

109TH CONGRESS
1ST SESSION

S. 190

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2005

Mr. HAGEL (for himself, Mr. SUNUNU, and Mrs. DOLE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To address the regulation of secondary mortgage market enterprises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Federal Housing Enterprise Regulatory Reform Act of
6 2005”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 101. Establishment of the Federal Housing Enterprise Regulatory Agency.
- Sec. 102. Duties and authorities of Director.
- Sec. 103. Federal Housing Enterprise Board.
- Sec. 104. Authority to require reports by regulated entities.
- Sec. 105. Examiners and accountants; authority to contract for reviews of enterprises.
- Sec. 106. Assessments.
- Sec. 107. Regulations and orders.
- Sec. 108. Prudential management and operations standards.
- Sec. 109. Limitation on nonmission-related assets.
- Sec. 110. Risk-based capital test for enterprises.
- Sec. 111. Limit on golden parachutes.
- Sec. 112. Reporting of fraudulent loans.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
- Sec. 122. Review of enterprise programs, and activities.
- Sec. 123. Authority to require reports by enterprises.
- Sec. 124. Monitoring and enforcing compliance with housing goals.
- Sec. 125. Assumption by director of other HUD responsibilities.
- Sec. 126. Administrative and judicial enforcement proceedings.

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.
- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.
- Sec. 157. Notice after separation from service.

Subtitle E—Other Reporting Regarding Regulated Entities

- Sec. 161. Reporting regarding regulated entities.

Subtitle F—General Provisions

- Sec. 171. Conforming and technical amendments.
- Sec. 172. Presidentially appointed directors of enterprises.
- Sec. 173. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Directors.
- Sec. 202. Definitions.
- Sec. 203. Agency oversight of Federal Home Loan Banks.

- Sec. 204. Debt issuing facility.
 Sec. 205. Exclusion from certain securities reporting requirements.
 Sec. 206. Limitation on golden parachutes.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Subtitle A—OFHEO

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

Subtitle B—Federal Housing Finance Board

- Sec. 311. Abolishment of the Federal Housing Finance Board.
 Sec. 312. Continuation and coordination of certain regulations.Board.
 Sec. 314. Transfer of property and facilities.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Study and report on Basel II and enterprise debt.
 Sec. 402. Affordable housing reporting.

1 **SEC. 2. DEFINITIONS.**

2 Section 1303 of the Federal Housing Enterprises Fi-
 3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 4 4502) is amended—

5 (1) in paragraph (5), by striking “Office of
 6 Federal Housing Enterprise Oversight of the De-
 7 partment of Housing and Urban Development” and
 8 inserting “Federal Housing Enterprise Regulatory
 9 Agency”;

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

13 (3) in paragraph (14), by striking “Office of
 14 Federal Housing Enterprise Oversight of the De-

1 department of Housing and Urban Development” and
 2 inserting “Federal Housing Enterprise Regulatory
 3 Agency”;

4 (4) by redesignating paragraphs (16) through
 5 (19) as paragraphs (21) through (24), respectively;

6 (5) by striking paragraph (15) and inserting
 7 the following:

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

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

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

14 “(C) any Federal Home Loan Bank.”;

15 (6) by striking paragraph (13) and by redesi-
 16 gnating paragraphs (7), (8), (9), (10), (11), (12), and
 17 (14) as paragraphs (13) through (19), respectively;

18 (7) by redesignating paragraphs (2) through
 19 (4) as paragraphs (5) through (7), respectively;

20 (8) by inserting after paragraph (7), as redesi-
 21 gnated, the following:

22 “(8) DEFAULT; DANGER OF DEFAULT.—

23 “(A) DEFAULT.—The term ‘default’
 24 means, with respect to an enterprise, any adju-
 25 dication or other official determination by any

1 court of competent jurisdiction, or the Agency,
2 pursuant to which a conservator, receiver, lim-
3 ited-life enterprise, or legal custodian is ap-
4 pointed for an enterprise.

5 “(B) IN DANGER OF DEFAULT.—The term
6 ‘in danger of default’ means an enterprise with
7 respect to which—

8 “(i) in the opinion of the Agency—

9 “(I) the enterprise is not likely to
10 be able to pay the obligations of the
11 enterprise in the normal course of
12 business; or

13 “(II) the enterprise has incurred
14 or is likely to incur losses that will de-
15plete all or substantially all of its cap-
16ital; and

17 “(ii) there is no reasonable prospect
18 that the capital of the enterprise will be re-
19plenished.”.

20 (9) by redesignating paragraph (1) as para-
21graph (2);

22 (10) by inserting after paragraph (2), as redес-
23ignated the following:

24 “(3) AUTHORIZING STATUTES.—The term ‘au-
25thorizing statutes’ means—

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

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

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

6 “(4) BOARD.—The term ‘Board’ means the
7 Federal Housing Enterprise Board established under
8 section 1313A.”;

9 (11) by redesignated paragraph (6) as para-
10 graph (10), and by inserting after paragraph (10),
11 as redesignated, the following:

12 “(11) ENTERPRISE-AFFILIATED PARTY.—The
13 term ‘enterprise-affiliated party’ means—

14 “(A) any director, officer, employee, or
15 controlling stockholder of, or agent for, a regu-
16 lated entity;

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

23 “(C) any independent contractor for a reg-
24 ulated entity (including any attorney, appraiser,
25 or accountant), if—

1 “(i) the independent contractor know-
2 ingly or recklessly participates in—

3 “(I) any violation of any law or
4 regulation;

5 “(II) any breach of fiduciary
6 duty; or

7 “(III) any unsafe or unsound
8 practice; and

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

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

16 (12) by inserting before paragraph (2), as re-
17 designated, the following:

18 “(1) AGENCY; DIRECTOR.—The term—

19 “(A) ‘Agency’ means the Federal Housing
20 Enterprise Regulatory Agency established under
21 section 1311; and

22 “(B) ‘Director’ means the Director of the
23 Agency, appointed under section 1312.”; and

24 (13) by adding at the end the following:

1 “(25) VIOLATION.—The term ‘violation’ in-
2 cludes any action (alone or in combination with an-
3 other or others) for or toward causing, bringing
4 about, participating in, counseling, or aiding or abet-
5 ting a violation.”.

6 **TITLE I—REFORM OF**
7 **REGULATION OF ENTERPRISES**
8 **Subtitle A—Improvement of Safety**
9 **and Soundness Supervision**

10 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING EN-**
11 **TERPRISE REGULATORY AGENCY.**

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

16 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**
17 **ENTERPRISE REGULATORY AGENCY.**

18 “(a) ESTABLISHMENT.—There is established the
19 Federal Housing Enterprise Regulatory Agency, which
20 shall be an independent agency of the Federal Govern-
21 ment.

22 “(b) GENERAL SUPERVISORY AND REGULATORY AU-
23 THORITY.—

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

4 “(2) AUTHORITY OVER FANNIE MAE AND
5 FREDDIE MAC, THE FEDERAL HOME LOAN BANKS,
6 AND THE FEDERAL HOME LOAN BANK FINANCE
7 CORPORATION.—The Director shall have general
8 regulatory authority over each regulated entity and
9 the Federal Home Loan Bank Finance Corporation,
10 and shall exercise such general regulatory authority,
11 including such duties and authorities set forth under
12 section 1313 of this Act, to ensure that the purposes
13 of this Act, the authorizing statutes, and any other
14 applicable law are carried out.

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

19 **“SEC. 1312. DIRECTOR.**

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

23 “(b) APPOINTMENT; TERM.—

24 “(1) APPOINTMENT.—The Director shall be ap-
25 pointed by the President, by and with the advice and

1 consent of the Senate, from among individuals who
2 are citizens of the United States, have a dem-
3 onstrated understanding of financial management or
4 oversight, and have a demonstrated understanding
5 of capital markets, including the mortgage securities
6 markets and housing finance.

7 “(2) TERM.—The Director shall be appointed
8 for a term of 6 years, unless removed before the end
9 of such term for cause by the President.

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

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

21 “(5) TRANSITIONAL PROVISION.—Notwith-
22 standing paragraphs (1) and (2), the person serving
23 as the Director of the Office of Federal Housing En-
24 terprise Oversight of the Department of Housing
25 and Urban Development on the date of enactment of

1 the Federal Housing Enterprise Regulatory Reform
2 Act of 2005, shall serve as the Director until a suc-
3 cessor has been appointed under paragraph (1).

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

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

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

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

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

1 derstanding of financial management or oversight,
2 and have a demonstrated understanding of the Fed-
3 eral Home Loan Bank System and housing finance.

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

9 “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND
10 GOALS.—

11 “(1) IN GENERAL.—The Agency shall have a
12 Deputy Director for Housing Mission and Goals,
13 who shall be designated by the Director from among
14 individuals who are citizens of the United States,
15 and have a demonstrated understanding of the hous-
16 ing markets and housing finance.

17 “(2) FUNCTIONS.—The Deputy Director for
18 Housing Mission and Goals shall have such func-
19 tions, powers, and duties with respect to the over-
20 sight of the housing mission and goals of the enter-
21 prises as the Director shall prescribe.

22 “(f) ACTING DIRECTOR.—In the event of the death,
23 resignation, sickness, or absence of the Director, the
24 Board shall, by a majority vote, designate either the Dep-
25 uty Director of the Division of Enterprise Regulation, the

1 Deputy Director of the Division of Federal Home Loan
2 Bank Regulation, or the Deputy Director for Housing
3 Mission and Goals, to serve as acting Director until the
4 return of the Director, or the appointment of a successor
5 pursuant to subsection (b).

6 “(g) LIMITATIONS.—The Director and each of the
7 Deputy Directors may not—

8 “(1) have any direct or indirect financial inter-
9 est in any regulated entity or enterprise-affiliated
10 party;

11 “(2) hold any office, position, or employment in
12 any regulated entity or enterprise-affiliated party; or

13 “(3) have served as an executive officer or di-
14 rector of any regulated entity, or enterprise-affiliated
15 party, at any time during the 3-year period ending
16 on the date of appointment of such individual as Di-
17 rector or Deputy Director.”.

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

19 (a) IN GENERAL.—Section 1313 of the Federal
20 Housing Enterprises Financial Safety and Soundness Act
21 of 1992 (12 U.S.C. 4513) is amended to read as follows:

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

23 “(a) DUTIES.—

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

1 “(A) to oversee the prudential operations
2 of each regulated entity, on a consolidated
3 basis; and

4 “(B) to ensure that—

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

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

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

22 “(iv) each regulated entity carries out
23 its statutory mission only through activi-
24 ties that are authorized under and con-

1 sistent with this title and the authorizing
2 statutes;

3 “(v) the activities of each regulated
4 entity and the manner in which such regu-
5 lated entity is operated are consistent with
6 the public interest; and

7 “(vi) each regulated entity remains
8 adequately capitalized, after due consider-
9 ation of the risk to such regulated entity.

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

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

16 “(B) to exercise such incidental powers as
17 may be necessary or appropriate to fulfill the
18 duties and responsibilities of the Director in the
19 supervision and regulation of each regulated en-
20 tity.

21 “(b) DELEGATION OF AUTHORITY.—The Director
22 may delegate to officers and employees of the Agency any
23 of the functions, powers, or duties of the Director, as the
24 Director considers appropriate.

25 “(c) LITIGATION AUTHORITY.—

1 “(1) IN GENERAL.—In enforcing any provision
2 of this title, any regulation or order prescribed under
3 this title, or any other provision of law, rule, regula-
4 tion, or order, or in any other action, suit, or pro-
5 ceeding to which the Director is a party or in which
6 the Director is interested, and in the administration
7 of conservatorships and receiverships, the Director
8 may act in the Director’s own name and through the
9 Director’s own attorneys.

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

22 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
23 AND RECOMMENDATIONS.—Section 111 of Public Law
24 93–495 (12 U.S.C. 250) is amended by striking “the Fed-

1 eral Housing Finance Board” and inserting “the Director
2 of the Federal Housing Enterprise Regulatory Agency”.

3 **SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.**

4 (a) IN GENERAL.—The Federal Housing Enterprises
5 Financial Safety and Soundness Act of 1992 (12 U.S.C.
6 4501 et seq.) is amended by inserting after section 1313
7 the following:

8 **“SEC. 1313A. FEDERAL HOUSING ENTERPRISE BOARD.**

9 “(a) IN GENERAL.—There is established the Federal
10 Housing Enterprise Board.

11 “(b) DUTIES.—The Board shall advise the Director
12 with respect to overall strategies and policies in carrying
13 out the duties of the Director under this title. Except as
14 otherwise provided under this Act, the Board shall not ex-
15 ercise any executive authority.

16 “(c) COMPOSITION.—The Board shall be comprised
17 of 4 members, of whom—

18 “(1) 1 member shall be the Secretary of the
19 Treasury;

20 “(2) 1 member shall be the Secretary of Hous-
21 ing and Urban Development;

22 “(3) 1 member shall be the Chairman of the
23 Securities and Exchange Commission; and

24 “(4) 1 member shall be the Director, who shall
25 serve as the Chairperson of the Board.

1 “(d) MEETINGS.—

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

6 “(2) SPECIAL MEETINGS.—Either the Secretary
7 of the Treasury, the Secretary of Housing and
8 Urban Development, or the Chairman of the Securi-
9 ties and Exchange Commission may, upon giving
10 written notice to the Director, require a special
11 meeting of the Board.

12 “(e) TESTIMONY.—On an annual basis, the Board
13 shall testify before Congress regarding—

14 “(1) the safety and soundness of the regulated
15 entities;

16 “(2) any material deficiencies in the conduct of
17 the operations of the regulated entities;

18 “(3) the overall operational status of the regu-
19 lated entities;

20 “(4) an evaluation of the performance of the
21 regulated entities in carrying out their respective
22 missions;

23 “(5) operations, resources, and performance of
24 the Agency; and

1 “(6) such other matters relating to the Agency
2 and its fulfillment of its mission, as the Board deter-
3 mines appropriate.”.

4 (b) ANNUAL REPORT OF THE DIRECTOR.—Section
5 1319B(a) of the Federal Housing Enterprises Financial
6 Safety and Soundness Act of 1992 (12 U.S.C. 4521 (a))
7 is amended—

8 (1) in paragraph (3), by striking “; and” and
9 inserting a semicolon;

10 (2) in paragraph (4), by striking the period at
11 the end and inserting “; and”; and

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

14 “(5) the assessment of the Board or any of its
15 members with respect to—

16 “(A) the safety and soundness of the regu-
17 lated entities;

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

20 “(C) the overall operational status of the
21 regulated entities; and

22 “(D) an evaluation of the performance of
23 the regulated entities in carrying out their re-
24 spective missions;

1 “(6) operations, resources, and performance of
2 the Agency; and

3 “(7) such other matters relating to the Agency
4 and its fulfillment of its mission.”.

5 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
6 **LATED ENTITIES.**

7 Section 1314 of the Federal Housing Enterprises Fi-
8 nancial Safety and Soundness Act of 1992 (12 U.S.C.
9 4514) is amended—

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

12 (2) by striking “an enterprise” each place that
13 term appears and inserting “a regulated entity”;

14 (3) by striking “the enterprise” and inserting
15 “the regulated entity”; and

16 (4) in subsection (a)—

17 (A) in the subsection heading, by striking
18 “SPECIAL REPORTS AND REPORTS OF FINAN-
19 CIAL CONDITION” and inserting “REGULAR
20 AND SPECIAL REPORTS”;

21 (B) in paragraph (1)—

22 (i) by striking the paragraph heading
23 and inserting the following:

24 “(1) REGULAR REPORTS.—”; and

1 (ii) by striking “reports of financial
2 condition and operations” and inserting
3 “regular reports, including financial state-
4 ments determined on a fair value basis, on
5 the condition (including financial condi-
6 tion), management, activities, or operations
7 of the regulated entity, as the Director
8 considers appropriate”; and

9 (C) in paragraph (2), by striking “when-
10 ever” and inserting “on any of the topics speci-
11 fied in paragraph (1) or any other relevant top-
12 ics, if”.

13 **SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**
14 **CONTRACT FOR REVIEWS OF REGULATED EN-**
15 **TITIES.**

16 (a) IN GENERAL.—Section 1317 of the Federal
17 Housing Enterprises Financial Safety and Soundness Act
18 of 1992 (12 U.S.C. 4517) is amended—

19 (1) in subsection (a), by striking “enterprise”
20 each place that term appears and inserting “regu-
21 lated entity”;

22 (2) in subsection (b), by striking “an enter-
23 prise” and inserting “a regulated entity”;

1 (3) in subsection (c), in the second sentence, by
2 inserting before the period “to conduct examinations
3 under this section”;

4 (4) by redesignating subsections (d) through (f)
5 as (e) through (g); and

6 (5) by inserting after subsection (c) the fol-
7 lowing:

8 “(d) INSPECTOR GENERAL.—There shall be within
9 the Agency an Inspector General, who shall be appointed
10 in accordance with section 3(a) of the Inspector General
11 Act of 1978.”.

12 (b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-
13 ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of
14 the Housing and Community Development Act of 1992
15 (12 U.S.C. 4517) is amended by adding at the end the
16 following:

17 “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
18 AND EXAMINERS.—

19 “(1) APPLICABILITY.—This section shall apply
20 with respect to any position of examiner, accountant,
21 economist, and specialist in financial markets and in
22 technology at the Agency, with respect to supervision
23 and regulation of the enterprises, that is in the com-
24 petitive service.

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

4 “(A) in accordance with the statutes, rules,
5 and regulations governing appointments in the
6 excepted service; and

7 “(B) notwithstanding any statutes, rules,
8 and regulations governing appointments in the
9 competitive service.”.

10 (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—
11 Section 11 of the Inspector General Act of 1978 (5 U.S.C.
12 11 App.) is amended—

13 (1) in paragraph (1), by inserting “, the Direc-
14 tor of the Federal Housing Enterprises Regulatory
15 Agency” after “Social Security Administration”; and

16 (2) in paragraph (2), by inserting “, the Fed-
17 eral Housing Enterprises Regulatory Agency” after
18 “Social Security Administration”.

19 (d) AUTHORITY TO CONTRACT FOR REVIEWS OF
20 REGULATED ENTITIES.—Section 1319 of the Federal
21 Housing Enterprises Financial Safety and Soundness Act
22 of 1992 (12 U.S.C. 4519) is amended in the section head-
23 ing, by striking “**BY RATING ORGANIZATION**”.

1 **SEC. 106. ASSESSMENTS.**

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

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

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

12 “(1) the expenses of any examinations under
13 section 1317;

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

16 “(3) such amounts in excess of actual expenses
17 for any given fiscal year, as deemed necessary by the
18 Director to maintain working capital.”;

19 (2) by striking “an enterprise” each place that
20 term appears and inserting “a regulated entity”;

21 (3) by striking “enterprise” each place that
22 term appears (other than as described in paragraph
23 (1)), except in subparagraphs (A) and (B) of sub-
24 section (b)(3), and inserting “regulated entity”;

25 (4) in subsection (b)—

1 (A) in paragraph (2), by moving the mar-
2 gin 2 ems to the left; and

3 (B) in paragraph (3)(B), by striking “by
4 the enterprise” and inserting “by an enter-
5 prise”;

6 (5) in subsection (c), by adding at the end the
7 following: “The Director may adjust the amounts of
8 any semiannual assessments for an assessment
9 under subsection (a) that are to be paid pursuant to
10 subsection (b) by a regulated entity, as the Director
11 determines necessary to ensure that the costs of en-
12 forcement activities under subtitles B and C for an
13 enterprise are borne only by that regulated entity.”;

14 (6) in subsection (d), by striking “If” and in-
15 sserting “Except with respect to amounts collected
16 pursuant to subsection (a)(3), if”;

17 (7) by striking subsection (e) and inserting the
18 following:

19 “(e) REMISSION OF ASSESSMENT.—At the end of
20 each year for which an assessment under this section is
21 made, the Director shall remit to each regulated entity any
22 amount of an assessment collected from the regulated en-
23 tity that is attributable to subsection (a)(3), and is in ex-
24 cess of the amount that the Director deems necessary to
25 maintain working capital.”;

1 (8) by striking subsection (f) and inserting the
2 following:

3 “(f) NO APPROPRIATED FUNDS.—Salaries of the Di-
4 rector and other employees of the Agency, and all other
5 expenses thereof, may be paid from assessments collected
6 under this subsection or other sources, and shall not be
7 construed to be Government funds or appropriated mon-
8 ies, or subject to apportionment for the purposes of chap-
9 ter 15 of title 31, United States Code, or any other au-
10 thority.”;

11 (9) in subsection (g)—

12 (A) by striking “the Secretary and” each
13 place that term appears; and

14 (B) in paragraph (3)—

15 (i) by striking “(A)”; and

16 (ii) by striking “, and (B)” and all
17 that follows through the end of the para-
18 graph and inserting a period; and

19 (10) by adding at the end the following:

20 “(h) PAYMENT OF EXPENSES.—

21 “(1) HOME LOAN BANKS.—The expenses for
22 performing examination, regulation, supervision, and
23 enforcement functions of the Federal Home Loan
24 Banks by the Director, or any other agency, shall

1 not be paid from any assessments collected by the
2 Director from the enterprises.

3 “(2) ENTERPRISES.—The expenses for per-
4 forming examination, regulation, supervision, and
5 enforcement function of the enterprises by the Di-
6 rector, or any other agency, shall not be paid from
7 any assessments collected by the Director from the
8 Federal Home Loan Banks.”.

9 **SEC. 107. REGULATIONS AND ORDERS.**

10 (a) AUTHORITY.—Section 1319G of the Federal
11 Housing Enterprises Financial Safety and Soundness Act
12 of 1992 (12 U.S.C. 4526) is amended—

13 (1) by striking subsection (a) and inserting the
14 following:

15 “(a) AUTHORITY.—The Director shall issue any reg-
16 ulations, guidelines, directives, or orders necessary to
17 carry out the duties of the Director under this title or the
18 authorizing statutes, and to ensure that the purposes of
19 this title and the authorizing statutes are accomplished.”;
20 and

21 (2) in subsection (c), by striking “Committee on
22 Banking, Finance and Urban Affairs” and inserting
23 “Committee on Financial Services”.

24 (b) CLARIFICATION OF MISSION.—Part 1 of subtitle
25 A of the Federal Housing Enterprises Financial Safety

1 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
2 amended by adding after section 1319H, as added by this
3 Act, the following:

4 **“SEC. 1319I. CLARIFICATION OF MISSION.**

5 “(a) LOAN ORIGINATION.—The Director shall pre-
6 scribe a regulation defining what activities constitute loan
7 origination and are, therefore, impermissible for the enter-
8 prises. The regulation shall clarify that loan origination
9 is impermissible to the enterprises whether done directly
10 or indirectly.

11 “(b) DEFINING THE BOUNDARY.—The Director shall
12 prescribe regulations defining the boundary between the
13 primary mortgage market, in which the enterprises are not
14 permitted to participate directly or indirectly, and the sec-
15 ondary mortgage market, in which the enterprises are per-
16 mitted to operate. Such regulations shall make clear
17 that—

18 “(1) the secondary market operations can only
19 involve a mortgage loan after it has been closed and
20 funded;

21 “(2) primary market activities include any ac-
22 tivities that involve direct contact with a mortgage
23 borrower, before or after the loan closes, except that
24 an enterprise may make direct contact with a bor-
25 rower whose loan that enterprise currently owns or

1 guarantees when that loan has defaulted or is in im-
 2 minent danger of defaulting;

3 “(3) underwriting a loan for origination, di-
 4 rectly or indirectly, is a primary market activity; and

5 “(4) document and custodial functions are pri-
 6 mary market activities, and therefore impermissible
 7 to the enterprises, until the purchase of the related
 8 loan in the secondary market.

9 “(c) DEADLINE.—The Director shall prescribe regu-
 10 lations required by this section in accordance with applica-
 11 ble requirements of title 5, United States Code, and shall
 12 issue them in final form not later than 18 months after
 13 the date of enactment of this section.

14 “(d) NO GRANDFATHERING.—No activity or invest-
 15 ment of an enterprise shall be presumed permissible be-
 16 cause it occurred or was occurring on the date of enact-
 17 ment of this section. The Director shall use reasonable
 18 procedures to address any such activity or investment.”.

19 **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS**
 20 **STANDARDS.**

21 Part 1 of subtitle A of the Federal Housing Enter-
 22 prises Financial Safety and Soundness Act of 1992 (12
 23 U.S.C. 4501 et seq.) is amended by inserting after section
 24 1313 the following new section:

1 **“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS**
2 **STANDARDS.**

3 “The Director may establish standards, by regula-
4 tion, order, or guideline, for each enterprise relating to—

5 “(1) adequacy of internal controls and informa-
6 tion systems taking into account the nature and
7 scale of business operations;

8 “(2) independence and adequacy of internal
9 audit systems;

10 “(3) management of interest rate risk exposure;

11 “(4) management of market risk, including
12 standards that provide for systems that accurately
13 measure, monitor, and control market risks and, as
14 warranted, that establish limitations on market risk;

15 “(5) adequacy and maintenance of liquidity and
16 reserves;

17 “(6) management of asset and investment port-
18 folio growth;

19 “(7) investments and acquisitions of assets by
20 an enterprise, to ensure that they are consistent
21 with the purposes of this title and the authorizing
22 statutes;

23 “(8) overall risk management processes, includ-
24 ing adequacy of oversight by senior management and
25 the board of directors and of processes and policies
26 to identify, measure, monitor, and control material

1 risks, including reputational risks, and for adequate,
 2 well-tested business resumption plans for all major
 3 systems with remote site facilities to protect against
 4 disruptive events; and

5 “(9) such other operational and management
 6 standards as the Director determines to be appro-
 7 priate.”.

8 **SEC. 109. LIMITATION ON NONMISSION-RELATED ASSETS.**

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

12 (1) by striking the subtitle designation and
 13 heading and inserting the following:

14 **“Subtitle B—Required Capital Lev-**
 15 **els for Enterprises, Special En-**
 16 **forcement Powers, and Limita-**
 17 **tion on Nonmission-Related As-**
 18 **sets”;**

19 and

20 (2) by adding at the end the following:

21 **“SEC. 1369E. LIMITATION ON NONMISSION-RELATED AS-**
 22 **SETS.**

23 “(a) IN GENERAL.—The Director may, by regulation,
 24 determine the type and amount of nonmission-related as-
 25 sets that an enterprise may hold at any time. The Director

1 shall, in any such regulation, define the term ‘nonmission-
2 related asset’ for purposes of this section.

3 “(b) **RULE OF CONSTRUCTION.**—Subsection (a) may
4 not be construed to authorize an enterprise to engage in
5 any new program relating to any nonmission-related asset
6 without obtaining the prior approval of the Director in ac-
7 cordance with section 1319H.”.

8 **SEC. 110. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

9 (a) **RISK CAPITAL LEVELS.**—Section 1361 of the
10 Federal Housing Enterprises Financial Safety and Sound-
11 ness Act of 1992 (12 U.S.C. 4611) is amended to read
12 as follows:

13 **“SEC. 1361. RISK-BASED CAPITAL LEVELS.**

14 “(a) **IN GENERAL.**—The Director shall, by regula-
15 tion, establish risk-based capital requirements for each of
16 the regulated entities to ensure that the regulated entities
17 operate in a safe and sound manner, with sufficient capital
18 and reserves to support the risks that arise in the oper-
19 ations and management of each regulated entity.

20 “(b) **REQUIRED REGISTRATION UNDER THE SECURI-
21 TIES EXCHANGE ACT OF 1934.**—

22 “(1) **IN GENERAL.**—Each regulated entity shall
23 register at least one class of the capital stock of
24 such regulated entity, and maintain such registra-

1 tion with the Securities and Exchange Commission,
2 under the Securities Exchange Act of 1934.

3 “(2) ENTERPRISES.—Each enterprise shall
4 comply with sections 14 and 16 of the Securities Ex-
5 change Act of 1934.

6 “(c) NO LIMITATION.—Nothing in this section shall
7 limit the authority of the Director to require other reports
8 or undertakings in furtherance of the responsibilities of
9 the Director under this Act.”.

10 (b) MINIMUM CAPITAL LEVELS FOR ENTER-
11 PRISES.—Section 1362 of the Federal Housing Enter-
12 prises Financial Safety and Soundness Act of 1992 (12
13 U.S.C. 4612) is amended—

14 (1) in the section heading, by inserting “**FOR**
15 **ENTERPRISES**” after “**LEVELS**”; and

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

18 “(b) REGULATORY DISCRETION.—The Director may,
19 by regulation, establish a minimum capital level that is
20 higher than the level specified in subsection (a).”.

21 **SEC. 111. LIMIT ON GOLDEN PARACHUTES.**

22 Section 1318 of the Federal Housing Enterprises Fi-
23 nancial Safety and Soundness Act of 1992 (12 U.S.C.
24 4518) is amended by adding at the end the following:

1 “(c) AUTHORITY TO REGULATE OR PROHIBIT CER-
2 TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

3 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-
4 TION PAYMENTS.—The Agency may prohibit or
5 limit, by regulation or order, any golden parachute
6 payment or indemnification payment.

7 “(2) FACTORS TO BE TAKEN INTO ACCOUNT.—
8 The Agency shall prescribe, by regulation, the fac-
9 tors to be considered by the Agency in taking any
10 action pursuant to paragraph (1), which may include
11 such factors as—

12 “(A) whether there is a reasonable basis to
13 believe that the affiliated party has committed
14 any fraudulent act or omission, breach of trust
15 or fiduciary duty, or insider abuse with regard
16 to the enterprise that has had a material affect
17 on the financial condition of the enterprise;

18 “(B) whether there is a reasonable basis to
19 believe that the affiliated party is substantially
20 responsible for the insolvency of the enterprise,
21 the appointment of a conservator or receiver for
22 the enterprise, or the enterprise’s troubled con-
23 dition (as defined in the regulations prescribed
24 pursuant to section 32(f));

1 “(C) whether there is a reasonable basis to
2 believe that the affiliated party has materially
3 violated any applicable Federal or State law or
4 regulation that has had a material affect on the
5 financial condition of the enterprise;

6 “(D) whether the affiliated party was in a
7 position of managerial or fiduciary responsi-
8 bility; and

9 “(E) the length of time the party was af-
10 filiated with the enterprise, and the degree to
11 which—

12 “(i) the payment reasonably reflects
13 compensation earned over the period of
14 employment; and

15 “(ii) the compensation involved rep-
16 resents a reasonable payment for services
17 rendered.

18 “(3) CERTAIN PAYMENTS PROHIBITED.—No
19 enterprise may prepay the salary or any liability or
20 legal expense of any affiliated party if such payment
21 is made—

22 “(A) in contemplation of the insolvency of
23 such enterprise, or after the commission of an
24 act of insolvency; and

25 “(B) with a view to, or has the result of—

1 “(i) preventing the proper application
2 of the assets of the enterprise to creditors;

3 or

4 “(ii) preferring one creditor over an-
5 other.

6 “(4) GOLDEN PARACHUTE PAYMENT DE-
7 FINED.—For purposes of this subsection—

8 “(A) IN GENERAL.—The term ‘golden
9 parachute payment’ means any payment (or
10 any agreement to make any payment) in the
11 nature of compensation by any enterprise for
12 the benefit of any affiliated party pursuant to
13 an obligation of such enterprise that—

14 “(i) is contingent on the termination
15 of such party’s affiliation with the enter-
16 prise; and

17 “(ii) is received on or after the date
18 on which—

19 “(I) the enterprise became insol-
20 vent;

21 “(II) any conservator or receiver
22 is appointed for such enterprise; or

23 “(III) the Agency determines
24 that the enterprise is in a troubled

1 condition (as defined in the regula-
2 tions of the Agency).

3 “(B) CERTAIN PAYMENTS IN CONTEMPLA-
4 TION OF AN EVENT.—Any payment which
5 would be a golden parachute payment but for
6 the fact that such payment was made before the
7 date referred to in subparagraph (A)(ii) shall be
8 treated as a golden parachute payment if the
9 payment was made in contemplation of the oc-
10 currence of an event described in any subclause
11 of such subparagraph.

12 “(C) CERTAIN PAYMENTS NOT IN-
13 CLUDED.—The term ‘golden parachute pay-
14 ment’ shall not include—

15 “(i) any payment made pursuant to a
16 retirement plan which is qualified (or is in-
17 tended to be qualified) under section 401
18 of the Internal Revenue Code of 1986 or
19 other nondiscriminatory benefit plan;

20 “(ii) any payment made pursuant to a
21 bona fide deferred compensation plan or
22 arrangement which the Board determines,
23 by regulation or order, to be permissible;
24 or

1 “(iii) any payment made by reason of
2 the death or disability of an affiliated
3 party.

4 “(5) OTHER DEFINITIONS.—For purposes of
5 this subsection—

6 “(A) INDEMNIFICATION PAYMENT.—Sub-
7 ject to paragraph (6), the term ‘indemnification
8 payment’ means any payment (or any agree-
9 ment to make any payment) by any enterprise
10 for the benefit of any person who is or was an
11 affiliated party, to pay or reimburse such per-
12 son for any liability or legal expense with re-
13 gard to any administrative proceeding or civil
14 action instituted by the Agency which results in
15 a final order under which such person—

16 “(i) is assessed a civil money penalty;

17 “(ii) is removed or prohibited from
18 participating in conduct of the affairs of
19 the enterprise; or

20 “(iii) is required to take any affirma-
21 tive action to correct certain conditions re-
22 sulting from violations or practices, by
23 order of the Agency.

24 “(B) LIABILITY OR LEGAL EXPENSE.—The
25 term ‘liability or legal expense’ means—

1 “(i) any legal or other professional ex-
2 pense incurred in connection with any
3 claim, proceeding, or action;

4 “(ii) the amount of, and any cost in-
5 curred in connection with, any settlement
6 of any claim, proceeding, or action; and

7 “(iii) the amount of, and any cost in-
8 curred in connection with, any judgment or
9 penalty imposed with respect to any claim,
10 proceeding, or action.

11 “(C) PAYMENT.—The term “payment” in-
12 cludes—

13 “(i) any direct or indirect transfer of
14 any funds or any asset; and

15 “(ii) any segregation of any funds or
16 assets for the purpose of making, or pursu-
17 ant to an agreement to make, any payment
18 after the date on which such funds or as-
19 sets are segregated, without regard to
20 whether the obligation to make such pay-
21 ment is contingent on—

22 “(I) the determination, after such
23 date, of the liability for the payment
24 of such amount; or

1 “(II) the liquidation, after such
2 date, of the amount of such payment.

3 “(6) CERTAIN COMMERCIAL INSURANCE COV-
4 ERAGE NOT TREATED AS COVERED BENEFIT PAY-
5 MENT.—No provision of this subsection shall be con-
6 strued as prohibiting any enterprise from purchasing
7 any commercial insurance policy or fidelity bond, ex-
8 cept that, subject to any requirement described in
9 paragraph (5)(A)(iii), such insurance policy or bond
10 shall not cover any legal or liability expense of the
11 enterprise which is described in paragraph (5)(A).”.

12 **SEC. 112. REPORTING OF FRAUDULENT LOANS.**

13 Subtitle C of part 1 of the Federal Housing Enter-
14 prises Financial Safety and Soundness Act of 1992 (12
15 U.S.C. 4631 et seq.), as amended by this Act, is amended
16 by adding at the end the following:

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

18 “The Director shall, by regulation, require the regu-
19 lated entities to timely report to the Director when the
20 regulated entity discovers it has purchased or sold a fraud-
21 ulent loan.”.

1 **Subtitle B—Improvement of**
2 **Mission Supervision**

3 **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**
4 **ING GOAL OVERSIGHT.**

5 Part 2 of subtitle A of the Federal Housing Enter-
6 prises Financial Safety and Soundness Act of 1992 (12
7 U.S.C. 4541 et seq.) is amended—

8 (1) by striking the heading for the part and in-
9 serting the following:

10 **“PART 2—PROGRAM APPROVAL BY THE DIREC-**
11 **TOR AND ESTABLISHMENT OF HOUSING**
12 **GOALS”;**

13 and

14 (2) by striking sections 1321 and 1322.

15 **SEC. 122. REVIEW OF ENTERPRISE PROGRAMS.**

16 Part 1 of subtitle A of the Federal Housing Enter-
17 prises Financial Safety and Soundness Act of 1992 (12
18 U.S.C. 4501 et seq.), as amended by this Act, is amended
19 by adding at the end the following:

20 **“SEC. 1319J. PRIOR APPROVAL AUTHORITY FOR NEW PRO-**
21 **GRAMS.**

22 “(a) IN GENERAL.—The Director shall have author-
23 ity to review the appropriateness and permissibility of any
24 enterprise activities to assure their conformance with the
25 purposes of this title and with the purposes of the Federal

1 Home Loan Mortgage Corporation Act and the Federal
2 National Mortgage Association Charter Act, and to pro-
3 tect the safety and soundness of the enterprises. The Di-
4 rector may require written applications before an activity
5 is, or before certain types of activities are, commenced.
6 It may review any activity after an enterprise has com-
7 menced it. The Director may prohibit or limit any activity
8 that it determines to be inappropriate or impermissible
9 under this section.

10 “(b) NOTICE OF NEW ACTIVITY.—An enterprise that
11 commences any business product or activity under this
12 section shall provide written notice to the Director of the
13 business product or activity not later than 30 days prior
14 to the commencement of such business product or activity.

15 “(c) NO LIMITATION.—Nothing in this section shall
16 be deemed to restrict the safety and soundness authority
17 of the Director over all new and existing programs, prod-
18 ucts, or activities.”.

19 **SEC. 123. AUTHORITY TO REQUIRE REPORTS BY ENTER-**
20 **PRISES.**

21 The Federal Housing Enterprises Financial Safety
22 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
23 amended by striking sections 1327 and 1328.

1 **SEC. 124. MONITORING AND ENFORCING COMPLIANCE**
 2 **WITH HOUSING GOALS.**

3 Section 1336 of the Federal Housing Enterprises Fi-
 4 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 5 4566) is amended—

6 (1) by striking “Secretary” each place that
 7 term appears and inserting “Director”; and

8 (2) in subsection (a)(1), by striking “estab-
 9 lished” and all that follows through “1334” and in-
 10 sserting “under this subpart”.

11 **SEC. 125. ASSUMPTION BY DIRECTOR OF OTHER HUD RE-**
 12 **SPONSIBILITIES.**

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

16 (1) by striking “Secretary” each place that
 17 term appears and inserting “Director” in each of—

18 (A) sections 1323, 1324, and 1326;

19 (B) subsections (a), (b), and (c) of section
 20 1331 (12 U.S.C. 4561);

21 (C) subsections (a), (b), and (c) of section
 22 1332 (12 U.S.C. 4562);

23 (D) subsections (a), (b), and (c) of section
 24 1333 (12 U.S.C. 4563);

25 (E) subsections (a), (b), and (c) of section
 26 1334 (12 U.S.C. 4564); and

1 (F) subsections (a), (b), and (c) of section
2 1336 (12 U.S.C. 4566);

3 (2) in section 1332 (12 U.S.C. 4562), by strik-
4 ing subsection (d);

5 (3) in section 1333 (12 U.S.C. 4563), by strik-
6 ing subsection (d);

7 (4) in section 1334 (12 U.S.C. 4564), by strik-
8 ing subsection (d);

9 (5) by striking sections 1337 and 1338 (12
10 U.S.C. 4567, 4562 note); and

11 (6) by striking section 1349 (12 U.S.C. 4589).

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

18 **SEC. 126. ADMINISTRATIVE AND JUDICIAL ENFORCEMENT**

19 **PROCEEDINGS.**

20 Subpart C of part 2 of subtitle A of the Federal
21 Housing Enterprises Financial Safety and Soundness Act
22 of 1992 (12 U.S.C. 4581 et seq.) is amended by striking
23 “Secretary” each place that term appears and inserting
24 “Director,” in each of—

25 (1) section 1341 (12 U.S.C. 4581);

- 1 (2) section 1342 (12 U.S.C. 4582);
2 (3) section 1343 (12 U.S.C. 4583);
3 (4) section 1344 (12 U.S.C. 4584);
4 (5) section 1345 (12 U.S.C. 4585);
5 (6) section 1346 (12 U.S.C. 4586);
6 (7) section 1347 (12 U.S.C. 4587); and
7 (8) section 1348 (12 U.S.C. 4588).

8 **Subtitle C—Prompt Corrective**
9 **Action**

10 **SEC. 141. CAPITAL CLASSIFICATIONS.**

11 Section 1364 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4614) is amended—

14 (1) by striking subsection (b) and inserting the
15 following:

16 “(b) DISCRETIONARY CLASSIFICATION.—

17 “(1) GROUNDS FOR RECLASSIFICATION.—The
18 Director may reclassify a regulated entity under
19 paragraph (2) if—

20 “(A) at any time, the Director determines
21 in writing that a regulated entity is engaging in
22 conduct that could result in a rapid depletion of
23 core capital, or that the value of the property
24 subject to mortgages held or securitized by the

1 regulated entity, or the value of collateral
2 pledged as security, has decreased significantly;

3 “(B) after notice and an opportunity for
4 hearing, the Director determines that a regu-
5 lated entity is in an unsafe or unsound condi-
6 tion; or

7 “(C) pursuant to section 1371(b), the Di-
8 rector determines that a regulated entity is en-
9 gaging in an unsafe or unsound practice.

10 “(2) RECLASSIFICATION.—In addition to any
11 other action authorized under this title, including
12 the reclassification of a regulated entity for any rea-
13 son not specified in this subsection, if the Director
14 takes any action described in paragraph (1), the Di-
15 rector may reclassify a regulated entity—

16 “(A) as ‘undercapitalized’, if the regulated
17 entity is otherwise classified as adequately cap-
18 italized;

19 “(B) as ‘significantly undercapitalized’, if
20 the regulated entity is otherwise classified as
21 undercapitalized; and

22 “(C) as ‘critically undercapitalized’, if the
23 regulated entity is otherwise classified as sig-
24 nificantly undercapitalized.”;

1 (2) by redesignating subsection (d) as sub-
2 section (e); and

3 (3) by inserting after subsection (c) the fol-
4 lowing:

5 “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

6 “(1) IN GENERAL.—A regulated entity shall
7 make no capital distribution if, after making the dis-
8 tribution, the regulated entity would be under-
9 capitalized.

10 “(2) EXCEPTION.—Notwithstanding paragraph
11 (1), the Director may permit a regulated entity to
12 repurchase, redeem, retire, or otherwise acquire
13 shares or ownership interests if the repurchase, re-
14 demption, retirement, or other acquisition—

15 “(A) is made in connection with the
16 issuance of additional shares or obligations of
17 the regulated entity in at least an equivalent
18 amount; and

19 “(B) will reduce the financial obligations of
20 the regulated entity or otherwise improve the fi-
21 nancial condition of the regulated entity.”.

1 **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
2 **CAPITALIZED REGULATED ENTITIES.**

3 Section 1365 of the Federal Housing Enterprises Fi-
4 nancial Safety and Soundness Act of 1992 (12 U.S.C.
5 4615) is amended—

6 (1) by striking “the enterprise” each place that
7 term appears and inserting “the regulated entity”;

8 (2) by striking “An enterprise” each place that
9 term appears and inserting “A regulated entity”;

10 (3) by striking “an enterprise” each place that
11 term appears and inserting “a regulated entity”;

12 (4) in subsection (a)—

13 (A) by redesignating paragraphs (1) and
14 (2) as paragraphs (2) and (3), respectively;

15 (B) by inserting before paragraph (2), as
16 redesignated, the following:

17 “(1) **REQUIRED MONITORING.**—The Director
18 shall—

19 “(A) closely monitor the condition of any
20 undercapitalized regulated entity;

21 “(B) closely monitor compliance with the
22 capital restoration plan, restrictions, and re-
23 quirements imposed on an undercapitalized reg-
24 ulated entity under this section; and

25 “(C) periodically review the plan, restric-
26 tions, and requirements applicable to an under-

1 capitalized regulated entity to determine wheth-
2 er the plan, restrictions, and requirements are
3 achieving the purpose of this section.”; and

4 (C) by adding at the end the following:

5 “(4) RESTRICTION OF ASSET GROWTH.—An
6 undercapitalized regulated entity shall not permit its
7 average total assets during any calendar quarter to
8 exceed its average total assets during the preceding
9 calendar quarter, unless—

10 “(A) the Director has accepted the capital
11 restoration plan of the regulated entity;

12 “(B) any increase in total assets is con-
13 sistent with the capital restoration plan; and

14 “(C) the ratio of tangible equity to assets
15 of the regulated entity increases during the cal-
16 endar quarter at a rate sufficient to enable the
17 enterprise to become adequately capitalized
18 within a reasonable time.

19 “(5) PRIOR APPROVAL OF ACQUISITIONS AND
20 NEW ACTIVITIES.—An undercapitalized regulated en-
21 tity shall not, directly or indirectly, acquire any in-
22 terest in any entity or engage in any new activity,
23 unless—

24 “(A) the Director has accepted the capital
25 restoration plan of the regulated entity, the reg-

1 ulated entity is implementing the plan, and the
2 Director determines that the proposed action is
3 consistent with and will further the achievement
4 of the plan; or

5 “(B) the Director determines that the pro-
6 posed action will further the purpose of this
7 subtitle.”;

8 (5) in subsection (b)—

9 (A) in the subsection heading, by striking
10 “DISCRETIONARY”;

11 (B) in the matter preceding paragraph (1),
12 by striking “may” and inserting “shall”; and

13 (C) in paragraph (2)—

14 (i) by striking “make, in good faith,
15 reasonable efforts necessary to”; and

16 (ii) by striking the period at the end
17 and inserting “in any material respect.”;

18 and

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

21 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The
22 Director may take, with respect to an undercapitalized
23 regulated entity, any of the actions authorized to be taken
24 under section 1366 with respect to a significantly under-
25 capitalized regulated entity, if the Director determines

1 that such actions are necessary to carry out the purpose
2 of this subtitle.”.

3 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
4 **CANTLY UNDERCAPITALIZED REGULATED**
5 **ENTITIES.**

6 Section 1366 of the Federal Housing Enterprises Fi-
7 nancial Safety and Soundness Act of 1992 (12 U.S.C.
8 4616) is amended—

9 (1) by striking “the enterprise” each place that
10 term appears and inserting “the regulated entity”;

11 (2) by striking “An enterprise” each place that
12 term appears and inserting “A regulated entity”;

13 (3) by striking “an enterprise” each place that
14 term appears and inserting “a regulated entity”;

15 (4) in subsection (b)—

16 (A) in the subsection heading, by striking
17 “DISCRETIONARY SUPERVISORY ACTIONS” and
18 inserting “SPECIFIC ACTIONS”;

19 (B) in the matter preceding paragraph (1),
20 by striking “may, at any time, take any” and
21 inserting “shall carry out this section by taking,
22 at any time, 1 or more”;

23 (C) by striking paragraph (6);

24 (D) by redesignating paragraph (5) as
25 paragraph (6);

1 (E) by inserting after paragraph (4) the
2 following:

3 “(5) IMPROVEMENT OF MANAGEMENT.—Take 1
4 or more of the following actions:

5 “(A) NEW ELECTION OF BOARD.—Order a
6 new election for the board of directors of the
7 regulated entity.

8 “(B) DISMISSAL OF DIRECTORS OR EXECU-
9 TIVE OFFICERS.—Require the regulated entity
10 to dismiss from office any director or executive
11 officer who had held office for more than 180
12 days immediately before the date on which the
13 regulated entity became undercapitalized. Dis-
14 missal under this subparagraph shall not be
15 construed to be a removal pursuant to the en-
16 forcement powers of the Director under section
17 1377.

18 “(C) EMPLOY QUALIFIED EXECUTIVE OF-
19 FICERS.—Require the regulated entity to em-
20 ploy qualified executive officers (who, if the Di-
21 rector so specifies, shall be subject to approval
22 by the Director).”; and

23 (F) by adding at the end the following:

24 “(8) OTHER ACTION.—Require the regulated
25 entity to take any other action that the Director de-

1 termines will better carry out the purpose of this
2 section than any of the actions specified in this
3 paragraph.”;

4 (5) by redesignating subsection (c) as sub-
5 section (d); and

6 (6) by inserting after subsection (b) the fol-
7 lowing:

8 “(c) RESTRICTION ON COMPENSATION OF EXECU-
9 TIVE OFFICERS.—A regulated entity that is classified as
10 significantly undercapitalized in accordance with section
11 1364 may not, without prior written approval by the Di-
12 rector—

13 “(1) pay any bonus to any executive officer; or

14 “(2) provide compensation to any executive offi-
15 cer at a rate exceeding the average rate of com-
16 pensation of that officer (excluding bonuses, stock
17 options, and profit sharing) during the 12 calendar
18 months preceding the calendar month in which the
19 regulated entity became significantly undercapital-
20 ized.”.

21 **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
22 **IZED ENTERPRISES.**

23 (a) IN GENERAL.—Section 1367 of the Federal
24 Housing Enterprises Financial Safety and Soundness Act
25 of 1992 (12 U.S.C. 4617) is amended to read as follows:

1 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
2 **IZED ENTERPRISES.**

3 “(a) APPOINTMENT OF THE AGENCY AS CONSER-
4 VATOR OR RECEIVER.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of Federal law, the Director may establish
7 a conservatorship or receivership in the manner pro-
8 vided under paragraph (2).

9 “(2) APPOINTMENT.—The Agency may, at the
10 discretion of the Director, be appointed conservator
11 or receiver for the purpose of reorganizing, rehabili-
12 tating, or winding up the affairs of an enterprise.

13 “(3) GROUNDS FOR APPOINTING CONSERVATOR
14 OR RECEIVER.—The grounds for appointing a con-
15 servator or receiver for any enterprise are as follows:

16 “(A) ASSETS INSUFFICIENT FOR OBLIGA-
17 TIONS.—The assets of the enterprise are less
18 than the obligations of the enterprise to its
19 creditors and others.

20 “(B) SUBSTANTIAL DISSIPATION.—Sub-
21 stantial dissipation of assets or earnings due
22 to—

23 “(i) any violation of any provision of
24 Federal or State law; or

25 “(ii) any unsafe or unsound practice.

1 “(C) UNSAFE OR UNSOUND CONDITION.—
2 An unsafe or unsound condition to transact
3 business.

4 “(D) CEASE-AND-DESIST ORDERS.—Any
5 willful violation of a cease-and-desist order that
6 has become final.

7 “(E) CONCEALMENT.—Any concealment of
8 the books, papers, records, or assets of the en-
9 terprise, or any refusal to submit the books, pa-
10 pers, records, or affairs of the enterprise, for
11 inspection to any examiner or to any lawful
12 agent of the Director.

13 “(F) INABILITY TO MEET OBLIGATIONS.—
14 The enterprise is likely to be unable to pay its
15 obligations or meet the demands of its creditors
16 in the normal course of business.

17 “(G) LOSSES.—The enterprise has in-
18 curred or is likely to incur losses that will de-
19 plete all or substantially all of its capital, and
20 there is no reasonable prospect for the enter-
21 prise to become adequately capitalized (as de-
22 fined in section 1364(a)(1)).

23 “(H) VIOLATIONS OF LAW.—Any violation
24 of any law or regulation, or any unsafe or un-
25 sound practice or condition that is likely to—

1 “(i) cause insolvency or substantial
2 dissipation of assets or earnings; or

3 “(ii) weaken the condition of the en-
4 terprise.

5 “(I) CONSENT.—The enterprise, by resolu-
6 tion of its board of directors or its shareholders
7 or members, consents to the appointment.

8 “(J) UNDERCAPITALIZATION.—The enter-
9 prise is undercapitalized or significantly under-
10 capitalized (as defined in section 1364(a)(3)),
11 and—

12 “(i) has no reasonable prospect of be-
13 coming adequately capitalized;

14 “(ii) fails to become adequately cap-
15 italized, as required by—

16 “(I) section 1365(a)(1) with re-
17 spect to an undercapitalized enter-
18 prise; or

19 “(II) section 1366(a)(1) with re-
20 spect to a significantly undercapital-
21 ized enterprise;

22 “(iii) fails to submit a capital restora-
23 tion plan acceptable to the Agency within
24 the time prescribed under section 1369C;
25 or

1 “(iv) materially fails to implement a
2 capital restoration plan submitted and ac-
3 cepted under section 1369C.

4 “(K) CRITICAL UNDERCAPITALIZATION.—
5 The enterprise is critically undercapitalized, as
6 defined in section 1364(a)(4).

7 “(L) MONEY LAUNDERING.—The Attorney
8 General notifies the Director in writing that the
9 enterprise has been found guilty of a criminal
10 offense under section 1956 or 1957 of title 18,
11 United States Code, or section 5322 or 5324 of
12 title 31, United States Code.

13 “(4) JUDICIAL REVIEW.—

14 “(A) IN GENERAL.—If the Agency is ap-
15 pointed conservator or receiver under this sec-
16 tion, the enterprise may, within 30 days of such
17 appointment, bring an action in the United
18 States District Court for the judicial district in
19 which the home office of such enterprise is lo-
20 cated, or in the United States District Court
21 for the District of Columbia, for an order re-
22 quiring the Agency to remove itself as conser-
23 vator or receiver.

24 “(B) REVIEW.—Upon the filing of an ac-
25 tion under subparagraph (A), the court shall,

1 upon the merits, dismiss such action or direct
2 the Agency to remove itself as such conservator
3 or receiver.

4 “(5) DIRECTORS NOT LIABLE FOR ACQUI-
5 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
6 CEIVER.—The members of the board of directors of
7 an enterprise shall not be liable to the shareholders
8 or creditors of the enterprise for acquiescing in or
9 consenting in good faith to the appointment of the
10 Agency as conservator or receiver for that enter-
11 prise.

12 “(6) AGENCY NOT SUBJECT TO ANY OTHER
13 FEDERAL AGENCY.—When acting as conservator or
14 receiver, the Agency shall not be subject to the di-
15 rection or supervision of any other agency of the
16 United States or any State in the exercise of the
17 rights, powers, and privileges of the Agency.

18 “(b) POWERS AND DUTIES OF THE AGENCY AS CON-
19 SERVATOR OR RECEIVER.—

20 “(1) RULEMAKING AUTHORITY OF THE AGEN-
21 CY.—The Agency may prescribe such regulations as
22 the Agency determines to be appropriate regarding
23 the conduct of conservatorships or receiverships.

24 “(2) GENERAL POWERS.—

1 “(A) SUCCESSOR TO ENTERPRISE.—The
2 Agency shall, as conservator or receiver, and by
3 operation of law, immediately succeed to—

4 “(i) all rights, titles, powers, and
5 privileges of the enterprise, and of any
6 stockholder, officer, or director of such en-
7 terprise with respect to the enterprise and
8 the assets of the enterprise; and

9 “(ii) title to the books, records, and
10 assets of any other legal custodian of such
11 enterprise.

12 “(B) OPERATE THE ENTERPRISE.—The
13 Agency may, as conservator or receiver—

14 “(i) take over the assets of and oper-
15 ate the enterprise with all the powers of
16 the shareholders, the directors, and the of-
17 ficers of the enterprise and conduct all
18 business of the enterprise;

19 “(ii) collect all obligations and money
20 due the enterprise;

21 “(iii) perform all functions of the en-
22 terprise in the name of the enterprise
23 which are consistent with the appointment
24 as conservator or receiver; and

1 “(iv) preserve and conserve the assets
2 and property of such enterprise.

3 “(C) FUNCTIONS OF OFFICERS, DIREC-
4 TORS, AND SHAREHOLDERS OF AN ENTER-
5 PRISE.—The Agency may, by regulation or
6 order, provide for the exercise of any function
7 by any stockholder, director, or officer of any
8 enterprise for which the Agency has been
9 named conservator or receiver.

10 “(D) POWERS AS CONSERVATOR.—The
11 Agency may, as conservator, take such action
12 as may be—

13 “(i) necessary to put the enterprise in
14 a sound and solvent condition; and

15 “(ii) appropriate to carry on the busi-
16 ness of the enterprise and preserve and
17 conserve the assets and property of the en-
18 terprise.

19 “(E) ADDITIONAL POWERS AS RE-
20 CEIVER.—The Agency may, as receiver, place
21 the enterprise in liquidation and proceed to re-
22 alize upon the assets of the enterprise, having
23 due regard to the conditions of the housing fi-
24 nance market.

1 “(F) ORGANIZATION OF NEW ENTER-
2 PRISES.—The Agency may, as receiver, orga-
3 nize a successor enterprise that will operate
4 pursuant to subsection (i).

5 “(G) TRANSFER OF ASSETS AND LIABIL-
6 ITIES.—The Agency may, as conservator or re-
7 ceiver, transfer any asset or liability of the en-
8 terprise in default without any approval, assign-
9 ment, or consent with respect to such transfer.

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 an
14 enterprise, pay all valid obligations of the enter-
15 prise in accordance with the prescriptions and
16 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 an enterprise (including deter-
24 mining any claim against the enter-
25 prise and determining and realizing

1 upon any asset of any person in the
2 course of collecting money due the en-
3 terprise), exercise any power estab-
4 lished 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 1379B.

22 “(J) INCIDENTAL POWERS.—The Agency

23 may, as conservator or receiver—

24 “(i) exercise all powers and authori-

25 ties specifically granted to conservators or

1 receivers, respectively, under this section,
2 and such incidental powers as shall be nec-
3 essary to carry out such powers; and

4 “(ii) take any action authorized by
5 this section, which the Agency determines
6 is in the best interests of the enterprise or
7 the Agency.

8 “(3) AUTHORITY OF RECEIVER TO DETERMINE
9 CLAIMS.—

10 “(A) IN GENERAL.—The Agency may, as
11 receiver, determine claims in accordance with
12 the requirements of this subsection and any
13 regulations prescribed under paragraph (4).

14 “(B) NOTICE REQUIREMENTS.—The re-
15 ceiver, in any case involving the liquidation or
16 winding up of the affairs of a closed enterprise,
17 shall—

18 “(i) promptly publish a notice to the
19 creditors of the enterprise to present their
20 claims, together with proof, to the receiver
21 by a date specified in the notice which
22 shall be not less than 90 days after the
23 publication of such notice; and

24 “(ii) republish such notice approxi-
25 mately 1 month and 2 months, respec-

1 tively, after the publication under clause
2 (i).

3 “(C) MAILING REQUIRED.—The receiver
4 shall mail a notice similar to the notice pub-
5 lished under subparagraph (B)(i) at the time of
6 such publication to any creditor shown on the
7 books of the enterprise—

8 “(i) at the last address of the creditor
9 appearing in such books; or

10 “(ii) upon discovery of the name and
11 address of a claimant not appearing on the
12 books of the enterprise within 30 days
13 after the discovery of such name and ad-
14 dress.

15 “(4) RULEMAKING AUTHORITY RELATING TO
16 DETERMINATION OF CLAIMS.—Subject to subsection
17 (c), the Director may prescribe regulations regarding
18 the allowance or disallowance of claims by the re-
19 ceiver and providing for administrative determina-
20 tion of claims and review of such determination.

21 “(5) PROCEDURES FOR DETERMINATION OF
22 CLAIMS.—

23 “(A) DETERMINATION PERIOD.—

24 “(i) IN GENERAL.—Before the end of
25 the 180-day period beginning on the date

1 on which any claim against an enterprise is
2 filed with the Agency as receiver, the
3 Agency shall determine whether to allow or
4 disallow the claim and shall notify the
5 claimant of any determination with respect
6 to such claim.

7 “(ii) EXTENSION OF TIME.—The pe-
8 riod described in clause (i) may be ex-
9 tended by a written agreement between the
10 claimant and the Agency.

11 “(iii) MAILING OF NOTICE SUFFI-
12 CIENT.—The requirements of clause (i)
13 shall be deemed to be satisfied if the notice
14 of any determination with respect to any
15 claim is mailed to the last address of the
16 claimant which appears—

17 “(I) on the books of the enter-
18 prise;

19 “(II) in the claim filed by the
20 claimant; or

21 “(III) in documents submitted in
22 proof of the claim.

23 “(iv) CONTENTS OF NOTICE OF DIS-
24 ALLOWANCE.—If any claim filed under

1 clause (i) is disallowed, the notice to the
2 claimant shall contain—

3 “(I) a statement of each reason
4 for the disallowance; and

5 “(II) the procedures available for
6 obtaining agency review of the deter-
7 mination to disallow the claim or judi-
8 cial determination of the claim.

9 “(B) ALLOWANCE OF PROVEN CLAIM.—
10 The receiver shall allow any claim received on
11 or before the date specified in the notice pub-
12 lished under paragraph (3)(B)(i) by the receiver
13 from any claimant which is proved to the satis-
14 faction of the receiver.

15 “(C) DISALLOWANCE OF CLAIMS FILED
16 AFTER END OF FILING PERIOD.—Claims filed
17 after the date specified in the notice published
18 under paragraph (3)(B)(i), or the date specified
19 under paragraph (3)(C), shall be disallowed and
20 such disallowance shall be final.

21 “(D) AUTHORITY TO DISALLOW CLAIMS.—

22 “(i) IN GENERAL.—The receiver may
23 disallow any portion of any claim by a
24 creditor or claim of security, preference, or

1 priority which is not proved to the satisfac-
2 tion of the receiver.

3 “(ii) PAYMENTS TO LESS THAN
4 FULLY SECURED CREDITORS.—In the case
5 of a claim of a creditor against an enter-
6 prise which is secured by any property or
7 other asset of such enterprise, the receiver
8 may treat the portion of such claim which
9 exceeds an amount equal to the fair mar-
10 ket value of such property or other asset
11 as an unsecured claim against the enter-
12 prise.

13 “(iii) EXCEPTIONS.—No provision of
14 this paragraph shall apply with respect
15 to—

16 “(I) any extension of credit from
17 any Federal Reserve Bank or the
18 United States Treasury; or

19 “(II) any security interest in the
20 assets of the enterprise securing any
21 such extension of credit.

22 “(E) NO JUDICIAL REVIEW OF DETER-
23 MINATION PURSUANT TO SUBPARAGRAPH (D).—
24 No court may review the determination of the

1 Agency under subparagraph (D) to disallow a
2 claim.

3 “(F) LEGAL EFFECT OF FILING.—

4 “(i) STATUTE OF LIMITATION
5 TOLLED.—For purposes of any applicable
6 statute of limitations, the filing of a claim
7 with the receiver shall constitute a com-
8 mencement of an action.

9 “(ii) NO PREJUDICE TO OTHER AC-
10 TIONS.—Subject to paragraph (10), the fil-
11 ing of a claim with the receiver shall not
12 prejudice any right of the claimant to con-
13 tinue any action which was filed before the
14 date of the appointment of the receiver,
15 subject to the determination of claims by
16 the receiver.

17 “(6) PROVISION FOR JUDICIAL DETERMINATION
18 OF CLAIMS.—

19 “(A) IN GENERAL.—The claimant may file
20 suit on a claim (or continue an action com-
21 menced before the appointment of the receiver)
22 in the district or territorial court of the United
23 States for the district within which the prin-
24 cipal place of business of the enterprise is lo-
25 cated or the United States District Court for

1 the District of Columbia (and such court shall
2 have jurisdiction to hear such claim), before the
3 end of the 60-day period beginning on the ear-
4 lier of—

5 “(i) the end of the period described in
6 paragraph (5)(A)(i) with respect to any
7 claim against an enterprise for which the
8 Agency is receiver; or

9 “(ii) the date of any notice of dis-
10 allowance of such claim pursuant to para-
11 graph (5)(A)(i).

12 “(B) STATUTE OF LIMITATIONS.—A claim
13 shall be deemed to be disallowed (other than
14 any portion of such claim which was allowed by
15 the receiver), and such disallowance shall be
16 final, and the claimant shall have no further
17 rights or remedies with respect to such claim,
18 if the claimant fails, before the end of the 60-
19 day period described under subparagraph (A),
20 to file suit on such claim (or continue an action
21 commenced before the appointment of the re-
22 ceiver).

23 “(7) REVIEW OF CLAIMS.—

24 “(A) OTHER REVIEW PROCEDURES.—

1 “(i) IN GENERAL.—The Agency shall
2 establish such alternative dispute resolu-
3 tion processes as may be appropriate for
4 the resolution of claims filed under para-
5 graph (5)(A)(i).

6 “(ii) CRITERIA.—In establishing alter-
7 native dispute resolution processes, the
8 Agency shall strive for procedures which
9 are expeditious, fair, independent, and low
10 cost.

11 “(iii) VOLUNTARY BINDING OR NON-
12 BINDING PROCEDURES.—The Agency may
13 establish both binding and nonbinding
14 processes, which may be conducted by any
15 government or private party. All parties,
16 including the claimant and the Agency,
17 must agree to the use of the process in a
18 particular case.

19 “(B) CONSIDERATION OF INCENTIVES.—
20 The Agency shall seek to develop incentives for
21 claimants to participate in the alternative dis-
22 pute resolution process.

23 “(8) EXPEDITED DETERMINATION OF
24 CLAIMS.—

1 “(A) ESTABLISHMENT REQUIRED.—The
2 Agency shall establish a procedure for expedited
3 relief outside of the routine claims process es-
4 tablished under paragraph (5) for claimants
5 who—

6 “(i) allege the existence of legally
7 valid and enforceable or perfected security
8 interests in assets of any enterprise for
9 which the Agency has been appointed re-
10 ceiver; and

11 “(ii) allege that irreparable injury will
12 occur if the routine claims procedure is fol-
13 lowed.

14 “(B) DETERMINATION PERIOD.—Before
15 the end of the 90-day period beginning on the
16 date any claim is filed in accordance with the
17 procedures established under subparagraph (A),
18 the Director shall—

19 “(i) determine—

20 “(I) whether to allow or disallow
21 such claim; or

22 “(II) whether such claim should
23 be determined pursuant to the proce-
24 dures established under paragraph
25 (5); and

1 “(ii) notify the claimant of the deter-
2 mination, and if the claim is disallowed,
3 provide a statement of each reason for the
4 disallowance and the procedure for obtain-
5 ing agency review or judicial determina-
6 tion.

7 “(C) PERIOD FOR FILING OR RENEWING
8 SUIT.—Any claimant who files a request for ex-
9 pedited relief shall be permitted to file a suit,
10 or to continue a suit filed before the appoint-
11 ment of the receiver, seeking a determination of
12 the rights of the claimant with respect to such
13 security interest after the earlier of—

14 “(i) the end of the 90-day period be-
15 ginning on the date of the filing of a re-
16 quest for expedited relief; or

17 “(ii) the date the Agency denies the
18 claim.

19 “(D) STATUTE OF LIMITATIONS.—If an
20 action described under subparagraph (C) is not
21 filed, or the motion to renew a previously filed
22 suit is not made, before the end of the 30-day
23 period beginning on the date on which such ac-
24 tion or motion may be filed under subparagraph
25 (B), the claim shall be deemed to be disallowed

1 as of the end of such period (other than any
2 portion of such claim which was allowed by the
3 receiver), such disallowance shall be final, and
4 the claimant shall have no further rights or
5 remedies with respect to such claim.

6 “(E) LEGAL EFFECT OF FILING.—

7 “(i) STATUTE OF LIMITATION
8 TOLLED.—For purposes of any applicable
9 statute of limitations, the filing of a claim
10 with the receiver shall constitute a com-
11 mencement of an action.

12 “(ii) NO PREJUDICE TO OTHER AC-
13 TIONS.—Subject to paragraph (10), the fil-
14 ing of a claim with the receiver shall not
15 prejudice any right of the claimant to con-
16 tinue any action that was filed before the
17 appointment of the receiver, subject to the
18 determination of claims by the receiver.

19 “(9) PAYMENT OF CLAIMS.—

20 “(A) IN GENERAL.—The receiver may, in
21 the discretion of the receiver, and to the extent
22 funds are available, pay creditor claims, in such
23 manner and amounts as are authorized under
24 this section, which are—

25 “(i) allowed by the receiver;

1 “(ii) approved by the Agency pursuant
2 to a final determination pursuant to para-
3 graph (7) or (8); or

4 “(iii) determined by the final judg-
5 ment of any court of competent jurisdic-
6 tion.

7 “(B) AGREEMENTS AGAINST THE INTER-
8 EST OF THE AGENCY.—No agreement that
9 tends to diminish or defeat the interest of the
10 Agency in any asset acquired by the Agency as
11 receiver under this section shall be valid against
12 the Agency unless such agreement is in writing.

13 “(C) PAYMENT OF DIVIDENDS ON
14 CLAIMS.—The receiver may, in the sole discre-
15 tion of the receiver, pay dividends on proved
16 claims at any time, and no liability shall attach
17 to the Agency, by reason of any such payment,
18 for failure to pay dividends to a claimant whose
19 claim is not proved at the time of any such pay-
20 ment.

21 “(C) RULEMAKING AUTHORITY OF THE DI-
22 RECTOR.—The Director may prescribe such
23 rules, including definitions of terms, as the Di-
24 rector deems appropriate to establish a single
25 uniform interest rate for, or to make payments

1 of post-insolvency interest to creditors holding
2 proven claims against the receivership estates of
3 enterprises following satisfaction by the receiver
4 of the principal amount of all creditor claims.

5 “(10) SUSPENSION OF LEGAL ACTIONS.—

6 “(A) IN GENERAL.—After the appointment
7 of a conservator or receiver for an enterprise,
8 the conservator or receiver may, in any judicial
9 action or proceeding to which such enterprise is
10 or becomes a party, request a stay for a period
11 not to exceed—

12 “(i) 45 days, in the case of any con-
13 servator; and

14 “(ii) 90 days, in the case of any re-
15 ceiver.

16 “(B) GRANT OF STAY BY ALL COURTS RE-
17 QUIRED.—Upon receipt of a request by any
18 conservator or receiver under subparagraph (A)
19 for a stay of any judicial action or proceeding
20 in any court with jurisdiction of such action or
21 proceeding, the court shall grant such stay as
22 to all parties.

23 “(11) ADDITIONAL RIGHTS AND DUTIES.—

24 “(A) PRIOR FINAL ADJUDICATION.—The
25 Agency shall abide by any final unappealable

1 judgment of any court of competent jurisdiction
2 which was rendered before the appointment of
3 the Agency as conservator or receiver.

4 “(B) RIGHTS AND REMEDIES OF CONSER-
5 VATOR OR RECEIVER.—In the event of any ap-
6 pealable judgment, the Agency as conservator
7 or receiver shall—

8 “(i) have all the rights and remedies
9 available to the enterprise (before the ap-
10 pointment of such conservator or receiver)
11 and the Agency, including removal to Fed-
12 eral court and all appellate rights; and

13 “(ii) not be required to post any bond
14 in order to pursue such remedies.

15 “(C) NO ATTACHMENT OR EXECUTION.—
16 No attachment or execution may issue by any
17 court upon assets in the possession of the re-
18 ceiver.

19 “(D) LIMITATION ON JUDICIAL REVIEW.—
20 Except as otherwise provided in this subsection,
21 no court shall have jurisdiction over—

22 “(i) any claim or action for payment
23 from, or any action seeking a determina-
24 tion of rights with respect to, the assets of

1 any enterprise for which the Agency has
2 been appointed receiver; or

3 “(ii) any claim relating to any act or
4 omission of such enterprise or the Agency
5 as receiver.

6 “(E) DISPOSITION OF ASSETS.—In exer-
7 cising any right, power, privilege, or authority
8 as conservator or receiver in connection with
9 any sale or disposition of assets of an enterprise
10 for which the Agency has been appointed con-
11 servator or receiver, the Agency shall conduct
12 its operations in a manner which—

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 “(i) IN GENERAL.—In the case of any
4 tort claim described under clause (ii) for
5 which the statute of limitations applicable
6 under State law with respect to such claim
7 has expired not more than 5 years before
8 the appointment of the Agency as conser-
9 vator or receiver, the Agency may bring an
10 action as conservator or receiver on such
11 claim without regard to the expiration of
12 the statute of limitation applicable under
13 State law.

14 “(ii) CLAIMS DESCRIBED.—A tort
15 claim referred to under clause (i) is a
16 claim arising from fraud, intentional mis-
17 conduct resulting in unjust enrichment, or
18 intentional misconduct resulting in sub-
19 stantial loss to the enterprise.

20 “(14) ACCOUNTING AND RECORDKEEPING RE-
21 QUIREMENTS.—

22 “(A) IN GENERAL.—The Agency as conser-
23 vator or receiver shall, consistent with the ac-
24 counting and reporting practices and proce-
25 dures established by the Agency, maintain a full

1 accounting of each conservatorship and receiv-
2 ership or other disposition of an enterprise in
3 default.

4 “(B) ANNUAL ACCOUNTING OR REPORT.—
5 With respect to each conservatorship or receiv-
6 ership, the Agency shall make an annual ac-
7 counting or report available to the Board, the
8 Comptroller General of the United States, the
9 Committee on Banking, Housing, and Urban
10 Affairs of the Senate, and the Committee on
11 Financial Services of the House of Representa-
12 tives.

13 “(C) AVAILABILITY OF REPORTS.—Any re-
14 port prepared under subparagraph (B) shall be
15 made available by the Agency upon request to
16 any shareholder of an enterprise or any member
17 of the public.

18 “(D) RECORDKEEPING REQUIREMENT.—
19 After the end of the 6-year period beginning on
20 the date that the conservatorship or receiver-
21 ship is terminated by the Director, the Agency
22 may destroy any records of such enterprise
23 which the Agency, in the discretion of the Agen-
24 cy, determines to be unnecessary unless di-
25 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 an enterprise-affiliated party, or
7 any person who the conservator or receiver de-
8 termines is a debtor of the enterprise, in prop-
9 erty, or any obligation incurred by such party
10 or person, that was made within 5 years of the
11 date on which the Agency was appointed con-
12 servator or receiver, if such party or person vol-
13 untarily or involuntarily made such transfer or
14 incurred such liability with the intent to hinder,
15 delay, or defraud the enterprise, the Agency,
16 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 enterprise, the property trans-
21 ferred, or, if a court so orders, the value of
22 such property (at the time of such transfer)
23 from—

24 “(i) the initial transferee of such
25 transfer or the enterprise-affiliated party

1 or person for whose benefit such transfer
2 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, or
14 pool of mortgages, held in trust, custodial,
15 or agency capacity by an enterprise shall
16 not be available to satisfy the claims of
17 creditors generally.

18 “(ii) HOLDING OF MORTGAGES.—Any
19 mortgage or pool of mortgages described
20 under clause (i) shall be held by the con-
21 servator or receiver appointed under this
22 subsection for the beneficial owners of such
23 mortgages, under the terms of the agree-
24 ment creating such trust, custodial, or
25 other agency arrangement.

1 “(iii) LIABILITY OF RECEIVER.—The
2 liability of a receiver appointed under this
3 section for damages shall, in the case of
4 any contingent or unliquidated claim relat-
5 ing to the mortgages held in trust, be esti-
6 mated in accordance set forth in the regu-
7 lations of the Director.

8 “(c) PRIORITY OF EXPENSES AND UNSECURED
9 CLAIMS.—

10 “(1) IN GENERAL.—Unsecured claims against
11 an enterprise, or a receiver, that are proven to the
12 satisfaction of the receiver shall have priority in the
13 following order:

14 “(A) Administrative expenses of the re-
15 ceiver.

16 “(B) Any general or senior liability of the
17 enterprise (which is not a liability described
18 under subparagraph (C) or (D).

19 “(C) Any obligation subordinated to gen-
20 eral creditors (which is not an obligation de-
21 scribed under subparagraph (D)).

22 “(D) Any obligation to shareholders or
23 members arising as a result of their status as
24 shareholder or members.

1 “(2) CREDITORS SIMILARLY SITUATED.—All
2 creditors that are similarly situated under paragraph
3 (1) shall be treated in a similar manner.

4 “(3) DEFINITION.—The term ‘administrative
5 expenses of the receiver’ shall include those nec-
6 essary expenses incurred by the receiver in liqui-
7 dating or otherwise resolving the affairs of a failed
8 enterprise. Such expenses shall include pre-failure
9 and post-failure obligations that the receiver deter-
10 mines are necessary and appropriate to facilitate the
11 smooth and orderly liquidation or other resolution of
12 the enterprise.

13 “(d) PROVISIONS RELATING TO CONTRACTS EN-
14 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
15 OR RECEIVER.—

16 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
17 In addition to any other rights a conservator or re-
18 ceiver may have, the conservator or receiver for any
19 enterprise may disaffirm or repudiate any contract
20 or lease—

21 “(A) to which such enterprise is a party;

22 “(B) the performance of which the conser-
23 vator or receiver, in its sole discretion, deter-
24 mines to be burdensome; and

1 “(C) the disaffirmance or repudiation of
2 which the conservator or receiver determines, in
3 its sole discretion, will promote the orderly ad-
4 ministration of the affairs of the enterprise.

5 “(2) TIMING OF REPUDIATION.—The conser-
6 vator or receiver shall determine whether or not to
7 exercise the rights of repudiation under this sub-
8 section within a reasonable period following such ap-
9 pointment.

10 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
11 ATION.—

12 “(A) IN GENERAL.—Except as otherwise
13 provided under subparagraph (C) and para-
14 graphs (4), (5), and (6), the liability of the con-
15 servator or receiver for the disaffirmance or re-
16 pudiation of any contract pursuant to para-
17 graph (1) shall be—

18 “(i) limited to actual direct compen-
19 satory damages; and

20 “(ii) determined as of—

21 “(I) the date of the appointment
22 of the conservator or receiver; or

23 “(II) in the case of any contract
24 or agreement referred to in paragraph
25 (8), the date of the disaffirmance or

1 repudiation of such contract or agree-
2 ment.

3 “(B) NO LIABILITY FOR OTHER DAM-
4 AGES.—For purposes of subparagraph (A), the
5 term ‘actual direct compensatory damages’ shall
6 not include—

7 “(i) punitive or exemplary damages;

8 “(ii) damages for lost profits or op-
9 portunity; or

10 “(iii) damages for pain and suffering.

11 “(C) MEASURE OF DAMAGES FOR REPUDI-
12 ATION OF FINANCIAL CONTRACTS.—In the case
13 of any qualified financial contract or agreement
14 to which paragraph (8) applies, compensatory
15 damages shall be—

16 “(i) deemed to include normal and
17 reasonable costs of cover or other reason-
18 able measures of damages utilized in the
19 industries for such contract and agreement
20 claims; and

21 “(ii) paid in accordance with this sub-
22 section and subsection (f), except as other-
23 wise specifically provided in this section.

24 “(4) LEASES UNDER WHICH THE ENTERPRISE
25 IS THE LESSEE.—

1 “(A) IN GENERAL.—If the conservator or
2 receiver disaffirms or repudiates a lease under
3 which the enterprise was the lessee, the conser-
4 vator or receiver shall not be liable for any
5 damages (other than damages determined
6 under subparagraph (B)) for the disaffirmance
7 or repudiation of such lease.

8 “(B) PAYMENTS OF RENT.—Notwith-
9 standing subparagraph (A), the lessor under a
10 lease to which that subparagraph applies
11 shall—

12 “(i) be entitled to the contractual rent
13 accruing before the later of the date—

14 “(I) the notice of disaffirmance
15 or repudiation is mailed; or

16 “(II) the disaffirmance or repudi-
17 ation becomes effective, unless the les-
18 sor is in default or breach of the
19 terms of the lease;

20 “(ii) have no claim for damages under
21 any acceleration clause or other penalty
22 provision in the lease; and

23 “(iii) have a claim for any unpaid
24 rent, subject to all appropriate offsets and
25 defenses, due as of the date of the appoint-

1 ment, which shall be paid in accordance
2 with this subsection and subsection (f).

3 “(5) LEASES UNDER WHICH THE ENTERPRISE
4 IS THE LESSOR.—

5 “(A) IN GENERAL.—If the conservator or
6 receiver repudiates an unexpired written lease
7 of real property of the enterprise under which
8 the enterprise is the lessor and the lessee is not,
9 as of the date of such repudiation, in default,
10 the lessee under such lease may either—

11 “(i) treat the lease as terminated by
12 such repudiation; or

13 “(ii) remain in possession of the lease-
14 hold interest for the balance of the term of
15 the lease, unless the lessee defaults under
16 the terms of the lease after the date of
17 such repudiation.

18 “(B) PROVISIONS APPLICABLE TO LESSEE
19 REMAINING IN POSSESSION.—If any lessee
20 under a lease described under subparagraph (A)
21 remains in possession of a leasehold interest
22 under clause (ii) of such subparagraph—

23 “(i) the lessee—

24 “(I) shall continue to pay the
25 contractual rent pursuant to the

1 terms of the lease after the date of
2 the repudiation of such lease; and

3 “(II) may offset against any rent
4 payment which accrues after the date
5 of the repudiation of the lease, and
6 any damages which accrue after such
7 date due to the nonperformance of
8 any obligation of the enterprise under
9 the lease after such date; and

10 “(ii) the conservator or receiver shall
11 not be liable to the lessee for any damages
12 arising after such date as a result of the
13 repudiation other than the amount of any
14 offset allowed under clause (i)(II).

15 “(6) CONTRACTS FOR THE SALE OF REAL
16 PROPERTY.—

17 “(A) IN GENERAL.—If the conservator or
18 receiver repudiates any contract for the sale of
19 real property and the purchaser of such real
20 property under such contract is in possession,
21 and is not, as of the date of such repudiation,
22 in default, such purchaser may either—

23 “(i) treat the contract as terminated
24 by such repudiation; or

1 “(ii) remain in possession of such real
2 property.

3 “(B) PROVISIONS APPLICABLE TO PUR-
4 CHASER REMAINING IN POSSESSION.—If any
5 purchaser of real property under any contract
6 described under subparagraph (A) remains in
7 possession of such property under clause (ii) of
8 such subparagraph—

9 “(i) the purchaser—

10 “(I) shall continue to make all
11 payments due under the contract after
12 the date of the repudiation of the con-
13 tract; and

14 “(II) may offset against any such
15 payments any damages which accrue
16 after such date due to the non-
17 performance (after such date) of any
18 obligation of the enterprise under the
19 contract; and

20 “(ii) the conservator or receiver
21 shall—

22 “(I) not be liable to the pur-
23 chaser for any damages arising after
24 such date as a result of the repudi-

1 ation other than the amount of any
2 offset allowed under clause (i)(II);

3 “(II) deliver title to the pur-
4 chaser in accordance with the provi-
5 sions of the contract; and

6 “(III) have no obligation under
7 the contract other than the perform-
8 ance required under subclause (II).

9 “(C) ASSIGNMENT AND SALE ALLOWED.—

10 “(i) IN GENERAL.—No provision of
11 this paragraph shall be construed as lim-
12 iting the right of the conservator or re-
13 ceiver to assign the contract described
14 under subparagraph (A), and sell the prop-
15 erty subject to the contract and the provi-
16 sions of this paragraph.

17 “(ii) NO LIABILITY AFTER ASSIGN-
18 MENT AND SALE.—If an assignment and
19 sale described under clause (i) is con-
20 summated, the conservator or receiver
21 shall have no further liability under the
22 contract described under subparagraph
23 (A), or with respect to the real property
24 which was the subject of such contract.

1 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
2 TRACTS.—

3 “(A) SERVICES PERFORMED BEFORE AP-
4 POINTMENT.—In the case of any contract for
5 services between any person and any enterprise
6 for which the Agency has been appointed con-
7 servator or receiver, any claim of such person
8 for services performed before the appointment
9 of the conservator or the receiver shall be—

10 “(i) a claim to be paid in accordance
11 with subsections (b) and (f); and

12 “(ii) deemed to have arisen as of the
13 date the conservator or receiver was ap-
14 pointed.

15 “(B) SERVICES PERFORMED AFTER AP-
16 POINTMENT AND PRIOR TO REPUDIATION.—If,
17 in the case of any contract for services de-
18 scribed under subparagraph (A), the conser-
19 vator or receiver accepts performance by the
20 other person before the conservator or receiver
21 makes any determination to exercise the right
22 of repudiation of such contract under this sec-
23 tion—

1 “(i) the other party shall be paid
2 under the terms of the contract for the
3 services performed; and

4 “(ii) the amount of such payment
5 shall be treated as an administrative ex-
6 pense of the conservatorship or receiver-
7 ship.

8 “(C) ACCEPTANCE OF PERFORMANCE NO
9 BAR TO SUBSEQUENT REPUDIATION.—The ac-
10 ceptance by any conservator or receiver of serv-
11 ices referred to under subparagraph (B) in con-
12 nection with a contract described in such sub-
13 paragraph shall not affect the right of the con-
14 servator or receiver to repudiate such contract
15 under this section at any time after such per-
16 formance.

17 “(8) CERTAIN QUALIFIED FINANCIAL CON-
18 TRACTS.—

19 “(A) RIGHTS OF PARTIES TO CON-
20 TRACTS.—Subject to paragraph (10) and not-
21 withstanding any other provision of this Act,
22 any other Federal law, or the law of any State,
23 no person shall be stayed or prohibited from ex-
24 ercising—

1 “(i) any right to cause the termi-
2 nation or liquidation of any qualified finan-
3 cial contract with an enterprise that arises
4 upon the appointment of the Agency as re-
5 ceiver for such enterprise at any time after
6 such appointment;

7 “(ii) any right under any security ar-
8 rangement relating to any contract or
9 agreement described in clause (i); or

10 “(iii) any right to offset or net out
11 any termination value, payment amount, or
12 other transfer obligation arising under or
13 in connection with 1 or more contracts and
14 agreements described in clause (i), includ-
15 ing any master agreement for such con-
16 tracts or agreements.

17 “(B) APPLICABILITY OF OTHER PROVI-
18 SIONS.—Subsection (b)(12) shall apply in the
19 case of any judicial action or proceeding
20 brought against any receiver referred to under
21 subparagraph (A), or the enterprise for which
22 such receiver was appointed, by any party to a
23 contract or agreement described under subpara-
24 graph (A)(i) with such enterprise.

1 “(C) CERTAIN TRANSFERS NOT AVOID-
2 ABLE.—

3 “(i) IN GENERAL.—Notwithstanding
4 paragraph (11), the Agency, whether act-
5 ing as such or as conservator or receiver of
6 an enterprise, may not avoid any transfer
7 of money or other property in connection
8 with any qualified financial contract with
9 an enterprise.

10 “(ii) EXCEPTION FOR CERTAIN
11 TRANSFERS.—Clause (i) shall not apply to
12 any transfer of money or other property in
13 connection with any qualified financial con-
14 tract with an enterprise if the Agency de-
15 termines that the transferee had actual in-
16 tent to hinder, delay, or defraud such en-
17 terprise, the creditors of such enterprise,
18 or any conservator or receiver appointed
19 for such enterprise.

20 “(D) CERTAIN CONTRACTS AND AGREE-
21 MENTS DEFINED.—In this subsection:

22 “(i) QUALIFIED FINANCIAL CON-
23 TRACT.—The term ‘qualified financial con-
24 tract’ means any securities contract, com-
25 modity contract, forward contract, repur-

1 chase agreement, swap agreement, and any
2 similar agreement that the Agency deter-
3 mines by regulation to be a qualified finan-
4 cial contract for purposes of this para-
5 graph.

6 “(ii) SECURITIES CONTRACT.—The
7 term ‘securities contract’ has the meaning
8 given to such term under section 741 of
9 title 11, United States Code, except that
10 the term ‘security’ (as used in such sec-
11 tion) shall be deemed to include any mort-
12 gage loan, any mortgage-related security
13 (as defined in section 3(a)(41) of the Secu-
14 rities Exchange Act of 1934), and any in-
15 terest in any mortgage loan or mortgage-
16 related security, and does not include any
17 participation in a commercial mortgage
18 loan.

19 “(iii) COMMODITY CONTRACT.—The
20 term ‘commodity contract’ has the mean-
21 ing given to such term in section 761 of
22 title 11, United States Code.

23 “(iv) FORWARD CONTRACT.—The
24 term ‘forward contract’ has the meaning

1 given to such term in section 101 of title
2 11, United States Code.

3 “(v) REPURCHASE AGREEMENT.—The
4 term ‘repurchase agreement’ has the mean-
5 ing given to such term in section 101 of
6 title 11, the United States Code, except
7 that the items (as described in such sec-
8 tion) which may be subject to any such
9 agreement shall be deemed to include
10 mortgage-related securities (as such term
11 is defined in section 3(a)(41) of the Securi-
12 ties Exchange Act of 1934), any mortgage
13 loan, and any interest in any mortgage
14 loan and does not include any participation
15 in a commercial mortgage loan unless the
16 Agency determines by regulation, resolu-
17 tion, or order to include any such partici-
18 pation within the meaning of such term.

19 “(vi) SWAP AGREEMENT.—The term
20 ‘swap agreement’—

21 “(I) means any agreement, in-
22 cluding the terms and conditions in-
23 corporated by reference in any such
24 agreement, which is a rate swap
25 agreement, basis swap, commodity

1 swap, forward rate agreement, inter-
2 est rate future, interest rate option
3 purchased, forward foreign exchange
4 agreement, rate cap agreement, rate
5 floor agreement, rate collar agree-
6 ment, currency swap agreement,
7 cross-currency rate swap agreement,
8 currency future, or currency option
9 purchased or any other similar agree-
10 ment; and

11 “(II) includes any combination of
12 such agreements and any option to
13 enter into any such agreement.

14 “(vii) TREATMENT OF MASTER
15 AGREEMENT AS 1 QUALIFIED FINANCIAL
16 CONTRACT.—Any master agreement for
17 any agreements described under this sub-
18 paragraph, together with all supplements
19 to such master agreement, shall be treated
20 as 1 qualified financial contract.

21 “(viii) TRANSFER.—The term ‘trans-
22 fer’ has the meaning given to such term in
23 section 101 of title 11, United States
24 Code.

1 “(E) CERTAIN PROTECTIONS IN EVENT OF
2 APPOINTMENT OF CONSERVATOR.—Notwith-
3 standing any other provision of this Act (other
4 than paragraph (12) of this subsection), any
5 other Federal law, or the law of any State, no
6 person shall be stayed or prohibited from exer-
7 cising—

8 “(i) any right such person has to
9 cause the termination, liquidation, or accel-
10 eration of any qualified financial contract
11 with an enterprise in a conservatorship
12 based upon a default under such financial
13 contract which is enforceable under appli-
14 cable noninsolvency law;

15 “(ii) any right under any security ar-
16 rangement relating to such qualified finan-
17 cial contracts; or

18 “(iii) any right to offset or net out
19 any termination values, payment amounts,
20 or other transfer obligations arising under
21 or in connection with such qualified finan-
22 cial contracts.

23 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
24 TRACTS.—In making any transfer of assets or liabil-
25 ities of an enterprise in default which includes any

1 qualified financial contract, the conservator or re-
2 ceiver for such enterprise shall either—

3 “(A) transfer to 1 person—

4 “(i) all qualified financial contracts
5 between—

6 “(I) any person (or any affiliate
7 of such person); and

8 “(II) the enterprise in default;

9 “(ii) all claims of such person (or any
10 affiliate of such person) against such en-
11 terprise under any such contract (other
12 than any claim which, under the terms of
13 any such contract, is subordinated to the
14 claims of general unsecured creditors of
15 such enterprise);

16 “(iii) all claims of such enterprise
17 against such person (or any affiliate of
18 such person) under any such contract; and

19 “(iv) all property securing any claim
20 described in clause (ii) or (iii) under any
21 such contract; or

22 “(B) transfer none of the financial con-
23 tracts, claims, or property referred to under
24 subparagraph (A) (with respect to such person
25 and any affiliate of such person).

1 “(10) NOTIFICATION OF TRANSFER.—

2 “(A) IN GENERAL.—If—

3 “(i) the conservator or receiver for an
4 enterprise in default makes any transfer of
5 the assets and liabilities of such enterprise;

6 “(ii) the transfer includes any quali-
7 fied financial contract; and

8 “(iii) the conservator or receiver shall
9 use best efforts to notify any person who
10 is a party to any such contract of such
11 transfer by 12 p.m. (noon) (Eastern
12 Standard Time) on the business day fol-
13 lowing such transfer.

14 “(B) 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) CERTAIN SECURITY INTERESTS NOT
21 AVOIDABLE.—No provision of this subsection shall
22 be construed as permitting the avoidance of any le-
23 gally enforceable or perfected security interest in any
24 of the assets of any enterprise, except where such an
25 interest is taken in contemplation of the insolvency

1 of the enterprise, or with the intent to hinder, delay,
2 or defraud the enterprise or the creditors of such en-
3 terprise.

4 “(12) AUTHORITY TO ENFORCE CONTRACTS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 provision of a contract providing for termi-
7 nation, default, acceleration, or exercise of
8 rights upon, or solely by reason of, insolvency
9 or the appointment of a conservator or receiver,
10 the conservator or receiver may enforce any
11 contract, other than a liability insurance of a
12 director or officer, or a contract or an enter-
13 prise bond, entered into by the enterprise.

14 “(B) CERTAIN RIGHTS NOT AFFECTED.—

15 No provision of this paragraph may be con-
16 strued as impairing or affecting any right of the
17 conservator or receiver to enforce or recover
18 under a liability insurance contract of an officer
19 or director, or enterprise bond under other ap-
20 plicable law.

21 “(C) CONSENT REQUIREMENT.—

22 “(i) IN GENERAL.—Except as other-
23 wise provided under this section, no person
24 may exercise any right or power to termi-
25 nate, accelerate, or declare a default under

1 any contract to which an enterprise is a
2 party, or to obtain possession of or exercise
3 control over any property of the enterprise,
4 or affect any contractual rights of the en-
5 terprise, without the consent of the conser-
6 vator or receiver, as appropriate, for a pe-
7 riod of—

8 “(I) 45 days after the date of ap-
9 pointment of a conservator; or

10 “(II) 90 days after the date of
11 appointment of a receiver.

12 “(ii) EXCEPTIONS.—This subpara-
13 graph shall—

14 “(I) not apply to the liability in-
15 surance contract of an officer or di-
16 rector;

17 “(II) not apply to the rights of
18 parties to certain qualified financial
19 contracts under subsection (d)(8); and

20 “(III) not be construed as per-
21 mitting the conservator or receiver to
22 fail to comply with otherwise enforce-
23 able provisions of such contracts.

24 “(e) VALUATION OF CLAIMS IN DEFAULT.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of Federal law or the law of any State, and
3 regardless of the method which the Agency deter-
4 mines to utilize with respect to an enterprise in de-
5 fault or in danger of default, including transactions
6 authorized under subsection (i), this subsection shall
7 govern the rights of the creditors of such enterprise.

8 “(2) MAXIMUM LIABILITY.—The maximum li-
9 ability of the Agency, acting as receiver or in any
10 other capacity, to any person having a claim against
11 the receiver or the enterprise for which such receiver
12 is appointed shall equal the lesser of—

13 “(A) the amount such claimant would have
14 received if the Agency had liquidated the assets
15 and liabilities of such enterprise without exer-
16 cising the authority of the Agency under sub-
17 section (i) of this section; or

18 “(B) the amount of proceeds realized from
19 the performance of contracts or sale of the as-
20 sets of the enterprise.

21 “(f) LIMITATION ON COURT ACTION.—Except as
22 provided in this section, no court may take any action,
23 except at the request of the Director, by regulation or
24 order, to restrain or affect the exercise of powers or func-
25 tions of the Agency as a conservator or a receiver.

1 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

2 “(1) IN GENERAL.—A director or officer of an
3 enterprise may be held personally liable for mone-
4 tary damages in any civil action by, on behalf of, or
5 at the request or direction of the Agency, which ac-
6 tion is prosecuted wholly or partially for the benefit
7 of the Agency—

8 “(A) acting as conservator or receiver of
9 such enterprise;

10 “(B) acting based upon a suit, claim, or
11 cause of action purchased from, assigned by, or
12 otherwise conveyed by such receiver or conser-
13 vator; or

14 “(C) for gross negligence, including any
15 similar conduct or conduct that demonstrates a
16 greater disregard of a duty of care (than gross
17 negligence) including intentional tortious con-
18 duct, as such terms are defined and determined
19 under applicable State law.

20 “(2) NO LIMITATION.—Nothing in this para-
21 graph shall impair or affect any right of the Agency
22 under other applicable law.

23 “(h) DAMAGES.—In any proceeding related to any
24 claim against a director, officer, employee, agent, attorney,
25 accountant, appraiser, or any other party employed by or

1 providing services to an enterprise, recoverable damages
2 determined to result from the improvident or otherwise
3 improper use or investment of any assets of the enterprise
4 shall include principal losses and appropriate interest.

5 “(i) LIMITED-LIFE ENTERPRISE.—

6 “(1) ORGANIZATION.—

7 “(A) PURPOSE.—If an enterprise is in de-
8 fault, or if the Agency anticipates that an en-
9 terprise will default, the Agency may organize a
10 limited-life enterprise with those powers and at-
11 tributes of the enterprise in default or in dan-
12 ger of default that the Director determines nec-
13 essary, subject to the provisions of this sub-
14 section. The Director shall grant a temporary
15 charter to the limited-life enterprise, and the
16 limited-life enterprise shall operate subject to
17 that charter.

18 “(B) AUTHORITIES.—Upon the creation of
19 a limited-life enterprise under subparagraph
20 (A), the limited-life enterprise may—

21 “(i) assume such liabilities of the en-
22 terprise that is in default or in danger of
23 default as the Agency may, in its discre-
24 tion, determine to be appropriate, provided
25 that the liabilities assumed shall not exceed

1 the amount of assets of the limited-life en-
2 terprise;

3 “(ii) purchase such assets of the en-
4 terprise that is in default, or in danger of
5 default, as the Agency may, in its discre-
6 tion, determine to be appropriate; and

7 “(iii) perform any other temporary
8 function which the Agency may, in its dis-
9 cretion, prescribe in accordance with this
10 section.

11 “(2) CHARTER.—

12 “(A) CONDITIONS.—The Agency may
13 grant a temporary charter if the Agency deter-
14 mines that the continued operation of the enter-
15 prise in default or in danger of default is in the
16 best interest of the national economy and the
17 housing markets.

18 “(B) LIMITED-LIFE ENTERPRISE TREATED
19 AS BEING IN DEFAULT FOR CERTAIN PUR-
20 POSES.—A limited-life enterprise shall be treat-
21 ed as an enterprise in default at such times and
22 for such purposes as the Agency may, in its dis-
23 cretion, determine.

24 “(C) MANAGEMENT.—A limited-life enter-
25 prise, upon the granting of its charter, shall be

1 under the management of a board of directors
2 consisting of not fewer than 5 nor more than
3 10 members appointed by the Agency.

4 “(D) BYLAWS.—The board of directors of
5 a limited-life enterprise shall adopt such bylaws
6 as may be approved by the Agency.

7 “(3) CAPITAL STOCK.—No capital stock need
8 be paid into a limited-life enterprise by the Agency.

9 “(4) INVESTMENTS.—Funds of a limited-life
10 enterprise shall be kept on hand in cash, invested in
11 obligations of the United States or obligations guar-
12 anteed as to principal and interest by the United
13 States, or deposited with the Agency, or any Federal
14 Reserve bank.

15 “(5) EXEMPT STATUS.—Notwithstanding any
16 other provision of Federal or State law, the limited-
17 life enterprise, its franchise, property, and income
18 shall be exempt from all taxation now or hereafter
19 imposed by the United States, by any territory, de-
20 pendency, or possession thereof, or by any State,
21 county, municipality, or local taxing authority.

22 “(6) OTHER EXEMPTIONS.—When acting as a
23 receiver, the following provisions shall apply with re-
24 spect to the Agency:

1 “(A) The Agency, including its franchise,
2 its capital, reserves, and surplus, and its in-
3 come, shall be exempt from all taxation imposed
4 by any State, country, municipality, or local
5 taxing authority, except that any real property
6 of the Agency shall be subject to State, terri-
7 torial, county, municipal, or local taxation to
8 the same extent according to its value as other
9 real property is taxed, except that, notwith-
10 standing the failure of any person to challenge
11 an assessment under State law of the value of
12 such property, and the tax thereon, shall be de-
13 termined as of the period for which such tax is
14 imposed.

15 “(B) No property of the Agency shall be
16 subject to levy, attachment, garnishment, fore-
17 closure, or sale without the consent of the
18 Agency, nor shall any involuntary lien attach to
19 the property of the Agency.

20 “(C) The Agency shall not be liable for any
21 amounts in the nature of penalties or fines, in-
22 cluding those arising from the failure of any
23 person to pay any real property, personal prop-
24 erty, probate, or recording tax or any recording
25 or filing fees when due.

1 “(7) WINDING UP.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), unless Congress authorizes the sale
4 of the capital stock of the limited-life enter-
5 prise, not later than 2 years after the date of
6 its organization, the Agency shall wind up the
7 affairs of the limited-life enterprise.

8 “(B) EXTENSION.—The Director may, in
9 the discretion of the Director, extend the status
10 of the limited-life enterprise for 3 additional 1-
11 year periods.

12 “(8) TRANSFER OF ASSETS AND LIABILITIES.—

13 “(A) IN GENERAL.—

14 “(i) TRANSFER OF ASSETS AND LI-
15 ABILITIES.—The Agency, as receiver, may
16 transfer any assets and liabilities of an en-
17 terprise in default, or in danger of default,
18 to the limited-life enterprise in accordance
19 with paragraph (1).

20 “(ii) SUBSEQUENT TRANSFERS.—At
21 any time after a charter is transferred to
22 a limited-life enterprise, the Agency, as re-
23 ceiver, may transfer any assets and liabil-
24 ities of such enterprise in default, or in
25 danger in default, as the Agency may, in

1 its discretion, determine to be appropriate
2 in accordance with paragraph (1).

3 “(iii) EFFECTIVE WITHOUT AP-
4 PROVAL.—The transfer of any assets or li-
5 abilities of an enterprise in default, or in
6 danger of default, transferred to a limited-
7 life enterprise shall be effective without
8 any further approval under Federal or
9 State law, assignment, or consent with re-
10 spect thereto.

11 “(9) PROCEEDS.—To the extent that available
12 proceeds from the limited-life enterprise exceed
13 amounts required to pay obligations, such proceeds
14 may be paid to the enterprise in default, or in dan-
15 ger of default.

16 “(10) POWERS OF LIMITED-LIFE ENTER-
17 PRISES.—

18 “(A) IN GENERAL.—Each limited-life en-
19 terprise created under this subsection shall have
20 all corporate powers of, and be subject to the
21 same provisions of law as, the enterprise in de-
22 fault or in danger of default to which it relates,
23 except that—

24 “(i) the Agency may—

1 “(I) remove the directors of a
2 limited-life enterprise; and

3 “(II) fix the compensation of
4 members of the board of directors and
5 senior management, as determined by
6 the Agency in its discretion, of a lim-
7 ited-life enterprise;

8 “(ii) the Agency may indemnify the
9 representatives for purposes of paragraph
10 (1)(B), and the directors, officers, employ-
11 ees, and agents of a limited-life enterprise
12 on such terms as the Agency determines to
13 be appropriate; and

14 “(iii) the board of directors of a lim-
15 ited-life enterprise—

16 “(I) shall elect a chairperson who
17 may also serve in the position of chief
18 executive officer, except that such per-
19 son shall not serve either as chair-
20 person or as chief executive officer
21 without the prior approval of the
22 Agency; and

23 “(II) may appoint a chief execu-
24 tive officer who is not also the chair-
25 person, except that such person shall

1 not serve as chief executive officer
2 without the prior approval of the
3 Agency.

4 “(B) STAY OF JUDICIAL ACTION.—Any ju-
5 dicial action to which a limited-life enterprise
6 becomes a party by virtue of its acquisition of
7 any assets or assumption of any liabilities of an
8 enterprise in default shall be stayed from fur-
9 ther proceedings for a period of up to 45 days
10 at the request of the limited-life enterprise.
11 Such period may be modified upon the consent
12 of all parties.

13 “(11) NO FEDERAL STATUS.—

14 “(A) AGENCY STATUS.—A limited-life en-
15 terprise is not an agency, establishment, or in-
16 strumentality of the United States.

17 “(B) EMPLOYEE STATUS.—Representa-
18 tives for purposes of paragraph (1)(B), interim
19 directors, directors, officers, employees, or
20 agents of a limited-life enterprise are not, solely
21 by virtue of service in any such capacity, offi-
22 cers or employees of the United States. Any
23 employee of the Agency or of any Federal in-
24 strumentality who serves at the request of the
25 Agency as a representative for purposes of

1 paragraph (1)(B), interim director, director, of-
2 ficer, employee, or agent of a limited-life enter-
3 prise shall not—

4 “(i) solely by virtue of service in any
5 such capacity lose any existing status as
6 an officer or employee of the United States
7 for purposes of title 5, United States Code,
8 or any other provision of law; or

9 “(ii) receive any salary or benefits for
10 service in any such capacity with respect to
11 a limited-life enterprise in addition to such
12 salary or benefits as are obtained through
13 employment with the Agency or such Fed-
14 eral instrumentality.

15 “(j) PROHIBITION OF CHARTER REVOCATION.—In
16 no case may a receiver appointed pursuant to this section
17 revoke, annul, or terminate the charter of an enterprise.

18 “(k) OBTAINING CREDIT BY A LIMITED-LIFE EN-
19 TERPRISE.—

20 “(1) IN GENERAL.—The limited-life enterprise
21 may obtain unsecured credit and incur unsecured
22 debt in the ordinary course of business.

23 “(2) INABILITY TO OBTAIN CREDIT.—If the
24 limited-life enterprise is unable to obtain unsecured

1 credit the Director may authorize the obtaining of
2 credit or the incurring of debt—

3 “(A) with priority over any or all adminis-
4 trative expenses;

5 “(B) secured by a lien on property that is
6 not otherwise subject to a lien; or

7 “(C) secured by a junior lien on property
8 that is subject to a lien.

9 “(3) LIMITATIONS.—

10 “(A) IN GENERAL.—The Director, after
11 notice and a hearing, may authorize the obtain-
12 ing of credit or the incurring of debt secured by
13 a senior or equal lien on property that is sub-
14 ject to a lien (other than mortgages that
15 collateralize the mortgage-backed securities
16 issued or guaranteed by the enterprise) only
17 if—

18 “(i) the limited-life enterprise is un-
19 able to obtain such credit otherwise; and

20 “(ii) there is adequate protection of
21 the interest of the holder of the lien on the
22 property which such senior or equal lien is
23 proposed to be granted.

24 “(B) BURDEN OF PROOF.—In any hearing
25 under this subsection, the Director has the bur-

1 den of proof on the issue of adequate protec-
2 tion.

3 “(4) AFFECT ON DEBTS AND LIENS.—The re-
4 versal or modification on appeal of an authorization
5 under this subsection to obtain credit or incur debt,
6 or of a grant under this section of a priority or a
7 lien, does not affect the validity of any debt so in-
8 curred, or any priority or lien so granted, to an enti-
9 ty that extended such credit in good faith, whether
10 or not such entity knew of the pendency of the ap-
11 peal, unless such authorization and the incurring of
12 such debt, or the granting of such priority or lien,
13 were stayed pending appeal.

14 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
15 The Federal Housing Enterprises Financial Safety and
16 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
17 ed—

18 (1) in section 1368 (12 U.S.C. 4618)—

19 (A) by striking “an enterprise” each place
20 that term appears and inserting “a regulated
21 entity”; and

22 (B) by striking “the enterprise” each place
23 that term appears and inserting “the regulated
24 entity”;

1 (2) in section 1369C (12 U.S.C. 4622), by
 2 striking “enterprise” each place that term appears
 3 and inserting “regulated entity”;

4 (3) in section 1369D (12 U.S.C. 4623)—

5 (A) by striking “an enterprise” each place
 6 that term appears and inserting “a regulated
 7 entity”; and

8 (B) in subsection (a)(1), by striking “An
 9 enterprise” and inserting “A regulated entity”;
 10 and

11 (4) by striking sections 1369, 1369A, and
 12 1369B (12 U.S.C. 4619, 4620, and 4621).

13 **Subtitle D—Enforcement Actions**

14 **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

15 Section 1371 of the Federal Housing Enterprises Fi-
 16 nancial Safety and Soundness Act of 1992 (12 U.S.C.
 17 4631) is amended—

18 (1) by striking subsections (a) and (b) and in-
 19 serting the following:

20 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
 21 **TICES AND VIOLATIONS.**—If, in the opinion of the Direc-
 22 tor, a regulated entity, any enterprise-affiliated party, or
 23 the Federal Home Loan Bank Finance Corporation, is en-
 24 gaging or has engaged, or the Director has reasonable
 25 cause to believe that the regulated entity, any enterprise-

1 affiliated party, or the Federal Home Loan Bank Finance
2 Corporation is about to engage, in an unsafe or unsound
3 practice in conducting the business of the regulated entity,
4 or is violating or has violated, or the Director has reason-
5 able cause to believe that the regulated entity, any enter-
6 prise-affiliated party, or the Federal Home Loan Bank Fi-
7 nance Corporation is about to violate, a law, rule, regula-
8 tion, or order, or any condition imposed in writing by the
9 Director in connection with the granting of any applica-
10 tion or other request by the regulated entity or any written
11 agreement entered into with the Director, the Director
12 may issue and serve upon the regulated entity, enterprise-
13 affiliated party, or the Federal Home Loan Bank Finance
14 Corporation a notice of charges in respect thereof.

15 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
16 regulated entity receives, in its most recent report of ex-
17 amination, a less-than-satisfactory rating for credit risk,
18 market risk, operations, or corporate governance, the Di-
19 rector may (if the deficiency is not corrected) deem the
20 regulated entity to be engaging in an unsafe or unsound
21 practice for purposes of subsection (a).”;

22 (2) in subsection (c)(2)—

23 (A) by striking “or director” and inserting
24 “director, or enterprise-affiliated party”; and

1 (B) by inserting “or enterprise-affiliated
2 party” before “consents”;

3 (3) in subsections (c), (d), and (e)—

4 (A) by striking “the enterprise” each place
5 that term appears and inserting “the regulated
6 entity”; and

7 (B) by striking “an enterprise” each place
8 that term appears and inserting “a regulated
9 entity”;

10 (4) in subsection (d)—

11 (A) by striking “or director” and inserting
12 “director, or enterprise-affiliated party”; and

13 (B) in paragraph (1), by striking “or a di-
14 rector” and inserting “, director, or enterprise-
15 affiliated party”;

16 (5) in each of subsections (d)(7) and (e), by in-
17 serting “or enterprise-affiliated party” after “enter-
18 prise” each place that term appears; and

19 (6) in subsection (f), by striking “or director”
20 and inserting “director, or enterprise-affiliated
21 party”.

22 **SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

23 Section 1372 of the Federal Housing Enterprises Fi-
24 nancial Safety and Soundness Act of 1992 (12 U.S.C.
25 4632) is amended—

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

3 “(a) GROUNDS FOR ISSUANCE.—

4 “(1) IN GENERAL.—If the Director determines
5 that the actions specified in the notice of charges
6 served upon a regulated entity, any enterprise-affili-
7 ated party, or the Federal Home Loan Bank Fi-
8 nance Corporation, pursuant to section 1371(a), or
9 the continuation thereof, is likely to cause insolvency
10 or significant dissipation of assets or earnings of
11 that entity, or is likely to weaken the condition of
12 that entity prior to the completion of the pro-
13 ceedings conducted pursuant to sections 1371 and
14 1373, the Director may—

15 “(A) issue a temporary order requiring
16 that entity to cease and desist from any such
17 violation or practice; and

18 “(B) require that entity to take affirmative
19 action to prevent or remedy such insolvency,
20 dissipation, condition, or prejudice pending
21 completion of such proceedings.

22 “(2) ADDITIONAL REQUIREMENTS.—An order
23 issued under paragraph (1) may include any require-
24 ment authorized under subsection 1371(d).”;

25 (2) in subsection (b)—

1 (A) by striking “or director” and inserting
2 “director, or enterprise-affiliated party”; and

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

5 (3) in subsection (e), by striking “enterprise”
6 and inserting “regulated entity”;

7 (4) in subsection (d)—

8 (A) by striking “or director” and inserting
9 “director, or enterprise-affiliated party”; and

10 (B) by striking “An enterprise” and insert-
11 ing “A regulated entity”; and

12 (5) by striking subsection (e) and inserting the
13 following:

14 “(e) ENFORCEMENT.—If a temporary cease-and-de-
15 sist order is issued under subsection (a), the Director may
16 apply to the United States District Court for the District
17 of Columbia, or the United States district court within the
18 jurisdiction of which the headquarters of the regulated en-
19 tity is located, for an injunction to enforce such order,
20 and, if the court determines that the notice of charges
21 issued under section 1371(a) are accurate, it shall be the
22 duty of the court to issue such injunction.”.

1 **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

2 (a) IN GENERAL.—Subtitle C of part 1 of the Fed-
3 eral Housing Enterprises Financial Safety and Soundness
4 Act of 1992 (12 U.S.C. 4631 et seq.) is amended—

5 (1) by redesignating sections 1377 through
6 1379B (12 U.S.C. 4637–4641) as sections 1379
7 through 1379D, respectively; and

8 (2) by inserting after section 1376 (12 U.S.C.
9 4636) the following:

10 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

11 **“(a) AUTHORITY TO ISSUE ORDER.—**

12 **“(1) IN GENERAL.—**The Director may serve
13 upon a party described in paragraph (2), or any offi-
14 cer or director of the Federal Home Loan Bank Fi-
15 nance Corporation a written notice of the intention
16 of the Director to suspend or remove such party
17 from office, or prohibit any further participation by
18 such party, in any manner, in the conduct of the af-
19 fairs of the regulated entity.

20 **“(2) APPLICABILITY.—**A party described in this
21 paragraph is an enterprise-affiliated party or any of-
22 ficer or director of the Federal Home Loan Bank
23 Finance Corporation, if the Director determines
24 that—

25 **“(A) that party, officer, or director has, di-**
26 **rectly or indirectly—**

1 “(i) violated—

2 “(I) any law or regulation;

3 “(II) any cease-and-desist order
4 which has become final;

5 “(III) any condition imposed in
6 writing by the Director in connection
7 with the grant of any application or
8 other request by such regulated enti-
9 ty; or

10 “(IV) any written agreement be-
11 tween such regulated entity and the
12 Director;

13 “(ii) engaged or participated in any
14 unsafe or unsound practice in connection
15 with any regulated entity; or

16 “(iii) committed or engaged in any
17 act, omission, or practice which constitutes
18 a breach of such party’s fiduciary duty;

19 “(B) by reason of the violation, practice, or
20 breach described in subparagraph (A)—

21 “(i) such regulated entity has suffered
22 or will probably suffer financial loss or
23 other damage; or

24 “(ii) such party has received financial
25 gain or other benefit; and

1 “(C) the violation, practice, or breach de-
2 scribed in subparagraph (A)—

3 “(i) involves personal dishonesty on
4 the part of such party; or

5 “(ii) demonstrates willful or con-
6 tinuing disregard by such party for the
7 safety or soundness of such regulated enti-
8 ty.

9 “(b) SUSPENSION ORDER.—

10 “(1) SUSPENSION OR PROHIBITION AUTHOR-
11 ITY.—If the Director serves written notice under
12 subsection (a) upon a party subject to that sub-
13 section (a), the Director may, by order, suspend or
14 remove such party from office, or prohibit such
15 party from further participation in any manner in
16 the conduct of the affairs of the regulated entity, if
17 the Director—

18 “(A) determines that such action is nec-
19 essary for the protection of the regulated entity;
20 and

21 “(B) serves such party with written notice
22 of the order.

23 “(2) EFFECTIVE PERIOD.—Any order issued
24 under this subsection—

1 “(A) shall become effective upon service;
2 and

3 “(B) unless a court issues a stay of such
4 order under subsection (g), shall remain in ef-
5 fect and enforceable until—

6 “(i) the date on which the Director
7 dismisses the charges contained in the no-
8 tice served under subsection (a) with re-
9 spect to such party; or

10 “(ii) the effective date of an order
11 issued under subsection (b).

12 “(3) COPY OF ORDER.—If the Director issues
13 an order under subsection (b) to any party, the Di-
14 rector shall serve a copy of such order on any regu-
15 lated entity with which such party is affiliated at the
16 time such order is issued.

17 “(c) NOTICE, HEARING, AND ORDER.—

18 “(1) NOTICE.—A notice under subsection (a) of
19 the intention of the Director to issue an order under
20 this section shall contain a statement of the facts
21 constituting grounds for such action, and shall fix a
22 time and place at which a hearing will be held on
23 such action.

24 “(2) TIMING OF HEARING.—A hearing shall be
25 fixed for a date not earlier than 30 days, nor later

1 than 60 days, after the date of service of notice
2 under subsection (a), unless an earlier or a later
3 date is set by the Director at the request of—

4 “(A) the party receiving such notice, and
5 good cause is shown; or

6 “(B) the Attorney General of the United
7 States.

8 “(3) CONSENT.—Unless the party that is the
9 subject of a notice delivered under subsection (a) ap-
10 pears at the hearing in person or by a duly author-
11 ized representative, such party shall be deemed to
12 have consented to the issuance of an order under
13 this section.

14 “(4) ISSUANCE OF ORDER OF SUSPENSION.—
15 The Director may issue an order under this section,
16 as the Director may deem appropriate, if—

17 “(A) a party is deemed to have consented
18 to the issuance of an order under paragraph
19 (3); or

20 “(B) upon the record made at the hearing,
21 the Director finds that any of the grounds spec-
22 ified in the notice have been established.

23 “(5) EFFECTIVENESS OF ORDER.—Any order
24 issued under paragraph (4) shall become effective at
25 the expiration of 30 days after the date of service

1 upon the relevant regulated entity and party (except
2 in the case of an order issued upon consent under
3 paragraph (3), which shall become effective at the
4 time specified therein). Such order shall remain ef-
5 fective and enforceable except to such extent as it is
6 stayed, modified, terminated, or set aside by action
7 of the Director or a reviewing court.

8 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-
9 TIES.—Any person subject to an order issued under this
10 section shall not—

11 “(1) participate in any manner in the conduct
12 of the affairs of any regulated entity or the Federal
13 Home Loan Bank Finance Corporation;

14 “(2) solicit, procure, transfer, attempt to trans-
15 fer, vote, or attempt to vote any proxy, consent, or
16 authorization with respect to any voting rights in
17 any regulated entity;

18 “(3) violate any voting agreement previously
19 approved by the Director; or

20 “(4) vote for a director, or serve or act as an
21 enterprise-affiliated party of a regulated entity or as
22 an officer or director of the Federal Home Loan
23 Bank Finance Corporation.

24 “(e) INDUSTRY-WIDE PROHIBITION.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), any person who, pursuant to an order
3 issued under this section, has been removed or sus-
4 pended from office in a regulated entity or the Fed-
5 eral Home Loan Bank Finance Corporation, or pro-
6 hibited from participating in the conduct of the af-
7 fairs of a regulated entity or such Corporation, may
8 not, while such order is in effect, continue or com-
9 mence to hold any office in, or participate in any
10 manner in the conduct of the affairs of, any regu-
11 lated entity or such Corporation.

12 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
13 TEN CONSENT.—If, on or after the date on which an
14 order is issued under this section which removes or
15 suspends from office any party, or prohibits such
16 party from participating in the conduct of the affairs
17 of a regulated entity or the Federal Home Loan
18 Bank Finance Corporation, such party receives the
19 written consent of the Director, the order shall, to
20 the extent of such consent, cease to apply to such
21 party with respect to the regulated entity or such
22 Corporation described in the written consent. Any
23 such consent shall be publicly disclosed.

24 “(3) VIOLATION OF PARAGRAPH (1) TREATED
25 AS VIOLATION OF ORDER.—Any violation of para-

1 graph (1) by any person who is subject to an order
2 issued under subsection (h) shall be treated as a vio-
3 lation of the order.

4 “(f) APPLICABILITY.—This section shall only apply
5 to a person who is an individual, unless the Director spe-
6 cifically finds that it should apply to a corporation, firm,
7 or other business entity.

8 “(g) STAY OF SUSPENSION AND PROHIBITION OF
9 ENTERPRISE-AFFILIATED PARTY.—Not later than 10
10 days after the date on which any enterprise-affiliated
11 party has been suspended from office or prohibited from
12 participation in the conduct of the affairs of a regulated
13 entity under this section, such party may apply to the
14 United States District Court for the District of Columbia,
15 or the United States district court for the judicial district
16 in which the headquarters of the regulated entity is lo-
17 cated, for a stay of such suspension or prohibition pending
18 the completion of the administrative proceedings pursuant
19 to subsection (c). The court shall have jurisdiction to stay
20 such suspension or prohibition.

21 “(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AF-
22 FILIATED PARTY CHARGED WITH FELONY.—

23 “(1) SUSPENSION OR PROHIBITION.—

24 “(A) IN GENERAL.—Whenever any enter-
25 prise-affiliated party is charged in any informa-

1 tion, indictment, or complaint, with the commis-
2 sion of or participation in a crime involving dis-
3 honesty or breach of trust which is punishable
4 by imprisonment for a term exceeding 1 year
5 under Federal or State law, the Director may,
6 if continued service or participation by such
7 party may pose a threat to the regulated entity
8 or impair public confidence in the regulated en-
9 tity, by written notice served upon such party,
10 suspend such party from office or prohibit such
11 party from further participation in any manner
12 in the conduct of the affairs of any regulated
13 entity.

14 “(B) PROVISIONS APPLICABLE TO NO-
15 TICE.—

16 “(i) COPY.—A copy of any notice
17 under subparagraph (A) shall be served
18 upon the relevant 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 subparagraph (A) 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 an enterprise-affiliated party in connec-
5 tion 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 removing such party from office or pro-
13 hibiting such party from further participation
14 in any manner in the conduct of the affairs of
15 the regulated entity without the prior written
16 consent of the Director.

17 “(B) PROVISIONS APPLICABLE TO
18 ORDER.—

19 “(i) COPY.—A copy of any order
20 under subparagraph (A) shall be served
21 upon the relevant regulated entity, at
22 which time the enterprise-affiliated party
23 who is subject to the order (if a director or
24 an officer) shall cease to be a director or
25 officer of such regulated entity.

1 “(ii) EFFECT OF ACQUITTAL.—A find-
2 ing of not guilty or other disposition of the
3 charge shall not preclude the Director from
4 instituting proceedings after such finding
5 or disposition to remove a party from of-
6 fice or to prohibit further participation in
7 the affairs of a regulated entity pursuant
8 to subsection (a), (d), or (e).

9 “(iii) EFFECTIVE PERIOD.—Unless
10 terminated by the Director, any notice of
11 suspension or order of removal issued
12 under this subsection shall remain effective
13 and outstanding until the completion of
14 any hearing or appeal authorized under
15 paragraph (4).

16 “(3) AUTHORITY OF REMAINING BOARD MEM-
17 BERS.—

18 “(A) IN GENERAL.—If at any time, be-
19 cause of the suspension of 1 or more directors
20 pursuant to this section, there shall be on the
21 board of directors of a regulated entity less
22 than a quorum of directors not so suspended,
23 all powers and functions vested in or exercisable
24 by such board shall vest in and be exercisable
25 by the director or directors on the board not so

1 suspended, until such time as there shall be a
2 quorum of the board of directors.

3 “(B) APPOINTMENT OF TEMPORARY DI-
4 RECTORS.—If all of the directors of a regulated
5 entity are suspended pursuant to this section,
6 the Director shall appoint persons to serve tem-
7 porarily as directors pending the termination of
8 such suspensions, or until such time as those
9 who have been suspended cease to be directors
10 of the regulated entity and their respective suc-
11 cessors take office.

12 “(4) HEARING REGARDING CONTINUED PAR-
13 TICIPATION.—

14 “(A) IN GENERAL.—Not later than 30
15 days after the date of service of any notice of
16 suspension or order of removal issued pursuant
17 to paragraph (1) or (2), the enterprise-affiliated
18 party may request in writing an opportunity to
19 appear before the Director to show that the
20 continued service or participation in the con-
21 duct of the affairs of the regulated entity by
22 such party does not, or is not likely to, pose a
23 threat to the interests of the regulated entity,
24 or threaten to impair public confidence in the
25 regulated entity.

1 “(B) TIMING AND FORM OF HEARING.—
2 Upon receipt of a request for a hearing under
3 subparagraph (A), the Director shall fix a time
4 (not later than 30 days after the date of receipt
5 of such request, unless extended at the request
6 of such party) and place at which the enter-
7 prise-affiliated party may appear, personally or
8 through counsel, before the Director or 1 or
9 more designated employees of the Director to
10 submit written materials (or, at the discretion
11 of the Director, oral testimony) and oral argu-
12 ment.

13 “(C) DETERMINATION.—Not later than 60
14 days after the date of a hearing under subpara-
15 graph (B), the Director shall notify the enter-
16 prise-affiliated party whether the suspension or
17 prohibition from participation in any manner in
18 the conduct of the affairs of the regulated enti-
19 ty will be continued, terminated, or otherwise
20 modified, or whether the order removing such
21 party from office or prohibiting such party from
22 further participation in any manner in the con-
23 duct of the affairs of the regulated entity will
24 be rescinded or otherwise modified. Such notifi-

1 cation shall contain a statement of the basis for
2 any adverse decision of the Director.

3 “(5) RULES.—The Director is authorized to
4 prescribe such rules as may be necessary to carry
5 out this subsection.

6 “(i) HEARINGS AND JUDICIAL REVIEW.—

7 “(1) VENUE AND PROCEDURE.—

8 “(A) IN GENERAL.—Any hearing under
9 this section shall be held in the District of Co-
10 lumbia or in the Federal judicial district in
11 which the headquarters of the regulated entity
12 is located, unless the party afforded the hearing
13 consents to another place, and shall be con-
14 ducted in accordance with the provisions of
15 chapter 5 of title 5, United States Code.

16 “(B) DECISION.—After any hearing under
17 this section, and not later than 90 days after
18 the Director has notified the parties that the
19 case has been submitted to it for final decision,
20 the Director shall render its decision (which
21 shall include findings of fact upon which the de-
22 cision of the Director is predicated) and issue
23 and serve upon each party to the proceeding an
24 order or orders consistent with the provisions of
25 this section.

1 “(C) JUDICIAL REVIEW.—Judicial review
2 of any order issued under subparagraph (B)
3 shall be exclusively as provided in this sub-
4 section.

5 “(D) MODIFICATION OF ORDER.—

6 “(i) IN GENERAL.—Unless a petition
7 for review is timely filed in a court of ap-
8 peals of the United States, as provided in
9 paragraph (2), and thereafter until the
10 record in the proceeding has been filed
11 with the court, the Director may at any
12 time, upon such notice and in such manner
13 as it shall deem proper, modify, terminate,
14 or set aside any such order.

15 “(ii) LIMITATION.—Upon the filing of
16 the record, the Director may modify, ter-
17 minate, or set aside any order under this
18 subsection only with permission of the
19 court.

20 “(2) REVIEW OF ORDER.—

21 “(A) IN GENERAL.—Any party to any pro-
22 ceeding under paragraph (1) may obtain a re-
23 view of any order served pursuant to paragraph
24 (1) (other than an order issued with the con-
25 sent of the regulated entity or the enterprise-af-

1 filiated party, or an order issued under sub-
2 section (h)) by the filing in the United States
3 Court of Appeals for the District of Columbia
4 Circuit, or the Court of Appeals of the United
5 States for the circuit in which the headquarters
6 of the relevant regulated entity is located, with-
7 in 30 days after the date of service of such
8 order, a written petition praying that the order
9 of the Director be modified, terminated, or set
10 aside.

11 “(B) FORWARDING OF PETITION; FILING
12 OF RECORD.—A copy of any petition filed under
13 subparagraph (A) shall be transmitted by the
14 clerk of the court to the Director, and the Di-
15 rector shall file in the court the record in the
16 proceeding, as provided in section 2112 of title
17 28, United States Code.

18 “(C) JURISDICTION.—Upon the filing of a
19 petition under subparagraph (B), the court
20 shall have jurisdiction, which upon the filing of
21 the record shall (except as provided under para-
22 graph (1)(D)(ii)) be exclusive, to affirm, mod-
23 ify, terminate, or set aside, in whole or in part,
24 the order of the Director.

1 “(D) FINALITY OF DECREE.—The judg-
2 ment and decree of the court under this para-
3 graph shall be final, except that it shall be sub-
4 ject to review by the Supreme Court of the
5 United States, upon certiorari, as provided in
6 section 1254 of title 28, United States Code.

7 “(3) PROCEEDINGS NOT TREATED AS STAY.—
8 The commencement of proceedings for judicial re-
9 view under paragraph (2) shall not, unless specifi-
10 cally ordered by the court, operate as a stay of any
11 order issued by the Director.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) 1992 ACT.—Section 1317(f) of the Federal
14 Housing Enterprises Financial Safety and Sound-
15 ness Act of 1992 (12 U.S.C. 4517(f)) is amended by
16 striking “section 1379B” and inserting “section
17 1379D”.

18 (2) FANNIE MAE CHARTER ACT.—Section
19 308(b) of the Federal National Mortgage Associa-
20 tion Charter Act (12 U.S.C. 1723(b)) is amended in
21 the second sentence, by striking “The” and inserting
22 “Except to the extent that action under section
23 1377 of the Federal Housing Enterprises Financial
24 Safety and Soundness Act of 1992 temporarily re-
25 sults in a lesser number, the”.

1 (3) FREDDIE MAC CHARTER ACT.—Section
2 303(a)(2)(A) of the Federal Home Loan Mortgage
3 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is
4 amended, in the second sentence, by striking “The”
5 and inserting “Except to the extent action under
6 section 1377 of the Federal Housing Enterprises Fi-
7 nancial Safety and Soundness Act of 1992 tempo-
8 rarily results in a lesser number, the”.

9 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

10 (a) IN GENERAL.—Section 1375 of the Federal
11 Housing Enterprises Financial Safety and Soundness Act
12 of 1992 (12 U.S.C. 4635) is amended—

13 (1) by striking subsection (a) and inserting the
14 following:

15 “(a) ENFORCEMENT.—The Director may, in the dis-
16 cretion of the Director, apply to the United States District
17 Court for the District of Columbia, or the United States
18 district court within the jurisdiction of which the head-
19 quarters of the regulated entity is located, for the enforce-
20 ment of any effective and outstanding notice, order, or
21 subpoena issued under this title, or request that the Attor-
22 ney General of the United States bring such an action.
23 Such court shall have jurisdiction and power to order and
24 require compliance with such notice, order, or subpoena.”;
25 and

1 (2) in subsection (b), by striking “or 1376” and
2 inserting “1376, or 1377”.

3 (b) CONFORMING AMENDMENT.—Section 1379B of
4 the Federal Housing Enterprises Financial Safety and
5 Soundness Act of 1992 (12 U.S.C. 4641) is amended by
6 striking subsection (c) and redesignating subsection (d) as
7 subsection (c).

8 **SEC. 155. CIVIL MONEY PENALTIES.**

9 Section 1376 of the Federal Housing Enterprises Fi-
10 nancial Safety and Soundness Act of 1992 (12 U.S.C.
11 4636) is amended—

12 (1) in subsection (a), in the matter preceding
13 paragraph (1), by striking “Any enterprise, or any
14 executive officer or director of any enterprise” and
15 inserting “Any regulated entity, or any executive of-
16 ficer of a regulated entity or any enterprise-affiliated
17 party,”; and

18 (2) by striking subsection (b) and inserting the
19 following:

20 “(b) AMOUNT OF PENALTY.—

21 “(1) FIRST TIER.—A regulated entity or enter-
22 prise-affiliated party shall forfeit and pay a civil pen-
23 alty of not more than \$10,000 for each day during
24 which a violation continues, if such regulated entity
25 or party—

1 “(A) violates any provision of this title, the
2 authorizing statutes, or any order, condition,
3 rule, or regulation under this title or any au-
4 thorizing statute;

5 “(B) violates any final or temporary order
6 or notice issued pursuant to this title;

7 “(C) violates any condition imposed in
8 writing by the Director in connection with the
9 grant of any application or other request by
10 such regulated entity;

11 “(D) violates any written agreement be-
12 tween the regulated entity and the Director; or

13 “(E) engages in any conduct that the Di-
14 rector determines to be an unsafe or unsound
15 practice.

16 “(2) SECOND TIER.—Notwithstanding para-
17 graph (1), a regulated entity or enterprise-affiliated
18 party shall forfeit and pay a civil penalty of not
19 more than \$50,000 for each day during which a vio-
20 lation, practice, or breach continues, if—

21 “(A) the regulated entity or enterprise-af-
22 filiated party, respectively—

23 “(i) commits any violation described
24 in any subparagraph of paragraph (1);

1 “(ii) recklessly engages in an unsafe
2 or unsound practice in conducting the af-
3 fairs of the 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 the regulated entity;
10 or

11 “(iii) results in pecuniary gain or
12 other benefit to such party.

13 “(3) THIRD TIER.—Notwithstanding para-
14 graphs (1) and (2), any regulated entity or enter-
15 prise-affiliated party shall forfeit and pay a civil pen-
16 alty in an amount not to exceed the applicable max-
17 imum amount determined under paragraph (4) for
18 each day during which such violation, practice, or
19 breach continues, if such regulated entity or enter-
20 prise-affiliated party—

21 “(A) knowingly—

22 “(i) commits any violation described
23 in any subparagraph of paragraph (1);

1 “(ii) engages in any unsafe or un-
2 sound practice in conducting the affairs of
3 the regulated entity; or

4 “(iii) breaches any fiduciary duty; and

5 “(B) knowingly or recklessly causes a sub-
6 stantial loss to the 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 “(4) MAXIMUM AMOUNTS OF PENALTIES FOR
11 ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—
12 The maximum daily amount of any civil penalty
13 which may be assessed pursuant to paragraph (3)
14 for any violation, practice, or breach described in
15 paragraph (3) is—

16 “(A) in the case of any enterprise-affiliated
17 party, an amount not to exceed \$2,000,000;
18 and

19 “(B) in the case of any regulated entity,
20 \$2,000,000.”;

21 (3) in subsection (c), by striking “enterprise”
22 each place that term appears and inserting “regu-
23 lated entity”;

24 (4) in subsection (d)—

1 (A) by striking “or director” each place
2 such term appears and inserting “director, or
3 enterprise-affiliated party”;

4 (B) by striking “an enterprise” and insert-
5 ing “a regulated entity”;

6 (C) by striking “the enterprise” and in-
7 serting “the regulated entity”;

8 (D) by striking “request the Attorney Gen-
9 eral of the United States to”;

10 (E) by inserting “, or the United States
11 district court within the jurisdiction of which
12 the headquarters of the regulated entity is lo-
13 cated,” after “District of Columbia”;

14 (F) by striking “, or may, under the direc-
15 tion and control of the Attorney General of the
16 United States, bring such an action”; and

17 (G) by striking “and section 1374”; and

18 (5) in subsection (g), by striking “An enter-
19 prise” and inserting “A regulated entity”.

20 **SEC. 156. CRIMINAL PENALTY.**

21 (a) IN GENERAL.—Subtitle C of title XIII of the
22 Federal Housing Enterprises Financial Safety and Sound-
23 ness Act of 1992 (12 U.S.C. 4631 et seq.), as amended
24 by this Act, is amended by adding at the end the following:

1 **“SEC. 1378. CRIMINAL PENALTY.**

2 “Whoever, being subject to an order in effect under
3 section 1377, without the prior written approval of the Di-
4 rector, knowingly participates, directly or indirectly, in any
5 manner (including by engaging in an activity specifically
6 prohibited in such an order) in the conduct of the affairs
7 of any regulated entity shall, notwithstanding section
8 3571 of title 18, be fined not more than \$1,000,000, im-
9 prisoned for not more than 5 years, or both.”.

10 (b) **TECHNICAL AND CONFORMING AMENDMENTS.—**

11 The Federal Housing Enterprises Financial Safety and
12 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
13 ed—

14 (1) in section 1379 (as so designated by this
15 Act)—

16 (A) by striking “an enterprise” and insert-
17 ing “a regulated entity”; and

18 (B) by striking “the enterprise” and in-
19 serting “the regulated entity”;

20 (2) in section 1379A (as so designated by this
21 Act), by striking “an enterprise” and inserting “a
22 regulated entity”;

23 (3) in section 1379B(c) (as so designated by
24 this Act), by striking “enterprise” and inserting
25 “regulated entity”; and

1 (4) in section 1379D (as so designated by this
2 Act), by striking “enterprise” and inserting “regu-
3 lated entity”.

4 **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

5 Section 1379 of the Federal Housing Enterprises Fi-
6 nancial Safety and Soundness Act of 1992 (12 U.S.C.
7 4637), as so designated by this Act, is amended—

8 (1) by striking “2-year” and inserting “6-year”;
9 and

10 (2) by inserting “or an enterprise-affiliated
11 party” after “enterprise” each place that term ap-
12 pears.

13 **Subtitle E—Other Reporting**
14 **Regarding Regulated Entities**

15 **SEC. 161. REPORTING REGARDING REGULATED ENTITIES.**

16 Part 3 of subtitle A of the Federal Housing Enter-
17 prises Financial Safety and Soundness Act of 1992 is
18 amended—

19 (1) by striking sections 1351, 1352, and 1353
20 (Public Law 102–550; 106 Stat. 3969), except that
21 no provisions of law amended by any such section
22 repealed shall be affected by such repeal; and

23 (2) by striking sections 1354, 1355, and 1356
24 (12 U.S.C. 4601–3) and inserting the following:

1 **“SEC. 1351. REPORTS REGARDING ISSUES AND ACTIVITIES**
2 **OF REGULATED ENTITIES.**

3 “(a) INSURED DEPOSITORY INSTITUTION HOLDINGS
4 OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURI-
5 TIES.—Not later than 2 years after the date of enactment
6 of the Federal Housing Enterprise Regulatory Reform Act
7 of 2005, the Director, the Secretary of the Treasury, the
8 Board of Governors of the Federal Reserve System, the
9 Board of Directors of the Federal Deposit Insurance Cor-
10 poration, and the National Credit Union Administration
11 Board shall jointly submit a report to the Congress re-
12 garding—

13 “(1) the extent to which obligations issued or
14 guaranteed by the regulated entities (including mort-
15 gage-backed securities) are held by federally insured
16 depository institutions, including such extent by type
17 of institution and such extent relative to the capital
18 of the institution;

19 “(2) the extent to which the unlimited holdings
20 by federally insured depository institutions of the ob-
21 ligations of the enterprises could produce systemic
22 risk issues, particularly for the safety and soundness
23 of the banking system in the United States, in the
24 event of default or failure by a regulated entity; and

25 “(3) the effects on the enterprises, the banking
26 industry, and mortgage markets, if prudent limits on

1 the holdings of the obligations of a regulated entity
2 were placed on federally insured depository institu-
3 tions.

4 “(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT,
5 AND MISSION.—

6 “(1) IN GENERAL.—Not later than 2 years
7 after the date of enactment of the Federal Housing
8 Enterprise Regulatory Reform Act of 2005, the Di-
9 rector shall submit a report to the Congress—

10 “(A) describing the holdings of the regu-
11 lated entities in retained mortgages and repur-
12 chased mortgage-backed securities and the use
13 of derivatives for hedging purposes;

14 “(B) describing the extent of such holdings
15 relative to other assets and the risk implications
16 of such holdings;

17 “(C) containing an analysis of such hold-
18 ings for safety and soundness or mission com-
19 pliance purposes; and

20 “(D) containing an assessment of whether
21 such holdings and other assets of the regulated
22 entities fulfill the mission purposes of the regu-
23 lated entities under the Federal National Mort-
24 gage Association Charter Act, the Federal

1 Home Loan Mortgage Corporation Act, and the
2 Federal Home Loan Bank Act.

3 “(2) CONSULTATION.—The Director shall con-
4 sult with the Comptroller General of the United
5 States in preparing the report under this subsection
6 and in conducting any research, analyses, and as-
7 sessments for the report.

8 “(c) DEBT ISSUANCES.—Not later than 2 years after
9 the date of enactment of the Federal Housing Enterprise
10 Regulatory Reform Act of 2005, the Director shall submit
11 a report to Congress regarding—

12 “(1) the extent of outstanding obligations of the
13 regulated entities and the rate of growth of such ob-
14 ligations; and

15 “(2) an analysis as to the appropriate level of
16 debt issuances of a regulated entity to operate in a
17 safe and sound manner, comply with its mission,
18 and maintain a certain credit rating or debt rating.

19 “(d) RISK-BASED CAPITAL LEVELS.—

20 “(1) IN GENERAL.—The Director shall submit
21 a report to the Congress, at the end of each fiscal
22 quarter, regarding—

23 “(A) the risk-based capital levels for the
24 enterprises under section 1361, including a de-
25 scription of the risk-based capital test under

1 that section and any assumptions of the Direc-
 2 tor and factors used by the Director in estab-
 3 lishing the test; and

4 “(B) the minimum and critical capital lev-
 5 els for the enterprises pursuant to sections
 6 1362 and 1363, respectively.

7 “(2) TIMING.—Each report under this sub-
 8 section shall be submitted not later than 60 days
 9 after the end of each fiscal quarter.

10 “(e) RESOURCES AND ALLOCATIONS.—The Comp-
 11 troller General of the United States shall submit a report
 12 to Congress annually, on a fiscal year basis, regarding—

13 “(1) the allocation of resources of the Agency
 14 by the Director; and

15 “(2) the level of assessments collected by the
 16 Director for the operation of the Agency.

17 “(f) RECOMMENDATIONS.—Each report submitted
 18 pursuant to this section shall include specific recommenda-
 19 tions of appropriate policies, limitations, regulations, legis-
 20 lation, or other actions to deal appropriately and effec-
 21 tively with the issues addressed by such report.”.

22 **Subtitle F—General Provisions**

23 **SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.**

24 (a) AMENDMENTS TO 1992 ACT.—The Federal
 25 Housing Enterprises Financial Safety and Soundness Act

1 of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,
2 is amended—

3 (1) in section 1315 (12 U.S.C. 4515)—

4 (A) in subsection (a)—

5 (i) by striking “(a) OFFICE PER-
6 SONNEL.—The” and inserting “(a) IN
7 GENERAL.—Subject to title III of the Fed-
8 eral Enterprise Regulatory Reform Act of
9 2005, the”; and

10 (ii) by striking “the Office” each place
11 that term appears and inserting “the
12 Agency”;

13 (B) in subsection (c), by striking “the Of-
14 fice” and inserting “the Agency”;

15 (C) in subsection (e), by striking “the Of-
16 fice” and inserting “the Agency”;

17 (D) by striking subsection (d) and redesign-
18 ating subsection (e) as subsection (d); and

19 (E) by striking subsection (f);

20 (2) in section 1319A (12 U.S.C. 4520)—

21 (A) by striking “(a) IN GENERAL.—”; and

22 (B) by striking subsection (b);

23 (3) in section 1364(e) (12 U.S.C. 4614(e)), by
24 striking the last sentence;

1 (4) by striking section 1383 (12 U.S.C. 1451
2 note);

3 (5) in each of sections 1319D, 1319E, and
4 1319F (12 U.S.C. 4523, 4524, 4525) by striking
5 “the Office” each place that term appears and in-
6 serting “the Agency”; and

7 (6) in each of sections 1319B and 1369(a)(3)
8 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-
9 mittee on Banking, Finance and Urban Affairs”
10 each place such term appears and inserting “Com-
11 mittee on Financial Services”.

12 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
13 The Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1716 et seq.) is amended—

15 (1) in each of sections 303(c)(2) (12 U.S.C.
16 1718(c)(2)), 309(d)(3)(B) (12 U.S.C.
17 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.
18 1723a(k)(1)), by striking “Director of the Office of
19 Federal Housing Enterprise Oversight of the De-
20 partment of Housing and Urban Development” each
21 place that term appears, and inserting “Director of
22 the Federal Housing Enterprise Regulatory Agen-
23 cy”;

24 (2) in section 309—

1 (A) in subsection (m) (12 U.S.C.
2 1723a(m))—

3 (i) in paragraph (1), by striking “to
4 the Secretary, in a form determined by the
5 Secretary” and inserting “to the Director
6 of the Federal Housing Enterprise Regu-
7 latory Agency, in a form determined by the
8 Director”; and

9 (ii) in paragraph (2), by striking “to
10 the Secretary, in a form determined by the
11 Secretary” and inserting “to the Director
12 of the Federal Housing Enterprise Regu-
13 latory Agency, in a form determined by the
14 Director”;

15 (B) in subsection (n) (12 U.S.C.
16 1723a(n))—

17 (i) in paragraph (1), by striking “and
18 the Secretary” and inserting “and the Di-
19 rector of the Federal Housing Enterprise
20 Regulatory Agency”; and

21 (ii) in paragraph (2), by striking
22 “Secretary” each place that term appears
23 and inserting “Director of the Federal
24 Housing Enterprise Regulatory Agency”;
25 and

1 (C) in paragraph (3)(B), by striking “Sec-
2 retary” and inserting “Director of the Federal
3 Housing Enterprise Regulatory Agency”.

4 (c) AMENDMENTS TO FREDDIE MAC ACT.—The Fed-
5 eral Home Loan Mortgage Corporation Act (12 U.S.C.
6 1451 et seq.) is amended—

7 (1) in each of sections 303(b)(2) (12 U.S.C.
8 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and
9 section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-
10 ing “Director of the Office of Federal Housing En-
11 terprise Oversight of the Department of Housing
12 and Urban Development” each place that term ap-
13 pears, and inserting “Director of the Federal Hous-
14 ing Enterprise Regulatory Agency”;

15 (2) in section 306 (12 U.S.C. 1455)—

16 (A) in subsection (c)(2), by inserting “the”
17 after “Secretary of”;

18 (B) in subsection (i)—

19 (i) by striking “section 1316(c)” and
20 inserting “section 306(c)”; and

21 (ii) by striking “section 106” and in-
22 serting “section 1316”; and

23 (C) in subsection (j), by striking “of sub-
24 stantially” and inserting “or substantially”; and

25 (3) in section 307 (12 U.S.C. 1456)—

1 (A) in subsection (e)—

2 (i) in paragraph (1), by striking “to
3 the Secretary, in a form determined by the
4 Secretary” and inserting “to the Director
5 of the Federal Housing Enterprise Regu-
6 latory Agency, in a form determined by the
7 Director”; and

8 (ii) in paragraph (2), by striking “to
9 the Secretary, in a form determined by the
10 Secretary” and inserting “to the Director
11 of the Federal Housing Enterprise Regu-
12 latory Agency, in a form determined by the
13 Director”; and

14 (B) in subsection (f)—

15 (i) in paragraph (1), by striking “and
16 the Secretary” and inserting “and the Di-
17 rector of the Federal Housing Enterprise
18 Regulatory Agency”;

19 (ii) in paragraph (2), by striking “the
20 Secretary” each place that term appears
21 and inserting “the Director of the Federal
22 Housing Enterprise Regulatory Agency”;
23 and

24 (iii) in paragraph (3)(B), by striking
25 “Secretary” and inserting “Director of the

1 Federal Housing Enterprise Regulatory
2 Agency”.

3 (d) AMENDMENT TO TITLE 18, UNITED STATES
4 CODE.—Section 1905 of title 18, United States Code, is
5 amended by striking “Office of Federal Housing Enter-
6 prise Oversight” and inserting “Federal Housing Enter-
7 prise Regulatory Agency”.

8 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION
9 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-
10 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))
11 is amended by striking “Director of the Office of Federal
12 Housing Enterprise Oversight of the Department of Hous-
13 ing and Urban Development” and inserting “Director of
14 the Federal Housing Enterprise Regulatory Agency”.

15 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND
16 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-
17 ment of Housing and Urban Development Act (42 U.S.C.
18 3534) is amended by striking subsection (d).

19 (g) AMENDMENT TO TITLE 5, UNITED STATES
20 CODE.—Section 5313 of title 5, United States Code, is
21 amended by striking the item relating to the Director of
22 the Office of Federal Housing Enterprise Oversight, De-
23 partment of Housing and Urban Development and insert-
24 ing the following new item:

1 “Director of the Federal Housing Enterprise
2 Regulatory Agency.”.

3 **SEC. 172. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-**
4 **TERPRISES.**

5 (a) FANNIE MAE.—

6 (1) IN GENERAL.—Section 308(b) of the Fed-
7 eral National Mortgage Association Charter Act (12
8 U.S.C. 1723(b)) is amended—

9 (A) in the first sentence, by striking
10 “eighteen persons, five of whom shall be ap-
11 pointed annually by the President of the United
12 States, and the remainder of whom” and insert-
13 ing “13 persons, or such other number that the
14 Director determines appropriate, who”;

15 (B) in the second sentence, by striking
16 “appointed by the President”;

17 (C) in the third sentence—

18 (i) by striking “appointed or”; and

19 (ii) by striking “, except that any
20 such appointed member may be removed
21 from office by the President for good
22 cause”;

23 (D) in the fourth sentence, by striking
24 “elective”; and

25 (E) by striking the fifth sentence.

1 (2) TRANSITIONAL PROVISION.—The amend-
2 ments made by paragraph (1) shall not apply to any
3 appointed position of the board of directors of the
4 Federal National Mortgage Association until the ex-
5 piration of the annual term for such position during
6 which the effective date under section 173 occurs.

7 (b) FREDDIE MAC.—

8 (1) IN GENERAL.—Section 303(a)(2) of the
9 Federal Home Loan Mortgage Corporation Act (12
10 U.S.C. 1452(a)(2)) is amended—

11 (A) in subparagraph (A)—

12 (i) in the first sentence, by striking
13 “13 persons, 5 of whom shall be appointed
14 annually by the President of the United
15 States and the remainder of whom” and
16 inserting “13 persons, or such other num-
17 ber as the Director determines appropriate,
18 who”; and

19 (ii) in the second sentence, by striking
20 “appointed by the President of the United
21 States”;

22 (B) in subparagraph (B)—

23 (i) by striking “such or”; and

- 1 (ii) by striking “, except that any ap-
2 pointed member may be removed from of-
3 fice by the President for good cause”; and
4 (C) in subparagraph (C)—
5 (i) by striking the first sentence; and
6 (ii) by striking “elective”.

7 (2) TRANSITIONAL PROVISION.—The amend-
8 ments made by paragraph (1) shall not apply to any
9 appointed position of the board of directors of the
10 Federal Home Loan Mortgage Corporation until the
11 expiration of the annual term for such position dur-
12 ing which the effective date under section 173 oc-
13 curs.

14 **SEC. 173. EFFECTIVE DATE.**

15 Except as specifically provided otherwise in this title,
16 the amendments made by this title shall take effect on,
17 and shall apply beginning on, the date of enactment of
18 this Act.

19 **TITLE II—FEDERAL HOME LOAN**
20 **BANKS**

21 **SEC. 201. DIRECTORS.**

22 Section 7 of the Federal Home Loan Bank Act (12
23 U.S.C. 1427) is amended—

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

1 “(a) NUMBER; APPOINTMENT AND ELECTION;
2 QUALIFICATIONS; CONFLICTS OF INTEREST.—

3 “(1) IN GENERAL.—Subject to paragraphs (2)
4 through (4), and except to the extent that action
5 under section 1377 of the Federal Housing Enter-
6 prises Financial Safety and Soundness Act of 1992
7 results in a lesser number, the management of each
8 Federal Home Loan Bank shall be vested in a board
9 of 13 directors, or such other number as the Direc-
10 tor determines appropriate.

11 “(2) BOARD MAKEUP.—The board of directors
12 of each Bank shall be comprised of—

13 “(A) member directors, who shall comprise
14 at least the majority of the members of the
15 board of directors; and

16 “(B) nonmember directors, who shall com-
17 prise not fewer than $\frac{1}{3}$ of the members of the
18 board of directors.

19 “(3) SELECTION CRITERIA.—

20 “(A) IN GENERAL.—Each member of the
21 board of directors shall be—

22 “(i) elected by majority vote of the
23 members, in accordance with procedures
24 established under this section; and

25 “(ii) a citizen of the United States.

1 “(B) NONMEMBER DIRECTOR CRITERIA.—

2 “(i) PUBLIC INTEREST.—Not fewer
3 than 2 of the nonmember directors shall be
4 selected from among representatives of or-
5 ganizations having more than a 2-year his-
6 tory of representing consumer or commu-
7 nity interests on banking services, credit
8 needs, housing, or financial consumer pro-
9 tectations.

10 “(ii) CONFLICTS OF INTEREST.—No
11 nonmember director may, during the term
12 of service on the board of directors, serve
13 as an officer of any Federal Home Loan
14 Bank or as a director or officer of any
15 member of a Bank.

16 “(4) DEFINITIONS.—For purposes of this sec-
17 tion, the following definitions shall apply:

18 “(A) MEMBER DIRECTOR.—The terms
19 ‘member director’ and ‘member directorship’
20 mean a member of the board of directors of a
21 Federal Home Loan Bank who is an officer or
22 director of a member bank that is located in the
23 district in which the Federal Home Loan Bank
24 is located.

1 “(B) NONMEMBER DIRECTOR.—The terms
2 ‘nonmember director’ and ‘nonmember director-
3 ship’ mean a member of the board of directors
4 of a Federal Home Loan Bank who is a bona
5 fide resident of the district in which the Federal
6 Home Loan Bank is located.”;

7 (2) by striking “elective” each place that term
8 appears and inserting “member”, other than in sub-
9 sections (d) and (f);

10 (3) in subsection (b)—

11 (A) in the first sentence, by striking “Each
12 elective directorship” and inserting the fol-
13 lowing:

14 “(b) DIRECTORSHIPS.—

15 “(1) MEMBER DIRECTORS.—Each member di-
16 rector”; and

17 (B) by adding at the end the following:

18 “(2) NONMEMBER DIRECTORS.—Each non-
19 member director shall be elected by the members en-
20 titled to vote, from among eligible persons nomi-
21 nated by the Board. Nominees shall meet all applica-
22 ble requirements prescribed in this section. Proce-
23 dures for nomination and election of nonmember di-
24 rectors shall be prescribed by the bylaws of each
25 Federal Home Loan Bank, in a manner consistent

1 with the rules and regulations of the Federal Hous-
2 ing Enterprise Agency.”;

3 (4) in subsection (d)—

4 (A) in the first sentence—

5 (i) by striking “, whether elected or
6 appointed,”; and

7 (ii) by striking “3 years” and insert-
8 ing 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 Enterprise
13 Regulatory Reform Act of 2005”;

14 (ii) by striking “ $\frac{1}{3}$ ” and inserting
15 “ $\frac{1}{4}$ ”; and

16 (iii) by striking “or appointed”;

17 (5) in subsection (f)—

18 (A) by striking paragraph (2);

19 (B) by striking “appointed or” each place
20 that term appears; and

21 (C) in paragraph (3)—

22 (i) by striking “(3) ELECTED BANK
23 DIRECTORS.—” and inserting “ELECTION
24 PROCESS.—”; and

1 (ii) by striking “and such person shall
2 not continue to act as a Bank director”
3 and inserting “but such person may con-
4 tinue to act as a Bank director until his or
5 her successor assumes the vacated office”;

6 (6) in subsection (i)—

7 (A) in paragraph (1), by striking “Subject
8 to paragraph (2), each” and inserting “Each”;
9 and

10 (B) by striking paragraph (2); and

11 (7) by adding at the end the following:

12 “(1) **TRANSITION RULE.**—Any member of the board
13 of directors of a Bank elected in accordance with this sec-
14 tion prior to the date of enactment of this subsection may
15 continue to serve as a member of that board of directors
16 for the remainder of the term of service, and until his or
17 her successor assumes the vacated office.”.

18 **SEC. 202. DEFINITIONS.**

19 Section 2 of the Federal Home Loan Bank Act (12
20 U.S.C. 1422) is amended—

21 (1) by striking paragraph (1);

22 (2) by redesignating paragraphs (2) through
23 (13) as paragraphs (1) through (12), respectively;
24 and

25 (3) by adding at the end the following:

1 “(13) DIRECTOR.—The term ‘Director’ means
2 the Director of the Federal Housing Enterprise
3 Agency.

4 “(14) AGENCY.—The term ‘Agency’ means the
5 Federal Housing Enterprises Supervisory Agency.”.

6 **SEC. 203. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**
7 **BANKS.**

8 The Federal Home Loan Bank Act (12 U.S.C. 1421
9 et seq.), other than in provisions of that Act added or
10 amended otherwise by this Act, is amended—

11 (1) by striking sections 2A, 2B, and 20 (12
12 U.S.C. 1422a, 1422b, 1440);

13 (2) in section 18 (12 U.S.C. 1438), by striking
14 subsection (b);

15 (3) by striking “the Board” each place that
16 term appears, except in sections 15 and 25, and sub-
17 sections (a), (b), and (c) of section 11, and inserting
18 “the Director”;

19 (4) by striking “The Board” each place that
20 term appears and inserting “The Director”;

21 (5) by striking “the Finance Board” each place
22 that term appears and inserting “the Director”;

23 (6) by striking “The Finance Board” each
24 place that term appears and inserting “The Direc-
25 tor”;

1 (7) in section 6 (12 U.S.C. 1426(b)(1))—

2 (A) in subsection (b)(1), in the matter pre-
3 ceding subparagraph (A), by striking “Finance
4 Board approval” and inserting “approval by the
5 Director”; and

6 (B) in each of subsections (c)(4)(B) and
7 (d)(2), by striking “Finance Board regulations”
8 each place that term appears and inserting
9 “regulations of the Director”;

10 (8) by striking “Federal Housing Finance
11 Board” each place that term appears and inserting
12 “Director”;

13 (9) by striking “Federal Home Loan Bank
14 Board” each place that term appears and inserting
15 “Director”;

16 (10) in section 10 (12 U.S.C. 1430)—

17 (A) in the heading for subsection (b), by
18 striking “FORMAL BOARD RESOLUTION” and
19 inserting “APPROVAL OF DIRECTOR”; and

20 (B) in subsection (b), by striking “by for-
21 mal resolution”; and

22 (11) in section 21(b)(5) (12 U.S.C. 1441(b)(5),
23 by striking “Chairperson of the Federal Housing Fi-
24 nance Board” and inserting “Director”.

1 **SEC. 204. DEBT ISSUING FACILITY.**

2 The Federal Home Loan Bank Act (12 U.S.C. 1421
3 et seq.) is amended by inserting after section 11 the fol-
4 lowing:

5 **“SEC. 11A. FEDERAL HOME LOAN BANK FINANCE COR-**
6 **PORATION.**

7 “(a) ESTABLISHMENT.—

8 “(1) IN GENERAL.—There is established the
9 Federal Home Loan Bank Finance Corporation (in
10 this section referred to as the ‘Corporation’), which
11 shall be a jointly owned subsidiary of the Federal
12 Home Loan Banks.

13 “(2) PURPOSES.—The purposes of the Corpora-
14 tion are—

15 “(A) to issue and service the consolidated
16 obligations of the Federal Home Loan Banks in
17 accordance with this Act; and

18 “(B) to perform all other necessary and
19 proper functions in relation to the issuance and
20 service of such obligations, as fiscal agent on
21 behalf of the Federal Home Loan Banks, and
22 any other functions performed by the Office of
23 Finance on behalf of the Financing Corporation
24 (established under section 21) and the Resolu-
25 tion Funding Corporation (established under
26 section 21B).

1 “(3) TRANSFER OF FUNCTIONS.—

2 “(A) IN GENERAL.—The functions of the
3 Office of Finance of the Federal Home Loan
4 Banks, shall be transferred to the Corporation
5 immediately upon the conclusion of the organi-
6 zational meeting of the board of directors (re-
7 ferred to in this subsection as the ‘effective
8 time’) established under subsection (c).

9 “(B) ORGANIZATIONAL MEETING.—The
10 organizational meeting of the board of directors
11 of the Corporation shall occur as soon as prac-
12 ticable after the date of enactment of the Fed-
13 eral Enterprise Regulatory Reform Act of 2005.

14 “(C) INTERIM PROCEDURES.—Until the ef-
15 fective time under subparagraph (A), the Office
16 of Finance established as a joint office of the
17 Federal Home Loan Banks (referred to in this
18 subsection as the ‘predecessor office’) shall con-
19 tinue to operate as if this section had not been
20 enacted.

21 “(D) REFERENCES.—After the effective
22 time under subparagraph (A), any reference
23 under any Federal law to the Office of Finance
24 and the Managing Director of the Office of Fi-
25 nance shall be deemed to be references to the

1 Corporation and the chief executive officer of
2 the Corporation, respectively.

3 “(4) SUCCESSION.—

4 “(i) ASSETS AND LIABILITIES.—At
5 the effective time, the Corporation shall, by
6 operation of law and without any further
7 action by the Federal Housing Finance
8 Board, the predecessor office, or any court,
9 succeed to the assets of, and assume all
10 debts, obligations, contracts, and other li-
11 abilities of the predecessor office, matured
12 or unmatured, accrued or absolute, contin-
13 gent or otherwise, and whether or not re-
14 flected or reserved against on balance
15 sheets, books of account, or records of the
16 predecessor office.

17 “(ii) CONTRACTS.—At the effective
18 time, the existing contractual obligations of
19 the Federal Housing Finance Board, solely
20 in its capacity as issuer of consolidated ob-
21 ligations of the Federal Home Loan Banks
22 and the predecessor office shall, by oper-
23 ation of law and without any further action
24 by the Federal Housing Finance Board,
25 the predecessor office, or any court, be-

1 come obligations, entitlements, and instru-
2 ments of the Corporation.

3 “(iii) TAXATION.—The succession to
4 assets, assumption of liabilities, conversion
5 of obligations and instruments, and effec-
6 tuation of any other transaction by the
7 Corporation to carry out this subsection
8 shall not be treated as a taxable event
9 under the laws of any State, or any polit-
10 ical subdivision thereof.

11 “(b) POWERS.—Subject to the provisions of this Act,
12 and such regulations as the Director may prescribe, the
13 Corporation shall have the power—

14 “(1) to issue voting capital stock to the Federal
15 Home Loan Banks;

16 “(2) to issue and service Federal Home Loan
17 Bank consolidated notes, consolidated bonds, con-
18 solidated debentures and other consolidated obliga-
19 tions under section 11, on behalf of the Federal
20 Home Loan Banks;

21 “(3) to determine the amount, maturities, rate
22 of interest, terms, and other conditions of Federal
23 Home Loan Bank consolidated obligations;

24 “(4) to adopt, alter, and use a corporate seal;

25 “(5) to make contracts;

1 “(6) to sue and be sued in the corporate capac-
2 ity of the Corporation, and to complain and defend
3 in any action brought by or against the Corporation
4 in any court of competent jurisdiction;

5 “(7) to determine the terms and conditions
6 under which the Corporation may indemnify its di-
7 rectors, officers, employees, and agents;

8 “(8) to determine and implement the method-
9 ology for assessments of the Federal Home Loan
10 Banks to fund all of the expenses of the Corpora-
11 tion; and

12 “(9) to exercise such incidental powers not in-
13 consistent with the provisions of this Act as are nec-
14 essary or advisable to carry out the purposes of the
15 Corporation.

16 “(c) BOARD OF DIRECTORS.—

17 “(1) ESTABLISHMENT.—The management of
18 the Corporation shall be vested in a board of direc-
19 tors composed of the president of each of the Fed-
20 eral Home Loan Banks, ex officio.

21 “(2) DUTIES.—The board of directors of the
22 Corporation shall administer the affairs of the Cor-
23 poration in accordance with the provisions of this
24 section.

1 “(3) INTERIM APPOINTMENTS.—If the office of
2 the president of any Federal Home Loan Bank is
3 vacant, the person serving in such capacity on an
4 acting basis shall serve on the board of directors of
5 the Corporation until replaced by the next person to
6 fill the office of the president of that Federal Home
7 Loan Bank.

8 “(4) POWERS.—The board of directors of the
9 Corporation shall exercise such powers as may be
10 necessary or advisable to carry out this section, in-
11 cluding the power to—

12 “(A) set policies for the management and
13 operation of the Corporation;

14 “(B) approve a strategic business plan for
15 the Corporation;

16 “(C) review, adopt and monitor annual op-
17 eration and capital budgets of the Corporation;

18 “(D) constitute and perform the duties of
19 an audit committee, which to the extent pos-
20 sible shall operate consistent with—

21 “(i) the requirements established for
22 the Federal Home Loan Banks; and

23 “(ii) the requirements pertaining to
24 audit committee reports set forth in the

1 rules of Securities and Exchange Commis-
2 sion;

3 “(E) select, employ, determine the com-
4 pensation for, and assign the duties and func-
5 tions of the president of the Corporation, who
6 shall—

7 “(i) be the chief executive officer for
8 the Corporation and shall direct the imple-
9 mentation of the policies adopted by the
10 board of directors of the Corporation;

11 “(ii) serve as a member of the Direc-
12 torate of the Financing Corporation, under
13 section 21(b)(1)(A) of this Act (12 U.S.C.
14 1441(b)(1)(A)); and

15 “(iii) serve as a member of the Direc-
16 torate of the Resolution Funding Corpora-
17 tion, under section 21B(c)(1)(A) of this
18 Act (12 U.S.C. 1441b(c)(1)(A));

19 “(F) provide for the review and approval
20 of all contracts of the Corporation;

21 “(G) have the exclusive authority to em-
22 ploy and contract for the services of an inde-
23 pendent, external auditor for the annual and
24 quarterly combined financial statements of the
25 Federal Home Loan Banks; and

1 “(H) select, evaluate, determine the com-
2 pensation of, and, as appropriate, replace the
3 internal auditor of the Corporation, who may be
4 removed only by vote of the board of directors
5 of the Corporation.

6 “(5) PAY.—The members of the board of direc-
7 tors of the Corporation shall not receive compensa-
8 tion for their services as members of the board of di-
9 rectors.

10 “(6) QUORUM REQUIREMENT.—

11 “(A) IN GENERAL.—No business of the
12 Corporation may be conducted by the board of
13 directors unless a quorum of the members of
14 the board of directors is present in person or by
15 telephone, or through action taken by written
16 consent executed by all of the members of the
17 board of directors.

18 “(B) NUMBER.—Directors representing a
19 majority of the members of the board of direc-
20 tors shall constitute a quorum.

21 “(C) VOTE REQUIRED.—Action taken by
22 the board of directors shall be approved by a
23 majority of the directors in attendance at any
24 meeting at which a quorum is present, unless

1 the board of directors adopts procedures requir-
2 ing a greater voting requirement.

3 “(7) APPOINTMENT OF OFFICERS AND ADOPT-
4 TION OF RULES OF PROCEDURE.—The board of di-
5 rectors of the Corporation shall—

6 “(A) select, from among the members of
7 such board, a Chairperson and a Vice Chair-
8 person; and

9 “(B) adopt bylaws and other rules of pro-
10 cedure for actions before the board of directors,
11 including the establishment of 1 or more com-
12 mittees to take action on behalf of the board of
13 directors, and the delegation of powers of the
14 board of directors to any committee or officer
15 of the Corporation.

16 “(d) STOCK.—

17 “(1) ISSUANCE OF EQUAL AMOUNT TO EACH
18 BANK.—The Corporation shall issue to each Federal
19 Home Loan Bank 1 share of voting capital stock,
20 with a par value of \$100 per share.

21 “(2) RESTRICTED TRANSFERABILITY.—Stock
22 issued under paragraph (1) may be owned and held
23 only by the Federal Home Loan Banks.

24 “(3) PAYMENT UPON ISSUANCE.—Upon
25 issuance of any share of stock under this subsection

1 to any Federal Home Loan Bank, the bank shall
 2 pay to the Corporation the total amount due for
 3 such stock.

4 “(4) DISTRIBUTION REQUIREMENT.—

5 “(A) IN GENERAL.—The total amount of
 6 outstanding stock of the Corporation shall, at
 7 all times, be distributed equally among all of
 8 the Federal Home Loan Banks.

9 “(B) PROCEDURES.—The board of direc-
 10 tors of the Corporation shall adopt procedures
 11 to implement subparagraph (A).

12 “(e) STATUS.—Except to the extent expressly pro-
 13 vided in this title, or in rules or regulations promulgated
 14 by the Director, or unless the context clearly indicates oth-
 15 erwise, the Corporation shall be accorded the same status
 16 as a Federal Home Loan Bank for purposes of any other
 17 provision of law, including sections 2B and 13 of this
 18 Act.”.

19 **SEC. 205. EXCLUSION FROM CERTAIN SECURITIES REPORT-**
 20 **ING REQUIREMENTS.**

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 the Securities Exchange Act
2 of 1934, and related Commission regulations, with
3 respect to transactions in the capital stock of a Fed-
4 eral Home Loan Bank.

5 (b) MEMBER EXEMPTION.—The members of the
6 Federal Home Loan Bank System shall be exempt from
7 compliance with sections 13(d), 13(f), 13(g), 14(d), and
8 16 of the Securities Exchange Act of 1934, and related
9 Commission regulations, with respect to ownership of or
10 transactions in the capital stock of the Federal Home
11 Loan Banks by such members.

12 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

13 (1) CAPITAL STOCK.—The capital stock issued
14 by each of the Federal Home Loan Banks under
15 section 6 of the Federal Home Loan Bank Act are—

16 (A) “exempted securities”, within the
17 meaning of section 3(a)(2) of the Securities Act
18 of 1933; and

19 (B) “exempted securities”, within the
20 meaning of section 3(a)(12)(A) of the Securities
21 Exchange Act of 1934.

22 (2) OTHER OBLIGATIONS.—The debentures,
23 bonds, and other obligations issued under section 11
24 of the Federal Home Loan Bank Act are—

1 (A) “exempted securities”, within the
2 meaning of section 3(a)(2) of the Securities Act
3 of 1933;

4 (B) “government securities”, within the
5 meaning of section 3(a)(42) of the Securities
6 Exchange Act of 1934; and

7 (E) “government securities” within the
8 meaning of section 2(a)(16) of the Investment
9 Company Act of 1940.

10 (3) BROKERS AND DEALERS.—A person that
11 effects transactions in the capital stock or other obli-
12 gations of a Federal Home Loan Bank, for the ac-
13 count of others or for his own account, as applica-
14 ble—

15 (A) is excluded from the definition of the
16 term “government securities broker” under sec-
17 tion 3(a)(43) of the Securities Exchange Act of
18 1934; and

19 (B) is excluded from the definition of “gov-
20 ernment securities dealer” under section
21 3(a)(44) of the Securities Exchange Act of
22 1934.

23 (d) EXEMPTION FROM REPORTING REQUIRE-
24 MENTS.—The Federal Home Loan Banks shall be exempt

1 from periodic reporting requirements under the securities
2 laws pertaining to—

3 (1) the disclosure of related party transactions
4 that occur in the ordinary course of the business of
5 the Banks with members; and

6 (2) the disclosure of the unregistered sales of
7 equity securities.

8 (e) TENDER OFFERS.—Commission rules relating to
9 tender offers shall not apply in connection with trans-
10 actions in the capital stock of the Federal Home Loan
11 Banks.

12 (f) REGULATIONS.—

13 (1) FINAL RULES.—Not later than 1 year after
14 the date of enactment of this Act, the Commission
15 shall issue final rules to implement this section and
16 the exemptions provided in this section.

17 (2) CONSIDERATIONS.—In issuing final regula-
18 tions under this section, the Commission shall con-
19 sider the distinctive characteristics of the Federal
20 Home Loan Banks when evaluating the accounting
21 treatment with respect to the payment to the Reso-
22 lution Funding Corporation, the role of the com-
23 bined financial statements of the Federal Home
24 Loan Banks, the accounting classification of redeem-
25 able capital stock, and the accounting treatment re-

1 lated to the joint and several nature of the obliga-
2 tions of the Banks.

3 (g) APPLICABILITY.—The exemptions and exclusions
4 provided for in this section shall apply in accordance with
5 this section, notwithstanding any other provision of law,
6 including any provision of the securities laws.

7 (h) DEFINITIONS.—As used in this section—

8 (1) the terms “Bank”, “Federal Home Loan
9 Bank”, “member”, and “Federal Home Loan Bank
10 System” have the same meanings as in section 2 of
11 the Federal Home Loan Bank Act (12 U.S.C.
12 1422);

13 (2) the term “Commission” means the Securi-
14 ties and Exchange Commission”; and

15 (3) the term “securities laws” has the same
16 meaning as in section 3(a)(47) of the Securities Ex-
17 change Act of 1934.

18 **SEC. 206. LIMITATION ON GOLDEN PARACHUTES.**

19 Section 7(i) of the Federal Home Loan Bank Act (12
20 U.S.C. 1427) is amended by adding at the end the fol-
21 lowing:

22 “(2) AUTHORITY TO REGULATE OR PROHIBIT
23 CERTAIN FORMS OF BENEFITS TO AFFILIATED PAR-
24 TIES.—

1 “(A) GOLDEN PARACHUTES AND INDEM-
2 NIFICATION PAYMENTS.—The Agency may pro-
3 hibit or limit, by regulation or order, any golden
4 parachute payment or indemnification payment.

5 “(B) FACTORS TO BE TAKEN INTO AC-
6 COUNT.—The Agency shall prescribe, by regula-
7 tion, the factors to be considered by the Agency
8 in taking any action pursuant to subparagraph
9 (A), which may include such factors as—

10 “(i) whether there is a reasonable
11 basis to believe that the affiliated party
12 has committed any fraudulent act or omis-
13 sion, breach of trust or fiduciary duty, or
14 insider abuse with regard to the Bank that
15 has had a material affect on the financial
16 condition of the Bank;

17 “(ii) whether there is a reasonable
18 basis to believe that the affiliated party is
19 substantially responsible for the insolvency
20 of the Bank, the appointment of a conser-
21 vator or receiver for the Bank, or the trou-
22 bled condition of the Bank (as defined in
23 regulations prescribed by the Agency);

24 “(iii) whether there is a reasonable
25 basis to believe that the affiliated party

1 has materially violated any applicable Fed-
2 eral or State law or regulation that has
3 had a material affect on the financial con-
4 dition of the Bank;

5 “(iv) whether the affiliated party was
6 in a position of managerial or fiduciary re-
7 sponsibility; and

8 “(v) the length of time the party was
9 affiliated with the Bank, and the degree to
10 which—

11 “(I) the payment reasonably re-
12 flects compensation earned over the
13 period of employment; and

14 “(II) the compensation involved
15 represents a reasonable payment for
16 services rendered.

17 “(C) CERTAIN PAYMENTS PROHIBITED.—
18 No Bank may prepay the salary or any liability
19 or legal expense of any affiliated party, if such
20 payment is made—

21 “(i) in contemplation of the insolvency
22 of such Bank, or after the commission of
23 an act of insolvency; and

24 “(ii) with a view to, or has the result
25 of—

1 “(I) preventing the proper appli-
2 cation of the assets of the Bank to
3 creditors; or

4 “(II) preferring one creditor over
5 another.

6 “(D) GOLDEN PARACHUTE PAYMENT DE-
7 FINED.—

8 “(i) IN GENERAL.—For purposes of
9 this paragraph, the term ‘golden parachute
10 payment’ means any payment (or any
11 agreement to make any payment) in the
12 nature of compensation by any Bank for
13 the benefit of any affiliated party, pursu-
14 ant to an obligation of such Bank that—

15 “(I) is contingent on the termi-
16 nation of such party’s affiliation with
17 the Bank; and

18 “(II) is received on or after the
19 date on which—

20 “(aa) the Bank becomes in-
21 solvent;

22 “(bb) any conservator or re-
23 ceiver is appointed for such insti-
24 tution; or

1 “(cc) the Agency determines
2 that the Bank is in a troubled
3 condition (as defined in the regu-
4 lations prescribed by the Agen-
5 cy).

6 “(ii) CERTAIN PAYMENTS IN CON-
7 TEMPLATION OF AN EVENT.—Any pay-
8 ment which would be a golden parachute
9 payment but for the fact that such pay-
10 ment was made before the date referred to
11 in subclause (II) of clause (i) shall be
12 treated as a golden parachute payment for
13 purposes of this paragraph, if the payment
14 was made in contemplation of the occur-
15 rence of an event described in any provi-
16 sion of such subclause.

17 “(iii) CERTAIN PAYMENTS NOT IN-
18 CLUDED.—For purposes of this paragraph,
19 the term ‘golden parachute payment’ does
20 not include—

21 “(I) any payment made pursuant
22 to a retirement plan which is qualified
23 (or is intended to be qualified) under
24 section 401 of the Internal Revenue

1 Code of 1986, or other nondiscriminatory benefit plan;

2
3 “(II) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Agency determines, by regulation or order, to be permissible; or

4
5
6
7
8 “(III) any payment made by reason of the death or disability of an affiliated party.

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10
11 “(E) OTHER DEFINITIONS.—For purposes of this paragraph—

12
13 “(i) INDEMNIFICATION PAYMENT.—
14 Subject to subparagraph (F), the term ‘indemnification payment’ means any payment (or any agreement to make any payment) by any Bank for the benefit of any person who is or was an affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Agency which results in a final order under which such person—

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24 “(I) is assessed a civil money
25 penalty;

1 “(II) is removed or prohibited
2 from participating in conduct of the
3 affairs of the Bank; or

4 “(III) is required to take any af-
5 firmative action described in section
6 2B(a)(5) with respect to such Bank.

7 “(ii) LIABILITY OR LEGAL EX-
8 PENSE.—The term ‘liability or legal ex-
9 pense’ means—

10 “(I) any legal or other profes-
11 sional expense incurred in connection
12 with any claim, proceeding, or action;

13 “(II) the amount of, and any cost
14 incurred in connection with, any set-
15 tlement of any claim, proceeding, or
16 action; and

17 “(III) the amount of, and any
18 cost incurred in connection with, any
19 judgment or penalty imposed with re-
20 spect to any claim, proceeding, or ac-
21 tion.

22 “(iii) PAYMENT.—The term ‘payment’
23 includes—

24 “(I) any direct or indirect trans-
25 fer of any funds or any asset; and

1 “(II) any segregation of any
2 funds or assets for the purpose of
3 making, or pursuant to an agreement
4 to make, any payment after the date
5 on which such funds or assets are seg-
6 regated, without regard to whether
7 the obligation to make such payment
8 is contingent on—

9 “(aa) the determination,
10 after such date, of the liability
11 for the payment of such amount;
12 or

13 “(bb) the liquidation, after
14 such date, of the amount of such
15 payment.

16 “(F) CERTAIN COMMERCIAL INSURANCE
17 COVERAGE NOT TREATED AS COVERED BEN-
18 EFIT PAYMENT.—No provision of this para-
19 graph shall be construed as prohibiting any
20 Bank from purchasing any commercial insur-
21 ance policy or fidelity bond, except that, subject
22 to any affirmative action required under section
23 2B(a)(5), such insurance policy or bond shall
24 not cover any legal or liability expense of the

1 Bank which is described in subparagraph
 2 (E)(i).”.

3 **TITLE III—TRANSFER OF FUNC-**
 4 **TIONS, PERSONNEL, AND**
 5 **PROPERTY OF OFHEO AND**
 6 **THE FEDERAL HOUSING FI-**
 7 **NANCE BOARD**

8 **Subtitle A—OFHEO**

9 **SEC. 301. ABOLISHMENT OF OFHEO.**

10 (a) IN GENERAL.—Effective at the end of the 180-
 11 day period beginning on the date of enactment of this Act,
 12 the Office of Federal Housing Enterprise Oversight of the
 13 Department of Housing and Urban Development and the
 14 positions of the Director and Deputy Director of such Of-
 15 fice are abolished.

16 (b) DISPOSITION OF AFFAIRS.—During the 180-day
 17 period beginning on the date of enactment of this Act, the
 18 Director of the Office of Federal Housing Enterprise
 19 Oversight, solely for the purpose of winding up the affairs
 20 of the Office of Federal Housing Enterprise Oversight—

21 (1) shall manage the employees of such Office
 22 and provide for the payment of the compensation
 23 and benefits of any such employee which accrue be-
 24 fore the effective date of the transfer of such em-
 25 ployee under section 303; and

1 (2) may take any other action necessary for the
2 purpose of winding up the affairs of the Office.

3 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

4 The amendments made by title I and the abolishment of
5 the Office of Federal Housing Enterprise Oversight under
6 subsection (a) of this section may not be construed to af-
7 fect the status of any employee of such Office as employ-
8 ees of an agency of the United States for purposes of any
9 other provision of law before the effective date of the
10 transfer of any such employee under section 303.

11 (d) USE OF PROPERTY AND SERVICES.—

12 (1) PROPERTY.—The Director of the Federal
13 Housing Enterprise Regulatory Agency may use the
14 property of the Office of Federal Housing Enter-
15 prise Oversight to perform functions which have
16 been transferred to the Director of the Federal
17 Housing Enterprise Regulatory Agency for such
18 time as is reasonable to facilitate the orderly trans-
19 fer of functions transferred under any other provi-
20 sion of this Act or any amendment made by this Act
21 to any provision of law.

22 (2) AGENCY SERVICES.—Any agency, depart-
23 ment, or other instrumentality of the United States,
24 and any successor to any such agency, department,
25 or instrumentality, which was providing supporting

1 services to the Office of Federal Housing Enterprise
2 Oversight before the expiration of the period under
3 subsection (a) in connection with functions that are
4 transferred to the Director of the Federal Housing
5 Enterprise Regulatory Agency shall—

6 (A) continue to provide such services, on a
7 reimbursable basis, until the transfer of such
8 functions is complete; and

9 (B) consult with any such agency to co-
10 ordinate and facilitate a prompt and reasonable
11 transition.

12 (e) SAVINGS PROVISIONS.—

13 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
14 TIONS NOT AFFECTED.—Subsection (a) shall not af-
15 fect the validity of any right, duty, or obligation of
16 the United States, the Director of the Office of Fed-
17 eral Housing Enterprise Oversight, or any other per-
18 son, which—

19 (A) arises under title XIII of the Housing
20 and Community Development Act of 1992, the
21 Federal National Mortgage Association Charter
22 Act, the Federal Home Loan Mortgage Cor-
23 poration Act, or any other provision of law ap-
24 plicable with respect to such Office; and

1 (B) existed on the day before the date of
2 abolishment under subsection (a).

3 (2) CONTINUATION OF SUITS.—No action or
4 other proceeding commenced by or against the Di-
5 rector of the Office of Federal Housing Enterprise
6 Oversight in connection with functions that are
7 transferred to the Director of the Federal Housing
8 Enterprise Regulatory Agency shall abate by reason
9 of the enactment of this Act, except that the Direc-
10 tor of the Federal Housing Enterprise Regulatory
11 Agency shall be substituted for the Director of the
12 Office of Federal Housing Enterprise Oversight as a
13 party to any such action or proceeding.

14 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
15 **REGULATIONS.**

16 (a) IN GENERAL.—All regulations, orders, and deter-
17 minations described under subsection (b) shall remain in
18 effect according to the terms of such regulations, orders,
19 determinations, and resolutions, and shall be enforceable
20 by or against the Director of the Federal Housing Enter-
21 prise Regulatory Agency or the Secretary of Housing and
22 Urban Development, as the case may be, until modified,
23 terminated, set aside, or superseded in accordance with
24 applicable law by such Director or Secretary, as the case

1 may be, any court of competent jurisdiction, or operation
2 of law.

3 (b) APPLICABILITY.—A regulation, order, or deter-
4 mination is described under this subsection if they—

5 (1) were issued, made, prescribed, or allowed to
6 become effective by—

7 (A) the Office of Federal Housing Enter-
8 prise Oversight;

9 (B) the Secretary of Housing and Urban
10 Development and that relate to the Secretary's
11 authority under—

12 (i) title XIII of the Housing and Com-
13 munity Development Act of 1992;

14 (ii) the Federal National Mortgage
15 Association Charter Act, with respect to
16 the Federal National Mortgage Associa-
17 tion; or

18 (iii) the Federal Home Loan Mort-
19 gage Corporation Act, with respect to the
20 Federal Home Loan Mortgage Corpora-
21 tion; or

22 (C) a court of competent jurisdiction and
23 that relate to functions transferred by this Act;
24 and

1 (2) are in effect on the effective date of the
2 abolishment under section 301(a).

3 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
4 **OFHEO.**

5 (a) TRANSFER.—Each employee of the Office of Fed-
6 eral Housing Enterprise Oversight shall be transferred to
7 the Federal Housing Enterprise Regulatory Agency for
8 employment not later than the effective date of the abol-
9 ishment under section 301(a) and such transfer shall be
10 deemed a transfer of function for purposes of section 3503
11 of title 5, United States Code.

12 (b) GUARANTEED POSITIONS.—Each employee trans-
13 ferred under subsection (a) shall be guaranteed a position
14 with the same status, tenure, grade, and pay as that held
15 on the day immediately preceding the transfer. Each such
16 employee holding a permanent position shall not be invol-
17 untarily separated or reduced in grade or compensation
18 for 12 months after the date of transfer, except for cause
19 or, if the employee is a temporary employee, separated in
20 accordance with the terms of the appointment.

21 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
22 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

23 (1) IN GENERAL.—In the case of employees oc-
24 cupying positions in the excepted service or the Sen-
25 ior Executive Service, any appointment authority es-

1 established under law or by regulations of the Office
2 of Personnel Management for filling such positions
3 shall be transferred, subject to paragraph (2).

4 (2) DECLINE OF TRANSFER.—The Director of
5 the Federal Housing Enterprise Regulatory Agency
6 may decline a transfer of authority under paragraph
7 (1) to the extent that such authority relates to posi-
8 tions excepted from the competitive service because
9 of their confidential, policymaking, policy-deter-
10 mining, or policy-advocating character, and non-
11 career positions in the Senior Executive Service
12 (within the meaning of section 3132(a)(7) of title 5,
13 United States Code).

14 (d) REORGANIZATION.—If the Director of the Fed-
15 eral Housing Enterprise Regulatory Agency determines,
16 after the end of the 1-year period beginning on the effec-
17 tive date of the abolishment under section 301(a), that
18 a reorganization of the combined workforce is required,
19 that reorganization shall be deemed a major reorganiza-
20 tion for purposes of affording affected employees retire-
21 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
22 5, United States Code.

23 (e) EMPLOYEE BENEFIT PROGRAMS.—

24 (1) IN GENERAL.—Any employee of the Office
25 of Federal Housing Enterprise Oversight accepting

1 employment with the Federal Housing Enterprise
2 Regulatory Agency as a result of a transfer under
3 subsection (a) may retain for 12 months after the
4 date on which such transfer occurs membership in
5 any employee benefit program of the Director of the
6 Federal Housing Enterprise Regulatory Agency or
7 the Office of Federal Housing Enterprise Oversight
8 of the Department of Housing and Urban Develop-
9 ment, as applicable, including insurance, to which
10 such employee belongs on the date of the abolish-
11 ment under section 301(a) if—

12 (A) the employee does not elect to give up
13 the benefit or membership in the program; and

14 (B) the benefit or program is continued by
15 the Director of the Federal Housing Enterprise
16 Regulatory Agency.

17 (2) COST DIFFERENTIAL.—The difference in
18 the costs between the benefits which would have
19 been provided by the Office of Federal Housing En-
20 terprise Oversight and those provided by this section
21 shall be paid by the Director of the Federal Housing
22 Enterprise Regulatory Agency. If any employee
23 elects to give up membership in a health insurance
24 program or the health insurance program is not con-
25 tinued by such Director, the employee shall be per-

1 mitted to select an alternate Federal health insur-
 2 ance program within 30 days after such election or
 3 notice, without regard to any other regularly sched-
 4 uled open season.

5 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

6 Upon the effective date of its abolishment under sec-
 7 tion 301(a), all property of the Office of Federal Housing
 8 Enterprise Oversight of the Department of Housing and
 9 Urban Development shall transfer to the Director of the
 10 Federal Housing Enterprise Regulatory Agency.

11 **Subtitle B—Federal Housing**
 12 **Finance Board**

13 **SEC. 311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
 14 **NANCE BOARD.**

15 (a) IN GENERAL.—Effective at the end of the 1-year
 16 period beginning on the date of enactment of this Act, the
 17 Federal Housing Finance Board (in this title referred to
 18 as the “Board”) is abolished.

19 (b) DISPOSITION OF AFFAIRS.—During the 1-year
 20 period beginning on the date of enactment of this Act, the
 21 Board, solely for the purpose of winding up the affairs
 22 of the Board—

23 (1) shall manage the employees of such Board
 24 and provide for the payment of the compensation
 25 and benefits of any such employee which accrue be-

1 fore the effective date of the transfer of such em-
2 ployee under section 403; and

3 (2) may take any other action necessary for the
4 purpose of winding up the affairs of the Board.

5 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

6 The amendments made by titles I and II and the abolish-
7 ment of the Board under subsection (a) may not be con-
8 strued to affect the status of any employee of such Board
9 as employees of an agency of the United States for pur-
10 poses of any other provision of law before the effective
11 date of the transfer of any such employee under section
12 403.

13 (d) USE OF PROPERTY AND SERVICES.—

14 (1) PROPERTY.—The Director of the Federal
15 Housing Enterprise Regulatory Agency may use the
16 property of the Board to perform functions which
17 have been transferred to the Director of the Federal
18 Housing Enterprise Regulatory Agency for such
19 time as is reasonable to facilitate the orderly trans-
20 fer of functions transferred under any other provi-
21 sion of this Act or any amendment made by this Act
22 to any other provision of law.

23 (2) AGENCY SERVICES.—Any agency, depart-
24 ment, or other instrumentality of the United States,
25 and any successor to any such agency, department,

1 or instrumentality, which was providing supporting
2 services to the Board before the expiration of the 1-
3 year period under subsection (a) in connection with
4 functions that are transferred to the Director of the
5 Federal Housing Enterprise Regulatory Agency
6 shall—

7 (A) continue to provide such services, on a
8 reimbursable basis, until the transfer of such
9 functions is complete; and

10 (B) consult with any such agency to co-
11 ordinate and facilitate a prompt and reasonable
12 transition.

13 (e) SAVINGS PROVISIONS.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
15 TIONS NOT AFFECTED.—Subsection (a) shall not af-
16 fect the validity of any right, duty, or obligation of
17 the United States, a member of the Board, or any
18 other person, which—

19 (A) arises under title XIII of the Housing
20 and Community Development Act of 1992, the
21 Federal National Mortgage Association Charter
22 Act, the Federal Home Loan Mortgage Cor-
23 poration Act, the Federal Home Loan Bank
24 Act, or any other provision of law applicable
25 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 Enter-
7 prise Regulatory Agency shall abate by reason of the
8 enactment of this Act, except that the Director of
9 the Federal Housing Enterprise Regulatory Agency
10 shall be substituted for the Board or any member
11 thereof as a party to any such action or proceeding.

12 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**
13 **REGULATIONS.**

14 (a) IN GENERAL.—All regulations, orders, and deter-
15 minations described under subsection (b) shall remain in
16 effect according to the terms of such regulations, orders,
17 determinations, and resolutions, and shall be enforceable
18 by or against the Director of the Federal Housing Enter-
19 prise Regulatory 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, or deter-
24 mination is described under this subsection if they—

1 (1) were issued, made, prescribed, or allowed to
2 become effective by—

3 (A) the Board; or

4 (B) a court of competent jurisdiction and
5 that relate to functions transferred by this Act;
6 and

7 (2) are in effect on the effective date of the
8 abolishment under section 401(a).

9 **SEC. 313. 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 Enterprise Regu-
13 latory Agency for employment not later than the effective
14 date of the abolishment under section 401(a), and such
15 transfer shall be deemed a transfer of function for pur-
16 poses of section 3503 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 Enterprise Regulatory Agency
11 may decline a transfer of authority under paragraph
12 (1) to the extent that such authority relates to posi-
13 tions excepted from the competitive service because
14 of their confidential, policymaking, policy-deter-
15 mining, or policy-advocating character, and non-
16 career positions in the Senior Executive Service
17 (within the meaning of section 3132(a)(7) of title 5,
18 United States Code).

19 (d) REORGANIZATION.—If the Director of the Fed-
20 eral Housing Enterprise Regulatory Agency determines,
21 after the end of the 1-year period beginning on the effec-
22 tive date of the abolishment under section 401(a), that
23 a reorganization of the combined workforce is required,
24 that reorganization shall be deemed a major reorganiza-
25 tion for purposes of affording affected employees retire-

1 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
2 5, United States Code.

3 (e) EMPLOYEE BENEFIT PROGRAMS.—

4 (1) IN GENERAL.—Any employee of the Board
5 accepting employment with the Federal Housing En-
6 terprise Regulatory Agency as a result of a transfer
7 under subsection (a) may retain for 12 months after
8 the date on which such transfer occurs membership
9 in any employee benefit program of the Federal
10 Housing Enterprise Regulatory Agency or the
11 Board, as applicable, including insurance, to which
12 such employee belongs on the effective date of the
13 abolishment under section 201(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 Enterprise
18 Regulatory 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 Enterprise Regulatory Agency. If any
24 employee elects to give up membership in a health
25 insurance program or the health insurance program

1 is not continued by such Director, the employee shall
2 be permitted to select an alternate Federal health in-
3 surance program within 30 days after the date of
4 such election or notice, without regard to any other
5 regularly scheduled open season.

6 **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

7 Upon the effective date of the abolishment under sec-
8 tion 401(a), all property of the Board shall transfer to
9 the Director of the Federal Housing Enterprise Regu-
10 latory Agency.

11 **TITLE IV—MISCELLANEOUS**
12 **PROVISIONS**

13 **SEC. 401. STUDY AND REPORT ON BASEL II AND ENTER-**
14 **PRISE DEBT.**

15 (a) STUDY.—The Board of Governors of the Federal
16 Reserve System shall conduct a study the effects of the
17 new Basel Capital Accord (Basel II), as endorsed by the
18 Group of Ten countries in "International Convergence of
19 Capital Measurement and Capital Standards: a Revised
20 Framework" on the regulated entities, as defined under
21 this Act. The study shall examine the debt of the regulated
22 entities and the capital classification on financial institu-
23 tions that hold such debt.

24 (b) REPORT.—The Chairman of the Board of Gov-
25 ernors of the Federal Reserve System shall submit a re-

1 port to Congress on the results of the study required by
2 this section 2 years after the date of enactment of this
3 Act.

4 **SEC. 402. AFFORDABLE HOUSING REPORTING.**

5 The Inspector General of the Federal Housing Enter-
6 prise Regulatory Agency shall conduct an annual audit of
7 the affordable housing activities of the Federal National
8 Mortgage Association and the Federal Home Loan Mort-
9 gage Corporation, programs, and partnerships to ensure
10 that such activities, programs, and partnerships support
11 the affordable housing mission of those enterprises.

○