION OF THE DATE ON
16 WHICH A CLAIM ACCRUES.—For purposes of
17 subparagraph (A), the date on which the stat-
18 ute of limitations begins to run on any claim
19 described in such subparagraph shall be the
20 later of—

21 “(i) the date of the appointment of
22 the Agency as conservator or receiver; or

23 “(ii) the date on which the cause of
24 action accrues.

1 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
2 ACTION.—

3 “(A) IN GENERAL.—In the case of any tort
4 claim described under subparagraph (B) for
5 which the statute of limitations applicable
6 under State law with respect to such claim has
7 expired not more than 5 years before the ap-
8 pointment of the Agency as conservator or re-
9 ceiver, the Agency may bring an action as con-
10 servator or receiver on such claim without re-
11 gard to the expiration of the statute of limita-
12 tion applicable under State law.

13 “(B) CLAIMS DESCRIBED.—A tort claim
14 referred to under subparagraph (A) is a claim
15 arising from fraud, intentional misconduct re-
16 sulting in unjust enrichment, or intentional mis-
17 conduct resulting in substantial loss to the reg-
18 ulated entity.

19 “(14) ACCOUNTING AND RECORDKEEPING RE-
20 QUIREMENTS.—

21 “(A) IN GENERAL.—The Agency as conser-
22 vator or receiver shall, consistent with the ac-
23 counting and reporting practices and proce-
24 dures established by the Agency, maintain a full
25 accounting of each conservatorship and receiv-

1 ership or other disposition of a regulated entity
2 in default.

3 “(B) ANNUAL ACCOUNTING OR REPORT.—
4 With respect to each conservatorship or receiver-
5 ership, the Agency shall make an annual ac-
6 counting or report available to the Board, the
7 Comptroller General of the United States, the
8 Committee on Banking, Housing, and Urban
9 Affairs of the Senate, and the Committee on
10 Financial Services of the House of Representa-
11 tives.

12 “(C) AVAILABILITY OF REPORTS.—Any re-
13 port prepared under subparagraph (B) shall be
14 made available by the Agency upon request to
15 any shareholder of a regulated entity or any
16 member of the public.

17 “(D) RECORDKEEPING REQUIREMENT.—
18 After the end of the 6-year period beginning on
19 the date that the conservatorship or receiver-
20 ship is terminated by the Director, the Agency
21 may destroy any records of such regulated enti-
22 ty which the Agency, in the discretion of the
23 Agency, determines to be unnecessary unless di-
24 rected not to do so by a court of competent ju-

1 jurisdiction or governmental agency, or prohibited
2 by law.

3 “(15) FRAUDULENT TRANSFERS.—

4 “(A) IN GENERAL.—The Agency, as con-
5 servator or receiver, may avoid a transfer of
6 any interest of a regulated entity-affiliated
7 party, or any person who the conservator or re-
8 ceiver determines is a debtor of the regulated
9 entity, in property, or any obligation incurred
10 by such party or person, that was made within
11 5 years of the date on which the Agency was
12 appointed conservator or receiver, if such party
13 or person voluntarily or involuntarily made such
14 transfer or incurred such liability with the in-
15 tent to hinder, delay, or defraud the regulated
16 entity, the Agency, the conservator, or receiver.

17 “(B) RIGHT OF RECOVERY.—To the extent
18 a transfer is avoided under subparagraph (A),
19 the conservator or receiver may recover, for the
20 benefit of the regulated entity, the property
21 transferred, or, if a court so orders, the value
22 of such property (at the time of such transfer)
23 from—

24 “(i) the initial transferee of such
25 transfer or the regulated entity-affiliated

1 party or person for whose benefit such
2 transfer was made; or

3 “(ii) any immediate or mediate trans-
4 feree of any such initial transferee.

5 “(C) RIGHTS OF TRANSFEREE OR OBLI-
6 GEE.—The conservator or receiver may not re-
7 cover under subparagraph (B) from—

8 “(i) any transferee that takes for
9 value, including satisfaction or securing of
10 a present or antecedent debt, in good faith;
11 or

12 “(ii) any immediate or mediate good
13 faith transferee of such transferee.

14 “(D) RIGHTS UNDER THIS PARAGRAPH.—
15 The rights under this paragraph of the conser-
16 vator or receiver described under subparagraph
17 (A) shall be superior to any rights of a trustee
18 or any other party (other than any party which
19 is a Federal agency) under title 11, United
20 States Code.

21 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
22 JUNCTIVE RELIEF.—Subject to paragraph (17), any
23 court of competent jurisdiction may, at the request
24 of the conservator or receiver, issue an order in ac-
25 cordance with Rule 65 of the Federal Rules of Civil

1 Procedure, including an order placing the assets of
2 any person designated by the Agency or such conser-
3 vator under the control of the court, and appointing
4 a trustee to hold such assets.

5 “(17) STANDARDS OF PROOF.—Rule 65 of the
6 Federal Rules of Civil Procedure shall apply with re-
7 spect to any proceeding under paragraph (16) with-
8 out regard to the requirement of such rule that the
9 applicant show that the injury, loss, or damage is ir-
10 reparable and immediate.

11 “(18) TREATMENT OF CLAIMS ARISING FROM
12 BREACH OF CONTRACTS EXECUTED BY THE RE-
13 CEIVER OR CONSERVATOR.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of this subsection, any final and
16 unappealable judgment for monetary damages
17 entered against a receiver or conservator for the
18 breach of an agreement executed or approved in
19 writing by such receiver or conservator after the
20 date of its appointment, shall be paid as an ad-
21 ministrative expense of the receiver or conser-
22 vator.

23 “(B) NO LIMITATION OF POWER.—Nothing
24 in this paragraph shall be construed to limit the
25 power of a receiver or conservator to exercise

1 any rights under contract or law, including to
2 terminate, breach, cancel, or otherwise dis-
3 continue such agreement.

4 “(19) GENERAL EXCEPTIONS.—

5 “(A) LIMITATIONS.—The rights of a con-
6 servator or receiver appointed under this section
7 shall be subject to the limitations on the powers
8 of a receiver under sections 402 through 407 of
9 the Federal Deposit Insurance Corporation Im-
10 provement Act of 1991 (12 U.S.C. 4402
11 through 4407).

12 “(B) MORTGAGES HELD IN TRUST.—

13 “(i) IN GENERAL.—Any mortgage,
14 pool of mortgages, or interest in a pool of
15 mortgages, held in trust, custodial, or
16 agency capacity by a regulated entity for
17 the benefit of persons other than the regu-
18 lated entity shall not be available to satisfy
19 the claims of creditors generally.

20 “(ii) HOLDING OF MORTGAGES.—Any
21 mortgage, pool of mortgages, or interest in
22 a pool of mortgages, described under
23 clause (i) shall be held by the conservator
24 or receiver appointed under this section for
25 the beneficial owners of such mortgage,

1 pool of mortgages, or interest in a pool of
2 mortgages in accordance with the terms of
3 the agreement creating such trust, custo-
4 dial, or other agency arrangement.

5 “(iii) LIABILITY OF RECEIVER.—The
6 liability of a receiver appointed under this
7 section for damages shall, in the case of
8 any contingent or unliquidated claim relat-
9 ing to the mortgages held in trust, be esti-
10 mated in accordance set forth in the regu-
11 lations of the Director.

12 “(c) PRIORITY OF EXPENSES AND UNSECURED
13 CLAIMS.—

14 “(1) IN GENERAL.—Unsecured claims against a
15 regulated entity, or a receiver, that are proven to the
16 satisfaction of the receiver shall have priority in the
17 following order:

18 “(A) Administrative expenses of the re-
19 ceiver.

20 “(B) Any other general or senior liability
21 of the regulated entity and claims of other Fed-
22 eral home loan banks arising from their pay-
23 ment obligations (including joint and several
24 payment obligations).

1 “(C) Any obligation subordinated to gen-
2 eral creditors.

3 “(D) Any obligation to shareholders or
4 members arising as a result of their status as
5 shareholder or members.

6 “(2) CREDITORS SIMILARLY SITUATED.—All
7 creditors that are similarly situated under paragraph
8 (1) shall be treated in a similar manner, except that
9 the Agency may make such other payments to credi-
10 tors necessary to maximize the present value return
11 from the sale or disposition or such regulated enti-
12 ty’s assets or to minimize the amount of any loss re-
13 alized in the resolution of cases so long as all credi-
14 tors similarly situated receive not less than the
15 amount provided under subsection (e)(2).

16 “(3) DEFINITION.—The term ‘administrative
17 expenses of the receiver’ shall include the actual,
18 necessary costs and expenses incurred by the re-
19 ceiver in preserving the assets of the regulated entity
20 or liquidating or otherwise resolving the affairs of
21 the regulated entity. Such expenses shall include ob-
22 ligations that are incurred by the receiver after ap-
23 pointment as receiver that the Director determines
24 are necessary and appropriate to facilitate the

1 smooth and orderly liquidation or other resolution of
2 the regulated entity.

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

6 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

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

11 “(A) to which such regulated entity is a
12 party;

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

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

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

1 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
2 ATION.—

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

9 “(i) limited to actual direct compen-
10 satory damages; and

11 “(ii) determined as of—

12 “(I) the date of the appointment
13 of the conservator or receiver; or

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

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

23 “(i) punitive or exemplary damages;

24 “(ii) damages for lost profits or op-
25 portunity; or

1 “(iii) damages for pain and suffering.

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

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

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

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

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

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

1 lease to which that subparagraph applies
2 shall—

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

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

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

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

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

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

21 “(A) IN GENERAL.—If the conservator or
22 receiver repudiates an unexpired written lease
23 of real property of the regulated entity under
24 which the regulated entity is the lessor and the
25 lessee is not, as of the date of such repudiation,

1 in default, the lessee under such lease may ei-
2 ther—

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

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

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

15 “(i) the lessee—

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

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

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

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

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

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

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

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

1 “(i) the purchaser—

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

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

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

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

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

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

25 “(C) ASSIGNMENT AND SALE ALLOWED.—

1 “(i) IN GENERAL.—No provision of
2 this paragraph shall be construed as lim-
3 iting the right of the conservator or re-
4 ceiver to assign the contract described
5 under subparagraph (A), and sell the prop-
6 erty subject to the contract and the provi-
7 sions of this paragraph.

8 “(ii) NO LIABILITY AFTER ASSIGN-
9 MENT AND SALE.—If an assignment and
10 sale described under clause (i) is con-
11 summated, the conservator or receiver
12 shall have no further liability under the
13 contract described under subparagraph
14 (A), or with respect to the real property
15 which was the subject of such contract.

16 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
17 TRACTS.—

18 “(A) SERVICES PERFORMED BEFORE AP-
19 POINTMENT.—In the case of any contract for
20 services between any person and any regulated
21 entity for which the Agency has been appointed
22 conservator or receiver, any claim of such per-
23 son for services performed before the appoint-
24 ment of the conservator or the receiver shall
25 be—

1 “(i) a claim to be paid in accordance
2 with subsections (b) and (e); and

3 “(ii) deemed to have arisen as of the
4 date the conservator or receiver was ap-
5 pointed.

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

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

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

22 “(C) ACCEPTANCE OF PERFORMANCE NO
23 BAR TO SUBSEQUENT REPUDIATION.—The ac-
24 ceptance by any conservator or receiver of serv-
25 ices referred to under subparagraph (B) in con-

1 nection with a contract described in such sub-
2 paragraph shall not affect the right of the con-
3 servator or receiver to repudiate such contract
4 under this section at any time after such per-
5 formance.

6 “(8) CERTAIN QUALIFIED FINANCIAL CON-
7 TRACTS.—

8 “(A) RIGHTS OF PARTIES TO CON-
9 TRACTS.—Subject to paragraphs (9) and (10)
10 and notwithstanding any other provision of this
11 Act, any other Federal law, or the law of any
12 State, no person shall be stayed or prohibited
13 from exercising—

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

21 “(ii) any right under any security
22 agreement or arrangement or other credit
23 enhancement relating to one or more quali-
24 fied financial contracts described in clause
25 (i); or

1 “(iii) any right to offset or net out
2 any termination value, payment amount, or
3 other transfer obligation arising under or
4 in connection with 1 or more contracts and
5 agreements described in clause (i), includ-
6 ing any master agreement for such con-
7 tracts or agreements.

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

17 “(C) CERTAIN TRANSFERS NOT AVOID-
18 ABLE.—

19 “(i) IN GENERAL.—Notwithstanding
20 paragraph (11) or any other Federal or
21 State laws relating to the avoidance of
22 preferential or fraudulent transfers, the
23 Agency, whether acting as such or as con-
24 servator or receiver of a regulated entity,
25 may not avoid any transfer of money or

1 other property in connection with any
2 qualified financial contract with a regu-
3 lated entity.

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

14 “(D) CERTAIN CONTRACTS AND AGREE-
15 MENTS DEFINED.—In this subsection:

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

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

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

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

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

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

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

20 “(V) means any margin loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(v) REPURCHASE AGREEMENT.—The
20 term ‘repurchase agreement’ (which defini-
21 tion also applies to a reverse repurchase
22 agreement)—

23 “(I) means an agreement, includ-
24 ing related terms, which provides for
25 the transfer of one or more certifi-

1 cates of deposit, mortgage-related se-
2 curities (as such term is defined in
3 the Securities Exchange Act of 1934),
4 mortgage loans, interests in mortgage-
5 related securities or mortgage loans,
6 eligible bankers' acceptances, qualified
7 foreign government securities or secu-
8 rities that are direct obligations of, or
9 that are fully guaranteed by, the
10 United States or any agency of the
11 United States against the transfer of
12 funds by the transferee of such certifi-
13 cates of deposit, eligible bankers' ac-
14 ceptances, securities, mortgage loans,
15 or interests with a simultaneous
16 agreement by such transferee to
17 transfer to the transferor thereof cer-
18 tificates of deposit, eligible bankers'
19 acceptances, securities, mortgage
20 loans, or interests as described above,
21 at a date certain not later than 1 year
22 after such transfers or on demand,
23 against the transfer of funds, or any
24 other similar agreement;

1 “(II) does not include any repur-
2 chase obligation under a participation
3 in a commercial mortgage loan unless
4 the Agency determines by regulation,
5 resolution, or order to include any
6 such participation within the meaning
7 of such term;

8 “(III) means any combination of
9 agreements or transactions referred to
10 in subclauses (I) and (IV);

11 “(IV) means any option to enter
12 into any agreement or transaction re-
13 ferred to in subclause (I) or (III);

14 “(V) means a master agreement
15 that provides for an agreement or
16 transaction referred to in subclause
17 (I), (III), or (IV), together with all
18 supplements to any such master
19 agreement, without regard to whether
20 the master agreement provides for an
21 agreement or transaction that is not a
22 repurchase agreement under this
23 clause, except that the master agree-
24 ment shall be considered to be a re-
25 purchase agreement under this sub-

1 clause only with respect to each agree-
2 ment or transaction under the master
3 agreement that is referred to in sub-
4 clause (I), (III), or (IV); and

5 “(VI) means any security agree-
6 ment or arrangement or other credit
7 enhancement related to any agree-
8 ment or transaction referred to in
9 subclause (I), (III), (IV), or (V), in-
10 cluding any guarantee or reimburse-
11 ment obligation in connection with
12 any agreement or transaction referred
13 to in any such subclause.

14 For purposes of this clause, the term
15 ‘qualified foreign government security’
16 means a security that is a direct obligation
17 of, or that is fully guaranteed by, the cen-
18 tral government of a member of the Orga-
19 nization for Economic Cooperation and
20 Development (as determined by regulation
21 or order adopted by the appropriate Fed-
22 eral banking authority).

23 “(vi) SWAP AGREEMENT.—The term
24 ‘swap agreement’ means—

1 “(I) any agreement, including the
2 terms and conditions incorporated by
3 reference in any such agreement,
4 which is an interest rate swap, option,
5 future, or forward agreement, includ-
6 ing a rate floor, rate cap, rate collar,
7 cross-currency rate swap, and basis
8 swap; a spot, same day-tomorrow, to-
9 morrow-next, forward, or other for-
10 eign exchange or precious metals
11 agreement; a currency swap, option,
12 future, or forward agreement; an eq-
13 uity index or equity swap, option, fu-
14 ture, or forward agreement; a debt
15 index or debt swap, option, future, or
16 forward agreement; a total return,
17 credit spread or credit swap, option,
18 future, or forward agreement; a com-
19 modity index or commodity swap, op-
20 tion, future, or forward agreement; or
21 a weather swap, weather derivative, or
22 weather option;

23 “(II) any agreement or trans-
24 action that is similar to any other
25 agreement or transaction referred to

1 in this clause and that is of a type
2 that has been, is presently, or in the
3 future becomes, the subject of recur-
4 rent dealings in the swap markets (in-
5 cluding terms and conditions incor-
6 porated by reference in such agree-
7 ment) and that is a forward, swap, fu-
8 ture, or option on one or more rates,
9 currencies, commodities, equity securi-
10 ties or other equity instruments, debt
11 securities or other debt instruments,
12 quantitative measures associated with
13 an occurrence, extent of an occur-
14 rence, or contingency associated with
15 a financial, commercial, or economic
16 consequence, or economic or financial
17 indices or measures of economic or fi-
18 nancial risk or value;

19 “(III) any combination of agree-
20 ments or transactions referred to in
21 this clause;

22 “(IV) any option to enter into
23 any agreement or transaction referred
24 to in this clause;

1 “(V) a master agreement that
2 provides for an agreement or trans-
3 action referred to in subclause (I),
4 (II), (III), or (IV), together with all
5 supplements to any such master
6 agreement, without regard to whether
7 the master agreement contains an
8 agreement or transaction that is not a
9 swap agreement under this clause, ex-
10 cept that the master agreement shall
11 be considered to be a swap agreement
12 under this clause only with respect to
13 each agreement or transaction under
14 the master agreement that is referred
15 to in subclause (I), (II), (III), or (IV);
16 and

17 “(VI) any security agreement or
18 arrangement or other credit enhance-
19 ment related to any agreements or
20 transactions referred to in subclause
21 (I), (II), (III), (IV), or (V), including
22 any guarantee or reimbursement obli-
23 gation in connection with any agree-
24 ment or transaction referred to in any
25 such subclause.

1 Such term is applicable for purposes of
2 this subsection only and shall not be con-
3 strued or applied so as to challenge or af-
4 fect the characterization, definition, or
5 treatment of any swap agreement under
6 any other statute, regulation, or rule, in-
7 cluding the Securities Act of 1933, the Se-
8 curities Exchange Act of 1934, the Public
9 Utility Holding Company Act of 1935, the
10 Trust Indenture Act of 1939, the Invest-
11 ment Company Act of 1940, the Invest-
12 ment Advisers Act of 1940, the Securities
13 Investor Protection Act of 1970, the Com-
14 modity Exchange Act, the Gramm-Leach-
15 Bliley Act, and the Legal Certainty for
16 Bank Products Act of 2000.

17 “(vii) TREATMENT OF MASTER
18 AGREEMENT AS ONE AGREEMENT.—Any
19 master agreement for any contract or
20 agreement described in any preceding
21 clause of this subparagraph (or any master
22 agreement for such master agreement or
23 agreements), together with all supplements
24 to such master agreement, shall be treated
25 as a single agreement and a single quali-

1 fied financial contract. If a master agree-
2 ment contains provisions relating to agree-
3 ments or transactions that are not them-
4 selves qualified financial contracts, the
5 master agreement shall be deemed to be a
6 qualified financial contract only with re-
7 spect to those transactions that are them-
8 selves qualified financial contracts.

9 “(viii) TRANSFER.—The term ‘trans-
10 fer’ means every mode, direct or indirect,
11 absolute or conditional, voluntary or invol-
12 untary, of disposing of or parting with
13 property or with an interest in property,
14 including retention of title as a security in-
15 terest and foreclosure of the regulated en-
16 tity’s equity of redemption.

17 “(E) CERTAIN PROTECTIONS IN EVENT OF
18 APPOINTMENT OF CONSERVATOR.—Notwith-
19 standing any other provision of this Act (other
20 than paragraph (13) of this subsection), any
21 other Federal law, or the law of any State, no
22 person shall be stayed or prohibited from exer-
23 cising—

24 “(i) any right such person has to
25 cause the termination, liquidation, or accel-

1 eration of any qualified financial contract
2 with a regulated entity in a conservator-
3 ship based upon a default under such fi-
4 nancial contract which is enforceable under
5 applicable noninsolvency law;

6 “(ii) any right under any security
7 agreement or arrangement or other credit
8 enhancement relating to one or more such
9 qualified financial contracts; or

10 “(iii) any right to offset or net out
11 any termination values, payment amounts,
12 or other transfer obligations arising under
13 or in connection with such qualified finan-
14 cial contracts.

15 “(F) CLARIFICATION.—No provision of law
16 shall be construed as limiting the right or
17 power of the Agency, or authorizing any court
18 or agency to limit or delay, in any manner, the
19 right or power of the Agency to transfer any
20 qualified financial contract in accordance with
21 paragraphs (9) and (10) of this subsection or to
22 disaffirm or repudiate any such contract in ac-
23 cordance with subsection (d)(1) of this section.

24 “(G) WALKAWAY CLAUSES NOT EFFEC-
25 TIVE.—

1 “(i) IN GENERAL.—Notwithstanding
2 the provisions of subparagraphs (A) and
3 (E), and sections 403 and 404 of the Fed-
4 eral Deposit Insurance Corporation Im-
5 provement Act of 1991, no walkaway
6 clause shall be enforceable in a qualified fi-
7 nancial contract of a regulated entity in
8 default.

9 “(ii) WALKAWAY CLAUSE DEFINED.—
10 For purposes of this subparagraph, the
11 term ‘walkaway clause’ means a provision
12 in a qualified financial contract that, after
13 calculation of a value of a party’s position
14 or an amount due to or from 1 of the par-
15 ties in accordance with its terms upon ter-
16 mination, liquidation, or acceleration of the
17 qualified financial contract, either does not
18 create a payment obligation of a party or
19 extinguishes a payment obligation of a
20 party in whole or in part solely because of
21 such party’s status as a nondefaulting
22 party.

23 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
24 TRACTS.—In making any transfer of assets or liabil-
25 ities of a regulated entity in default which includes

1 any qualified financial contract, the conservator or
2 receiver for such regulated entity shall either—

3 “(A) transfer to 1 person—

4 “(i) all qualified financial contracts
5 between any person (or any affiliate of
6 such person) and the regulated entity in
7 default;

8 “(ii) all claims of such person (or any
9 affiliate of such person) against such regu-
10 lated entity under any such contract (other
11 than any claim which, under the terms of
12 any such contract, is subordinated to the
13 claims of general unsecured creditors of
14 such regulated entity);

15 “(iii) all claims of such regulated enti-
16 ty against such person (or any affiliate of
17 such person) under any such contract; and

18 “(iv) all property securing or any
19 other credit enhancement for any contract
20 described in clause (i) or any claim de-
21 scribed in clause (ii) or (iii) under any
22 such contract; or

23 “(B) transfer none of the financial con-
24 tracts, claims, or property referred to under

1 subparagraph (A) (with respect to such person
2 and any affiliate of such person).

3 “(10) NOTIFICATION OF TRANSFER.—

4 “(A) IN GENERAL.—If—

5 “(i) the conservator or receiver for a
6 regulated entity in default makes any
7 transfer of the assets and liabilities of such
8 regulated entity, and

9 “(ii) the transfer includes any quali-
10 fied financial contract,

11 the conservator or receiver shall notify any per-
12 son who is a party to any such contract of such
13 transfer by 5:00 p.m. (eastern time) on the
14 business day following the date of the appoint-
15 ment of the receiver in the case of a receiver-
16 ship, or the business day following such trans-
17 fer in the case of a conservatorship.

18 “(B) CERTAIN RIGHTS NOT ENFORCE-
19 ABLE.—

20 “(i) RECEIVERSHIP.—A person who is
21 a party to a qualified financial contract
22 with a regulated entity may not exercise
23 any right that such person has to termi-
24 nate, liquidate, or net such contract under
25 paragraph (8)(A) of this subsection or sec-

1 tion 403 or 404 of the Federal Deposit In-
2 surance Corporation Improvement Act of
3 1991, solely by reason of or incidental to
4 the appointment of a receiver for the regu-
5 lated entity (or the insolvency or financial
6 condition of the regulated entity for which
7 the receiver has been appointed)—

8 “(I) until 5:00 p.m. (eastern
9 time) on the business day following
10 the date of the appointment of the re-
11 ceiver; or

12 “(II) after the person has re-
13 ceived notice that the contract has
14 been transferred pursuant to para-
15 graph (9)(A).

16 “(ii) CONSERVATORSHIP.—A person
17 who is a party to a qualified financial con-
18 tract with a regulated entity may not exer-
19 cise any right that such person has to ter-
20 minate, liquidate, or net such contract
21 under paragraph (8)(E) of this subsection
22 or section 403 or 404 of the Federal De-
23 posit Insurance Corporation Improvement
24 Act of 1991, solely by reason of or inci-
25 dental to the appointment of a conservator

1 for the regulated entity (or the insolvency
2 or financial condition of the regulated enti-
3 ty for which the conservator has been ap-
4 pointed).

5 “(iii) NOTICE.—For purposes of this
6 paragraph, the Agency as receiver or con-
7 servator of a regulated entity shall be
8 deemed to have notified a person who is a
9 party to a qualified financial contract with
10 such regulated entity if the Agency has
11 taken steps reasonably calculated to pro-
12 vide notice to such person by the time
13 specified in subparagraph (A).

14 “(C) BUSINESS DAY DEFINED.—For pur-
15 poses of this paragraph, the term ‘business day’
16 means any day other than any Saturday, Sun-
17 day, or any day on which either the New York
18 Stock Exchange or the Federal Reserve Bank
19 of New York is closed.

20 “(11) DISAFFIRMANCE OR REPUDIATION OF
21 QUALIFIED FINANCIAL CONTRACTS.—In exercising
22 the rights of disaffirmance or repudiation of a con-
23 servator or receiver with respect to any qualified fi-
24 nancial contract to which a regulated entity is a

1 party, the conservator or receiver for such institution
2 shall either—

3 “(A) disaffirm or repudiate all qualified fi-
4 nancial contracts between—

5 “(i) any person or any affiliate of
6 such person; and

7 “(ii) the regulated entity in default; or

8 “(B) disaffirm or repudiate none of the
9 qualified financial contracts referred to in sub-
10 paragraph (A) (with respect to such person or
11 any affiliate of such person).

12 “(12) CERTAIN SECURITY INTERESTS NOT
13 AVOIDABLE.—No provision of this subsection shall
14 be construed as permitting the avoidance of any le-
15 gally enforceable or perfected security interest in any
16 of the assets of any regulated entity, except where
17 such an interest is taken in contemplation of the in-
18 solvency of the regulated entity, or with the intent
19 to hinder, delay, or defraud the regulated entity or
20 the creditors of such regulated entity.

21 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

22 “(A) IN GENERAL.—Notwithstanding any
23 provision of a contract providing for termi-
24 nation, default, acceleration, or exercise of
25 rights upon, or solely by reason of, insolvency

1 or the appointment of a conservator or receiver,
2 the conservator or receiver may enforce any
3 contract or regulated entity bond entered into
4 by the regulated entity.

5 “(B) CERTAIN RIGHTS NOT AFFECTED.—
6 No provision of this paragraph may be con-
7 strued as impairing or affecting any right of the
8 conservator or receiver to enforce or recover
9 under a director’s or officer’s liability insurance
10 contract or surety bond under other applicable
11 law.

12 “(C) CONSENT REQUIREMENT.—
13 “(i) IN GENERAL.—Except as other-
14 wise provided under this section, no person
15 may exercise any right or power to termi-
16 nate, accelerate, or declare a default under
17 any contract to which a regulated entity is
18 a party, or to obtain possession of or exer-
19 cise control over any property of the regu-
20 lated entity, or affect any contractual
21 rights of the regulated entity, without the
22 consent of the conservator or receiver, as
23 appropriate, for a period of—

24 “(I) 45 days after the date of ap-
25 pointment of a conservator; or

1 “(II) 90 days after the date of
2 appointment of a receiver.

3 “(ii) EXCEPTIONS.—This paragraph
4 shall—

5 “(I) not apply to a director’s or
6 officer’s liability insurance contract;

7 “(II) not apply to the rights of
8 parties to any qualified financial con-
9 tracts under subsection (d)(8); and

10 “(III) not be construed as per-
11 mitting the conservator or receiver to
12 fail to comply with otherwise enforce-
13 able provisions of such contracts.

14 “(14) SAVINGS CLAUSE.—The meanings of
15 terms used in this subsection are applicable for pur-
16 poses of this subsection only, and shall not be con-
17 strued or applied so as to challenge or affect the
18 characterization, definition, or treatment of any
19 similar terms under any other statute, regulation, or
20 rule, including the Gramm-Leach-Bliley Act, the
21 Legal Certainty for Bank Products Act of 2000, the
22 securities laws (as that term is defined in section
23 3(a)(47) of the Securities Exchange Act of 1934),
24 and the Commodity Exchange Act.

1 “(15) EXCEPTION FOR FEDERAL RESERVE AND
2 FEDERAL HOME LOAN BANKS.—No provision of this
3 subsection shall apply with respect to—

4 “(A) any extension of credit from any Fed-
5 eral home loan bank or Federal Reserve Bank
6 to any regulated entity; or

7 “(B) any security interest in the assets of
8 the regulated entity securing any such extension
9 of credit.

10 “(e) VALUATION OF CLAIMS IN DEFAULT.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of Federal law or the law of any State, and
13 regardless of the method which the Agency deter-
14 mines to utilize with respect to a regulated entity in
15 default or in danger of default, including trans-
16 actions authorized under subsection (i), this sub-
17 section shall govern the rights of the creditors of
18 such regulated entity.

19 “(2) MAXIMUM LIABILITY.—The maximum li-
20 ability of the Agency, acting as receiver or in any
21 other capacity, to any person having a claim against
22 the receiver or the regulated entity for which such
23 receiver is appointed shall equal the lesser of—

24 “(A) the amount such claimant would have
25 received if the Agency had liquidated the assets

1 and liabilities of such regulated entity without
2 exercising the authority of the Agency under
3 subsection (i) of this section; or

4 “(B) the amount of proceeds realized from
5 the performance of contracts or sale of the as-
6 sets of the regulated entity.

7 “(f) LIMITATION ON COURT ACTION.—Except as
8 provided in this section or at the request of the Director,
9 no court may take any action to restrain or affect the exer-
10 cise of powers or functions of the Agency as a conservator
11 or a receiver.

12 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

13 “(1) IN GENERAL.—A director or officer of a
14 regulated entity may be held personally liable for
15 monetary damages in any civil action by, on behalf
16 of, or at the request or direction of the Agency,
17 which action is prosecuted wholly or partially for the
18 benefit of the Agency—

19 “(A) acting as conservator or receiver of
20 such regulated entity, or

21 “(B) acting based upon a suit, claim, or
22 cause of action purchased from, assigned by, or
23 otherwise conveyed by such receiver or conser-
24 vator,

1 for gross negligence, including any similar conduct
2 or conduct that demonstrates a greater disregard of
3 a duty of care (than gross negligence) including in-
4 tentional tortious conduct, as such terms are defined
5 and determined under applicable State law.

6 “(2) NO LIMITATION.—Nothing in this para-
7 graph shall impair or affect any right of the Agency
8 under other applicable law.

9 “(h) DAMAGES.—In any proceeding related to any
10 claim against a director, officer, employee, agent, attorney,
11 accountant, appraiser, or any other party employed by or
12 providing services to a regulated entity, recoverable dam-
13 ages determined to result from the improvident or other-
14 wise improper use or investment of any assets of the regu-
15 lated entity shall include principal losses and appropriate
16 interest.

17 “(i) LIMITED-LIFE REGULATED ENTITIES.—

18 “(1) ORGANIZATION.—

19 “(A) PURPOSE.—If a regulated entity is in
20 default, or if the Agency anticipates that a regu-
21 lated entity will default, the Agency may orga-
22 nize a limited-life regulated entity with those
23 powers and attributes of the regulated entity in
24 default or in danger of default that the Director
25 determines necessary, subject to the provisions

1 of this subsection. The Director shall grant a
2 temporary charter to the limited-life regulated
3 entity, and the limited-life regulated entity shall
4 operate subject to that charter.

5 “(B) AUTHORITIES.—Upon the creation of
6 a limited-life regulated entity under subpara-
7 graph (A), the limited-life regulated entity
8 may—

9 “(i) assume such liabilities of the reg-
10 ulated entity that is in default or in danger
11 of default as the Agency may, in its discre-
12 tion, determine to be appropriate, provided
13 that the liabilities assumed shall not exceed
14 the amount of assets of the limited-life reg-
15 ulated entity;

16 “(ii) purchase such assets of the regu-
17 lated entity that is in default, or in danger
18 of default, as the Agency may, in its dis-
19 cretion, determine to be appropriate; and

20 “(iii) perform any other temporary
21 function which the Agency may, in its dis-
22 cretion, prescribe in accordance with this
23 section.

24 “(2) CHARTER.—

1 “(A) CONDITIONS.—The Agency may
2 grant a temporary charter if the Agency deter-
3 mines that the continued operation of the regu-
4 lated entity in default or in danger of default
5 is in the best interest of the national economy
6 and the housing markets.

7 “(B) TREATMENT AS BEING IN DEFAULT
8 FOR CERTAIN PURPOSES.—A limited-life regu-
9 lated entity shall be treated as a regulated enti-
10 ty in default at such times and for such pur-
11 poses as the Agency may, in its discretion, de-
12 termine.

13 “(C) MANAGEMENT.—A limited-life regu-
14 lated entity, upon the granting of its charter,
15 shall be under the management of a board of
16 directors consisting of not fewer than 5 nor
17 more than 10 members appointed by the Agen-
18 cy.

19 “(D) BYLAWS.—The board of directors of
20 a limited-life regulated entity shall adopt such
21 bylaws as may be approved by the Agency.

22 “(3) CAPITAL STOCK.—No capital stock need
23 be paid into a limited-life regulated entity by the
24 Agency.

1 “(4) INVESTMENTS.—Funds of a limited-life
2 regulated entity shall be kept on hand in cash, in-
3 vested in obligations of the United States or obliga-
4 tions guaranteed as to principal and interest by the
5 United States, or deposited with the Agency, or any
6 Federal Reserve bank.

7 “(5) EXEMPT STATUS.—Notwithstanding any
8 other provision of Federal or State law, the limited-
9 life regulated entity, its franchise, property, and in-
10 come shall be exempt from all taxation now or here-
11 after imposed by the United States, by any territory,
12 dependency, or possession thereof, or by any State,
13 county, municipality, or local taxing authority.

14 “(6) WINDING UP.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), unless Congress authorizes the sale
17 of the capital stock of the limited-life regulated
18 entity, not later than 2 years after the date of
19 its organization, the Agency shall wind up the
20 affairs of the limited-life regulated entity.

21 “(B) EXTENSION.—The Director may, in
22 the discretion of the Director, extend the status
23 of the limited-life regulated entity for 3 addi-
24 tional 1-year periods.

25 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

1 “(A) IN GENERAL.—

2 “(i) TRANSFER OF ASSETS AND LI-
3 ABILITIES.—The Agency, as receiver, may
4 transfer any assets and liabilities of a reg-
5 ulated entity in default, or in danger of de-
6 fault, to the limited-life regulated entity in
7 accordance with paragraph (1).

8 “(ii) SUBSEQUENT TRANSFERS.—At
9 any time after a charter is transferred to
10 a limited-life regulated entity, the Agency,
11 as receiver, may transfer any assets and li-
12 abilities of such regulated entity in default,
13 or in danger in default, as the Agency
14 may, in its discretion, determine to be ap-
15 propriate in accordance with paragraph
16 (1).

17 “(iii) EFFECTIVE WITHOUT AP-
18 PROVAL.—The transfer of any assets or li-
19 abilities of a regulated entity in default, or
20 in danger of default, transferred to a lim-
21 ited-life regulated entity shall be effective
22 without any further approval under Fed-
23 eral or State law, assignment, or consent
24 with respect thereto.

1 “(8) PROCEEDS.—To the extent that available
2 proceeds from the limited-life regulated entity exceed
3 amounts required to pay obligations, such proceeds
4 may be paid to the regulated entity in default, or in
5 danger of default.

6 “(9) POWERS.—

7 “(A) IN GENERAL.—Each limited-life regu-
8 lated entity created under this subsection shall
9 have all corporate powers of, and be subject to
10 the same provisions of law as, the regulated en-
11 tity in default or in danger of default to which
12 it relates, except that—

13 “(i) the Agency may—

14 “(I) remove the directors of a
15 limited-life regulated entity; and

16 “(II) fix the compensation of
17 members of the board of directors and
18 senior management, as determined by
19 the Agency in its discretion, of a lim-
20 ited-life regulated entity;

21 “(ii) the Agency may indemnify the
22 representatives for purposes of paragraph
23 (1)(B), and the directors, officers, employ-
24 ees, and agents of a limited-life regulated

1 entity on such terms as the Agency deter-
2 mines to be appropriate; and

3 “(iii) the board of directors of a lim-
4 ited-life regulated entity—

5 “(I) shall elect a chairperson who
6 may also serve in the position of chief
7 executive officer, except that such per-
8 son shall not serve either as chair-
9 person or as chief executive officer
10 without the prior approval of the
11 Agency; and

12 “(II) may appoint a chief execu-
13 tive officer who is not also the chair-
14 person, except that such person shall
15 not serve as chief executive officer
16 without the prior approval of the
17 Agency.

18 “(B) STAY OF JUDICIAL ACTION.—Any ju-
19 dicial action to which a limited-life regulated
20 entity becomes a party by virtue of its acquisi-
21 tion of any assets or assumption of any liabil-
22 ities of a regulated entity in default shall be
23 stayed from further proceedings for a period of
24 up to 45 days at the request of the limited-life

1 regulated entity. Such period may be modified
2 upon the consent of all parties.

3 “(10) OBTAINING OF CREDIT AND INCURRING
4 OF DEBT.—

5 “(A) IN GENERAL.—The limited-life regu-
6 lated entity may obtain unsecured credit and
7 incur unsecured debt in the ordinary course of
8 business.

9 “(B) INABILITY TO OBTAIN CREDIT.—If
10 the limited-life regulated entity is unable to ob-
11 tain unsecured credit the Director may author-
12 ize the obtaining of credit or the incurring of
13 debt—

14 “(i) with priority over any or all ad-
15 ministrative expenses;

16 “(ii) secured by a lien on property
17 that is not otherwise subject to a lien; or

18 “(iii) secured by a junior lien on prop-
19 erty that is subject to a lien.

20 “(C) LIMITATIONS.—

21 “(i) IN GENERAL.—The Director,
22 after notice and a hearing, may authorize
23 the obtaining of credit or the incurring of
24 debt secured by a senior or equal lien on
25 property that is subject to a lien (other

1 than mortgages that collateralize the mort-
2 gage-backed securities issued or guaran-
3 teed by the regulated entity) only if—

4 “(I) the limited-life regulated en-
5 tity is unable to obtain such credit
6 otherwise; and

7 “(II) there is adequate protection
8 of the interest of the holder of the lien
9 on the property which such senior or
10 equal lien is proposed to be granted.

11 “(ii) BURDEN OF PROOF.—In any
12 hearing under this subsection, the Director
13 has the burden of proof on the issue of
14 adequate protection.

15 “(D) EFFECT ON DEBTS AND LIENS.—The
16 reversal or modification on appeal of an author-
17 ization under this paragraph to obtain credit or
18 incur debt, or of a grant under this section of
19 a priority or a lien, does not affect the validity
20 of any debt so incurred, or any priority or lien
21 so granted, to an entity that extended such
22 credit in good faith, whether or not such entity
23 knew of the pendency of the appeal, unless such
24 authorization and the incurring of such debt, or

1 the granting of such priority or lien, were
2 stayed pending appeal.

3 “(11) ISSUANCE OF PREFERRED DEBT.—A lim-
4 ited-life regulated entity may, subject to the ap-
5 proval of the Director and subject to such terms and
6 conditions as the Director may prescribe, issue
7 notes, bonds, or other debt obligations of a class to
8 which all other debt obligations of the limited-life
9 regulated entity shall be subordinate in right and
10 payment.

11 “(12) NO FEDERAL STATUS.—

12 “(A) AGENCY STATUS.—A limited-life reg-
13 ulated entity is not an agency, establishment, or
14 instrumentality of the United States.

15 “(B) EMPLOYEE STATUS.—Representa-
16 tives for purposes of paragraph (1)(B), interim
17 directors, directors, officers, employees, or
18 agents of a limited-life regulated entity are not,
19 solely by virtue of service in any such capacity,
20 officers or employees of the United States. Any
21 employee of the Agency or of any Federal in-
22 strumentality who serves at the request of the
23 Agency as a representative for purposes of
24 paragraph (1)(B), interim director, director, of-

1 ficer, employee, or agent of a limited-life regu-
2 lated entity shall not—

3 “(i) solely by virtue of service in any
4 such capacity lose any existing status as
5 an officer or employee of the United States
6 for purposes of title 5, United States Code,
7 or any other provision of law; or

8 “(ii) receive any salary or benefits for
9 service in any such capacity with respect to
10 a limited-life regulated entity in addition to
11 such salary or benefits as are obtained
12 through employment with the Agency or
13 such Federal instrumentality.

14 “(13) ADDITIONAL POWERS.—In addition to
15 any other powers granted under this subsection, a
16 limited-life regulated entity may—

17 “(A) extend a maturity date or change in
18 an interest rate or other term of outstanding
19 securities;

20 “(B) issue securities of the limited-life regu-
21 lated entity, for cash, for property, for existing
22 securities, or in exchange for claims or inter-
23 ests, or for any other appropriate purposes; and

24 “(C) take any other action not inconsistent
25 with this section.

1 “(j) OTHER EXEMPTIONS.—When acting as a re-
2 ceiver, the following provisions shall apply with respect to
3 the Agency:

4 “(1) EXEMPTION FROM TAXATION.—The Agen-
5 cy, including its franchise, its capital, reserves, and
6 surplus, and its income, shall be exempt from all
7 taxation imposed by any State, country, munici-
8 pality, or local taxing authority, except that any real
9 property of the Agency shall be subject to State, ter-
10 ritorial, county, municipal, or local taxation to the
11 same extent according to its value as other real
12 property is taxed, except that, notwithstanding the
13 failure of any person to challenge an assessment
14 under State law of the value of such property, and
15 the tax thereon, shall be determined as of the period
16 for which such tax is imposed.

17 “(2) EXEMPTION FROM ATTACHMENT AND
18 LIENS.—No property of the Agency shall be subject
19 to levy, attachment, garnishment, foreclosure, or sale
20 without the consent of the Agency, nor shall any in-
21 voluntary lien attach to the property of the Agency.

22 “(3) EXEMPTION FROM PENALTIES AND
23 FINES.—The Agency shall not be liable for any
24 amounts in the nature of penalties or fines, includ-
25 ing those arising from the failure of any person to

1 pay any real property, personal property, probate, or
2 recording tax or any recording or filing fees when
3 due.

4 “(k) PROHIBITION OF CHARTER REVOCATION.—In
5 no case may a receiver appointed pursuant to this section
6 revoke, annul, or terminate the charter of a regulated enti-
7 ty.

8 “(l) PRESERVATION OF BANKRUPTCY LAW.—Noth-
9 ing in this Act shall be construed to modify, impair, or
10 supersede the operation of any provision of title 11 of the
11 United States Code, or the operation of any provision of
12 title 28 of such Code that relates to cases under such title
13 11, except as otherwise provided in section 1367(b) of this
14 Act and except that a regulated entity may not be a debtor
15 under such title 11.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) HOUSING AND COMMUNITY DEVELOPMENT
18 ACT OF 1992.—Subtitle B of title XIII of the Hous-
19 ing and Community Development Act of 1992 is
20 amended by striking sections 1369 (12 U.S.C.
21 4619), 1369A (12 U.S.C. 4620), and 1369B (12
22 U.S.C. 4621).

23 (2) FEDERAL HOME LOAN BANKS.—Section 25
24 of the Federal Home Loan Bank Act (12 U.S.C.
25 1445) is amended to read as follows:

1 **“SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.**

2 “Each Federal Home Loan Bank shall have succes-
3 sion until it is voluntarily merged with another Bank
4 under this Act, or until it is merged, reorganized, rehabili-
5 tated, liquidated, or otherwise wound up by the Director
6 in accordance with the provisions of section 1367 of the
7 Housing and Community Development Act of 1992, or by
8 further Act of Congress.”.

9 **SEC. 349. CONFORMING AMENDMENTS.**

10 Title XIII of the Housing and Community Develop-
11 ment Act of 1992, as amended by the preceding provisions
12 of this title, is further amended—

13 (1) in sections 1365 (12 U.S.C. 4615) through
14 1369D (12 U.S.C. 4623), but not including section
15 1367 (12 U.S.C. 4617) as amended by section 349
16 of this title—

17 (A) by striking “An enterprise” each place
18 such term appears and inserting “A regulated
19 entity”;

20 (B) by striking “an enterprise” each place
21 such term appears and inserting “a regulated
22 entity”; and

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

26 (2) in section 1366 (12 U.S.C. 4616)—

1 (A) in subsection (b)(7), by striking “sec-
2 tion 1369 (excluding subsection (a)(1) and
3 (2))” and inserting “section 1367”; and

4 (B) in subsection (d), by striking “the en-
5 terprises” and inserting “the regulated enti-
6 ties”;

7 (3) in section 1368(d) (12 U.S.C. 4618(d)), by
8 striking “Committee on Banking, Finance and
9 Urban Affairs” and inserting “Committee on Finan-
10 cial Services”;

11 (4) in section 1369C (12 U.S.C. 4622)—

12 (A) in subsection (a)(4), by striking “ac-
13 tivities (including existing and new programs)”
14 and inserting “activities, services, undertakings,
15 and offerings (including existing and new prod-
16 ucts (as such term is defined in section
17 1321(f))”; and

18 (B) in subsection (e), by striking “any en-
19 terprise” and inserting “any regulated entity”;
20 and

21 (5) in subsections (a) and (d) of section 1369D,
22 by striking “section 1366 or 1367 or action under
23 section 1369)” each place such phrase appears and
24 inserting “section 1367”).

1 CHAPTER 4—ENFORCEMENT ACTIONS**2 SEC. 351. CEASE-AND-DESIST PROCEEDINGS.**

3 Section 1371 of the Housing and Community Devel-
4 opment Act of 1992 (12 U.S.C. 4631) is amended—

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

7 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
8 **TICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the
9 opinion of the Director, a regulated entity or any regulated
10 entity-affiliated party is engaging or has engaged, or the
11 Director has reasonable cause to believe that the regulated
12 entity or any regulated entity-affiliated party is about to
13 engage, in an unsafe or unsound practice in conducting
14 the business of the regulated entity or is violating or has
15 violated, or the Director has reasonable cause to believe
16 that the regulated entity or any regulated entity-affiliated
17 party is about to violate, a law, rule, or regulation, or any
18 condition imposed in writing by the Director in connection
19 with the granting of any application or other request by
20 the regulated entity or any written agreement entered into
21 with the Director, the Director may issue and serve upon
22 the regulated entity or such party a notice of charges in
23 respect thereof. The Director may not, pursuant to this
24 section, enforce compliance with any housing goal estab-
25 lished under subpart B of part 2 of subtitle A of this title,

1 with section 1336 or 1337 of this title, with subsection
2 (m) or (n) of section 309 of the Federal National Mort-
3 gage Association Charter Act (12 U.S.C. 1723a(m), (n)),
4 with subsection (e) or (f) of section 307 of the Federal
5 Home Loan Mortgage Corporation Act (12 U.S.C.
6 1456(e), (f)), or with paragraph (5) of section 10(j) of
7 the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

8 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
9 regulated entity receives, in its most recent report of ex-
10 amination, a less-than-satisfactory rating for asset quality,
11 management, earnings, or liquidity, the Director may (if
12 the deficiency is not corrected) deem the regulated entity
13 to be engaging in an unsafe or unsound practice for pur-
14 poses of this subsection.”;

15 (2) in subsection (c)(2), by striking “enterprise,
16 executive officer, or director” and inserting “regu-
17 lated entity or regulated entity-affiliated party”; and

18 (3) in subsection (d)—

19 (A) in the matter preceding paragraph (1),
20 by striking “enterprise, executive officer, or di-
21 rector” and inserting “regulated entity or regu-
22 lated entity-affiliated party”;

23 (B) in paragraph (1)—

1 (i) by striking “an executive officer or
2 a director” and inserting “a regulated enti-
3 ty affiliated party”; and

4 (ii) by inserting “(including reim-
5 bursement of compensation under section
6 1318)” after “reimbursement”;

7 (C) in paragraph (6), by striking “and” at
8 the end;

9 (D) by redesignating paragraph (7) as
10 paragraph (8); and

11 (E) by inserting after paragraph (6) the
12 following new paragraph:

13 “(7) to effect an attachment on a regulated en-
14 tity or regulated entity-affiliated party subject to an
15 order under this section or section 1372; and”.

16 **SEC. 352. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

17 Section 1372 of the Housing and Community Devel-
18 opment Act of 1992 (12 U.S.C. 4632) is amended—

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

21 “(a) **GROUND FOR ISSUANCE.**—Whenever the Direc-
22 tor determines that the violation or threatened violation
23 or the unsafe or unsound practice or practices specified
24 in the notice of charges served upon the regulated entity
25 or any regulated entity-affiliated party pursuant to section

1 1371(a), or the continuation thereof, is likely to cause in-
2 solvency or significant dissipation of assets or earnings of
3 the regulated entity, or is likely to weaken the condition
4 of the regulated entity prior to the completion of the pro-
5 ceedings conducted pursuant to sections 1371 and 1373,
6 the Director may issue a temporary order requiring the
7 regulated entity or such party to cease and desist from
8 any such violation or practice and to take affirmative ac-
9 tion to prevent or remedy such insolvency, dissipation,
10 condition, or prejudice pending completion of such pro-
11 ceedings. Such order may include any requirement author-
12 ized under section 1371(d).”;

13 (2) in subsection (b), by striking “enterprise,
14 executive officer, or director” and inserting “regu-
15 lated entity or regulated entity-affiliated party”;

16 (3) in subsection (d)—

17 (A) by striking “An enterprise, executive
18 officer, or director” and inserting “A regulated
19 entity or regulated entity-affiliated party”; and

20 (B) by striking “the enterprise, executive
21 officer, or director” and inserting “the regu-
22 lated entity or regulated entity-affiliated party”;
23 and

24 (4) by striking subsection (e) and in inserting
25 the following new subsection:

1 “(e) ENFORCEMENT.—In the case of violation or
2 threatened violation of, or failure to obey, a temporary
3 cease-and-desist order issued pursuant to this section, the
4 Director may apply to the United States District Court
5 for the District of Columbia or the United States district
6 court within the jurisdiction of which the headquarters of
7 the regulated entity is located, for an injunction to enforce
8 such order, and, if the court determines that there has
9 been such violation or threatened violation or failure to
10 obey, it shall be the duty of the court to issue such injunc-
11 tion.”.

12 **SEC. 353. PREJUDGMENT ATTACHMENT.**

13 The Housing and Community Development Act of
14 1992 is amended by inserting after section 1375 (12
15 U.S.C. 4635) the following new section:

16 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

17 “(a) IN GENERAL.—In any action brought pursuant
18 to this title, or in actions brought in aid of, or to enforce
19 an order in, any administrative or other civil action for
20 money damages, restitution, or civil money penalties
21 brought pursuant to this title, the court may, upon appli-
22 cation of the Director or Attorney General, as applicable,
23 issue a restraining order that—

24 “(1) prohibits any person subject to the pro-
25 ceeding from withdrawing, transferring, removing,

1 dissipating, or disposing of any funds, assets or
2 other property; and

3 “(2) appoints a person on a temporary basis to
4 administer the restraining order.

5 “(b) STANDARD.—

6 “(1) SHOWING.—Rule 65 of the Federal Rules
7 of Civil Procedure shall apply with respect to any
8 proceeding under subsection (a) without regard to
9 the requirement of such rule that the applicant show
10 that the injury, loss, or damage is irreparable and
11 immediate.

12 “(2) STATE PROCEEDING.—If, in the case of
13 any proceeding in a State court, the court deter-
14 mines that rules of civil procedure available under
15 the laws of such State provide substantially similar
16 protections to a party’s right to due process as Rule
17 65 (as modified with respect to such proceeding by
18 paragraph (1)), the relief sought under subsection
19 (a) may be requested under the laws of such State.”.

20 **SEC. 354. ENFORCEMENT AND JURISDICTION.**

21 Section 1375 of the Housing and Community Devel-
22 opment Act of 1992 (12 U.S.C. 4635) is amended—

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

1 “(a) ENFORCEMENT.—The Director may, in the dis-
2 cretion of the Director, apply to the United States District
3 Court for the District of Columbia, or the United States
4 district court within the jurisdiction of which the head-
5 quarters of the regulated entity is located, for the enforce-
6 ment of any effective and outstanding notice or order
7 issued under this subtitle or subtitle B, or request that
8 the Attorney General of the United States bring such an
9 action. Such court shall have jurisdiction and power to
10 order and require compliance with such notice or order.”;
11 and

12 (2) in subsection (b), by striking “or 1376” and
13 inserting “1376, or 1377”.

14 **SEC. 355. CIVIL MONEY PENALTIES.**

15 Section 1376 of the Housing and Community Devel-
16 opment Act of 1992 (12 U.S.C. 4636) is amended—

17 (1) in subsection (a)—

18 (A) in the matter preceding paragraph (1),
19 by striking “, or any executive officer or direc-
20 tor” and inserting “or any regulated-entity af-
21 filiated party”; and

22 (B) in paragraph (1)—

23 (i) by striking “the Federal National
24 Mortgage Association Charter Act, the
25 Federal Home Loan Mortgage Corporation

1 Act” and inserting “any provision of any
2 of the authorizing statutes”;

3 (ii) by striking “or Act” and inserting
4 “or statute”;

5 (iii) by striking “or subsection” and
6 inserting “, subsection”; and

7 (iv) by inserting “, or paragraph (5)
8 or (12) of section 10(j) of the Federal
9 Home Loan Bank Act” before the semi-
10 colon at the end;

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

13 “(b) AMOUNT OF PENALTY.—

14 “(1) FIRST TIER.—Any regulated entity which,
15 or any regulated entity-affiliated party who—

16 “(A) violates any provision of this title,
17 any provision of any of the authorizing statutes,
18 or any order, condition, rule, or regulation
19 under any such title or statute, except that the
20 Director may not, pursuant to this section, en-
21 force compliance with any housing goal estab-
22 lished under subpart B of part 2 of subtitle A
23 of this title, with section 1336 or 1337 of this
24 title, with subsection (m) or (n) of section 309
25 of the Federal National Mortgage Association

1 Charter Act (12 U.S.C. 1723a(m), (n)), with
2 subsection (e) or (f) of section 307 of the Fed-
3 eral Home Loan Mortgage Corporation Act (12
4 U.S.C. 1456(e), (f)), or with paragraph (5) or
5 (12) of section 10(j) of the Federal Home Loan
6 Bank Act;

7 “(B) violates any final or temporary order
8 or notice issued pursuant to this title;

9 “(C) violates any condition imposed in
10 writing by the Director in connection with the
11 grant of any application or other request by
12 such regulated entity; or

13 “(D) violates any written agreement be-
14 tween the regulated entity and the Director,
15 shall forfeit and pay a civil money penalty of not
16 more than \$10,000 for each day during which such
17 violation continues.

18 “(2) SECOND TIER.—Notwithstanding para-
19 graph (1)—

20 “(A) if a regulated entity, or a regulated
21 entity-affiliated party—

22 “(i) commits any violation described
23 in any subparagraph of paragraph (1);

1 “(ii) recklessly engages in an unsafe
2 or unsound practice in conducting the af-
3 fairs of such regulated entity; or

4 “(iii) breaches any fiduciary duty; and
5 “(B) the violation, practice, or breach—

6 “(i) is part of a pattern of mis-
7 conduct;

8 “(ii) causes or is likely to cause more
9 than a minimal loss to such regulated enti-
10 ty; or

11 “(iii) results in pecuniary gain or
12 other benefit to such party,

13 the regulated entity or regulated entity-affiliated
14 party shall forfeit and pay a civil penalty of not
15 more than \$50,000 for each day during which such
16 violation, practice, or breach continues.

17 “(3) THIRD TIER.—Notwithstanding para-
18 graphs (1) and (2), any regulated entity which, or
19 any regulated entity-affiliated party who—

20 “(A) knowingly—

21 “(i) commits any violation or engages
22 in any conduct described in any subpara-
23 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. 356. 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. 357. 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 be fined not more than
2 \$1,000,000, imprisoned for not more than 5 years, or
3 both.”.

4 **SEC. 358. 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 356(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. 359. 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 356(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 356(a)(1) of this title, by in-
11 serting “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 regu-
21 lated 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. 361. 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 365 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 365 oc-
9 curs.

10 **SEC. 362. 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 365, 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. 363. 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. 364. 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 365.

18 **SEC. 365. 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. 371. 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. 372. 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 381, 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 381 may continue to serve
19 as a member of such board of directors for the remainder
20 of the term of such office as provided in section 7 of the
21 Federal Home Loan Bank Act, as in effect before such
22 effective date.

1 **SEC. 373. 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. 374. 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. 375. 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 381 of this title.

1 **SEC. 376. 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. 377. 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. 378. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

16 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)
17 of section 2 of the Federal Home Loan Bank Act (12
18 U.S.C. 1422(10)), as so redesignated by section 371(3)
19 of this title, is amended by striking “\$500,000,000” each
20 place such term appears and inserting “\$1,000,000,000”.

21 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
22 MENT ACTIVITIES.—Section 10(a) of the Federal Home
23 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

24 (1) in paragraph (2)(B)—

25 (A) by striking “and”; and

1 (B) by inserting “, and community devel-
2 opment activities” before the period at the end;

3 (2) in paragraph (3)(E), by inserting “or com-
4 munity development activities” after “agriculture,”;
5 and

6 (3) in paragraph (6)—

7 (A) by striking “and”; and

8 (B) by inserting “, and ‘community devel-
9 opment activities’ ” before “shall”.

10 **SEC. 379. TECHNICAL AND CONFORMING AMENDMENTS.**

11 (a) **RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—**

12 Section 1113(o) of the Right to Financial Privacy Act of
13 1978 (12 U.S.C. 3413(o)) is amended—

14 (1) by striking “Federal Housing Finance
15 Board” and inserting “Federal Housing Finance
16 Agency”; and

17 (2) by striking “Federal Housing Finance
18 Board’s” and inserting “Federal Housing Finance
19 Agency’s”.

20 (b) **RIEGLE COMMUNITY DEVELOPMENT AND REGU-
21 LATORY IMPROVEMENT ACT OF 1994.—**Section 117(e) of

22 the Riegle Community Development and Regulatory Im-
23 provement Act of 1994 (12 U.S.C. 4716(e)) is amended

24 by striking “Federal Housing Finance Board” and insert-
25 ing “Federal Housing Finance Agency”.

1 (c) TITLE 18, UNITED STATES CODE.—Title 18,
2 United States Code, is amended by striking “Federal
3 Housing Finance Board” each place such term appears
4 in each of sections 212, 657, 1006, 1014, and inserting
5 “Federal Housing Finance Agency”.

6 (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the
7 Multifamily Assisted Housing Reform and Affordability
8 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
9 ing “Federal Housing Finance Board” and inserting
10 “Federal Housing Finance Agency”.

11 (e) TITLE 44, UNITED STATES CODE.—Section
12 3502(5) of title 44, United States Code, is amended by
13 striking “Federal Housing Finance Board” and inserting
14 “Federal Housing Finance Agency”.

15 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
16 1004(d)(2)(D)(iii) of the Launching Our Communities’
17 Access to Local Television Act of 2000 (47 U.S.C.
18 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
19 eral Housing Enterprise Oversight, the Federal Housing
20 Finance Board” and inserting “Federal Housing Finance
21 Agency”.

22 (g) SARBANES-OXLEY ACT OF 2002.—Section
23 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002
24 (15 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting

1 “and the Director of the Federal Housing Finance Agen-
2 cy” after “Commission,”.

3 **SEC. 380. STUDY OF AFFORDABLE HOUSING PROGRAM USE**
4 **FOR LONG-TERM CARE FACILITIES.**

5 The Comptroller General shall conduct a study of the
6 use of affordable housing programs of the Federal home
7 loan banks under section 10(j) of the Federal Home Loan
8 Bank Act to determine how and the extent to which such
9 programs are used to assist long-term care facilities for
10 low- and moderate-income individuals, and the effective-
11 ness and adequacy of such assistance in meeting the needs
12 of affected communities. The study shall examine the ap-
13 plicability of such use to the affordable housing fund re-
14 quired to be established by the Director of the Federal
15 Housing Finance Agency pursuant to the amendment
16 made by section 340 of this title. The Comptroller General
17 shall submit a report to the Director of the Federal Hous-
18 ing Finance Agency and the Congress regarding the re-
19 sults of the study not later than the expiration of the 1-
20 year period beginning on the date of the enactment of this
21 Act. This section shall take effect on the date of the enact-
22 ment of this Act.

23 **SEC. 381. EFFECTIVE DATE.**

24 Except as specifically provided otherwise in this sub-
25 title, this subtitle shall take effect on and the amendments

1 made by this subtitle shall take effect on, and shall apply
2 beginning on, the expiration of the 6-month period begin-
3 ning on the date of the enactment of this Act.

4 **Subtitle C—Transfer of Functions,**
5 **Personnel, and Property of Of-**
6 **ice of Federal Housing Enter-**
7 **prise Oversight, Federal Hous-**
8 **ing Finance Board, and Depart-**
9 **ment of Housing and Urban De-**
10 **velopment**

11 **CHAPTER 1—OFFICE OF FEDERAL**
12 **HOUSING ENTERPRISE OVERSIGHT**

13 **SEC. 385. ABOLISHMENT OF OFHEO.**

14 (a) **IN GENERAL.**—Effective at the end of the 6-
15 month period beginning on the date of the enactment of
16 this Act, the Office of Federal Housing Enterprise Over-
17 sight of the Department of Housing and Urban Develop-
18 ment and the positions of the Director and Deputy Direc-
19 tor of such Office are abolished.

20 (b) **DISPOSITION OF AFFAIRS.**—During the 6-month
21 period beginning on the date of the enactment of this Act,
22 the Director of the Office of Federal Housing Enterprise
23 Oversight shall, for the purpose of winding up the affairs
24 of the Office of Federal Housing Enterprise Oversight and

1 in addition to carrying out its other responsibilities under
2 law—

3 (1) manage the employees of such Office and
4 provide for the payment of the compensation and
5 benefits of any such employee which accrue before
6 the effective date of the transfer of such employee
7 pursuant to section 387; and

8 (2) may take any other action necessary for the
9 purpose of winding up the affairs of the Office.

10 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

11 The amendments made by subtitle A and the abolishment
12 of the Office of Federal Housing Enterprise Oversight
13 under subsection (a) of this section may not be construed
14 to affect the status of any employee of such Office as em-
15 ployees of an agency of the United States for purposes
16 of any other provision of law before the effective date of
17 the transfer of any such employee pursuant to section 387.

18 (d) USE OF PROPERTY AND SERVICES.—

19 (1) PROPERTY.—The Director of the Federal
20 Housing Finance Agency may use the property of
21 the Office of Federal Housing Enterprise Oversight
22 to perform functions which have been transferred to
23 the Director of the Federal Housing Finance Agency
24 for such time as is reasonable to facilitate the or-
25 derly transfer of functions transferred pursuant to

1 any other provision of this title or any amendment
2 made by this title to any other provision of law.

3 (2) AGENCY SERVICES.—Any agency, depart-
4 ment, or other instrumentality of the United States,
5 and any successor to any such agency, department,
6 or instrumentality, which was providing supporting
7 services to the Office of Federal Housing Enterprise
8 Oversight before the expiration of the period under
9 subsection (a) in connection with functions that are
10 transferred to the Director of the Federal Housing
11 Finance Agency shall—

12 (A) continue to provide such services, on a
13 reimbursable basis, until the transfer of such
14 functions is complete; and

15 (B) consult with any such agency to co-
16 ordinate and facilitate a prompt and reasonable
17 transition.

18 (e) SAVINGS PROVISIONS.—

19 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
20 TIONS NOT AFFECTED.—Subsection (a) shall not af-
21 fect the validity of any right, duty, or obligation of
22 the United States, the Director of the Office of Fed-
23 eral Housing Enterprise Oversight, or any other per-
24 son, which—

1 (A) arises under or pursuant to the title
2 XIII of the Housing and Community Develop-
3 ment Act of 1992, the Federal National Mort-
4 gage Association Charter Act, the Federal
5 Home Loan Mortgage Corporation Act, or any
6 other provision of law applicable with respect to
7 such Office; and

8 (B) existed on the day before the abolish-
9 ment under subsection (a) of this section.

10 (2) CONTINUATION OF SUITS.—No action or
11 other proceeding commenced by or against the Di-
12 rector of the Office of Federal Housing Enterprise
13 Oversight in connection with functions that are
14 transferred to the Director of the Federal Housing
15 Finance Agency shall abate by reason of the enact-
16 ment of this title, except that the Director of the
17 Federal Housing Finance Agency shall be sub-
18 stituted for the Director of the Office of Federal
19 Housing Enterprise Oversight as a party to any
20 such action or proceeding.

21 **SEC. 386. CONTINUATION AND COORDINATION OF CERTAIN**
22 **REGULATIONS.**

23 All regulations, orders, determinations, and resolu-
24 tions that—

1 (1) were issued, made, prescribed, or allowed to
2 become effective by—

3 (A) the Office of Federal Housing Enter-
4 prise Oversight; or

5 (B) a court of competent jurisdiction and
6 that relate to functions transferred by this
7 chapter; and

8 (2) are in effect on the date of the abolishment
9 under section 385(a) of this title, shall remain in ef-
10 fect according to the terms of such regulations, or-
11 ders, determinations, and resolutions, and shall be
12 enforceable by or against the Director of the Federal
13 Housing Finance Agency until modified, terminated,
14 set aside, or superseded in accordance with applica-
15 ble law by such Director, as the case may be, any
16 court of competent jurisdiction, or operation of law.

17 **SEC. 387. TRANSFER AND RIGHTS OF EMPLOYEES OF**
18 **OFHEO.**

19 (a) TRANSFER.—Each employee of the Office of Fed-
20 eral Housing Enterprise Oversight shall be transferred to
21 the Federal Housing Finance Agency for employment no
22 later than the date of the abolishment under section
23 385(a) of this title and such transfer shall be deemed a
24 transfer of function for purposes of section 3503 of title
25 5, United States Code.

1 (b) GUARANTEED POSITIONS.—Each employee trans-
2 ferred under subsection (a) shall be guaranteed a position
3 with the same status, tenure, grade, and pay as that held
4 on the day immediately preceding the transfer. Each such
5 employee holding a permanent position shall not be invol-
6 untarily separated or reduced in grade or compensation
7 for 12 months after the date of transfer, except for cause
8 or, if the employee is a temporary employee, separated in
9 accordance with the terms of the appointment.

10 (c) APPOINTMENT AUTHORITY FOR EXCEPTED
11 SERVICE EMPLOYEES.—

12 (1) IN GENERAL.—In the case of employees oc-
13 cupying positions in the excepted service, any ap-
14 pointment authority established pursuant to law or
15 regulations of the Office of Personnel Management
16 for filling such positions shall be transferred, subject
17 to paragraph (2).

18 (2) DECLINE OF TRANSFER.—The Director of
19 the Federal Housing Finance Agency may decline a
20 transfer of authority under paragraph (1) (and the
21 employees appointed pursuant thereto) to the extent
22 that such authority relates to positions excepted
23 from the competitive service because of their con-
24 fidential, policy-making, policy-determining, or pol-
25 icy-advocating character.

1 (d) REORGANIZATION.—If the Director of the Fed-
2 eral Housing Finance Agency determines, after the end
3 of the 1-year period beginning on the date of the abolish-
4 ment under section 385(a), that a reorganization of the
5 combined work force is required, that reorganization shall
6 be deemed a major reorganization for purposes of afford-
7 ing affected employees retirement under section
8 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
9 Code.

10 (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee
11 of the Office of Federal Housing Enterprise Oversight ac-
12 cepting employment with the Director of the Federal
13 Housing Finance Agency as a result of a transfer under
14 subsection (a) may retain for 12 months after the date
15 such transfer occurs membership in any employee benefit
16 program of the Federal Housing Finance Agency or the
17 Office of Federal Housing Enterprise Oversight, as appli-
18 cable, including insurance, to which such employee belongs
19 on the date of the abolishment under section 385(a) if—

20 (1) the employee does not elect to give up the
21 benefit or membership in the program; and

22 (2) the benefit or program is continued by the
23 Director of the Federal Housing Finance Agency,
24 The difference in the costs between the benefits which
25 would have been provided by such agency and those pro-

1 vided by this section shall be paid by the Director of the
2 Federal Housing Finance Agency. If any employee elects
3 to give up membership in a health insurance program or
4 the health insurance program is not continued by such Di-
5 rector, the employee shall be permitted to select an alter-
6 nate Federal health insurance program within 30 days of
7 such election or notice, without regard to any other regu-
8 larly scheduled open season.

9 **SEC. 388. TRANSFER OF PROPERTY AND FACILITIES.**

10 Upon the abolishment under section 385(a), all prop-
11 erty of the Office of Federal Housing Enterprise Oversight
12 shall transfer to the Director of the Federal Housing Fi-
13 nance Agency.

14 **CHAPTER 2—FEDERAL HOUSING FINANCE**
15 **BOARD**

16 **SEC. 391. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
17 **NANCE BOARD.**

18 (a) **IN GENERAL.**—Effective at the end of the 6-
19 month period beginning on the date of enactment of this
20 Act, the Federal Housing Finance Board (in this subtitle
21 referred to as the “Board”) is abolished.

22 (b) **DISPOSITION OF AFFAIRS.**—During the 6-month
23 period beginning on the date of enactment of this Act, the
24 Board, for the purpose of winding up the affairs of the

1 Board and in addition to carrying out its other responsibil-
2 ities under law—

3 (1) shall manage the employees of such Board
4 and provide for the payment of the compensation
5 and benefits of any such employee which accrue be-
6 fore the effective date of the transfer of such em-
7 ployee under section 393; and

8 (2) may take any other action necessary for the
9 purpose of winding up the affairs of the Board.

10 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

11 The amendments made by subtitles A and B and the abol-
12 ishment of the Board under subsection (a) may not be
13 construed to affect the status of any employee of such
14 Board as employees of an agency of the United States for
15 purposes of any other provision of law before the effective
16 date of the transfer of any such employee under section
17 393.

18 (d) USE OF PROPERTY AND SERVICES.—

19 (1) PROPERTY.—The Director of the Federal
20 Housing Finance Agency may use the property of
21 the Board to perform functions which have been
22 transferred to the Director of the Federal Housing
23 Finance Agency for such time as is reasonable to fa-
24 cilitate the orderly transfer of functions transferred
25 under any other provision of this title or any amend-

1 ment made by this title to any other provision of
2 law.

3 (2) AGENCY SERVICES.—Any agency, depart-
4 ment, or other instrumentality of the United States,
5 and any successor to any such agency, department,
6 or instrumentality, which was providing supporting
7 services to the Board before the expiration of the pe-
8 riod under subsection (a) in connection with func-
9 tions that are transferred to the Director of the
10 Federal Housing Finance Agency shall—

11 (A) continue to provide such services, on a
12 reimbursable basis, until the transfer of such
13 functions is complete; and

14 (B) consult with any such agency to co-
15 ordinate and facilitate a prompt and reasonable
16 transition.

17 (e) SAVINGS PROVISIONS.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Subsection (a) shall not af-
20 fect the validity of any right, duty, or obligation of
21 the United States, a member of the Board, or any
22 other person, which—

23 (A) arises under the Federal Home Loan
24 Bank Act or any other provision of law applica-
25 ble with respect to such Board; and

1 (B) existed on the day before the effective
2 date of the abolishment under subsection (a).

3 (2) CONTINUATION OF SUITS.—No action or
4 other proceeding commenced by or against the
5 Board in connection with functions that are trans-
6 ferred to the Director of the Federal Housing Fi-
7 nance Agency shall abate by reason of the enactment
8 of this title, except that the Director of the Federal
9 Housing Finance Agency shall be substituted for the
10 Board or any member thereof as a party to any such
11 action or proceeding.

12 **SEC. 392. CONTINUATION AND COORDINATION OF CERTAIN**
13 **REGULATIONS.**

14 (a) IN GENERAL.—All regulations, orders, deter-
15 minations, and resolutions described under subsection (b)
16 shall remain in effect according to the terms of such regu-
17 lations, orders, determinations, and resolutions, and shall
18 be enforceable by or against the Director of the Federal
19 Housing Finance Agency until modified, terminated, set
20 aside, or superseded in accordance with applicable law by
21 such Director, any court of competent jurisdiction, or op-
22 eration of law.

23 (b) APPLICABILITY.—A regulation, order, determina-
24 tion, or resolution is described under this subsection if it—

1 (1) was issued, made, prescribed, or allowed to
2 become effective by—

3 (A) the Board; or

4 (B) a court of competent jurisdiction and
5 relates to functions transferred by this chapter;
6 and

7 (2) is in effect on the effective date of the abol-
8 ishment under section 391(a).

9 **SEC. 393. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
10 **FEDERAL HOUSING FINANCE BOARD.**

11 (a) **TRANSFER.**—Each employee of the Board shall
12 be transferred to the Federal Housing Finance Agency for
13 employment not later than the effective date of the abol-
14 ishment under section 391(a), and such transfer shall be
15 deemed a transfer of function for purposes of section 3503
16 of title 5, United States Code.

17 (b) **GUARANTEED POSITIONS.**—Each employee trans-
18 ferred under subsection (a) shall be guaranteed a position
19 with the same status, tenure, grade, and pay as that held
20 on the day immediately preceding the transfer. Each such
21 employee holding a permanent position shall not be invol-
22 untarily separated or reduced in grade or compensation
23 for 12 months after the date of transfer, except for cause
24 or, if the employee is a temporary employee, separated in
25 accordance 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) to the ex-
12 tent that such authority relates to positions excepted
13 from the competitive service because of their con-
14 fidential, policymaking, policy-determining, or policy-
15 advocating character, and noncareer positions in the
16 Senior Executive Service (within the meaning of sec-
17 tion 3132(a)(7) of title 5, United States Code).

18 (d) REORGANIZATION.—If the Director of the Fed-
19 eral Housing Finance Agency determines, after the end
20 of the 1-year period beginning on the effective date of the
21 abolishment under section 391(a), that a reorganization
22 of the combined workforce is required, that reorganization
23 shall be deemed a major reorganization for purposes of
24 affording affected employees retirement under section

1 8336(d)(2) or 8414(b)(1)(B) of title 5, United States
2 Code.

3 (e) EMPLOYEE BENEFIT PROGRAMS.—

4 (1) IN GENERAL.—Any employee of the Board
5 accepting employment with the Federal Housing Fi-
6 nance Agency as a result of a transfer under sub-
7 section (a) may retain for 12 months after the date
8 on which such transfer occurs membership in any
9 employee benefit program of the Federal Housing
10 Finance Agency or the Board, as applicable, includ-
11 ing insurance, to which such employee belongs on
12 the effective date of the abolishment under section
13 391(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 Board and those provided by
22 this section shall be paid by the Director of the Fed-
23 eral Housing Finance Agency. If any employee elects
24 to give up membership in a health insurance pro-
25 gram or the health insurance program is not contin-

1 ued by such Director, the employee shall be per-
2 mitted to select an alternate Federal health insur-
3 ance program within 30 days after such election or
4 notice, without regard to any other regularly sched-
5 uled open season.

6 **SEC. 394. TRANSFER OF PROPERTY AND FACILITIES.**

7 Upon the effective date of the abolishment under sec-
8 tion 391(a), all property of the Board shall transfer to
9 the Director of the Federal Housing Finance Agency.

10 **CHAPTER 3—DEPARTMENT OF HOUSING**
11 **AND URBAN DEVELOPMENT**

12 **SEC. 395. TERMINATION OF ENTERPRISE-RELATED FUNC-**
13 **TIONS.**

14 (a) **TERMINATION DATE.**—For purposes of this chap-
15 ter, the term “termination date” means the date that oc-
16 curs 6 months after the date of the enactment of this Act.

17 (b) **DETERMINATION OF TRANSFERRED FUNCTIONS**
18 **AND EMPLOYEES.**—

19 (1) **IN GENERAL.**—Not later than the expira-
20 tion of the 3-month period beginning on the date of
21 the enactment of this Act, the Secretary, in con-
22 sultation with the Director of the Office of Federal
23 Housing Enterprise Oversight, shall determine—

24 (A) the functions, duties, and activities of
25 the Secretary of Housing and Urban Develop-

1 ment regarding oversight or regulation of the
2 enterprises under or pursuant to the author-
3 izing statutes, title XIII of the Housing and
4 Community Development Act of 1992, and any
5 other provisions of law, as in effect before the
6 date of the enactment of this Act, but not in-
7 cluding any such functions, duties, and activi-
8 ties of the Director of the Office of Federal
9 Housing Enterprise Oversight of the Depart-
10 ment of Housing and Urban Development and
11 such Office; and

12 (B) the employees of the Department of
13 Housing and Urban Development necessary to
14 perform such functions, duties, and activities.

15 (2) ENTERPRISE-RELATED FUNCTIONS.—For
16 purposes of this chapter, the term “enterprise-re-
17 lated functions of the Department” means the func-
18 tions, duties, and activities of the Department of
19 Housing and Urban Development determined under
20 paragraph (1)(A).

21 (3) ENTERPRISE-RELATED EMPLOYEES.—For
22 purposes of this chapter, the term “enterprise-re-
23 lated employees of the Department” means the em-
24 ployees of the Department of Housing and Urban
25 Development determined under paragraph (1)(B).

1 (c) DISPOSITION OF AFFAIRS.—During the 6-month
2 period beginning on the date of enactment of this Act, the
3 Secretary of Housing and Urban Development (in this
4 subtitle referred to as the “Secretary”), for the purpose
5 of winding up the affairs of the Secretary regarding the
6 enterprise-related functions of the Department of Housing
7 and Urban Development (in this subtitle referred to as
8 the “Department”) and in addition to carrying out the
9 Secretary’s other responsibilities under law regarding such
10 functions—

11 (1) shall manage the enterprise-related employ-
12 ees of the Department and provide for the payment
13 of the compensation and benefits of any such em-
14 ployee which accrue before the effective date of the
15 transfer of any such employee under section 397;
16 and

17 (2) may take any other action necessary for the
18 purpose of winding up the enterprise-related func-
19 tions of the Department.

20 (d) STATUS OF EMPLOYEES BEFORE TRANSFER.—
21 The amendments made by subtitles A and B and the ter-
22 mination of the enterprise-related functions of the Depart-
23 ment under subsection (b) may not be construed to affect
24 the status of any employee of the Department as employ-
25 ees of an agency of the United States for purposes of any

1 other provision of law before the effective date of the
2 transfer of any such employee under section 397.

3 (e) USE OF PROPERTY AND SERVICES.—

4 (1) PROPERTY.—The Director of the Federal
5 Housing Finance Agency may use the property of
6 the Secretary to perform functions which have been
7 transferred to the Director of the Federal Housing
8 Finance Agency for such time as is reasonable to fa-
9 cilitate the orderly transfer of functions transferred
10 under any other provision of this title or any amend-
11 ment made by this title to any other provision of
12 law.

13 (2) AGENCY SERVICES.—Any agency, depart-
14 ment, or other instrumentality of the United States,
15 and any successor to any such agency, department,
16 or instrumentality, which was providing supporting
17 services to the Secretary regarding enterprise-related
18 functions of the Department before the termination
19 date under subsection (a) in connection with such
20 functions that are transferred to the Director of the
21 Federal Housing Finance Agency shall—

22 (A) continue to provide such services, on a
23 reimbursable basis, until the transfer of such
24 functions is complete; and

1 (B) consult with any such agency to co-
2 ordinate and facilitate a prompt and reasonable
3 transition.

4 (f) SAVINGS PROVISIONS.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Subsection (a) shall not af-
7 fect the validity of any right, duty, or obligation of
8 the United States, the Secretary, or any other per-
9 son, which—

10 (A) arises under the authorizing statutes,
11 title XIII of the Housing and Community De-
12 velopment Act of 1992, or any other provision
13 of law applicable with respect to the Secretary,
14 in connection with the enterprise-related func-
15 tions of the Department; and

16 (B) existed on the day before the termi-
17 nation date under subsection (a).

18 (2) CONTINUATION OF SUITS.—No action or
19 other proceeding commenced by or against the Sec-
20 retary in connection with the enterprise-related func-
21 tions of the Department shall abate by reason of the
22 enactment of this title, except that the Director of
23 the Federal Housing Finance Agency shall be sub-
24 stituted for the Secretary or any member thereof as
25 a party to any such action or proceeding.

1 **SEC. 396. CONTINUATION AND COORDINATION OF CERTAIN**
2 **REGULATIONS.**

3 (a) IN GENERAL.—All regulations, orders, and deter-
4 minations described in subsection (b) shall remain in ef-
5 fect according to the terms of such regulations, orders,
6 determinations, and resolutions, and shall be enforceable
7 by or against the Director of the Federal Housing Finance
8 Agency until modified, terminated, set aside, or super-
9 seded in accordance with applicable law by such Director,
10 any court of competent jurisdiction, or operation of law.

11 (b) APPLICABILITY.—A regulation, order, or deter-
12 mination is described under this subsection if it—

13 (1) was issued, made, prescribed, or allowed to
14 become effective by—

15 (A) the Secretary; or

16 (B) a court of competent jurisdiction and
17 that relate to the enterprise-related functions of
18 the Department; and

19 (2) is in effect on the termination date under
20 section 395(a).

21 **SEC. 397. TRANSFER AND RIGHTS OF EMPLOYEES OF DE-**
22 **PARTMENT OF HOUSING AND URBAN DEVEL-**
23 **OPMENT.**

24 (a) TRANSFER.—

25 (1) IN GENERAL.—Except as provided in para-
26 graph (2), each enterprise-related employee of the

1 Department shall be transferred to the Federal
2 Housing Finance Agency for employment not later
3 than the termination date under section 395(a) and
4 such transfer shall be deemed a transfer of function
5 for purposes of section 3503 of title 5, United States
6 Code.

7 (2) **AUTHORITY TO DECLINE.**—An enterprise-
8 related employee of the Department may, in the dis-
9 cretion of the employee, decline transfer under para-
10 graph (1) to a position in the Federal Housing Fi-
11 nance Agency and shall be guaranteed a position in
12 the Department with the same status, tenure, grade,
13 and pay as that held on the day immediately pre-
14 ceding the date that such declination was made.
15 Each such employee holding a permanent position
16 shall not be involuntarily separated or reduced in
17 grade or compensation for 12 months after the date
18 that the transfer would otherwise have occurred, ex-
19 cept for cause or, if the employee is a temporary em-
20 ployee, separated in accordance with the terms of
21 the appointment.

22 (b) **GUARANTEED POSITIONS.**—Each enterprise-re-
23 lated employee of the Department transferred under sub-
24 section (a) shall be guaranteed a position with the same
25 status, tenure, grade, and pay as that held on the day

1 immediately preceding the transfer. Each such employee
2 holding a permanent position shall not be involuntarily
3 separated or reduced in grade or compensation for 12
4 months after the date of transfer, except for cause or, if
5 the employee is a temporary employee, separated in ac-
6 cordance with the terms of the appointment.

7 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
8 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

9 (1) IN GENERAL.—In the case of employees oc-
10 cupying positions in the excepted service or the Sen-
11 ior Executive Service, any appointment authority es-
12 tablished under law or by regulations of the Office
13 of Personnel Management for filling such positions
14 shall be transferred, subject to paragraph (2).

15 (2) DECLINE OF TRANSFER.—The Director of
16 the Federal Housing Finance Agency may decline a
17 transfer of authority under paragraph (1) (and the
18 employees appointed pursuant thereto) to the extent
19 that such authority relates to positions excepted
20 from the competitive service because of their con-
21 fidential, policymaking, policy-determining, or policy-
22 advocating character, and noncareer positions in the
23 Senior Executive Service (within the meaning of sec-
24 tion 3132(a)(7) of title 5, United States Code).

1 (d) REORGANIZATION.—If the Director of the Fed-
2 eral Housing Finance Agency determines, after the end
3 of the 1-year period beginning on the termination date
4 under section 395(a), that a reorganization of the com-
5 bined workforce is required, that reorganization shall be
6 deemed a major reorganization for purposes of affording
7 affected employees retirement under section 8336(d)(2) or
8 8414(b)(1)(B) of title 5, United States Code.

9 (e) EMPLOYEE BENEFIT PROGRAMS.—

10 (1) IN GENERAL.—Any enterprise-related em-
11 ployee of the Department accepting employment
12 with the Federal Housing Finance Agency as a re-
13 sult of a transfer under subsection (a) may retain
14 for 12 months after the date on which such transfer
15 occurs membership in any employee benefit program
16 of the Federal Housing Finance Agency or the De-
17 partment, as applicable, including insurance, to
18 which such employee belongs on the termination
19 date under section 395(a) if—

20 (A) the employee does not elect to give up
21 the benefit or membership in the program; and

22 (B) the benefit or program is continued by
23 the Director of the Federal Housing Finance
24 Agency.

1 **TITLE IV—EMERGENCY MORT-**
2 **GAGE LOAN MODIFICATION**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Emergency Mortgage
5 Loan Modification Act of 2008”.

6 **SEC. 402. SAFE HARBOR FOR QUALIFIED LOAN MODIFICA-**
7 **TIONS OR WORKOUT PLANS FOR CERTAIN**
8 **RESIDENTIAL MORTGAGE LOANS.**

9 (a) STANDARD FOR LOAN MODIFICATIONS OR WORK-
10 OUT PLANS.—Absent contractual provisions to the con-
11 trary—

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

19 (2) a servicer of pooled residential mortgage
20 loans shall be deemed to be acting on behalf of the
21 securitization vehicle in the best interest of all inves-
22 tors and holders of beneficial interests in the pooled
23 loans, in the aggregate, if for a loan that is in pay-
24 ment default under the loan agreement or for which
25 payment default is imminent or reasonably foresee-

1 able, the loan servicer makes or causes to be made
2 reasonable and documented efforts to implement a
3 modification or workout plan or, if such efforts are
4 unsuccessful or such plan would be infeasible, en-
5 gages or causes to engage in other loss mitigation,
6 including accepting a short payment or partial dis-
7 charge of principal, or agreeing to a short sale of the
8 property, to the extent that the servicer reasonably
9 believes the modification or workout plan or other
10 mitigation actions will maximize the net present
11 value to be realized on the loan over that which
12 would be realized through foreclosure.

13 (b) SAFE HARBOR.—Absent contractual provisions to
14 the contrary, a servicer of a residential mortgage loan that
15 acts or causes to act in a manner consistent with the duty
16 set forth in subsection (a), shall not be liable for entering
17 into a qualified loan modification or workout plan, to—

18 (1) any person, based on that person's owner-
19 ship of a residential mortgage loan or any interest
20 in a pool of residential mortgage loans or in securi-
21 ties that distribute payments out of the principal, in-
22 terest and other payments in loans on the pool;

23 (2) any person who is obligated to make pay-
24 ments pursuant to a derivatives instrument deter-

1 mined in reference to any interest referred to in
2 paragraph (1); or

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

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

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

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

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

22 (B) does not provide for a repayment
23 schedule that results in an increase in the out-
24 standing principal balance of the loan, including

1 by deferred or unpaid interest, fees, or other
2 charges; and

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

5 (2) RESIDENTIAL MORTGAGE LOAN DEFINED.—

6 The term “residential mortgage loan” means a loan
7 that is secured by a lien on an owner-occupied resi-
8 dential dwelling.

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

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

19 (B) holds such loans.

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

1 **TITLE V—OTHER HOUSING**
2 **PROVISIONS**

3 **SEC. 501. DEPOSITORY INSTITUTION COMMUNITY DEVELOPMENT INVESTMENTS ENHANCEMENT .**

5 (a) TECHNICAL CORRECTIONS.—

6 (1) NATIONAL BANKS.—The first sentence of
7 the paragraph designated as the “Eleventh” of section
8 5136 of the Revised Statutes of the United
9 States (12 U.S.C. 24) (as amended by section
10 305(a) of the Financial Services Regulatory Relief
11 Act of 2006) is amended by striking “promotes the
12 public welfare by benefitting primarily” and inserting
13 “is designed primarily to promote the public welfare,
14 including the welfare of”.

15 (2) STATE MEMBER BANKS.—The first sentence
16 of the 23rd undesignated paragraph of section 9 of
17 the Federal Reserve Act (12 U.S.C. 338a) (as
18 amended by section 305(b) of the Financial Services
19 Regulatory Relief Act of 2006) is amended by striking
20 “promotes the public welfare by benefitting primarily”
21 and inserting “is designed primarily to promote the public
22 welfare, including the welfare of”.

23 (b) INVESTMENTS BY FEDERAL SAVINGS ASSOCIATIONS
24 AUTHORIZED TO PROMOTE THE PUBLIC WELFARE.—
25

1 (1) IN GENERAL.—Section 5(c)(3) of the Home
2 Owners’ Loan Act (12 U.S.C. 1464(c)) is amended
3 by adding at the end the following new subpara-
4 graph:

5 “(D) DIRECT INVESTMENTS TO PROMOTE
6 THE PUBLIC WELFARE.—

7 “(i) IN GENERAL.—A Federal savings
8 association may make investments, directly
9 or indirectly, each of which is designed pri-
10 marily to promote the public welfare, in-
11 cluding the welfare of low- and moderate-
12 income communities or families through
13 the provision of housing, services, and jobs.

14 “(ii) DIRECT INVESTMENTS OR ACQUI-
15 SITION OF INTEREST IN OTHER COMPA-
16 NIES.—Investments under clause (i) may
17 be made directly or by purchasing interests
18 in an entity primarily engaged in making
19 such investments.

20 “(iii) PROHIBITION ON UNLIMITED LI-
21 ABILITY.—No investment may be made
22 under this subparagraph which would sub-
23 ject a Federal savings association to unlim-
24 ited liability to any person.

1 “(iv) SINGLE INVESTMENT LIMITA-
2 TION TO BE ESTABLISHED BY DIREC-
3 TOR.—Subject to clauses (v) and (vi), the
4 Director shall establish, by order or regula-
5 tion, limits on—

6 “(I) the amount any savings as-
7 sociation may invest in any 1 project;
8 and

9 “(II) the aggregate amount of in-
10 vestment of any savings association
11 under this subparagraph.

12 “(v) FLEXIBLE AGGREGATE INVEST-
13 MENT LIMITATION.—The aggregate
14 amount of investments of any savings asso-
15 ciation under this subparagraph may not
16 exceed an amount equal to the sum of 5
17 percent of the savings association’s capital
18 stock actually paid in and unimpaired and
19 5 percent of the savings association’s
20 unimpaired surplus, unless—

21 “(I) the Director determines that
22 the savings association is adequately
23 capitalized; and

24 “(II) the Director determines, by
25 order, that the aggregate amount of

1 investments in a higher amount than
2 the limit under this clause will pose
3 no significant risk to the affected de-
4 posit insurance fund.

5 “(vi) MAXIMUM AGGREGATE INVEST-
6 MENT LIMITATION.—Notwithstanding
7 clause (v), the aggregate amount of invest-
8 ments of any savings association under
9 this subparagraph may not exceed an
10 amount equal to the sum of 15 percent of
11 the savings association’s capital stock actu-
12 ally paid in and unimpaired and 15 per-
13 cent of the savings association’s
14 unimpaired surplus.

15 “(vii) INVESTMENTS NOT SUBJECT TO
16 OTHER LIMITATION ON QUALITY OF IN-
17 VESTMENTS.—No obligation a Federal sav-
18 ings association acquires or retains under
19 this subparagraph shall be taken into ac-
20 count for purposes of the limitation con-
21 tained in section 28(d) of the Federal De-
22 posit Insurance Act on the acquisition and
23 retention of any corporate debt security
24 not of investment grade.

1 “(viii) APPLICABILITY OF STANDARDS
2 TO EACH INVESTMENT.—The standards
3 and limitations of this subparagraph shall
4 apply to each investment under this sub-
5 paragraph made by a savings association
6 directly and by its subsidiaries.”.

7 (2) TECHNICAL AND CONFORMING AMEND-
8 MENTS.—Section 5(c)(3)(A) of the Home Owners’
9 Loan Act (12 U.S.C. 1464(c)(3)(A)) is amended to
10 read as follows:

11 “(A) **【Repealed】**”.

12 **SEC. 502. PRESERVATION OF CERTAIN AFFORDABLE HOUS-**
13 **ING DWELLING UNITS.**

14 (a) CONVERSION OF HUD CONTRACTS.—Notwith-
15 standing any other provision of law, the Secretary of
16 Housing and Urban Development may, at the request of
17 the owner of the multifamily housing project to which Sec-
18 tion 8 Project Number NY 913 VO 0018 and RAP Con-
19 tract Number 012035NIRAP are subject, convert such
20 contracts to a contract for project-based rental assistance
21 under section 8 of the United States Housing Act of 1937
22 (42 U.S.C. 1437f).

23 (b) INITIAL RENEWAL.—

24 (1) ELIGIBILITY.—At the request of the owner
25 made no later than 90 days prior to a conversion,

1 the Secretary may, to the extent sufficient amounts
2 are made available in appropriation Acts and not-
3 withstanding any other law, treat the contemplated
4 resulting contract as if such contract were eligible
5 for initial renewal under section 524(a) of the Multi-
6 family Assisted Housing Reform and Affordability
7 Act of 1997 (42 U.S.C. 1437f note).

8 (2) REQUEST.—A request by the owner pursu-
9 ant to paragraph (1) shall be upon such terms and
10 conditions as the Secretary may require.

11 (c) RESULTING CONTRACT.—The resulting contract
12 shall—

13 (1) be subject to section 524(a) of MAHRA (42
14 U.S.C. 1437f note);

15 (2) be considered for all purposes a contract
16 that has been renewed under section 524(a) of
17 MAHRA (42 U.S.C. 1437f note) for a term not to
18 exceed 20 years;

19 (3) be subsequently renewable at the request of
20 the owner, under any renewal option for which the
21 project is eligible under MAHRA (42 U.S.C. 1437f
22 note);

23 (4) contain provisions limiting distributions, as
24 the Secretary determines appropriate, not to exceed
25 10 percent of the initial investment of the owner;

1 (5) be subject to the availability of sufficient
2 amounts in appropriation Acts; and

3 (6) be subject to such other terms and condi-
4 tions as the Secretary considers appropriate.

5 (d) INCOME TARGETING.—The owner shall be
6 deemed to be in compliance with all income-targeting re-
7 quirements under the United States Housing Act of 1937
8 by serving low-income families, as such term is defined
9 in the section 3(b)(2) of such Act (42 U.S.C.
10 1437a(b)(2)).

11 (e) TENANT ELIGIBILITY.—Notwithstanding any
12 other provision of law, each family residing in an assisted
13 dwelling unit on the date of the conversion under this sec-
14 tion, subject to the resulting contract under subsection
15 (a), shall be considered to meet the applicable require-
16 ments for income eligibility and occupancy.

17 (f) DEFINITIONS.—As used in this section—

18 (1) the term “assisted dwelling unit” means the
19 dwelling units that, on the date of the conversion
20 under this section, were subject to Section 8 Project
21 Number NY 913 VO 0018 or RAP Contract Num-
22 ber 012035NIRAP;

23 (2) the term “conversion” means the action
24 under which Section 8 Project Number NY 913 VO
25 0018 and RAP Contract Number 012035NIRAP be-

1 come a contract for project-based rental assistance
2 under section 8 of the United States Housing Act of
3 1937 (42 U.S.C. 1437f) pursuant to subsection (a);

4 (3) the term “MAHRA” means the Multifamily
5 Assisted Housing Reform and Affordability Act of
6 1997 (42 U.S.C. 1437f note);

7 (4) the term “owner” means Starrett City As-
8 sociates or any successor owner of the multifamily
9 housing project to which Section 8 Project Number
10 NY 913 VO 0018 and RAP Contract Number
11 012035NIRAP are subject;

12 (5) the term “resulting contract” means the
13 new contract after a conversion of Section 8 Project
14 Number NY 913 VO 0018 and RAP Contract Num-
15 ber 012035NIRAP to a contract for project-based
16 rental assistance under section 8 of the United
17 States Housing Act of 1937 (42 U.S.C. 1437f) pur-
18 suant to subsection (a); and

19 (6) the term “Secretary” means the Secretary
20 of Housing and Urban Development.

21 **SEC. 503. ELIGIBILITY OF CERTAIN PROJECTS FOR EN-**
22 **HANCED VOUCHER ASSISTANCE.**

23 Notwithstanding any other provision of law—

24 (1) the property known as The Heritage Apart-
25 ments (FHA No. 023-44804), in Malden, Massachu-

1 setts, shall be considered eligible low-income housing
2 for purposes of the eligibility of residents of the
3 property for enhanced voucher assistance under sec-
4 tion 8(t) of the United States Housing Act of 1937
5 (42 U.S.C. 1437f(t)), pursuant to paragraph (2)(A)
6 of section 223(f) of the Low-Income Housing Pres-
7 ervation and Resident Homeownership Act of 1990
8 (12 U.S.C. 4113(f)(2)(A));

9 (2) such residents shall receive enhanced rental
10 housing vouchers upon the prepayment of the mort-
11 gage loan for the property under section 236 of the
12 National Housing Act (12 U.S.C. 1715z-1); and

13 (3) the Secretary shall approve such prepay-
14 ment and subsequent transfer of the property with-
15 out any further condition, except that the property
16 shall be restricted for occupancy, until the original
17 maturity date of the prepaid mortgage loan, only by
18 families with incomes not exceeding 80 percent of
19 the adjusted median income for the area in which
20 the property is located, as published by the Sec-
21 retary.

22 Amounts for the enhanced vouchers pursuant to this sec-
23 tion shall be provided under amounts appropriated for ten-
24 ant-based rental assistance otherwise authorized under
25 section 8(t) of the United States Housing Act of 1937.

1 **SEC. 504. TRANSFER OF CERTAIN RENTAL ASSISTANCE**
2 **CONTRACTS.**

3 (a) TRANSFER.—Subject to subsection (c) and not-
4 withstanding any other provision of law, the Secretary of
5 Housing and Urban Development shall, at the request of
6 the owner, transfer or authorize the transfer, of the con-
7 tracts, restrictions, and debt described in subsection (b)—

8 (1) on the housing that is owned or managed
9 by Community Properties of Ohio Management
10 Services LLC or an affiliate of Ohio Capital Cor-
11 poration for Housing and located in Franklin Coun-
12 ty, Ohio, to other properties located in Franklin
13 County, Ohio; and

14 (2) on the housing that is owned or managed
15 by The Model Group, Inc., and located in Hamilton
16 County, Ohio, to other properties located in Ham-
17 ilton County, Ohio.

18 (b) CONTRACTS, RESTRICTIONS, AND DEBT COV-
19 ERED.—The contracts, restrictions, and debt described in
20 this subsection are as follows:

21 (1) All or a portion of a project-based rental as-
22 sistance housing assistance payments contract under
23 section 8 of the United States Housing Act of 1937
24 (42 U.S.C. 1437f).

1 (2) Existing Federal use restrictions, including
2 without limitation use agreements, regulatory agree-
3 ments, and accommodation agreements.

4 (3) Any subordinate debt held by the Secretary
5 or assigned and any mortgages securing such debt,
6 all related loan and security documentation and obli-
7 gations, and reserve and escrow balances.

8 (c) **RETENTION OF SAME NUMBER OF UNITS AND**
9 **AMOUNT OF ASSISTANCE.**—Any transfer pursuant to sub-
10 section (a) shall result in—

11 (1) a total number of dwelling units (including
12 units retained by the owners and units transferred)
13 covered by assistance described in subsection (b)(1)
14 after the transfer remaining the same as such num-
15 ber assisted before the transfer, with such increases
16 or decreases in unit sizes as may be contained in a
17 plan approved by a local planning or development
18 commission or department; and

19 (2) no reduction in the total amount of the
20 housing assistance payments under contracts de-
21 scribed in subsection (b)(1).

22 **SEC. 505. PROTECTION AGAINST DISCRIMINATORY TREAT-**
23 **MENT.**

24 Section 525 of title 11, the United States Code, is
25 amended by adding at the end the following:

1 “(d) A governmental unit that operates a mortgage
2 loan program, including a loan guarantee or subsidy pro-
3 gram, may not deny the benefits of such program to a
4 disabled veteran (as defined in section 3741(1) of title 38)
5 because he or she is or has been a debtor under this title,
6 has been insolvent before the commencement of a case
7 under this title or during the pendency of the case but
8 before being granted or denied a discharge, or has not paid
9 a debt that is dischargeable in the case under this title.”.

10 **TITLE VI—HOUSING ASSISTANCE** 11 **AUTHORIZATION**

12 **SEC. 601. HOUSING ASSISTANCE AUTHORIZATION.**

13 (a) LIMITATION ON USE OF AUTHORIZED
14 AMOUNTS.—None of the amounts authorized by this sec-
15 tion may be used to lobby, or retain a lobbyist, for the
16 purpose of influencing a Federal, State, or local govern-
17 mental entity or officer.

18 (b) ASSISTANCE FOR THE NATIONAL URBAN
19 LEAGUE.—

20 (1) USE.—The Secretary of Housing and
21 Urban Development may make a grant to the Na-
22 tional Urban League for the purpose of providing
23 technical and financial assistance to local non-profit
24 organizations to undertake community development
25 and affordable housing projects and programs serv-

1 ing low- and moderate-income households, particu-
2 larly through organizations located in neighborhoods
3 with substantial populations of African American in-
4 come-disadvantaged households. Assistance provided
5 by the Secretary under this subsection may be used
6 by National Urban League to—

7 (A) provide technical and financial assist-
8 ance for site acquisition and development, con-
9 struction financing, and short- and long-term fi-
10 nancing for housing, including housing for dis-
11 abled veterans, community facilities, and eco-
12 nomic development;

13 (B) leverage capital from private entities,
14 including private financial institutions, insur-
15 ance companies, and private philanthropic orga-
16 nizations;

17 (C) provide technical assistance, training,
18 support, and advice to develop the management,
19 financial, and administrative capabilities of
20 housing development organizations serving low-
21 income households, including African American
22 households; and

23 (D) conduct such other activities as may
24 be determined by the Secretary and the Na-
25 tional Urban League.

1 (2) AUTHORIZATION OF APPROPRIATIONS.—

2 There is authorized to be appropriated for grants
3 under this subsection—

4 (A) \$5,000,000 for fiscal year 2008; and

5 (B) \$10,000,000 for each of fiscal years
6 2009 and 2010.

7 (c) ASSISTANCE FOR RAZA DEVELOPMENT FUND.—

8 (1) USE.—The Secretary of Housing and
9 Urban Development may make a grant to the Raza
10 Development Fund for the purpose of providing
11 technical and financial assistance to local non-profit
12 organizations to undertake community development
13 and affordable housing projects and programs serv-
14 ing low- and moderate-income households, particu-
15 larly through organizations located in neighborhoods
16 with substantial populations of income-disadvan-
17 taged households of Hispanic origin. Assistance pro-
18 vided by the Secretary under this subsection may be
19 used by the Raza Development Fund to—

20 (A) provide technical and financial assist-
21 ance for site acquisition and development, con-
22 struction financing, and short- and long-term fi-
23 nancing for housing, including housing for dis-
24 abled veterans, community facilities, and eco-
25 nomic development;

1 (B) leverage capital from private entities,
2 including private financial institutions, insur-
3 ance companies, and private philanthropic orga-
4 nizations;

5 (C) provide technical assistance, training,
6 support, and advice to develop the management,
7 financial, and administrative capabilities of
8 housing development organizations serving low-
9 income households, including Hispanic house-
10 holds; and

11 (D) conduct such other activities as may
12 be determined by the Secretary and the Raza
13 Development Fund.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—
15 There is authorized to be appropriated for grants
16 under this subsection—

17 (A) \$5,000,000 for fiscal year 2008; and

18 (B) \$10,000,000 for each of fiscal years
19 2009 and 2010.

20 (d) ASSISTANCE FOR THE HOUSING PARTNERSHIP
21 NETWORK.—

22 (1) USE.—The Secretary of Housing and
23 Urban Development may make a grant to the Hous-
24 ing Partnership Network (in this subsection referred
25 to as the “Network”) for the purpose of creating,

1 sustaining, and improving access to affordable hous-
2 ing and community facilities that benefit very low-
3 , low-, and moderate-income households and commu-
4 nities. Assistance provided by the Secretary under
5 this subsection may be used by the Network to—

6 (A) make investments, loans, and grants to
7 its member nonprofits that demonstrate exper-
8 tise in using such funds to leverage additional
9 private capital to build, operate, finance, and
10 sustain affordable housing, including housing
11 for disabled veterans, and related community
12 development facilities;

13 (B) make investments in entities sponsored
14 by the Network with the intent to leverage ad-
15 ditional private capital for the purpose of fur-
16 thering the production capacity, sustainability,
17 or efficiency of its members;

18 (C) pay for the necessary and reasonable
19 expenses of the Network to administer and
20 oversee such investments, including the cost of
21 underwriting, managing the assets of the Net-
22 work, and reporting to the Secretary and other
23 capital providers, provided however, that such
24 expenses do not exceed 6 percent of any

1 amounts made available pursuant to paragraph
2 (2); and

3 (D) conduct such other activities as may
4 be determined by the Secretary and the Net-
5 work.

6 (2) AUTHORIZATION OF APPROPRIATIONS.—

7 There is authorized to be appropriated for grants
8 under this subsection—

9 (A) \$5,000,000 for fiscal year 2008; and

10 (B) \$10,000,000 for each of fiscal years
11 2009 and 2010.

12 (e) ASSISTANCE FOR NATIONAL COMMUNITY REN-
13 AISSANCE.—

14 (1) USE.—The Secretary of Housing and
15 Urban Development may make a grant to the Na-
16 tional Community Renaissance Program (in this
17 subsection referred to as “National Core”) to under-
18 take affordable housing projects that benefit very
19 low-, low- and moderate-income households. Assist-
20 ance provided by the Secretary under this subsection
21 may be used by National CORE—

22 (A) for site acquisition, rehabilitation, and
23 preservation of affordable multifamily housing
24 units, including development, construction fi-
25 nancing, and short- and long-term financing for

1 housing, including housing for disabled vet-
2 erans, community facilities, and economic devel-
3 opment;

4 (B) to leverage capital from private enti-
5 ties, including private financial institutions, in-
6 surance companies, and private philanthropic
7 organizations in amounts not less than \$3 for
8 every \$1 authorized in this subsection; and

9 (C) conduct such other activities as may be
10 determined by the Secretary and National
11 CORE.

12 (2) AUTHORIZATION OF APPROPRIATIONS.—
13 There are authorized to be appropriated for grants
14 under this subsection—

15 (A) \$5,000,000 for fiscal year 2008; and

16 (B) \$10,000,000 for each of fiscal years
17 2009 and 2010.

18 (f) AUDITS AND REPORTS.—

19 (1) AUDIT.—In any year in which an entity or
20 organization described under either subsection (b),
21 (c), (d), or (e) receives funds under this section, the
22 Comptroller General of the United States shall—

23 (A) audit the financial transactions and ac-
24 tivities of such entity or organization only with
25 respect to such funds so received; and

1 (B) submit a report detailing such audit to
2 the Committee on Financial Services of the
3 House of Representatives and the Committee
4 on Banking, Housing, and Urban Affairs of the
5 Senate.

6 (2) GAO REPORT.—The Comptroller General of
7 the United States shall conduct a study and submit
8 a report to the Committee on Financial Services of
9 the House of Representatives and the Committee on
10 Banking, Housing, and Urban Affairs of the Senate
11 on the use of any Federal funds appropriated to an
12 entity or organization described under either sub-
13 section (b), (c), (d), or (e) over the past 10 years.

14 (g) PERSONS NOT LAWFULLY PRESENT IN THE
15 UNITED STATES.—None of the funds made available
16 under this section may be used to provide direct housing
17 assistance to any person not lawfully present in the United
18 States.

In the matter proposed to be inserted by the amend-
ment of the Senate to the text of the bill, strike titles
VII, IX, and XI.

