

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

H. R. 3221

Moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT and an amendment to the title intended to
be proposed by _____

Viz:

1 In lieu of the matter proposed to be inserted, insert
2 the following:

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Housing and Economic Recovery Act of 2008”.

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

Sec. 1. Short title; table of contents.

- Sec. 1001. Short title.
- Sec. 1002. Definitions.

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 1101. Establishment of the Federal Housing Finance Agency.
- Sec. 1102. Duties and authorities of the Director.
- Sec. 1103. Federal Housing Finance Oversight Board.
- Sec. 1104. Authority to require reports by regulated entities.
- Sec. 1105. Examiners and accountants; authority to contract for reviews of regulated entities; ombudsman.
- Sec. 1106. Assessments.
- Sec. 1107. Regulations and orders.
- Sec. 1108. Prudential management and operations standards.
- Sec. 1109. Review of and authority over enterprise assets and liabilities.
- Sec. 1110. Risk-based capital requirements.
- Sec. 1111. Minimum capital levels.
- Sec. 1112. Registration under the securities laws.
- Sec. 1113. Prohibition and withholding of executive compensation.
- Sec. 1114. Limit on golden parachutes.
- Sec. 1115. Reporting of fraudulent loans.

Subtitle B—Improvement of Mission Supervision

- Sec. 1121. Transfer of program approval and housing goal oversight.
- Sec. 1122. Assumption by the Director of certain other HUD responsibilities.
- Sec. 1123. Review of enterprise products.
- Sec. 1124. Conforming loan limits.
- Sec. 1125. Annual housing report.
- Sec. 1126. Public use database.
- Sec. 1127. Reporting of mortgage data.
- Sec. 1128. Revision of housing goals.
- Sec. 1129. Duty to serve underserved markets.
- Sec. 1130. Monitoring and enforcing compliance with housing goals.
- Sec. 1131. Affordable housing programs.
- Sec. 1132. Financial education and counseling.
- Sec. 1133. Transfer and rights of certain HUD employees.

Subtitle C—Prompt Corrective Action

- Sec. 1141. Critical capital levels.
- Sec. 1142. Capital classifications.
- Sec. 1143. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 1144. Supervisory actions applicable to significantly undercapitalized regulated entities.
- Sec. 1145. Authority over critically undercapitalized regulated entities.

Subtitle D—Enforcement Actions

- Sec. 1151. Cease and desist proceedings.
- Sec. 1152. Temporary cease and desist proceedings.
- Sec. 1153. Removal and prohibition authority.
- Sec. 1154. Enforcement and jurisdiction.
- Sec. 1155. Civil money penalties.
- Sec. 1156. Criminal penalty.

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- Sec. 1157. Notice after separation from service.
- Sec. 1158. Subpoena authority.

Subtitle E—General Provisions

- Sec. 1161. Conforming and technical amendments.
- Sec. 1162. Presidentially-appointed directors of enterprises.
- Sec. 1163. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 1201. Recognition of distinctions between the enterprises and the Federal Home Loan Banks.
- Sec. 1202. Directors.
- Sec. 1203. Definitions.
- Sec. 1204. Agency oversight of Federal Home Loan Banks.
- Sec. 1205. Housing goals.
- Sec. 1206. Community development financial institutions.
- Sec. 1207. Sharing of information among Federal Home Loan Banks.
- Sec. 1208. Exclusion from certain requirements.
- Sec. 1209. Voluntary mergers.
- Sec. 1210. Authority to reduce districts.
- Sec. 1211. Community financial institution members.
- Sec. 1212. Public use data base; reports to Congress.
- Sec. 1213. Semiannual reports.
- Sec. 1214. Liquidation or reorganization of a Federal Home Loan Bank.
- Sec. 1215. Study and report to Congress on securitization of Acquired Member Assets.
- Sec. 1216. Technical and conforming amendments.
- Sec. 1217. Study on Federal Home Loan Bank advances.
- Sec. 1218. Federal Home Loan Bank refinancing authority for certain residential mortgage loans.

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

Subtitle A—OFHEO

- Sec. 1301. Abolishment of OFHEO.
- Sec. 1302. Continuation and coordination of certain actions.
- Sec. 1303. Transfer and rights of employees of OFHEO.
- Sec. 1304. Transfer of property and facilities.

Subtitle B—Federal Housing Finance Board

- Sec. 1311. Abolishment of the Federal Housing Finance Board.
- Sec. 1312. Continuation and coordination of certain regulations.
- Sec. 1313. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 1314. Transfer of property and facilities.

TITLE IV—HOPE FOR HOMEOWNERS

- Sec. 1401. Short title.
- Sec. 1402. Establishment of HOPE for Homeowners Program.
- Sec. 1403. Fiduciary duty of servicers of pooled residential mortgage loans.
- Sec. 1404. Revised standards for FHA appraisers.

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TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

- Sec. 1501. Short title.
- Sec. 1502. Purposes and methods for establishing a mortgage licensing system and registry.
- Sec. 1503. Definitions.
- Sec. 1504. License or registration required.
- Sec. 1505. State license and registration application and issuance.
- Sec. 1506. Standards for State license renewal.
- Sec. 1507. System of registration administration by Federal agencies.
- Sec. 1508. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
- Sec. 1509. Backup authority to establish a nationwide mortgage licensing and registry system.
- Sec. 1510. Fees.
- Sec. 1511. Background checks of loan originators.
- Sec. 1512. Confidentiality of information.
- Sec. 1513. Liability provisions.
- Sec. 1514. Enforcement under HUD backup licensing system.
- Sec. 1515. State examination authority.
- Sec. 1516. Reports and recommendations to Congress.
- Sec. 1517. Study and reports on defaults and foreclosures.

TITLE VI—MISCELLANEOUS

- Sec. 1601. Study and reports on guarantee fees.
- Sec. 1602. Study and report on default risk evaluation.
- Sec. 1603. Conversion of HUD contracts.
- Sec. 1604. Bridge depository institutions.
- Sec. 1605. Sense of the Senate.

DIVISION B—FORECLOSURE PREVENTION

- Sec. 2001. Short title.
- Sec. 2002. Emergency designation.

TITLE I—FHA MODERNIZATION ACT OF 2008

- Sec. 2101. Short title.

Subtitle A—Building American Homeownership

- Sec. 2111. Short title.
- Sec. 2112. Maximum principal loan obligation.
- Sec. 2113. Cash investment requirement and prohibition of seller-funded down payment assistance.
- Sec. 2114. Mortgage insurance premiums.
- Sec. 2115. Rehabilitation loans.
- Sec. 2116. Discretionary action.
- Sec. 2117. Insurance of condominiums.
- Sec. 2118. Mutual Mortgage Insurance Fund.
- Sec. 2119. Hawaiian home lands and Indian reservations.
- Sec. 2120. Conforming and technical amendments.
- Sec. 2121. Insurance of mortgages.
- Sec. 2122. Home equity conversion mortgages.
- Sec. 2123. Energy efficient mortgages program.

- Sec. 2124. Pilot program for automated process for borrowers without sufficient credit history.
- Sec. 2125. Homeownership preservation.
- Sec. 2126. Use of FHA savings for improvements in FHA technologies, procedures, processes, program performance, staffing, and salaries.
- Sec. 2127. Post-purchase housing counseling eligibility improvements.
- Sec. 2128. Pre-purchase homeownership counseling demonstration.
- Sec. 2129. Fraud prevention.
- Sec. 2130. Limitation on mortgage insurance premium increases.
- Sec. 2131. Savings provision.
- Sec. 2132. Implementation.
- Sec. 2133. Moratorium on implementation of risk-based premiums.

Subtitle B—Manufactured Housing Loan Modernization

- Sec. 2141. Short title.
- Sec. 2142. Purposes.
- Sec. 2143. Exception to limitation on financial institution portfolio.
- Sec. 2144. Insurance benefits.
- Sec. 2145. Maximum loan limits.
- Sec. 2146. Insurance premiums.
- Sec. 2147. Technical corrections.
- Sec. 2148. Revision of underwriting criteria.
- Sec. 2149. Prohibition against kickbacks and unearned fees.
- Sec. 2150. Leasehold requirements.

TITLE II—MORTGAGE FORECLOSURE PROTECTIONS FOR SERVICEMEMBERS

- Sec. 2201. Temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs.
- Sec. 2202. Counseling on mortgage foreclosures for members of the Armed Forces returning from service abroad.
- Sec. 2203. Enhancement of protections for servicemembers relating to mortgages and mortgage foreclosures.

TITLE III—EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES

- Sec. 2301. Emergency assistance for the redevelopment of abandoned and foreclosed homes.
- Sec. 2302. Nationwide distribution of resources.
- Sec. 2303. Limitation on use of funds with respect to eminent domain.
- Sec. 2304. Limitation on distribution of funds.
- Sec. 2305. Counseling intermediaries.

TITLE IV—HOUSING COUNSELING RESOURCES

- Sec. 2401. Housing counseling resources.
- Sec. 2402. Credit counseling.

TITLE V—MORTGAGE DISCLOSURE IMPROVEMENT ACT

- Sec. 2501. Short title.
- Sec. 2502. Enhanced mortgage loan disclosures.
- Sec. 2503. Community Development Investment Authority for depository institutions.

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TITLE VI—VETERANS HOUSING MATTERS

- Sec. 2601. Home improvements and structural alterations for totally disabled members of the Armed Forces before discharge or release from the Armed Forces.
- Sec. 2602. Eligibility for specially adapted housing benefits and assistance for members of the Armed Forces with service-connected disabilities and individuals residing outside the United States.
- Sec. 2603. Specially adapted housing assistance for individuals with severe burn injuries.
- Sec. 2604. Extension of assistance for individuals residing temporarily in housing owned by a family member.
- Sec. 2605. Increase in specially adapted housing benefits for disabled veterans.
- Sec. 2606. Report on specially adapted housing for disabled individuals.
- Sec. 2607. Report on specially adapted housing assistance for individuals who reside in housing owned by a family member on permanent basis.
- Sec. 2608. Definition of annual income for purposes of section 8 and other public housing programs.
- Sec. 2609. Payment of transportation of baggage and household effects for members of the Armed Forces who relocate due to foreclosure of leased housing.

DIVISION C—TAX-RELATED PROVISIONS

- Sec. 3000. Short title; etc.

TITLE I—HOUSING TAX INCENTIVES

Subtitle A—Multi-Family Housing

PART I—LOW-INCOME HOUSING TAX CREDIT

- Sec. 3001. Temporary increase in volume cap for low-income housing tax credit.
- Sec. 3002. Determination of credit rate.
- Sec. 3003. Modifications to definition of eligible basis.
- Sec. 3004. Other simplification and reform of low-income housing tax incentives.
- Sec. 3005. Treatment of military basic pay.

PART II—MODIFICATIONS TO TAX-EXEMPT HOUSING BOND RULES

- Sec. 3007. Recycling of tax-exempt debt for financing residential rental projects.
- Sec. 3008. Coordination of certain rules applicable to low-income housing credit and qualified residential rental project exempt facility bonds.

PART III—REFORMS RELATED TO THE LOW-INCOME HOUSING CREDIT AND TAX-EXEMPT HOUSING BONDS

- Sec. 3009. Hold harmless for reductions in area median gross income.
- Sec. 3010. Exception to annual current income determination requirement where determination not relevant.

Subtitle B—Single Family Housing

- Sec. 3011. First-time homebuyer credit.

Sec. 3012. Additional standard deduction for real property taxes for non-itemizers.

Subtitle C—General Provisions

- Sec. 3021. Temporary liberalization of tax-exempt housing bond rules.
Sec. 3022. Repeal of alternative minimum tax limitations on tax-exempt housing bonds, low-income housing tax credit, and rehabilitation credit.
Sec. 3023. Bonds guaranteed by Federal home loan banks eligible for treatment as tax-exempt bonds.
Sec. 3024. Modification of rules pertaining to FIRPTA nonforeign affidavits.
Sec. 3025. Modification of definition of tax-exempt use property for purposes of the rehabilitation credit.
Sec. 3026. Extension of special rule for mortgage revenue bonds for residences located in disaster areas.

TITLE II—REFORMS RELATED TO REAL ESTATE INVESTMENT TRUSTS

Subtitle A—Foreign Currency and Other Qualified Activities

- Sec. 3031. Revisions to REIT income tests.
Sec. 3032. Revisions to REIT asset tests.
Sec. 3033. Conforming foreign currency revisions.

Subtitle B—Taxable REIT Subsidiaries

- Sec. 3041. Conforming taxable REIT subsidiary asset test.

Subtitle C—Dealer Sales

- Sec. 3051. Holding period under safe harbor.
Sec. 3052. Determining value of sales under safe harbor.

Subtitle D—Health Care REITs

- Sec. 3061. Conformity for health care facilities.

Subtitle E—Effective Dates

- Sec. 3071. Effective dates.

TITLE III—REVENUE PROVISIONS

Subtitle A—General Provisions

- Sec. 3081. Election to accelerate amt and r and d credits in lieu of bonus depreciation.
Sec. 3082. Certain GO Zone incentives.

Subtitle B—Revenue Offsets

- Sec. 3091. Returns relating to payments made in settlement of payment card and third party network transactions.
Sec. 3092. Gain from sale of principal residence allocated to nonqualified use not excluded from income.
Sec. 3093. Increase in information return penalties.
Sec. 3094. Increase in penalty for failure to file S corporation returns.

Sec. 3095. Increase in penalty for failure to file partnership returns.

Sec. 3096. Increase in minimum penalty on failure to file a return of tax.

1 **DIVISION A—HOUSING FINANCE** 2 **REFORM**

3 **SEC. 1001. SHORT TITLE.**

4 This division may be cited as the “Federal Housing
5 Finance Regulatory Reform Act of 2008”.

6 **SEC. 1002. DEFINITIONS.**

7 (a) **FEDERAL SAFETY AND SOUNDNESS ACT DEFINI-**
8 **TIONS.**—Section 1303 of the Federal Housing Enterprises
9 Financial Safety and Soundness Act of 1992 (12 U.S.C.
10 4502) is amended—

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

14 (2) by redesignating paragraphs (16) through
15 (19) as paragraphs (21) through (24), respectively;

16 (3) by striking paragraphs (13) through (15)
17 and inserting the following:

18 “(19) **OFFICE OF FINANCE.**—The term ‘Office
19 of Finance’ means the Office of Finance of the Fed-
20 eral Home Loan Bank System (or any successor
21 thereto).

22 “(20) **REGULATED ENTITY.**—The term ‘regu-
23 lated entity’ means—

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

3 “(B) the Federal Home Loan Mortgage
4 Corporation and any affiliate thereof; and

5 “(C) any Federal Home Loan Bank.”;

6 (4) by redesignating paragraphs (11) and (12)
7 as paragraphs (17) and (18), respectively;

8 (5) by redesignating paragraph (7) as para-
9 graph (12);

10 (6) by redesignating paragraphs (8) through
11 (10) as paragraphs (14) through (16), respectively;
12 (7) in paragraph (5)—

13 (A) by striking “(5)” and inserting “(9)”;
14 and

15 (B) by striking “Office of Federal Housing
16 Enterprise Oversight of the Department of
17 Housing and Urban Development” and insert-
18 ing “Federal Housing Finance Agency”;

19 (8) by redesignating paragraph (6) as para-
20 graph (10);

21 (9) by redesignating paragraphs (2) through
22 (4) as paragraphs (5) through (7), respectively;

23 (10) by inserting after paragraph (7), as redес-
24 ignated, the following:

25 “(8) DEFAULT; IN DANGER OF DEFAULT.—

1 “(A) DEFAULT.—The term ‘default’
2 means, with respect to a regulated entity, any
3 adjudication or other official determination by
4 any court of competent jurisdiction, or the
5 Agency, pursuant to which a conservator, re-
6 ceiver, limited-life regulated entity, or legal cus-
7 todian is appointed for a regulated entity.

8 “(B) IN DANGER OF DEFAULT.—The term
9 ‘in danger of default’ means a regulated entity
10 with respect to which, in the opinion of the
11 Agency—

12 “(i) the regulated entity is not likely
13 to be able to pay the obligations of the reg-
14 ulated entity in the normal course of busi-
15 ness; or

16 “(ii) the regulated entity—

17 “(I) has incurred or is likely to
18 incur losses that will deplete all or
19 substantially all of its capital; and

20 “(II) there is no reasonable pros-
21 pect that the capital of the regulated
22 entity will be replenished.”;

23 (11) by inserting after paragraph (1) the fol-
24 lowing:

1 “(2) AGENCY.—The term ‘Agency’ means the
2 Federal Housing Finance Agency established under
3 section 1311.

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

6 “(A) the Federal National Mortgage Asso-
7 ciation Charter Act;

8 “(B) the Federal Home Loan Mortgage
9 Corporation Act; and

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

11 “(4) BOARD.—The term ‘Board’ means the
12 Federal Housing Finance Oversight Board estab-
13 lished under section 1313A.”;

14 (12) by inserting after paragraph (10), as re-
15 designated by this section, the following:

16 “(11) ENTITY-AFFILIATED PARTY.—The term
17 ‘entity-affiliated party’ means—

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

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

1 a regulated entity, provided that a member of
2 a Federal Home Loan Bank shall not be
3 deemed to have participated in the affairs of
4 that Bank solely by virtue of being a share-
5 holder of, and obtaining advances from, that
6 Bank;

7 “(C) any independent contractor for a reg-
8 ulated entity (including any attorney, appraiser,
9 or accountant), if—

10 “(i) the independent contractor know-
11 ingly or recklessly participates in—

12 “(I) any violation of any law or
13 regulation;

14 “(II) any breach of fiduciary
15 duty; or

16 “(III) any unsafe or unsound
17 practice; and

18 “(ii) such violation, breach, or prac-
19 tice caused, or is likely to cause, more than
20 a minimal financial loss to, or a significant
21 adverse effect on, the regulated entity;

22 “(D) any not-for-profit corporation that re-
23 ceives its principal funding, on an ongoing
24 basis, from any regulated entity; and

25 “(E) the Office of Finance.”;

1 (13) by inserting after paragraph (12), as re-
2 designated by this section, the following:

3 “(13) LIMITED-LIFE REGULATED ENTITY.—

4 The term ‘limited-life regulated entity’ means an en-
5 tity established by the Agency under section 1367(i)
6 with respect to a Federal Home Loan Bank in de-
7 fault or in danger of default or with respect to an
8 enterprise in default or in danger of default.”; and

9 (14) by adding at the end the following:

10 “(25) VIOLATION.—The term ‘violation’ in-
11 cludes any action (alone or in combination with an-
12 other or others) for or toward causing, bringing
13 about, participating in, counseling, or aiding or abet-
14 ting a violation.”.

15 (b) REFERENCES IN THIS ACT.—As used in this Act,
16 unless otherwise specified—

17 (1) the term “Agency” means the Federal
18 Housing Finance Agency;

19 (2) the term “Director” means the Director of
20 the Agency; and

21 (3) the terms “enterprise”, “regulated entity”,
22 and “authorizing statutes” have the same meanings
23 as in section 1303 of the Federal Housing Enter-
24 prises Financial Safety and Soundness Act of 1992,
25 as amended by this Act.

1 **TITLE I—REFORM OF**
2 **REGULATION OF ENTERPRISES**
3 **Subtitle A—Improvement of Safety**
4 **and Soundness Supervision**

5 **SEC. 1101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**
6 **NANCE AGENCY.**

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

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

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

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

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

21 “(2) AUTHORITY OVER FANNIE MAE, FREDDIE
22 MAC, THE FEDERAL HOME LOAN BANKS, AND THE
23 OFFICE OF FINANCE.—The Director shall have gen-
24 eral regulatory authority over each regulated entity
25 and the Office of Finance, and shall exercise such

1 general regulatory authority, including such duties
2 and authorities set forth under section 1313, to en-
3 sure that the purposes of this Act, the authorizing
4 statutes, and any other applicable law are carried
5 out.

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

10 **“SEC. 1312. DIRECTOR.**

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

14 “(b) APPOINTMENT; TERM.—

15 “(1) APPOINTMENT.—The Director shall be ap-
16 pointed by the President, by and with the advice and
17 consent of the Senate, from among individuals who
18 are citizens of the United States, have a dem-
19 onstrated understanding of financial management or
20 oversight, and have a demonstrated understanding
21 of capital markets, including the mortgage securities
22 markets and housing finance.

23 “(2) TERM.—The Director shall be appointed
24 for a term of 5 years, unless removed before the end
25 of such term for cause by the President.

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

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

12 “(5) TRANSITIONAL PROVISION.—Notwith-
13 standing paragraphs (1) and (2), during the period
14 beginning on the effective date of the Federal Hous-
15 ing Finance Regulatory Reform Act of 2008, and
16 ending on the date on which the Director is ap-
17 pointed and confirmed, the person serving as the Di-
18 rector of the Office of Federal Housing Enterprise
19 Oversight of the Department of Housing and Urban
20 Development on that effective date shall act for all
21 purposes as, and with the full powers of, the Direc-
22 tor.

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

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

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

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

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

24 “(2) FUNCTIONS.—The Deputy Director of the
25 Division of Federal Home Loan Bank Regulation

1 shall have such functions, powers, and duties with
2 respect to the oversight of the Federal Home Loan
3 Banks as the Director shall prescribe.

4 “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND
5 GOALS.—

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

12 “(2) FUNCTIONS.—The Deputy Director for
13 Housing Mission and Goals shall have such func-
14 tions, powers, and duties with respect to the over-
15 sight of the housing mission and goals of the enter-
16 prises, and with respect to oversight of the housing
17 finance and community and economic development
18 mission of the Federal Home Loan Banks, as the
19 Director shall prescribe.

20 “(3) CONSIDERATIONS.—In exercising such
21 functions, powers, and duties, the Deputy Director
22 for Housing Mission and Goals shall consider the
23 differences between the enterprises and the Federal
24 Home Loan Banks, including those described in sec-
25 tion 1313(f).

1 “(f) ACTING DIRECTOR.—In the event of the death,
2 resignation, sickness, or absence of the Director, the
3 President shall designate either the Deputy Director of the
4 Division of Enterprise Regulation, the Deputy Director of
5 the Division of Federal Home Loan Bank Regulation, or
6 the Deputy Director for Housing Mission and Goals, to
7 serve as acting Director until the return of the Director,
8 or the appointment of a successor pursuant to subsection
9 (b).

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

12 “(1) have any direct or indirect financial inter-
13 est in any regulated entity or entity-affiliated party;

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

16 “(3) have served as an executive officer or di-
17 rector of any regulated entity or entity-affiliated
18 party at any time during the 3-year period preceding
19 the date of appointment or designation of such indi-
20 vidual as Director or Deputy Director, as applica-
21 ble.”.

22 **SEC. 1102. DUTIES AND AUTHORITIES OF THE DIRECTOR.**

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

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

2 “(a) DUTIES.—

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

5 “(A) to oversee the prudential operations
6 of each regulated entity; and

7 “(B) to ensure that—

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

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

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

25 “(iv) each regulated entity carries out
26 its statutory mission only through activi-

1 ties that are authorized under and con-
2 sistent with this title and the authorizing
3 statutes; and

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

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

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

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

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

23 “(c) LITIGATION AUTHORITY.—

24 “(1) IN GENERAL.—In enforcing any provision
25 of this title, any regulation or order prescribed under

1 this title, or any other provision of law, rule, regula-
2 tion, or order, or in any other action, suit, or pro-
3 ceeding to which the Director is a party or in which
4 the Director is interested, and in the administration
5 of conservatorships and receiverships, the Director
6 may act in the Director's own name and through the
7 Director's own attorneys.

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

20 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
21 AND RECOMMENDATIONS.—Section 111 of Public Law
22 93–495 (12 U.S.C. 250) is amended by striking “the Fed-
23 eral Housing Finance Board” and inserting “the Director
24 of the Federal Housing Finance Agency”.

1 **SEC. 1103. FEDERAL HOUSING FINANCE OVERSIGHT**
2 **BOARD.**

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

7 **“SEC. 1313A. FEDERAL HOUSING FINANCE OVERSIGHT**
8 **BOARD.**

9 “(a) IN GENERAL.—There is established the Federal
10 Housing Finance Oversight Board, which shall advise the
11 Director with respect to overall strategies and policies in
12 carrying out the duties of the Director under this title.

13 “(b) LIMITATIONS.—The Board may not exercise any
14 executive authority, and the Director may not delegate to
15 the Board any of the functions, powers, or duties of the
16 Director.

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

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

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

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

25 “(4) 1 member shall be the Director, who shall
26 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) by striking “enterprise” each place that
9 term appears and inserting “regulated entity”;

10 (2) by striking “enterprises” each place that
11 term appears and inserting “regulated entities”;

12 (3) in paragraph (3), by striking “; and” and
13 inserting a semicolon;

14 (4) in paragraph (4), by striking “1994.” and
15 inserting “1994; and”; and

16 (5) by adding at the end the following:

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

19 “(A) the safety and soundness of the regu-
20 lated entities;

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

23 “(C) the overall operational status of the
24 regulated entities; and

1 “(D) an evaluation of the performance of
2 the regulated entities in carrying out their re-
3 spective missions;

4 “(6) operations, resources, and performance of
5 the Agency; and

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

8 **SEC. 1104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
9 **LATED ENTITIES.**

10 (a) IN GENERAL.—Section 1314 of the Federal
11 Housing Enterprises Financial Safety and Soundness Act
12 of 1992 (12 U.S.C. 4514) is amended—

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

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

17 (3) by striking “the enterprise” and inserting
18 “the regulated entity”;

19 (4) in subsection (a)—

20 (A) by striking the subsection heading and
21 all that follows through “and operations” in
22 paragraph (1) and inserting the following:

23 “(a) **REGULAR AND SPECIAL REPORTS.**—

24 “(1) **REGULAR REPORTS.**—The Director may
25 require, by general or specific orders, a regulated en-

1 Act, within the period of time specified in such
2 provision of law or otherwise by the Director; or

3 “(B) to submit or publish any false or mis-
4 leading report or information under this sec-
5 tion.

6 “(2) PENALTIES.—

7 “(A) FIRST TIER.—

8 “(i) IN GENERAL.—A violation de-
9 scribed in paragraph (1) shall be subject to
10 a penalty of not more than \$2,000 for each
11 day during which such violation continues,
12 in any case in which—

13 “(I) the subject regulated entity
14 maintains procedures reasonably
15 adapted to avoid any inadvertent error
16 and the violation was unintentional
17 and a result of such an error; or

18 “(II) the violation was an inad-
19 vertent transmittal or publication of
20 any report which was minimally late.

21 “(ii) BURDEN OF PROOF.—For pur-
22 poses of this subparagraph, the regulated
23 entity shall have the burden of proving
24 that the error was inadvertent or that a re-

1 port was inadvertently transmitted or pub-
2 lished late.

3 “(B) SECOND TIER.—A violation described
4 in paragraph (1) shall be subject to a penalty
5 of not more than \$20,000 for each day during
6 which such violation continues or such false or
7 misleading information is not corrected, in any
8 case that is not addressed in subparagraph (A)
9 or (C).

10 “(C) THIRD TIER.—A violation described
11 in paragraph (1) shall be subject to a penalty
12 of not more than \$1,000,000 per day for each
13 day during which such violation continues or
14 such false or misleading information is not cor-
15 rected, in any case in which the subject regu-
16 lated entity committed such violation knowingly
17 or with reckless disregard for the accuracy of
18 any such information or report.

19 “(3) ASSESSMENTS.—Any penalty imposed
20 under this subsection shall be in lieu of a penalty
21 under section 1376, but shall be assessed and col-
22 lected by the Director in the manner provided in sec-
23 tion 1376 for penalties imposed under that section,
24 and any such assessment (including the determina-

1 tion of the amount of the penalty) shall be otherwise
2 subject to the provisions of section 1376.

3 “(4) HEARING.—A regulated entity against
4 which a penalty is assessed under this section shall
5 be afforded an agency hearing if the regulated entity
6 submits a request for a hearing not later than 20
7 days after the date of the issuance of the notice of
8 assessment. Section 1374 shall apply to any such
9 proceedings.”.

10 (b) CONFORMING AMENDMENT.—The Federal Hous-
11 ing Enterprises Financial Safety and Soundness Act of
12 1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-
13 tions 1327 and 1328.

14 **SEC. 1105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**
15 **CONTRACT FOR REVIEWS OF REGULATED EN-**
16 **TITIES; OMBUDSMAN.**

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

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

23 (2) in subsection (b)—

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

1 (B) by striking “to determine the condition
2 of an enterprise for the purpose of ensuring its
3 financial safety and soundness” and inserting
4 “or appropriate”;

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

8 (4) by redesignating subsections (d) through (f)
9 as subsections (e) through (g), respectively; and

10 (5) by inserting after subsection (c) the fol-
11 lowing:

12 “(d) INSPECTOR GENERAL.—There shall be within
13 the Agency an Inspector General, who shall be appointed
14 in accordance with section 3(a) of the Inspector General
15 Act of 1978.”.

16 (b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-
17 ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of
18 the Federal Housing Enterprises Financial Safety and
19 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
20 adding at the end the following:

21 “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,
22 AND EXAMINERS.—

23 “(1) APPLICABILITY.—This section shall apply
24 with respect to any position of examiner, accountant,
25 economist, and specialist in financial markets and in

1 technology at the Agency, with respect to supervision
2 and regulation of the regulated entities, that is in
3 the competitive service.

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

7 “(A) in accordance with the statutes, rules,
8 and regulations governing appointments in the
9 excepted service; and

10 “(B) notwithstanding any statutes, rules,
11 and regulations governing appointments in the
12 competitive service.”.

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

16 (1) in paragraph (1), by inserting “; the Direc-
17 tor of the Federal Housing Finance Agency” after
18 “Social Security Administration”; and

19 (2) in paragraph (2), by inserting “, the Fed-
20 eral Housing Finance Agency” after “Social Secu-
21 rity Administration”.

22 (d) AUTHORITY TO CONTRACT FOR REVIEWS OF
23 REGULATED ENTITIES.—Section 1319 of the Federal
24 Housing Enterprises Financial Safety and Soundness Act
25 of 1992 (12 U.S.C. 4519) is amended—

1 (1) in the section heading, by striking “**ENTER-**
2 **PRISES BY RATING ORGANIZATION**” and insert-
3 ing “**REGULATED ENTITIES**”; and

4 (2) by striking “enterprises” and inserting
5 “regulated entities”.

6 (e) OFFICE OF THE OMBUDSMAN.—Section 1317 of
7 the Federal Housing Enterprises Financial Safety and
8 Soundness Act of 1992 (12 U.S.C. 4517) is amended by
9 adding at the end the following:

10 “(i) OMBUDSMAN.—The Director shall establish, by
11 regulation, an Office of the Ombudsman within the Agen-
12 cy, which shall be responsible for considering complaints
13 and appeals, from any regulated entity and any person
14 that has a business relationship with a regulated entity,
15 regarding any matter relating to the regulation and super-
16 vision of such regulated entity by the Agency. The regula-
17 tion issued by the Director under this subsection shall
18 specify the authority and duties of the Office of the Om-
19 budsman.”.

20 **SEC. 1106. ASSESSMENTS.**

21 Section 1316 of the Federal Housing Enterprises Fi-
22 nancial Safety and Soundness Act of 1992 (12 U.S.C.
23 4516) is amended—

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

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

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

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

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

15 “(4) the windup of the affairs of the Office of
16 Federal Housing Enterprise Oversight and the Fed-
17 eral Housing Finance Board under title III of the
18 Federal Housing Finance Regulatory Reform Act of
19 2008.”;

20 (2) in subsection (b)—

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

1 (B) by redesignating paragraphs (2) and
2 (3) as paragraphs (3) and (4), respectively; and
3 (C) by inserting after paragraph (1) the
4 following:

5 “(2) SEPARATE TREATMENT OF FEDERAL
6 HOME LOAN BANK AND ENTERPRISE ASSESS-
7 MENTS.—Assessments collected from the enterprises
8 shall not exceed the amounts sufficient to provide
9 for the costs and expenses described in subsection
10 (a) relating to the enterprises. Assessments collected
11 from the Federal Home Loan Banks shall not ex-
12 ceed the amounts sufficient to provide for the costs
13 and expenses described in subsection (a) relating to
14 the Federal Home Loan Banks.”;

15 (3) by striking subsection (c) and inserting the
16 following:

17 “(c) INCREASED COSTS OF REGULATION.—

18 “(1) INCREASE FOR INADEQUATE CAPITALIZA-
19 TION.—The semiannual payments made pursuant to
20 subsection (b) by any regulated entity that is not
21 classified (for purposes of subtitle B) as adequately
22 capitalized may be increased, as necessary, in the
23 discretion of the Director to pay additional esti-
24 mated costs of regulation of the regulated entity.

1 “(2) ADJUSTMENT FOR ENFORCEMENT ACTIVI-
2 TIES.—The Director may adjust the amounts of any
3 semiannual payments for an assessment under sub-
4 section (a) that are to be paid pursuant to sub-
5 section (b) by a regulated entity, as necessary in the
6 discretion of the Director, to ensure that the costs
7 of enforcement activities under this Act for a regu-
8 lated entity are borne only by such regulated entity.

9 “(3) ADDITIONAL ASSESSMENT FOR DEFICI-
10 CIENCIES.—If at any time, as a result of increased
11 costs of regulation of a regulated entity that is not
12 classified (for purposes of subtitle B) as adequately
13 capitalized or as the result of supervisory or enforce-
14 ment activities under this Act for a regulated entity,
15 the amount available from any semiannual payment
16 made by such regulated entity pursuant to sub-
17 section (b) is insufficient to cover the costs of the
18 Agency with respect to such entity, the Director may
19 make and collect from such regulated entity an im-
20 mediate assessment to cover the amount of such de-
21 ficiency for the semiannual period. If, at the end of
22 any semiannual period during which such an assess-
23 ment is made, any amount remains from such as-
24 sessment, such remaining amount shall be deducted

1 from the assessment for such regulated entity for
2 the following semiannual period.”;

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

6 (5) by striking subsections (e) through (g) and
7 inserting the following:

8 “(e) WORKING CAPITAL FUND.—At the end of each
9 year for which an assessment under this section is made,
10 the Director shall remit to each regulated entity any
11 amount of assessment collected from such regulated entity
12 that is attributable to subsection (a)(3) and is in excess
13 of the amount the Director deems necessary to maintain
14 a working capital fund.

15 “(f) TREATMENT OF ASSESSMENTS.—

16 “(1) DEPOSIT.—Amounts received by the Di-
17 rector from assessments under this section may be
18 deposited by the Director in the manner provided in
19 section 5234 of the Revised Statutes of the United
20 States (12 U.S.C. 192) for monies deposited by the
21 Comptroller of the Currency.

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

1 “(3) NO APPORTIONMENT OF FUNDS.—Not-
2 withstanding any other provision of law, the
3 amounts received by the Director from any assess-
4 ment under this section shall not be subject to ap-
5 portionment for the purpose of chapter 15 of title
6 31, United States Code, or under any other author-
7 ity.

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

13 “(5) AVAILABILITY OF OVERSIGHT FUND
14 AMOUNTS.—Notwithstanding any other provision of
15 law, any amounts remaining in the Federal Housing
16 Enterprises Oversight Fund established under this
17 section (as in effect before the effective date of the
18 Federal Housing Finance Regulatory Reform Act of
19 2008, and any amounts remaining from assessments
20 on the Federal Home Loan Banks pursuant to sec-
21 tion 18(b) of the Federal Home Loan Bank Act (12
22 U.S.C. 1438(b)), shall, upon such effective date, be
23 treated for purposes of this subsection as amounts
24 received from assessments under this section.

25 “(6) TREASURY INVESTMENTS.—

1 “(A) AUTHORITY.—The Director may re-
2 quest the Secretary of the Treasury to invest
3 such portions of amounts received by the Direc-
4 tor from assessments paid under this section
5 that, in the Director’s discretion, are not re-
6 quired to meet the current working needs of the
7 Agency.

8 “(B) GOVERNMENT OBLIGATIONS.—Pursu-
9 ant to a request under subparagraph (A), the
10 Secretary of the Treasury shall invest such
11 amounts in Government obligations guaranteed
12 as to principal and interest by the United
13 States with maturities suitable to the needs of
14 the Agency and bearing interest at a rate deter-
15 mined by the Secretary of the Treasury taking
16 into consideration current market yields on out-
17 standing marketable obligations of the United
18 States of comparable maturity.

19 “(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

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

5 “(2) FINANCIAL STATEMENTS.—The Agency
6 shall prepare annually a statement of—

7 “(A) assets and liabilities and surplus or
8 deficit;

9 “(B) income and expenses; and

10 “(C) sources and application of funds.

11 “(3) FINANCIAL MANAGEMENT SYSTEMS.—The
12 Agency shall implement and maintain financial man-
13 agement systems that—

14 “(A) comply substantially with Federal fi-
15 nancial management systems requirements and
16 applicable Federal accounting standards; and

17 “(B) use a general ledger system that ac-
18 counts for activity at the transaction level.

19 “(4) ASSERTION OF INTERNAL CONTROLS.—
20 The Director shall provide to the Comptroller Gen-
21 eral of the United States an assertion as to the ef-
22 fectiveness of the internal controls that apply to fi-
23 nancial reporting by the Agency, using the standards
24 established in section 3512(c) of title 31, United
25 States Code.

1 “(5) RULE OF CONSTRUCTION.—This sub-
2 section may not be construed as implying any obliga-
3 tion on the part of the Director to consult with or
4 obtain the consent or approval of the Director of the
5 Office of Management and Budget with respect to
6 any report, plan, forecast, or other information re-
7 ferred to in paragraph (1) or any jurisdiction or
8 oversight over the affairs or operations of the Agen-
9 cy.

10 “(h) AUDIT OF AGENCY.—

11 “(1) IN GENERAL.—The Comptroller General
12 shall annually audit the financial transactions of the
13 Agency in accordance with the United States gen-
14 erally accepted government auditing standards as
15 may be prescribed by the Comptroller General of the
16 United States. The audit shall be conducted at the
17 place or places where accounts of the Agency are
18 normally kept. The representatives of the Govern-
19 ment Accountability Office shall have access to the
20 personnel and to all books, accounts, documents, pa-
21 pers, records (including electronic records), reports,
22 files, and all other papers, automated data, things,
23 or property belonging to or under the control of or
24 used or employed by the Agency pertaining to its fi-
25 nancial transactions and necessary to facilitate the

1 audit, and such representatives shall be afforded full
2 facilities for verifying transactions with the balances
3 or securities held by depositories, fiscal agents, and
4 custodians. All such books, accounts, documents,
5 records, reports, files, papers, and property of the
6 Agency shall remain in possession and custody of
7 the Agency. The Comptroller General may obtain
8 and duplicate any such books, accounts, documents,
9 records, working papers, automated data and files,
10 or other information relevant to such audit without
11 cost to the Comptroller General and the Comptroller
12 General's right of access to such information shall
13 be enforceable pursuant to section 716(c) of title 31,
14 United States Code.

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

1 thereto as the Comptroller General may deem advis-
2 able. A copy of each report shall be furnished to the
3 President and to the Agency at the time submitted
4 to the Congress.

5 “(3) ASSISTANCE AND COSTS.—For the purpose
6 of conducting an audit under this subsection, the
7 Comptroller General may, in the discretion of the
8 Comptroller General, employ by contract, without re-
9 gard to section 3709 of the Revised Statutes of the
10 United States (41 U.S.C. 5), professional services of
11 firms and organizations of certified public account-
12 ants for temporary periods or for special purposes.
13 Upon the request of the Comptroller General, the
14 Director of the Agency shall transfer to the Govern-
15 ment Accountability Office from funds available, the
16 amount requested by the Comptroller General to
17 cover the full costs of any audit and report con-
18 ducted by the Comptroller General. The Comptroller
19 General shall credit funds transferred to the account
20 established for salaries and expenses of the Govern-
21 ment Accountability Office, and such amount shall
22 be available upon receipt and without fiscal year lim-
23 itation to cover the full costs of the audit and re-
24 port.”.

1 **SEC. 1107. REGULATIONS AND ORDERS.**

2 Section 1319G of the Federal Housing Enterprises
3 Financial Safety and Soundness Act of 1992 (12 U.S.C.
4 4526) is amended—

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

7 “(a) **AUTHORITY.**—The Director shall issue any reg-
8 ulations, guidelines, or orders necessary to carry out the
9 duties of the Director under this title or the authorizing
10 statutes, and to ensure that the purposes of this title and
11 the authorizing statutes are accomplished.”; and

12 (2) by striking subsection (c).

13 **SEC. 1108. PRUDENTIAL MANAGEMENT AND OPERATIONS**
14 **STANDARDS.**

15 The Federal Housing Enterprises Financial Safety
16 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
17 amended by inserting after section 1313A, as added by
18 this Act, the following new section:

19 **“SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS**
20 **STANDARDS.**

21 “(a) **STANDARDS.**—The Director shall establish
22 standards, by regulation or guideline, for each regulated
23 entity relating to—

24 “(1) adequacy of internal controls and informa-
25 tion systems taking into account the nature and
26 scale of business operations;

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

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

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

8 “(5) adequacy and maintenance of liquidity and
9 reserves;

10 “(6) management of asset and investment port-
11 folio growth;

12 “(7) investments and acquisitions of assets by
13 a regulated entity, to ensure that they are consistent
14 with the purposes of this title and the authorizing
15 statutes;

16 “(8) overall risk management processes, includ-
17 ing adequacy of oversight by senior management and
18 the board of directors and of processes and policies
19 to identify, measure, monitor, and control material
20 risks, including reputational risks, and for adequate,
21 well-tested business resumption plans for all major
22 systems with remote site facilities to protect against
23 disruptive events;

24 “(9) management of credit and counterparty
25 risk, including systems to identify concentrations of

1 credit risk and prudential limits to restrict exposure
2 of the regulated entity to a single counterparty or
3 groups of related counterparties;

4 “(10) maintenance of adequate records, in ac-
5 cordance with consistent accounting policies and
6 practices that enable the Director to evaluate the fi-
7 nancial condition of the regulated entity; and

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

11 “(b) FAILURE TO MEET STANDARDS.—

12 “(1) PLAN REQUIREMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 1109. REVIEW OF AND AUTHORITY OVER ENTERPRISE**
2 **ASSETS AND LIABILITIES.**

3 (a) IN GENERAL.—Subtitle B of the Federal Housing
4 Enterprises Financial Safety and Soundness Act of 1992
5 (12 U.S.C. 4611 et seq.) is amended—

6 (1) by striking the subtitle designation and
7 heading and inserting the following:

8 **“Subtitle B—Required Capital Lev-**
9 **els for Regulated Entities, Spe-**
10 **cial Enforcement Powers, and**
11 **Reviews of Assets and Liabil-**
12 **ities”;**

13 and

14 (2) by adding at the end the following new sec-
15 tion:

16 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**
17 **ITIES.**

18 “(a) IN GENERAL.—The Director shall, by regula-
19 tion, establish criteria governing the portfolio holdings of
20 the enterprises, to ensure that the holdings are backed by
21 sufficient capital and consistent with the mission and the
22 safe and sound operations of the enterprises. In estab-
23 lishing such criteria, the Director shall consider the ability
24 of the enterprises to provide a liquid secondary market
25 through securitization activities, the portfolio holdings in

1 relation to the overall mortgage market, and adherence to
2 the standards specified in section 1313B.

3 “(b) TEMPORARY ADJUSTMENTS.—The Director
4 may, by order, make temporary adjustments to the estab-
5 lished standards for an enterprise or both enterprises,
6 such as during times of economic distress or market dis-
7 ruption.

8 “(c) AUTHORITY TO REQUIRE DISPOSITION OR AC-
9 QUISSION.—The Director shall monitor the portfolio of
10 each enterprise. Pursuant to subsection (a) and notwith-
11 standing the capital classifications of the enterprises, the
12 Director may, by order, require an enterprise, under such
13 terms and conditions as the Director determines to be ap-
14 propriate, to dispose of or acquire any asset, if the Direc-
15 tor determines that such action is consistent with the pur-
16 poses of this Act or any of the authorizing statutes.”.

17 (b) REGULATIONS.—Not later than the expiration of
18 the 180-day period beginning on the effective date of this
19 Act, the Director shall issue regulations pursuant to sec-
20 tion 1369E(a) of the Federal Housing Enterprises Finan-
21 cial Safety and Soundness Act of 1992 (as added by sub-
22 section (a) of this section) establishing the portfolio hold-
23 ings standards under such section.

1 **SEC. 1110. RISK-BASED CAPITAL REQUIREMENTS.**

2 (a) IN GENERAL.—Section 1361 of the Federal
3 Housing Enterprises Financial Safety and Soundness Act
4 of 1992 (12 U.S.C. 4611) is amended to read as follows:

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

7 “(a) IN GENERAL.—

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

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

19 “(b) NO LIMITATION.—Nothing in this section shall
20 limit the authority of the Director to require other reports
21 or undertakings, or take other action, in furtherance of
22 the responsibilities of the Director under this Act.”

23 (b) FEDERAL HOME LOAN BANKS RISK-BASED CAP-
24 ITAL.—Section 6(a)(3) of the Federal Home Loan Bank
25 Act (12 U.S.C. 1426(a)(3)) is amended—

1 (1) by striking subparagraph (A) and inserting
2 the following:

3 “(A) RISK-BASED CAPITAL STANDARDS.—
4 The Director shall, by regulation, establish risk-
5 based capital standards for the Federal Home
6 Loan Banks to ensure that the Federal Home
7 Loan Banks operate in a safe and sound man-
8 ner, with sufficient permanent capital and re-
9 serves to support the risks that arise in the op-
10 erations and management of the Federal Home
11 Loans Banks.”; and

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

14 **SEC. 1111. MINIMUM CAPITAL LEVELS.**

15 Section 1362 of the Federal Housing Enterprises Fi-
16 nancial Safety and Soundness Act of 1992 (12 U.S.C.
17 4612) is amended—

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

20 (2) by striking subsection (b) and inserting the
21 following:

22 “(b) FEDERAL HOME LOAN BANKS.—For purposes
23 of this subtitle, the minimum capital level for each Federal
24 Home Loan Bank shall be the minimum capital required
25 to be maintained to comply with the leverage requirement

1 for the bank established under section 6(a)(2) of the Fed-
2 eral Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

3 “(c) ESTABLISHMENT OF REVISED MINIMUM CAP-
4 ITAL LEVELS.—Notwithstanding subsections (a) and (b)
5 and notwithstanding the capital classifications of the regu-
6 lated entities, the Director may, by regulations issued
7 under section 1319G, establish a minimum capital level
8 for the enterprises, for the Federal Home Loan Banks,
9 or for both the enterprises and the banks, that is higher
10 than the level specified in subsection (a) for the enter-
11 prises or the level specified in subsection (b) for the Fed-
12 eral Home Loan Banks, to the extent needed to ensure
13 that the regulated entities operate in a safe and sound
14 manner.

15 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-
16 CREASE.—

17 “(1) IN GENERAL.—Notwithstanding sub-
18 sections (a) and (b) and any minimum capital level
19 established pursuant to subsection (c), the Director
20 may, by order, increase the minimum capital level
21 for a regulated entity on a temporary basis, when
22 the Director determines that such an increase is nec-
23 essary and consistent with the prudential regulation
24 and the safe and sound operations of a regulated en-
25 tity.

1 “(2) RESCISSION.—The Director shall rescind
2 any temporary minimum capital level established
3 under paragraph (1) when the Director determines
4 that the circumstances or facts no longer justify the
5 temporary minimum capital level.

6 “(3) REGULATIONS REQUIRED.—The Director
7 shall issue regulations establishing—

8 “(A) standards for the imposition of a
9 temporary increase in minimum capital under
10 paragraph (1);

11 “(B) the standards and procedures that
12 the Director will use to make the determination
13 referred to in paragraph (2); and

14 “(C) a reasonable time frame for periodic
15 review of any temporary increase in minimum
16 capital for the purpose of making the deter-
17 mination referred to in paragraph (2).

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

1 that arise in the operations and management of the regu-
2 lated entity.

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

9 **SEC. 1112. REGISTRATION UNDER THE SECURITIES LAWS.**

10 The Securities Exchange Act of 1934 (15 U.S.C. 78a
11 et seq.) is amended by adding at the end the following:

12 **“SEC. 38. FEDERAL NATIONAL MORTGAGE ASSOCIATION,**
13 **FEDERAL HOME LOAN MORTGAGE CORPORA-**
14 **TION, FEDERAL HOME LOAN BANKS.**

15 “(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION
16 AND FEDERAL HOME LOAN MORTGAGE CORPORATION.—
17 No class of equity securities of the Federal National Mort-
18 gage Association or the Federal Home Loan Mortgage
19 Corporation shall be treated as an exempted security for
20 purposes of section 12, 13, 14, or 16.

21 “(b) FEDERAL HOME LOAN BANKS.—

22 “(1) REGISTRATION.—Each Federal Home
23 Loan Bank shall register a class of its common
24 stock under section 12(g), not later than 120 days
25 after the date of enactment of the Federal Housing

1 Finance Regulatory Reform Act of 2008, and shall
2 thereafter maintain such registration and be treated
3 for purposes of this title as an ‘issuer’, the securities
4 of which are required to be registered under section
5 12, regardless of the number of members holding
6 such stock at any given time.

7 “(2) STANDARDS RELATING TO AUDIT COMMIT-
8 TEES.—Each Federal Home Loan Bank shall com-
9 ply with the rules issued by the Commission under
10 section 10A(m).

11 “(c) DEFINITIONS.—For purposes of this section, the
12 following definitions shall apply:

13 “(1) FEDERAL HOME LOAN BANK; MEMBER.—
14 The terms ‘Federal Home Loan Bank’ and ‘mem-
15 ber’, have the same meanings as in section 2 of the
16 Federal Home Loan Bank Act.

17 “(2) FEDERAL NATIONAL MORTGAGE ASSOCIA-
18 TION.—The term ‘Federal National Mortgage Asso-
19 ciation’ means the corporation created by the Fed-
20 eral National Mortgage Association Charter Act.

21 “(3) FEDERAL HOME LOAN MORTGAGE COR-
22 PORATION.—The term ‘Federal Home Loan Mort-
23 gage Corporation’ means the corporation created by
24 the Federal Home Loan Mortgage Corporation
25 Act.”.

1 **SEC. 1113. PROHIBITION AND WITHHOLDING OF EXECU-**
2 **TIVE COMPENSATION.**

3 (a) IN GENERAL.—Section 1318 of the Federal
4 Housing Enterprises Financial Safety and Soundness Act
5 of 1992 (12 U.S.C. 4518) is amended—

6 (1) in the section heading, by striking “**OF EX-**
7 **CESSIVE**” and inserting “**AND WITHHOLDING OF**
8 **EXECUTIVE**”;

9 (2) by redesignating subsection (b) as sub-
10 section (d); and

11 (3) by inserting after subsection (a) the fol-
12 lowing:

13 “(b) FACTORS.—In making any determination under
14 subsection (a), the Director may take into consideration
15 any factors the Director considers relevant, including any
16 wrongdoing on the part of the executive officer, and such
17 wrongdoing shall include any fraudulent act or omission,
18 breach of trust or fiduciary duty, violation of law, rule,
19 regulation, order, or written agreement, and insider abuse
20 with respect to the regulated entity. The approval of an
21 agreement or contract pursuant to section 309(d)(3)(B)
22 of the Federal National Mortgage Association Charter Act
23 (12 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the
24 Federal Home Loan Mortgage Corporation Act (12 U.S.C.
25 1452(h)(2)) shall not preclude the Director from making
26 any subsequent determination under subsection (a).

1 “(c) WITHHOLDING OF COMPENSATION.—In car-
2 rying out subsection (a), the Director may require a regu-
3 lated entity to withhold any payment, transfer, or dis-
4 bursement of compensation to an executive officer, or to
5 place such compensation in an escrow account, during the
6 review of the reasonableness and comparability of com-
7 pensation.”.

8 (b) CONFORMING AMENDMENTS.—

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

13 “(4) Notwithstanding any other provision of this sec-
14 tion, the corporation shall not transfer, disburse, or pay
15 compensation to any executive officer, or enter into an
16 agreement with such executive officer, without the ap-
17 proval of the Director, for matters being reviewed under
18 section 1318 of the Federal Housing Enterprises Finan-
19 cial Safety and Soundness Act of 1992 (12 U.S.C.
20 4518).”.

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

1 “(4) Notwithstanding any other provision of this sec-
2 tion, the Corporation shall not transfer, disburse, or pay
3 compensation to any executive officer, or enter into an
4 agreement with such executive officer, without the ap-
5 proval of the Director, for matters being reviewed under
6 section 1318 of the Federal Housing Enterprises Finan-
7 cial Safety and Soundness Act of 1992 (12 U.S.C.
8 4518).”.

9 (3) FEDERAL HOME LOAN BANKS.—Section 7
10 of the Federal Home Loan Bank Act (12 U.S.C.
11 1427) is amended by adding at the end the following
12 new subsection:

13 “(1) WITHHOLDING OF COMPENSATION.—Notwith-
14 standing any other provision of this section, a Federal
15 Home Loan Bank shall not transfer, disburse, or pay com-
16 pensation to any executive officer, or enter into an agree-
17 ment with such executive officer, without the approval of
18 the Director, for matters being reviewed under section
19 1318 of the Federal Housing Enterprises Financial Safety
20 and Soundness Act of 1992 (12 U.S.C. 4518).”.

21 **SEC. 1114. 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 “(e) AUTHORITY TO REGULATE OR PROHIBIT CER-
2 TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

3 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-
4 TION PAYMENTS.—The Director 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 Director shall prescribe, by regulation, the fac-
9 tors to be considered by the Director 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 regulated entity that has had a material
17 effect on the financial condition of the regulated
18 entity;

19 “(B) whether there is a reasonable basis to
20 believe that the affiliated party is substantially
21 responsible for the insolvency of the regulated
22 entity, the appointment of a conservator or re-
23 ceiver for the regulated entity, or the troubled
24 condition of the regulated entity (as defined in
25 regulations prescribed by the Director);

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

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

10 “(E) the length of time that the party was
11 affiliated with the regulated entity, and the de-
12 gree to which—

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

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

19 “(3) CERTAIN PAYMENTS PROHIBITED.—No
20 regulated entity may prepay the salary or any liabil-
21 ity or legal expense of any affiliated party if such
22 payment is made—

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

1 “(B) with a view to, or having the result
2 of—

3 “(i) preventing the proper application
4 of the assets of the regulated entity to
5 creditors; or

6 “(ii) preferring one creditor over an-
7 other.

8 “(4) GOLDEN PARACHUTE PAYMENT DE-
9 FINED.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the term ‘golden parachute pay-
12 ment’ means any payment (or any agreement to
13 make any payment) in the nature of compensa-
14 tion by any regulated entity for the benefit of
15 any affiliated party pursuant to an obligation of
16 such regulated entity that—

17 “(i) is contingent on the termination
18 of such party’s affiliation with the regu-
19 lated entity; and

20 “(ii) is received on or after the date
21 on which—

22 “(I) the regulated entity became
23 insolvent;

1 “(II) any conservator or receiver
2 is appointed for such regulated entity;
3 or

4 “(III) the Director determines
5 that the regulated entity is in a trou-
6 bled condition (as defined in the regu-
7 lations of the Director).

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

17 “(C) CERTAIN PAYMENTS NOT IN-
18 CLUDED.—For purposes of this subsection, the
19 term ‘golden parachute payment’ shall not in-
20 clude—

21 “(i) any payment made pursuant to a
22 retirement plan which is qualified (or is in-
23 tended to be qualified) under section 401
24 of the Internal Revenue Code of 1986, or
25 other nondiscriminatory benefit plan;

1 “(ii) any payment made pursuant to a
2 bona fide deferred compensation plan or
3 arrangement which the Director deter-
4 mines, by regulation or order, to be per-
5 missible; or

6 “(iii) any payment made by reason of
7 the death or disability of an affiliated
8 party.

9 “(5) OTHER DEFINITIONS.—For purposes of
10 this subsection, the following definitions shall apply:

11 “(A) INDEMNIFICATION PAYMENT.—Sub-
12 ject to paragraph (6), the term ‘indemnification
13 payment’ means any payment (or any agree-
14 ment to make any payment) by any regulated
15 entity for the benefit of any person who is or
16 was an affiliated party, to pay or reimburse
17 such person for any liability or legal expense
18 with regard to any administrative proceeding or
19 civil action instituted by the Agency which re-
20 sults in a final order under which such per-
21 son—

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

23 “(ii) is removed or prohibited from
24 participating in conduct of the affairs of
25 the regulated entity; or

1 “(iii) is required to take any affirma-
2 tive action to correct certain conditions re-
3 sulting from violations or practices, by
4 order of the Director.

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

7 “(i) any legal or other professional ex-
8 pense incurred in connection with any
9 claim, proceeding, or action;

10 “(ii) the amount of, and any cost in-
11 curred in connection with, any settlement
12 of any claim, proceeding, or action; and

13 “(iii) the amount of, and any cost in-
14 curred in connection with, any judgment or
15 penalty imposed with respect to any claim,
16 proceeding, or action.

17 “(C) PAYMENT.—The term ‘payment’ in-
18 cludes—

19 “(i) any direct or indirect transfer of
20 any funds or any asset; and

21 “(ii) any segregation of any funds or
22 assets for the purpose of making, or pursu-
23 ant to an agreement to make, any payment
24 after the date on which such funds or as-
25 sets are segregated, without regard to

1 whether the obligation to make such pay-
2 ment is contingent on—

3 “(I) the determination, after such
4 date, of the liability for the payment
5 of such amount; or

6 “(II) the liquidation, after such
7 date, of the amount of such payment.

8 “(6) CERTAIN COMMERCIAL INSURANCE COV-
9 ERAGE NOT TREATED AS COVERED BENEFIT PAY-
10 MENT.—No provision of this subsection shall be con-
11 strued as prohibiting any regulated entity from pur-
12 chasing any commercial insurance policy or fidelity
13 bond, except that, subject to any requirement de-
14 scribed in paragraph (5)(A)(iii), such insurance pol-
15 icy or bond shall not cover any legal or liability ex-
16 pense of the regulated entity which is described in
17 paragraph (5)(A).”.

18 **SEC. 1115. REPORTING OF FRAUDULENT LOANS.**

19 Part 1 of subtitle C of the Federal Housing Enter-
20 prises Financial Safety and Soundness Act of 1992 (12
21 U.S.C. 4631 et seq.), as amended by this Act, is amended
22 by adding at the end the following:

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

24 “(a) REQUIREMENT TO REPORT.—The Director shall
25 require a regulated entity to submit to the Director a time-

1 ly report upon discovery by the regulated entity that it
2 has purchased or sold a fraudulent loan or financial in-
3 strument, or suspects a possible fraud relating to the pur-
4 chase or sale of any loan or financial instrument. The Di-
5 rector shall require each regulated entity to establish and
6 maintain procedures designed to discover any such trans-
7 actions.

8 “(b) PROTECTION FROM LIABILITY FOR REPORTS.—
9 Any regulated entity that, in good faith, makes a report
10 pursuant to subsection (a), and any entity-affiliated party,
11 that, in good faith, makes or requires another to make
12 any such report, shall not be liable to any person under
13 any provision of law or regulation, any constitution, law,
14 or regulation of any State or political subdivision of any
15 State, or under any contract or other legally enforceable
16 agreement (including any arbitration agreement) for such
17 report or for any failure to provide notice of such report
18 to the person who is the subject of such report or any
19 other persons identified in the report.”.

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

3 **SEC. 1121. 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—ADDITIONAL AUTHORITIES OF THE**
11 **DIRECTOR”;**

12 and

13 (2) by striking sections 1321 and 1322.

14 **SEC. 1122. ASSUMPTION BY THE DIRECTOR OF CERTAIN**
15 **OTHER HUD RESPONSIBILITIES.**

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

19 (1) by striking “Secretary” each place that
20 term appears and inserting “Director” in each of
21 sections 1323, 1326, 1327, 1328, and 1336; and

22 (2) by striking sections 1338 and 1349 (12
23 U.S.C. 4562 note and 4589).

24 (b) RETENTION OF FAIR HOUSING RESPONSIBIL-
25 ITIES.—Section 1325 of the Federal Housing Enterprises

1 Financial Safety and Soundness Act of 1992 (12 U.S.C.
2 4545) is amended in the matter preceding paragraph (1),
3 by inserting “of Housing and Urban Development” after
4 “The Secretary”.

5 **SEC. 1123. REVIEW OF ENTERPRISE PRODUCTS.**

6 Part 2 of subtitle A of the Federal Housing Enter-
7 prises Financial Safety and Soundness Act of 1992 (12
8 U.S.C. 4541 et seq.) is amended by inserting before sec-
9 tion 1323 the following:

10 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS.**

11 “(a) IN GENERAL.—The Director shall require each
12 enterprise to obtain the approval of the Director for any
13 product of the enterprise before initially offering the prod-
14 uct.

15 “(b) STANDARD FOR APPROVAL.—In considering any
16 request for approval of a product pursuant to subsection
17 (a), the Director shall make a determination that—

18 “(1) in the case of a product of the Federal Na-
19 tional Mortgage Association, the product is author-
20 ized under paragraph (2), (3), (4), or (5) of section
21 302(b) or section 304 of the Federal National Mort-
22 gage Association Charter Act (12 U.S.C. 1717(b),
23 1719);

24 “(2) in the case of a product of the Federal
25 Home Loan Mortgage Corporation, the product is

1 authorized under paragraph (1), (4), or (5) of sec-
2 tion 305(a) of the Federal Home Loan Mortgage
3 Corporation Act (12 U.S.C. 1454(a));

4 “(3) the product is in the public interest; and

5 “(4) the product is consistent with the safety
6 and soundness of the enterprise or the mortgage fi-
7 nance system.

8 “(c) PROCEDURE FOR APPROVAL.—

9 “(1) SUBMISSION OF REQUEST.—An enterprise
10 shall submit to the Director a written request for
11 approval of a product that describes the product in
12 such form as prescribed by order or regulation of the
13 Director.

14 “(2) REQUEST FOR PUBLIC COMMENT.—Imme-
15 diately upon receipt of a request for approval of a
16 product, as required under paragraph (1), the Direc-
17 tor shall publish notice of such request and of the
18 period for public comment pursuant to paragraph
19 (3) regarding the product, and a description of the
20 product proposed by the request. The Director shall
21 give interested parties the opportunity to respond in
22 writing to the proposed product.

23 “(3) PUBLIC COMMENT PERIOD.—During the
24 30-day period beginning on the date of publication
25 pursuant to paragraph (2) of a request for approval

1 of a product, the Director shall receive public com-
2 ments regarding the proposed product.

3 “(4) OFFERING OF PRODUCT.—

4 “(A) IN GENERAL.—Not later than 30
5 days after the close of the public comment pe-
6 riod described in paragraph (3), the Director
7 shall approve or deny the product, specifying
8 the grounds for such decision in writing.

9 “(B) FAILURE TO ACT.—If the Director
10 fails to act within the 30-day period described
11 in subparagraph (A), then the enterprise may
12 offer the product.

13 “(C) TEMPORARY APPROVAL.—The Direc-
14 tor may, subject to the rules of the Director,
15 provide for temporary approval of the offering
16 of a product without a public comment period,
17 if the Director finds that the existence of exi-
18 gent circumstances makes such delay contrary
19 to the public interest.

20 “(d) CONDITIONAL APPROVAL.—If the Director ap-
21 proves the offering of any product by an enterprise, the
22 Director may establish terms, conditions, or limitations
23 with respect to such product with which the enterprise
24 must comply in order to offer such product.

25 “(e) EXCLUSIONS.—

1 “(1) IN GENERAL.—The requirements of sub-
2 sections (a) through (d) do not apply with respect
3 to—

4 “(A) the automated loan underwriting sys-
5 tem of an enterprise in existence as of the date
6 of enactment of the Federal Housing Finance
7 Regulatory Reform Act of 2008, including any
8 upgrade to the technology, operating system, or
9 software to operate the underwriting system;

10 “(B) any modification to the mortgage
11 terms and conditions or mortgage underwriting
12 criteria relating to the mortgages that are pur-
13 chased or guaranteed by an enterprise, provided
14 that such modifications do not alter the under-
15 lying transaction so as to include services or fi-
16 nancing, other than residential mortgage fi-
17 nancing; or

18 “(C) any other activity that is substantially
19 similar, as determined by rule of the Director
20 to—

21 “(i) the activities described in sub-
22 paragraphs (A) and (B); and

23 “(ii) other activities that have been
24 approved by the Director in accordance
25 with this section.

1 “(2) EXPEDITED REVIEW.—

2 “(A) ENTERPRISE NOTICE.—For any new
3 activity that an enterprise considers not to be
4 a product, the enterprise shall provide written
5 notice to the Director of such activity, and may
6 not commence such activity until the date of re-
7 ceipt of a notice under subparagraph (B) or the
8 expiration of the period described in subpara-
9 graph (C). The Director shall establish, by reg-
10 ulation, the form and content of such written
11 notice.

12 “(B) DIRECTOR DETERMINATION.—Not
13 later than 15 days after the date of receipt of
14 a notice under subparagraph (A), the Director
15 shall determine whether such activity is a prod-
16 uct subject to approval under this section. The
17 Director shall, immediately upon so deter-
18 mining, notify the enterprise.

19 “(C) FAILURE TO ACT.—If the Director
20 fails to determine whether such activity is a
21 product within the 15-day period described in
22 subparagraph (B), the enterprise may com-
23 mence the new activity in accordance with sub-
24 paragraph (A).

1 “(f) NO LIMITATION.—Nothing in this section may
2 be construed to restrict—

3 “(1) the safety and soundness authority of the
4 Director over all new and existing products or activi-
5 ties; or

6 “(2) the authority of the Director to review all
7 new and existing products or activities to determine
8 that such products or activities are consistent with
9 the statutory mission of an enterprise.”.

10 **SEC. 1124. CONFORMING LOAN LIMITS.**

11 (a) FANNIE MAE.—

12 (1) GENERAL LIMIT.—Section 302(b)(2) of the
13 Federal National Mortgage Association Charter Act
14 (12 U.S.C. 1717(b)(2)) is amended by striking the
15 7th and 8th sentences and inserting the following
16 new sentences: “Such limitations shall not exceed
17 \$417,000 for a mortgage secured by a single-family
18 residence, \$533,850 for a mortgage secured by a 2-
19 family residence, \$645,300 for a mortgage secured
20 by a 3-family residence, and \$801,950 for a mort-
21 gage secured by a 4-family residence, except that
22 such maximum limitations shall be adjusted effective
23 January 1 of each year beginning after the effective
24 date of Federal Housing Finance Regulatory Reform
25 Act of 2008, subject to the limitations in this para-

1 graph. Each adjustment shall be made by adding to
2 each such amount (as it may have been previously
3 adjusted) a percentage thereof equal to the percent-
4 age increase, during the most recent 12-month or
5 4th-quarter period ending before the time of deter-
6 mining such annual adjustment, in the housing price
7 index maintained by the Director of the Federal
8 Housing Finance Agency (pursuant to section 1322
9 of the Federal Housing Enterprises Financial Safety
10 and Soundness Act of 1992 (12 U.S.C. 4541)). If
11 the change in such house price index during the
12 most recent 12-month or 4th-quarter period ending
13 before the time of determining such annual adjust-
14 ment is a decrease, then no adjustment shall be
15 made for the next year, and the next adjustment
16 shall take into account prior declines in the house
17 price index, so that any adjustment shall reflect the
18 net change in the house price index since the last
19 adjustment. Declines in the house price index shall
20 be accumulated and then reduce increases until sub-
21 sequent increases exceed prior declines.”.

22 (2) HIGH-COST AREA LIMIT.—Section 302(b)(2)
23 of the Federal National Mortgage Association Char-
24 ter Act (12 U.S.C. 1717(b)(2)) is amended by add-
25 ing after the period at the end the following: “Such

1 foregoing limitations shall also be increased with re-
2 spect to properties of a particular size located in any
3 area for which the median price for such size resi-
4 dence exceeds the foregoing limitation for such size
5 residence, to the lesser of 150 percent of such fore-
6 going limitation for such size residence or the
7 amount that is equal to the median price in such
8 area for such size residence.”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by paragraphs (1) and (2) of this subsection shall
11 take effect upon the expiration of the date described
12 in section 201(a) of the Economic Stimulus Act of
13 2008 (Public Law 110–185).

14 (b) FREDDIE MAC.—

15 (1) GENERAL LIMIT.—Section 305(a)(2) of the
16 Federal Home Loan Mortgage Corporation Act (12
17 U.S.C. 1454(a)(2)) is amended by striking the 6th
18 and 7th sentences and inserting the following new
19 sentences: “Such limitations shall not exceed
20 \$417,000 for a mortgage secured by a single-family
21 residence, \$533,850 for a mortgage secured by a 2-
22 family residence, \$645,300 for a mortgage secured
23 by a 3-family residence, and \$801,950 for a mort-
24 gage secured by a 4-family residence, except that
25 such maximum limitations shall be adjusted effective

1 January 1 of each year beginning after the effective
2 date of the Federal Housing Finance Regulatory Re-
3 form Act of 2008, subject to the limitations in this
4 paragraph. Each adjustment shall be made by add-
5 ing to each such amount (as it may have been pre-
6 viously adjusted) a percentage thereof equal to the
7 percentage increase, during the most recent 12-
8 month or fourth-quarter period ending before the
9 time of determining such annual adjustment, in the
10 housing price index maintained by the Director of
11 the Federal Housing Finance Agency (pursuant to
12 section 1322 of the Federal Housing Enterprises Fi-
13 nancial Safety and Soundness Act of 1992 (12
14 U.S.C. 4541)). If the change in such house price
15 index during the most recent 12-month or 4th-quar-
16 ter period ending before the time of determining
17 such annual adjustment is a decrease, then no ad-
18 justment shall be made for the next year, and the
19 next adjustment shall take into account prior de-
20 clines in the house price index, so that any adjust-
21 ment shall reflect the net change in the house price
22 index since the last adjustment. Declines in the
23 house price index shall be accumulated and then re-
24 duce increases until subsequent increases exceed
25 prior declines.”.

1 (2) HIGH-COST AREA LIMIT.—Section 305(a)(2)
2 of the Federal Home Loan Mortgage Corporation
3 Act is amended by adding after the period at the
4 end the following: “Such foregoing limitations shall
5 also be increased with respect to properties of a par-
6 ticular size located in any area for which the median
7 price for such size residence exceeds the foregoing
8 limitation for such size residence, to the lesser of
9 150 percent of such foregoing limitation for such
10 size residence or the amount that is equal to the me-
11 dian price in such area for such size residence.”.

12 (3) EFFECTIVE DATE.—The amendments made
13 by paragraphs (1) and (2) of this subsection shall
14 take effect upon the expiration of the date described
15 in section 201(a) of the Economic Stimulus Act of
16 2008 (Public Law 110–185).

17 (c) SENSE OF CONGRESS.—It is the sense of the Con-
18 gress that the securitization of mortgages by the Federal
19 National Mortgage Association and the Federal Home
20 Loan Mortgage Corporation plays an important role in
21 providing liquidity to the United States housing markets.
22 Therefore, the Congress encourages the Federal National
23 Mortgage Association and the Federal Home Loan Mort-
24 gage Corporation to securitize mortgages acquired under

1 the increased conforming loan limits established under this
2 Act.

3 (d) HOUSING PRICE INDEX.—Part 2 of subtitle A of
4 the Federal Housing Enterprises Financial Safety and
5 Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amend-
6 ed by inserting after section 1321 (as added by section
7 1123 of this Act) the following new section:

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

9 “The Director shall establish and maintain a method
10 of assessing the national average 1-family house price for
11 use for adjusting the conforming loan limitations of the
12 enterprises. In establishing such method, the Director
13 shall take into consideration the monthly survey of all
14 major lenders conducted by the Federal Housing Finance
15 Agency to determine the national average 1-family house
16 price, the House Price Index maintained by the Office of
17 Federal Housing Enterprise Oversight of the Department
18 of Housing and Urban Development before the effective
19 date of the Federal Housing Finance Regulatory Reform
20 Act of 2008, any appropriate house price indexes of the
21 Bureau of the Census of the Department of Commerce,
22 and any other indexes or measures that the Director con-
23 siderers appropriate.”.

1 **SEC. 1125. ANNUAL HOUSING REPORT.**

2 (a) REPEAL.—Section 1324 of the Federal Housing
3 Enterprises Financial Safety and Soundness Act of 1992
4 (12 U.S.C. 4544) is hereby repealed.

5 (b) ANNUAL HOUSING REPORT.—The Federal Hous-
6 ing Enterprises Financial Safety and Soundness Act of
7 1992 is amended by inserting after section 1323 the fol-
8 lowing:

9 **“SEC. 1324. ANNUAL HOUSING REPORT.**

10 “(a) IN GENERAL.—After reviewing and analyzing
11 the reports submitted under section 309(n) of the Federal
12 National Mortgage Association Charter Act and section
13 307(f) of the Federal Home Loan Mortgage Corporation
14 Act, the Director shall submit a report, not later than Oc-
15 tober 30 of each year, to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and the Com-
17 mittee on Financial Services of the House of Representa-
18 tives, on the activities of each enterprise.

19 “(b) CONTENTS.—The report required under sub-
20 section (a) shall—

21 “(1) discuss—

22 “(A) the extent to and manner in which—

23 “(i) each enterprise is achieving the
24 annual housing goals established under
25 subpart B;

1 “(ii) each enterprise is complying with
2 its duty to serve underserved markets, as
3 established under section 1335;

4 “(iii) each enterprise is complying
5 with section 1337;

6 “(iv) each enterprise received credit
7 towards achieving each of its goals result-
8 ing from a transaction or activity pursuant
9 to section 1331(b)(2); and

10 “(v) each enterprise is achieving the
11 purposes of the enterprise established by
12 law; and

13 “(B) the actions that each enterprise could
14 undertake to promote and expand the purposes
15 of the enterprise;

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

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

23 “(4) identify the extent to which each enter-
24 prise is involved in mortgage purchases and sec-

1 ondary market activities involving subprime and
2 nontraditional loans;

3 “(5) compare the characteristics of subprime
4 and nontraditional loans both purchased and
5 securitized by each enterprise to other loans pur-
6 chased and securitized by each enterprise; and

7 “(6) compare the characteristics of high-cost
8 loans purchased and securitized, where such securi-
9 ties are not held on portfolio to loans purchased and
10 securitized, where such securities are either retained
11 on portfolio or repurchased by the enterprise, includ-
12 ing such characteristics as—

13 “(A) the purchase price of the property
14 that secures the mortgage;

15 “(B) the loan-to-value ratio of the mort-
16 gage, which shall reflect any secondary liens on
17 the relevant property;

18 “(C) the terms of the mortgage;

19 “(D) the creditworthiness of the borrower;
20 and

21 “(E) any other relevant data, as deter-
22 mined by the Director.

23 “(c) DATA COLLECTION AND REPORTING.—

24 “(1) IN GENERAL.—To assist the Director in
25 analyzing the matters described in subsection (b),

1 the Director shall conduct, on a monthly basis, a
2 survey of mortgage markets in accordance with this
3 subsection.

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

7 “(A) the characteristics of individual mort-
8 gages that are eligible for purchase by the en-
9 terprises and the characteristics of individual
10 mortgages that are not eligible for purchase by
11 the enterprises including, in both cases, infor-
12 mation concerning—

13 “(i) the price of the house that se-
14 cures the mortgage;

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

18 “(iii) the terms of the mortgage;

19 “(iv) the creditworthiness of the bor-
20 rower or borrowers; and

21 “(v) whether the mortgage, in the
22 case of a conforming mortgage, was pur-
23 chased by an enterprise;

24 “(B) the characteristics of individual
25 subprime and nontraditional mortgages that are

1 eligible for purchase by the enterprises and the
2 characteristics of borrowers under such mort-
3 gages, including the creditworthiness of such
4 borrowers and determination whether such bor-
5 rowers would qualify for prime lending; and

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

8 “(3) PUBLIC AVAILABILITY.—The Director
9 shall make any data collected by the Director in con-
10 nection with the conduct of a monthly survey avail-
11 able to the public in a timely manner, provided that
12 the Director may modify the data released to the
13 public to ensure that the data—

14 “(A) is not released in an identifiable
15 form; and

16 “(B) is not otherwise obtainable from
17 other publicly available data sets.

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

1 **SEC. 1126. PUBLIC USE DATABASE.**

2 Section 1323 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 (42 U.S.C.
4 4543) is amended—

5 (1) in subsection (a)—

6 (A) by striking “(a) IN GENERAL.—The
7 Secretary” and inserting the following:

8 “(a) AVAILABILITY.—

9 “(1) IN GENERAL.—The Director”; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(2) CENSUS TRACT LEVEL REPORTING.—Such
13 data shall include the data elements required to be
14 reported under the Home Mortgage Disclosure Act
15 of 1975, at the census tract level.”;

16 (2) in subsection (b)(2), by inserting before the
17 period at the end the following: “or with subsection
18 (a)(2)”; and

19 (3) by adding at the end the following new sub-
20 section:

21 “(d) TIMING.—Data submitted under this section by
22 an enterprise in connection with a provision referred to
23 in subsection (a) shall be made publicly available in ac-
24 cordance with this section not later than September 30
25 of the year following the year to which the data relates.”.

1 **SEC. 1127. REPORTING OF MORTGAGE DATA.**

2 Section 1326 of the Federal Housing Enterprises Fi-
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.
4 4546) is amended—

5 (1) in subsection (a), by striking “The Direc-
6 tor” and inserting “Subject to subsection (d), the
7 Director”; and

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

9 “(d) MORTGAGE INFORMATION.—Subject to privacy
10 considerations, as described in section 304(j) of the Home
11 Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(j)), the
12 Director shall, by regulation or order, provide that certain
13 information relating to single family mortgage data of the
14 enterprises shall be disclosed to the public, in order to
15 make available to the public—

16 “(1) the same data from the enterprises that is
17 required of insured depository institutions under the
18 Home Mortgage Disclosure Act of 1975; and

19 “(2) information collected by the Director
20 under section 1324(b)(6).”.

21 **SEC. 1128. REVISION OF HOUSING GOALS.**

22 (a) REPEAL.—Sections 1331 through 1334 of the
23 Federal Housing Enterprises Financial Safety and Sound-
24 ness Act of 1992 (12 U.S.C. 4561 through 4564) are here-
25 by repealed.

1 (b) HOUSING GOAL.—The Federal Housing Enter-
2 prises Financial Safety and Soundness Act of 1992 is
3 amended by inserting before section 1335 the following:

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

5 “(a) IN GENERAL.—The Director shall, by regula-
6 tion, establish effective for the first calendar year that be-
7 gins after the date of enactment of the Federal Housing
8 Finance Regulatory Reform Act of 2008, and each year
9 thereafter, annual housing goals, as described under this
10 subpart, with respect to the mortgage purchases by the
11 enterprises.

12 “(b) SPECIAL COUNTING REQUIREMENTS.—

13 “(1) IN GENERAL.—The Director shall deter-
14 mine whether an enterprise shall receive full, partial,
15 or no credit for a transaction toward achievement of
16 any of the housing goals established pursuant to this
17 section or sections 1332 through 1334.

18 “(2) CONSIDERATIONS.—In making any deter-
19 mination under paragraph (1), the Director shall
20 consider whether a transaction or activity of an en-
21 terprise is substantially equivalent to a mortgage
22 purchase and either (A) creates a new market, or
23 (B) adds liquidity to an existing market, provided
24 however that the terms and conditions of such mort-
25 gage purchase is neither determined to be unaccept-

1 able, nor contrary to good lending practices, and
2 otherwise promotes sustainable homeownership and
3 further, that such mortgage purchase actually fulfills
4 the purposes of the enterprise and is in accordance
5 with the chartering Act of such enterprise.

6 “(c) ELIMINATING INTEREST RATE DISPARITIES.—

7 “(1) IN GENERAL.—In establishing and imple-
8 menting the housing goals under this subpart, the
9 Director shall require the enterprises to disclose ap-
10 propriate information to allow the Director to assess
11 if there are any disparities in interest rates charged
12 on mortgages to borrowers who are minorities, as
13 compared with borrowers of similar creditworthiness
14 who are not minorities, as evidenced in reports pur-
15 suant to the Home Mortgage Disclosure Act of
16 1975.

17 “(2) REPORT TO CONGRESS ON DISPARITIES.—

18 Upon a finding by the Director that a pattern of dis-
19 parities in interest rates exists pursuant to the infor-
20 mation provided by an enterprise under paragraph
21 (1), the Director shall—

22 “(A) forward to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate
24 and the Committee on Financial Services of the

1 House of Representatives a report detailing the
2 disparities; and

3 “(B) forward the report prepared under
4 subparagraph (A) to any other appropriate reg-
5 ulatory or enforcement agency.

6 “(3) IDENTITY OF INDIVIDUALS NOT DIS-
7 CLOSED.—In carrying out this subsection, the Direc-
8 tor shall ensure that no personally identifiable finan-
9 cial information that would enable an individual bor-
10 rower to be reasonably identified shall be made pub-
11 lic.

12 “(d) TIMING.—The Director shall establish an an-
13 nual deadline for the establishment of housing goals de-
14 scribed in subsection (a), taking into consideration the
15 need for the enterprises to reasonably and sufficiently plan
16 their operations and activities in advance, including oper-
17 ations and activities necessary to meet such goals.

18 **“SEC. 1331A. DISCRETIONARY ADJUSTMENT OF HOUSING**
19 **GOALS.**

20 “(a) AUTHORITY.—

21 “(1) REVIEW.—The Director shall review the
22 appropriateness of each goal established pursuant to
23 this subpart at least once during each year to assure
24 that given current market conditions that each such
25 goal is feasible.

1 “(2) PETITION TO REDUCE.—An enterprise
2 may petition the Director in writing at any time
3 during a year to reduce the level of any goal for
4 such year established pursuant to this subpart.

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

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

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

19 “(c) DETERMINATION.—

20 “(1) 30-DAY PERIOD.—If an enterprise submits
21 a petition for reduction to the Director under sub-
22 section (a)(2), the Director shall make a determina-
23 tion regarding any proposed reduction within 30
24 days of receipt of the petition.

1 “(2) EXTENSION.—The Director may extend
2 the period described in paragraph (1) for a single
3 additional 15-day period, but only if the Director re-
4 quests additional information from the enterprise.

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

6 “(a) ESTABLISHMENT OF GOALS.—

7 “(1) IN GENERAL.—The Director shall establish
8 annual goals for the purchase by each enterprise of
9 conventional, conforming, single-family, owner-occu-
10 pied, purchase money mortgages financing housing
11 for each of the following:

12 “(A) Low-income families.

13 “(B) Families that reside in low-income
14 areas.

15 “(C) Very low-income families.

16 “(2) GOALS AS PERCENTAGE OF TOTAL PUR-
17 CHASE MONEY MORTGAGE PURCHASES.—The goals
18 established under paragraph (1) shall be established
19 as a percentage of the total number of single-family
20 dwelling units financed by single-family purchase
21 money mortgage purchases of the enterprise.

22 “(b) DETERMINATION OF COMPLIANCE.—

23 “(1) IN GENERAL.—The Director shall deter-
24 mine, for each year that the housing goals under
25 this section are in effect pursuant to section

1 1331(a), whether each enterprise has complied with
2 the single-family housing goals established under
3 this section for such year.

4 “(2) COMPLIANCE REQUIREMENTS.—An enter-
5 prise shall be considered to be in compliance with a
6 goal described under subsection (a) for a year, only
7 if, for each of the types of families described in sub-
8 section (a), the percentage of the number of conven-
9 tional, conforming, single-family, owner-occupied,
10 purchase money mortgages purchased by the enter-
11 prise in such year that serve such families, meets or
12 exceeds the target established under subsection (c)
13 for the year for such type of family.

14 “(c) ANNUAL TARGETS.—

15 “(1) IN GENERAL.—The Director shall establish
16 annual targets for each goal described in subsection
17 (a).

18 “(2) CONSIDERATIONS.—In establishing annual
19 targets under paragraph (1), the Director shall con-
20 sider—

21 “(A) national housing needs;

22 “(B) economic, housing, and demographic
23 conditions;

1 “(C) the performance and effort of the en-
2 terprises toward achieving the housing goals
3 under this section in previous years;

4 “(D) the ability of the enterprise to lead
5 the industry in making mortgage credit avail-
6 able;

7 “(E) recent information submitted in com-
8 pliance with the Home Mortgage Disclosure Act
9 of 1975 and such other reliable mortgage data
10 as may be available;

11 “(F) the size of the purchase money con-
12 ventional mortgage market serving each of the
13 types of families described in subsection (a),
14 relative to the size of the overall purchase
15 money mortgage market; and

16 “(G) the need to maintain the sound finan-
17 cial condition of the enterprises.

18 “(3) HIGH-COST LOANS AND INAPPROPRIATE
19 LENDING PRACTICES.—In establishing annual tar-
20 gets under paragraph (1), the Director shall not
21 consider segments of the market determined to be
22 unacceptable or contrary to good lending practices
23 pursuant to section 1331(b)(2).

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

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

11 “(2) COMMENT PERIOD.—The Director shall
12 provide each enterprise and the public an oppor-
13 tunity to comment on the determination during the
14 30-day period beginning upon receipt by the enter-
15 prise of the notice.

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

22 “(f) CONSIDERATION OF PROPERTIES WITH RENTAL
23 UNITS.—Mortgages financing 1-to-4 unit owner-occupied
24 properties shall count toward the achievement of the sin-
25 gle-family housing goal under this section, if such prop-

1 erties otherwise meet the requirements under this section
2 notwithstanding the use of 1 or more units for rental pur-
3 poses.

4 **“SEC. 1333. SINGLE-FAMILY HOUSING REFINANCE GOALS.**

5 “(a) PREPAYMENT OF EXISTING LOANS.—

6 “(1) IN GENERAL.—The Director shall establish
7 annual goals for the purchase by each enterprise of
8 mortgages on conventional, conforming, single-fam-
9 ily, owner-occupied housing given to pay off or pre-
10 pay an existing loan served by the same property for
11 each of the following:

12 “(A) Low-income families.

13 “(B) Families that reside in low-income
14 areas.

15 “(C) Very low-income families.

16 “(2) GOALS AS PERCENTAGE OF TOTAL REFI-
17 NANCING MORTGAGE PURCHASES.—The goals de-
18 scribed under paragraph (1) shall be established as
19 a percentage of the total number of single-family
20 dwelling units refinanced by mortgage purchases of
21 each enterprise.

22 “(b) DETERMINATION OF COMPLIANCE.—

23 “(1) IN GENERAL.—The Director shall deter-
24 mine, for each year that the housing goals under
25 this section are in effect pursuant to section

1 1331(a), whether each enterprise has complied with
2 the single-family housing refinance goals established
3 under this section for such year.

4 “(2) COMPLIANCE.—An enterprise shall be con-
5 sidered to be in compliance with the goals of this
6 section for a year, only if, for each of the types of
7 families described in subsection (a), the percentage
8 of the number of conventional, conforming, single-
9 family, owner-occupied refinancing mortgages pur-
10 chased by each enterprise in such year that serve
11 such families, meets or exceeds the target for the
12 year for such type of family that is established under
13 subsection (c).

14 “(c) ANNUAL TARGETS.—

15 “(1) IN GENERAL.—The Director shall establish
16 annual targets for each goal described in subsection
17 (a).

18 “(2) CONSIDERATIONS.—In establishing annual
19 targets under paragraph (1), the Director shall con-
20 sider—

21 “(A) national housing needs;

22 “(B) economic, housing, and demographic
23 conditions;

1 “(C) the performance and effort of the en-
2 terprises toward achieving the housing goals
3 under this section in previous years;

4 “(D) the ability of the enterprise to lead
5 the industry in making mortgage credit avail-
6 able;

7 “(E) recent information submitted in com-
8 pliance with the Home Mortgage Disclosure Act
9 of 1975 and such other reliable mortgage data
10 as may be available;

11 “(F) the size of the purchase money con-
12 ventional mortgage market serving each of the
13 types of families described in subsection (a),
14 relative to the size of the overall purchase
15 money mortgage market; and

16 “(G) the need to maintain the sound finan-
17 cial condition of the enterprises.

18 “(d) NOTICE OF DETERMINATION AND ENTERPRISE
19 COMMENT.—

20 “(1) NOTICE.—Within 30 days of making a de-
21 termination under subsection (b) regarding compli-
22 ance of an enterprise for a year with the housing
23 goals established under this section and before any
24 public disclosure thereof, the Director shall provide
25 notice of the determination to the enterprise, which

1 shall include an analysis and comparison, by the Di-
2 rector, of the performance of the enterprise for the
3 year and the targets for the year under subsection
4 (c).

5 “(2) COMMENT PERIOD.—The Director shall
6 provide each enterprise and the public an oppor-
7 tunity to comment on the determination during the
8 30-day period beginning upon receipt by the enter-
9 prise of the notice.

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

16 **“SEC. 1334. MULTIFAMILY SPECIAL AFFORDABLE HOUSING**
17 **GOAL.**

18 “(a) ESTABLISHMENT.—

19 “(1) IN GENERAL.—The Director shall estab-
20 lish, by regulation, by unit, dollar volume, or per-
21 centage of multifamily activity, as determined by the
22 Director, an annual goal for the purchase by each
23 enterprise of—

24 “(A) mortgages that finance dwelling units
25 affordable to very low-income families; and

1 “(B) mortgages that finance dwelling units
2 assisted by the low-income housing tax credit
3 under section 42 of the Internal Revenue Code
4 of 1986.

5 “(2) ADDITIONAL REQUIREMENTS FOR SMALL-
6 ER PROJECTS.—The Director shall establish, within
7 the housing goal established under this section, addi-
8 tional requirements for the purchase by each enter-
9 prise of mortgages described in paragraph (1) for
10 multifamily housing projects of a smaller or limited
11 size, which may be based on the number of dwelling
12 units in the project or the amount of the mortgage,
13 or both, and shall include multifamily housing
14 projects of 5 to 50 units (as adjusted by the Direc-
15 tor), or with mortgages of up to \$5,000,000 (as ad-
16 justed by the Director).

17 “(3) FACTORS.—The Director shall establish
18 the goal and additional requirements under this sec-
19 tion taking into consideration—

20 “(A) national multifamily mortgage credit
21 needs;

22 “(B) the performance and effort of the en-
23 terprise in making mortgage credit available for
24 multifamily housing in previous years;

1 “(C) the size of the multifamily mortgage
2 market, including the size of the small multi-
3 family mortgage market;

4 “(D) the most recent information available
5 for the Residential Survey published by the
6 Census Bureau, and such other reliable data as
7 may be available regarding multifamily mort-
8 gages;

9 “(E) the ability of the enterprise to lead
10 the industry in expanding mortgage credit
11 availability at favorable terms, especially for un-
12 derserved markets, such as for—

13 “(i) small multifamily projects;

14 “(ii) multifamily properties in need of
15 preservation and rehabilitation; and

16 “(iii) multifamily properties located in
17 rural areas; and

18 “(F) the need to maintain the sound finan-
19 cial condition of the enterprise.

20 “(b) UNITS FINANCED BY HOUSING FINANCE AGEN-
21 CY BONDS.—The Director may give credit toward the
22 achievement of the multifamily special affordable housing
23 goal under this section (for purposes of section 1336) to
24 dwelling units in multifamily housing projects that other-
25 wise qualify under such goal and that are financed by tax-

1 exempt or taxable bonds issued by a State or local housing
2 finance agency, but only if such bonds—

3 “(1) are secured by a guarantee of the enter-
4 prise; or

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

7 “(c) USE OF TENANT RENT LEVEL.—

8 “(1) IN GENERAL.—The Director shall monitor
9 the performance of each enterprise in meeting the
10 goal established under this section and shall evaluate
11 such performance (for purposes of section 1336)
12 based on whether the rent levels are affordable to
13 low-income and very low-income families.

14 “(2) RENT LEVEL.—A rent level shall be con-
15 sidered to be affordable for purposes of this sub-
16 section for an income category referred to in this
17 subsection if it does not exceed 30 percent of the
18 maximum income level of such income category, with
19 appropriate adjustments for unit size as measured
20 by the number of bedrooms.

21 “(d) DETERMINATION OF COMPLIANCE.—

22 “(1) IN GENERAL.—The Director shall, for
23 each year that the housing goal under this section
24 is in effect pursuant to section 1331(a), determine
25 whether each enterprise has complied with such goal

1 and the additional requirements under subsection
2 (a)(2).

3 “(2) COMPLIANCE.—An enterprise shall be con-
4 sidered to be in compliance with the goal described
5 under subsection (a) for a year only if the multi-
6 family mortgage purchases of the enterprise meet or
7 exceed the goal for the year established under sub-
8 section (a).

9 “(e) CONSIDERATION OF UNITS IN SINGLE-FAMILY
10 RENTAL HOUSING.—In establishing the goal under this
11 section, the Director may take into consideration the num-
12 ber of housing units financed by any mortgage purchased
13 by an enterprise on single-family rental housing that is
14 not owner-occupied.

15 “(f) REMOVING CREDIT.—The Director shall sub-
16 tract from the units or mortgages counted toward the goal
17 established under this section in a current year any units
18 or mortgages credited toward such goal in a prior year
19 if an enterprise requires a lender to repurchase, or reim-
20 burse for losses, or indemnify the enterprise against poten-
21 tial losses on such units or mortgages.

22 “(g) NOTICE OF DETERMINATION AND ENTERPRISE
23 COMMENT.—

24 “(1) NOTICE.—Within 30 days of making a de-
25 termination under subsection (d) regarding compli-

1 ance of an enterprise for a year with the housing
2 goal established under this section and before any
3 public disclosure thereof, the Director shall provide
4 notice of the determination to the enterprise, which
5 shall include an analysis and comparison, by the Di-
6 rector, of the performance of the enterprise for the
7 year and the goal for the year under subsection (a).

8 “(2) COMMENT PERIOD.—The Director shall
9 provide each enterprise and the public an oppor-
10 tunity to comment on the determination during the
11 30-day period beginning upon receipt by the enter-
12 prise of the notice.”.

13 (c) CONFORMING AMENDMENTS.—The Federal
14 Housing Enterprises Financial Safety and Soundness Act
15 of 1992 is amended—

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

21 (2) in section 1336(a)(1) (12 U.S.C.
22 4566(a)(1)), by striking “sections 1332, 1333, and
23 1334,” and inserting “this subpart”.

1 (d) DEFINITIONS.—Section 1303 of the Federal
2 Housing Enterprises Financial Safety and Soundness Act
3 of 1992 (12 U.S.C. 4502) is amended—

4 (1) by striking paragraph (24), as so designated
5 by section 1002 of this Act, and inserting the fol-
6 lowing:

7 “(24) VERY LOW-INCOME.—

8 “(A) IN GENERAL.—The term ‘very low-in-
9 come’ means—

10 “(i) in the case of owner-occupied
11 units, families having incomes not greater
12 than 50 percent of the area median in-
13 come; and

14 “(ii) in the case of rental units, fami-
15 lies having incomes not greater than 50
16 percent of the area median income, with
17 adjustments for smaller and larger fami-
18 lies, as determined by the Director.

19 “(B) RULE OF CONSTRUCTION.—For pur-
20 poses of section 1338 and 1339, the term ‘very
21 low-income’ means—

22 “(i) in the case of owner-occupied
23 units, income in excess of 30 percent but
24 not greater than 50 percent of the area
25 median income; and

1 “(ii) in the case of rental units, in-
2 come in excess of 30 percent but not great-
3 er than 50 percent of the area median in-
4 come, with adjustments for smaller and
5 larger families, as determined by the Di-
6 rector.”; and

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

8 “(26) CONFORMING MORTGAGE.—The term
9 ‘conforming mortgage’ means, with respect to an en-
10 terprise, a conventional mortgage having an original
11 principal obligation that does not exceed the applica-
12 ble dollar limitation, in effect at the time of such
13 origination, under—

14 “(A) section 302(b)(2) of the Federal Na-
15 tional Mortgage Association Charter Act; or

16 “(B) section 305(a)(2) of the Federal
17 Home Loan Mortgage Corporation Act.

18 “(27) EXTREMELY LOW-INCOME.—The term
19 ‘extremely low-income’ means—

20 “(A) in the case of owner-occupied units,
21 income not in excess of 30 percent of the area
22 median income; and

23 “(B) in the case of rental units, income
24 not in excess of 30 percent of the area median

1 income, with adjustments for smaller and larger
2 families, as determined by the Director.

3 “(28) LOW-INCOME AREA.—The term ‘low-in-
4 come area’ means a census tract or block numbering
5 area in which the median income does not exceed 80
6 percent of the median income for the area in which
7 such census tract or block numbering area is lo-
8 cated, and, for the purposes of section 1332(a)(2),
9 shall include families having incomes not greater
10 than 100 percent of the area median income who re-
11 side in minority census tracts.

12 “(29) MINORITY CENSUS TRACT.—The term
13 ‘minority census tract’ means a census tract that
14 has a minority population of at least 30 percent and
15 a median family income of less than 100 percent of
16 the area family median income.

17 “(30) SHORTAGE OF STANDARD RENTAL UNITS
18 BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY
19 LOW-INCOME RENTER HOUSEHOLDS.—

20 “(A) IN GENERAL.—The term ‘shortage of
21 standard rental units both affordable and avail-
22 able to extremely low-income renter households’
23 means the gap between—

24 “(i) the number of units with com-
25 plete plumbing and kitchen facilities with a

1 rent that is 30 percent or less of 30 per-
2 cent of the adjusted area median income as
3 determined by the Director that are occu-
4 pied by extremely low-income renter house-
5 holds or are vacant for rent; and

6 “ (ii) the number of extremely low-in-
7 come renter households.

8 “(B) RULE OF CONSTRUCTION.—If the
9 number of units described in subparagraph
10 (A)(i) exceeds the number of extremely low-in-
11 come households as described in subparagraph
12 (A)(ii), there is no shortage.

13 “(31) SHORTAGE OF STANDARD RENTAL UNITS
14 BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-
15 INCOME RENTER HOUSEHOLDS.—

16 “(A) IN GENERAL.—The term ‘shortage of
17 standard rental units both affordable and avail-
18 able to very low-income renter households’
19 means the gap between—

20 “(i) the number of units with com-
21 plete plumbing and kitchen facilities with a
22 rent that is 30 percent or less of 50 per-
23 cent of the adjusted area median income as
24 determined by the Director that are occu-
25 pied by either extremely low- or very low-

1 income renter households or are vacant for
2 rent; and

3 “(ii) the number of extremely low-
4 and very low-income renter households.

5 “(B) RULE OF CONSTRUCTION.—If the
6 number of units described in subparagraph
7 (A)(i) exceeds the number of extremely low- and
8 very low-income households as described in sub-
9 paragraph (A)(ii), there is no shortage.”.

10 **SEC. 1129. DUTY TO SERVE UNDERSERVED MARKETS.**

11 (a) ESTABLISHMENT AND EVALUATION OF PER-
12 FORMANCE.—Section 1335 of the Federal Housing Enter-
13 prises Financial Safety and Soundness Act of 1992 (12
14 U.S.C. 4565) is amended—

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

18 (2) by striking subsection (b);

19 (3) in subsection (a)—

20 (A) in the matter preceding paragraph (1),
21 by inserting “and to carry out the duty under
22 subsection (a) of this section” before “, each
23 enterprise shall”;

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

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

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

4 (E) by redesignating such subsection as
5 subsection (b);

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

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

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

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

5 “(A) MANUFACTURED HOUSING.—The en-
6 terprise shall lead the industry in developing
7 loan products and flexible underwriting guide-
8 lines to facilitate a secondary market for mort-
9 gages on manufactured homes for very low-,
10 low-, and moderate-income families.

11 “(B) AFFORDABLE HOUSING PRESERVA-
12 TION.—The enterprise shall lead the industry in
13 developing loan products and flexible under-
14 writing guidelines to facilitate a secondary mar-
15 ket to preserve housing affordable to very low-
16 , low-, and moderate-income families, including
17 housing projects subsidized under—

18 “(i) the project-based and tenant-
19 based rental assistance programs under
20 section 8 of the United States Housing Act
21 of 1937;

22 “(ii) the program under section 236
23 of the National Housing Act;

1 “(iii) the below-market interest rate
2 mortgage program under section 221(d)(4)
3 of the National Housing Act;

4 “(iv) the supportive housing for the
5 elderly program under section 202 of the
6 Housing Act of 1959;

7 “(v) the supportive housing program
8 for persons with disabilities under section
9 811 of the Cranston-Gonzalez National Af-
10 fordable Housing Act;

11 “(vi) the programs under title IV of
12 the McKinney-Vento Homeless Assistance
13 Act (42 U.S.C. 11361 et seq.), but only
14 permanent supportive housing projects
15 subsidized under such programs; and

16 “(vii) the rural rental housing pro-
17 gram under section 515 of the Housing
18 Act of 1949.

19 “(C) RURAL AND OTHER UNDERSERVED
20 MARKETS.—The enterprise shall lead the indus-
21 try in developing loan products and flexible un-
22 derwriting guidelines to facilitate a secondary
23 market for mortgages on housing for very low-
24 , low-, and moderate-income families in rural
25 areas, and for mortgages for housing for any

1 other underserved market for very low-, low-,
2 and moderate-income families that the Director
3 identifies as lacking adequate credit through
4 conventional lending sources. Such underserved
5 markets may be identified by borrower type,
6 market segment, or geographic area.”; and

7 (5) by adding at the end the following new sub-
8 section:

9 “(c) EVALUATION AND REPORTING OF COMPLI-
10 ANCE.—

11 “(1) IN GENERAL.—Not later than 6 months
12 after the effective date of the Federal Housing Fi-
13 nance Regulatory Reform Act of 2008, the Director
14 shall establish a manner for evaluating whether, and
15 the extent to which, the enterprises have complied
16 with the duty under subsection (a) to serve under-
17 served markets and for rating the extent of such
18 compliance. Using such method, the Director shall,
19 for each year, evaluate such compliance and rate the
20 performance of each enterprise as to extent of com-
21 pliance. The Director shall include such evaluation
22 and rating for each enterprise for a year in the re-
23 port for that year submitted pursuant to section
24 1319B(a).

1 “(2) SEPARATE EVALUATIONS.—In determining
2 whether an enterprise has complied with the duty re-
3 ferred to in paragraph (1), the Director shall sepa-
4 rately evaluate whether the enterprise has complied
5 with such duty with respect to each of the under-
6 served markets identified in subsection (a), taking
7 into consideration—

8 “(A) the development of loan products and
9 more flexible underwriting guidelines;

10 “(B) the extent of outreach to qualified
11 loan sellers in each of such underserved mar-
12 kets; and

13 “(C) the volume of loans purchased in each
14 of such underserved markets.

15 “(3) MANUFACTURED HOUSING MARKET.—In
16 determining whether an enterprise has complied with
17 the duty under subparagraph (A) of subsection
18 (a)(2), the Director may consider loans secured by
19 both real and personal property.”.

20 (b) ENFORCEMENT.—Subsection (a) of section 1336
21 of the Housing and Community Development Act of 1992
22 (12 U.S.C. 4566(a)) is amended—

23 (1) in paragraph (1), by inserting “and with
24 the duty under section 1335(a) of each enterprise

1 with respect to underserved markets,” before “as
2 provided in this section”; and

3 (2) by adding at the end of such subsection, as
4 amended by the preceding provisions of this subtitle,
5 the following new paragraph:

6 “(4) ENFORCEMENT OF DUTY TO PROVIDE
7 MORTGAGE CREDIT TO UNDERSERVED MARKETS.—

8 The duty under section 1335(a) of each enterprise
9 to serve underserved markets (as determined in ac-
10 cordance with section 1335(c)) shall be enforceable
11 under this section to the same extent and under the
12 same provisions that the housing goals established
13 under this subpart are enforceable. Such duty shall
14 not be enforceable under any other provision of this
15 title (including subpart C of this part) other than
16 this section or under any provision of the Federal
17 National Mortgage Association Charter Act or the
18 Federal Home Loan Mortgage Corporation Act.”.

19 **SEC. 1130. MONITORING AND ENFORCING COMPLIANCE**
20 **WITH HOUSING GOALS.**

21 (a) IN GENERAL.—Section 1336 of the Federal
22 Housing Enterprises Financial Safety and Soundness Act
23 of 1992 (12 U.S.C. 4566) is amended by striking sub-
24 sections (b) and (c) and inserting the following:

1 “(b) NOTICE AND PRELIMINARY DETERMINATION OF
2 FAILURE TO MEET GOALS.—

3 “(1) NOTICE.—If the Director preliminarily de-
4 termines that an enterprise has failed, or that there
5 is a substantial probability that an enterprise will
6 fail, to meet any housing goal under this subpart,
7 the Director shall provide written notice to the en-
8 terprise of such a preliminary determination, the
9 reasons for such determination, and the information
10 on which the Director based the determination.

11 “(2) RESPONSE PERIOD.—

12 “(A) IN GENERAL.—During the 30-day pe-
13 riod beginning on the date on which an enter-
14 prise is provided notice under paragraph (1),
15 the enterprise may submit to the Director any
16 written information that the enterprise con-
17 siders appropriate for consideration by the Di-
18 rector in finally determining whether such fail-
19 ure has occurred or whether the achievement of
20 such goal was or is feasible.

21 “(B) EXTENDED PERIOD.—The Director
22 may extend the period under subparagraph (A)
23 for good cause for not more than 30 additional
24 days.

1 “(C) SHORTENED PERIOD.—The Director
2 may shorten the period under subparagraph (A)
3 for good cause.

4 “(D) FAILURE TO RESPOND.—The failure
5 of an enterprise to provide information during
6 the 30-day period under this paragraph (as ex-
7 tended or shortened) shall waive any right of
8 the enterprise to comment on the proposed de-
9 termination or action of the Director.

10 “(3) CONSIDERATION OF INFORMATION AND
11 FINAL DETERMINATION.—

12 “(A) IN GENERAL.—After the expiration of
13 the response period under paragraph (2), or
14 upon receipt of information provided during
15 such period by the enterprise, whichever occurs
16 earlier, the Director shall issue a final deter-
17 mination on—

18 “(i) whether the enterprise has failed,
19 or there is a substantial probability that
20 the enterprise will fail, to meet the housing
21 goal; and

22 “(ii) whether (taking into consider-
23 ation market and economic conditions and
24 the financial condition of the enterprise)

1 the achievement of the housing goal was or
2 is feasible.

3 “(B) CONSIDERATIONS.—In making a
4 final determination under subparagraph (A),
5 the Director shall take into consideration any
6 relevant information submitted by the enter-
7 prise during the response period.

8 “(C) NOTICE.—The Director shall provide
9 written notice, including a response to any in-
10 formation submitted during the response pe-
11 riod, to the enterprise, the Committee on Bank-
12 ing, Housing, and Urban Affairs of the Senate,
13 and the Committee on Financial Services of the
14 House of Representatives, of—

15 “(i) each final determination under
16 this paragraph that an enterprise has
17 failed, or that there is a substantial prob-
18 ability that the enterprise will fail, to meet
19 a housing goal;

20 “(ii) each final determination that the
21 achievement of a housing goal was or is
22 feasible; and

23 “(iii) the reasons for each such final
24 determination.

1 “(c) CEASE AND DESIST, CIVIL MONEY PENALTIES,
2 AND REMEDIES INCLUDING HOUSING PLANS.—

3 “(1) REQUIREMENT.—If the Director finds,
4 pursuant to subsection (b), that there is a substan-
5 tial probability that an enterprise will fail, or has ac-
6 tually failed, to meet any housing goal under this
7 subpart, and that the achievement of the housing
8 goal was or is feasible, the Director may require that
9 the enterprise submit a housing plan under this sub-
10 section. If the Director makes such a finding and
11 the enterprise refuses to submit such a plan, sub-
12 mits an unacceptable plan, fails to comply with the
13 plan, or the Director finds that the enterprise has
14 failed to meet any housing goal under this subpart,
15 in addition to requiring an enterprise to submit a
16 housing plan, the Director may issue a cease and de-
17 sist order in accordance with section 1341, impose
18 civil money penalties in accordance with section
19 1345, or order other remedies as set forth in para-
20 graph (7).

21 “(2) HOUSING PLAN.—If the Director requires
22 a housing plan under this subsection, such a plan
23 shall be—

24 “(A) a feasible plan describing the specific
25 actions the enterprise will take—

1 “(i) to achieve the goal for the next
2 calendar year; and

3 “(ii) if the Director determines that
4 there is a substantial probability that the
5 enterprise will fail to meet a goal in the
6 current year, to make such improvements
7 and changes in its operations as are rea-
8 sonable in the remainder of such year; and

9 “(B) sufficiently specific to enable the Di-
10 rector to monitor compliance periodically.

11 “(3) DEADLINE FOR SUBMISSION.—The Direc-
12 tor shall establish a deadline for an enterprise to
13 comply with any remedial action or submit a housing
14 plan to the Director, which may not be more than
15 45 days after the enterprise is provided notice. The
16 Director may extend the deadline to the extent that
17 the Director determines necessary. Any extension of
18 the deadline shall be in writing and for a time cer-
19 tain.

20 “(4) APPROVAL.—The Director shall review
21 each submission by an enterprise, including a hous-
22 ing plan submitted under this subsection, and, not
23 later than 30 days after submission, approve or dis-
24 approve the plan or other action. The Director may
25 extend the period for approval or disapproval for a

1 single additional 30-day period if the Director deter-
2 mines it necessary. The Director shall approve any
3 plan that the Director determines is likely to suc-
4 ceed, and conforms with the Federal National Mort-
5 gage Association Charter Act or the Federal Home
6 Loan Mortgage Corporation Act (as applicable), this
7 title, and any other applicable provision of law.

8 “(5) NOTICE OF APPROVAL AND DIS-
9 APPROVAL.—The Director shall provide written no-
10 tice to any enterprise submitting a housing plan of
11 the approval or disapproval of the plan (which shall
12 include the reasons for any disapproval of the plan)
13 and of any extension of the period for approval or
14 disapproval.

15 “(6) RESUBMISSION.—If the initial housing
16 plan submitted by an enterprise under this section
17 is disapproved, the enterprise shall submit an
18 amended plan acceptable to the Director not later
19 than 15 days after such disapproval, or such longer
20 period that the Director determines is in the public
21 interest.

22 “(7) ADDITIONAL REMEDIES FOR FAILURE TO
23 MEET GOALS.—In addition to ordering a housing
24 plan under this section, issuing cease and desist or-

1 ders under section 1341, and ordering civil money
2 penalties under section 1345, the Director may—

3 “(A) seek other actions when an enterprise
4 fails to meet a goal; and

5 “(B) exercise appropriate enforcement au-
6 thority available to the Director under this
7 Act.”.

8 (b) CONFORMING AMENDMENT.—The heading for
9 subpart C of part 2 of subtitle A of the Federal Housing
10 Enterprises Financial Safety and Soundness Act of 1992
11 is amended to read as follows:

12 **“Subpart C—Enforcement”.**

13 (c) CEASE AND DESIST PROCEEDINGS .—

14 (1) REPEAL.—Section 1341 of the Federal
15 Housing Enterprises Financial Safety and Sound-
16 ness Act of 1992 (12 U.S.C. 4581) is hereby re-
17 pealed.

18 (2) CEASE AND DESIST PROCEEDINGS.—The
19 Federal Housing Enterprises Financial Safety and
20 Soundness Act of 1992 is amended by inserting be-
21 fore section 1342 the following:

22 **“SEC. 1341. CEASE AND DESIST PROCEEDINGS.**

23 “(a) GROUNDS FOR ISSUANCE.—The Director may
24 issue and serve a notice of charges under this section upon
25 an enterprise if the Director determines that—

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

5 “(2) the enterprise has failed to submit a report
6 under section 1327, following a notice of such fail-
7 ure, an opportunity for comment by the enterprise,
8 and a final determination by the Director;

9 “(3) the enterprise has failed to submit the in-
10 formation required under subsection (m) or (n) of
11 section 309 of the Federal National Mortgage Asso-
12 ciation Charter Act, subsection (e) or (f) of section
13 307 of the Federal Home Loan Mortgage Corpora-
14 tion Act, or section 1337 of this title;

15 “(4) the enterprise has violated any provision of
16 part 2 of this title or any order, rule, or regulation
17 under part 2;

18 “(5) the enterprise has failed to submit a hous-
19 ing plan or perform its responsibilities under a reme-
20 dial order that substantially complies with section
21 1336(c) within the applicable period; or

22 “(6) the enterprise has failed to comply with a
23 housing plan under section 1336(c).

24 “(b) PROCEDURE.—

1 “(1) NOTICE OF CHARGES.—Each notice of
2 charges issued under this section shall contain a
3 statement of the facts constituting the alleged con-
4 duct and shall fix a time and place at which a hear-
5 ing will be held to determine on the record whether
6 an order to cease and desist from such conduct
7 should issue.

8 “(2) ISSUANCE OF ORDER.—If the Director
9 finds on the record made at a hearing described in
10 paragraph (1) that any conduct specified in the no-
11 tice of charges has been established (or the enter-
12 prise consents pursuant to section 1342(a)(4)), the
13 Director may issue and serve upon the enterprise an
14 order requiring the enterprise to—

15 “(A) comply with the goals;

16 “(B) submit a report under section 1327;

17 “(C) comply with any provision of part 2
18 of this title or any order, rule, or regulation
19 under part 2;

20 “(D) submit a housing plan in compliance
21 with section 1336(c);

22 “(E) comply with the housing plan in com-
23 pliance with section 1336(c); or

24 “(F) provide the information required
25 under subsection (m) or (n) of section 309 of

1 the Federal National Mortgage Association
2 Charter Act, or subsection (e) or (f) of section
3 307 of the Federal Home Loan Mortgage Cor-
4 poration Act.

5 “(c) EFFECTIVE DATE.—An order under this section
6 shall become effective upon the expiration of the 30-day
7 period beginning on the date of service of the order upon
8 the enterprise (except in the case of an order issued upon
9 consent, which shall become effective at the time specified
10 therein), and shall remain effective and enforceable as pro-
11 vided in the order, except to the extent that the order is
12 stayed, modified, terminated, or set aside by action of the
13 Director or otherwise, as provided in this subpart.”.

14 (d) CIVIL MONEY PENALTIES.—

15 (1) REPEAL.—Section 1345 of the Federal
16 Housing Enterprises Financial Safety and Sound-
17 ness Act of 1992 (12 U.S.C. 4585) is hereby re-
18 pealed.

19 (2) CIVIL MONEY PENALTIES.—The Federal
20 Housing Enterprises Financial Safety and Sound-
21 ness Act of 1992 is amended by inserting after sec-
22 tion 1344 the following:

1 **“SEC. 1345. CIVIL MONEY PENALTIES.**

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

5 “(1) meet any housing goal established under
6 subpart B, following a written notice and determina-
7 tion of such failure in accordance with section
8 1336(b);

9 “(2) submit a report under section 1327, fol-
10 lowing a notice of such failure, an opportunity for
11 comment by the enterprise, and a final determina-
12 tion by the Director;

13 “(3) submit the information required under
14 subsection (m) or (n) of section 309 of the Federal
15 National Mortgage Association Charter Act or sub-
16 section (e) or (f) of section 307 of the Federal Home
17 Loan Mortgage Corporation Act;

18 “(4) comply with any provision of part 2 of this
19 title or any order, rule, or regulation under part 2;

20 “(5) submit a housing plan or perform its re-
21 sponsibilities under a remedial order issued pursuant
22 to section 1336(e) within the required period; or

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

1 “(b) AMOUNT OF PENALTY.—The amount of a pen-
2 alty under this section, as determined by the Director,
3 may not exceed—

4 “(1) for any failure described in paragraph (1),
5 (5), or (6) of subsection (a), \$100,000 for each day
6 that the failure occurs; and

7 “(2) for any failure described in paragraph (2),
8 (3), or (4) of subsection (a), \$50,000 for each day
9 that the failure occurs.

10 “(c) PROCEDURES.—

11 “(1) ESTABLISHMENT.—The Director shall es-
12 tablish standards and procedures governing the im-
13 position of civil money penalties under this section.
14 Such standards and procedures—

15 “(A) shall provide for the Director to no-
16 tify the enterprise in writing of the determina-
17 tion of the Director to impose the penalty,
18 which shall be made on the record;

19 “(B) shall provide for the imposition of a
20 penalty only after the enterprise has been given
21 an opportunity for a hearing on the record pur-
22 suant to section 1342; and

23 “(C) may provide for review by the Direc-
24 tor of any determination or order, or interlocu-
25 tory ruling, arising from a hearing.

1 “(2) FACTORS IN DETERMINING AMOUNT OF
2 PENALTY.—In determining the amount of a penalty
3 under this section, the Director shall give consider-
4 ation to factors including—

5 “(A) the gravity of the offense;

6 “(B) any history of prior offenses;

7 “(C) ability to pay the penalty;

8 “(D) injury to the public;

9 “(E) benefits received;

10 “(F) deterrence of future violations;

11 “(G) the length of time that the enterprise
12 should reasonably take to achieve the goal; and

13 “(H) such other factors as the Director
14 may determine, by regulation, to be appro-
15 priate.

16 “(d) ACTION TO COLLECT PENALTY.—If an enter-
17 prise fails to comply with an order by the Director impos-
18 ing a civil money penalty under this section, after the
19 order is no longer subject to review, as provided in sections
20 1342 and 1343, the Director may bring an action in the
21 United States District Court for the District of Columbia
22 to obtain a monetary judgment against the enterprise, and
23 such other relief as may be available. The monetary judg-
24 ment may, in the court’s discretion, include the attorneys’
25 fees and other expenses incurred by the United States in

1 connection with the action. In an action under this sub-
2 section, the validity and appropriateness of the order im-
3 posing the penalty shall not be subject to review.

4 “(e) SETTLEMENT BY DIRECTOR.—The Director
5 may compromise, modify, or remit any civil money penalty
6 which may be, or has been, imposed under this section.

7 “(f) DEPOSIT OF PENALTIES.—The Director shall
8 use any civil money penalties collected under this section
9 to help fund the Housing Trust Fund established under
10 section 1338.”.

11 (e) DIRECTOR AUTHORITY.—

12 (1) AUTHORITY TO BRING A CIVIL ACTION.—

13 Section 1344(a) of the Federal Housing Enterprises
14 Financial Safety and Soundness Act of 1992 (12
15 U.S.C. 4584) is amended by striking “The Secretary
16 may request the Attorney General of the United
17 States to bring a civil action” and inserting “The
18 Director may bring a civil action”.

19 (2) SUBPOENA ENFORCEMENT.—Section

20 1348(e) of the Federal Housing Enterprises Finan-
21 cial Safety and Soundness Act of 1992 (12 U.S.C.
22 4588(e)) is amended by inserting “may bring an ac-
23 tion or” before “may request”.

24 (3) CONFORMING AMENDMENTS.—Subpart C of

25 part 2 of subtitle A of the Federal Housing Enter-

1 prises Financial Safety and Soundness Act of 1992
2 (12 U.S.C. 4581 et seq.) is amended by striking
3 “Secretary” each place that term appears and in-
4 serting “Director” in each of—

5 (A) section 1342 (12 U.S.C. 4582);

6 (B) section 1343 (12 U.S.C. 4583);

7 (C) section 1346 (12 U.S.C. 4586);

8 (D) section 1347 (12 U.S.C. 4587); and

9 (E) section 1348 (12 U.S.C. 4588).

10 **SEC. 1131. AFFORDABLE HOUSING PROGRAMS.**

11 (a) REPEAL.—Section 1337 of the Federal Housing
12 Enterprises Financial Safety and Soundness Act of 1992
13 (12 U.S.C. 4567) is hereby repealed.

14 (b) ANNUAL HOUSING REPORT.—The Federal Hous-
15 ing Enterprises Financial Safety and Soundness Act of
16 1992 (12 U.S.C. 1301 et seq.) is amended by inserting
17 after section 1336 the following:

18 **“SEC. 1337. AFFORDABLE HOUSING ALLOCATIONS.**

19 “(a) SET ASIDE AND ALLOCATION OF AMOUNTS BY
20 ENTERPRISES.—Subject to subsection (b), in each fiscal
21 year—

22 “(1) the Federal Home Loan Mortgage Cor-
23 poration shall—

24 “(A) set aside an amount equal to 4.2
25 basis points for each dollar of the unpaid prin-

1 ciproal balance of its total new business pur-
2 chases; and

3 “(B) allocate or otherwise transfer—

4 “(i) 65 percent of such amounts to
5 the Secretary of Housing and Urban De-
6 velopment to fund the Housing Trust
7 Fund established under section 1338; and

8 “(ii) 35 percent of such amounts to
9 fund the Capital Magnet Fund established
10 pursuant to section 1339; and

11 “(2) the Federal National Mortgage Association
12 shall—

13 “(A) set aside an amount equal to 4.2
14 basis points for each dollar of unpaid principal
15 balance of its total new business purchases; and

16 “(B) allocate or otherwise transfer—

17 “(i) 65 percent of such amounts to
18 the Secretary of Housing and Urban De-
19 velopment to fund the Housing Trust
20 Fund established under section 1338; and

21 “(ii) 35 percent of such amounts to
22 fund the Capital Magnet Fund established
23 pursuant to section 1339.

24 “(b) SUSPENSION OF CONTRIBUTIONS.—The Direc-
25 tor shall temporarily suspend allocations under subsection

1 (a) by an enterprise upon a finding by the Director that
2 such allocations—

3 “(1) are contributing, or would contribute, to
4 the financial instability of the enterprise;

5 “(2) are causing, or would cause, the enterprise
6 to be classified as undercapitalized; or

7 “(3) are preventing, or would prevent, the en-
8 terprise from successfully completing a capital res-
9 toration plan under section 1369C.

10 “(c) PROHIBITION OF PASS-THROUGH OF COST OF
11 ALLOCATIONS.—The Director shall, by regulation, pro-
12 hibit each enterprise from redirecting the costs of any allo-
13 cation required under this section, through increased
14 charges or fees, or decreased premiums, or in any other
15 manner, to the originators of mortgages purchased or
16 securitized by the enterprise.

17 “(d) ENFORCEMENT OF REQUIREMENTS ON ENTER-
18 PRISE.—Compliance by the enterprises with the require-
19 ments under this section shall be enforceable under sub-
20 part C. Any reference in such subpart to this part or to
21 an order, rule, or regulation under this part specifically
22 includes this section and any order, rule, or regulation
23 under this section.

24 “(e) REQUIRED AMOUNT FOR HOPE RESERVE
25 FUND.—Of the aggregate amount allocated under sub-

1 section (a), 25 percent shall be deposited into a fund es-
2 tablished in the Treasury of the United States by the Sec-
3 retary of the Treasury for such purpose.

4 “(f) LIMITATION.—No funds under this title may be
5 used in conjunction with property taken by eminent do-
6 main, unless eminent domain is employed only for a public
7 use, except that, for purposes of this section, public use
8 shall not be construed to include economic development
9 that primarily benefits any private entity.

10 **“SEC. 1338. HOUSING TRUST FUND.**

11 “(a) ESTABLISHMENT AND PURPOSE.—The Sec-
12 retary of Housing and Urban Development (in this section
13 referred to as the ‘Secretary’) shall establish and manage
14 a Housing Trust Fund, which shall be funded with
15 amounts allocated by the enterprises under section 1337
16 and any amounts as are or may be appropriated, trans-
17 ferred, or credited to such Housing Trust Fund under any
18 other provisions of law. The purpose of the Housing Trust
19 Fund under this section is to provide grants to States for
20 use—

21 “(1) to increase and preserve the supply of
22 rental housing for extremely low- and very low-in-
23 come families, including homeless families; and

24 “(2) to increase homeownership for extremely
25 low- and very low-income families.

1 “(b) ALLOCATIONS FOR HOPE BOND PAYMENTS.—

2 “(1) IN GENERAL.—Notwithstanding subsection
3 (c), to help address the mortgage crisis, of the
4 amounts allocated pursuant to clauses (i) and (ii) of
5 section 1337(a)(1)(B) and clauses (i) and (ii) of sec-
6 tion 1337(a)(2)(B) in excess of amounts described in
7 section 1337(e)—

8 “(A) 100 percent of such excess shall be
9 used to reimburse the Treasury for payments
10 made pursuant to section 257(w)(1)(C) of the
11 National Housing Act in calendar year 2009;

12 “(B) 50 percent of such excess shall be
13 used to reimburse the Treasury for such pay-
14 ments in calendar year 2010; and

15 “(C) 25 percent of such excess shall be
16 used to reimburse the Treasury for such pay-
17 ments in calendar year 2011.

18 “(2) EXCESS FUNDS.—At the termination of
19 the HOPE for Homeowners Program established
20 under section 257 of the National Housing Act, if
21 amounts used to reimburse the Treasury under
22 paragraph (1) exceed the total net cost to the Gov-
23 ernment of the HOPE for Homeowners Program,
24 such amounts shall be used for their original pur-

1 pose, as described in paragraphs (1)(B) and (2)(B)
2 of section 1337(a).

3 “(3) TREASURY FUND.—The amounts referred
4 to in subparagraphs (A) through (C) of paragraph
5 (1) shall be deposited into a fund established in the
6 Treasury of the United States by the Secretary of
7 the Treasury for such purpose.

8 “(c) ALLOCATION FOR HOUSING TRUST FUND IN
9 FISCAL YEAR 2010 AND SUBSEQUENT YEARS.—

10 “(1) IN GENERAL.—Except as provided in sub-
11 section (b), the Secretary shall distribute the
12 amounts allocated for the Housing Trust Fund
13 under this section to provide affordable housing as
14 described in this subsection.

15 “(2) PERMISSIBLE DESIGNEES.—A State re-
16 ceiving grant amounts under this subsection may
17 designate a State housing finance agency, housing
18 and community development entity, tribally des-
19 ignated housing entity (as such term is defined in
20 section 4 of the Native American Housing Assist-
21 ance and Self-Determination Act of 1997 (25 U.S.C.
22 4103)), or any other qualified instrumentality of the
23 State to receive such grant amounts.

24 “(3) DISTRIBUTION TO STATES BY NEEDS-
25 BASED FORMULA.—

1 “(A) IN GENERAL.—The Secretary shall,
2 by regulation, establish a formula within 12
3 months of the date of enactment of the Federal
4 Housing Finance Regulatory Reform Act of
5 2008, to distribute amounts made available
6 under this subsection to each State to provide
7 affordable housing to extremely low- and very
8 low-income households.

9 “(B) BASIS FOR FORMULA.—The formula
10 required under subparagraph (A) shall include
11 the following:

12 “(i) The ratio of the shortage of
13 standard rental units both affordable and
14 available to extremely low-income renter
15 households in the State to the aggregate
16 shortage of standard rental units both af-
17 fordable and available to extremely low-in-
18 come renter households in all the States.

19 “(ii) The ratio of the shortage of
20 standard rental units both affordable and
21 available to very low-income renter house-
22 holds in the State to the aggregate short-
23 age of standard rental units both afford-
24 able and available to very low-income
25 renter households in all the States.

1 “(iii) The ratio of extremely low-in-
2 come renter households in the State living
3 with either (I) incomplete kitchen or
4 plumbing facilities, (II) more than 1 per-
5 son per room, or (III) paying more than
6 50 percent of income for housing costs, to
7 the aggregate number of extremely low-in-
8 come renter households living with either
9 (IV) incomplete kitchen or plumbing facili-
10 ties, (V) more than 1 person per room, or
11 (VI) paying more than 50 percent of in-
12 come for housing costs in all the States.

13 “(iv) The ratio of very low-income
14 renter households in the State paying more
15 than 50 percent of income on rent relative
16 to the aggregate number of very low-in-
17 come renter households paying more than
18 50 percent of income on rent in all the
19 States.

20 “(v) The resulting sum calculated
21 from the factors described in clauses (i)
22 through (iv) shall be multiplied by the rel-
23 ative cost of construction in the State. For
24 purposes of this subclause, the term ‘cost
25 of construction’—

1 “(I) means the cost of construc-
2 tion or building rehabilitation in the
3 State relative to the national cost of
4 construction or building rehabilitation;
5 and

6 “(II) shall be calculated such
7 that values higher than 1.0 indicate
8 that the State’s construction costs are
9 higher than the national average, a
10 value of 1.0 indicates that the State’s
11 construction costs are exactly the
12 same as the national average, and val-
13 ues lower than 1.0 indicate that the
14 State’s cost of construction are lower
15 than the national average.

16 “(C) PRIORITY.—The formula required
17 under subparagraph (A) shall give priority em-
18 phasis and consideration to the factor described
19 in subparagraph (B)(i).

20 “(4) ALLOCATION OF GRANT AMOUNTS.—

21 “(A) NOTICE.—Not later than 60 days
22 after the date that the Secretary determines the
23 formula amounts described in paragraph (3),
24 the Secretary shall caused to be published in

1 the Federal Register a notice that such
2 amounts shall be so available.

3 “(B) GRANT AMOUNT.—In each fiscal year
4 other than fiscal year 2009, the Secretary shall
5 make a grant to each State in an amount that
6 is equal to the formula amount determined
7 under paragraph (3) for that State.

8 “(C) MINIMUM STATE ALLOCATIONS.—If
9 the formula amount determined under para-
10 graph (3) for a fiscal year would allocate less
11 than \$3,000,000 to any State, the allocation for
12 such State shall be \$3,000,000, and the in-
13 crease shall be deducted pro rata from the allo-
14 cations made to all other States.

15 “(5) ALLOCATION PLANS REQUIRED.—

16 “(A) IN GENERAL.—For each year that a
17 State or State designated entity receives a
18 grant under this subsection, the State or State
19 designated entity shall establish an allocation
20 plan. Such plan shall—

21 “(i) set forth a plan for the distribu-
22 tion of grant amounts received by the
23 State or State designated entity for such
24 year;

1 “(ii) be based on priority housing
2 needs, as determined by the State or State
3 designated entity in accordance with the
4 regulations established under subsection
5 (g)(2)(C);

6 “(iii) comply with paragraph (6); and

7 “(iv) include performance goals that
8 comply with the requirements established
9 by the Secretary pursuant to subsection
10 (g)(2).

11 “(B) ESTABLISHMENT.—In establishing
12 an allocation plan under this paragraph, a
13 State or State designated entity shall—

14 “(i) notify the public of the establish-
15 ment of the plan;

16 “(ii) provide an opportunity for public
17 comments regarding the plan;

18 “(iii) consider any public comments
19 received regarding the plan; and

20 “(iv) make the completed plan avail-
21 able to the public.

22 “(C) CONTENTS.—An allocation plan of a
23 State or State designated entity under this
24 paragraph shall set forth the requirements for
25 eligible recipients under paragraph (8) to apply

1 for such grant amounts, including a require-
2 ment that each such application include—

3 “(i) a description of the eligible activi-
4 ties to be conducted using such assistance;
5 and

6 “(ii) a certification by the eligible re-
7 cipient applying for such assistance that
8 any housing units assisted with such as-
9 sistance will comply with the requirements
10 under this section.

11 “(6) SELECTION OF ACTIVITIES FUNDED USING
12 HOUSING TRUST FUND GRANT AMOUNTS.—Grant
13 amounts received by a State or State designated en-
14 tity under this subsection may be used, or com-
15 mitted for use, only for activities that—

16 “(A) are eligible under paragraph (7) for
17 such use;

18 “(B) comply with the applicable allocation
19 plan of the State or State designated entity
20 under paragraph (5); and

21 “(C) are selected for funding by the State
22 or State designated entity in accordance with
23 the process and criteria for such selection estab-
24 lished pursuant to subsection (g)(2)(C).

1 “(7) ELIGIBLE ACTIVITIES.—Grant amounts al-
2 located to a State or State designated entity under
3 this subsection shall be eligible for use, or for com-
4 mitment for use, only for assistance for—

5 “(A) the production, preservation, and re-
6 habilitation of rental housing, including housing
7 under the programs identified in section
8 1335(a)(2)(B) and for operating costs, except
9 that not less than 75 percent of such grant
10 amounts shall be used for the benefit only of
11 extremely low-income families and not more
12 than 25 percent for the benefit only of very low-
13 income families; and

14 “(B) the production, preservation, and re-
15 habilitation of housing for homeownership, in-
16 cluding such forms as down payment assist-
17 ance, closing cost assistance, and assistance for
18 interest rate buy-downs, that—

19 “(i) is available for purchase only for
20 use as a principal residence by families
21 that qualify both as—

22 “(I) extremely low- and very low-
23 income families at the times described
24 in subparagraphs (A) through (C) of
25 section 215(b)(2) of the Cranston-

1 Gonzalez National Affordable Housing
2 Act (42 U.S.C. 12745(b)(2)); and

3 “(II) first-time homebuyers, as
4 such term is defined in section 104 of
5 the Cranston-Gonzalez National Af-
6 fordable Housing Act (42 U.S.C.
7 12704), except that any reference in
8 such section to assistance under title
9 II of such Act shall for purposes of
10 this subsection be considered to refer
11 to assistance from affordable housing
12 fund grant amounts;

13 “(ii) has an initial purchase price that
14 meets the requirements of section
15 215(b)(1) of the Cranston-Gonzalez Na-
16 tional Affordable Housing Act;

17 “(iii) is subject to the same resale re-
18 strictions established under section
19 215(b)(3) of the Cranston-Gonzalez Na-
20 tional Affordable Housing Act and applica-
21 ble to the participating jurisdiction that is
22 the State in which such housing is located;
23 and

24 “(iv) is made available for purchase
25 only by, or in the case of assistance under

1 this subsection, is made available only to
2 homebuyers who have, before purchase
3 completed a program of independent finan-
4 cial education and counseling from an eli-
5 gible organization that meets the require-
6 ments of section 132 of the Federal Hous-
7 ing Finance Regulatory Reform Act of
8 2008.

9 “(8) ELIGIBLE RECIPIENTS.—Grant amounts
10 allocated to a State or State designated entity under
11 this subsection may be provided only to a recipient
12 that is an organization, agency, or other entity (in-
13 cluding a for-profit entity or a nonprofit entity)
14 that—

15 “(A) has demonstrated experience and ca-
16 pacity to conduct an eligible activity under
17 paragraph (7), as evidenced by its ability to—

18 “(i) own, construct or rehabilitate,
19 manage, and operate an affordable multi-
20 family rental housing development;

21 “(ii) design, construct or rehabilitate,
22 and market affordable housing for home-
23 ownership; or

1 “(iii) provide forms of assistance, such
2 as down payments, closing costs, or inter-
3 est rate buy-downs for purchasers;

4 “(B) demonstrates the ability and financial
5 capacity to undertake, comply, and manage the
6 eligible activity;

7 “(C) demonstrates its familiarity with the
8 requirements of any other Federal, State, or
9 local housing program that will be used in con-
10 junction with such grant amounts to ensure
11 compliance with all applicable requirements and
12 regulations of such programs; and

13 “(D) makes such assurances to the State
14 or State designated entity as the Secretary
15 shall, by regulation, require to ensure that the
16 recipient will comply with the requirements of
17 this subsection during the entire period that be-
18 gins upon selection of the recipient to receive
19 such grant amounts and ending upon the con-
20 clusion of all activities under paragraph (8)
21 that are engaged in by the recipient and funded
22 with such grant amounts.

23 “(9) LIMITATIONS ON USE.—

24 “(A) REQUIRED AMOUNT FOR HOME-
25 OWNERSHIP ACTIVITIES.—Of the aggregate

1 amount allocated to a State or State designated
2 entity under this subsection not more than 10
3 percent shall be used for activities under sub-
4 paragraph (B) of paragraph (7).

5 “(B) DEADLINE FOR COMMITMENT OR
6 USE.—Grant amounts allocated to a State or
7 State designated entity under this subsection
8 shall be used or committed for use within 2
9 years of the date that such grant amounts are
10 made available to the State or State designated
11 entity. The Secretary shall recapture any such
12 amounts not so used or committed for use and
13 reallocate such amounts under this subsection
14 in the first year after such recapture.

15 “(C) USE OF RETURNS.—The Secretary
16 shall, by regulation, provide that any return on
17 a loan or other investment of any grant amount
18 used by a State or State designated entity to
19 provide a loan under this subsection shall be
20 treated, for purposes of availability to and use
21 by the State or State designated entity, as a
22 grant amount authorized under this subsection.

23 “(D) PROHIBITED USES.—The Secretary
24 shall, by regulation—

1 “(i) set forth prohibited uses of grant
2 amounts allocated under this subsection,
3 which shall include use for—

4 “(I) political activities;

5 “(II) advocacy;

6 “(III) lobbying, whether directly
7 or through other parties;

8 “(IV) counseling services;

9 “(V) travel expenses; and

10 “(VI) preparing or providing ad-
11 vice on tax returns;

12 “(ii) provide that, except as provided
13 in clause (iii), grant amounts of a State or
14 State designated entity may not be used
15 for administrative, outreach, or other costs
16 of—

17 “(I) the State or State des-
18 igned entity; or

19 “(II) any other recipient of such
20 grant amounts; and

21 “(iii) limit the amount of any grant
22 amounts for a year that may be used by
23 the State or State designated entity for ad-
24 ministrative costs of carrying out the pro-
25 gram required under this subsection, in-

1 cluding home ownership counseling, to a
2 percentage of such grant amounts of the
3 State or State designated entity for such
4 year, which may not exceed 10 percent.

5 “(E) PROHIBITION OF CONSIDERATION OF
6 USE FOR MEETING HOUSING GOALS OR DUTY
7 TO SERVE.—In determining compliance with
8 the housing goals under this subpart and the
9 duty to serve underserved markets under sec-
10 tion 1335, the Director may not consider any
11 grant amounts used under this section for eligi-
12 ble activities under paragraph (7). The Director
13 shall give credit toward the achievement of such
14 housing goals and such duty to serve under-
15 served markets to purchases by the enterprises
16 of mortgages for housing that receives funding
17 from such grant amounts, but only to the ex-
18 tent that such purchases by the enterprises are
19 funded other than with such grant amounts.

20 “(d) REDUCTION FOR FAILURE TO OBTAIN RETURN
21 OF MISUSED FUNDS.—If in any year a State or State des-
22 ignated entity fails to obtain reimbursement or return of
23 the full amount required under subsection (e)(1)(B) to be
24 reimbursed or returned to the State or State designated
25 entity during such year—

1 “(1) except as provided in paragraph (2)—

2 “(A) the amount of the grant for the State
3 or State designated entity for the succeeding
4 year, as determined pursuant to this section,
5 shall be reduced by the amount by which such
6 amounts required to be reimbursed or returned
7 exceed the amount actually reimbursed or re-
8 turned; and

9 “(B) the amount of the grant for the suc-
10 ceeding year for each other State or State des-
11 ignated entity whose grant is not reduced pur-
12 suant to subparagraph (A) shall be increased by
13 the amount determined by applying the formula
14 established pursuant to this section to the total
15 amount of all reductions for all State or State
16 designated entities for such year pursuant to
17 subparagraph (A); or

18 “(2) in any case in which such failure to obtain
19 reimbursement or return occurs during a year imme-
20 diately preceding a year in which grants under this
21 section will not be made, the State or State des-
22 ignated entity shall pay to the Secretary for realloca-
23 tion among the other grantees an amount equal to
24 the amount of the reduction for the entity that
25 would otherwise apply under paragraph (1)(A).

1 “(e) ACCOUNTABILITY OF RECIPIENTS AND GRANT-
2 EES.—

3 “(1) RECIPIENTS.—

4 “(A) TRACKING OF FUNDS.—The Sec-
5 retary shall—

6 “(i) require each State or State des-
7 igned entity to develop and maintain a
8 system to ensure that each recipient of as-
9 sistance under this section uses such
10 amounts in accordance with this section,
11 the regulations issued under this section,
12 and any requirements or conditions under
13 which such amounts were provided; and

14 “(ii) establish minimum requirements
15 for agreements, between the State or State
16 designated entity and recipients, regarding
17 assistance under this section, which shall
18 include—

19 “(I) appropriate periodic finan-
20 cial and project reporting, record re-
21 tention, and audit requirements for
22 the duration of the assistance to the
23 recipient to ensure compliance with
24 the limitations and requirements of

1 this section and the regulations under
2 this section; and

3 “(II) any other requirements that
4 the Secretary determines are nec-
5 essary to ensure appropriate adminis-
6 tration and compliance.

7 “(B) MISUSE OF FUNDS.—

8 “(i) REIMBURSEMENT REQUIRE-
9 MENT.—If any recipient of assistance
10 under this section is determined, in accord-
11 ance with clause (ii), to have used any
12 such amounts in a manner that is materi-
13 ally in violation of this section, the regula-
14 tions issued under this section, or any re-
15 quirements or conditions under which such
16 amounts were provided, the State or State
17 designated entity shall require that, within
18 12 months after the determination of such
19 misuse, the recipient shall reimburse the
20 State or State designated entity for such
21 misused amounts and return to the State
22 or State designated entity any such
23 amounts that remain unused or uncommit-
24 ted for use. The remedies under this clause

1 are in addition to any other remedies that
2 may be available under law.

3 “(ii) DETERMINATION.—A determina-
4 tion is made in accordance with this clause
5 if the determination is made by the Sec-
6 retary or made by the State or State des-
7 ignated entity, provided that—

8 “(I) the State or State des-
9 ignated entity provides notification of
10 the determination to the Secretary for
11 review, in the discretion of the Sec-
12 retary, of the determination; and

13 “(II) the Secretary does not sub-
14 sequently reverse the determination.

15 “(2) GRANTEES.—

16 “(A) REPORT.—

17 “(i) IN GENERAL.—The Secretary
18 shall require each State or State des-
19 ignated entity receiving grant amounts in
20 any given year under this section to submit
21 a report, for such year, to the Secretary
22 that—

23 “(I) describes the activities fund-
24 ed under this section during such year
25 with such grant amounts; and

1 “(II) the manner in which the
2 State or State designated entity com-
3 plied during such year with any allo-
4 cation plan established pursuant to
5 subsection (c).

6 “(ii) PUBLIC AVAILABILITY.—The
7 Secretary shall make such reports pursu-
8 ant to this subparagraph publicly available.

9 “(B) MISUSE OF FUNDS.—If the Secretary
10 determines, after reasonable notice and oppor-
11 tunity for hearing, that a State or State des-
12 ignated entity has failed to comply substantially
13 with any provision of this section, and until the
14 Secretary is satisfied that there is no longer
15 any such failure to comply, the Secretary
16 shall—

17 “(i) reduce the amount of assistance
18 under this section to the State or State
19 designated entity by an amount equal to
20 the amount of grant amounts which were
21 not used in accordance with this section;

22 “(ii) require the State or State des-
23 ignated entity to repay the Secretary any
24 amount of the grant which was not used in
25 accordance with this section;

1 “(iii) limit the availability of assist-
2 ance under this section to the State or
3 State designated entity to activities or re-
4 cipients not affected by such failure to
5 comply; or

6 “(iv) terminate any assistance under
7 this section to the State or State des-
8 ignated entity.

9 “(f) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 “(1) EXTREMELY LOW-INCOME RENTER
12 HOUSEHOLD.—The term ‘extremely low-income
13 renter household’ means a household whose income
14 is not in excess of 30 percent of the area median in-
15 come, with adjustments for smaller and larger fami-
16 lies, as determined by the Secretary.

17 “(2) RECIPIENT.—The term ‘recipient’ means
18 an individual or entity that receives assistance from
19 a State or State designated entity from amounts
20 made available to the State or State designated enti-
21 ty under this section.

22 “(3) SHORTAGE OF STANDARD RENTAL UNITS
23 BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY
24 LOW-INCOME RENTER HOUSEHOLDS.—

1 “(A) IN GENERAL.—The term ‘shortage of
2 standard rental units both affordable and avail-
3 able to extremely low-income renter households’
4 means for any State or other geographical area
5 the gap between—

6 “(i) the number of units with com-
7 plete plumbing and kitchen facilities with a
8 rent that is 30 percent or less of 30 per-
9 cent of the adjusted area median income as
10 determined by the Secretary that are occu-
11 pied by extremely low-income renter house-
12 holds or are vacant for rent; and

13 “(ii) the number of extremely low-in-
14 come renter households.

15 “(B) RULE OF CONSTRUCTION.—If the
16 number of units described in subparagraph
17 (A)(i) exceeds the number of extremely low-in-
18 come households as described in subparagraph
19 (A)(ii), there is no shortage.

20 “(4) SHORTAGE OF STANDARD RENTAL UNITS
21 BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-
22 INCOME RENTER HOUSEHOLDS.—

23 “(A) IN GENERAL.—The term ‘shortage of
24 standard rental units both affordable and avail-
25 able to very low-income renter households’

1 means for any State or other geographical area
2 the gap between—

3 “(i) the number of units with com-
4 plete plumbing and kitchen facilities with a
5 rent that is 30 percent or less of 50 per-
6 cent of the adjusted area median income as
7 determined by the Secretary that are occu-
8 pied by very low-income renter households
9 or are vacant for rent; and

10 “(ii) the number of very low-income
11 renter households.

12 “(B) RULE OF CONSTRUCTION.—If the
13 number of units described in subparagraph
14 (A)(i) exceeds the number of very low-income
15 households as described in subparagraph
16 (A)(ii), there is no shortage.

17 “(5) VERY LOW-INCOME FAMILY.—The term
18 ‘very low-income family’ has the meaning given such
19 term in section 1303, except that such term includes
20 any family that resides in a rural area that has an
21 income that does not exceed the poverty line (as
22 such term is defined in section 673(2) of the Omni-
23 bus Budget Reconciliation Act of 1981 (42 U.S.C.
24 9902(2)), including any revision required by such
25 section) applicable to a family of the size involved.

1 “(6) VERY LOW-INCOME RENTER HOUSE-
2 HOLDS.—The term ‘very low-income renter house-
3 holds’ means a household whose income is in excess
4 of 30 percent but not greater than 50 percent of the
5 area median income, with adjustments for smaller
6 and larger families, as determined by the Secretary.

7 “(g) REGULATIONS.—

8 “(1) IN GENERAL.—The Secretary shall issue
9 regulations to carry out this section.

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

12 “(A) a requirement that the Secretary en-
13 sure that the use of grant amounts under this
14 section by States or State designated entities is
15 audited not less than annually to ensure compli-
16 ance with this section;

17 “(B) authority for the Secretary to audit,
18 provide for an audit, or otherwise verify a State
19 or State designated entity’s activities to ensure
20 compliance with this section;

21 “(C) requirements for a process for appli-
22 cation to, and selection by, each State or State
23 designated entity for activities meeting the
24 State or State designated entity’s priority hous-
25 ing needs to be funded with grant amounts

1 under this section, which shall provide for pri-
2 ority in funding to be based upon—

3 “(i) geographic diversity;

4 “(ii) ability to obligate amounts and
5 undertake activities so funded in a timely
6 manner;

7 “(iii) in the case of rental housing
8 projects under subsection (c)(7)(A), the ex-
9 tent to which rents for units in the project
10 funded are affordable, especially for ex-
11 tremely low-income families;

12 “(iv) in the case of rental housing
13 projects under subsection (c)(7)(A), the ex-
14 tent of the duration for which such rents
15 will remain affordable;

16 “(v) the extent to which the applica-
17 tion makes use of other funding sources;
18 and

19 “(vi) the merits of an applicant’s pro-
20 posed eligible activity;

21 “(D) requirements to ensure that grant
22 amounts provided to a State or State des-
23 ignated entity under this section that are used
24 for rental housing under subsection (c)(7)(A)

1 are used only for the benefit of extremely low-
2 and very low-income families; and

3 “(E) requirements and standards for es-
4 tablishment, by a State or State designated en-
5 tity, for use of grant amounts in 2009 and sub-
6 sequent years of performance goals, bench-
7 marks, and timetables for the production, pres-
8 ervation, and rehabilitation of affordable rental
9 and homeownership housing with such grant
10 amounts.

11 “(h) AFFORDABLE HOUSING TRUST FUND.—If,
12 after the date of enactment of the Federal Housing Fi-
13 nance Regulatory Reform Act of 2008, in any year, there
14 is enacted any provision of Federal law establishing an
15 affordable housing trust fund other than under this title
16 for use only for grants to provide affordable rental housing
17 and affordable homeownership opportunities, and the sub-
18 sequent year is a year referred to in subsection (c), the
19 Secretary shall in such subsequent year and any remaining
20 years referred to in subsection (c) transfer to such afford-
21 able housing trust fund the aggregate amount allocated
22 pursuant to subsection (c) in such year. Notwithstanding
23 any other provision of law, assistance provided using
24 amounts transferred to such affordable housing trust fund
25 pursuant to this subsection may not be used for any of

1 the activities specified in clauses (i) through (vi) of sub-
2 section (c)(9)(D).

3 “(i) **FUNDING ACCOUNTABILITY AND TRANS-**
4 **PARENCY.**—Any grant under this section to a grantee by
5 a State or State designated entity, any assistance provided
6 to a recipient by a State or State designated entity, and
7 any grant, award, or other assistance from an affordable
8 housing trust fund referred to in subsection (h) shall be
9 considered a Federal award for purposes of the Federal
10 Funding Accountability and Transparency Act of 2006
11 (31 U.S.C. 6101 note). Upon the request of the Director
12 of the Office of Management and Budget, the Secretary
13 shall obtain and provide such information regarding any
14 such grants, assistance, and awards as the Director of the
15 Office of Management and Budget considers necessary to
16 comply with the requirements of such Act, as applicable,
17 pursuant to the preceding sentence.

18 **“SEC. 1339. CAPITAL MAGNET FUND.**

19 “(a) **ESTABLISHMENT.**—There is established in the
20 Treasury of the United States a trust fund to be known
21 as the Capital Magnet Fund, which shall be a special ac-
22 count within the Community Development Financial Insti-
23 tutions Fund.

24 “(b) **DEPOSITS TO TRUST FUND.**—The Capital Mag-
25 net Fund shall consist of—

1 “(1) any amounts transferred to the Fund pur-
2 suant to section 1337; and

3 “(2) any amounts as are or may be appro-
4 priated, transferred, or credited to such Fund under
5 any other provisions of law.

6 “(c) EXPENDITURES FROM TRUST FUND.—Amounts
7 in the Capital Magnet Fund shall be available to the Sec-
8 retary of the Treasury to carry out a competitive grant
9 program to attract private capital for and increase invest-
10 ment in—

11 “(1) the development, preservation, rehabilita-
12 tion, or purchase of affordable housing for primarily
13 extremely low-, very low-, and low-income families;
14 and

15 “(2) economic development activities or commu-
16 nity service facilities, such as day care centers, work-
17 force development centers, and health care clinics,
18 which in conjunction with affordable housing activi-
19 ties implement a concerted strategy to stabilize or
20 revitalize a low-income area or underserved rural
21 area.

22 “(d) FEDERAL ASSISTANCE.—All assistance provided
23 using amounts in the Capital Magnet Fund shall be con-
24 sidered to be Federal financial assistance.

1 “(e) ELIGIBLE GRANTEES.—A grant under this sec-
2 tion may be made, pursuant to such requirements as the
3 Secretary of the Treasury shall establish for experience
4 and success in attracting private financing and carrying
5 out the types of activities proposed under the application
6 of the grantee, only to—

7 “(1) a Treasury certified community develop-
8 ment financial institution; or

9 “(2) a nonprofit organization having as 1 of its
10 principal purposes the development or management
11 of affordable housing.

12 “(f) ELIGIBLE USES.—Grant amounts awarded from
13 the Capital Magnet Fund pursuant to this section may
14 be used for the purposes described in paragraphs (1) and
15 (2) of subsection (e), including for the following uses:

16 “(1) To provide loan loss reserves.

17 “(2) To capitalize a revolving loan fund.

18 “(3) To capitalize an affordable housing fund.

19 “(4) To capitalize a fund to support activities
20 described in subsection (e)(2).

21 “(5) For risk-sharing loans.

22 “(g) APPLICATIONS.—

23 “(1) IN GENERAL.—The Secretary of the
24 Treasury shall provide, in a competitive application
25 process established by regulation, for eligible grant-

1 ees under subsection (e) to submit applications for
2 Capital Magnet Fund grants to the Secretary at
3 such time and in such manner as the Secretary shall
4 determine.

5 “(2) CONTENT OF APPLICATION.—The applica-
6 tion required under paragraph (1) shall include a de-
7 tailed description of—

8 “(A) the types of affordable housing, eco-
9 nomic, and community revitalization projects
10 that support or sustain residents of an afford-
11 able housing project funded by a grant under
12 this section for which such grant amounts
13 would be used, including the proposed use of el-
14 igible grants as authorized under this section;

15 “(B) the types, sources, and amounts of
16 other funding for such projects; and

17 “(C) the expected time frame of any grant
18 used for such project.

19 “(h) GRANT LIMITATION.—

20 “(1) IN GENERAL.—Any 1 eligible grantee and
21 its subsidiaries and affiliates may not be awarded
22 more than 15 percent of the aggregate funds avail-
23 able for grants during any year from the Capital
24 Magnet Fund.

25 “(2) GEOGRAPHIC DIVERSITY.—

1 “(A) GOAL.—The Secretary of the Treas-
2 ury shall seek to fund activities in geographi-
3 cally diverse areas of economic distress, includ-
4 ing metropolitan and underserved rural areas in
5 every State.

6 “(B) DIVERSITY DEFINED.—For purposes
7 of this paragraph, geographic diversity includes
8 those areas that meet objective criteria of eco-
9 nomic distress developed by the Secretary of the
10 Treasury, which may include—

11 “(i) the percentage of low-income
12 families or the extent of poverty;

13 “(ii) the rate of unemployment or
14 underemployment;

15 “(iii) extent of blight and disinvest-
16 ment;

17 “(iv) projects that target extremely
18 low-, very low-, and low-income families in
19 or outside a designated economic distress
20 area; or

21 “(v) any other criteria designated by
22 the Secretary of the Treasury.

23 “(3) LEVERAGE OF FUNDS.—Each grant from
24 the Capital Magnet Fund awarded under this section
25 shall be reasonably expected to result in eligible

1 housing, or economic and community development
2 projects that support or sustain an affordable hous-
3 ing project funded by a grant under this section
4 whose aggregate costs total at least 10 times the
5 grant amount.

6 “(4) COMMITMENT FOR USE DEADLINE.—
7 Amounts made available for grants under this sec-
8 tion shall be committed for use within 2 years of the
9 date of such allocation. The Secretary of the Treas-
10 ury shall recapture into the Capital Magnet Fund
11 any amounts not so used or committed for use and
12 allocate such amounts in the first year after such re-
13 capture.

14 “(5) LOBBYING RESTRICTIONS.—No assistance
15 or amounts made available under this section may
16 be expended by an eligible grantee to pay any person
17 to influence or attempt to influence any agency,
18 elected official, officer or employee of a State or
19 local government in connection with the making,
20 award, extension, continuation, renewal, amendment,
21 or modification of any State or local government
22 contract, grant, loan, or cooperative agreement as
23 such terms are defined in section 1352 of title 31,
24 United States Code.

1 “(6) PROHIBITION OF CONSIDERATION OF USE
2 FOR MEETING HOUSING GOALS OR DUTY TO
3 SERVE.—In determining the compliance of the enter-
4 prises with the housing goals under this section and
5 the duty to serve underserved markets under section
6 1335, the Director of the Federal Housing Finance
7 Agency may not consider any Capital Magnet Fund
8 amounts used under this section for eligible activities
9 under subsection (f). The Director of the Federal
10 Housing Finance Agency shall give credit toward the
11 achievement of such housing goals and such duty to
12 serve underserved markets to purchases by the en-
13 terprises of mortgages for housing that receives
14 funding from Capital Magnet Fund grant amounts,
15 but only to the extent that such purchases by the
16 enterprises are funded other than with such grant
17 amounts.

18 “(7) ACCOUNTABILITY OF RECIPIENTS AND
19 GRANTEES.—

20 “(A) TRACKING OF FUNDS.—The Sec-
21 retary of the Treasury shall—

22 “(i) require each grantee to develop
23 and maintain a system to ensure that each
24 recipient of assistance from the Capital
25 Magnet Fund uses such amounts in ac-

1 cordance with this section, the regulations
2 issued under this section, and any require-
3 ments or conditions under which such
4 amounts were provided; and

5 “(ii) establish minimum requirements
6 for agreements, between the grantee and
7 the Capital Magnet Fund, regarding as-
8 sistance from the Capital Magnet Fund,
9 which shall include—

10 “(I) appropriate periodic finan-
11 cial and project reporting, record re-
12 tention, and audit requirements for
13 the duration of the grant to the re-
14 cipient to ensure compliance with the
15 limitations and requirements of this
16 section and the regulations under this
17 section; and

18 “(II) any other requirements that
19 the Secretary determines are nec-
20 essary to ensure appropriate grant ad-
21 ministration and compliance.

22 “(B) MISUSE OF FUNDS.—If the Secretary
23 of the Treasury determines, after reasonable
24 notice and opportunity for hearing, that a
25 grantee has failed to comply substantially with

1 any provision of this section and until the Sec-
2 retary is satisfied that there is no longer any
3 such failure to comply, the Secretary shall—

4 “(i) reduce the amount of assistance
5 under this section to the grantee by an
6 amount equal to the amount of Capital
7 Magnet Fund grant amounts which were
8 not used in accordance with this section;

9 “(ii) require the grantee to repay the
10 Secretary any amount of the Capital Mag-
11 net Fund grant amounts which were not
12 used in accordance with this section;

13 “(iii) limit the availability of assist-
14 ance under this section to the grantee to
15 activities or recipients not affected by such
16 failure to comply; or

17 “(iv) terminate any assistance under
18 this section to the grantee.

19 “(i) PERIODIC REPORTS.—

20 “(1) IN GENERAL.—The Secretary of the
21 Treasury shall submit a report, on a periodic basis,
22 to the Committee on Banking, Housing, and Urban
23 Affairs of the Senate and the Committee on Finan-
24 cial Services of the House of Representatives de-

1 scribing the activities to be funded under this sec-
2 tion.

3 “(2) REPORTS AVAILABLE TO PUBLIC.—The
4 Secretary of the Treasury shall make the reports re-
5 quired under paragraph (1) publicly available.

6 “(j) REGULATIONS.—

7 “(1) IN GENERAL.—The Secretary of the
8 Treasury shall issue regulations to carry out this
9 section.

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

12 “(A) authority for the Secretary to audit,
13 provide for an audit, or otherwise verify an en-
14 terprise’s activities, to ensure compliance with
15 this section;

16 “(B) a requirement that the Secretary en-
17 sure that the allocation of each enterprise is au-
18 dited not less than annually to ensure compli-
19 ance with this section; and

20 “(C) requirements for a process for appli-
21 cation to, and selection by, the Secretary for ac-
22 tivities to be funded with amounts from the
23 Capital Magnet Fund, which shall provide
24 that—

1 “(i) funds be fairly distributed to
2 urban, suburban, and rural areas; and

3 “(ii) selection shall be based upon spe-
4 cific criteria, including a prioritization of
5 funding based upon—

6 “(I) the ability to use such funds
7 to generate additional investments;

8 “(II) affordable housing need
9 (taking into account the distinct needs
10 of different regions of the country);
11 and

12 “(III) ability to obligate amounts
13 and undertake activities so funded in
14 a timely manner.”.

15 **SEC. 1132. FINANCIAL EDUCATION AND COUNSELING.**

16 (a) GOALS.—Financial education and counseling
17 under this section shall have the goal of—

18 (1) increasing the financial knowledge and deci-
19 sion making capabilities of prospective homebuyers;

20 (2) assisting prospective homebuyers to develop
21 monthly budgets, build personal savings, finance or
22 plan for major purchases, reduce their debt, improve
23 their financial stability, and set and reach their fi-
24 nancial goals;

1 (3) helping prospective homebuyers to improve
2 their credit scores by understanding the relationship
3 between their credit histories and their credit scores;
4 and

5 (4) educating prospective homebuyers about the
6 options available to build savings for short- and
7 long-term goals.

8 (b) GRANTS.—

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury (in this section referred to as the “Secretary”)
11 shall make grants to eligible organizations to enable
12 such organizations to provide a range of financial
13 education and counseling services to prospective
14 homebuyers.

15 (2) SELECTION.—The Secretary shall select eli-
16 gible organizations to receive assistance under this
17 section based on their experience and ability to pro-
18 vide financial education and counseling services that
19 result in documented positive behavioral changes.

20 (c) ELIGIBLE ORGANIZATIONS.—

21 (1) IN GENERAL.—For purposes of this section,
22 the term “eligible organization” means an organiza-
23 tion that is—

1 (A) certified in accordance with section
2 106(e)(1) of the Housing and Urban Develop-
3 ment Act of 1968 (12 U.S.C. 1701x(e)); or

4 (B) certified by the Office of Financial
5 Education of the Department of the Treasury
6 for purposes of this section, in accordance with
7 paragraph (2).

8 (2) OFE CERTIFICATION.—To be certified by
9 the Office of Financial Education for purposes of
10 this section, an eligible organization shall be—

11 (A) a housing counseling agency certified
12 by the Secretary of Housing and Urban Develop-
13 ment under section 106(e) of the Housing
14 and Urban Development Act of 1968;

15 (B) a State, local, or tribal government
16 agency;

17 (C) a community development financial in-
18 stitution (as defined in section 103(5) of the
19 Community Development Banking and Finan-
20 cial Institutions Act of 1994 (12 U.S.C.
21 4702(5)) or a credit union; or

22 (D) any collaborative effort of entities de-
23 scribed in any of subparagraphs (A) through
24 (C).

25 (d) AUTHORITY FOR PILOT PROJECTS.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall authorize not more than 5 pilot project
3 grants to eligible organizations under subsection (c)
4 in order to—

5 (A) carry out the services under this sec-
6 tion; and

7 (B) provide such other services that will
8 improve the financial stability and economic
9 condition of low- and moderate-income and low-
10 wealth individuals.

11 (2) GOAL.—The goal of the pilot project grants
12 under this subsection is to—

13 (A) identify successful methods resulting in
14 positive behavioral change for financial em-
15 powerment; and

16 (B) establish program models for organiza-
17 tions to carry out effective counseling services.

18 (e) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary such
20 sums as are necessary to carry out this section and for
21 the provision of additional financial educational services.

22 (f) STUDY AND REPORT ON EFFECTIVENESS AND IM-
23 PACT.—

24 (1) IN GENERAL.—The Comptroller General of
25 the United States shall conduct a study on the effec-

1 tiveness and impact of the grant program estab-
2 lished under this section. Not later than 3 years
3 after the date of enactment of this Act, the Comp-
4 troller General shall submit a report on the results
5 of such study to the Committee on Banking, Hous-
6 ing, and Urban Affairs of the Senate and the Com-
7 mittee on Financial Services of the House of Rep-
8 resentatives.

9 (2) CONTENT OF STUDY.—The study required
10 under paragraph (1) shall include an evaluation of
11 the following:

12 (A) The effectiveness of the grant program
13 established under this section in improving the
14 financial situation of homeowners and prospec-
15 tive homebuyers served by the grant program.

16 (B) The extent to which financial edu-
17 cation and counseling services have resulted in
18 positive behavioral changes.

19 (C) The effectiveness and quality of the eli-
20 gible organizations providing financial education
21 and counseling services under the grant pro-
22 gram.

23 (g) REGULATIONS.—The Secretary is authorized to
24 promulgate such regulations as may be necessary to imple-

1 tarily separated or reduced in grade or compensation
2 during the 12-month period beginning on the date of
3 transfer, except for cause, or, in the case of a tem-
4 porary employee, separated in accordance with the
5 terms of the appointment of the employee.

6 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
7 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

8 (1) IN GENERAL.—In the case of an employee
9 occupying a position in the excepted service or the
10 Senior Executive Service, any appointment authority
11 established under law or by regulations of the Office
12 of Personnel Management for filling such position
13 shall be transferred, subject to paragraph (2).

14 (2) DECLINE OF TRANSFER.—The Director
15 may decline a transfer of authority under paragraph
16 (1) to the extent that such authority relates to—

17 (A) a position excepted from the competi-
18 tive service because of its confidential, policy-
19 making, policy-determining, or policy-advocating
20 character; or

21 (B) a noncareer position in the Senior Ex-
22 ecutive Service (within the meaning of section
23 3132(a)(7) of title 5, United States Code).

24 (d) REORGANIZATION.—If the Director determines,
25 after the end of the 1-year period beginning on the effec-

1 tive date of the Federal Housing Finance Regulatory Re-
2 form Act of 2008, that a reorganization of the combined
3 workforce is required, that reorganization shall be deemed
4 a major reorganization for purposes of affording affected
5 employee retirement under section 8336(d)(2) or
6 8414(b)(1)(B) of title 5, United States Code.

7 (e) EMPLOYEE BENEFIT PROGRAMS.—

8 (1) IN GENERAL.—Any employee described
9 under subsection (a) accepting employment with the
10 Agency as a result of a transfer under subsection (a)
11 may retain, for 12 months after the date on which
12 such transfer occurs, membership in any employee
13 benefit program of the Agency or the Department of
14 Housing and Urban Development, as applicable, in-
15 cluding insurance, to which such employee belongs
16 on such effective date, if—

17 (A) the employee does not elect to give up
18 the benefit or membership in the program; and

19 (B) the benefit or program is continued by
20 the Director of the Federal Housing Finance
21 Agency.

22 (2) COST DIFFERENTIAL.—

23 (A) IN GENERAL.—The difference in the
24 costs between the benefits which would have
25 been provided by the Department of Housing

1 and Urban Development and those provided by
2 this section shall be paid by the Director.

3 (B) HEALTH INSURANCE.—If any em-
4 ployee elects to give up membership in a health
5 insurance program or the health insurance pro-
6 gram is not continued by the Director, the em-
7 ployee shall be permitted to select an alternate
8 Federal health insurance program not later
9 than 30 days after the date of such election or
10 notice, without regard to any other regularly
11 scheduled open season.

12 **Subtitle C—Prompt Corrective** 13 **Action**

14 **SEC. 1141. CRITICAL CAPITAL LEVELS.**

15 (a) IN GENERAL.—Section 1363 of the Federal
16 Housing Enterprises Financial Safety and Soundness Act
17 of 1992 (12 U.S.C. 4613) is amended—

18 (1) by striking “For” and inserting “(a) EN-
19 TERPRISES.—FOR”; and

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

22 “(b) FEDERAL HOME LOAN BANKS.—

23 “(1) IN GENERAL.—For purposes of this sub-
24 title, the critical capital level for each Federal Home

1 Loan Bank shall be such amount of capital as the
2 Director shall, by regulation, require.

3 “(2) CONSIDERATION OF OTHER CRITICAL CAP-
4 ITAL LEVELS.—In establishing the critical capital
5 level under paragraph (1) for the Federal Home
6 Loan Banks, the Director shall take due consider-
7 ation of the critical capital level established under
8 subsection (a) for the enterprises, with such modi-
9 fications as the Director determines to be appro-
10 priate to reflect the difference in operations between
11 the banks and the enterprises.”.

12 (b) REGULATIONS.—Not later than the expiration of
13 the 180-day period beginning on the date of enactment
14 of this Act, the Director of the Federal Housing Finance
15 Agency shall issue regulations pursuant to section 1363(b)
16 of the Federal Housing Enterprises Financial Safety and
17 Soundness Act of 1992 (as added by this section) estab-
18 lishing the critical capital level under such section.

19 **SEC. 1142. CAPITAL CLASSIFICATIONS.**

20 (a) IN GENERAL.—Section 1364 of the Federal
21 Housing Enterprises Financial Safety and Soundness Act
22 of 1992 (12 U.S.C. 4614) is amended—

23 (1) in the heading for subsection (a) by striking
24 “In General” and inserting “Enterprises”;

25 (2) in subsection (c)—

1 (A) by striking “subsection (b)” and in-
2 serting “subsection (e)”;

3 (B) by striking “enterprises” and inserting
4 “regulated entities”; and

5 (C) by striking the last sentence;

6 (3) by redesignating subsections (c) (as so
7 amended by paragraph (2) of this subsection) and
8 (d) as subsections (d) and (f), respectively;

9 (4) by striking subsection (b) and inserting the
10 following:

11 “(b) FEDERAL HOME LOAN BANKS.—

12 “(1) ESTABLISHMENT AND CRITERIA.—For
13 purposes of this subtitle, the Director shall, by regu-
14 lation—

15 “(A) establish the capital classifications
16 specified under paragraph (2) for the Federal
17 Home Loan Banks;

18 “(B) establish criteria for each such cap-
19 ital classification based on the amount and
20 types of capital held by a bank and the risk-
21 based, minimum, and critical capital levels for
22 the banks and taking due consideration of the
23 capital classifications established under sub-
24 section (a) for the enterprises, with such modi-
25 fications as the Director determines to be ap-

1 appropriate to reflect the difference in operations
2 between the banks and the enterprises; and

3 “(C) shall classify the Federal Home Loan
4 Banks according to such capital classifications.

5 “(2) CLASSIFICATIONS.—The capital classifica-
6 tions specified under this paragraph are—

7 “(A) adequately capitalized;

8 “(B) undercapitalized;

9 “(C) significantly undercapitalized; and

10 “(D) critically undercapitalized.

11 “(c) DISCRETIONARY CLASSIFICATION.—

12 “(1) GROUNDS FOR RECLASSIFICATION.—The
13 Director may reclassify a regulated entity under
14 paragraph (2) if—

15 “(A) at any time, the Director determines
16 in writing that the regulated entity is engaging
17 in conduct that could result in a rapid depletion
18 of core or total capital or the value of collateral
19 pledged as security has decreased significantly
20 or that the value of the property subject to any
21 mortgage held by the regulated entity (or
22 securitized in the case of an enterprise) has de-
23 creased significantly;

24 “(B) after notice and an opportunity for
25 hearing, the Director determines that the regu-

1 lated entity is in an unsafe or unsound condi-
2 tion; or

3 “(C) pursuant to section 1371(b), the Di-
4 rector deems the regulated entity to be engag-
5 ing in an unsafe or unsound practice.

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

12 “(A) as undercapitalized, if the regulated
13 entity is otherwise classified as adequately cap-
14 italized;

15 “(B) as significantly undercapitalized, if
16 the regulated entity is otherwise classified as
17 undercapitalized; and

18 “(C) as critically undercapitalized, if the
19 regulated entity is otherwise classified as sig-
20 nificantly undercapitalized.”; and

21 (5) by inserting after subsection (d) (as so re-
22 designated by paragraph (3) of this subsection), the
23 following new subsection:

24 “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

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

5 “(2) EXCEPTION.—Notwithstanding paragraph
6 (1), the Director may permit a regulated entity, to
7 the extent appropriate or applicable, to repurchase,
8 redeem, retire, or otherwise acquire shares or owner-
9 ship interests if the repurchase, redemption, retire-
10 ment, or other acquisition—

11 “(A) is made in connection with the
12 issuance of additional shares or obligations of
13 the regulated entity in at least an equivalent
14 amount; and

15 “(B) will reduce the financial obligations of
16 the regulated entity or otherwise improve the fi-
17 nancial condition of the entity.”.

18 (b) REGULATIONS.—Not later than the expiration of
19 the 180-day period beginning on the date of enactment
20 of this Act, the Director of the Federal Housing Finance
21 Agency shall issue regulations to carry out section 1364(b)
22 of the Federal Housing Enterprises Financial Safety and
23 Soundness Act of 1992 (as added by this section), relating
24 to capital classifications for the Federal Home Loan
25 Banks.

1 **SEC. 1143. 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 regulated entity to become adequately capital-
18 ized 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. 1144. SUPERVISORY ACTIONS APPLICABLE TO SIG-**
4 **NIFICANTLY UNDERCAPITALIZED REGU-**
5 **LATED 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) in subsection (a)(2), by striking “under-
10 capitalized enterprise” and inserting “undercapital-
11 ized”;

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

14 (3) by striking “An enterprise” each place that
15 term appears and inserting “A regulated entity”;

16 (4) by striking “an enterprise” each place that
17 term appears and inserting “a regulated entity”;

18 (5) in subsection (b)—

19 (A) in the subsection heading, by striking
20 “DISCRETIONARY SUPERVISORY” and inserting
21 “SPECIFIC”;

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

1 (C) by striking paragraph (6);

2 (D) by redesignating paragraph (5) as
3 paragraph (6);

4 (E) by inserting after paragraph (4) the
5 following:

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

8 “(A) NEW ELECTION OF BOARD.—Order a
9 new election for the board of directors of the
10 regulated entity.

11 “(B) DISMISSAL OF DIRECTORS OR EXECU-
12 TIVE OFFICERS.—Require the regulated entity
13 to dismiss from office any director or executive
14 officer who had held office for more than 180
15 days immediately before the date on which the
16 regulated entity became undercapitalized. Dis-
17 missal under this subparagraph shall not be
18 construed to be a removal pursuant to the en-
19 forcement powers of the Director under section
20 1377.

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

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

2 “(7) OTHER ACTION.—Require the regulated
3 entity to take any other action that the Director de-
4 termines will better carry out the purpose of this
5 section than any of the other actions specified in this
6 subsection.”; and

7 (6) by striking subsection (e) and inserting the
8 following:

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

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

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

1 **SEC. 1145. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
2 **IZED REGULATED ENTITIES.**

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

6 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
7 **IZED REGULATED ENTITIES.**

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

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of Federal or State law, the Director may
12 appoint the Agency as conservator or receiver for a
13 regulated entity in the manner provided under para-
14 graph (2) or (4). All references to the conservator or
15 receiver under this section are references to the
16 Agency acting as conservator or receiver.

17 “(2) DISCRETIONARY APPOINTMENT.—The
18 Agency may, at the discretion of the Director, be ap-
19 pointed conservator or receiver for the purpose of re-
20 organizing, rehabilitating, or winding up the affairs
21 of a regulated entity.

22 “(3) GROUNDS FOR DISCRETIONARY APPOINT-
23 MENT OF CONSERVATOR OR RECEIVER.—The
24 grounds for appointing conservator or receiver for
25 any regulated entity under paragraph (2) are as fol-
26 lows:

1 “(A) SUBSTANTIAL DISSIPATION.—Sub-
2 stantial dissipation of assets or earnings due
3 to—

4 “(i) any violation of any provision of
5 Federal or State law; or

6 “(ii) any unsafe or unsound practice.

7 “(B) UNSAFE OR UNSOUND CONDITION.—
8 An unsafe or unsound condition to transact
9 business.

10 “(C) CEASE AND DESIST ORDERS.—Any
11 willful violation of a cease and desist order that
12 has become final.

13 “(D) CONCEALMENT.—Any concealment of
14 the books, papers, records, or assets of the reg-
15 ulated entity, or any refusal to submit the
16 books, papers, records, or affairs of the regu-
17 lated entity, for inspection to any examiner or
18 to any lawful agent of the Director.

19 “(E) INABILITY TO MEET OBLIGATIONS.—
20 The regulated entity is likely to be unable to
21 pay its obligations or meet the demands of its
22 creditors in the normal course of business.

23 “(F) LOSSES.—The regulated entity has
24 incurred or is likely to incur losses that will de-
25 plete all or substantially all of its capital, and

1 “(II) section 1366(a)(1) with re-
2 spect to a significantly undercapital-
3 ized regulated entity;

4 “(iii) fails to submit a capital restora-
5 tion plan acceptable to the Agency within
6 the time prescribed under section 1369C;
7 or

8 “(iv) materially fails to implement a
9 capital restoration plan submitted and ac-
10 cepted under section 1369C.

11 “(J) CRITICAL UNDERCAPITALIZATION.—
12 The regulated entity is critically undercapital-
13 ized, as defined in section 1364(a)(4).

14 “(K) MONEY LAUNDERING.—The Attorney
15 General notifies the Director in writing that the
16 regulated entity has been found guilty of a
17 criminal offense under section 1956 or 1957 of
18 title 18, United States Code, or section 5322 or
19 5324 of title 31, United States Code.

20 “(4) MANDATORY RECEIVERSHIP.—

21 “(A) IN GENERAL.—The Director shall ap-
22 point the Agency as receiver for a regulated en-
23 tity if the Director determines, in writing,
24 that—

1 “(i) the assets of the regulated entity
2 are, and during the preceding 60 calendar
3 days have been, less than the obligations of
4 the regulated entity to its creditors and
5 others; or

6 “(ii) the regulated entity is not, and
7 during the preceding 60 calendar days has
8 not been, generally paying the debts of the
9 regulated entity (other than debts that are
10 the subject of a bona fide dispute) as such
11 debts become due.

12 “(B) PERIODIC DETERMINATION RE-
13 QUIRED FOR CRITICALLY UNDERCAPITALIZED
14 REGULATED ENTITY.—If a regulated entity is
15 critically undercapitalized, the Director shall
16 make a determination, in writing, as to whether
17 the regulated entity meets the criteria specified
18 in clause (i) or (ii) of subparagraph (A)—

19 “(i) not later than 30 calendar days
20 after the regulated entity initially becomes
21 critically undercapitalized; and

22 “(ii) at least once during each suc-
23 ceeding 30-calendar day period.

24 “(C) DETERMINATION NOT REQUIRED IF
25 RECEIVERSHIP ALREADY IN PLACE.—Subpara-

1 graph (B) does not apply with respect to a reg-
2 ulated entity in any period during which the
3 Agency serves as receiver for the regulated enti-
4 ty.

5 “(D) RECEIVERSHIP TERMINATES CON-
6 SERVATORSHIP.—The appointment of the Agen-
7 cy as receiver of a regulated entity under this
8 section shall immediately terminate any con-
9 servatorship established for the regulated entity
10 under this title.

11 “(5) JUDICIAL REVIEW.—

12 “(A) IN GENERAL.—If the Agency is ap-
13 pointed conservator or receiver under this sec-
14 tion, the regulated entity may, within 30 days
15 of such appointment, bring an action in the
16 United States district court for the judicial dis-
17 trict in which the home office of such regulated
18 entity is located, or in the United States Dis-
19 trict Court for the District of Columbia, for an
20 order requiring the Agency to remove itself as
21 conservator or receiver.

22 “(B) REVIEW.—Upon the filing of an ac-
23 tion under subparagraph (A), the court shall,
24 upon the merits, dismiss such action or direct

1 the Agency to remove itself as such conservator
2 or receiver.

3 “(6) DIRECTORS NOT LIABLE FOR ACQUI-
4 ESCING IN APPOINTMENT OF CONSERVATOR OR RE-
5 CEIVER.—The members of the board of directors of
6 a regulated entity shall not be liable to the share-
7 holders or creditors of the regulated entity for acqui-
8 escing in or consenting in good faith to the appoint-
9 ment of the Agency as conservator or receiver for
10 that regulated entity.

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

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

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

23 “(2) GENERAL POWERS.—

24 “(A) SUCCESSOR TO REGULATED ENTI-
25 TY.—The Agency shall, as conservator or re-

1 ceiver, and by operation of law, immediately
2 succeed to—

3 “(i) all rights, titles, powers, and
4 privileges of the regulated entity, and of
5 any stockholder, officer, or director of such
6 regulated entity with respect to the regu-
7 lated entity and the assets of the regulated
8 entity; and

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

12 “(B) OPERATE THE REGULATED ENTI-
13 TY.—The Agency may, as conservator or re-
14 ceiver—

15 “(i) take over the assets of and oper-
16 ate the regulated entity with all the powers
17 of the shareholders, the directors, and the
18 officers of the regulated entity and conduct
19 all business of the regulated entity;

20 “(ii) collect all obligations and money
21 due the regulated entity;

22 “(iii) perform all functions of the regu-
23 lated entity in the name of the regulated
24 entity which are consistent with the ap-
25 pointment as conservator or receiver;

1 “(iv) preserve and conserve the assets
2 and property of the regulated entity; and

3 “(v) provide by contract for assistance
4 in fulfilling any function, activity, action,
5 or duty of the Agency as conservator or re-
6 ceiver.

7 “(C) FUNCTIONS OF OFFICERS, DIREC-
8 TORS, AND SHAREHOLDERS OF A REGULATED
9 ENTITY.—The Agency may, by regulation or
10 order, provide for the exercise of any function
11 by any stockholder, director, or officer of any
12 regulated entity for which the Agency has been
13 named conservator or receiver.

14 “(D) POWERS AS CONSERVATOR.—The
15 Agency may, as conservator, take such action
16 as may be—

17 “(i) necessary to put the regulated en-
18 tity in a sound and solvent condition; and

19 “(ii) appropriate to carry on the busi-
20 ness of the regulated entity and preserve
21 and conserve the assets and property of
22 the regulated entity.

23 “(E) ADDITIONAL POWERS AS RE-
24 CEIVER.—In any case in which the Agency is
25 acting as receiver, the Agency shall place the

1 regulated entity in liquidation and proceed to
2 realize upon the assets of the regulated entity
3 in such manner as the Agency deems appro-
4 priate, including through the sale of assets, the
5 transfer of assets to a limited-life regulated en-
6 tity established under subsection (i), or the ex-
7 ercise of any other rights or privileges granted
8 to the Agency under this paragraph.

9 “(F) ORGANIZATION OF NEW ENTER-
10 PRISE.—The Agency shall, as receiver for an
11 enterprise, organize a successor enterprise that
12 will operate pursuant to subsection (i).

13 “(G) TRANSFER OR SALE OF ASSETS AND
14 LIABILITIES.—The Agency may, as conservator
15 or receiver, transfer or sell any asset or liability
16 of the regulated entity in default, and may do
17 so without any approval, assignment, or consent
18 with respect to such transfer or sale.

19 “(H) PAYMENT OF VALID OBLIGATIONS.—
20 The Agency, as conservator or receiver, shall, to
21 the extent of proceeds realized from the per-
22 formance of contracts or sale of the assets of a
23 regulated entity, pay all valid obligations of the
24 regulated entity that are due and payable at the
25 time of the appointment of the Agency as con-

1 servator or receiver, in accordance with the pre-
2 scriptions and limitations of this section.

3 “(I) SUBPOENA AUTHORITY.—

4 “(i) IN GENERAL.—

5 “(I) AGENCY AUTHORITY.—The
6 Agency may, as conservator or re-
7 ceiver, and for purposes of carrying
8 out any power, authority, or duty with
9 respect to a regulated entity (includ-
10 ing determining any claim against the
11 regulated entity and determining and
12 realizing upon any asset of any person
13 in the course of collecting money due
14 the regulated entity), exercise any
15 power established under section 1348.

16 “(II) APPLICABILITY OF LAW.—

17 The provisions of section 1348 shall
18 apply with respect to the exercise of
19 any power under this subparagraph,
20 in the same manner as such provi-
21 sions apply under that section.

22 “(ii) SUBPOENA.—A subpoena or sub-
23 poena duces tecum may be issued under
24 clause (i) only by, or with the written ap-

1 proval of, the Director, or the designee of
2 the Director.

3 “(iii) RULE OF CONSTRUCTION.—This
4 subsection shall not be construed to limit
5 any rights that the Agency, in any capac-
6 ity, might otherwise have under section
7 1317 or 1379B.

8 “(J) INCIDENTAL POWERS.—The Agency
9 may, as conservator or receiver—

10 “(i) exercise all powers and authori-
11 ties specifically granted to conservators or
12 receivers, respectively, under this section,
13 and such incidental powers as shall be nec-
14 essary to carry out such powers; and

15 “(ii) take any action authorized by
16 this section, which the Agency determines
17 is in the best interests of the regulated en-
18 tity or the Agency.

19 “(K) OTHER PROVISIONS.—

20 “(i) SHAREHOLDERS AND CREDITORS
21 OF FAILED REGULATED ENTITY.—Not-
22 withstanding any other provision of law,
23 the appointment of the Agency as receiver
24 for a regulated entity pursuant to para-
25 graph (2) or (4) of subsection (a) and its

1 succession, by operation of law, to the
2 rights, titles, powers, and privileges de-
3 scribed in subsection (b)(2)(A) shall termi-
4 nate all rights and claims that the stock-
5 holders and creditors of the regulated enti-
6 ty may have against the assets or charter
7 of the regulated entity or the Agency aris-
8 ing as a result of their status as stock-
9 holders or creditors, except for their right
10 to payment, resolution, or other satisfac-
11 tion of their claims, as permitted under
12 subsections (b)(9), (c), and (e).

13 “(ii) ASSETS OF REGULATED ENTI-
14 TY.—Notwithstanding any other provision
15 of law, for purposes of this section, the
16 charter of a regulated entity shall not be
17 considered an asset of the regulated entity.

18 “(3) AUTHORITY OF RECEIVER TO DETERMINE
19 CLAIMS.—

20 “(A) IN GENERAL.—The Agency may, as
21 receiver, determine claims in accordance with
22 the requirements of this subsection and any
23 regulations prescribed under paragraph (4).

24 “(B) NOTICE REQUIREMENTS.—The re-
25 ceiver, in any case involving the liquidation or

1 winding up of the affairs of a closed regulated
2 entity, shall—

3 “(i) promptly publish a notice to the
4 creditors of the regulated entity to present
5 their claims, together with proof, to the re-
6 ceiver by a date specified in the notice
7 which shall be not less than 90 days after
8 the date of publication of such notice; and

9 “(ii) republish such notice approxi-
10 mately 1 month and 2 months, respec-
11 tively, after the date of publication under
12 clause (i).

13 “(C) MAILING REQUIRED.—The receiver
14 shall mail a notice similar to the notice pub-
15 lished under subparagraph (B)(i) at the time of
16 such publication to any creditor shown on the
17 books of the regulated entity—

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

20 “(ii) upon discovery of the name and
21 address of a claimant not appearing on the
22 books of the regulated entity, within 30
23 days after the discovery of such name and
24 address.

1 “(4) RULEMAKING AUTHORITY RELATING TO
2 DETERMINATION OF CLAIMS.—Subject to subsection
3 (c), the Director may prescribe regulations regarding
4 the allowance or disallowance of claims by the re-
5 ceiver and providing for administrative determina-
6 tion of claims and review of such determination.

7 “(5) PROCEDURES FOR DETERMINATION OF
8 CLAIMS.—

9 “(A) DETERMINATION PERIOD.—

10 “(i) IN GENERAL.—Before the end of
11 the 180-day period beginning on the date
12 on which any claim against a regulated en-
13 tity is filed with the Agency as receiver,
14 the Agency shall determine whether to
15 allow or disallow the claim and shall notify
16 the claimant of any determination with re-
17 spect to such claim.

18 “(ii) EXTENSION OF TIME.—The pe-
19 riod described in clause (i) may be ex-
20 tended by a written agreement between the
21 claimant and the Agency.

22 “(iii) MAILING OF NOTICE SUFFI-
23 CIENT.—The requirements of clause (i)
24 shall be deemed to be satisfied if the notice
25 of any determination with respect to any

1 claim is mailed to the last address of the
2 claimant which appears—

3 “(I) on the books of the regu-
4 lated entity;

5 “(II) in the claim filed by the
6 claimant; or

7 “(III) in documents submitted in
8 proof of the claim.

9 “(iv) CONTENTS OF NOTICE OF DIS-
10 ALLOWANCE.—If any claim filed under
11 clause (i) is disallowed, the notice to the
12 claimant shall contain—

13 “(I) a statement of each reason
14 for the disallowance; and

15 “(II) the procedures available for
16 obtaining agency review of the deter-
17 mination to disallow the claim or judi-
18 cial determination of the claim.

19 “(B) ALLOWANCE OF PROVEN CLAIM.—
20 The receiver shall allow any claim received on
21 or before the date specified in the notice pub-
22 lished under paragraph (3)(B)(i) by the receiver
23 from any claimant which is proved to the satis-
24 faction of the receiver.

1 “(C) DISALLOWANCE OF CLAIMS FILED
2 AFTER FILING PERIOD.—Claims filed after the
3 date specified in the notice published under
4 paragraph (3)(B)(i), or the date specified under
5 paragraph (3)(C), shall be disallowed and such
6 disallowance shall be final.

7 “(D) AUTHORITY TO DISALLOW CLAIMS.—

8 “(i) IN GENERAL.—The receiver may
9 disallow any portion of any claim by a
10 creditor or claim of security, preference, or
11 priority which is not proved to the satisfac-
12 tion of the receiver.

13 “(ii) PAYMENTS TO LESS THAN
14 FULLY SECURED CREDITORS.—In the case
15 of a claim of a creditor against a regulated
16 entity which is secured by any property or
17 other asset of such regulated entity, the re-
18 ceiver—

19 “(I) may treat the portion of
20 such claim which exceeds an amount
21 equal to the fair market value of such
22 property or other asset as an unse-
23 cured claim against the regulated en-
24 tity; and

1 “(II) may not make any payment
2 with respect to such unsecured por-
3 tion of the claim, other than in con-
4 nection with the disposition of all
5 claims of unsecured creditors of the
6 regulated entity.

7 “(iii) EXCEPTIONS.—No provision of
8 this paragraph shall apply with respect
9 to—

10 “(I) any extension of credit from
11 any Federal Reserve Bank, Federal
12 Home Loan Bank, or the United
13 States Treasury; or

14 “(II) any security interest in the
15 assets of the regulated entity securing
16 any such extension of credit.

17 “(E) NO JUDICIAL REVIEW OF DETER-
18 MINATION PURSUANT TO SUBPARAGRAPH (D).—
19 No court may review the determination of the
20 Agency under subparagraph (D) to disallow a
21 claim.

22 “(F) LEGAL EFFECT OF FILING.—

23 “(i) STATUTE OF LIMITATION
24 TOLLED.—For purposes of any applicable
25 statute of limitations, the filing of a claim

1 with the receiver shall constitute a com-
2 mencement of an action.

3 “(ii) NO PREJUDICE TO OTHER AC-
4 TIONS.—Subject to paragraph (10), the fil-
5 ing of a claim with the receiver shall not
6 prejudice any right of the claimant to con-
7 tinue any action which was filed before the
8 date of the appointment of the receiver,
9 subject to the determination of claims by
10 the receiver.

11 “(6) PROVISION FOR JUDICIAL DETERMINATION
12 OF CLAIMS.—

13 “(A) IN GENERAL.—The claimant may file
14 suit on a claim (or continue an action com-
15 menced before the appointment of the receiver)
16 in the district or territorial court of the United
17 States for the district within which the prin-
18 cipal place of business of the regulated entity is
19 located or the United States District Court for
20 the District of Columbia (and such court shall
21 have jurisdiction to hear such claim), before the
22 end of the 60-day period beginning on the ear-
23 lier of—

24 “(i) the end of the period described in
25 paragraph (5)(A)(i) with respect to any

1 claim against a regulated entity for which
2 the Agency is receiver; or

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

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

17 “(7) REVIEW OF CLAIMS.—

18 “(A) OTHER REVIEW PROCEDURES.—

19 “(i) IN GENERAL.—The Agency shall
20 establish such alternative dispute resolu-
21 tion processes as may be appropriate for
22 the resolution of claims filed under para-
23 graph (5)(A)(i).

24 “(ii) CRITERIA.—In establishing alter-
25 native dispute resolution processes, the

1 Agency shall strive for procedures which
2 are expeditious, fair, independent, and low
3 cost.

4 “(iii) VOLUNTARY BINDING OR NON-
5 BINDING PROCEDURES.—The Agency may
6 establish both binding and nonbinding
7 processes under this subparagraph, which
8 may be conducted by any government or
9 private party. All parties, including the
10 claimant and the Agency, must agree to
11 the use of the process in a particular case.

12 “(B) CONSIDERATION OF INCENTIVES.—
13 The Agency shall seek to develop incentives for
14 claimants to participate in the alternative dis-
15 pute resolution process.

16 “(8) EXPEDITED DETERMINATION OF
17 CLAIMS.—

18 “(A) ESTABLISHMENT REQUIRED.—The
19 Agency shall establish a procedure for expedited
20 relief outside of the routine claims process es-
21 tablished under paragraph (5) for claimants
22 who—

23 “(i) allege the existence of legally
24 valid and enforceable or perfected security
25 interests in assets of any regulated entity

1 for which the Agency has been appointed
2 receiver; and

3 “(ii) allege that irreparable injury will
4 occur if the routine claims procedure is fol-
5 lowed.

6 “(B) DETERMINATION PERIOD.—Before
7 the end of the 90-day period beginning on the
8 date on which any claim is filed in accordance
9 with the procedures established under subpara-
10 graph (A), the Director shall—

11 “(i) determine—

12 “(I) whether to allow or disallow
13 such claim; or

14 “(II) whether such claim should
15 be determined pursuant to the proce-
16 dures established under paragraph
17 (5); and

18 “(ii) notify the claimant of the deter-
19 mination, and if the claim is disallowed,
20 provide a statement of each reason for the
21 disallowance and the procedure for obtain-
22 ing agency review or judicial determina-
23 tion.

24 “(C) PERIOD FOR FILING OR RENEWING
25 SUIT.—Any claimant who files a request for ex-

1 pedited relief shall be permitted to file a suit,
2 or to continue a suit filed before the date of ap-
3 pointment of the receiver, seeking a determina-
4 tion of the rights of the claimant with respect
5 to such security interest after the earlier of—

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

9 “(ii) the date on which the Agency de-
10 nies the claim.

11 “(D) STATUTE OF LIMITATIONS.—If an
12 action described under subparagraph (C) is not
13 filed, or the motion to renew a previously filed
14 suit is not made, before the end of the 30-day
15 period beginning on the date on which such ac-
16 tion or motion may be filed under subparagraph
17 (B), the claim shall be deemed to be disallowed
18 as of the end of such period (other than any
19 portion of such claim which was allowed by the
20 receiver), such disallowance shall be final, and
21 the claimant shall have no further rights or
22 remedies with respect to such claim.

23 “(E) LEGAL EFFECT OF FILING.—

24 “(i) STATUTE OF LIMITATION
25 TOLLED.—For purposes of any applicable

1 statute of limitations, the filing of a claim
2 with the receiver shall constitute a com-
3 mencement of an action.

4 “(ii) NO PREJUDICE TO OTHER AC-
5 TIONS.—Subject to paragraph (10), the fil-
6 ing of a claim with the receiver shall not
7 prejudice any right of the claimant to con-
8 tinue any action that was filed before the
9 appointment of the receiver, subject to the
10 determination of claims by the receiver.

11 “(9) PAYMENT OF CLAIMS.—

12 “(A) IN GENERAL.—The receiver may, in
13 the discretion of the receiver, and to the extent
14 that funds are available from the assets of the
15 regulated entity, pay creditor claims, in such
16 manner and amounts as are authorized under
17 this section, which are—

18 “(i) allowed by the receiver;

19 “(ii) approved by the Agency pursuant
20 to a final determination pursuant to para-
21 graph (7) or (8); or

22 “(iii) determined by the final judg-
23 ment of any court of competent jurisdic-
24 tion.

1 “(B) AGREEMENTS AGAINST THE INTER-
2 EST OF THE AGENCY.—No agreement that
3 tends to diminish or defeat the interest of the
4 Agency in any asset acquired by the Agency as
5 receiver under this section shall be valid against
6 the Agency unless such agreement is in writing
7 and executed by an authorized officer or rep-
8 resentative of the regulated entity.

9 “(C) PAYMENT OF DIVIDENDS ON
10 CLAIMS.—The receiver may, in the sole discre-
11 tion of the receiver, pay from the assets of the
12 regulated entity dividends on proved claims at
13 any time, and no liability shall attach to the
14 Agency by reason of any such payment, for fail-
15 ure to pay dividends to a claimant whose claim
16 is not proved at the time of any such payment.

17 “(D) RULEMAKING AUTHORITY OF THE
18 DIRECTOR.—The Director may prescribe such
19 rules, including definitions of terms, as the Di-
20 rector deems appropriate to establish a single
21 uniform interest rate for, or to make payments
22 of post-insolvency interest to creditors holding
23 proven claims against the receivership estates of
24 the regulated entity, following satisfaction by

1 the receiver of the principal amount of all cred-
2 itor claims.

3 “(10) SUSPENSION OF LEGAL ACTIONS.—

4 “(A) IN GENERAL.—After the appointment
5 of a conservator or receiver for a regulated enti-
6 ty, the conservator or receiver may, in any judi-
7 cial action or proceeding to which such regu-
8 lated entity is or becomes a party, request a
9 stay for a period not to exceed—

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

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

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

21 “(11) ADDITIONAL RIGHTS AND DUTIES.—

22 “(A) PRIOR FINAL ADJUDICATION.—The
23 Agency shall abide by any final unappealable
24 judgment of any court of competent jurisdiction

1 tion of rights with respect to, the assets or
2 charter of any regulated entity for which
3 the Agency has been appointed receiver; or

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

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

14 “(i) maximizes the net present value
15 return from the sale or disposition of such
16 assets;

17 “(ii) minimizes the amount of any loss
18 realized in the resolution of cases; and

19 “(iii) ensures adequate competition
20 and fair and consistent treatment of
21 offerors.

22 “(12) STATUTE OF LIMITATIONS FOR ACTIONS
23 BROUGHT BY CONSERVATOR OR RECEIVER.—

24 “(A) IN GENERAL.—Notwithstanding any
25 provision of any contract, the applicable statute

1 of limitations with regard to any action brought
2 by the Agency as conservator or receiver shall
3 be—

4 “(i) in the case of any contract claim,
5 the longer of—

6 “(I) the 6-year period beginning
7 on the date on which the claim ac-
8 crues; or

9 “(II) the period applicable under
10 State law; and

11 “(ii) in the case of any tort claim, the
12 longer of—

13 “(I) the 3-year period beginning
14 on the date on which the claim ac-
15 crues; or

16 “(II) the period applicable under
17 State law.

18 “(B) DETERMINATION OF THE DATE ON
19 WHICH A CLAIM ACCRUES.—For purposes of
20 subparagraph (A), the date on which the stat-
21 ute of limitations begins to run on any claim
22 described in such subparagraph shall be the
23 later of—

24 “(i) the date of the appointment of
25 the Agency as conservator or receiver; or

1 “(ii) the date on which the cause of
2 action accrues.

3 “(13) REVIVAL OF EXPIRED STATE CAUSES OF
4 ACTION.—

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

15 “(B) CLAIMS DESCRIBED.—A tort claim
16 referred to under clause (i) is a claim arising
17 from fraud, intentional misconduct resulting in
18 unjust enrichment, or intentional misconduct
19 resulting in substantial loss to the regulated en-
20 tity.

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

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

1 dures established by the Agency, maintain a full
2 accounting of each conservatorship and receiv-
3 ership or other disposition of a regulated entity
4 in default.

5 “(B) ANNUAL ACCOUNTING OR REPORT.—

6 With respect to each conservatorship or receiv-
7 ership, the Agency shall make an annual ac-
8 counting or report available to the Board, the
9 Comptroller General of the United States, the
10 Committee on Banking, Housing, and Urban
11 Affairs of the Senate, and the Committee on
12 Financial Services of the House of Representa-
13 tives.

14 “(C) AVAILABILITY OF REPORTS.—Any re-

15 port prepared under subparagraph (B) shall be
16 made available by the Agency upon request to
17 any shareholder of a regulated entity or any
18 member of the public.

19 “(D) RECORDKEEPING REQUIREMENT.—

20 After the end of the 6-year period beginning on
21 the date on which the conservatorship or receiv-
22 ership is terminated by the Director, the Agen-
23 cy may destroy any records of such regulated
24 entity which the Agency, in the discretion of the
25 Agency, determines to be unnecessary, unless

1 directed not to do so by a court of competent
2 jurisdiction or governmental agency, or prohib-
3 ited by law.

4 “(15) FRAUDULENT TRANSFERS.—

5 “(A) IN GENERAL.—The Agency, as con-
6 servator or receiver, may avoid a transfer of
7 any interest of an entity-affiliated party, or any
8 person determined by the conservator or re-
9 ceiver to be a debtor of the regulated entity, in
10 property, or any obligation incurred by such
11 party or person, that was made within 5 years
12 of the date on which the Agency was appointed
13 conservator or receiver, if such party or person
14 voluntarily or involuntarily made such transfer
15 or incurred such liability with the intent to
16 hinder, delay, or defraud the regulated entity,
17 the Agency, the conservator, or receiver.

18 “(B) RIGHT OF RECOVERY.—To the extent
19 a transfer is avoided under subparagraph (A),
20 the conservator or receiver may recover, for the
21 benefit of the regulated entity, the property
22 transferred, or, if a court so orders, the value
23 of such property (at the time of such transfer)
24 from—

1 “(i) the initial transferee of such
2 transfer or the entity-affiliated party or
3 person for whose benefit such transfer was
4 made; or

5 “(ii) any immediate or mediate trans-
6 feree of any such initial transferee.

7 “(C) RIGHTS OF TRANSFEREE OR OBLI-
8 GEE.—The conservator or receiver may not re-
9 cover under subparagraph (B) from—

10 “(i) any transferee that takes for
11 value, including satisfaction or securing of
12 a present or antecedent debt, in good faith;
13 or

14 “(ii) any immediate or mediate good
15 faith transferee of such transferee.

16 “(D) RIGHTS UNDER THIS PARAGRAPH.—
17 The rights under this paragraph of the conser-
18 vator or receiver described under subparagraph
19 (A) shall be superior to any rights of a trustee
20 or any other party (other than any party which
21 is a Federal agency) under title 11, United
22 States Code.

23 “(16) ATTACHMENT OF ASSETS AND OTHER IN-
24 JUNCTIVE RELIEF.—Subject to paragraph (17), any
25 court of competent jurisdiction may, at the request

1 of the conservator or receiver, issue an order in ac-
2 cordance with rule 65 of the Federal Rules of Civil
3 Procedure, including an order placing the assets of
4 any person designated by the conservator or receiver
5 under the control of the court, and appointing a
6 trustee to hold such assets.

7 “(17) STANDARDS OF PROOF.—Rule 65 of the
8 Federal Rules of Civil Procedure shall apply with re-
9 spect to any proceeding under paragraph (16) with-
10 out regard to the requirement of such rule that the
11 applicant show that the injury, loss, or damage is ir-
12 reparable and immediate.

13 “(18) TREATMENT OF CLAIMS ARISING FROM
14 BREACH OF CONTRACTS EXECUTED BY THE CON-
15 SERVATOR OR RECEIVER.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of this subsection, any final and
18 unappealable judgment for monetary damages
19 entered against the conservator or receiver for
20 the breach of an agreement executed or ap-
21 proved in writing by the conservator or receiver
22 after the date of its appointment, shall be paid
23 as an administrative expense of the conservator
24 or receiver.

1 “(B) NO LIMITATION OF POWER.—Nothing
2 in this paragraph shall be construed to limit the
3 power of the conservator or receiver to exercise
4 any rights under contract or law, including to
5 terminate, breach, cancel, or otherwise dis-
6 continue such agreement.

7 “(19) GENERAL EXCEPTIONS.—

8 “(A) LIMITATIONS.—The rights of the
9 conservator or receiver appointed under this
10 section shall be subject to the limitations on the
11 powers of a receiver under sections 402 through
12 407 of the Federal Deposit Insurance Corpora-
13 tion Improvement Act of 1991 (12 U.S.C. 4402
14 through 4407).

15 “(B) MORTGAGES HELD IN TRUST.—

16 “(i) IN GENERAL.—Any mortgage,
17 pool of mortgages, or interest in a pool of
18 mortgages held in trust, custodial, or agen-
19 cy capacity by a regulated entity for the
20 benefit of any person other than the regu-
21 lated entity shall not be available to satisfy
22 the claims of creditors generally, except
23 that nothing in this clause shall be con-
24 strued to expand or otherwise affect the
25 authority of any regulated entity.

1 “(ii) HOLDING OF MORTGAGES.—Any
2 mortgage, pool of mortgages, or interest in
3 a pool of mortgages described in clause (i)
4 shall be held by the conservator or receiver
5 appointed under this section for the bene-
6 ficial owners of such mortgage, pool of
7 mortgages, or interest in accordance with
8 the terms of the agreement creating such
9 trust, custodial, or other agency arrange-
10 ment.

11 “(iii) LIABILITY OF CONSERVATOR OR
12 RECEIVER.—The liability of the conser-
13 vator or receiver appointed under this sec-
14 tion for damages shall, in the case of any
15 contingent or unliquidated claim relating
16 to the mortgages held in trust, be esti-
17 mated in accordance with the regulations
18 of the Director.

19 “(c) PRIORITY OF EXPENSES AND UNSECURED
20 CLAIMS.—

21 “(1) IN GENERAL.—Unsecured claims against a
22 regulated entity, or the receiver therefor, that are
23 proven to the satisfaction of the receiver shall have
24 priority in the following order:

1 “(A) Administrative expenses of the re-
2 ceiver.

3 “(B) Any other general or senior liability
4 of the regulated entity (which is not a liability
5 described under subparagraph (C) or (D).

6 “(C) Any obligation subordinated to gen-
7 eral creditors (which is not an obligation de-
8 scribed under subparagraph (D)).

9 “(D) Any obligation to shareholders or
10 members arising as a result of their status as
11 shareholder or members.

12 “(2) CREDITORS SIMILARLY SITUATED.—All
13 creditors that are similarly situated under paragraph
14 (1) shall be treated in a similar manner, except that
15 the receiver may take any action (including making
16 payments) that does not comply with this subsection,
17 if—

18 “(A) the Director determines that such ac-
19 tion is necessary to maximize the value of the
20 assets of the regulated entity, to maximize the
21 present value return from the sale or other dis-
22 position of the assets of the regulated entity, or
23 to minimize the amount of any loss realized
24 upon the sale or other disposition of the assets
25 of the regulated entity; and

1 “(B) all creditors that are similarly situ-
2 ated under paragraph (1) receive not less than
3 the amount provided in subsection (e)(2).

4 “(3) DEFINITION.—As used in this subsection,
5 the term ‘administrative expenses of the receiver’ in-
6 cludes—

7 “(A) the actual, necessary costs and ex-
8 penses incurred by the receiver in preserving
9 the assets of a failed regulated entity or liqui-
10 dating or otherwise resolving the affairs of a
11 failed regulated entity; and

12 “(B) any obligations that the receiver de-
13 termines are necessary and appropriate to fa-
14 cilitate the smooth and orderly liquidation or
15 other resolution of the regulated entity.

16 “(d) PROVISIONS RELATING TO CONTRACTS EN-
17 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
18 OR RECEIVER.—

19 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
20 In addition to any other rights a conservator or re-
21 ceiver may have, the conservator or receiver for any
22 regulated entity may disaffirm or repudiate any con-
23 tract or lease—

24 “(A) to which such regulated entity is a
25 party;

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

4 “(C) the disaffirmance or repudiation of
5 which the conservator or receiver determines, in
6 its sole discretion, will promote the orderly ad-
7 ministration of the affairs of the regulated enti-
8 ty.

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

14 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
15 ATION.—

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

22 “(i) limited to actual direct compen-
23 satory damages; and

24 “(ii) determined as of—

1 “(I) the date of the appointment
2 of the conservator or receiver; or

3 “(II) in the case of any contract
4 or agreement referred to in paragraph
5 (8), the date of the disaffirmance or
6 repudiation of such contract or agree-
7 ment.

8 “(B) NO LIABILITY FOR OTHER DAM-
9 AGES.—For purposes of subparagraph (A), the
10 term ‘actual direct compensatory damages’ shall
11 not include—

12 “(i) punitive or exemplary damages;

13 “(ii) damages for lost profits or op-
14 portunity; or

15 “(iii) damages for pain and suffering.

16 “(C) MEASURE OF DAMAGES FOR REPUDI-
17 ATION OF FINANCIAL CONTRACTS.—In the case
18 of any qualified financial contract or agreement
19 to which paragraph (8) applies, compensatory
20 damages shall be—

21 “(i) deemed to include normal and
22 reasonable costs of cover or other reason-
23 able measures of damages utilized in the
24 industries for such contract and agreement
25 claims; and

1 “(ii) paid in accordance with this sub-
2 section and subsection (e), except as other-
3 wise specifically provided in this section.

4 “(4) LEASES UNDER WHICH THE REGULATED
5 ENTITY IS THE LESSEE.—

6 “(A) IN GENERAL.—If the conservator or
7 receiver disaffirms or repudiates a lease under
8 which the regulated entity was the lessee, the
9 conservator or receiver shall not be liable for
10 any damages (other than damages determined
11 under subparagraph (B)) for the disaffirmance
12 or repudiation of such lease.

13 “(B) PAYMENTS OF RENT.—Notwith-
14 standing subparagraph (A), the lessor under a
15 lease to which that subparagraph applies
16 shall—

17 “(i) be entitled to the contractual rent
18 accruing before the later of the date on
19 which—

20 “(I) the notice of disaffirmance
21 or repudiation is mailed; or

22 “(II) the disaffirmance or repudi-
23 ation becomes effective, unless the les-
24 sor is in default or breach of the
25 terms of the lease;

1 “(ii) have no claim for damages under
2 any acceleration clause or other penalty
3 provision in the lease; and

4 “(iii) have a claim for any unpaid
5 rent, subject to all appropriate offsets and
6 defenses, due as of the date of the appoint-
7 ment, which shall be paid in accordance
8 with this subsection and subsection (e).

9 “(5) LEASES UNDER WHICH THE REGULATED
10 ENTITY IS THE LESSOR.—

11 “(A) IN GENERAL.—If the conservator or
12 receiver repudiates an unexpired written lease
13 of real property of the regulated entity under
14 which the regulated entity is the lessor and the
15 lessee is not, as of the date of such repudiation,
16 in default, the lessee under such lease may ei-
17 ther—

18 “(i) treat the lease as terminated by
19 such repudiation; or

20 “(ii) remain in possession of the lease-
21 hold interest for the balance of the term of
22 the lease, unless the lessee defaults under
23 the terms of the lease after the date of
24 such repudiation.

1 “(B) PROVISIONS APPLICABLE TO LESSEE
2 REMAINING IN POSSESSION.—If any lessee
3 under a lease described under subparagraph (A)
4 remains in possession of a leasehold interest
5 under clause (ii) of subparagraph (A)—

6 “(i) the lessee—

7 “(I) shall continue to pay the
8 contractual rent pursuant to the
9 terms of the lease after the date of
10 the repudiation of such lease; and

11 “(II) may offset against any rent
12 payment which accrues after the date
13 of the repudiation of the lease, and
14 any damages which accrue after such
15 date due to the nonperformance of
16 any obligation of the regulated entity
17 under the lease after such date; and

18 “(ii) the conservator or receiver shall
19 not be liable to the lessee for any damages
20 arising after such date as a result of the
21 repudiation, other than the amount of any
22 offset allowed under clause (i)(II).

23 “(6) CONTRACTS FOR THE SALE OF REAL
24 PROPERTY.—

1 “(A) IN GENERAL.—If the conservator or
2 receiver repudiates any contract for the sale of
3 real property and the purchaser of such real
4 property under such contract is in possession,
5 and is not, as of the date of such repudiation,
6 in default, such purchaser may either—

7 “(i) treat the contract as terminated
8 by such repudiation; or

9 “(ii) remain in possession of such real
10 property.

11 “(B) PROVISIONS APPLICABLE TO PUR-
12 CHASER REMAINING IN POSSESSION.—If any
13 purchaser of real property under any contract
14 described under subparagraph (A) remains in
15 possession of such property under clause (ii) of
16 subparagraph (A)—

17 “(i) the purchaser—

18 “(I) shall continue to make all
19 payments due under the contract after
20 the date of the repudiation of the con-
21 tract; and

22 “(II) may offset against any such
23 payments any damages which accrue
24 after such date due to the non-
25 performance (after such date) of any

1 obligation of the regulated entity
2 under the contract; and

3 “(ii) the conservator or receiver
4 shall—

5 “(I) not be liable to the pur-
6 chaser for any damages arising after
7 such date as a result of the repudi-
8 ation, other than the amount of any
9 offset allowed under clause (i)(II);

10 “(II) deliver title to the pur-
11 chaser in accordance with the provi-
12 sions of the contract; and

13 “(III) have no obligation under
14 the contract other than the perform-
15 ance required under subclause (II).

16 “(C) ASSIGNMENT AND SALE ALLOWED.—

17 “(i) IN GENERAL.—No provision of
18 this paragraph shall be construed as lim-
19 iting the right of the conservator or re-
20 ceiver to assign the contract described
21 under subparagraph (A), and sell the prop-
22 erty subject to the contract and the provi-
23 sions of this paragraph.

24 “(ii) NO LIABILITY AFTER ASSIGN-
25 MENT AND SALE.—If an assignment and

1 sale described under clause (i) is con-
2 summated, the conservator or receiver
3 shall have no further liability under the
4 contract described under subparagraph
5 (A), or with respect to the real property
6 which was the subject of such contract.

7 “(7) SERVICE CONTRACTS.—

8 “(A) SERVICES PERFORMED BEFORE AP-
9 POINTMENT.—In the case of any contract for
10 services between any person and any regulated
11 entity for which the Agency has been appointed
12 conservator or receiver, any claim of such per-
13 son for services performed before the appoint-
14 ment of the conservator or receiver shall be—

15 “(i) a claim to be paid in accordance
16 with subsections (b) and (e); and

17 “(ii) deemed to have arisen as of the
18 date on which the conservator or receiver
19 was appointed.

20 “(B) SERVICES PERFORMED AFTER AP-
21 POINTMENT AND PRIOR TO REPUDIATION.—If,
22 in the case of any contract for services de-
23 scribed under subparagraph (A), the conser-
24 vator or receiver accepts performance by the
25 other person before the conservator or receiver

1 makes any determination to exercise the right
2 of repudiation of such contract under this sec-
3 tion—

4 “(i) the other party shall be paid
5 under the terms of the contract for the
6 services performed; and

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

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

20 “(8) CERTAIN QUALIFIED FINANCIAL CON-
21 TRACTS.—

22 “(A) RIGHTS OF PARTIES TO CON-
23 TRACTS.—Subject to paragraphs (9) and (10),
24 and notwithstanding any other provision of this
25 title (other than subsection (b)(9)(B) of this

1 section), any other Federal law, or the law of
2 any State, no person shall be stayed or prohib-
3 ited from exercising—

4 “(i) any right of that person to cause
5 the termination, liquidation, or acceleration
6 of any qualified financial contract with a
7 regulated entity that arises upon the ap-
8 pointment of the Agency as receiver for
9 such regulated entity at any time after
10 such appointment;

11 “(ii) any right under any security
12 agreement or arrangement or other credit
13 enhancement relating to one or more quali-
14 fied financial contracts; or

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

22 “(B) APPLICABILITY OF OTHER PROVI-
23 SIONS.—Subsection (b)(10) shall apply in the
24 case of any judicial action or proceeding
25 brought against any receiver referred to under

1 subparagraph (A), or the regulated entity for
2 which such receiver was appointed, by any
3 party to a contract or agreement described
4 under subparagraph (A)(i) with such regulated
5 entity.

6 “(C) CERTAIN TRANSFERS NOT AVOID-
7 ABLE.—

8 “(i) IN GENERAL.—Notwithstanding
9 paragraph (11), or any other provision of
10 Federal or State law relating to the avoid-
11 ance of preferential or fraudulent trans-
12 fers, the Agency, whether acting as such or
13 as conservator or receiver of a regulated
14 entity, may not avoid any transfer of
15 money or other property in connection with
16 any qualified financial contract with a reg-
17 ulated entity.

18 “(ii) EXCEPTION FOR CERTAIN
19 TRANSFERS.—Clause (i) shall not apply to
20 any transfer of money or other property in
21 connection with any qualified financial con-
22 tract with a regulated entity if the Agency
23 determines that the transferee had actual
24 intent to hinder, delay, or defraud such
25 regulated entity, the creditors of such reg-

1 ulated entity, or any conservator or re-
2 ceiver appointed for such regulated entity.

3 “(D) CERTAIN CONTRACTS AND AGREE-
4 MENTS DEFINED.—In this subsection the fol-
5 lowing definitions shall apply:

6 “(i) QUALIFIED FINANCIAL CON-
7 TRACT.—The term ‘qualified financial con-
8 tract’ means any securities contract, com-
9 modity contract, forward contract, repur-
10 chase agreement, swap agreement, and any
11 similar agreement that the Agency deter-
12 mines by regulation, resolution, or order to
13 be a qualified financial contract for pur-
14 poses of this paragraph.

15 “(ii) SECURITIES CONTRACT.—The
16 term ‘securities contract’—

17 “(I) means a contract for the
18 purchase, sale, or loan of a security, a
19 certificate of deposit, a mortgage loan,
20 or any interest in a mortgage loan, a
21 group or index of securities, certifi-
22 cates of deposit, or mortgage loans or
23 interests therein (including any inter-
24 est therein or based on the value
25 thereof) or any option on any of the

1 foregoing, including any option to
2 purchase or sell any such security,
3 certificate of deposit, mortgage loan,
4 interest, group or index, or option,
5 and including any repurchase or re-
6 verse repurchase transaction on any
7 such security, certificate of deposit,
8 mortgage loan, interest, group or
9 index, or option;

10 “(II) does not include any pur-
11 chase, sale, or repurchase obligation
12 under a participation in a commercial
13 mortgage loan, unless the Agency de-
14 termines by regulation, resolution, or
15 order to include any such agreement
16 within the meaning of such term;

17 “(III) means any option entered
18 into on a national securities exchange
19 relating to foreign currencies;

20 “(IV) means the guarantee by or
21 to any securities clearing agency of
22 any settlement of cash, securities, cer-
23 tificates of deposit, mortgage loans or
24 interests therein, group or index of se-
25 curities, certificates of deposit, or

1 mortgage loans or interests therein
2 (including any interest therein or
3 based on the value thereof) or option
4 on any of the foregoing, including any
5 option to purchase or sell any such se-
6 curity, certificate of deposit, mortgage
7 loan, interest, group or index, or op-
8 tion;

9 “(V) means any margin loan;

10 “(VI) means any other agree-
11 ment or transaction that is similar to
12 any agreement or transaction referred
13 to in this clause;

14 “(VII) means any combination of
15 the agreements or transactions re-
16 ferred to in this clause;

17 “(VIII) means any option to
18 enter into any agreement or trans-
19 action referred to in this clause;

20 “(IX) means a master agreement
21 that provides for an agreement or
22 transaction referred to in subclause
23 (I), (III), (IV), (V), (VI), (VII), or
24 (VIII), together with all supplements
25 to any such master agreement, with-

1 out regard to whether the master
2 agreement provides for an agreement
3 or transaction that is not a securities
4 contract under this clause, except that
5 the master agreement shall be consid-
6 ered to be a securities contract under
7 this clause only with respect to each
8 agreement or transaction under the
9 master agreement that is referred to
10 in subclause (I), (III), (IV), (V), (VI),
11 (VII), or (VIII); and

12 “(X) means any security agree-
13 ment or arrangement or other credit
14 enhancement related to any agree-
15 ment or transaction referred to in this
16 clause, including any guarantee or re-
17 imbursement obligation in connection
18 with any agreement or transaction re-
19 ferred to in this clause.

20 “(iii) COMMODITY CONTRACT.—The
21 term ‘commodity contract’ means—

22 “(I) with respect to a futures
23 commission merchant, a contract for
24 the purchase or sale of a commodity
25 for future delivery on, or subject to

1 the rules of, a contract market or
2 board of trade;

3 “(II) with respect to a foreign fu-
4 tures commission merchant, a foreign
5 future;

6 “(III) with respect to a leverage
7 transaction merchant, a leverage
8 transaction;

9 “(IV) with respect to a clearing
10 organization, a contract for the pur-
11 chase or sale of a commodity for fu-
12 ture delivery on, or subject to the
13 rules of, a contract market or board
14 of trade that is cleared by such clear-
15 ing organization, or commodity option
16 traded on, or subject to the rules of,
17 a contract market or board of trade
18 that is cleared by such clearing orga-
19 nization;

20 “(V) with respect to a commodity
21 options dealer, a commodity option;

22 “(VI) any other agreement or
23 transaction that is similar to any
24 agreement or transaction referred to
25 in this clause;

1 “(VII) any combination of the
2 agreements or transactions referred to
3 in this clause;

4 “(VIII) any option to enter into
5 any agreement or transaction referred
6 to in this clause;

7 “(IX) a master agreement that
8 provides for an agreement or trans-
9 action referred to in subclause (I),
10 (II), (III), (IV), (V), (VI), (VII), or
11 (VIII), together with all supplements
12 to any such master agreement, with-
13 out regard to whether the master
14 agreement provides for an agreement
15 or transaction that is not a com-
16 modity contract under this clause, ex-
17 cept that the master agreement shall
18 be considered to be a commodity con-
19 tract under this clause only with re-
20 spect to each agreement or trans-
21 action under the master agreement
22 that is referred to in subclause (I),
23 (II), (III), (IV), (V), (VI), (VII), or
24 (VIII); or

1 transaction, or any other similar
2 agreement;

3 “(II) any combination of agree-
4 ments or transactions referred to in
5 subclauses (I) and (III);

6 “(III) any option to enter into
7 any agreement or transaction referred
8 to in subclause (I) or (II);

9 “(IV) a master agreement that
10 provides for an agreement or trans-
11 action referred to in subclauses (I),
12 (II), or (III), together with all supple-
13 ments to any such master agreement,
14 without regard to whether the master
15 agreement provides for an agreement
16 or transaction that is not a forward
17 contract under this clause, except that
18 the master agreement shall be consid-
19 ered to be a forward contract under
20 this clause only with respect to each
21 agreement or transaction under the
22 master agreement that is referred to
23 in subclause (I), (II), or (III); or

24 “(V) any security agreement or
25 arrangement or other credit enhance-

1 ment related to any agreement or
2 transaction referred to in subclause
3 (I), (II), (III), or (IV), including any
4 guarantee or reimbursement obliga-
5 tion in connection with any agreement
6 or transaction referred to in any such
7 subclause.

8 “(v) REPURCHASE AGREEMENT.—The
9 term ‘repurchase agreement’ (including a
10 reverse repurchase agreement)—

11 “(I) means an agreement, includ-
12 ing related terms, which provides for
13 the transfer of one or more certifi-
14 cates of deposit, mortgage-related se-
15 curities (as such term is defined in
16 section 3 of the Securities Exchange
17 Act of 1934), mortgage loans, inter-
18 ests in mortgage-related securities or
19 mortgage loans, eligible bankers’ ac-
20 ceptances, qualified foreign govern-
21 ment securities (defined for purposes
22 of this clause as a security that is a
23 direct obligation of, or that is fully
24 guaranteed by, the central government
25 of a member of the Organization for

1 Economic Cooperation and Develop-
2 ment, as determined by regulation or
3 order adopted by the appropriate Fed-
4 eral banking authority), or securities
5 that are direct obligations of, or that
6 are fully guaranteed by, the United
7 States or any agency of the United
8 States against the transfer of funds
9 by the transferee of such certificates
10 of deposit, eligible bankers' accept-
11 ances, securities, mortgage loans, or
12 interests with a simultaneous agree-
13 ment by such transferee to transfer to
14 the transferor thereof certificates of
15 deposit, eligible bankers' acceptances,
16 securities, mortgage loans, or interests
17 as described above, at a date certain
18 not later than 1 year after such trans-
19 fers or on demand, against the trans-
20 fer of funds, or any other similar
21 agreement;

22 “(II) does not include any repur-
23 chase obligation under a participation
24 in a commercial mortgage loan, unless
25 the Agency determines by regulation,

1 resolution, or order to include any
2 such participation within the meaning
3 of such term;

4 “(III) means any combination of
5 agreements or transactions referred to
6 in subclauses (I) and (IV);

7 “(IV) means any option to enter
8 into any agreement or transaction re-
9 ferred to in subclause (I) or (III);

10 “(V) means a master agreement
11 that provides for an agreement or
12 transaction referred to in subclause
13 (I), (III), or (IV), together with all
14 supplements to any such master
15 agreement, without regard to whether
16 the master agreement provides for an
17 agreement or transaction that is not a
18 repurchase agreement under this
19 clause, except that the master agree-
20 ment shall be considered to be a re-
21 purchase agreement under this sub-
22 clause only with respect to each agree-
23 ment or transaction under the master
24 agreement that is referred to in sub-
25 clause (I), (III), or (IV); and

1 “(VI) means any security agree-
2 ment or arrangement or other credit
3 enhancement related to any agree-
4 ment or transaction referred to in
5 subclause (I), (III), (IV), or (V), in-
6 cluding any guarantee or reimburse-
7 ment obligation in connection with
8 any agreement or transaction referred
9 to in any such subclause.

10 “(vi) SWAP AGREEMENT.—The term
11 ‘swap agreement’ means—

12 “(I) any agreement, including the
13 terms and conditions incorporated by
14 reference in any such agreement,
15 which is an interest rate swap, option,
16 future, or forward agreement, includ-
17 ing a rate floor, rate cap, rate collar,
18 cross-currency rate swap, and basis
19 swap; a spot, same day-tomorrow, to-
20 morrow-next, forward, or other for-
21 eign exchange or precious metals
22 agreement; a currency swap, option,
23 future, or forward agreement; an eq-
24 uity index or equity swap, option, fu-
25 ture, or forward agreement; a debt

1 index or debt swap, option, future, or
2 forward agreement; a total return,
3 credit spread or credit swap, option,
4 future, or forward agreement; a com-
5 modity index or commodity swap, op-
6 tion, future, or forward agreement; or
7 a weather swap, weather derivative, or
8 weather option;

9 “(II) any agreement or trans-
10 action that is similar to any other
11 agreement or transaction referred to
12 in this clause and that is of a type
13 that has been, is presently, or in the
14 future becomes, the subject of recur-
15 rent dealings in the swap markets (in-
16 cluding terms and conditions incor-
17 porated by reference in such agree-
18 ment) and that is a forward, swap, fu-
19 ture, or option on one or more rates,
20 currencies, commodities, equity securi-
21 ties or other equity instruments, debt
22 securities or other debt instruments,
23 quantitative measures associated with
24 an occurrence, extent of an occur-
25 rence, or contingency associated with

1 a financial, commercial, or economic
2 consequence, or economic or financial
3 indices or measures of economic or fi-
4 nancial risk or value;

5 “(III) any combination of agree-
6 ments or transactions referred to in
7 this clause;

8 “(IV) any option to enter into
9 any agreement or transaction referred
10 to in this clause;

11 “(V) a master agreement that
12 provides for an agreement or trans-
13 action referred to in subclause (I),
14 (II), (III), or (IV), together with all
15 supplements to any such master
16 agreement, without regard to whether
17 the master agreement contains an
18 agreement or transaction that is not a
19 swap agreement under this clause, ex-
20 cept that the master agreement shall
21 be considered to be a swap agreement
22 under this clause only with respect to
23 each agreement or transaction under
24 the master agreement that is referred

1 to in subclause (I), (II), (III), or (IV);
2 and

3 “(VI) any security agreement or
4 arrangement or other credit enhance-
5 ment related to any agreements or
6 transactions referred to in subclause
7 (I), (II), (III), (IV), or (V), including
8 any guarantee or reimbursement obli-
9 gation in connection with any agree-
10 ment or transaction referred to in any
11 such subclause.

12 “(vii) TREATMENT OF MASTER
13 AGREEMENT AS ONE AGREEMENT.—Any
14 master agreement for any contract or
15 agreement described in any preceding
16 clause of this subparagraph (or any master
17 agreement for such master agreement or
18 agreements), together with all supplements
19 to such master agreement, shall be treated
20 as a single agreement and a single quali-
21 fied financial contract. If a master agree-
22 ment contains provisions relating to agree-
23 ments or transactions that are not them-
24 selves qualified financial contracts, the
25 master agreement shall be deemed to be a

1 qualified financial contract only with re-
2 spect to those transactions that are them-
3 selves qualified financial contracts.

4 “(viii) TRANSFER.—The term ‘trans-
5 fer’ means every mode, direct or indirect,
6 absolute or conditional, voluntary or invol-
7 untary, of disposing of or parting with
8 property or with an interest in property,
9 including retention of title as a security in-
10 terest and foreclosure of the equity of re-
11 demption of the regulated entity.

12 “(E) CERTAIN PROTECTIONS IN EVENT OF
13 APPOINTMENT OF CONSERVATOR.—Notwith-
14 standing any other provision of this section, any
15 other Federal law, or the law of any State
16 (other than paragraph (10) of this subsection
17 and subsection (b)(9)(B)), no person shall be
18 stayed or prohibited from exercising—

19 “(i) any right such person has to
20 cause the termination, liquidation, or accel-
21 eration of any qualified financial contract
22 with a regulated entity in a conservator-
23 ship based upon a default under such fi-
24 nancial contract which is enforceable under
25 applicable noninsolvency law;

1 “(ii) any right under any security
2 agreement or arrangement or other credit
3 enhancement relating to 1 or more such
4 qualified financial contracts; or

5 “(iii) any right to offset or net out
6 any termination values, payment amounts,
7 or other transfer obligations arising under
8 or in connection with such qualified finan-
9 cial contracts.

10 “(F) CLARIFICATION.—No provision of law
11 shall be construed as limiting the right or
12 power of the Agency, or authorizing any court
13 or agency to limit or delay in any manner, the
14 right or power of the Agency to transfer any
15 qualified financial contract in accordance with
16 paragraphs (9) and (10), or to disaffirm or re-
17 pudiate any such contract in accordance with
18 subsection (d)(1).

19 “(G) WALKAWAY CLAUSES NOT EFFEC-
20 TIVE.—

21 “(i) IN GENERAL.—Notwithstanding
22 the provisions of subparagraphs (A) and
23 (E), and sections 403 and 404 of the Fed-
24 eral Deposit Insurance Corporation Im-
25 provement Act of 1991, no walkaway

1 clause shall be enforceable in a qualified fi-
2 nancial contract of a regulated entity in
3 default.

4 “(ii) WALKAWAY CLAUSE DEFINED.—
5 For purposes of this subparagraph, the
6 term ‘walkaway clause’ means a provision
7 in a qualified financial contract that, after
8 calculation of a value of a party’s position
9 or an amount due to or from 1 of the par-
10 ties in accordance with its terms upon ter-
11 mination, liquidation, or acceleration of the
12 qualified financial contract, either does not
13 create a payment obligation of a party or
14 extinguishes a payment obligation of a
15 party in whole or in part solely because of
16 the status of such party as a nondefaulting
17 party.

18 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
19 TRACTS.—In making any transfer of assets or liabil-
20 ities of a regulated entity in default which includes
21 any qualified financial contract, the conservator or
22 receiver for such regulated entity shall either—

23 “(A) transfer to 1 person—

24 “(i) all qualified financial contracts
25 between any person (or any affiliate of

1 such person) and the regulated entity in
2 default;

3 “(ii) all claims of such person (or any
4 affiliate of such person) against such regu-
5 lated entity under any such contract (other
6 than any claim which, under the terms of
7 any such contract, is subordinated to the
8 claims of general unsecured creditors of
9 such regulated entity);

10 “(iii) all claims of such regulated enti-
11 ty against such person (or any affiliate of
12 such person) under any such contract; and

13 “(iv) all property securing, or any
14 other credit enhancement for any contract
15 described in clause (i), or any claim de-
16 scribed in clause (ii) or (iii) under any
17 such contract; or

18 “(B) transfer none of the financial con-
19 tracts, claims, or property referred to under
20 subparagraph (A) (with respect to such person
21 and any affiliate of such person).

22 “(10) NOTIFICATION OF TRANSFER.—

23 “(A) IN GENERAL.—The conservator or re-
24 ceiver shall notify any person that is a party to
25 a contract or transfer by 5:00 p.m. (Eastern

1 Standard Time) on the business day following
2 the date of the appointment of the receiver in
3 the case of a receivership, or the business day
4 following such transfer in the case of a con-
5 servatorship, if—

6 “(i) the conservator or receiver for a
7 regulated entity in default makes any
8 transfer of the assets and liabilities of such
9 regulated entity; and

10 “(ii) such transfer includes any quali-
11 fied financial contract.

12 “(B) CERTAIN RIGHTS NOT ENFORCE-
13 ABLE.—

14 “(i) RECEIVERSHIP.—A person who is
15 a party to a qualified financial contract
16 with a regulated entity may not exercise
17 any right that such person has to termi-
18 nate, liquidate, or net such contract under
19 paragraph (8)(A) of this subsection or
20 under section 403 or 404 of the Federal
21 Deposit Insurance Corporation Improve-
22 ment Act of 1991, solely by reason of or
23 incidental to the appointment of a receiver
24 for the regulated entity (or the insolvency
25 or financial condition of the regulated enti-

1 ty for which the receiver has been ap-
2 pointed)—

3 “(I) until 5:00 p.m. (Eastern
4 Standard Time) on the business day
5 following the date of the appointment
6 of the receiver; or

7 “(II) after the person has re-
8 ceived notice that the contract has
9 been transferred pursuant to para-
10 graph (9)(A).

11 “(ii) CONSERVATORSHIP.—A person
12 who is a party to a qualified financial con-
13 tract with a regulated entity may not exer-
14 cise any right that such person has to ter-
15 minate, liquidate, or net such contract
16 under paragraph (8)(E) of this subsection
17 or under section 403 or 404 of the Federal
18 Deposit Insurance Corporation Improve-
19 ment Act of 1991, solely by reason of or
20 incidental to the appointment of a conser-
21 vator for the regulated entity (or the insol-
22 vency or financial condition of the regu-
23 lated entity for which the conservator has
24 been appointed).

1 “(iii) NOTICE.—For purposes of this
2 paragraph, the conservator or receiver of a
3 regulated entity shall be deemed to have
4 notified a person who is a party to a quali-
5 fied financial contract with such regulated
6 entity, if the conservator or receiver has
7 taken steps reasonably calculated to pro-
8 vide notice to such person by the time
9 specified in subparagraph (A).

10 “(C) BUSINESS DAY DEFINED.—For pur-
11 poses of this paragraph, the term ‘business day’
12 means any day other than any Saturday, Sun-
13 day, or any day on which either the New York
14 Stock Exchange or the Federal Reserve Bank
15 of New York is closed.

16 “(11) DISAFFIRMANCE OR REPUDIATION OF
17 QUALIFIED FINANCIAL CONTRACTS.—In exercising
18 the rights of disaffirmance or repudiation of a con-
19 servator or receiver with respect to any qualified fi-
20 nancial contract to which a regulated entity is a
21 party, the conservator or receiver for such institution
22 shall either—

23 “(A) disaffirm or repudiate all qualified fi-
24 nancial contracts between—

1 “(i) any person or any affiliate of
2 such person; and

3 “(ii) the regulated entity in default; or
4 “(B) disaffirm or repudiate none of the
5 qualified financial contracts referred to in sub-
6 paragraph (A) (with respect to such person or
7 any affiliate of such person).

8 “(12) CERTAIN SECURITY INTERESTS NOT
9 AVOIDABLE.—No provision of this subsection shall
10 be construed as permitting the avoidance of any le-
11 gally enforceable or perfected security interest in any
12 of the assets of any regulated entity, except where
13 such an interest is taken in contemplation of the in-
14 solvency of the regulated entity, or with the intent
15 to hinder, delay, or defraud the regulated entity or
16 the creditors of such regulated entity.

17 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

18 “(A) IN GENERAL.—Notwithstanding any
19 provision of a contract providing for termi-
20 nation, default, acceleration, or exercise of
21 rights upon, or solely by reason of, insolvency
22 or the appointment of, or the exercise of rights
23 or powers by, a conservator or receiver, the con-
24 servator or receiver may enforce any contract,
25 other than a contract for liability insurance for

1 a director or officer, or a contract or a regu-
2 lated entity bond, entered into by the regulated
3 entity.

4 “(B) CERTAIN RIGHTS NOT AFFECTED.—
5 No provision of this paragraph may be con-
6 strued as impairing or affecting any right of the
7 conservator or receiver to enforce or recover
8 under a liability insurance contract for an offi-
9 cer or director, or regulated entity bond under
10 other applicable law.

11 “(C) CONSENT REQUIREMENT.—

12 “(i) IN GENERAL.—Except as other-
13 wise provided under this section, no person
14 may exercise any right or power to termi-
15 nate, accelerate, or declare a default under
16 any contract to which a regulated entity is
17 a party, or to obtain possession of or exer-
18 cise control over any property of the regu-
19 lated entity, or affect any contractual
20 rights of the regulated entity, without the
21 consent of the conservator or receiver, as
22 appropriate, for a period of—

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

1 “(II) 90 days after the date of
2 appointment of a receiver.

3 “(ii) EXCEPTIONS.—This subpara-
4 graph shall not—

5 “(I) apply to a contract for liabil-
6 ity insurance for an officer or direc-
7 tor;

8 “(II) apply to the rights of par-
9 ties to certain qualified financial con-
10 tracts under subsection (d)(8); and

11 “(III) be construed as permitting
12 the conservator or receiver to fail to
13 comply with otherwise enforceable
14 provisions of such contracts.

15 “(14) SAVINGS CLAUSE.—The meanings of
16 terms used in this subsection are applicable for pur-
17 poses of this subsection only, and shall not be con-
18 strued or applied so as to challenge or affect the
19 characterization, definition, or treatment of any
20 similar terms under any other statute, regulation, or
21 rule, including the Gramm-Leach-Bliley Act, the
22 Legal Certainty for Bank Products Act of 2000, the
23 securities laws (as that term is defined in section
24 3(a)(47) of the Securities Exchange Act of 1934),
25 and the Commodity Exchange Act.

1 “(15) EXCEPTION FOR FEDERAL RESERVE AND
2 FEDERAL HOME LOAN BANKS.—No provision of this
3 subsection shall apply with respect to—

4 “(A) any extension of credit from any Fed-
5 eral Home Loan Bank or Federal Reserve
6 Bank to any regulated entity; or

7 “(B) any security interest in the assets of
8 the regulated entity securing any such extension
9 of credit.

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

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of Federal law or the law of any State, and
13 regardless of the method which the Agency deter-
14 mines to utilize with respect to a regulated entity in
15 default or in danger of default, including trans-
16 actions authorized under subsection (i), this sub-
17 section shall govern the rights of the creditors of
18 such regulated entity.

19 “(2) MAXIMUM LIABILITY.—The maximum li-
20 ability of the Agency, acting as receiver or in any
21 other capacity, to any person having a claim against
22 the receiver or the regulated entity for which such
23 receiver is appointed shall be not more than the
24 amount that such claimant would have received if
25 the Agency had liquidated the assets and liabilities

1 of the regulated entity without exercising the author-
2 ity of the Agency under subsection (i).

3 “(f) LIMITATION ON COURT ACTION.—Except as
4 provided in this section or at the request of the Director,
5 no court may take any action to restrain or affect the exer-
6 cise of powers or functions of the Agency as a conservator
7 or a receiver.

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

9 “(1) IN GENERAL.—A director or officer of a
10 regulated entity may be held personally liable for
11 monetary damages in any civil action described in
12 paragraph (2) brought by, on behalf of, or at the re-
13 quest or direction of the Agency, and prosecuted
14 wholly or partially for the benefit of the Agency—

15 “(A) acting as conservator or receiver of
16 such regulated entity; or

17 “(B) acting based upon a suit, claim, or
18 cause of action purchased from, assigned by, or
19 otherwise conveyed by such receiver or conser-
20 vator.

21 “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-
22 plies in any civil action for gross negligence, includ-
23 ing any similar conduct or conduct that dem-
24 onstrates a greater disregard of a duty of care than
25 gross negligence, including intentional tortious con-

1 duct, as such terms are defined and determined
2 under applicable State law.

3 “(3) NO LIMITATION.—Nothing in this sub-
4 section shall impair or affect any right of the Agency
5 under other applicable law.

6 “(h) DAMAGES.—In any proceeding related to any
7 claim against a director, officer, employee, agent, attorney,
8 accountant, appraiser, or any other party employed by or
9 providing services to a regulated entity, recoverable dam-
10 ages determined to result from the improvident or other-
11 wise improper use or investment of any assets of the regu-
12 lated entity shall include principal losses and appropriate
13 interest.

14 “(i) LIMITED-LIFE REGULATED ENTITIES.—

15 “(1) ORGANIZATION.—

16 “(A) PURPOSE.—The Agency, as receiver
17 appointed pursuant to subsection (a)—

18 “(i) may, in the case of a Federal
19 Home Loan Bank, organize a limited-life
20 regulated entity with those powers and at-
21 tributes of the Federal Home Loan Bank
22 in default or in danger of default as the
23 Director determines necessary, subject to
24 the provisions of this subsection, and the
25 Director shall grant a temporary charter to

1 that limited-life regulated entity, and that
2 limited-life regulated entity shall operate
3 subject to that charter; and

4 “(ii) shall, in the case of an enter-
5 prise, organize a limited-life regulated enti-
6 ty with respect to that enterprise in ac-
7 cordance with this subsection.

8 “(B) AUTHORITIES.—Upon the creation of
9 a limited-life regulated entity under subpara-
10 graph (A), the limited-life regulated entity
11 may—

12 “(i) assume such liabilities of the reg-
13 ulated entity that is in default or in danger
14 of default as the Agency may, in its discre-
15 tion, determine to be appropriate, except
16 that the liabilities assumed shall not exceed
17 the amount of assets purchased or trans-
18 ferred from the regulated entity to the lim-
19 ited-life regulated entity;

20 “(ii) purchase such assets of the regu-
21 lated entity that is in default, or in danger
22 of default as the Agency may, in its discre-
23 tion, determine to be appropriate; and

24 “(iii) perform any other temporary
25 function which the Agency may, in its dis-

1 cretion, prescribe in accordance with this
2 section.

3 “(2) CHARTER AND ESTABLISHMENT.—

4 “(A) TRANSFER OF CHARTER.—

5 “(i) FANNIE MAE.—If the Agency is
6 appointed as receiver for the Federal Na-
7 tional Mortgage Association, the limited-
8 life regulated entity established under this
9 subsection with respect to such enterprise
10 shall, by operation of law and immediately
11 upon its organization—

12 “(I) succeed to the charter of the
13 Federal National Mortgage Associa-
14 tion, as set forth in the Federal Na-
15 tional Mortgage Association Charter
16 Act; and

17 “(II) thereafter operate in ac-
18 cordance with, and subject to, such
19 charter, this Act, and any other provi-
20 sion of law to which the Federal Na-
21 tional Mortgage Association is subject,
22 except as otherwise provided in this
23 subsection.

24 “(ii) FREDDIE MAC.—If the Agency is
25 appointed as receiver for the Federal

1 Home Loan Mortgage Corporation, the
2 limited-life regulated entity established
3 under this subsection with respect to such
4 enterprise shall, by operation of law and
5 immediately upon its organization—

6 “(I) succeed to the charter of the
7 Federal Home Loan Mortgage Cor-
8 poration, as set forth in the Federal
9 Home Loan Mortgage Corporation
10 Charter Act; and

11 “(II) thereafter operate in ac-
12 cordance with, and subject to, such
13 charter, this Act, and any other provi-
14 sion of law to which the Federal
15 Home Loan Mortgage Corporation is
16 subject, except as otherwise provided
17 in this subsection.

18 “(B) INTERESTS IN AND ASSETS AND OB-
19 LIGATIONS OF REGULATED ENTITY IN DE-
20 FAULT.—Notwithstanding subparagraph (A) or
21 any other provision of law—

22 “(i) a limited-life regulated entity
23 shall assume, acquire, or succeed to the as-
24 sets or liabilities of a regulated entity only
25 to the extent that such assets or liabilities

1 are transferred by the Agency to the lim-
2 ited-life regulated entity in accordance
3 with, and subject to the restrictions set
4 forth in, paragraph (1)(B);

5 “(ii) a limited-life regulated entity
6 shall not assume, acquire, or succeed to
7 any obligation that a regulated entity for
8 which a receiver has been appointed may
9 have to any shareholder of the regulated
10 entity that arises as a result of the status
11 of that person as a shareholder of the reg-
12 ulated entity; and

13 “(iii) no shareholder or creditor of a
14 regulated entity shall have any right or
15 claim against the charter of the regulated
16 entity once the Agency has been appointed
17 receiver for the regulated entity and a lim-
18 ited-life regulated entity succeeds to the
19 charter pursuant to subparagraph (A).

20 “(C) LIMITED-LIFE REGULATED ENTITY
21 TREATED AS BEING IN DEFAULT FOR CERTAIN
22 PURPOSES.—A limited-life regulated entity shall
23 be treated as a regulated entity in default at
24 such times and for such purposes as the Agency
25 may, in its discretion, determine.

1 “(D) MANAGEMENT.—Upon its establish-
2 ment, a limited-life regulated entity shall be
3 under the management of a board of directors
4 consisting of not fewer than 5 nor more than
5 10 members appointed by the Agency.

6 “(E) BYLAWS.—The board of directors of
7 a limited-life regulated entity shall adopt such
8 bylaws as may be approved by the Agency.

9 “(3) CAPITAL STOCK.—

10 “(A) NO AGENCY REQUIREMENT.—
11 The Agency is not required to pay capital
12 stock into a limited-life regulated entity or
13 to issue any capital stock on behalf of a
14 limited-life regulated entity established
15 under this subsection.

16 “(B) AUTHORITY.—If the Director
17 determines that such action is advisable,
18 the Agency may cause capital stock or
19 other securities of a limited-life regulated
20 entity established with respect to an enter-
21 prise to be issued and offered for sale, in
22 such amounts and on such terms and con-
23 ditions as the Director may determine, in
24 the discretion of the Director.

1 “(4) INVESTMENTS.—Funds of a limited-life
2 regulated entity shall be kept on hand in cash, in-
3 vested in obligations of the United States or obliga-
4 tions guaranteed as to principal and interest by the
5 United States, or deposited with the Agency, or any
6 Federal reserve bank.

7 “(5) EXEMPT TAX STATUS.—Notwithstanding
8 any other provision of Federal or State law, a lim-
9 ited-life regulated entity, its franchise, property, and
10 income shall be exempt from all taxation now or
11 hereafter imposed by the United States, by any ter-
12 ritory, dependency, or possession thereof, or by any
13 State, county, municipality, or local taxing authority.

14 “(6) WINDING UP.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graphs (B) and (C), not later than 2 years after
17 the date of its organization, the Agency shall
18 wind up the affairs of a limited-life regulated
19 entity.

20 “(B) EXTENSION.—The Director may, in
21 the discretion of the Director, extend the status
22 of a limited-life regulated entity for 3 additional
23 1-year periods.

24 “(C) TERMINATION OF STATUS AS LIM-
25 ITED-LIFE REGULATED ENTITY.—

1 “(i) IN GENERAL.—Upon the sale by
2 the Agency of 80 percent or more of the
3 capital stock of a limited-life regulated en-
4 tity, as defined in clause (iv), to 1 or more
5 persons (other than the Agency)—

6 “(I) the status of the limited-life
7 regulated entity as such shall termi-
8 nate; and

9 “(II) the entity shall cease to be
10 a limited-life regulated entity for pur-
11 poses of this subsection.

12 “(ii) DIVESTITURE OF REMAINING
13 STOCK, IF ANY.—

14 “(I) IN GENERAL.—Not later
15 than 1 year after the date on which
16 the status of a limited-life regulated
17 entity is terminated pursuant to
18 clause (i), the Agency shall sell to 1 or
19 more persons (other than the Agency)
20 any remaining capital stock of the
21 former limited-life regulated entity.

22 “(II) EXTENSION AUTHORIZED.—The Director may extend the
23 period referred to in subclause (I) for
24 not longer than an additional 2 years,
25

1 if the Director determines that such
2 action would be in the public interest.

3 “(iii) SAVINGS CLAUSE.—Notwith-
4 standing any provision of law, other than
5 clause (ii), the Agency shall not be re-
6 quired to sell the capital stock of an enter-
7 prise or a limited-life regulated entity es-
8 tablished with respect to an enterprise.

9 “(iv) APPLICABILITY.—This subpara-
10 graph applies only with respect to a lim-
11 ited-life regulated entity that is established
12 with respect to an enterprise.

13 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

14 “(A) IN GENERAL.—

15 “(i) TRANSFER OF ASSETS AND LI-
16 ABILITIES.—The Agency, as receiver, may
17 transfer any assets and liabilities of a reg-
18 ulated entity in default, or in danger of de-
19 fault, to the limited-life regulated entity in
20 accordance with and subject to the restric-
21 tions of paragraph (1).

22 “(ii) SUBSEQUENT TRANSFERS.—At
23 any time after the establishment of a lim-
24 ited-life regulated entity, the Agency, as
25 receiver, may transfer any assets and li-

1 abilities of the regulated entity in default,
2 or in danger of default, as the Agency
3 may, in its discretion, determine to be ap-
4 propriate in accordance with and subject to
5 the restrictions of paragraph (1).

6 “(iii) EFFECTIVE WITHOUT AP-
7 PROVAL.—The transfer of any assets or li-
8 abilities of a regulated entity in default or
9 in danger of default to a limited-life regu-
10 lated entity shall be effective without any
11 further approval under Federal or State
12 law, assignment, or consent with respect
13 thereto.

14 “(iv) EQUITABLE TREATMENT OF
15 SIMILARLY SITUATED CREDITORS.—The
16 Agency shall treat all creditors of a regu-
17 lated entity in default or in danger of de-
18 fault that are similarly situated under sub-
19 section (c)(1) in a similar manner in exer-
20 cising the authority of the Agency under
21 this subsection to transfer any assets or li-
22 abilities of the regulated entity to the lim-
23 ited-life regulated entity established with
24 respect to such regulated entity, except
25 that the Agency may take actions (includ-

1 ing making payments) that do not comply
2 with this clause, if—

3 “(I) the Director determines that
4 such actions are necessary to maxi-
5 mize the value of the assets of the
6 regulated entity, to maximize the
7 present value return from the sale or
8 other disposition of the assets of the
9 regulated entity, or to minimize the
10 amount of any loss realized upon the
11 sale or other disposition of the assets
12 of the regulated entity; and

13 “(II) all creditors that are simi-
14 larly situated under subsection (c)(1)
15 receive not less than the amount pro-
16 vided in subsection (e)(2).

17 “(v) LIMITATION ON TRANSFER OF
18 LIABILITIES.—Notwithstanding any other
19 provision of law, the aggregate amount of
20 liabilities of a regulated entity that are
21 transferred to, or assumed by, a limited-
22 life regulated entity may not exceed the ag-
23 gregate amount of assets of the regulated
24 entity that are transferred to, or purchased
25 by, the limited-life regulated entity.

1 Agency determines to be appropriate;
2 and

3 “(ii) the board of directors of a lim-
4 ited-life regulated entity—

5 “(I) shall elect a chairperson who
6 may also serve in the position of chief
7 executive officer, except that such per-
8 son shall not serve either as chair-
9 person or as chief executive officer
10 without the prior approval of the
11 Agency; and

12 “(II) may appoint a chief execu-
13 tive officer who is not also the chair-
14 person, except that such person shall
15 not serve as chief executive officer
16 without the prior approval of the
17 Agency.

18 “(B) STAY OF JUDICIAL ACTION.—Any ju-
19 dicial action to which a limited-life regulated
20 entity becomes a party by virtue of its acquisi-
21 tion of any assets or assumption of any liabil-
22 ities of a regulated entity in default shall be
23 stayed from further proceedings for a period of
24 not longer than 45 days, at the request of the

1 limited-life regulated entity. Such period may
2 be modified upon the consent of all parties.

3 “(10) NO FEDERAL STATUS.—

4 “(A) AGENCY STATUS.—A limited-life reg-
5 ulated entity is not an agency, establishment, or
6 instrumentality of the United States.

7 “(B) EMPLOYEE STATUS.—Representa-
8 tives for purposes of paragraph (1)(B), interim
9 directors, directors, officers, employees, or
10 agents of a limited-life regulated entity are not,
11 solely by virtue of service in any such capacity,
12 officers or employees of the United States. Any
13 employee of the Agency or of any Federal in-
14 strumentality who serves at the request of the
15 Agency as a representative for purposes of
16 paragraph (1)(B), interim director, director, of-
17 ficer, employee, or agent of a limited-life regu-
18 lated entity shall not—

19 “(i) solely by virtue of service in any
20 such capacity lose any existing status as
21 an officer or employee of the United States
22 for purposes of title 5, United States Code,
23 or any other provision of law; or

24 “(ii) receive any salary or benefits for
25 service in any such capacity with respect to

1 a limited-life regulated entity in addition to
2 such salary or benefits as are obtained
3 through employment with the Agency or
4 such Federal instrumentality.

5 “(11) AUTHORITY TO OBTAIN CREDIT.—

6 “(A) IN GENERAL.—A limited-life regu-
7 lated entity may obtain unsecured credit and
8 issue unsecured debt.

9 “(B) INABILITY TO OBTAIN CREDIT.—If a
10 limited-life regulated entity is unable to obtain
11 unsecured credit or issue unsecured debt, the
12 Director may authorize the obtaining of credit
13 or the issuance of debt by the limited-life regu-
14 lated entity—

15 “(i) with priority over any or all of
16 the obligations of the limited-life regulated
17 entity;

18 “(ii) secured by a lien on property of
19 the limited-life regulated entity that is not
20 otherwise subject to a lien; or

21 “(iii) secured by a junior lien on prop-
22 erty of the limited-life regulated entity that
23 is subject to a lien.

24 “(C) LIMITATIONS.—

1 “(i) IN GENERAL.—The Director,
2 after notice and a hearing, may authorize
3 the obtaining of credit or the issuance of
4 debt by a limited-life regulated entity that
5 is secured by a senior or equal lien on
6 property of the limited-life regulated entity
7 that is subject to a lien (other than mort-
8 gages that collateralize the mortgage-
9 backed securities issued or guaranteed by
10 an enterprise) only if—

11 “(I) the limited-life regulated en-
12 tity is unable to otherwise obtain such
13 credit or issue such debt; and

14 “(II) there is adequate protection
15 of the interest of the holder of the lien
16 on the property with respect to which
17 such senior or equal lien is proposed
18 to be granted.

19 “(D) BURDEN OF PROOF.—In any hearing
20 under this subsection, the Director has the bur-
21 den of proof on the issue of adequate protec-
22 tion.

23 “(12) AFFECT ON DEBTS AND LIENS.—The re-
24 versal or modification on appeal of an authorization
25 under this subsection to obtain credit or issue debt,

1 or of a grant under this section of a priority or a
2 lien, does not affect the validity of any debt so
3 issued, or any priority or lien so granted, to an enti-
4 ty that extended such credit in good faith, whether
5 or not such entity knew of the pendency of the ap-
6 peal, unless such authorization and the issuance of
7 such debt, or the granting of such priority or lien,
8 were stayed pending appeal.

9 “(j) OTHER AGENCY EXEMPTIONS.—

10 “(1) APPLICABILITY.—The provisions of this
11 subsection shall apply with respect to the Agency in
12 any case in which the Agency is acting as a conser-
13 vator or a receiver.

14 “(2) TAXATION.—The Agency, including its
15 franchise, its capital, reserves, and surplus, and its
16 income, shall be exempt from all taxation imposed
17 by any State, county, municipality, or local taxing
18 authority, except that any real property of the Agen-
19 cy shall be subject to State, territorial, county, mu-
20 nicipal, or local taxation to the same extent accord-
21 ing to its value as other real property is taxed, ex-
22 cept that, notwithstanding the failure of any person
23 to challenge an assessment under State law of the
24 value of such property, and the tax thereon, shall be

1 determined as of the period for which such tax is im-
2 posed.

3 “(3) PROPERTY PROTECTION.—No property of
4 the Agency shall be subject to levy, attachment, gar-
5 nishment, foreclosure, or sale without the consent of
6 the Agency, nor shall any involuntary lien attach to
7 the property of the Agency.

8 “(4) PENALTIES AND FINES.—The Agency
9 shall not be liable for any amounts in the nature of
10 penalties or fines, including those arising from the
11 failure of any person to pay any real property, per-
12 sonal property, probate, or recording tax or any re-
13 cording or filing fees when due.

14 “(k) PROHIBITION OF CHARTER REVOCATION.—In
15 no case may the receiver appointed pursuant to this sec-
16 tion revoke, annul, or terminate the charter of an enter-
17 prise.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
19 The Federal Housing Enterprises Financial Safety and
20 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-
21 ed—

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

23 (A) by striking “an enterprise” each place
24 that term appears and inserting “a regulated
25 entity”; and

1 (B) by striking “the enterprise” each place
2 that term appears and inserting “the regulated
3 entity”;

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

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

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

11 (B) in subsection (a)(1), by striking “An
12 enterprise” and inserting “A regulated entity”;
13 and

14 (4) by striking sections 1369, 1369A, and
15 1369B (12 U.S.C. 4619, 4620, and 4621).

16 **Subtitle D—Enforcement Actions**

17 **SEC. 1151. CEASE AND DESIST PROCEEDINGS.**

18 Section 1371 of the Federal Housing Enterprises Fi-
19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
20 4631) is amended—

21 (1) by striking subsections (a) and (b) and in-
22 serting the following:

23 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**
24 **TICES AND VIOLATIONS.—**

1 “(1) AUTHORITY OF DIRECTOR.—If, in the
2 opinion of the Director, a regulated entity or any en-
3 tity-affiliated party is engaging or has engaged, or
4 the Director has reasonable cause to believe that the
5 regulated entity or any entity-affiliated party is
6 about to engage, in an unsafe or unsound practice
7 in conducting the business of the regulated entity or
8 the Office of Finance, or is violating or has violated,
9 or the Director has reasonable cause to believe is
10 about to violate, a law, rule, regulation, or order, or
11 any condition imposed in writing by the Director in
12 connection with the granting of any application or
13 other request by the regulated entity or the Office
14 of Finance or any written agreement entered into
15 with the Director, the Director may issue and serve
16 upon the regulated entity or entity-affiliated party a
17 notice of charges in respect thereof.

18 “(2) LIMITATION.—The Director may not, pur-
19 suant to this section, enforce compliance with any
20 housing goal established under subpart B of part 2
21 of subtitle A of this title, with section 1336 or 1337
22 of this title, with subsection (m) or (n) of section
23 309 of the Federal National Mortgage Association
24 Charter Act (12 U.S.C. 1723a(m), (n)), with sub-
25 section (e) or (f) of section 307 of the Federal Home

1 Loan Mortgage Corporation Act (12 U.S.C. 1456(e),
2 (f)), or with paragraph (5) of section 10(j) of the
3 Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

4 “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a
5 regulated entity receives, in its most recent report of ex-
6 amination, a less-than-satisfactory rating for asset quality,
7 management, earnings, or liquidity, the Director may (if
8 the deficiency is not corrected) deem the regulated entity
9 to be engaging in an unsafe or unsound practice for pur-
10 poses of subsection (a).”;

11 (2) in subsection (c)—

12 (A) in paragraph (1), by inserting before
13 the period at the end the following: “, unless
14 the party served with a notice of charges shall
15 appear at the hearing personally or by a duly
16 authorized representative, the party shall be
17 deemed to have consented to the issuance of the
18 cease and desist order”; and

19 (B) in paragraph (2)—

20 (i) by striking “or director” and in-
21 serting “director, or entity-affiliated
22 party”; and

23 (ii) by inserting “or entity-affiliated
24 party” before “consents”;

25 (3) in each of subsections (c), (d), and (e)—

1 (A) by striking “the enterprise” each place
2 that term appears and inserting “the regulated
3 entity”;

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

7 (C) by striking “conduct” each place that
8 term appears and inserting “practice”;
9 (4) in subsection (d)—

10 (A) in the matter preceding paragraph
11 (1)—

12 (i) by striking “or director” and in-
13 serting “director, or entity-affiliated
14 party”; and

15 (ii) by inserting “to require a regu-
16 lated entity or entity-affiliated party” after
17 “includes the authority”;

18 (B) in paragraph (1)—

19 (i) by striking “to require an executive
20 officer or a director to”; and

21 (ii) by striking “loss” and all that fol-
22 lows through “person” and inserting “loss,
23 if”;

1 (iii) in subparagraph (A), by inserting

2 “such entity or party or finance facility”

3 before “was”; and

4 (iv) by striking subparagraph (B) and

5 inserting the following:

6 “(B) the violation or practice involved a

7 reckless disregard for the law or any applicable

8 regulations or prior order of the Director;” and

9 (C) in paragraph (4), by inserting “loan

10 or” before “asset”;

11 (5) in subsection (e), by inserting “or entity-af-

12 filiated party”—

13 (A) before “or any executive”; and

14 (B) before the period at the end; and

15 (6) in subsection (f)—

16 (A) by striking “enterprise” and inserting

17 “regulated entity, finance facility,”; and

18 (B) by striking “or director” and inserting

19 “director, or entity-affiliated party”.

20 **SEC. 1152. TEMPORARY CEASE AND DESIST PROCEEDINGS.**

21 Section 1372 of the Federal Housing Enterprises Fi-

22 nancial Safety and Soundness Act of 1992 (12 U.S.C.

23 4632) is amended—

24 (1) by striking subsection (a) and inserting the

25 following:

1 “(a) GROUNDS FOR ISSUANCE.—

2 “(1) IN GENERAL.—If the Director determines
3 that the actions specified in the notice of charges
4 served upon a regulated entity or any entity-affili-
5 ated party pursuant to section 1371(a), or the con-
6 tinuation thereof, is likely to cause insolvency or sig-
7 nificant dissipation of assets or earnings of that en-
8 tity, or is likely to weaken the condition of that enti-
9 ty prior to the completion of the proceedings con-
10 ducted pursuant to sections 1371 and 1373, the Di-
11 rector may—

12 “(A) issue a temporary order requiring
13 that regulated entity or entity-affiliated party to
14 cease and desist from any such violation or
15 practice; and

16 “(B) require that regulated entity or enti-
17 ty-affiliated party to take affirmative action to
18 prevent or remedy such insolvency, dissipation,
19 condition, or prejudice pending completion of
20 such proceedings.

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

24 (2) in subsection (b)—

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

3 (B) by striking “enterprise” each place
4 that term appears and inserting “regulated en-
5 tity”;

6 (3) in subsection (c), by striking “enterprise”
7 each place that term appears and inserting “regu-
8 lated entity”;

9 (4) in subsection (d)—

10 (A) by striking “or director” each place
11 that term appears and inserting “director, or
12 entity-affiliated party”; and

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

15 (5) in subsection (e)—

16 (A) by striking “request the Attorney Gen-
17 eral of the United States to”; and

18 (B) by striking “or may, under the direc-
19 tion and control of the Attorney General, bring
20 such action”.

21 **SEC. 1153. REMOVAL AND PROHIBITION AUTHORITY.**

22 (a) IN GENERAL.—Part 1 of subtitle C of the Federal
23 Housing Enterprises Financial Safety and Soundness Act
24 of 1992 (12 U.S.C. 4631 et seq.) is amended—

1 (1) by redesignating sections 1377 through
2 1379B (12 U.S.C. 4637–4641) as sections 1379
3 through 1379D, respectively; and

4 (2) by inserting after section 1376 (12 U.S.C.
5 4636) the following:

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

7 “(a) AUTHORITY TO ISSUE ORDER.—

8 “(1) IN GENERAL.—The Director may serve
9 upon a party described in paragraph (2), or any offi-
10 cer, director, or management of the Office of Fi-
11 nance a written notice of the intention of the Direc-
12 tor to suspend or remove such party from office, or
13 prohibit any further participation by such party, in
14 any manner, in the conduct of the affairs of the reg-
15 ulated entity.

16 “(2) APPLICABILITY.—A party described in this
17 paragraph is an entity-affiliated party or any officer,
18 director, or management of the Office of Finance, if
19 the Director determines that—

20 “(A) that party, officer, or director has, di-
21 rectly or indirectly—

22 “(i) violated—

23 “(I) any law or regulation;

24 “(II) any cease and desist order
25 which has become final;

1 “(III) any condition imposed in
2 writing by the Director in connection
3 with the grant of any application or
4 other request by such regulated enti-
5 ty; or

6 “(IV) any written agreement be-
7 tween such regulated entity and the
8 Director;

9 “(ii) engaged or participated in any
10 unsafe or unsound practice in connection
11 with any regulated entity or business insti-
12 tution; or

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

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

18 “(i) such regulated entity or business
19 institution has suffered or will probably
20 suffer financial loss or other damage; or

21 “(ii) such party has received financial
22 gain or other benefit; and

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

1 “(i) involves personal dishonesty on
2 the part of such party; or

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

7 “(b) SUSPENSION ORDER.—

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

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

19 “(B) serves such party with written notice
20 of the order.

21 “(2) EFFECTIVE PERIOD.—Any order issued
22 under this subsection—

23 “(A) shall become effective upon service;
24 and

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

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

8 “(ii) the effective date of an order
9 issued under subsection (b).

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

15 “(c) NOTICE, HEARING, AND ORDER.—

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

22 “(2) TIMING OF HEARING.—A hearing shall be
23 fixed for a date not earlier than 30 days, nor later
24 than 60 days, after the date of service of notice

1 under subsection (a), unless an earlier or a later
2 date is set by the Director at the request of—

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

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

7 “(3) CONSENT.—Unless the party that is the
8 subject of a notice delivered under subsection (a) ap-
9 pears at the hearing in person or by a duly author-
10 ized representative, such party shall be deemed to
11 have consented to the issuance of an order under
12 this section.

13 “(4) ISSUANCE OF ORDER OF SUSPENSION.—
14 The Director may issue an order under this section,
15 as the Director may deem appropriate, if—

16 “(A) a party is deemed to have consented
17 to the issuance of an order under paragraph
18 (3); or

19 “(B) upon the record made at the hearing,
20 the Director finds that any of the grounds spec-
21 ified in the notice have been established.

22 “(5) EFFECTIVENESS OF ORDER.—Any order
23 issued under paragraph (4) shall become effective at
24 the expiration of 30 days after the date of service
25 upon the relevant regulated entity and party (except

1 in the case of an order issued upon consent under
2 paragraph (3), which shall become effective at the
3 time specified therein). Such order shall remain ef-
4 fective and enforceable except to such extent as it is
5 stayed, modified, terminated, or set aside by action
6 of the Director or a reviewing court.

7 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-
8 TIES.—Any person subject to an order issued under this
9 section shall not—

10 “(1) participate in any manner in the conduct
11 of the affairs of any regulated entity or the Office
12 of Finance;

13 “(2) solicit, procure, transfer, attempt to trans-
14 fer, vote, or attempt to vote any proxy, consent, or
15 authorization with respect to any voting rights in
16 any regulated entity;

17 “(3) violate any voting agreement previously
18 approved by the Director; or

19 “(4) vote for a director, or serve or act as an
20 entity-affiliated party of a regulated entity or as an
21 officer or director of the Office of Finance.

22 “(e) INDUSTRY-WIDE PROHIBITION.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), any person who, pursuant to an order
25 issued under this section, has been removed or sus-

1 pended from office in a regulated entity or the Of-
2 fice of Finance, or prohibited from participating in
3 the conduct of the affairs of a regulated entity or
4 the Office of Finance, may not, while such order is
5 in effect, continue or commence to hold any office in,
6 or participate in any manner in the conduct of the
7 affairs of, any regulated entity or the Office of Fi-
8 nance.

9 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-
10 TEN CONSENT.—If, on or after the date on which an
11 order is issued under this section which removes or
12 suspends from office any party, or prohibits such
13 party from participating in the conduct of the affairs
14 of a regulated entity or the Office of Finance, such
15 party receives the written consent of the Director,
16 the order shall, to the extent of such consent, cease
17 to apply to such party with respect to the regulated
18 entity or such Office of Finance described in the
19 written consent. Any such consent shall be publicly
20 disclosed.

21 “(3) VIOLATION OF PARAGRAPH (1) TREATED
22 AS VIOLATION OF ORDER.—Any violation of para-
23 graph (1) by any person who is subject to an order
24 issued under subsection (h) shall be treated as a vio-
25 lation of the order.

1 “(f) APPLICABILITY.—This section shall only apply
2 to a person who is an individual, unless the Director spe-
3 cifically finds that it should apply to a corporation, firm,
4 or other business entity.

5 “(g) STAY OF SUSPENSION AND PROHIBITION OF
6 ENTITY-AFFILIATED PARTY.—Not later than 10 days
7 after the date on which any entity-affiliated party has been
8 suspended from office or prohibited from participation in
9 the conduct of the affairs of a regulated entity under this
10 section, such party may apply to the United States Dis-
11 trict Court for the District of Columbia, or the United
12 States district court for the judicial district in which the
13 headquarters of the regulated entity is located, for a stay
14 of such suspension or prohibition pending the completion
15 of the administrative proceedings pursuant to subsection
16 (c). The court shall have jurisdiction to stay such suspen-
17 sion or prohibition.

18 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-
19 ATED PARTY CHARGED WITH FELONY.—

20 “(1) SUSPENSION OR PROHIBITION.—

21 “(A) IN GENERAL.—Whenever any entity-
22 affiliated party is charged in any information,
23 indictment, or complaint, with the commission
24 of or participation in a crime involving dishon-
25 esty or breach of trust which is punishable by

1 imprisonment for a term exceeding 1 year
2 under Federal or State law, the Director may,
3 if continued service or participation by such
4 party may pose a threat to the regulated entity
5 or impair public confidence in the regulated en-
6 tity, by written notice served upon such party,
7 suspend such party from office or prohibit such
8 party from further participation in any manner
9 in the conduct of the affairs of any regulated
10 entity.

11 “(B) PROVISIONS APPLICABLE TO NO-
12 TICE.—

13 “(i) COPY.—A copy of any notice
14 under subparagraph (A) shall be served
15 upon the relevant regulated entity.

16 “(ii) EFFECTIVE PERIOD.—A suspen-
17 sion or prohibition under subparagraph (A)
18 shall remain in effect until the informa-
19 tion, indictment, or complaint referred to
20 in subparagraph (A) is finally disposed of,
21 or until terminated by the Director.

22 “(2) REMOVAL OR PROHIBITION.—

23 “(A) IN GENERAL.—If a judgment of con-
24 viction or an agreement to enter a pretrial di-
25 version or other similar program is entered

1 against an entity-affiliated party in connection
2 with a crime described in paragraph (1)(A), at
3 such time as such judgment is not subject to
4 further appellate review, the Director may, if
5 continued service or participation by such party
6 may pose a threat to the regulated entity or im-
7 pair public confidence in the regulated entity,
8 issue and serve upon such party an order re-
9 moving such party from office or prohibiting
10 such party from further participation in any
11 manner in the conduct of the affairs of the reg-
12 ulated entity without the prior written consent
13 of the Director.

14 “(B) PROVISIONS APPLICABLE TO
15 ORDER.—

16 “(i) COPY.—A copy of any order
17 under subparagraph (A) shall be served
18 upon the relevant regulated entity, at
19 which time the entity-affiliated party who
20 is subject to the order (if a director or an
21 officer) shall cease to be a director or offi-
22 cer of such regulated entity.

23 “(ii) EFFECT OF ACQUITTAL.—A find-
24 ing of not guilty or other disposition of the
25 charge shall not preclude the Director from

1 instituting proceedings after such finding
2 or disposition to remove a party from of-
3 fice or to prohibit further participation in
4 the affairs of a regulated entity pursuant
5 to subsection (a) or (b).

6 “(iii) EFFECTIVE PERIOD.—Unless
7 terminated by the Director, any notice of
8 suspension or order of removal issued
9 under this subsection shall remain effective
10 and outstanding until the completion of
11 any hearing or appeal authorized under
12 paragraph (4).

13 “(3) AUTHORITY OF REMAINING BOARD MEM-
14 BERS.—

15 “(A) IN GENERAL.—If at any time, be-
16 cause of the suspension of 1 or more directors
17 pursuant to this section, there shall be on the
18 board of directors of a regulated entity less
19 than a quorum of directors not so suspended,
20 all powers and functions vested in or exercisable
21 by such board shall vest in and be exercisable
22 by the director or directors on the board not so
23 suspended, until such time as there shall be a
24 quorum of the board of directors.

1 “(B) APPOINTMENT OF TEMPORARY DI-
2 RECTORS.—If all of the directors of a regulated
3 entity are suspended pursuant to this section,
4 the Director shall appoint persons to serve tem-
5 porarily as directors pending the termination of
6 such suspensions, or until such time as those
7 who have been suspended cease to be directors
8 of the regulated entity and their respective suc-
9 cessors take office.

10 “(4) HEARING REGARDING CONTINUED PAR-
11 TICIPATION.—

12 “(A) IN GENERAL.—Not later than 30
13 days after the date of service of any notice of
14 suspension or order of removal issued pursuant
15 to paragraph (1) or (2), the entity-affiliated
16 party may request in writing an opportunity to
17 appear before the Director to show that the
18 continued service or participation in the con-
19 duct of the affairs of the regulated entity by
20 such party does not, or is not likely to, pose a
21 threat to the interests of the regulated entity,
22 or threaten to impair public confidence in the
23 regulated entity.

24 “(B) TIMING AND FORM OF HEARING.—
25 Upon receipt of a request for a hearing under

1 subparagraph (A), the Director shall fix a time
2 (not later than 30 days after the date of receipt
3 of such request, unless extended at the request
4 of such party) and place at which the entity-af-
5 filiated party may appear, personally or through
6 counsel, before the Director or 1 or more des-
7 ignated employees of the Director to submit
8 written materials (or, at the discretion of the
9 Director, oral testimony) and oral argument.

10 “(C) DETERMINATION.—Not later than 60
11 days after the date of a hearing under subpara-
12 graph (B), the Director shall notify the entity-
13 affiliated party whether the suspension or pro-
14 hibition from participation in any manner in
15 the conduct of the affairs of the regulated enti-
16 ty will be continued, terminated, or otherwise
17 modified, or whether the order removing such
18 party from office or prohibiting such party from
19 further participation in any manner in the con-
20 duct of the affairs of the regulated entity will
21 be rescinded or otherwise modified. Such notifi-
22 cation shall contain a statement of the basis for
23 any adverse decision of the Director.

1 “(5) RULES.—The Director is authorized to
2 prescribe such rules as may be necessary to carry
3 out this subsection.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) SAFETY AND SOUNDNESS ACT.—Subtitle C
6 of the Federal Housing Enterprises Financial Safety
7 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.)
8 is amended—

9 (A) in section 1317(f), by striking “section
10 1379B” and inserting “section 1379D”;

11 (B) in section 1373(a)—

12 (i) in paragraph (1), by striking “or
13 1376(c)” and inserting “, 1376(c), or
14 1377”;

15 (ii) in paragraph (2), by inserting “or
16 1377” after “1371”; and

17 (iii) in paragraph (4), by inserting “or
18 removal or prohibition” after “cease and
19 desist”; and

20 (C) in section 1374(a)—

21 (i) by striking “or 1376” and insert-
22 ing “1313B , 1376, or 1377”; and

23 (ii) by striking “such section” and in-
24 serting “this title”.

1 (2) FANNIE MAE CHARTER ACT.—Section
2 308(b) of the Federal National Mortgage Associa-
3 tion Charter Act (12 U.S.C. 1723(b)) is amended in
4 the second sentence, by striking “The” and inserting
5 “Except to the extent that action under section
6 1377 of the Federal Housing Enterprises Financial
7 Safety and Soundness Act of 1992 temporarily re-
8 sults in a lesser number, the”.

9 (3) FREDDIE MAC CHARTER ACT.—Section
10 303(a)(2)(A) of the Federal Home Loan Mortgage
11 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is
12 amended, in the second sentence, by striking “The”
13 and inserting “Except to the extent action under
14 section 1377 of the Federal Housing Enterprises Fi-
15 nancial Safety and Soundness Act of 1992 tempo-
16 rarily results in a lesser number, the”.

17 **SEC. 1154. ENFORCEMENT AND JURISDICTION.**

18 Section 1375 of the Federal Housing Enterprises Fi-
19 nancial Safety and Soundness Act of 1992 (12 U.S.C.
20 4635) is amended—

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

23 “(a) ENFORCEMENT.—The Director may, in the dis-
24 cretion of the Director, apply to the United States District
25 Court for the District of Columbia, or the United States

1 district court within the jurisdiction of which the head-
2 quarters of the regulated entity is located, for the enforce-
3 ment of any effective and outstanding notice or order
4 issued under this subtitle or subtitle B, or request that
5 the Attorney General of the United States bring such an
6 action. Such court shall have jurisdiction and power to
7 order and require compliance with such notice or order.”;
8 and

9 (2) in subsection (b), by striking “or 1376” and
10 inserting “1313B, 1376, or 1377”.

11 **SEC. 1155. CIVIL MONEY PENALTIES.**

12 Section 1376 of the Federal Housing Enterprises Fi-
13 nancial Safety and Soundness Act of 1992 (12 U.S.C.
14 4636) is amended—

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

17 “(a) IN GENERAL.—The Director may impose a civil
18 money penalty in accordance with this section on any reg-
19 ulated entity or any entity-affiliated party. The Director
20 shall not impose a civil penalty in accordance with this
21 section on any regulated entity or any entity-affiliated
22 party for any violation that is addressed under section
23 1345(a).”;

24 (2) by striking subsection (b) and inserting the
25 following:

1 “(b) AMOUNT OF PENALTY.—

2 “(1) FIRST TIER.—A regulated entity or entity-
3 affiliated party shall forfeit and pay a civil penalty
4 of not more than \$10,000 for each day during which
5 a violation continues, if such regulated entity or
6 party—

7 “(A) violates any provision of this title, the
8 authorizing statutes, or any order, condition,
9 rule, or regulation under this title or any au-
10 thorizing statute;

11 “(B) violates any final or temporary order
12 or notice issued pursuant to this title;

13 “(C) violates any condition imposed in
14 writing by the Director in connection with the
15 grant of any application or other request by
16 such regulated entity; or

17 “(D) violates any written agreement be-
18 tween the regulated entity and the Director.

19 “(2) SECOND TIER.—Notwithstanding para-
20 graph (1), a regulated entity or entity-affiliated
21 party shall forfeit and pay a civil penalty of not
22 more than \$50,000 for each day during which a vio-
23 lation, practice, or breach continues, if—

24 “(A) the regulated entity or entity-affili-
25 ated party, respectively—

1 “(i) commits any violation described
2 in any subparagraph of paragraph (1);

3 “(ii) recklessly engages in an unsafe
4 or unsound practice in conducting the af-
5 fairs of the regulated entity; or

6 “(iii) breaches any fiduciary duty; and
7 “(B) the violation, practice, or breach—

8 “(i) is part of a pattern of mis-
9 conduct;

10 “(ii) causes or is likely to cause more
11 than a minimal loss to the regulated entity;
12 or

13 “(iii) results in pecuniary gain or
14 other benefit to such party.

15 “(3) THIRD TIER.—Notwithstanding para-
16 graphs (1) and (2), any regulated entity or entity-
17 affiliated party shall forfeit and pay a civil penalty
18 in an amount not to exceed the applicable maximum
19 amount determined under paragraph (4) for each
20 day during which such violation, practice, or breach
21 continues, if such regulated entity or entity-affiliated
22 party—

23 “(A) knowingly—

24 “(i) commits any violation described
25 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 entity-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)—

22 (A) by striking “enterprise” each place
23 that term appears and inserting “regulated en-
24 tity”;

1 (B) by inserting “or entity-affiliated
2 party” before “in writing”; and

3 (C) by inserting “or entity-affiliated party”
4 before “has been given”;

5 (4) in subsection (d)—

6 (A) by striking “or director” each place
7 such term appears and inserting “director, or
8 entity-affiliated party”;

9 (B) by striking “an enterprise” and insert-
10 ing “a regulated entity”;

11 (C) by striking “the enterprise” and in-
12 serting “the regulated entity”;

13 (D) by striking “request the Attorney Gen-
14 eral of the United States to”;

15 (E) by inserting “, or the United States
16 district court within the jurisdiction of which
17 the headquarters of the regulated entity is lo-
18 cated,” after “District of Columbia”;

19 (F) by striking “, or may, under the direc-
20 tion and control of the Attorney General of the
21 United States, bring such an action”; and

22 (G) by striking “and section 1374”; and

23 (5) in subsection (g), by striking “An enter-
24 prise” and inserting “A regulated entity”.

1 **SEC. 1156. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Subtitle C of the Federal Housing
3 Enterprises Financial Safety and Soundness Act of 1992
4 (12 U.S.C. 4631 et seq.) is amended by inserting after
5 section 1377, as added by this Act, the following:

6 **“SEC. 1378. CRIMINAL PENALTY.**

7 “Whoever, being subject to an order in effect under
8 section 1377, without the prior written approval of the Di-
9 rector, knowingly participates, directly or indirectly, in any
10 manner (including by engaging in an activity specifically
11 prohibited in such an order) in the conduct of the affairs
12 of any regulated entity shall, notwithstanding section
13 3571 of title 18, be fined not more than \$1,000,000, im-
14 prisoned for not more than 5 years, or both.”.

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

19 (1) in section 1379 (as so designated by this
20 Act)—

21 (A) by striking “an enterprise” and insert-
22 ing “a regulated entity”; and

23 (B) by striking “the enterprise” and in-
24 serting “the regulated entity”;

1 (2) in section 1379A (as so designated by this
2 Act), by striking “an enterprise” and inserting “a
3 regulated entity”;

4 (3) in section 1379B(c) (as so designated by
5 this Act), by striking “enterprise” and inserting
6 “regulated entity”; and

7 (4) in section 1379D (as so designated by this
8 Act), by striking “enterprise” and inserting “regu-
9 lated entity”.

10 **SEC. 1157. NOTICE AFTER SEPARATION FROM SERVICE.**

11 Section 1379 of the Federal Housing Enterprises Fi-
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.
13 4637), as so designated by this Act, is amended—

14 (1) by striking “2-year” and inserting “6-year”;

15 (2) by striking “a director or executive officer
16 of an enterprise” and inserting “an entity-affiliated
17 party”;

18 (3) by striking “director or officer” each place
19 that term appears and inserting “entity-affiliated
20 party”; and

21 (4) by striking “enterprise.” and inserting “reg-
22 ulated entity.”.

1 **SEC. 1158. SUBPOENA AUTHORITY.**

2 (a) IN GENERAL.—Section 1379B of the Federal
3 Housing Enterprises Financial Safety and Soundness Act
4 of 1992 (12 U.S.C. 4641) is amended—

5 (1) in subsection (a)—

6 (A) in the matter preceding paragraph

7 (1)—

8 (i) by striking “administrative”;

9 (ii) by inserting “, examination, or in-
10 vestigation” after “proceeding”;

11 (iii) by striking “subtitle” and insert-
12 ing “title”; and

13 (iv) by inserting “or any designated
14 representative thereof, including any per-
15 son designated to conduct any hearing
16 under this subtitle” after “Director”; and

17 (B) in paragraph (4), by striking “issued
18 by the Director”;

19 (2) in subsection (b), by inserting “or in any
20 territory or other place subject to the jurisdiction of
21 the United States” after “State”;

22 (3) by striking subsection (c) and inserting the
23 following:

24 “(c) ENFORCEMENT.—

25 “(1) IN GENERAL.—The Director, or any party
26 to proceedings under this subtitle, may apply to the

1 United States District Court for the District of Co-
2 lumbia, or the United States district court for the
3 judicial district of the United States in any territory
4 in which such proceeding is being conducted, or
5 where the witness resides or carries on business, for
6 enforcement of any subpoena or subpoena duces
7 tecum issued pursuant to this section.

8 “(2) POWER OF COURT.—The courts described
9 under paragraph (1) shall have the jurisdiction and
10 power to order and require compliance with any sub-
11 poena issued under paragraph (1).”;

12 (4) in subsection (d), by inserting “enterprise-
13 affiliated party” before “may allow”; and

14 (5) by adding at the end the following:

15 “(e) PENALTIES.—A person shall be guilty of a mis-
16 demeanor, and upon conviction, shall be subject to a fine
17 of not more than \$1,000 or to imprisonment for a term
18 of not more than 1 year, or both, if that person willfully
19 fails or refuses, in disobedience of a subpoena issued under
20 subsection (e), to—

21 “(1) attend court;

22 “(2) testify in court;

23 “(3) answer any lawful inquiry; or

1 “(4) produce books, papers, correspondence,
2 contracts, agreements, or such other records as re-
3 quested in the subpoena.”.

4 **Subtitle E—General Provisions**

5 **SEC. 1161. CONFORMING AND TECHNICAL AMENDMENTS.**

6 (a) AMENDMENTS TO 1992 ACT.—The Federal
7 Housing Enterprises Financial Safety and Soundness Act
8 of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,
9 is amended—

10 (1) in section 1315 (12 U.S.C. 4515)—

11 (A) in subsection (a)—

12 (i) by striking “(a) OFFICE PER-
13 SONNEL.—The” and inserting “(a) IN
14 GENERAL.—Subject to title III of the Fed-
15 eral Housing Finance Regulatory Reform
16 Act of 2008, the”; and

17 (ii) by striking “the Office” each place
18 that term appears and inserting “the
19 Agency”;

20 (B) in subsection (c), by striking “the Of-
21 fice” and inserting “the Agency”;

22 (C) in subsection (e), by striking “the Of-
23 fice” and inserting “the Agency”;

24 (D) by striking subsection (d) and redesign-
25 nating subsection (e) as subsection (d); and

1 (E) by striking subsection (f);

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

3 (A) by striking “(a) IN GENERAL.—”; and

4 (B) by striking subsection (b);

5 (3) in section 1364(e) (12 U.S.C. 4614(e)), by
6 striking the last sentence;

7 (4) by striking section 1383 (12 U.S.C. 1451
8 note);

9 (5) in each of sections 1319D, 1319E, and
10 1319F (12 U.S.C. 4523, 4524, 4525) by striking
11 “the Office” each place that term appears and in-
12 serting “the Agency”; and

13 (6) in each of sections 1319B and 1369(a)(3)
14 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-
15 mittee on Banking, Finance and Urban Affairs”
16 each place such term appears and inserting “Com-
17 mittee on Financial Services”.

18 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—
19 The Federal National Mortgage Association Charter Act
20 (12 U.S.C. 1716 et seq.) is amended—

21 (1) in each of sections 303(c)(2) (12 U.S.C.
22 1718(e)(2)), 309(d)(3)(B) (12 U.S.C.
23 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.
24 1723a(k)(1)), by striking “Director of the Office of
25 Federal Housing Enterprise Oversight of the De-

1 department of Housing and Urban Development” each
2 place that term appears, and inserting “Director of
3 the Federal Housing Finance Agency”; and

4 (2) in section 309—

5 (A) in subsection (m) (12 U.S.C.
6 1723a(m))—

7 (i) in paragraph (1), by striking “to
8 the Secretary, in a form determined by the
9 Secretary” and inserting “to the Director
10 of the Federal Housing Finance Agency, in
11 a form determined by the Director”; and

12 (ii) in paragraph (2), by striking “to
13 the Secretary, in a form determined by the
14 Secretary” and inserting “to the Director
15 of the Federal Housing Finance Agency, in
16 a form determined by the Director”;

17 (B) in subsection (n) (12 U.S.C.
18 1723a(n))—

19 (i) in paragraph (1), by striking “and
20 the Secretary” and inserting “and the Di-
21 rector of the Federal Housing Finance
22 Agency”; and

23 (ii) in paragraph (2), by striking
24 “Secretary” each place that term appears

1 (C) in subsection (j)(2), by striking “of
2 substantially” and inserting “or substantially”;
3 and

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

5 (A) in subsection (e)—

6 (i) in paragraph (1), by striking “to
7 the Secretary, in a form determined by the
8 Secretary” and inserting “to the Director
9 of the Federal Housing Finance Agency, in
10 a form determined by the Director”; and

11 (ii) in paragraph (2), by striking “to
12 the Secretary, in a form determined by the
13 Secretary” and inserting “to the Director
14 of the Federal Housing Finance Agency, in
15 a form determined by the Director”; and

16 (B) in subsection (f)—

17 (i) in paragraph (1), by striking “and
18 the Secretary” and inserting “and the Di-
19 rector of the Federal Housing Finance
20 Agency”;

21 (ii) in paragraph (2), by striking “the
22 Secretary” each place that term appears
23 and inserting “the Director of the Federal
24 Housing Finance Agency”; and

1 (iii) in paragraph (3)(B), by striking
2 “Secretary” and inserting “Director of the
3 Federal Housing Finance Agency”.

4 (d) AMENDMENT TO TITLE 18, UNITED STATES
5 CODE.—Section 1905 of title 18, United States Code, is
6 amended by striking “Office of Federal Housing Enter-
7 prise Oversight” and inserting “Federal Housing Finance
8 Agency”.

9 (e) AMENDMENTS TO FLOOD DISASTER PROTECTION
10 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-
11 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))
12 is amended by striking “Director of the Office of Federal
13 Housing Enterprise Oversight of the Department of Hous-
14 ing and Urban Development” and inserting “Director of
15 the Federal Housing Finance Agency”.

16 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND
17 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-
18 ment of Housing and Urban Development Act (42 U.S.C.
19 3534) is amended by striking subsection (d).

20 (g) AMENDMENTS TO TITLE 5, UNITED STATES
21 CODE.—Title 5, United States Code, is amended—

22 (1) in section 5313, by striking the item relat-
23 ing to the Director of the Office of Federal Housing
24 Enterprise Oversight, Department of Housing and

1 Urban Development and inserting the following new
2 item:

3 “Director of the Federal Housing Finance
4 Agency.”; and

5 (2) in section 3132(a)(1)—

6 (A) in subparagraph (B), by striking “,
7 and” and inserting “, and”;

8 (B) in subparagraph (D)—

9 (i) by striking “the Federal Housing
10 Finance Board”;

11 (ii) by striking “the Office of Federal
12 Housing Enterprise Oversight of the De-
13 partment of Housing and Urban Develop-
14 ment” and inserting “the Federal Housing
15 Finance Agency”; and

16 (iii) by striking “or or” at the end;

17 (C) in subparagraph (E), as added by sec-
18 tion 8(d)(1)(B)(iii) of Public Law 107-123, by
19 adding “or” at the end; and

20 (D) by redesignating subparagraph (E), as
21 added by section 10702(e)(1)(C) of Public Law
22 107-171, as subparagraph (F).

23 (h) AMENDMENT TO SARBANES-OXLEY ACT.—Sec-
24 tion 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of
25 2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by in-

1 serting “and the Director of the Federal Housing Finance
2 Agency,” after “Commission,”.

3 (i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE
4 ACT.—Section 11(t)(2)(A) of the Federal Deposit Insur-
5 ance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding
6 at the end the following:

7 “(vii) Federal Housing Finance Agen-
8 cy.”.

9 **SEC. 1162. PRESIDENTIALLY-APPOINTED DIRECTORS OF**
10 **ENTERPRISES.**

11 (a) FANNIE MAE.—

12 (1) IN GENERAL.—Section 308(b) of the Fed-
13 eral National Mortgage Association Charter Act (12
14 U.S.C. 1723(b)) is amended—

15 (A) in the first sentence, by striking
16 “eighteen persons, five of whom shall be ap-
17 pointed annually by the President of the United
18 States, and the remainder of whom” and insert-
19 ing “13 persons, or such other number that the
20 Director determines appropriate, who”;

21 (B) in the second sentence, by striking
22 “appointed by the President”;

23 (C) in the third sentence—

24 (i) by striking “appointed or”; and

1 (ii) by striking “, except that any
2 such appointed member may be removed
3 from office by the President for good
4 cause”;

5 (D) in the fourth sentence, by striking
6 “elective”; and

7 (E) by striking the fifth sentence.

8 (2) TRANSITIONAL PROVISION.—The amend-
9 ments made by paragraph (1) shall not apply to any
10 appointed position of the board of directors of the
11 Federal National Mortgage Association until the ex-
12 piration of the annual term for such position during
13 which the effective date under section 1163 occurs.

14 (b) FREDDIE MAC.—

15 (1) IN GENERAL.—Section 303(a)(2) of the
16 Federal Home Loan Mortgage Corporation Act (12
17 U.S.C. 1452(a)(2)) is amended—

18 (A) in subparagraph (A)—

19 (i) in the first sentence, by striking
20 “18 persons, 5 of whom shall be appointed
21 annually by the President of the United
22 States and the remainder of whom” and
23 inserting “13 persons, or such other num-
24 ber as the Director determines appropriate,
25 who”; and

1 (ii) in the second sentence, by striking
2 “appointed by the President of the United
3 States”;

4 (B) in subparagraph (B)—

5 (i) by striking “such or”; and

6 (ii) by striking “, except that any ap-
7 pointed member may be removed from of-
8 fice by the President for good cause”; and

9 (C) in subparagraph (C)—

10 (i) by striking the first sentence; and

11 (ii) by striking “elective”.

12 (2) **TRANSITIONAL PROVISION.**—The amend-
13 ments made by paragraph (1) shall not apply to any
14 appointed position of the board of directors of the
15 Federal Home Loan Mortgage Corporation until the
16 expiration of the annual term for such position dur-
17 ing which the effective date under section 1163 oc-
18 curs.

19 **SEC. 1163. EFFECTIVE DATE.**

20 Except as otherwise specifically provided in this title,
21 this title and the amendments made by this title shall take
22 effect on, and shall apply beginning on, the date of enact-
23 ment of this Act.

1 **SEC. 1201. RECOGNITION OF DISTINCTIONS BETWEEN THE**
2 **ENTERPRISES AND THE FEDERAL HOME**
3 **LOAN BANKS.**

4 Section 1313 of the Federal Housing Enterprises Fi-
5 nancial Safety and Soundness Act of 1992 (12 U.S.C.
6 4513) is amended by adding at the end the following:

7 “(f) RECOGNITION OF DISTINCTIONS BETWEEN THE
8 ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—
9 Prior to promulgating any regulation or taking any other
10 formal or informal agency action of general applicability
11 relating to the Federal Home Loan Banks, including the
12 issuance of an advisory document or examination guid-
13 ance, the Director shall consider the differences between
14 the Federal Home Loan Banks and the enterprises with
15 respect to—

16 “(1) the Banks’—

17 “(A) cooperative ownership structure;

18 “(B) the mission of providing liquidity to
19 members;

20 “(C) affordable housing and community
21 development mission;

22 “(D) capital structure; and

23 “(E) joint and several liability; and

24 “(2) any other differences that the Director
25 considers appropriate.”.

1 **SEC. 1202. DIRECTORS.**

2 Section 7 of the Federal Home Loan Bank Act (12
3 U.S.C. 1427) is amended—

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

6 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-
7 Flicts OF INTEREST.—

8 “(1) IN GENERAL.—Subject to paragraphs (2)
9 through (4), the management of each Federal Home
10 Loan Bank shall be vested in a board of 13 direc-
11 tors, or such other number as the Director deter-
12 mines appropriate.

13 “(2) BOARD MAKEUP.—The board of directors
14 of each Bank shall be comprised of—

15 “(A) member directors, who shall comprise
16 at least the majority of the members of the
17 board of directors; and

18 “(B) independent directors, who shall com-
19 prise not fewer than $\frac{2}{5}$ of the members of the
20 board of directors.

21 “(3) SELECTION CRITERIA.—

22 “(A) IN GENERAL.—Each member of the
23 board of directors shall be—

24 “(i) elected by plurality vote of the
25 members, in accordance with procedures
26 established under this section; and

1 “(ii) a citizen of the United States.

2 “(B) INDEPENDENT DIRECTOR CRI-
3 TERIA.—

4 “(i) IN GENERAL.—Each independent
5 director that is not a public interest direc-
6 tor under clause (ii) shall have dem-
7 onstrated knowledge of, or experience in,
8 financial management, auditing and ac-
9 counting, risk management practices, de-
10 rivatives, project development, or organiza-
11 tional management, or such other knowl-
12 edge or expertise as the Director may pro-
13 vide by regulation.

14 “(ii) PUBLIC INTEREST.—Not fewer
15 than 2 of the independent directors shall
16 have more than 4 years of experience in
17 representing consumer or community inter-
18 ests on banking services, credit needs,
19 housing, or financial consumer protections.

20 “(iii) CONFLICTS OF INTEREST.—No
21 independent director may, during the term
22 of service on the board of directors, serve
23 as an officer of any Federal Home Loan
24 Bank or as a director, officer, or employee

1 of any member of a Bank, or of any person
2 that receives advances from a Bank.

3 “(4) DEFINITIONS.—For purposes of this sec-
4 tion, the following definitions shall apply:

5 “(A) INDEPENDENT DIRECTOR.—The
6 terms ‘independent director’ and ‘independent
7 directorship’ mean a member of the board of di-
8 rectors of a Federal Home Loan Bank who is
9 a bona fide resident of the district in which the
10 Federal Home Loan Bank is located, or the di-
11 rectorship held by such a person, respectively.

12 “(B) MEMBER DIRECTOR.—The terms
13 ‘member director’ and ‘member directorship’
14 mean a member of the board of directors of a
15 Federal Home Loan Bank who is an officer or
16 director of a member institution that is located
17 in the district in which the Federal Home Loan
18 Bank is located, or the directorship held by
19 such a person, respectively.”;

20 (2) by striking “elective” each place that term
21 appears, other than in subsections (d), (e), and (f),
22 and inserting “member”;

23 (3) in subsection (b)—

1 (A) by striking the subsection heading and
2 all that follows through “Each elective director-
3 ship” and inserting the following:

4 “(b) DIRECTORSHIPS.—

5 “(1) MEMBER DIRECTORSHIPS.—Each member
6 directorship”; and

7 (B) by adding at the end the following:

8 “(2) INDEPENDENT DIRECTORSHIPS.—

9 “(A) ELECTIONS.—Each independent di-
10 rector—

11 “(i) shall be elected by the members
12 entitled to vote, from among eligible per-
13 sons nominated, after consultation with the
14 Advisory Council of the Bank, by the
15 board of directors of the Bank; and

16 “(ii) shall be elected by a plurality of
17 the votes of the members of the Bank at
18 large, with each member having the num-
19 ber of votes for each such directorship as
20 it has under paragraph (1) in an election
21 to fill member directorships.

22 “(B) CRITERIA.—Nominees shall meet all
23 applicable requirements prescribed in this sec-
24 tion.

1 “(C) NOMINATION AND ELECTION PROCE-
2 DURES.—Procedures for nomination and elec-
3 tion of independent directors shall be prescribed
4 by the bylaws of each Federal Home Loan
5 Bank, in a manner consistent with the rules
6 and regulations of the Agency.”;

7 (4) in subsection (c)—

8 (A) by striking “elective” each place that
9 term appears and inserting “member”, ex-
10 cept—

11 (i) in the second sentence, the second
12 place that term appears; and

13 (ii) each place that term appears in
14 the fifth sentence; and

15 (B) in the second sentence—

16 (i) by inserting “(A) except as pro-
17 vided in clause (B) of this sentence,” be-
18 fore “if at any time”; and

19 (ii) by inserting before the period at
20 the end the following: “, and (B) clause
21 (A) of this sentence shall not apply to the
22 directorships of any Federal Home Loan
23 Bank resulting from the merger of any 2
24 or more such Banks”;

25 (5) in subsection (d)—

1 (A) in the first sentence—

2 (i) by striking “, whether elected or
3 appointed,”; and

4 (ii) by striking “3 years” and insert-
5 ing “4 years”;

6 (B) in the second sentence—

7 (i) by striking “Federal Home Loan
8 Bank System Modernization Act of 1999”
9 and inserting “Federal Housing Finance
10 Regulatory Reform Act of 2008”;

11 (ii) by striking “ $\frac{1}{3}$ ” and inserting
12 “ $\frac{1}{4}$ ”; and

13 (iii) by striking “or appointed”; and

14 (C) in the third sentence—

15 (i) by striking “an elective” each place
16 that term appears and inserting “a”; and

17 (ii) by striking “in any elective direc-
18 torship or elective directorships”;

19 (6) in subsection (f)—

20 (A) by striking paragraph (2);

21 (B) by striking “appointed or” each place
22 that term appears; and

23 (C) in paragraph (3)—

1 (i) by striking “(3) ELECTED BANK
2 DIRECTORS.—” and inserting “(2) ELEC-
3 TION PROCESS.—”; and

4 (ii) by striking “elective” each place
5 that term appears;

6 (7) 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 insert-
11 ing the following:

12 “(2) ANNUAL REPORT.—The Director shall in-
13 clude, in the annual report submitted to the Con-
14 gress pursuant to section 1319B of the Federal
15 Housing Enterprises Financial Safety and Sound-
16 ness Act of 1992, information regarding the com-
17 pensation and expenses paid by the Federal Home
18 Loan Banks to the directors on the boards of direc-
19 tors of the Banks.”; and

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

21 “(1) TRANSITION RULE.—Any member of the board
22 of directors of a Bank elected or appointed in accordance
23 with this section prior to the date of enactment of this
24 subsection may continue to serve as a member of that

1 board of directors for the remainder of the existing term
2 of service.”.

3 **SEC. 1203. DEFINITIONS.**

4 Section 2 of the Federal Home Loan Bank Act (12
5 U.S.C. 1422) is amended—

6 (1) by striking paragraphs (1), (10), and (11);

7 (2) by redesignating paragraphs (2) through
8 (9) as paragraphs (1) through (8), respectively;

9 (3) by redesignating paragraphs (12) and (13)
10 as paragraphs (9) and (10), respectively; and

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

12 “(11) DIRECTOR.—The term ‘Director’ means
13 the Director of the Federal Housing Finance Agen-
14 cy.

15 “(12) AGENCY.—The term ‘Agency’ means the
16 Federal Housing Finance Agency, established under
17 section 1311 of the Federal Housing Enterprises Fi-
18 nancial Safety and Soundness Act of 1992.”.

19 **SEC. 1204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**
20 **BANKS.**

21 The Federal Home Loan Bank Act (12 U.S.C. 1421
22 et seq.), other than in provisions of that Act added or
23 amended otherwise by this Act, is amended—

24 (1) by striking sections 2A and 2B (12 U.S.C.
25 1422a, 1422b);

1 (2) by striking section 18 (12 U.S.C. 1438) and
2 inserting the following:

3 **“SEC. 18. ADMINISTRATIVE PROVISIONS.**

4 “(a) ACQUISITION AUTHORITY.—The Director of the
5 Office of Thrift Supervision, utilizing the services of the
6 Administrator of General Services (hereinafter referred to
7 as the ‘Administrator’), and subject to any limitation here-
8 on which may hereafter be imposed in appropriation Acts,
9 is hereby authorized—

10 “(1) to acquire, in the name of the United
11 States, real property in the District of Columbia, for
12 the purposes set forth in this section;

13 “(2) to construct, develop, furnish, and equip
14 such buildings thereon and such facilities as in its
15 judgment may be appropriate to provide, to such ex-
16 tent as the Director of the Office of Thrift Super-
17 vision may deem advisable, suitable and adequate
18 quarters and facilities for the Director of the Office
19 of Thrift Supervision and the agencies under its ad-
20 ministration or supervision;

21 “(3) to enlarge, remodel, or reconstruct any of
22 the same; and

23 “(4) to make or enter into contracts for any of
24 the foregoing.

1 “(b) ADVANCES.—The Director of the Office of
2 Thrift Supervision may require of the respective banks,
3 and they shall make to the Director of the Office of Thrift
4 Supervision, such advances of funds for the purposes set
5 out in subsection (a) as in the sole judgment of the Direc-
6 tor of the Office of Thrift Supervision may from time to
7 time be advisable. Such advances shall be apportioned by
8 the Director of the Office of Thrift Supervision among the
9 banks in proportion to the total assets of the respective
10 banks, determined in such manner and as of such times
11 as the Director of the Office of Thrift Supervision may
12 prescribe. Each such advance shall bear interest at the
13 rate of 4 ½ per centum per annum from the date of the
14 advance and shall be repaid by the Director of the Office
15 of Thrift Supervision in such installments and over such
16 period, not longer than twenty-five years from the making
17 of the advance, as the Director of the Office of Thrift Su-
18 pervision may determine. Payments of interest and prin-
19 cipal upon such advances shall be made from receipts of
20 the Director of the Office of Thrift Supervision or from
21 other sources which may from time to time be available
22 to the Director of the Office of Thrift Supervision. The
23 obligation of the Director of the Office of Thrift Super-
24 vision to make any such payment shall not be regarded
25 as an obligation of the United States. To such extent as

1 the Director of the Office of Thrift Supervision may pre-
2 scribe any such obligation shall be regarded as a legal in-
3 vestment for the purposes of subsections (g) and (h) of
4 section 11 and for the purposes of section 16.

5 “(c) PLANS AND DESIGNS.—The plans and designs
6 for such buildings and facilities and for any such enlarge-
7 ment, remodeling, or reconstruction shall, to such extent
8 as the chairperson of the Director of the Office of Thrift
9 Supervision may request, be subject to the approval of the
10 Director.

11 “(d) CUSTODY, MANAGEMENT AND CONTROL.—
12 Upon the making of arrangements mutually agreeable to
13 the Director of the Office of Thrift Supervision and the
14 Administrator, which arrangements may be modified from
15 time to time by mutual agreement between them and may
16 include but shall not be limited to the making of payments
17 by the Director of the Office of Thrift Supervision and
18 such agencies to the Administrator and by the Adminis-
19 trator to the Director of the Office of Thrift Supervision,
20 the custody, management, and control of such buildings
21 and facilities and of such real property shall be vested in
22 the Administrator in accordance therewith. Until the mak-
23 ing of such arrangements, such custody, management, and
24 control, including the assignment and allotment and the
25 reassignment and reallocation of building and other space,

1 shall be vested in the Director of the Office of Thrift Su-
2 pervision.

3 “(e) PROCEEDS.—Any proceeds (including advances)
4 received by the Director of the Office of Thrift Supervision
5 in connection with this subsection, and any proceeds from
6 the sale or other disposition of real or other property ac-
7 quired by the Director of the Office of Thrift Supervision
8 under this section, shall be considered as receipts of the
9 Director of the Office of Thrift Supervision, and obliga-
10 tions and expenditures of the Director of the Office of
11 Thrift Supervision and such agencies in connection with
12 this section shall not be considered as administrative ex-
13 penses. As used in this section, the term ‘property’ shall
14 include interests in property.

15 “(f) BUDGET PROGRAM.—

16 “(1) IN GENERAL.—With respect to its func-
17 tions under this section, the Director of the Office
18 of Thrift Supervision shall—

19 “(A) annually prepare and submit a budg-
20 et program as provided in title I of the Govern-
21 ment Corporation Control Act with regard to
22 wholly owned Government corporations, and for
23 purposes of this paragraph, the terms ‘wholly
24 owned Government corporations’ and ‘Govern-
25 ment corporations’, wherever used in such title,

1 shall include the Director of the Office of Thrift
2 Supervision; and

3 “(B) maintain an integral set of accounts
4 which shall be audited by the General Account-
5 ing Office in accordance with the principles and
6 procedures applicable to commercial corporate
7 transactions, as provided in such title, and no
8 other settlement or adjustment shall be re-
9 quired with respect to transactions under this
10 section or with respect to claims, demands, or
11 accounts by or against any person arising there-
12 under.

13 “(2) MISCELLANEOUS PROVISIONS.—The first
14 budget program shall be for the first full fiscal year
15 beginning on or after the date of enactment of this
16 subsection. Except as otherwise provided in this sec-
17 tion or by the Director of the Office of Thrift Super-
18 vision, the provisions of this section and the func-
19 tions thereby or thereunder subsisting shall be appli-
20 cable and exercisable notwithstanding and without
21 regard to the Act of June 20, 1938 (D.C. Code,
22 secs. 5-413—5-428), except that the proviso of sec-
23 tion 16 thereof shall apply to any building con-
24 structed under this section, and section 306 of the
25 Act of July 30, 1947 (61 Stat. 584), or any other

1 provision of law relating to the construction, alter-
2 ation, repair, or furnishing of public or other build-
3 ings or structures or the obtaining of sites therefor,
4 but any person or body in whom any such function
5 is vested may provide for delegation or redelegation
6 of the exercise of such function.

7 “(g) LIMITATION.—No obligation shall be incurred
8 and no expenditure, except in liquidation of obligation,
9 shall be made pursuant to paragraphs (1) and (2) of sub-
10 section (a), if the total amount of all obligations incurred
11 pursuant thereto would thereupon exceed \$13,200,000, or
12 such greater amount as may be provided in an appropria-
13 tions Act or other law.”.

14 (3) in section 11 (12 U.S.C. 1431)—

15 (A) in subsection (b)—

16 (i) in the first sentence—

17 (I) by striking “The Board” and
18 inserting “The Office of Finance, as
19 agent for the Banks,”; and

20 (II) by striking “the Board” and
21 inserting “such Office”; and

22 (ii) in the second and fourth sen-
23 tences, by striking “the Board” each place
24 such term appears and inserting “the Of-
25 fice of Finance”;

1 (B) in subsection (c)—

2 (i) by striking “the Board” the first
3 place such term appears and inserting “the
4 Office of Finance, as agent for the
5 Banks,”; and

6 (ii) by striking “the Board” the sec-
7 ond place such term appears and inserting
8 “such Office”; and

9 (C) in subsection (f)—

10 (i) by striking the 2 commas after
11 “permit” and inserting “or”; and

12 (ii) by striking the comma after “re-
13 quire”;

14 (4) in section 6 (12 U.S.C. 1426)—

15 (A) in subsection (b)(1), in the matter pre-
16 ceeding subparagraph (A), by striking “Finance
17 Board approval” and inserting “approval by the
18 Director”; and

19 (B) in each of subsections (c)(4)(B) and
20 (d)(2), by striking “Finance Board regulations”
21 each place that term appears and inserting
22 “regulations of the Director”;

23 (5) in section 10(b) (12 U.S.C. 1430(b))—

1 (A) in the subsection heading, by striking
2 “FORMAL BOARD RESOLUTION” and inserting
3 “APPROVAL OF DIRECTOR”; and

4 (B) by striking “by formal resolution”;
5 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),
6 by striking “Chairperson of the Federal Housing Fi-
7 nance Board” and inserting “Director”;

8 (7) in section 15 (12 U.S.C. 1435), by inserting
9 “or the Director” after “the Board”;

10 (8) by striking “the Board” each place that
11 term appears and inserting “the Director”;

12 (9) by striking “The Board” each place that
13 term appears and inserting “The Director”;

14 (10) by striking “the Finance Board” each
15 place that term appears and inserting “the Direc-
16 tor”;

17 (11) by striking “The Finance Board” each
18 place that term appears and inserting “The Direc-
19 tor”; and

20 (12) by striking “Federal Housing Finance
21 Board” each place that term appears and inserting
22 “Director”.

1 **SEC. 1205. HOUSING GOALS.**

2 The Federal Home Loan Bank Act (12 U.S.C. 1421
3 et seq.) is amended by inserting after section 10b the fol-
4 lowing new section:

5 **“SEC. 10C. HOUSING GOALS.**

6 “(a) IN GENERAL.—The Director shall establish
7 housing goals with respect to the purchase of mortgages,
8 if any, by the Federal Home Loan Banks. Such goals shall
9 be consistent with the goals established under sections
10 1331 through 1334 of the Federal Housing Enterprises
11 Financial Safety and Soundness Act of 1992.

12 “(b) CONSIDERATIONS.—In establishing the goals re-
13 quired by subsection (a), the Director shall consider the
14 unique mission and ownership structure of the Federal
15 Home Loan Banks.

16 “(c) TRANSITION PERIOD.—To facilitate an orderly
17 transition, the Director shall establish interim target goals
18 for purposes of this section for each of the 2 calendar
19 years following the date of enactment of this section.

20 “(d) MONITORING AND ENFORCEMENT OF GOALS.—
21 The requirements of section 1336 of the Federal Housing
22 Enterprises Safety and Soundness Act of 1992, shall
23 apply to this section, in the same manner and to the same
24 extent as that section applies to the Federal housing enter-
25 prises.

1 “(e) ANNUAL REPORT.—The Director shall annually
2 report to Congress on the performance of the Banks in
3 meeting the goals established under this section.”.

4 **SEC. 1206. COMMUNITY DEVELOPMENT FINANCIAL INSTI-**
5 **TUTIONS.**

6 Section 4(a)(1) of the Federal Home Loan Bank Act
7 (12 U.S.C. 1424(a)(1)) is amended—

8 (1) by inserting after “savings bank,” the fol-
9 lowing: “community development financial institu-
10 tion,”; and

11 (2) in subparagraph (B), by inserting after
12 “United States,” the following: “or, in the case of a
13 community development financial institution, is cer-
14 tified as a community development financial institu-
15 tion under the Community Development Banking
16 and Financial Institutions Act of 1994.”.

17 **SEC. 1207. SHARING OF INFORMATION AMONG FEDERAL**
18 **HOME LOAN BANKS.**

19 The Federal Home Loan Bank Act is amended by
20 inserting after section 20 (12 U.S.C. 1440) the following
21 new section:

22 **“SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL**
23 **HOME LOAN BANKS.**

24 “(a) INFORMATION ON FINANCIAL CONDITION.—In
25 order to enable each Federal Home Loan Bank to evaluate

1 the financial condition of one or more of the other Federal
2 Home Loan Banks individually and the Federal Home
3 Loan Bank System (including any risks associated with
4 the issuance or repayment of consolidated Federal Home
5 Loan Bank bonds and debentures or other borrowings and
6 the joint and several liabilities of the Banks incurred due
7 to such borrowings), as well as to comply with any of its
8 obligations under the Securities Exchange Act of 1934 (15
9 U.S.C. 78a et seq.), the Director shall make available to
10 the Banks such reports, records, or other information as
11 may be available, relating to the condition of any Federal
12 Home Loan Bank.

13 “(b) SHARING OF INFORMATION.—

14 “(1) IN GENERAL.—The Director shall promul-
15 gate regulations to facilitate the sharing of informa-
16 tion made available under subsection (a) directly
17 among the Federal Home Loan Banks.

18 “(2) LIMITATION.—Notwithstanding paragraph
19 (1), a Federal Home Loan Bank responding to a re-
20 quest from another Bank or from the Director for
21 information pursuant to this section may request
22 that the Director determine that such information is
23 proprietary and that the public interest requires that
24 such information not be shared.

1 “(c) LIMITATION.—Nothing in this section shall af-
2 fect the obligations of any Federal Home Loan Bank
3 under the Securities Exchange Act of 1934 (15 U.S.C.
4 78a et seq.) or the regulations issued by the Securities
5 and Exchange Commission thereunder.”.

6 **SEC. 1208. EXCLUSION FROM CERTAIN REQUIREMENTS.**

7 (a) IN GENERAL.—The Federal Home Loan Banks
8 shall be exempt from compliance with—

9 (1) sections 13(e), 14(a), and 14(c) of the Se-
10 curities Exchange Act of 1934, and related Commis-
11 sion regulations;

12 (2) section 15 of the Securities Exchange Act
13 of 1934, and related Commission regulations, with
14 respect to transactions in the capital stock of a Fed-
15 eral Home Loan Bank;

16 (3) section 17A of the Securities Exchange Act
17 of 1934, and related Commission regulations, with
18 respect to the transfer of the securities of a Federal
19 Home Loan Bank; and

20 (4) the Trust Indenture Act of 1939.

21 (b) MEMBER EXEMPTION.—The members of the
22 Federal Home Loan Bank System shall be exempt from
23 compliance with sections 13(d), 13(f), 13(g), 14(d), and
24 16 of the Securities Exchange Act of 1934, and related
25 Commission regulations, with respect to ownership of or

1 transactions in the capital stock of the Federal Home
2 Loan Banks by such members.

3 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

4 (1) CAPITAL STOCK.—The capital stock issued
5 by each of the Federal Home Loan Banks under
6 section 6 of the Federal Home Loan Bank Act are—

7 (A) exempted securities, within the mean-
8 ing of section 3(a)(2) of the Securities Act of
9 1933; and

10 (B) exempted securities, within the mean-
11 ing of section 3(a)(12)(A) of the Securities Ex-
12 change Act of 1934, except to the extent pro-
13 vided in section 38 of that Act.

14 (2) OTHER OBLIGATIONS.—The debentures,
15 bonds, and other obligations issued under section 11
16 of the Federal Home Loan Bank Act (12 U.S.C.
17 1431) are—

18 (A) exempted securities, within the mean-
19 ing of section 3(a)(2) of the Securities Act of
20 1933;

21 (B) government securities, within the
22 meaning of section 3(a)(42) of the Securities
23 Exchange Act of 1934; and

1 (C) government securities, within the
2 meaning of section 2(a)(16) of the Investment
3 Company Act of 1940.

4 (3) BROKERS AND DEALERS.—A person (other
5 than a Federal Home Loan Bank effecting trans-
6 actions for members of the Federal Home Loan
7 Bank System) that effects transactions in the capital
8 stock or other obligations of a Federal Home Loan
9 Bank, for the account of others or for that person’s
10 own account, as applicable, is a broker or dealer, as
11 those terms are defined in paragraphs (4) and (5),
12 respectively, of section 3(a) of the Securities Ex-
13 change Act of 1934, but is excluded from the defini-
14 tion of—

15 (A) the term “government securities
16 broker” under section 3(a)(43) of the Securities
17 Exchange Act of 1934; and

18 (B) the term “government securities deal-
19 er” under section 3(a)(44) of the Securities Ex-
20 change Act of 1934.

21 (d) EXEMPTION FROM REPORTING REQUIRE-
22 MENTS.—The Federal Home Loan Banks shall be exempt
23 from periodic reporting requirements under the securities
24 laws pertaining to the disclosure of—

1 (1) related party transactions that occur in the
2 ordinary course of the business of the Banks with
3 members; and

4 (2) the unregistered sales of equity securities.

5 (e) TENDER OFFERS.—Commission rules relating to
6 tender offers shall not apply in connection with trans-
7 actions in the capital stock of the Federal Home Loan
8 Banks.

9 (f) REGULATIONS.—

10 (1) IN GENERAL.—The Commission shall pro-
11 mulgate such rules and regulations as may be nec-
12 essary or appropriate in the public interest or in fur-
13 therance of this section and the exemptions provided
14 in this section.

15 (2) CONSIDERATIONS.—In issuing regulations
16 under this section, the Commission shall consider
17 the distinctive characteristics of the Federal Home
18 Loan Banks when evaluating—

19 (A) the accounting treatment with respect
20 to the payment to the Resolution Funding Cor-
21 poration;

22 (B) the role of the combined financial
23 statements of the Federal Home Loan Banks;

24 (C) the accounting classification of redeem-
25 able capital stock; and

1 (D) the accounting treatment related to
2 the joint and several nature of the obligations
3 of the Banks.

4 (g) DEFINITIONS.—As used in this section—

5 (1) the terms “Bank”, “Federal Home Loan
6 Bank”, “member”, and “Federal Home Loan Bank
7 System” have the same meanings as in section 2 of
8 the Federal Home Loan Bank Act (12 U.S.C.
9 1422);

10 (2) the term “Commission” means the Securi-
11 ties and Exchange Commission; and

12 (3) the term “securities laws” has the same
13 meaning as in section 3(a)(47) of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78c(a)(47)).

15 **SEC. 1209. VOLUNTARY MERGERS.**

16 Section 26 of the Federal Home Loan Bank Act (12
17 U.S.C. 1446) is amended—

18 (1) by striking “Whenever” and inserting “(a)
19 IN GENERAL.—Whenever”; and

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

21 “(b) VOLUNTARY MERGERS AUTHORIZED.—

22 “(1) IN GENERAL.—Any Federal Home Loan
23 Bank may, with the approval of the Director and of
24 the boards of directors of the Banks involved, merge
25 with another Bank.

1 “(2) REGULATIONS REQUIRED.—The Director
2 shall promulgate regulations establishing the condi-
3 tions and procedures for the consideration and ap-
4 proval of any voluntary merger described in para-
5 graph (1), including the procedures for Bank mem-
6 ber approval.”.

7 **SEC. 1210. AUTHORITY TO REDUCE DISTRICTS.**

8 Section 3 of the Federal Home Loan Bank Act (12
9 U.S.C. 1423) is amended—

10 (1) by striking “As soon” and inserting “(a) IN
11 GENERAL.—As soon”; and

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

13 “(b) AUTHORITY TO REDUCE DISTRICTS.—Notwith-
14 standing subsection (a), the number of districts may be
15 reduced to a number less than 8—

16 “(1) pursuant to a voluntary merger between
17 Banks, as approved pursuant to section 26(b); or

18 “(2) pursuant to a decision by the Director to
19 liquidate a Bank pursuant to section 1367 of the
20 Federal Housing Enterprises Financial Safety and
21 Soundness Act of 1992.”.

22 **SEC. 1211. COMMUNITY FINANCIAL INSTITUTION MEM-**
23 **BERS.**

24 (a) TOTAL ASSET REQUIREMENT.—Paragraph (10)
25 of section 2 of the Federal Home Loan Bank Act (12

1 U.S.C. 1422(10)), as so redesignated by section 201(3)
2 of this Act, is amended by striking “\$500,000,000” each
3 place such term appears and inserting “\$1,000,000,000”.

4 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-
5 MENT ACTIVITIES.—Section 10(a) of the Federal Home
6 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

7 (1) in paragraph (2)(B)—

8 (A) by striking “and”; and

9 (B) by inserting “, and community devel-
10 opment activities” before the period at the end;

11 (2) in paragraph (3)(E), by inserting “or com-
12 munity development activities” after “agriculture,”;
13 and

14 (3) in paragraph (6)—

15 (A) by striking “and”; and

16 (B) by inserting “, and ‘community devel-
17 opment activities’” before “shall”.

18 **SEC. 1212. PUBLIC USE DATA BASE; REPORTS TO CON-**
19 **GRESS.**

20 Section 10 of the Federal Home Loan Bank Act (12
21 U.S.C. 1430) is amended—

22 (1) in subsection (j)(12)—

23 (A) by striking subparagraph (C) and in-
24 serting the following:

1 “(C) REPORTS.—The Director shall annu-
2 ally report to the Committee on Banking, Hous-
3 ing, and Urban Affairs of the Senate and the
4 Committee on Financial Services of the House
5 of Representatives on the collateral pledged to
6 the Banks, including an analysis of collateral by
7 type and by Bank district.”; and

8 (B) by adding at the end the following:

9 “(D) SUBMISSION TO CONGRESS.—The Di-
10 rector shall submit the reports under subpara-
11 graphs (A) and (C) to the Committee on Bank-
12 ing, Housing, and Urban Affairs of the Senate
13 and the Committee on Financial Services of the
14 House of Representatives, not later than 180
15 days after the date of enactment of the Federal
16 Housing Finance Regulatory Reform Act of
17 2008.”; and

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

19 “(k) PUBLIC USE DATABASE.—

20 “(1) DATA.—Each Federal Home Loan Bank
21 shall provide to the Director, in a form determined
22 by the Director, census tract level data relating to
23 mortgages purchased, if any, including—

24 “(A) data consistent with that reported
25 under section 1323 of the Federal Housing En-

1 terprises Financial Safety and Soundness Act
2 of 1992;

3 “(B) data elements required to be reported
4 under the Home Mortgage Disclosure Act of
5 1975; and

6 “(C) any other data elements that the Di-
7 rector considers appropriate.

8 “(2) PUBLIC USE DATABASE.—

9 “(A) IN GENERAL.—The Director shall
10 make available to the public, in a form that is
11 useful to the public (including forms accessible
12 electronically), and to the extent practicable,
13 the data provided to the Director under para-
14 graph (1).

15 “(B) PROPRIETARY INFORMATION.—Not
16 withstanding subparagraph (A), the Director
17 may not provide public access to, or disclose to
18 the public, any information required to be sub-
19 mitted under this subsection that the Director
20 determines is proprietary or that would provide
21 personally identifiable information and that is
22 not otherwise publicly accessible through other
23 forms, unless the Director determines that it is
24 in the public interest to provide such informa-
25 tion.”.

1 **SEC. 1213. SEMIANNUAL REPORTS.**

2 Section 21B of the Federal Home Loan Bank Act
3 is amended in subsection (f)(2)(C), by adding at the end
4 the following:

5 “(v) SEMIANNUAL REPORTS.—The
6 Director shall report semiannually to the
7 Committee on Banking, Housing, and
8 Urban Affairs of the Senate and the Com-
9 mittee on Financial Services of the House
10 of Representatives on the projected date
11 for the completion of contributions re-
12 quired by this section.”.

13 **SEC. 1214. LIQUIDATION OR REORGANIZATION OF A FED-**
14 **ERAL HOME LOAN BANK.**

15 Section 26 of the Federal Home Loan Bank Act (12
16 U.S.C. 1446) is amended by adding at the end the fol-
17 lowing: “At least 30 days prior to liquidating or reorga-
18 nizing any Bank under this section, the Director shall no-
19 tify the Bank of its determination and the facts and cir-
20 cumstances upon which such determination is based. The
21 Bank may contest that determination in a hearing before
22 the Director, in which all issues shall be determined on
23 the record pursuant to section 554 of title 5, United
24 States Code.”.

1 **SEC. 1215. STUDY AND REPORT TO CONGRESS ON**
2 **SECURITIZATION OF ACQUIRED MEMBER AS-**
3 **SETS.**

4 (a) **STUDY.**—The Director shall conduct a study on
5 securitization of home mortgage loans purchased or to be
6 purchased from member financial institutions under the
7 Acquired Member Assets programs. In conducting the
8 study, the Director shall establish a process for the formal
9 submission of comments.

10 (b) **ELEMENTS.**—The study shall encompass—

11 (1) the benefits and risks associated with
12 securitization of Acquired Member Assets;

13 (2) the potential impact of securitization upon
14 liquidity in the mortgage and broader credit mar-
15 kets;

16 (3) the ability of the Federal Home Loan Bank
17 or Banks in question to manage the risks associated
18 with such a program;

19 (4) the impact of such a program on the exist-
20 ing activities of the Banks, including their mortgage
21 portfolios and advances; and

22 (5) the joint and several liability of the Banks
23 and the cooperative structure of the Federal Home
24 Loan Bank System.

25 (c) **CONSULTATIONS.**—In conducting the study under
26 this section, the Director shall consult with the Federal

1 Home Loan Banks, the Banks' fiscal agent, representa-
2 tives of the mortgage lending industry, practitioners in the
3 structured finance field, and other experts as needed.

4 (d) REPORT.—Not later than 1 year after the date
5 of enactment of this Act, the Director shall submit a re-
6 port to Congress on the results of the study conducted
7 under subsection (a), including policy recommendations
8 based on the analysis of the Director of the feasibility of
9 mortgage-backed securities issuance by a Federal Home
10 Loan Bank or Banks and the risks and benefits associated
11 with such program or programs.

12 (e) DEFINITIONS.—As used in this section, the terms
13 “member”, “Bank”, and “Federal Home Loan Bank”
14 have the same meanings as in section 2 of the Federal
15 Home Loan Bank Act (12 U.S.C. 1422).

16 **SEC. 1216. TECHNICAL AND CONFORMING AMENDMENTS.**

17 (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—
18 Section 1113(o) of the Right to Financial Privacy Act of
19 1978 (12 U.S.C. 3413(o)) is amended—

20 (1) by striking “Federal Housing Finance
21 Board” and inserting “Federal Housing Finance
22 Agency”; and

23 (2) by striking “Federal Housing Finance
24 Board’s” and inserting “Federal Housing Finance
25 Agency’s”.

1 (b) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
2 LATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of
3 the Riegle Community Development and Regulatory Im-
4 provement Act of 1994 (12 U.S.C. 4716(e)) is amended
5 by striking “Federal Housing Finance Board” and insert-
6 ing “Federal Housing Finance Agency”.

7 (c) TITLE 18, UNITED STATES CODE.—Title 18,
8 United States Code, is amended by striking “Federal
9 Housing Finance Board” each place such term appears
10 in each of sections 212, 657, 1006, and 1014, and insert-
11 ing “Federal Housing Finance Agency”.

12 (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the
13 Multifamily Assisted Housing Reform and Affordability
14 Act of 1997 (42 U.S.C. 1437f note) is amended by strik-
15 ing “Federal Housing Finance Board” and inserting
16 “Federal Housing Finance Agency”.

17 (e) TITLE 44, UNITED STATES CODE.—Section
18 3502(5) of title 44, United States Code, is amended by
19 striking “Federal Housing Finance Board” and inserting
20 “Federal Housing Finance Agency”.

21 (f) ACCESS TO LOCAL TV ACT OF 2000.—Section
22 1004(d)(2)(D)(iii) of the Launching Our Communities’
23 Access to Local Television Act of 2000 (47 U.S.C.
24 1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-
25 eral Housing Enterprise Oversight, the Federal Housing

1 Finance Board” and inserting “Federal Housing Finance
2 Agency”.

3 (g) FIRREA.—Section 1216 of the Financial Institu-
4 tions Reform, Recovery, and Enhancement Act of 1989
5 (12 U.S.C. 1833e) is amended—

6 (1) in subsection (a), by striking paragraph (3)
7 and inserting the following:

8 “(3) the Federal Housing Finance Agency;”;

9 (2) in subsection (b), by striking “Federal Na-
10 tional Mortgage Association” and inserting “Federal
11 Home Loan Banks, the Federal National Mortgage
12 Association,”; and

13 (3) in subsection (c), by striking “Finance
14 Board” and inserting “Finance Agency”.

15 **SEC. 1217. STUDY ON FEDERAL HOME LOAN BANK AD-**
16 **VANCES.**

17 (a) IN GENERAL.—Not later than 1 year after the
18 date of enactment of this Act, the Director shall conduct
19 a study and submit a report to the Committee on Banking,
20 Housing, and Urban Affairs of the Senate and the Com-
21 mittee on Financial Services of the House or Representa-
22 tives on the extent to which loans and securities used as
23 collateral to support Federal Home Loan Bank advances
24 are consistent with the interagency guidance on nontradi-
25 tional mortgage products.

1 (b) REQUIRED CONTENT.—The study required under
2 subsection (a) shall—

3 (1) consider and recommend any additional reg-
4 ulations, guidance, advisory bulletins, or other ad-
5 ministrative actions necessary to ensure that the
6 Federal Home Loan Banks are not supporting loans
7 with predatory characteristics; and

8 (2) include an opportunity for the public to
9 comment on any recommendations made under para-
10 graph (1).

11 **SEC. 1218. FEDERAL HOME LOAN BANK REFINANCING AU-**
12 **THORITY FOR CERTAIN RESIDENTIAL MORT-**
13 **GAGE LOANS.**

14 Section 10(j)(2) of the Federal Home Loan Bank Act
15 (12 U.S.C. 1430(j)(2)) is amended—

16 (1) in subparagraph (A), by striking “or” at
17 the end;

18 (2) in subparagraph (B), by striking the period
19 at the end and inserting “; or”; and

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

21 “(C) during the 2-year period beginning on
22 the date of enactment of this subparagraph, re-
23 finance loans that are secured by a first mort-
24 gage on a primary residence of any family hav-

1 ing an income at or below 80 percent of the me-
2 dian income for the area.”.

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. 1301. ABOLISHMENT OF OFHEO.**

10 (a) IN GENERAL.—Effective at the end of the 1-year
11 period beginning on the date of enactment of this Act, the
12 Office of Federal Housing Enterprise Oversight of the De-
13 partment of Housing and Urban Development and the po-
14 sitions of the Director and Deputy Director of such Office
15 are abolished.

16 (b) DISPOSITION OF AFFAIRS.—During the 1-year
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 1303; 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 an em-
8 ployee of an agency of the United States for purposes of
9 any other provision of law before the effective date of the
10 transfer of any such employee under section 1303.

11 (d) USE OF PROPERTY AND SERVICES.—

12 (1) PROPERTY.—The Director may use the
13 property of the Office of Federal Housing Enter-
14 prise Oversight to perform functions which have
15 been transferred to the Director for such time as is
16 reasonable to facilitate the orderly transfer of func-
17 tions transferred under any other provision of this
18 Act or any amendment made by this Act to any
19 other provision of law.

20 (2) AGENCY SERVICES.—Any agency, depart-
21 ment, or other instrumentality of the United States,
22 and any successor to any such agency, department,
23 or instrumentality, which was providing supporting
24 services to the Office of Federal Housing Enterprise
25 Oversight before the expiration of the period under

1 subsection (a) in connection with functions that are
2 transferred to the Director shall—

3 (A) continue to provide such services, on a
4 reimbursable basis, until the transfer of such
5 functions is complete; and

6 (B) consult with any such agency to co-
7 ordinate and facilitate a prompt and reasonable
8 transition.

9 (e) CONTINUATION OF SERVICES.—The Director may
10 use the services of employees and other personnel of the
11 Office of Federal Housing Enterprise Oversight, on a re-
12 imburseable basis, to perform functions which have been
13 transferred to the Director for such time as is reasonable
14 to facilitate the orderly transfer of functions pursuant to
15 any other provision of this Act or any amendment made
16 by this Act to any other provision of law.

17 (f) SAVINGS PROVISIONS.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Subsection (a) shall not af-
20 fect the validity of any right, duty, or obligation of
21 the United States, the Director of the Office of Fed-
22 eral Housing Enterprise Oversight, or any other per-
23 son, which—

24 (A) arises under—

1 (i) the Federal Housing Enterprises
2 Financial Safety and Soundness Act of
3 1992;

4 (ii) the Federal National Mortgage
5 Association Charter Act;

6 (iii) the Federal Home Loan Mort-
7 gage Corporation Act; or

8 (iv) any other provision of law appli-
9 cable with respect to such Office; and

10 (B) existed on the day before the date of
11 abolishment under subsection (a).

12 (2) CONTINUATION OF SUITS.—No action or
13 other proceeding commenced by or against the Di-
14 rector of the Office of Federal Housing Enterprise
15 Oversight in connection with functions that are
16 transferred to the Director of the Federal Housing
17 Finance Agency shall abate by reason of the enact-
18 ment of this Act, except that the Director of the
19 Federal Housing Finance Agency shall be sub-
20 stituted for the Director of the Office of Federal
21 Housing Enterprise Oversight as a party to any
22 such action or proceeding.

1 **SEC. 1302. CONTINUATION AND COORDINATION OF CER-**
2 **TAIN REGULATIONS.**

3 (a) IN GENERAL.—All regulations, orders, and deter-
4 minations described in subsection (b) shall remain in ef-
5 fect according to the terms of such regulations, orders,
6 and determinations, and shall be enforceable by or against
7 the Director or the Secretary of Housing and Urban De-
8 velopment, as the case may be, until modified, terminated,
9 set aside, or superseded in accordance with applicable law
10 by the Director or the Secretary, as the case may be, any
11 court of competent jurisdiction, or operation of law.

12 (b) APPLICABILITY.—A regulation, order, or deter-
13 mination is described in this subsection if it—

14 (1) was issued, made, prescribed, or allowed to
15 become effective by—

16 (A) the Office of Federal Housing Enter-
17 prise Oversight;

18 (B) the Secretary of Housing and Urban
19 Development, and relates to the authority of
20 the Secretary under—

21 (i) the Federal Housing Enterprises
22 Financial Safety and Soundness Act of
23 1992;

24 (ii) the Federal National Mortgage
25 Association Charter Act, with respect to

1 the Federal National Mortgage Associa-
2 tion; or

3 (iii) the Federal Home Loan Mort-
4 gage Corporation Act, with respect to the
5 Federal Home Loan Mortgage Corpora-
6 tion; or

7 (C) a court of competent jurisdiction, and
8 relates to functions transferred by this Act; and

9 (2) is in effect on the effective date of the abol-
10 ishment under section 1301(a).

11 **SEC. 1303. TRANSFER AND RIGHTS OF EMPLOYEES OF**
12 **OFHEO.**

13 (a) TRANSFER.—Each employee of the Office of Fed-
14 eral Housing Enterprise Oversight shall be transferred to
15 the Agency for employment, not later than the effective
16 date of the abolishment under section 1301(a), and such
17 transfer shall be deemed a transfer of function for pur-
18 poses of section 3503 of title 5, United States Code.

19 (b) GUARANTEED POSITIONS.—

20 (1) IN GENERAL.—Each employee transferred
21 under subsection (a) shall be guaranteed a position
22 with the same status, tenure, grade, and pay as that
23 held on the day immediately preceding the transfer.

24 (2) NO INVOLUNTARY SEPARATION OR REDUC-
25 TION.—An employee transferred under subsection

1 (a) holding a permanent position on the day imme-
2 diately preceding the transfer may not be involun-
3 tarily separated or reduced in grade or compensation
4 during the 12-month period beginning on the date of
5 transfer, except for cause, or, in the case of a tem-
6 porary employee, separated in accordance with the
7 terms of the appointment of the employee.

8 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND
9 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

10 (1) IN GENERAL.—In the case of an employee
11 occupying a position in the excepted service or the
12 Senior Executive Service, any appointment authority
13 established under law or by regulations of the Office
14 of Personnel Management for filling such position
15 shall be transferred, subject to paragraph (2).

16 (2) DECLINE OF TRANSFER.—The Director
17 may decline a transfer of authority under paragraph
18 (1) to the extent that such authority relates to—

19 (A) a position excepted from the competi-
20 tive service because of its confidential, policy-
21 making, policy-determining, or policy-advocating
22 character; or

23 (B) a noncareer position in the Senior Ex-
24 ecutive Service (within the meaning of section
25 3132(a)(7) of title 5, United States Code).

1 (d) REORGANIZATION.—If the Director determines,
2 after the end of the 1-year period beginning on the effec-
3 tive date of the abolishment under section 1301(a), that
4 a reorganization of the combined workforce is required,
5 that reorganization shall be deemed a major reorganiza-
6 tion for purposes of affording affected employee retire-
7 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
8 5, United States Code.

9 (e) EMPLOYEE BENEFIT PROGRAMS.—

10 (1) IN GENERAL.—Any employee of the Office
11 of Federal Housing Enterprise Oversight accepting
12 employment with the Agency as a result of a trans-
13 fer under subsection (a) may retain, for 12 months
14 after the date on which such transfer occurs, mem-
15 bership in any employee benefit program of the
16 Agency or the Office of Federal Housing Enterprise
17 Oversight of the Department of Housing and Urban
18 Development, as applicable, including insurance, to
19 which such employee belongs on the date of the abol-
20 ishment under section 1301(a), if—

21 (A) the employee does not elect to give up
22 the benefit or membership in the program; and

23 (B) the benefit or program is continued by
24 the Director of the Federal Housing Finance
25 Agency.

1 (2) COST DIFFERENTIAL.—

2 (A) IN GENERAL.—The difference in the
3 costs between the benefits which would have
4 been provided by the Office of Federal Housing
5 Enterprise Oversight and those provided by this
6 section shall be paid by the Director.

7 (B) HEALTH INSURANCE.—If any em-
8 ployee elects to give up membership in a health
9 insurance program or the health insurance pro-
10 gram is not continued by the Director, the em-
11 ployee shall be permitted to select an alternate
12 Federal health insurance program not later
13 than 30 days after the date of such election or
14 notice, without regard to any other regularly
15 scheduled open season.

16 **SEC. 1304. TRANSFER OF PROPERTY AND FACILITIES.**

17 Upon the effective date of its abolishment under sec-
18 tion 1301(a), all property of the Office of Federal Housing
19 Enterprise Oversight shall transfer to the Agency.

20 **Subtitle B—Federal Housing**
21 **Finance Board**

22 **SEC. 1311. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
23 **NANCE BOARD.**

24 (a) IN GENERAL.—Effective at the end of the 1-year
25 period beginning on the date of enactment of this Act, the

1 Federal Housing Finance Board (in this subtitle referred
2 to as the “Board”) is abolished.

3 (b) DISPOSITION OF AFFAIRS.—During the 1-year
4 period beginning on the date of enactment of this Act, the
5 Board, solely for the purpose of winding up the affairs
6 of the Board—

7 (1) shall manage the employees of the Board
8 and provide for the payment of the compensation
9 and benefits of any such employee which accrue be-
10 fore the effective date of the transfer of such em-
11 ployee under section 1313; and

12 (2) may take any other action necessary for the
13 purpose of winding up the affairs of the Board.

14 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—
15 The amendments made by titles I and II and the abolish-
16 ment of the Board under subsection (a) may not be con-
17 strued to affect the status of any employee of the Board
18 as an employee of an agency of the United States for pur-
19 poses of any other provision of law before the effective
20 date of the transfer of any such employee under section
21 1313.

22 (d) USE OF PROPERTY AND SERVICES.—

23 (1) PROPERTY.—The Director may use the
24 property of the Board to perform functions which
25 have been transferred to the Director, for such time

1 as is reasonable to facilitate the orderly transfer of
2 functions transferred under any other provision of
3 this Act or any amendment made by this Act to any
4 other provision of law.

5 (2) AGENCY SERVICES.—Any agency, depart-
6 ment, or other instrumentality of the United States,
7 and any successor to any such agency, department,
8 or instrumentality, which was providing supporting
9 services to the Board before the expiration of the 1-
10 year period under subsection (a) in connection with
11 functions that are transferred to the Director
12 shall—

13 (A) continue to provide such services, on a
14 reimbursable basis, until the transfer of such
15 functions is complete; and

16 (B) consult with any such agency to co-
17 ordinate and facilitate a prompt and reasonable
18 transition.

19 (e) CONTINUATION OF SERVICES.—The Director may
20 use the services of employees and other personnel of the
21 Board, on a reimbursable basis, to perform functions
22 which have been transferred to the Director for such time
23 as is reasonable to facilitate the orderly transfer of func-
24 tions pursuant to any other provision of this Act or any

1 amendment made by this Act to any other provision of
2 law.

3 (f) SAVINGS PROVISIONS.—

4 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
5 TIONS NOT AFFECTED.—Subsection (a) shall not af-
6 fect the validity of any right, duty, or obligation of
7 the United States, a member of the Board, or any
8 other person, which—

9 (A) arises under the Federal Home Loan
10 Bank Act, or any other provision of law applica-
11 ble with respect to the Board; and

12 (B) existed on the day before the effective
13 date of the abolishment under subsection (a).

14 (2) CONTINUATION OF SUITS.—No action or
15 other proceeding commenced by or against the
16 Board in connection with functions that are trans-
17 ferred under this Act to the Director shall abate by
18 reason of the enactment of this Act, except that the
19 Director shall be substituted for the Board or any
20 member thereof as a party to any such action or
21 proceeding.

22 **SEC. 1312. CONTINUATION AND COORDINATION OF CER-**
23 **TAIN ACTIONS.**

24 (a) IN GENERAL.—All regulations, orders, deter-
25 minations, and resolutions described under subsection (b)

1 shall remain in effect according to the terms of such regu-
2 lations, orders, determinations, and resolutions, and shall
3 be enforceable by or against the Director until modified,
4 terminated, set aside, or superseded in accordance with
5 applicable law by the Director, any court of competent ju-
6 risdiction, or operation of law.

7 (b) APPLICABILITY.—A regulation, order, determina-
8 tion, or resolution is described under this subsection if it—

9 (1) was issued, made, prescribed, or allowed to
10 become effective by—

11 (A) the Board; or

12 (B) a court of competent jurisdiction, and
13 relates to functions transferred by this Act; and

14 (2) is in effect on the effective date of the abol-
15 ishment under section 1311(a).

16 **SEC. 1313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
17 **FEDERAL HOUSING FINANCE BOARD.**

18 (a) TRANSFER.—Each employee of the Board shall
19 be transferred to the Agency for employment, not later
20 than the effective date of the abolishment under section
21 1311(a), and such transfer shall be deemed a transfer of
22 function for purposes of section 3503 of title 5, United
23 States Code.

24 (b) GUARANTEED POSITIONS.—

1 (1) IN GENERAL.—Each employee transferred
2 under subsection (a) shall be guaranteed a position
3 with the same status, tenure, grade, and pay as that
4 held on the day immediately preceding the transfer.

5 (2) NO INVOLUNTARY SEPARATION OR REDUC-
6 TION.—An employee holding a permanent position
7 on the day immediately preceding the transfer may
8 not be involuntarily separated or reduced in grade or
9 compensation during the 12-month period beginning
10 on the date of transfer, except for cause, or, if the
11 employee is a temporary employee, separated in ac-
12 cordance with the terms of the appointment of the
13 employee.

14 (c) APPOINTMENT AUTHORITY FOR EXCEPTED EM-
15 PLOYEES.—

16 (1) IN GENERAL.—In the case of an employee
17 occupying a position in the excepted service, any ap-
18 pointment authority established under law or by reg-
19 ulations of the Office of Personnel Management for
20 filling such position shall be transferred, subject to
21 paragraph (2).

22 (2) DECLINE OF TRANSFER.—The Director
23 may decline a transfer of authority under paragraph
24 (1), to the extent that such authority relates to a po-
25 sition excepted from the competitive service because

1 of its confidential, policymaking, policy-determining,
2 or policy-advocating character.

3 (d) REORGANIZATION.—If the Director determines,
4 after the end of the 1-year period beginning on the effec-
5 tive date of the abolishment under section 1311(a), that
6 a reorganization of the combined workforce is required,
7 that reorganization shall be deemed a major reorganiza-
8 tion for purposes of affording affected employee retire-
9 ment under section 8336(d)(2) or 8414(b)(1)(B) of title
10 5, United States Code.

11 (e) EMPLOYEE BENEFIT PROGRAMS.—

12 (1) IN GENERAL.—Any employee of the Board
13 accepting employment with the Agency as a result of
14 a transfer under subsection (a) may retain, for 12
15 months after the date on which such transfer occurs,
16 membership in any employee benefit program of the
17 Agency or the Board, as applicable, including insur-
18 ance, to which such employee belongs on the effec-
19 tive date of the abolishment under section 1311(a)
20 if—

21 (A) the employee does not elect to give up
22 the benefit or membership in the program; and

23 (B) the benefit or program is continued by
24 the Director.

25 (2) COST DIFFERENTIAL.—

1 (A) IN GENERAL.—The difference in the
2 costs between the benefits which would have
3 been provided by the Board and those provided
4 by this section shall be paid by the Director.

5 (B) HEALTH INSURANCE.—If any em-
6 ployee elects to give up membership in a health
7 insurance program or the health insurance pro-
8 gram is not continued by the Director, the em-
9 ployee shall be permitted to select an alternate
10 Federal health insurance program not later
11 than 30 days after the date of such election or
12 notice, without regard to any other regularly
13 scheduled open season.

14 **SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.**

15 Upon the effective date of the abolishment under sec-
16 tion 1311(a), all property of the Board shall transfer to
17 the Agency.

18 **TITLE IV—HOPE FOR**
19 **HOMEOWNERS**

20 **SEC. 1401. SHORT TITLE.**

21 This title may be cited as the “HOPE for Home-
22 owners Act of 2008”.

1 **SEC. 1402. ESTABLISHMENT OF HOPE FOR HOMEOWNERS**
2 **PROGRAM.**

3 (a) ESTABLISHMENT.—Title II of the National Hous-
4 ing Act (12 U.S.C. 1707 et seq.) is amended by adding
5 at the end the following:

6 **“SEC. 257. HOPE FOR HOMEOWNERS PROGRAM.**

7 “(a) ESTABLISHMENT.—There is established in the
8 Federal Housing Administration a HOPE for Home-
9 owners Program.

10 “(b) PURPOSE.—The purpose of the HOPE for
11 Homeowners Program is—

12 “(1) to create an FHA program, participation
13 in which is voluntary on the part of homeowners and
14 existing loan holders to insure refinanced loans for
15 distressed borrowers to support long-term, sustain-
16 able homeownership;

17 “(2) to allow homeowners to avoid foreclosure
18 by reducing the principle balance outstanding, and
19 interest rate charged, on their mortgages;

20 “(3) to help stabilize and provide confidence in
21 mortgage markets by bringing transparency to the
22 value of assets based on mortgage assets;

23 “(4) to target mortgage assistance under this
24 section to homeowners for their principal residence;

1 “(5) to enhance the administrative capacity of
2 the FHA to carry out its expanded role under the
3 HOPE for Homeowners Program;

4 “(6) to ensure the HOPE for Homeowners Pro-
5 gram remains in effect only for as long as is nec-
6 essary to provide stability to the housing market;
7 and

8 “(7) to provide servicers of delinquent mort-
9 gages with additional methods and approaches to
10 avoid foreclosure.

11 “(c) ESTABLISHMENT AND IMPLEMENTATION OF
12 PROGRAM REQUIREMENTS.—

13 “(1) DUTIES OF THE BOARD.—In order to
14 carry out the purposes of the HOPE for Home-
15 owners Program, the Board shall—

16 “(A) establish requirements and standards
17 for the program; and

18 “(B) prescribe such regulations and pro-
19 vide such guidance as may be necessary or ap-
20 propriate to implement such requirements and
21 standards.

22 “(2) DUTIES OF THE SECRETARY.—In carrying
23 out any of the program requirements or standards
24 established under paragraph (1), the Secretary may

1 issue such interim guidance and mortgagee letters as
2 the Secretary determines necessary or appropriate.

3 “(d) INSURANCE OF MORTGAGES.—The Secretary is
4 authorized upon application of a mortgagee to make com-
5 mitments to insure or to insure any eligible mortgage that
6 has been refinanced in a manner meeting the requirements
7 under subsection (e).

8 “(e) REQUIREMENTS OF INSURED MORTGAGES.—To
9 be eligible for insurance under this section, a refinanced
10 eligible mortgage shall comply with all of the following re-
11 quirements:

12 “(1) LACK OF CAPACITY TO PAY EXISTING
13 MORTGAGE.—

14 “(A) BORROWER CERTIFICATION.—

15 “(i) IN GENERAL.—The mortgagor
16 shall provide certification to the Secretary
17 that the mortgagor has not intentionally
18 defaulted on the mortgage or any other
19 debt, and has not knowingly, or willfully
20 and with actual knowledge, furnished ma-
21 terial information known to be false for the
22 purpose of obtaining any eligible mortgage.

23 “(ii) PENALTIES.—

24 “(I) FALSE STATEMENT.—Any
25 certification filed pursuant to clause

1 (i) shall contain an acknowledgment
2 that any willful false statement made
3 in such certification is punishable
4 under section 1001, of title 18, United
5 States Code, by fine or imprisonment
6 of not more than 5 years, or both.

7 “(II) LIABILITY FOR REPAY-
8 MENT.—The mortgagor shall agree in
9 writing that the mortgagor shall be
10 liable to repay to the Federal Housing
11 Administration any direct financial
12 benefit achieved from the reduction of
13 indebtedness on the existing mortgage
14 or mortgages on the residence refi-
15 nanced under this section derived
16 from misrepresentations made in the
17 certifications and documentation re-
18 quired under this subparagraph, sub-
19 ject to the discretion of the Secretary.

20 “(B) CURRENT BORROWER DEBT-TO-IN-
21 COME RATIO.—As of March 1, 2008, the mort-
22 gator shall have had a ratio of mortgage debt
23 to income, taking into consideration all existing
24 mortgages of that mortgagor at such time,

1 greater than 31 percent (or such higher amount
2 as the Board determines appropriate).

3 “(2) DETERMINATION OF PRINCIPAL OBLIGA-
4 TION AMOUNT.—The principal obligation amount of
5 the refinanced eligible mortgage to be insured
6 shall—

7 “(A) be determined by the reasonable abil-
8 ity of the mortgagor to make his or her mort-
9 gage payments, as such ability is determined by
10 the Secretary pursuant to section 203(b)(4) or
11 by any other underwriting standards established
12 by the Board; and

13 “(B) not exceed 90 percent of the ap-
14 praised value of the property to which such
15 mortgage relates.

16 “(3) REQUIRED WAIVER OF PREPAYMENT PEN-
17 ALTIES AND FEES.—All penalties for prepayment or
18 refinancing of the eligible mortgage, and all fees and
19 penalties related to default or delinquency on the eli-
20 gible mortgage, shall be waived or forgiven.

21 “(4) EXTINGUISHMENT OF SUBORDINATE
22 LIENS.—

23 “(A) REQUIRED AGREEMENT.—All holders
24 of outstanding mortgage liens on the property
25 to which the eligible mortgage relates shall

1 agree to accept the proceeds of the insured loan
2 as payment in full of all indebtedness under the
3 eligible mortgage, and all encumbrances related
4 to such eligible mortgage shall be removed. The
5 Secretary may take such actions, subject to
6 standards established by the Board under sub-
7 paragraph (B), as may be necessary and appro-
8 priate to facilitate coordination and agreement
9 between the holders of the existing senior mort-
10 gage and any existing subordinate mortgages,
11 taking into consideration the subordinate lien
12 status of such subordinate mortgages.

13 “(B) SHARED APPRECIATION.—

14 “(i) IN GENERAL.—The Board shall
15 establish standards and policies that will
16 allow for the payment to the holder of any
17 existing subordinate mortgage of a portion
18 of any future appreciation in the property
19 secured by such eligible mortgage that is
20 owed to the Secretary pursuant to sub-
21 section (k).

22 “(ii) FACTORS.—In establishing the
23 standards and policies required under
24 clause (i), the Board shall take into consid-
25 eration—

1 “(I) the status of any subordi-
2 nate mortgage;

3 “(II) the outstanding principal
4 balance of and accrued interest on the
5 existing senior mortgage and any out-
6 standing subordinate mortgages;

7 “(III) the extent to which the
8 current appraised value of the prop-
9 erty securing a subordinate mortgage
10 is less than the outstanding principal
11 balance and accrued interest on any
12 other liens that are senior to such
13 subordinate mortgage; and

14 “(IV) such other factors as the
15 Board determines to be appropriate.

16 “(C) VOLUNTARY PROGRAM.—This para-
17 graph may not be construed to require any
18 holder of any existing mortgage to participate
19 in the program under this section generally, or
20 with respect to any particular loan.

21 “(5) TERM OF MORTGAGE.—The refinanced eli-
22 gible mortgage to be insured shall—

23 “(A) bear interest at a single rate that is
24 fixed for the entire term of the mortgage; and

1 “(B) have a maturity of not less than 30
2 years from the date of the beginning of amorti-
3 zation of such refinanced eligible mortgage.

4 “(6) MAXIMUM LOAN AMOUNT.—The principal
5 obligation amount of the eligible mortgage to be in-
6 sured shall not exceed 132 percent of the dollar
7 amount limitation in effect for 2007 under section
8 305(a)(2) of the Federal Home Loan Mortgage Cor-
9 poration Act (12 U.S.C. 1454(a)(2)) for a property
10 of the applicable size.

11 “(7) PROHIBITION ON SECOND LIENS.—A
12 mortgagor may not grant a new second lien on the
13 mortgaged property during the first 5 years of the
14 term of the mortgage insured under this section.

15 “(8) APPRAISALS.—Any appraisal conducted in
16 connection with a mortgage insured under this sec-
17 tion shall—

18 “(A) be based on the current value of the
19 property;

20 “(B) be conducted in accordance with title
21 XI of the Financial Institutions Reform, Recov-
22 ery, and Enforcement Act of 1989 (12 U.S.C.
23 3331 et seq.);

24 “(C) be completed by an appraiser who
25 meets the competency requirements of the Uni-

1 form Standards of Professional Appraisal Prac-
2 tice;

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

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

10 “(9) DOCUMENTATION AND VERIFICATION OF
11 INCOME.—In complying with the FHA underwriting
12 requirements under the HOPE for Homeowners
13 Program under this section, the mortgagee under
14 the mortgage shall document and verify the income
15 of the mortgagor by procuring an Internal Revenue
16 Service transcript of the income tax returns of the
17 mortgagor for the 2 most recent years for which the
18 filing deadline for such years has passed and by any
19 other method, in accordance with procedures and
20 standards that the Board or the Secretary shall es-
21 tablish.

22 “(10) MORTGAGE FRAUD.—The mortgagor
23 shall not have been convicted under any provision of
24 Federal or State law for fraud, including mortgage
25 fraud.

1 “(11) PRIMARY RESIDENCE.—The mortgagor
2 shall provide documentation satisfactory in the de-
3 termination of the Secretary to prove that the resi-
4 dence covered by the mortgage to be insured under
5 this section is occupied by the mortgagor as the pri-
6 mary residence of the mortgagor, and that such resi-
7 dence is the only residence in which the mortgagor
8 has any present ownership interest.

9 “(f) STUDY OF AUCTION OR BULK REFINANCE PRO-
10 GRAM.—

11 “(1) STUDY.—The Board shall conduct a study
12 of the need for and efficacy of an auction or bulk
13 refinancing mechanism to facilitate refinancing of
14 existing residential mortgages that are at risk for
15 foreclosure into mortgages insured under this sec-
16 tion. The study shall identify and examine various
17 options for mechanisms under which lenders and
18 servicers of such mortgages may make bids for for-
19 ward commitments for such insurance in an expe-
20 dited manner.

21 “(2) CONTENT.—

22 “(A) ANALYSIS.—The study required
23 under paragraph (1) shall analyze—

24 “(i) the feasibility of establishing a
25 mechanism that would facilitate the more

1 rapid refinancing of borrowers at risk of
2 foreclosure into performing mortgages in-
3 sured under this section;

4 “(ii) whether such a mechanism would
5 provide an effective and efficient mecha-
6 nism to reduce foreclosures on qualified ex-
7 isting mortgages;

8 “(iii) whether the use of an auction or
9 bulk refinance program is necessary to sta-
10 bilize the housing market and reduce the
11 impact of turmoil in that market on the
12 economy of the United States;

13 “(iv) whether there are other mecha-
14 nisms or authority that would be useful to
15 reduce foreclosure; and

16 “(v) and any other factors that the
17 Board considers relevant.

18 “(B) DETERMINATIONS.—To the extent
19 that the Board finds that a facility of the type
20 described in subparagraph (A) is feasible and
21 useful, the study shall—

22 “(i) determine and identify any addi-
23 tional authority or resources needed to es-
24 tablish and operate such a mechanism;

1 “(ii) determine whether there is a
2 need for additional authority with respect
3 to the loan underwriting criteria estab-
4 lished in this section or with respect to eli-
5 gibility of participating borrowers, lenders,
6 or holders of liens;

7 “(iii) determine whether such under-
8 writing criteria should be established on
9 the basis of individual loans, in the aggre-
10 gate, or otherwise to facilitate the goal of
11 refinancing borrowers at risk of foreclosure
12 into viable loans insured under this sec-
13 tion.

14 “(3) REPORT.—Not later than the expiration of
15 the 60-day period beginning on the date of the en-
16 actment of this section, the Board shall submit a re-
17 port regarding the results of the study conducted
18 under this subsection to the Committee on Financial
19 Services of the House of Representatives and the
20 Committee on Banking, Housing, and Urban Affairs
21 of the Senate. The report shall include a detailed de-
22 scription of the analysis required under paragraph
23 (2)(A) and of the determinations made pursuant to
24 paragraph (2)(B), and shall include any other find-
25 ings and recommendations of the Board pursuant to

1 the study, including identifying various options for
2 mechanisms described in paragraph (1).

3 “(g) APPRAISAL INDEPENDENCE.—

4 “(1) PROHIBITIONS ON INTERESTED PARTIES
5 IN A REAL ESTATE TRANSACTION.—No mortgage
6 lender, mortgage broker, mortgage banker, real es-
7 tate broker, appraisal management company, em-
8 ployee of an appraisal management company, nor
9 any other person with an interest in a real estate
10 transaction involving an appraisal in connection with
11 a mortgage insured under this section shall improper-
12 ly influence, or attempt to improperly influence,
13 through coercion, extortion, collusion, compensation,
14 instruction, inducement, intimidation, nonpayment
15 for services rendered, or bribery, the development,
16 reporting, result, or review of a real estate appraisal
17 sought in connection with the mortgage.

18 “(2) CIVIL MONETARY PENALTIES.—The Sec-
19 retary may impose a civil money penalty for any
20 knowing and material violation of paragraph (1)
21 under the same terms and conditions as are author-
22 ized in section 536(a) of this Act.

23 “(h) STANDARDS TO PROTECT AGAINST ADVERSE
24 SELECTION.—

1 “(1) IN GENERAL.—The Board shall, by rule or
2 order, establish standards and policies to require the
3 underwriter of the insured loan to provide such rep-
4 resentations and warranties as the Board considers
5 necessary or appropriate to enforce compliance with
6 all underwriting and appraisal standards of the
7 HOPE for Homeowners Program.

8 “(2) EXCLUSION FOR VIOLATIONS.—The Board
9 shall prohibit the Secretary from paying insurance
10 benefits to a mortgagee who violates the representa-
11 tions and warranties, as established under para-
12 graph (1), or in any case in which a mortgagor fails
13 to make the first payment on a refinanced eligible
14 mortgage.

15 “(3) OTHER AUTHORITY.—The Board may es-
16 tablish such other standards or policies as necessary
17 to protect against adverse selection, including requir-
18 ing loans identified by the Secretary as higher risk
19 loans to demonstrate payment performance for a
20 reasonable period of time prior to being insured
21 under the program.

22 “(i) PREMIUMS.—For each refinanced eligible mort-
23 gage insured under this section, the Secretary shall estab-
24 lish and collect—

1 “(1) at the time of insurance, a single premium
2 payment in an amount equal to 3 percent of the
3 amount of the original insured principal obligation of
4 the refinanced eligible mortgage, which shall be paid
5 from the proceeds of the mortgage being insured
6 under this section, through the reduction of the
7 amount of indebtedness that existed on the eligible
8 mortgage prior to refinancing; and

9 “(2) in addition to the premium required under
10 paragraph (1), an annual premium in an amount
11 equal to 1.5 percent of the amount of the remaining
12 insured principal balance of the mortgage.

13 “(j) ORIGINATION FEES AND INTEREST RATE.—The
14 Board shall establish—

15 “(1) a reasonable limitation on origination fees
16 for refinanced eligible mortgages insured under this
17 section; and

18 “(2) procedures to ensure that interest rates on
19 such mortgages shall be commensurate with market
20 rate interest rates on such types of loans.

21 “(k) EQUITY AND APPRECIATION.—

22 “(1) FIVE-YEAR PHASE-IN FOR EQUITY AS A
23 RESULT OF SALE OR REFINANCING.—For each eligi-
24 ble mortgage insured under this section, the Sec-
25 retary and the mortgagor of such mortgage shall,

1 upon any sale or disposition of the property to which
2 such mortgage relates, or upon the subsequent refi-
3 nancing of such mortgage, be entitled to the fol-
4 lowing with respect to any equity created as a direct
5 result of such sale or refinancing:

6 “(A) If such sale or refinancing occurs
7 during the period that begins on the date that
8 such mortgage is insured and ends 1 year after
9 such date of insurance, the Secretary shall be
10 entitled to 100 percent of such equity.

11 “(B) If such sale or refinancing occurs
12 during the period that begins 1 year after such
13 date of insurance and ends 2 years after such
14 date of insurance, the Secretary shall be enti-
15 tled to 90 percent of such equity and the mort-
16 gagor shall be entitled to 10 percent of such eq-
17 uity.

18 “(C) If such sale or refinancing occurs
19 during the period that begins 2 years after such
20 date of insurance and ends 3 years after such
21 date of insurance, the Secretary shall be enti-
22 tled to 80 percent of such equity and the mort-
23 gagor shall be entitled to 20 percent of such eq-
24 uity.

1 “(D) If such sale or refinancing occurs
2 during the period that begins 3 years after such
3 date of insurance and ends 4 years after such
4 date of insurance, the Secretary shall be enti-
5 tled to 70 percent of such equity and the mort-
6 gagor shall be entitled to 30 percent of such eq-
7 uity.

8 “(E) If such sale or refinancing occurs
9 during the period that begins 4 years after such
10 date of insurance and ends 5 years after such
11 date of insurance, the Secretary shall be enti-
12 tled to 60 percent of such equity and the mort-
13 gagor shall be entitled to 40 percent of such eq-
14 uity.

15 “(F) If such sale or refinancing occurs
16 during any period that begins 5 years after
17 such date of insurance, the Secretary shall be
18 entitled to 50 percent of such equity and the
19 mortgagor shall be entitled to 50 percent of
20 such equity.

21 “(2) APPRECIATION IN VALUE.—For each eligi-
22 ble mortgage insured under this section, the Sec-
23 retary and the mortgagor of such mortgage shall,
24 upon any sale or disposition of the property to which
25 such mortgage relates, each be entitled to 50 percent

1 of any appreciation in value of the appraised value
2 of such property that has occurred since the date
3 that such mortgage was insured under this section.

4 “(l) ESTABLISHMENT OF HOPE FUND.—

5 “(1) IN GENERAL.—There is established in the
6 Federal Housing Administration a revolving fund to
7 be known as the Home Ownership Preservation En-
8 tity Fund, which shall be used by the Board for car-
9 rying out the mortgage insurance obligations under
10 this section.

11 “(2) MANAGEMENT OF FUND.—The HOPE
12 Fund shall be administered and managed by the
13 Secretary, who shall establish reasonable and pru-
14 dent criteria for the management and operation of
15 any amounts in the HOPE Fund.

16 “(m) LIMITATION ON AGGREGATE INSURANCE AU-
17 THORITY.—The aggregate original principal obligation of
18 all mortgages insured under this section may not exceed
19 \$300,000,000,000.

20 “(n) REPORTS BY THE BOARD.—The Board shall
21 submit monthly reports to the Congress identifying the
22 progress of the HOPE for Homeowners Program, which
23 shall contain the following information for each month:

24 “(1) The number of new mortgages insured
25 under this section, including the location of the

1 properties subject to such mortgages by census
2 tract.

3 “(2) The aggregate principal obligation of new
4 mortgages insured under this section.

5 “(3) The average amount by which the principle
6 balance outstanding on mortgages insured this sec-
7 tion was reduced.

8 “(4) The amount of premiums collected for in-
9 surance of mortgages under this section.

10 “(5) The claim and loss rates for mortgages in-
11 sured under this section.

12 “(6) Any other information that the Board con-
13 siders appropriate.

14 “(o) REQUIRED OUTREACH EFFORTS.—The Sec-
15 retary shall carry out outreach efforts to ensure that
16 homeowners, lenders, and the general public are aware of
17 the opportunities for assistance available under this sec-
18 tion.

19 “(p) ENHANCEMENT OF FHA CAPACITY.—Under
20 the direction of the Board, the Secretary shall take such
21 actions as may be necessary to—

22 “(1) contract for the establishment of under-
23 writing criteria, automated underwriting systems,
24 pricing standards, and other factors relating to eligi-
25 bility for mortgages insured under this section;

1 “(2) contract for independent quality reviews of
2 underwriting, including appraisal reviews and fraud
3 detection, of mortgages insured under this section or
4 pools of such mortgages; and

5 “(3) increase personnel of the Department as
6 necessary to process or monitor the processing of
7 mortgages insured under this section.

8 “(q) GNMA COMMITMENT AUTHORITY.—

9 “(1) GUARANTEES.—The Secretary shall take
10 such actions as may be necessary to ensure that se-
11 curities based on and backed by a trust or pool com-
12 posed of mortgages insured under this section are
13 available to be guaranteed by the Government Na-
14 tional Mortgage Association as to the timely pay-
15 ment of principal and interest.

16 “(2) GUARANTEE AUTHORITY.—To carry out
17 the purposes of section 306 of the National Housing
18 Act (12 U.S.C. 1721), the Government National
19 Mortgage Association may enter into new commit-
20 ments to issue guarantees of securities based on or
21 backed by mortgages insured under this section, not
22 exceeding \$300,000,000,000. The amount of author-
23 ity provided under the preceding sentence to enter
24 into new commitments to issue guarantees is in ad-
25 dition to any amount of authority to make new com-

1 mitments to issue guarantees that is provided to the
2 Association under any other provision of law.

3 “(r) SUNSET.—The Secretary may not enter into any
4 new commitment to insure any refinanced eligible mort-
5 gage, or newly insure any refinanced eligible mortgage
6 pursuant to this section before October 1, 2008 or after
7 September 30, 2011.

8 “(s) DEFINITIONS.—For purposes of this section, the
9 following definitions shall apply:

10 “(1) APPROVED FINANCIAL INSTITUTION OR
11 MORTGAGEE.—The term ‘approved financial institu-
12 tion or mortgagee’ means a financial institution or
13 mortgagee approved by the Secretary under section
14 203 as responsible and able to service mortgages re-
15 sponsibly.

16 “(2) BOARD.—The term ‘Board’ means the
17 Board of Directors of the HOPE for Homeowners
18 Program. The Board shall be composed of the Sec-
19 retary, the Secretary of the Treasury, the Chair-
20 person of the Board of Governors of the Federal Re-
21 serve System, and the Chairperson of the Board of
22 Directors of the Federal Deposit Insurance Corpora-
23 tion.

24 “(3) ELIGIBLE MORTGAGE.—The term ‘eligible
25 mortgage’ means a mortgage—

1 “(A) the mortgagor of which—

2 “(i) occupies such property as his or
3 her principal residence; and

4 “(ii) cannot, subject to subsection
5 (e)(1)(B) and such other standards estab-
6 lished by the Board, afford his or her
7 mortgage payments; and

8 “(B) originated on or before January 1,
9 2008.

10 “(4) EXISTING SENIOR MORTGAGE.—The term
11 ‘existing senior mortgage’ means, with respect to a
12 mortgage insured under this section, the existing
13 mortgage that has superior priority.

14 “(5) EXISTING SUBORDINATE MORTGAGE.—The
15 term ‘existing subordinate mortgage’ means, with re-
16 spect to a mortgage insured under this section, an
17 existing mortgage that has subordinate priority to
18 the existing senior mortgage.

19 “(6) HOPE FOR HOMEOWNERS PROGRAM.—
20 The term ‘HOPE for Homeowners Program’ means
21 the program established under this section.

22 “(7) SECRETARY.—The term ‘Secretary’ means
23 the Secretary of Housing and Urban Development,
24 except where specifically provided otherwise.

25 “(t) REQUIREMENTS RELATED TO THE BOARD.—

1 “(1) COMPENSATION, ACTUAL, NECESSARY,
2 AND TRANSPORTATION EXPENSES.—

3 “(A) FEDERAL EMPLOYEES.—A member
4 of the Board who is an officer or employee of
5 the Federal Government shall serve without ad-
6 ditional pay (or benefits in the nature of com-
7 pensation) for service as a member of the
8 Board.

9 “(B) TRAVEL EXPENSES.—Members of the
10 Board shall be entitled to receive travel ex-
11 penses, including per diem in lieu of subsist-
12 ence, equivalent to those set forth in subchapter
13 I of chapter 57 of title 5, United States Code.

14 “(2) BYLAWS.—The Board may prescribe,
15 amend, and repeal such bylaws as may be necessary
16 for carrying out the functions of the Board.

17 “(3) QUORUM.—A majority of the Board shall
18 constitute a quorum.

19 “(4) STAFF; EXPERTS AND CONSULTANTS.—

20 “(A) DETAIL OF GOVERNMENT EMPLOY-
21 EES.—Upon request of the Board, any Federal
22 Government employee may be detailed to the
23 Board without reimbursement, and such detail
24 shall be without interruption or loss of civil
25 service status or privilege.

1 “(B) EXPERTS AND CONSULTANTS.—The
2 Board shall procure the services of experts and
3 consultants as the Board considers appropriate.

4 “(u) RULE OF CONSTRUCTION RELATED TO VOL-
5 UNTARY NATURE OF THE PROGRAM.—This section shall
6 not be construed to require that any approved financial
7 institution or mortgagee participate in any activity author-
8 ized under this section, including any activity related to
9 the refinancing of an eligible mortgage.

10 “(v) RULE OF CONSTRUCTION RELATED TO INSUR-
11 ANCE OF MORTGAGES.—Except as otherwise provided for
12 in this section or by action of the Board, the provisions
13 and requirements of section 203(b) shall apply with re-
14 spect to the insurance of any eligible mortgage under this
15 section.

16 “(w) HOPE BONDS.—

17 “(1) ISSUANCE AND REPAYMENT OF BONDS.—
18 Notwithstanding section 504(b) of the Federal Cred-
19 it Reform Act of 1990 (2 U.S.C. 661d(b)), the Sec-
20 retary of the Treasury shall—

21 “(A) subject to such terms and conditions
22 as the Secretary of the Treasury deems nec-
23 essary, issue Federal credit instruments, to be
24 known as ‘HOPE Bonds’, that are callable at
25 the discretion of the Secretary of the Treasury

1 and do not, in the aggregate, exceed the
2 amount specified in subsection (m);

3 “(B) provide the subsidy amounts nec-
4 essary for loan guarantees under the HOPE for
5 Homeowners Program, not to exceed the
6 amount specified in subsection (m), in accord-
7 ance with the provisions of the Federal Credit
8 Reform Act of 1990 (2 U.S.C. 661 et seq.), ex-
9 cept as provided in this paragraph; and

10 “(C) use the proceeds from HOPE Bonds
11 only to pay for the net costs to the Federal
12 Government of the HOPE for Homeowners
13 Program, including administrative costs.

14 “(2) REIMBURSEMENTS TO TREASURY.—Funds
15 received pursuant to section 1338(b) of the Federal
16 Housing Enterprises Regulatory Reform Act of
17 1992 shall be used to reimburse the Secretary of the
18 Treasury for amounts borrowed under paragraph
19 (1).

20 “(3) USE OF RESERVE FUND.—If the net cost
21 to the Federal Government for the HOPE for
22 Homeowners Program exceeds the amount of funds
23 received under paragraph (2), remaining debts of
24 the HOPE for Homeowners Program shall be paid
25 from amounts deposited into the fund established by

1 the Secretary under section 1337(e) of the Federal
2 Housing Enterprises Financial Safety and Sound-
3 ness Act of 1992, remaining amounts in such fund
4 to be used to reduce the National debt.

5 “(4) REDUCTION OF NATIONAL DEBT.—
6 Amounts collected under the HOPE for Home-
7 owners Program in accordance with subsections (i)
8 and (k) in excess of the net cost to the Federal Gov-
9 ernment for such Program shall be used to reduce
10 the National debt.”.

11 **SEC. 1403. FIDUCIARY DUTY OF SERVICERS OF POOLED**
12 **RESIDENTIAL MORTGAGE LOANS.**

13 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
14 is amended by inserting after section 129 the following
15 new section:

16 **“SEC. 129A. FIDUCIARY DUTY OF SERVICERS OF POOLED**
17 **RESIDENTIAL MORTGAGES.**

18 “(a) IN GENERAL.—Except as may be established in
19 any investment contract between a servicer of pooled resi-
20 dential mortgages and an investor, a servicer of pooled res-
21 idential mortgages—

22 “(1) owes any duty to maximize the net present
23 value of the pooled mortgages in an investment to all
24 investors and parties having a direct or indirect in-

1 terest in such investment, not to any individual
2 party or group of parties; and

3 “(2) shall be deemed to act in the best interests
4 of all such investors and parties if the servicer
5 agrees to or implements a modification or workout
6 plan, including any modification or refinancing un-
7 dertaken pursuant to the HOPE for Homeowners
8 Act of 2008, for a residential mortgage or a class of
9 residential mortgages that constitute a part or all of
10 the pooled mortgages in such investment, provided
11 that any mortgage so modified meets the following
12 criteria:

13 “(A) Default on the payment of such mort-
14 gage has occurred or is reasonably foreseeable.

15 “(B) The property securing such mortgage
16 is occupied by the mortgagor of such mortgage.

17 “(C) The anticipated recovery on the prin-
18 cipal outstanding obligation of the mortgage
19 under the modification or workout plan exceeds,
20 on a net present value basis, the anticipated re-
21 covery on the principal outstanding obligation
22 of the mortgage through foreclosure.

23 “(b) DEFINITION.—As used in this section, the term
24 ‘servicer’ has the same meaning as in section 6(i)(2) of

1 the Real Estate Settlement Procedures Act of 1974 (12
2 U.S.C. 2605(i)(2)).”.

3 **SEC. 1404. REVISED STANDARDS FOR FHA APPRAISERS.**

4 Section 202(e) of the National Housing Act (12
5 U.S.C. 1708(e)) is amended by adding at the end the fol-
6 lowing:

7 “(5) **ADDITIONAL APPRAISER STANDARDS.**—
8 Beginning on the date of enactment of the Federal
9 Housing Finance Regulatory Reform Act of 2008,
10 any appraiser chosen or approved to conduct ap-
11 praisals for mortgages under this title shall—

12 “(A) be certified—

13 “(i) by the State in which the prop-
14 erty to be appraised is located; or

15 “(ii) by a nationally recognized profes-
16 sional appraisal organization; and

17 “(B) have demonstrated verifiable edu-
18 cation in the appraisal requirements established
19 by the Federal Housing Administration under
20 this subsection.”.

1 **TITLE V—S.A.F.E. MORTGAGE**
2 **LICENSING ACT**

3 **SEC. 1501. SHORT TITLE.**

4 This title may be cited as the “Secure and Fair En-
5 forcement for Mortgage Licensing Act of 2008” or
6 “S.A.F.E. Mortgage Licensing Act of 2008”.

7 **SEC. 1502. PURPOSES AND METHODS FOR ESTABLISHING A**
8 **MORTGAGE LICENSING SYSTEM AND REG-**
9 **ISTRY.**

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

18 (1) Provides uniform license applications and
19 reporting requirements for State-licensed loan origi-
20 nators.

21 (2) Provides a comprehensive licensing and su-
22 pervisory database.

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

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

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

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

7 (7) Provides consumers with easily accessible
8 information, offered at no charge, utilizing electronic
9 media, including the Internet, regarding the employ-
10 ment history of, and publicly adjudicated discipli-
11 nary and enforcement actions against, loan origina-
12 tors.

13 (8) Establishes a means by which residential
14 mortgage loan originators would, to the greatest ex-
15 tent possible, be required to act in the best interests
16 of the consumer.

17 (9) Facilitates responsible behavior in the
18 subprime mortgage market place and provides com-
19 prehensive training and examination requirements
20 related to subprime mortgage lending.

21 (10) Facilitates the collection and disbursement
22 of consumer complaints on behalf of State and Fed-
23 eral mortgage regulators.

1 **SEC. 1503. DEFINITIONS.**

2 For purposes of this title, the following definitions
3 shall apply:

4 (1) **FEDERAL BANKING AGENCIES.**—The term
5 “Federal banking agencies” means the Board of
6 Governors of the Federal Reserve System, the
7 Comptroller of the Currency, the Director of the Of-
8 fice of Thrift Supervision, the National Credit Union
9 Administration, and the Federal Deposit Insurance
10 Corporation.

11 (2) **DEPOSITORY INSTITUTION.**—The term “de-
12 pository institution” has the same meaning as in
13 section 3 of the Federal Deposit Insurance Act, and
14 includes any credit union.

15 (3) **LOAN ORIGINATOR.**—

16 (A) **IN GENERAL.**—The term “loan origi-
17 nator”—

18 (i) means an individual who—

19 (I) takes a residential mortgage
20 loan application; and

21 (II) offers or negotiates terms of
22 a residential mortgage loan for com-
23 pensation or gain;

24 (ii) does not include any individual
25 who is not otherwise described in clause (i)
26 and who performs purely administrative or

1 clerical tasks on behalf of a person who is
2 described in any such clause;

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

12 (iv) does not include a person or enti-
13 ty solely involved in extensions of credit re-
14 lating to timeshare plans, as that term is
15 defined in section 101(53D) of title 11,
16 United States Code.

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

1 (C) ADMINISTRATIVE OR CLERICAL
2 TASKS.—The term “administrative or clerical
3 tasks” means the receipt, collection, and dis-
4 tribution of information common for the proc-
5 essing or underwriting of a loan in the mort-
6 gage industry and communication with a con-
7 sumer to obtain information necessary for the
8 processing or underwriting of a residential
9 mortgage loan.

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

15 (i) acting as a real estate agent or
16 real estate broker for a buyer, seller, les-
17 sor, or lessee of real property;

18 (ii) bringing together parties inter-
19 ested in the sale, purchase, lease, rental, or
20 exchange of real property;

21 (iii) negotiating, on behalf of any
22 party, any portion of a contract relating to
23 the sale, purchase, lease, rental, or ex-
24 change of real property (other than in con-

1 nection with providing financing with re-
2 spect to any such transaction);

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

8 (v) offering to engage in any activity,
9 or act in any capacity, described in clause
10 (i), (ii), (iii), or (iv).

11 (4) LOAN PROCESSOR OR UNDERWRITER.—

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

17 (i) a State-licensed loan originator; or
18 (ii) a registered loan originator.

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

22 (i) the receipt, collection, distribution,
23 and analysis of information common for
24 the processing or underwriting of a resi-
25 dential mortgage loan; and

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

8 (5) NATIONWIDE MORTGAGE LICENSING SYS-
9 TEM AND REGISTRY.—The term “Nationwide Mort-
10 gage Licensing System and Registry” means a mort-
11 gage licensing system developed and maintained by
12 the Conference of State Bank Supervisors and the
13 American Association of Residential Mortgage Regu-
14 lators for the State licensing and registration of
15 State-licensed loan originators and the registration
16 of registered loan originators or any system estab-
17 lished by the Secretary under section 1509.

18 (6) NONTRADITIONAL MORTGAGE PRODUCT.—
19 The term “nontraditional mortgage product” means
20 any mortgage product other than a 30-year fixed
21 rate mortgage.

22 (7) REGISTERED LOAN ORIGINATOR.—The term
23 “registered loan originator” means any individual
24 who—

1 (A) meets the definition of loan originator
2 and is an employee of—

3 (i) a depository institution;

4 (ii) a subsidiary that is—

5 (I) owned and controlled by a de-
6 pository institution; and

7 (II) regulated by a Federal bank-
8 ing agency; or

9 (iii) an institution regulated by the
10 Farm Credit Administration; and

11 (B) is registered with, and maintains a
12 unique identifier through, the Nationwide Mort-
13 gage Licensing System and Registry.

14 (8) RESIDENTIAL MORTGAGE LOAN.—The term
15 “residential mortgage loan” means any loan pri-
16 marily for personal, family, or household use that is
17 secured by a mortgage, deed of trust, or other equiv-
18 alent consensual security interest on a dwelling (as
19 defined in section 103(v) of the Truth in Lending
20 Act) or residential real estate upon which is con-
21 structed or intended to be constructed a dwelling (as
22 so defined).

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

1 (10) STATE-LICENSED LOAN ORIGINATOR.—

2 The term “State-licensed loan originator” means
3 any individual who—

4 (A) is a loan originator;

5 (B) is not an employee of—

6 (i) a depository institution;

7 (ii) a subsidiary that is—

8 (I) owned and controlled by a de-
9 pository institution; and

10 (II) regulated by a Federal bank-
11 ing agency; or

12 (iii) an institution regulated by the
13 Farm Credit Administration; and

14 (C) is licensed by a State or by the Sec-
15 retary under section 1508 and registered as a
16 loan originator with, and maintains a unique
17 identifier through, the Nationwide Mortgage Li-
18 censing System and Registry.

19 (11) UNIQUE IDENTIFIER.—

20 (A) IN GENERAL.—The term “unique iden-
21 tifier” means a number or other identifier
22 that—

23 (i) permanently identifies a loan origi-
24 nator;

1 (ii) is assigned by protocols estab-
2 lished by the Nationwide Mortgage Licens-
3 ing System and Registry and the Federal
4 banking agencies to facilitate electronic
5 tracking of loan originators and uniform
6 identification of, and public access to, the
7 employment history of and the publicly ad-
8 judicated disciplinary and enforcement ac-
9 tions against loan originators; and

10 (iii) shall not be used for purposes
11 other than those set forth under this title.

12 (B) RESPONSIBILITY OF STATES.—To the
13 greatest extent possible and to accomplish the
14 purpose of this title, States shall use unique
15 identifiers in lieu of social security numbers.

16 **SEC. 1504. LICENSE OR REGISTRATION REQUIRED.**

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

19 (1) obtaining, and maintaining annually—

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

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

24 (2) obtaining a unique identifier.

25 (b) LOAN PROCESSORS AND UNDERWRITERS.—

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

11 (2) INDEPENDENT CONTRACTORS.—An inde-
12 pendent contractor may not engage in residential
13 mortgage loan origination activities as a loan proc-
14 essor or underwriter unless such independent con-
15 tractor is a State-licensed loan originator.

16 **SEC. 1505. STATE LICENSE AND REGISTRATION APPLICA-**
17 **TION AND ISSUANCE.**

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

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

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

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

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

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

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

16 (1) The applicant has never had a loan origi-
17 nator license revoked in any governmental jurisdic-
18 tion.

19 (2) The applicant has not been convicted of, or
20 pled guilty or nolo contendere to, a felony in a do-
21 mestic, foreign, or military court—

22 (A) during the 7-year period preceding the
23 date of the application for licensing and reg-
24 istration; or

1 (B) at any time preceding such date of ap-
2 plication, if such felony involved an act of
3 fraud, dishonesty, or a breach of trust, or
4 money laundering.

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

11 (4) The applicant has completed the pre-licens-
12 ing education requirement described in subsection
13 (c).

14 (5) The applicant has passed a written test that
15 meets the test requirement described in subsection
16 (d).

17 (6) The applicant has met either a net worth or
18 surety bond requirement, as required by the State
19 pursuant to section 1508(d)(6).

20 (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-
21 TORS.—

22 (1) MINIMUM EDUCATIONAL REQUIREMENTS.—
23 In order to meet the pre-licensing education require-
24 ment referred to in subsection (b)(4), a person shall
25 complete at least 20 hours of education approved in

1 accordance with paragraph (2), which shall include
2 at least—

3 (A) 3 hours of Federal law and regula-
4 tions;

5 (B) 3 hours of ethics, which shall include
6 instruction on fraud, consumer protection, and
7 fair lending issues; and

8 (C) 2 hours of training related to lending
9 standards for the nontraditional mortgage prod-
10 uct marketplace.

11 (2) APPROVED EDUCATIONAL COURSES.—For
12 purposes of paragraph (1), pre-licensing education
13 courses shall be reviewed, and approved by the Na-
14 tionwide Mortgage Licensing System and Registry.

15 (3) LIMITATION AND STANDARDS.—

16 (A) LIMITATION.—To maintain the inde-
17 pendence of the approval process, the Nation-
18 wide Mortgage Licensing System and Registry
19 shall not directly or indirectly offer pre-licen-
20 sure educational courses for loan originators.

21 (B) STANDARDS.—In approving courses
22 under this section, the Nationwide Mortgage Li-
23 censing System and Registry shall apply rea-
24 sonable standards in the review and approval of
25 courses.

1 (d) TESTING OF LOAN ORIGINATORS.—

2 (1) IN GENERAL.—In order to meet the written
3 test requirement referred to in subsection (b)(5), an
4 individual shall pass, in accordance with the stand-
5 ards established under this subsection, a qualified
6 written test developed by the Nationwide Mortgage
7 Licensing System and Registry and administered by
8 an approved test provider.

9 (2) QUALIFIED TEST.—A written test shall not
10 be treated as a qualified written test for purposes of
11 paragraph (1) unless the test adequately measures
12 the applicant's knowledge and comprehension in ap-
13 propriate subject areas, including—

14 (A) ethics;

15 (B) Federal law and regulation pertaining
16 to mortgage origination;

17 (C) State law and regulation pertaining to
18 mortgage origination;

19 (D) Federal and State law and regulation,
20 including instruction on fraud, consumer pro-
21 tection, the nontraditional mortgage market-
22 place, and fair lending issues.

23 (3) MINIMUM COMPETENCE.—

24 (A) PASSING SCORE.—An individual shall
25 not be considered to have passed a qualified

1 written test unless the individual achieves a test
2 score of not less than 75 percent correct an-
3 swers to questions.

4 (B) INITIAL RETESTS.—An individual may
5 retake a test 3 consecutive times with each con-
6 secutive taking occurring at least 30 days after
7 the preceding test.

8 (C) SUBSEQUENT RETESTS.—After failing
9 3 consecutive tests, an individual shall wait at
10 least 6 months before taking the test again.

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

17 (e) MORTGAGE CALL REPORTS.—Each mortgage li-
18 censee shall submit to the Nationwide Mortgage Licensing
19 System and Registry reports of condition, which shall be
20 in such form and shall contain such information as the
21 Nationwide Mortgage Licensing System and Registry may
22 require.

1 **SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.**

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

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

7 (2) The loan originator has satisfied the annual
8 continuing education requirements described in sub-
9 section (b).

10 (b) CONTINUING EDUCATION FOR STATE-LICENSED
11 LOAN ORIGINATORS.—

12 (1) IN GENERAL.—In order to meet the annual
13 continuing education requirements referred to in
14 subsection (a)(2), a State-licensed loan originator
15 shall complete at least 8 hours of education ap-
16 proved in accordance with paragraph (2), which
17 shall include at least—

18 (A) 3 hours of Federal law and regula-
19 tions;

20 (B) 2 hours of ethics, which shall include
21 instruction on fraud, consumer protection, and
22 fair lending issues; and

23 (C) 2 hours of training related to lending
24 standards for the nontraditional mortgage prod-
25 uct marketplace.

1 (2) APPROVED EDUCATIONAL COURSES.—For
2 purposes of paragraph (1), continuing education
3 courses shall be reviewed, and approved by the Na-
4 tionwide Mortgage Licensing System and Registry.

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

7 (A) may only receive credit for a con-
8 tinuing education course in the year in which
9 the course is taken; and

10 (B) may not take the same approved
11 course in the same or successive years to meet
12 the annual requirements for continuing edu-
13 cation.

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

20 (5) LIMITATION AND STANDARDS.—

21 (A) LIMITATION.—To maintain the inde-
22 pendence of the approval process, the Nation-
23 wide Mortgage Licensing System and Registry
24 shall not directly or indirectly offer any con-
25 tinuing education courses for loan originators.

1 (B) STANDARDS.—In approving courses
2 under this section, the Nationwide Mortgage Li-
3 censing System and Registry shall apply rea-
4 sonable standards in the review and approval of
5 courses.

6 **SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY**
7 **FEDERAL AGENCIES.**

8 (a) DEVELOPMENT.—

9 (1) IN GENERAL.—The Federal banking agen-
10 cies shall jointly, through the Federal Financial In-
11 stitutions Examination Council, and together with
12 the Farm Credit Administration, develop and main-
13 tain a system for registering employees of a deposit-
14 tory institution, employees of a subsidiary that is
15 owned and controlled by a depository institution and
16 regulated by a Federal banking agency, or employees
17 of an institution regulated by the Farm Credit Ad-
18 ministration, as registered loan originators with the
19 Nationwide Mortgage Licensing System and Reg-
20 istry. The system shall be implemented before the
21 end of the 1-year period beginning on the date of en-
22 actment of this title.

23 (2) REGISTRATION REQUIREMENTS.—In con-
24 nection with the registration of any loan originator
25 under this subsection, the appropriate Federal bank-

1 ing agency and the Farm Credit Administration
2 shall, at a minimum, furnish or cause to be fur-
3 nished to the Nationwide Mortgage Licensing Sys-
4 tem and Registry information concerning the
5 employees's identity, including—

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

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

17 (b) COORDINATION.—

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

1 the employment history of and publicly adjudicated
2 disciplinary and enforcement actions against loan
3 originators.

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

15 (c) CONSIDERATION OF FACTORS AND PROCE-
16 DURES.—In establishing the registration procedures under
17 subsection (a) and the protocols for assigning a unique
18 identifier to a registered loan originator, the Federal bank-
19 ing agencies shall make such de minimis exceptions as
20 may be appropriate to paragraphs (1)(A) and (2) of sec-
21 tion 1504(a), shall make reasonable efforts to utilize exist-
22 ing information to minimize the burden of registering loan
23 originators, and shall consider methods for automating the
24 process to the greatest extent practicable consistent with
25 the purposes of this title.

1 **SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOP-**
2 **MENT BACKUP AUTHORITY TO ESTABLISH A**
3 **LOAN ORIGINATOR LICENSING SYSTEM.**

4 (a) **BACKUP LICENSING SYSTEM.**—If, by the end of
5 the 1-year period, or the 2-year period in the case of a
6 State whose legislature meets only biennially, beginning
7 on the date of the enactment of this title or at any time
8 thereafter, the Secretary determines that a State does not
9 have in place by law or regulation a system for licensing
10 and registering loan originators that meets the require-
11 ments of sections 1505 and 1506 and subsection (d) of
12 this section, or does not participate in the Nationwide
13 Mortgage Licensing System and Registry, the Secretary
14 shall provide for the establishment and maintenance of a
15 system for the licensing and registration by the Secretary
16 of loan originators operating in such State as State-li-
17 censed loan originators.

18 (b) **LICENSING AND REGISTRATION REQUIRE-**
19 **MENTS.**—The system established by the Secretary under
20 subsection (a) for any State shall meet the requirements
21 of sections 1505 and 1506 for State-licensed loan origina-
22 tors.

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

1 as a State-licensed loan originator that will facilitate elec-
2 tronic tracking and uniform identification of, and public
3 access to, the employment history of and the publicly adju-
4 dicated disciplinary and enforcement actions against loan
5 originators.

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

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

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

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

1 (4) The State loan originator supervisory au-
2 thority has a process in place for challenging infor-
3 mation contained in the Nationwide Mortgage Li-
4 censing System and Registry.

5 (5) The State loan originator supervisory au-
6 thority has established a mechanism to assess civil
7 money penalties for individuals acting as mortgage
8 originators in their State without a valid license or
9 registration.

10 (6) The State loan originator supervisory au-
11 thority has established minimum net worth or surety
12 bonding requirements that reflect the dollar amount
13 of loans originated by a residential mortgage loan
14 originator.

15 (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-
16 retary may extend, by not more than 24 months, the 1-
17 year or 2-year period, as the case may be, referred to in
18 subsection (a) for the licensing of loan originators in any
19 State under a State licensing law that meets the require-
20 ments of sections 1505 and 1506 and subsection (d) if
21 the Secretary determines that such State is making a good
22 faith effort to establish a State licensing law that meets
23 such requirements, license mortgage originators under
24 such law, and register such originators with the Nation-
25 wide Mortgage Licensing System and Registry.

1 (f) CONTRACTING AUTHORITY.—The Secretary may
2 enter into contracts with qualified independent parties, as
3 necessary to efficiently fulfill the obligations of the Sec-
4 retary under this section.

5 **SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATION-**
6 **WIDE MORTGAGE LICENSING AND REGISTRY**
7 **SYSTEM.**

8 If at any time the Secretary determines that the Na-
9 tionwide Mortgage Licensing System and Registry is fail-
10 ing to meet the requirements and purposes of this title
11 for a comprehensive licensing, supervisory, and tracking
12 system for loan originators, the Secretary shall establish
13 and maintain such a system to carry out the purposes of
14 this title and the effective registration and regulation of
15 loan originators.

16 **SEC. 1510. FEES.**

17 The Federal banking agencies, the Farm Credit
18 Administration, the Secretary, and the Nationwide Mort-
19 gage Licensing System and Registry may charge reason-
20 able fees to cover the costs of maintaining and providing
21 access to information from the Nationwide Mortgage Li-
22 censing System and Registry, to the extent that such fees
23 are not charged to consumers for access to such system
24 and registry.

1 **SEC. 1511. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

2 (a) ACCESS TO RECORDS.—Notwithstanding any
3 other provision of law, in providing identification and
4 processing functions, the Attorney General shall provide
5 access to all criminal history information to the appro-
6 priate State officials responsible for regulating State-li-
7 censed loan originators to the extent criminal history
8 background checks are required under the laws of the
9 State for the licensing of such loan originators.

10 (b) AGENT.—For the purposes of this section and in
11 order to reduce the points of contact which the Federal
12 Bureau of Investigation may have to maintain for pur-
13 poses of subsection (a), the Conference of State Bank Su-
14 pervisors or a wholly owned subsidiary may be used as
15 a channeling agent of the States for requesting and dis-
16 tributing information between the Department of Justice
17 and the appropriate State agencies.

18 **SEC. 1512. CONFIDENTIALITY OF INFORMATION.**

19 (a) SYSTEM CONFIDENTIALITY.—Except as other-
20 wise provided in this section, any requirement under Fed-
21 eral or State law regarding the privacy or confidentiality
22 of any information or material provided to the Nationwide
23 Mortgage Licensing System and Registry or a system es-
24 tablished by the Secretary under section 1509, and any
25 privilege arising under Federal or State law (including the
26 rules of any Federal or State court) with respect to such

1 information or material, shall continue to apply to such
2 information or material after the information or material
3 has been disclosed to the system. Such information and
4 material may be shared with all State and Federal regu-
5 latory officials with mortgage industry oversight authority
6 without the loss of privilege or the loss of confidentiality
7 protections provided by Federal and State laws.

8 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-
9 MENTS.—Information or material that is subject to a
10 privilege or confidentiality under subsection (a) shall not
11 be subject to—

12 (1) disclosure under any Federal or State law
13 governing the disclosure to the public of information
14 held by an officer or an agency of the Federal Gov-
15 ernment or the respective State; or

16 (2) subpoena or discovery, or admission into
17 evidence, in any private civil action or administrative
18 process, unless with respect to any privilege held by
19 the Nationwide Mortgage Licensing System and
20 Registry or the Secretary with respect to such infor-
21 mation or material, the person to whom such infor-
22 mation or material pertains waives, in whole or in
23 part, in the discretion of such person, that privilege.

24 (c) COORDINATION WITH OTHER LAW.—Any State
25 law, including any State open record law, relating to the

1 disclosure of confidential supervisory information or any
2 information or material described in subsection (a) that
3 is inconsistent with subsection (a) shall be superseded by
4 the requirements of such provision to the extent State law
5 provides less confidentiality or a weaker privilege.

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

12 **SEC. 1513. LIABILITY PROVISIONS.**

13 The Secretary, any State official or agency, any Fed-
14 eral banking agency, or any organization serving as the
15 administrator of the Nationwide Mortgage Licensing Sys-
16 tem and Registry or a system established by the Secretary
17 under section 1509, or any officer or employee of any such
18 entity, shall not be subject to any civil action or proceeding
19 for monetary damages by reason of the good faith action
20 or omission of any officer or employee of any such entity,
21 while acting within the scope of office or employment, re-
22 lating to the collection, furnishing, or dissemination of in-
23 formation concerning persons who are loan originators or
24 are applying for licensing or registration as loan origina-
25 tors.

1 **SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING**
2 **SYSTEM.**

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

4 (1) examine any books, papers, records, or
5 other data of any loan originator operating in any
6 State which is subject to a licensing system estab-
7 lished by the Secretary under section 1508; and

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

18 (b) **EXAMINATION AUTHORITY.**—

19 (1) **IN GENERAL.**—If the Secretary establishes
20 a licensing system under section 1508 for any State,
21 the Secretary shall appoint examiners for the pur-
22 poses of administering such section.

23 (2) **POWER TO EXAMINE.**—Any examiner ap-
24 pointed under paragraph (1) shall have power, on
25 behalf of the Secretary, to make any examination of
26 any loan originator operating in any State which is

1 subject to a licensing system established by the Sec-
2 retary under section 1508 whenever the Secretary
3 determines an examination of any loan originator is
4 necessary to determine the compliance by the origi-
5 nator with this title.

6 (3) REPORT OF EXAMINATION.—Each examiner
7 appointed under paragraph (1) shall make a full and
8 detailed report of examination of any loan originator
9 examined to the Secretary.

10 (4) ADMINISTRATION OF OATHS AND AFFIRMA-
11 TIONS; EVIDENCE.—In connection with examinations
12 of loan originators operating in any State which is
13 subject to a licensing system established by the Sec-
14 retary under section 1508, or with other types of in-
15 vestigations to determine compliance with applicable
16 law and regulations, the Secretary and examiners
17 appointed by the Secretary may administer oaths
18 and affirmations and examine and take and preserve
19 testimony under oath as to any matter in respect to
20 the affairs of any such loan originator.

21 (5) ASSESSMENTS.—The cost of conducting any
22 examination of any loan originator operating in any
23 State which is subject to a licensing system estab-
24 lished by the Secretary under section 1508 shall be
25 assessed by the Secretary against the loan originator

1 to meet the Secretary's expenses in carrying out
2 such examination.

3 (c) CEASE AND DESIST PROCEEDING.—

4 (1) AUTHORITY OF SECRETARY.—If the Sec-
5 retary finds, after notice and opportunity for hear-
6 ing, that any person is violating, has violated, or is
7 about to violate any provision of this title, or any
8 regulation thereunder, with respect to a State which
9 is subject to a licensing system established by the
10 Secretary under section 1508, the Secretary may
11 publish such findings and enter an order requiring
12 such person, and any other person that is, was, or
13 would be a cause of the violation, due to an act or
14 omission the person knew or should have known
15 would contribute to such violation, to cease and de-
16 sist from committing or causing such violation and
17 any future violation of the same provision, rule, or
18 regulation. Such order may, in addition to requiring
19 a person to cease and desist from committing or
20 causing a violation, require such person to comply,
21 or to take steps to effect compliance, with such pro-
22 vision or regulation, upon such terms and conditions
23 and within such time as the Secretary may specify
24 in such order. Any such order may, as the Secretary
25 deems appropriate, require future compliance or

1 steps to effect future compliance, either permanently
2 or for such period of time as the Secretary may
3 specify, with such provision or regulation with re-
4 spect to any loan originator.

5 (2) HEARING.—The notice instituting pro-
6 ceedings pursuant to paragraph (1) shall fix a hear-
7 ing date not earlier than 30 days nor later than 60
8 days after service of the notice unless an earlier or
9 a later date is set by the Secretary with the consent
10 of any respondent so served.

11 (3) TEMPORARY ORDER.—Whenever the Sec-
12 retary determines that the alleged violation or
13 threatened violation specified in the notice insti-
14 tuting proceedings pursuant to paragraph (1), or the
15 continuation thereof, is likely to result in significant
16 dissipation or conversion of assets, significant harm
17 to consumers, or substantial harm to the public in-
18 terest prior to the completion of the proceedings, the
19 Secretary may enter a temporary order requiring the
20 respondent to cease and desist from the violation or
21 threatened violation and to take such action to pre-
22 vent the violation or threatened violation and to pre-
23 vent dissipation or conversion of assets, significant
24 harm to consumers, or substantial harm to the pub-
25 lic interest as the Secretary deems appropriate pend-

1 ing completion of such proceedings. Such an order
2 shall be entered only after notice and opportunity for
3 a hearing, unless the Secretary determines that no-
4 tice and hearing prior to entry would be impracti-
5 cable or contrary to the public interest. A temporary
6 order shall become effective upon service upon the
7 respondent and, unless set aside, limited, or sus-
8 pended by the Secretary or a court of competent ju-
9 risdiction, shall remain effective and enforceable
10 pending the completion of the proceedings.

11 (4) REVIEW OF TEMPORARY ORDERS.—

12 (A) REVIEW BY SECRETARY.—At any time
13 after the respondent has been served with a
14 temporary cease and desist order pursuant to
15 paragraph (3), the respondent may apply to the
16 Secretary to have the order set aside, limited,
17 or suspended. If the respondent has been served
18 with a temporary cease and desist order entered
19 without a prior hearing before the Secretary,
20 the respondent may, within 10 days after the
21 date on which the order was served, request a
22 hearing on such application and the Secretary
23 shall hold a hearing and render a decision on
24 such application at the earliest possible time.

25 (B) JUDICIAL REVIEW.—Within—

1 (i) 10 days after the date the respond-
2 ent was served with a temporary cease and
3 desist order entered with a prior hearing
4 before the Secretary; or

5 (ii) 10 days after the Secretary ren-
6 ders a decision on an application and hear-
7 ing under paragraph (1), with respect to
8 any temporary cease and desist order en-
9 tered without a prior hearing before the
10 Secretary,

11 the respondent may apply to the United States
12 district court for the district in which the re-
13 spondent resides or has its principal place of
14 business, or for the District of Columbia, for an
15 order setting aside, limiting, or suspending the
16 effectiveness or enforcement of the order, and
17 the court shall have jurisdiction to enter such
18 an order. A respondent served with a temporary
19 cease and desist order entered without a prior
20 hearing before the Secretary may not apply to
21 the court except after hearing and decision by
22 the Secretary on the respondent's application
23 under subparagraph (A).

24 (C) NO AUTOMATIC STAY OF TEMPORARY
25 ORDER.—The commencement of proceedings

1 under subparagraph (B) shall not, unless spe-
2 cifically ordered by the court, operate as a stay
3 of the Secretary's order.

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

14 (d) AUTHORITY OF THE SECRETARY TO ASSESS
15 MONEY PENALTIES.—

16 (1) IN GENERAL.—The Secretary may impose a
17 civil penalty on a loan originator operating in any
18 State which is subject to a licensing system estab-
19 lished by the Secretary under section 1508, if the
20 Secretary finds, on the record after notice and op-
21 portunity for hearing, that such loan originator has
22 violated or failed to comply with any requirement of
23 this title or any regulation prescribed by the Sec-
24 retary under this title or order issued under sub-
25 section (c).

1 (2) MAXIMUM AMOUNT OF PENALTY.—The
2 maximum amount of penalty for each act or omis-
3 sion described in paragraph (1) shall be \$25,000.

4 **SEC. 1515. STATE EXAMINATION AUTHORITY.**

5 In addition to any authority allowed under State law
6 a State licensing agency shall have the authority to con-
7 duct investigations and examinations as follows:

8 (1) For the purposes of investigating violations
9 or complaints arising under this title, or for the pur-
10 poses of examination, the State licensing agency may
11 review, investigate, or examine any loan originator
12 licensed or required to be licensed under this title,
13 as often as necessary in order to carry out the pur-
14 poses of this title.

15 (2) Each such loan originator shall make avail-
16 able upon request to the State licensing agency the
17 books and records relating to the operations of such
18 originator. The State licensing agency may have ac-
19 cess to such books and records and interview the of-
20 ficers, principals, loan originators, employees, inde-
21 pendent contractors, agents, and customers of the li-
22 censee concerning their business.

23 (3) The authority of this section shall remain in
24 effect, whether such a loan originator acts or claims

1 to act under any licensing or registration law of such
2 State, or claims to act without such authority.

3 (4) No person subject to investigation or exam-
4 ination under this section may knowingly withhold,
5 abstract, remove, mutilate, destroy, or secrete any
6 books, records, computer records, or other informa-
7 tion.

8 **SEC. 1516. REPORTS AND RECOMMENDATIONS TO CON-**
9 **GRESS.**

10 (a) ANNUAL REPORTS.—Not later than 1 year after
11 the date of enactment of this title, and annually there-
12 after, the Secretary shall submit a report to Congress on
13 the effectiveness of the provisions of this title, including
14 legislative recommendations, if any, for strengthening con-
15 sumer protections, enhancing examination standards,
16 streamlining communication between all stakeholders in-
17 volved in residential mortgage loan origination and proc-
18 essing, and establishing performance based bonding re-
19 quirements for mortgage originators or institutions that
20 employ such brokers.

21 (b) LEGISLATIVE RECOMMENDATIONS.—Not later
22 than 6 months after the date of enactment of this title,
23 the Secretary shall make recommendations to Congress on
24 legislative reforms to the Real Estate Settlement Proce-
25 dures Act of 1974, that the Secretary deems appropriate

1 to promote more transparent disclosures, allowing con-
2 sumers to better shop and compare mortgage loan terms
3 and settlement costs.

4 **SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORE-**
5 **CLOSURES.**

6 (a) **STUDY REQUIRED.**—The Secretary shall conduct
7 an extensive study of the root causes of default and fore-
8 closure of home loans, using as much empirical data as
9 is available.

10 (b) **PRELIMINARY REPORT TO CONGRESS.**—Not later
11 than 6 months after the date of enactment of this title,
12 the Secretary shall submit to Congress a preliminary re-
13 port regarding the study required by this section.

14 (c) **FINAL REPORT TO CONGRESS.**—Not later than
15 12 months after the date of enactment of this title, the
16 Secretary shall submit to Congress a final report regard-
17 ing the results of the study required by this section, which
18 shall include any recommended legislation relating to the
19 study, and recommendations for best practices and for a
20 process to provide targeted assistance to populations with
21 the highest risk of potential default or foreclosure.

1 **TITLE VI—MISCELLANEOUS**

2 **SEC. 1601. STUDY AND REPORTS ON GUARANTEE FEES.**

3 (a) ONGOING STUDY OF FEES.—The Director shall
4 conduct an ongoing study of fees charged by enterprises
5 for guaranteeing a mortgage.

6 (b) COLLECTION OF DATA.—The Director shall, by
7 regulation or order, establish procedures for the collection
8 of data from enterprises for purposes of this subsection,
9 including the format and the process for collection of such
10 data.

11 (c) REPORTS TO CONGRESS.—The Director shall an-
12 nually submit a report to Congress on the results of the
13 study conducted under subsection (a), based on the aggre-
14 gated data collected under subsection (a) for the subject
15 year, regarding the amount of such fees and the criteria
16 used by the enterprises to determine such fees.

17 (d) CONTENTS OF REPORTS.—The reports required
18 under subsection (c) shall identify and analyze—

19 (1) the factors considered in determining the
20 amount of the guarantee fees charged;

21 (2) the total revenue earned by the enterprises
22 from guarantee fees;

23 (3) the total costs incurred by the enterprises
24 for providing guarantees;

1 (4) the average guarantee fee charged by the
2 enterprises;

3 (5) an analysis of any increase or decrease in
4 guarantee fees from the preceding year;

5 (6) a breakdown of the revenue and costs asso-
6 ciated with providing guarantees, based on product
7 type and risk classifications; and

8 (7) a breakdown of guarantee fees charged
9 based on asset size of the originator and the number
10 of loans sold or transferred to an enterprise.

11 (e) PROTECTION OF INFORMATION.—Nothing in this
12 section may be construed to require or authorize the Di-
13 rector to publicly disclose information that is confidential
14 or proprietary.

15 **SEC. 1602. STUDY AND REPORT ON DEFAULT RISK EVALUA-**
16 **TION.**

17 (a) STUDY.—The Director shall conduct a study of
18 ways to improve the overall default risk evaluation used
19 with respect to residential mortgage loans. Particular at-
20 tention shall be paid to the development and utilization
21 of processes and technologies that provide a means to
22 standardize the measurement of risk.

23 (b) REPORT.—The Director shall submit a report on
24 the study conducted under this section to the Committee
25 on Banking, Housing, and Urban Affairs of the Senate

1 and the Committee on Financial Services of the House of
2 Representatives, not later than 1 year after the date of
3 enactment of this Act.

4 **SEC. 1603. CONVERSION OF HUD CONTRACTS.**

5 (a) IN GENERAL.—Notwithstanding any other provi-
6 sion of law, the Secretary may, at the request of an owner
7 of a multifamily housing project that exceeds 5,000 units
8 to which a contract for project-based rental assistance
9 under section 8 of the United States Housing Act of 1937
10 (“Act”) (42 U.S.C. 1437f) and a Rental Assistance Pay-
11 ment contract is subject, convert such contracts to a con-
12 tract for project-based rental assistance under section 8
13 of the Act.

14 (b) INITIAL RENEWAL.—

15 (1) At the request of an owner under subsection
16 (a) made no later than 90 days prior to a conver-
17 sion, the Secretary may, to the extent sufficient
18 amounts are made available in appropriation Acts
19 and notwithstanding any other law, treat the con-
20 templated resulting contract as if such contract were
21 eligible for initial renewal under section 524(a) of
22 the MultiFamily Assisted Housing Reform and Af-
23 fordability Act of 1997 (42 U.S.C. 1437f note)
24 (“MAHRA”) (42 U.S.C. 1437f note).

1 (2) A request by an owner pursuant to para-
2 graph (1) shall be upon such terms and conditions
3 as the Secretary may require.

4 (c) RESULTING CONTRACT.—The resulting contract
5 shall—

6 (1) be subject to section 524(a) of MAHRA (42
7 U.S.C. 1437f note);

8 (2) be considered for all purposes a contract
9 that has been renewed under section 524(a) of
10 MAHRA (42 U.S.C. 1437f note) for a term not to
11 exceed 20 years;

12 (3) be subsequently renewable at the request of
13 an owner, under any renewal option for which the
14 project is eligible under MAHRA (42 U.S.C. 1437f
15 note);

16 (4) contain provisions limiting distributions, as
17 the Secretary determines appropriate, not to exceed
18 10 percent of the initial investment of the owner;

19 (5) be subject to the availability of sufficient
20 amounts in appropriation Acts; and

21 (6) be subject to such other terms and condi-
22 tions as the Secretary considers appropriate.

23 (d) INCOME TARGETING.—To the extent that as-
24 sisted dwelling units, subject to the resulting contract
25 under subsection (a), serve low-income families, as defined

1 in section 3(b)(2) of the Act (42 U.S.C. 1437a(b)(2)) the
2 units shall be considered to be in compliance with all in-
3 come targeting requirements under the Act (42 U.S.C.
4 1437 et seq).

5 (e) TENANT ELIGIBILITY.—Notwithstanding any
6 other provision of law, each family residing in an assisted
7 dwelling unit on the date of conversion of a contract under
8 this section, subject to the resulting contract under sub-
9 section (a), shall be considered to meet the applicable re-
10 quirements for income eligibility and occupancy.

11 (f) DEFINITIONS.—As used in this section—

12 (1) the term “Secretary” means the Secretary
13 of Housing and Urban Development;

14 (2) the term “conversion” means the action
15 under which a contract for project-based rental as-
16 sistance under section 8 of the Act and a Rental As-
17 sistance Payment contract become a contract for
18 project-based rental assistance under section 8 of
19 the Act (42 U.S.C. 1437f) pursuant to subsection
20 (a);

21 (3) the term “resulting contract” means the
22 new contract after a conversion pursuant to sub-
23 section (a); and

24 (4) the term “assisted dwelling unit” means a
25 dwelling unit in a multifamily housing project that

1 exceeds 5,000 units that, on the date of conversion
2 of a contract under this section, is subject to a con-
3 tract for project-based rental assistance under sec-
4 tion 8 of the Act (42 U.S.C. 1437f) or a Rental As-
5 sistance Payment contract.

6 **SEC. 1604. BRIDGE DEPOSITORY INSTITUTIONS.**

7 (a) IN GENERAL.—Section 11 of the Federal Deposit
8 Insurance Act (12 U.S.C. 1821) is amended—

9 (1) in subsection (d)(2)—

10 (A) in subsection (F), by striking “as re-
11 ceiver” and all that follows through clause (ii)
12 and inserting the following: “as receiver, with
13 respect to any insured depository institution,
14 organize a new depository institution under
15 subsection (m) or a bridge depository institu-
16 tion under subsection (n).”;

17 (B) in subparagraph (G), by striking “new
18 bank or a bridge bank” and inserting “new de-
19 pository institution or a bridge depository insti-
20 tution”;

21 (2) in subsection (e)(10)(C), by striking “bridge
22 bank” each place that term appears and inserting
23 “bridge depository institution”;

24 (3) in subsection (m)—

1 (A) in the subsection heading, by striking
2 “BANKS” and inserting “DEPOSITORY INSTITU-
3 TIONS”;

4 (B) by striking “new bank” each place
5 that term appears and inserting “new deposi-
6 tory institution”;

7 (C) by striking “such bank” each place
8 that term appears and inserting “such deposi-
9 tory institution”;

10 (D) in paragraph (1), by inserting “or
11 Federal savings association” after “national
12 bank”;

13 (E) in paragraph (6), by striking “only
14 bank” and inserting “only depository institu-
15 tion”;

16 (F) in paragraph (9), by inserting “or the
17 Director of the Office of Thrift Supervision, as
18 appropriate” after “Comptroller of the Cur-
19 rency”;

20 (G) in paragraph (15), by striking “, but
21 in no event” and all that follows through “lo-
22 cated”;

23 (H) in paragraph (16)—

24 (i) by inserting “or the Director of the
25 Office of Thrift Supervision, as appro-

1 appropriate,” after “Comptroller of the Cur-
2 rency” each place that term appears;

3 (ii) by striking “the bank” each place
4 that term appears and inserting “the de-
5 pository institution”;

6 (iii) by inserting “or Federal savings
7 association” after “national bank” each
8 place that term appears;

9 (iv) by inserting “or Federal savings
10 associations” after “national banks”; and

11 (v) by striking “Such bank” and in-
12 serting “Such depository institution”; and

13 (I) in paragraph (18), by inserting “or the
14 Director of the Office of Thrift Supervision, as
15 appropriate,” after “Comptroller of the Cur-
16 rency” each place that term appears;

17 (4) in subsection (n)—

18 (A) in the subsection heading, by striking
19 “BANKS” and inserting “DEPOSITORY INSTITU-
20 TIONS”;

21 (B) by striking “bridge bank” each place
22 that term appears and inserting “bridge depository
23 institution”;

24 (C) by striking “bridge banks” each place
25 that term appears (other than in paragraph

1 (1)(A) and inserting “bridge depository institu-
2 tions”;

3 (D) by striking “bridge bank’s” each place
4 that term appears and inserting “bridge depository
5 institutions”;

6 (E) by striking “insured bank” each place
7 that term appears and inserting “insured depository
8 institution”;

9 (F) by striking “insured banks” each place
10 that term appears and inserting “insured depository
11 institutions”;

12 (G) by striking “such bank” each place
13 that term appears (other than in paragraph
14 (4)(J)) and inserting “such depository institu-
15 tion”;

16 (H) by striking “the bank” each place that
17 term appears and inserting “the depository in-
18 stitution”;

19 (I) in paragraph (1)(A)—

20 (i) by inserting “, with respect to 1 or
21 more insured banks, or the Director of the
22 Office of Thrift Supervision, with respect
23 to 1 or more insured savings associations,”
24 after “Comptroller of the Currency”;

1 (ii) by inserting “or Federal savings
2 associations, as appropriate,” after “na-
3 tional banks”;

4 (iii) by inserting “or Federal savings
5 associations, as applicable,” after “banking
6 associations”; and

7 (iv) by striking “as bridge banks” and
8 inserting “as ‘bridge depository institu-
9 tions’ ”;

10 (J) in paragraph (1)(B)—

11 (i) by striking “bank or banks” each
12 place that term appears and inserting “de-
13 pository institution or institutions”;

14 (ii) by striking “of a bank”; and

15 (iii) by striking “of that bank”;

16 (K) in paragraph (1)(E), by inserting be-
17 fore the period “, in the case of 1 or more in-
18 sured banks, and as a Federal savings associa-
19 tion, in the case of 1 or more insured savings
20 associations”;

21 (L) in paragraph (2)—

22 (i) in subparagraph by inserting “or
23 Federal savings association” after “na-
24 tional bank” each place that term appears;
25 and

1 (ii) by inserting “or the Director of
2 the Office of Thrift Supervision” after
3 “Comptroller of the Currency”;

4 (M) in paragraph (4)—

5 (i) in subparagraph (C), by striking
6 “under section 5138 of the Revised Stat-
7 utes or any other” and inserting “under
8 any”;

9 (ii) by inserting “and the Director of
10 the Office of Thrift Supervision, as appro-
11 priate,” after “Comptroller of the Cur-
12 rency” each place that term appears;

13 (iii) in subparagraph (D), by striking
14 “bank’s” and inserting “depository institu-
15 tion’s”; and

16 (iv) in subparagraph (F), by inserting
17 before the period “or Federal home loan
18 bank”;

19 (N) in paragraph (8)—

20 (i) in subparagraph (A), by striking
21 “the banks” and inserting “the depository
22 institutions”;

23 (ii) in subparagraph (B), by striking
24 “bank’s” and inserting “depository institu-
25 tion’s”;

1 (O) in paragraph (11), by inserting “or a
2 Federal savings association, as the case may
3 be,” after “national bank” each place that term
4 appears;

5 (P) in paragraph (12)—

6 (i) by inserting “or the Director of the
7 Office of Thrift Supervision, as appro-
8 priate,” after “Comptroller of the Cur-
9 rency” each place that term appears; and

10 (ii) by inserting “or Federal savings
11 associations, as appropriate” after “na-
12 tional banks”; and

13 (Q) in paragraph (13), by striking “single
14 bank” and inserting “single depository institu-
15 tion”.

16 (b) OTHER CONFORMING AMENDMENTS.—

17 (1) FEDERAL DEPOSIT INSURANCE ACT.—The
18 Federal Deposit Insurance Act (12 U.S.C. 1811 et
19 seq.) is amended—

20 (A) in section 3 (12 U.S.C. 1813), by
21 striking subsection (i) and inserting the fol-
22 lowing:

23 “(i) NEW DEPOSITORY INSTITUTION AND BRIDGE
24 DEPOSITORY INSTITUTION DEFINED.—

1 “(1) NEW DEPOSITORY INSTITUTION.—The
2 term ‘new depository institution’ means a new na-
3 tional bank or Federal savings association, other
4 than a bridge depository institution, organized by
5 the Corporation in accordance with section 11(m).

6 “(2) BRIDGE DEPOSITORY INSTITUTION.—The
7 term ‘bridge depository institution’ means a new na-
8 tional bank or Federal savings association organized
9 by the Corporation in accordance with section
10 11(n).”;

11 (B) in section 10(d)(5)(B) (12 U.S.C.
12 1820(d)(5)(B)), by striking “bridge bank” and
13 inserting “bridge depository institution”;

14 (C) in section 12 (12 U.S.C. 1822), by
15 striking “new bank” each place that term ap-
16 pears and inserting “new depository institu-
17 tion”;and

18 (D) in section 38(j)(2) (12 U.S.C.
19 1831o(j)(2)), by striking “bridge bank” and in-
20 serting “bridge depository institution”.

21 (2) FEDERAL CREDIT UNION ACT.—Section
22 207(c)(10)(C)(i) of the Federal Credit Union Act
23 (12 U.S.C. 1787(c)(10)(C)(i)) is amended by strik-
24 ing “bridge bank” and inserting “bridge depository
25 institution”.

1 **TITLE I—FHA MODERNIZATION**
2 **ACT OF 2008**

3 **SEC. 2101. SHORT TITLE.**

4 This title may be cited as the “FHA Modernization
5 Act of 2008”.

6 **Subtitle A—Building American**
7 **Homeownership**

8 **SEC. 2111. SHORT TITLE.**

9 This subtitle may be cited as the “Building American
10 Homeownership Act of 2008”.

11 **SEC. 2112. MAXIMUM PRINCIPAL LOAN OBLIGATION.**

12 (a) IN GENERAL.—Paragraph (2) of section
13 203(b)(2) of the National Housing Act (12 U.S.C.
14 1709(b)(2)) is amended—

15 (1) by amending subparagraphs (A) and (B) to
16 read as follows:

17 “(A) not to exceed the lesser of—

18 “(i) in the case of a 1-family resi-
19 dence, 110 percent of the median 1-family
20 house price in the area, as determined by
21 the Secretary; and in the case of a 2-, 3-
22 , or 4-family residence, the percentage of
23 such median price that bears the same
24 ratio to such median price as the dollar
25 amount limitation determined under sec-

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

7 “ (ii) 150 percent of the dollar amount
8 limitation determined under section
9 305(a)(2) of the Federal Home Loan
10 Mortgage Corporation Act for a residence
11 of applicable size,

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

21 “(B) not to exceed 100 percent of the ap-
22 praised value of the property.”; and

23 (2) in the matter following subparagraph (B),
24 by striking the second sentence (relating to a defini-
25 tion of “average closing cost”) and all that follows

1 through “section 3103A(d) of title 38, United States
2 Code.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 subsection (a) shall take effect upon the expiration of the
5 date described in section 202(a) of the Economic Stimulus
6 Act of 2008 (Public Law 110–185).

7 **SEC. 2113. CASH INVESTMENT REQUIREMENT AND PROHI-**
8 **BITION OF SELLER-FUNDED DOWN PAYMENT**
9 **ASSISTANCE.**

10 Paragraph (9) of section 203(b) of the National
11 Housing Act (12 U.S.C. 1709(b)(9)) is amended to read
12 as follows:

13 “(9) **CASH INVESTMENT REQUIREMENT.**—

14 “(A) **IN GENERAL.**—A mortgage insured
15 under this section shall be executed by a mort-
16 gator who shall have paid, in cash, on account
17 of the property an amount equal to not less
18 than 3.5 percent of the appraised value of the
19 property or such larger amount as the Sec-
20 retary may determine.

21 “(B) **FAMILY MEMBERS.**—For purposes of
22 this paragraph, the Secretary shall consider as
23 cash or its equivalent any amounts borrowed
24 from a family member (as such term is defined
25 in section 201), subject only to the require-

1 ments that, in any case in which the repayment
2 of such borrowed amounts is secured by a lien
3 against the property, that—

4 “(i) such lien shall be subordinate to
5 the mortgage; and

6 “(ii) the sum of the principal obliga-
7 tion of the mortgage and the obligation se-
8 cured by such lien may not exceed 100
9 percent of the appraised value of the prop-
10 erty.

11 “(C) PROHIBITED SOURCES.—In no case
12 shall the funds required by subparagraph (A)
13 consist, in whole or in part, of funds provided
14 by any of the following parties before, during,
15 or after closing of the property sale:

16 “(i) The seller or any other person or
17 entity that financially benefits from the
18 transaction.

19 “(ii) Any third party or entity that is
20 reimbursed, directly or indirectly, by any of
21 the parties described in clause (i).”.

22 **SEC. 2114. MORTGAGE INSURANCE PREMIUMS.**

23 Section 203(c)(2) of the National Housing Act (12
24 U.S.C. 1709(c)(2)) is amended—

1 (1) in the matter preceding subparagraph (A),
2 by striking “or of the General Insurance Fund” and
3 all that follows through “section 234(c),,”; and

4 (2) in subparagraph (A)—

5 (A) by striking “2.25 percent” and insert-
6 ing “3 percent”; and

7 (B) by striking “2.0 percent” and inserting
8 “2.75 percent”.

9 **SEC. 2115. REHABILITATION LOANS.**

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

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

14 (2) in paragraph (5)—

15 (A) by striking “General Insurance Fund”
16 the first place it appears and inserting “Mutual
17 Mortgage Insurance Fund”; and

18 (B) in the second sentence, by striking the
19 comma and all that follows through “General
20 Insurance Fund”.

21 **SEC. 2116. DISCRETIONARY ACTION.**

22 The National Housing Act is amended—

23 (1) in subsection (e) of section 202 (12 U.S.C.
24 1708(e))—

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

4 (B) by redesignating such subsection as
5 subsection (f);

6 (2) by striking paragraph (4) of section 203(s)
7 (12 U.S.C. 1709(s)(4)) and inserting the following
8 new paragraph:

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

10 (3) by transferring subsection (s) of section 203
11 (as amended by paragraph (2) of this section) to
12 section 202, inserting such subsection after sub-
13 section (d) of section 202, and redesignating such
14 subsection as subsection (e).

15 **SEC. 2117. INSURANCE OF CONDOMINIUMS.**

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

18 (1) in subsection (c), in the first sentence—

19 (A) by striking “and” before “(2)”; and

20 (B) by inserting before the period at the
21 end the following: “, and (3) the project has a
22 blanket mortgage insured by the Secretary
23 under subsection (d)”; and

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

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

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

5 (2) by striking “or on a leasehold (1)” and in-
6 serting “(B) a first mortgage on a leasehold on real
7 estate (i)”;

8 (3) by striking “or (2)” and inserting “, or
9 (ii)”;

10 (4) by inserting before the semicolon the fol-
11 lowing: “, or (C) a first mortgage given to secure the
12 unpaid purchase price of a fee interest in, or long-
13 term leasehold interest in, real estate consisting of
14 a one-family unit in a multifamily project, including
15 a project in which the dwelling units are attached,
16 or are manufactured housing units, semi-detached,
17 or detached, and an undivided interest in the com-
18 mon areas and facilities which serve the project”.

19 (c) DEFINITION OF REAL ESTATE.—Section 201 of
20 the National Housing Act (12 U.S.C. 1707) is amended
21 by adding at the end the following new subsection:

22 “(g) The term ‘real estate’ means land and all nat-
23 ural resources and structures permanently affixed to the
24 land, including residential buildings and stationary manu-
25 factured housing. The Secretary may not require, for

1 treatment of any land or other property as real estate for
2 purposes of this title, that such land or property be treated
3 as real estate for purposes of State taxation.”.

4 **SEC. 2118. MUTUAL MORTGAGE INSURANCE FUND.**

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

8 “(a) MUTUAL MORTGAGE INSURANCE FUND.—

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

18 “(2) LIMIT ON LOAN GUARANTEES.—The au-
19 thority of the Secretary to enter into commitments
20 to guarantee such insured mortgages shall be effec-
21 tive for any fiscal year only to the extent that the
22 aggregate original principal loan amount under such
23 mortgages, any part of which is guaranteed, does
24 not exceed the amount specified in appropriations
25 Acts for such fiscal year.

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

4 “(4) ANNUAL INDEPENDENT ACTUARIAL
5 STUDY.—The Secretary shall provide for an inde-
6 pendent actuarial study of the Fund to be conducted
7 annually, which shall analyze the financial position
8 of the Fund. The Secretary shall submit a report
9 annually to the Congress describing the results of
10 such study and assessing the financial status of the
11 Fund. The report shall recommend adjustments to
12 underwriting standards, program participation, or
13 premiums, if necessary, to ensure that the Fund re-
14 mains financially sound. The report shall also in-
15 clude an evaluation of the quality control procedures
16 and accuracy of information utilized in the process
17 of underwriting loans guaranteed by the Fund. Such
18 evaluation shall include a review of the risk charac-
19 teristics of loans based not only on borrower infor-
20 mation and performance, but on risks associated
21 with loans originated or funded by various entities
22 or financial institutions.

23 “(5) QUARTERLY REPORTS.—During each fiscal
24 year, the Secretary shall submit a report to the Con-

1 gress for each calendar quarter, which shall specify
2 for mortgages that are obligations of the Fund—

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

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

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

12 “(D) projected versus actual loss rates;
13 and

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

20 The first quarterly report under this paragraph shall
21 be submitted on the last day of the first quarter of
22 fiscal year 2008, or on the last day of the first full
23 calendar quarter following the enactment of the
24 Building American Homeownership Act of 2008,
25 whichever is later.

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

11 “(7) OPERATIONAL GOALS.—The operational
12 goals for the Fund are—

13 “(A) to minimize the default risk to the
14 Fund and to homeowners by among other ac-
15 tions instituting fraud prevention quality con-
16 trol screening not later than 18 months after
17 the date of enactment of the Building American
18 Homeownership Act of 2008; and

19 “(B) to meet the housing needs of the bor-
20 rowers that the single family mortgage insur-
21 ance program under this title is designed to
22 serve.”.

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

1 (1) HOMEOWNERSHIP VOUCHER PROGRAM
2 MORTGAGES.—In section 203(v) (12 U.S.C.
3 1709(v))—

4 (A) by striking “Notwithstanding section
5 202 of this title, the” and inserting “The”; and

6 (B) by striking “General Insurance Fund”
7 the first place such term appears and all that
8 follows through the end of the subsection and
9 inserting “Mutual Mortgage Insurance Fund.”.

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

15 (c) CONFORMING AMENDMENTS.—The National
16 Housing Act is amended—

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

19 (2) in section 519(e) (12 U.S.C. 1735c(e)), by
20 striking “203(b)” and all that follows through
21 “203(i)” and inserting “203, except as determined
22 by the Secretary”.

1 **SEC. 2119. HAWAIIAN HOME LANDS AND INDIAN RESERVA-**
2 **TIONS.**

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

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

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

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

14 (1) by striking “General Insurance Fund” the
15 first place it appears through “519” and inserting
16 “Mutual Mortgage Insurance Fund”; and

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

19 **SEC. 2120. CONFORMING AND TECHNICAL AMENDMENTS.**

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

22 (1) Subsection (i) of section 203 (12 U.S.C.
23 1709(i)).

24 (2) Subsection (o) of section 203 (12 U.S.C.
25 1709(o)).

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

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

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

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

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

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

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

18 **SEC. 2121. INSURANCE OF MORTGAGES.**

19 Subsection (n)(2) of section 203 of the National
20 Housing Act (12 U.S.C. 1709(n)(2)) is amended—

21 (1) in subparagraph (A), by inserting “or sub-
22 ordinate mortgage or” before “lien given”; and

23 (2) in subparagraph (C), by inserting “or sub-
24 ordinate mortgage or” before “lien”.

1 **SEC. 2122. HOME EQUITY CONVERSION MORTGAGES.**

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

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

6 (2) by amending subsection (d)(1) to read as
7 follows:

8 “(1) have been originated by a mortgagee ap-
9 proved by the Secretary;”;

10 (3) by amending subsection (d)(2)(B) to read
11 as follows:

12 “(B) has received adequate counseling, as
13 provided in subsection (f), by an independent
14 third party that is not, either directly or indi-
15 rectly, associated with or compensated by a
16 party involved in—

17 “(i) originating or servicing the mort-
18 gage;

19 “(ii) funding the loan underlying the
20 mortgage; or

21 “(iii) the sale of annuities, invest-
22 ments, long-term care insurance, or any
23 other type of financial or insurance prod-
24 uct;”;

25 (4) in subsection (f)—

1 (A) by striking “(f) INFORMATION SERV-
2 ICES FOR MORTGAGORS.—” and inserting “(f)
3 COUNSELING SERVICES AND INFORMATION FOR
4 MORTGAGORS.—”; and

5 (B) by amending the matter preceding
6 paragraph (1) to read as follows: “The Sec-
7 retary shall provide or cause to be provided ade-
8 quate counseling for the mortgagor, as de-
9 scribed in subsection (d)(2)(B). Such counseling
10 shall be provided by counselors that meet quali-
11 fication standards and follow uniform coun-
12 seling protocols. The qualification standards
13 and counseling protocols shall be established by
14 the Secretary within 12 months of the date of
15 enactment of the Building American Home-
16 ownership Act of 2008. The protocols shall re-
17 quire a qualified counselor to discuss with each
18 mortgagor information which shall include—”

19 (5) in subsection (g), by striking “established
20 under section 203(b)(2)” and all that follows
21 through “located” and inserting “limitation estab-
22 lished under section 305(a)(2) of the Federal Home
23 Loan Mortgage Corporation Act for a 1-family resi-
24 dence”;

25 (6) by striking subsection (l);

1 (7) by redesignating subsection (m) as sub-
2 section (l);

3 (8) by amending subsection (l), as so redesign-
4 nated, to read as follows:

5 “(l) FUNDING FOR COUNSELING.—The Secretary
6 may use a portion of the mortgage insurance premiums
7 collected under the program under this section to ade-
8 quately fund the counseling and disclosure activities re-
9 quired under subsection (f), including counseling for those
10 homeowners who elect not to take out a home equity con-
11 version mortgage, provided that the use of such funds is
12 based upon accepted actuarial principles.”; and

13 (9) by adding at the end the following new sub-
14 section:

15 “(m) AUTHORITY TO INSURE HOME PURCHASE
16 MORTGAGE.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of this section, the Secretary may insure,
19 upon application by a mortgagee, a home equity con-
20 version mortgage upon such terms and conditions as
21 the Secretary may prescribe, when the home equity
22 conversion mortgage will be used to purchase a 1- to
23 4-family dwelling unit, one unit of which the mort-
24 gagor will occupy as a primary residence, and to
25 provide for any future payments to the mortgagor,

1 based on available equity, as authorized under sub-
2 section (d)(9).

3 “(2) LIMITATION ON PRINCIPAL OBLIGATION.—

4 A home equity conversion mortgage insured pursu-
5 ant to paragraph (1) shall involve a principal obliga-
6 tion that does not exceed the dollar amount limita-
7 tion determined under section 305(a)(2) of the Fed-
8 eral Home Loan Mortgage Corporation Act for a 1-
9 family residence.

10 “(n) REQUIREMENTS ON MORTGAGE ORIGINA-
11 TORS.—

12 “(1) IN GENERAL.—The mortgagee and any
13 other party that participates in the origination of a
14 mortgage to be insured under this section shall—

15 “(A) not participate in, be associated with,
16 or employ any party that participates in or is
17 associated with any other financial or insurance
18 activity; or

19 “(B) demonstrate to the Secretary that the
20 mortgagee or other party maintains, or will
21 maintain, firewalls and other safeguards de-
22 signed to ensure that—

23 “(i) individuals participating in the
24 origination of the mortgage shall have no
25 involvement with, or incentive to provide

1 the mortgagor with, any other financial or
2 insurance product; and

3 “(ii) the mortgagor shall not be re-
4 quired, directly or indirectly, as a condition
5 of obtaining a mortgage under this section,
6 to purchase any other financial or insur-
7 ance product.

8 “(2) APPROVAL OF OTHER PARTIES.—All par-
9 ties that participate in the origination of a mortgage
10 to be insured under this section shall be approved by
11 the Secretary.

12 “(o) PROHIBITION AGAINST REQUIREMENTS TO
13 PURCHASE ADDITIONAL PRODUCTS.—The mortgagee or
14 any other party shall not be required by the mortgagor
15 or any other party to purchase an insurance, annuity, or
16 other additional product as a requirement or condition of
17 eligibility for insurance under subsection (c).

18 “(p) STUDY TO DETERMINE CONSUMER PROTEC-
19 TIONS AND UNDERWRITING STANDARDS.—The Secretary
20 shall conduct a study to examine and determine appro-
21 priate consumer protections and underwriting standards
22 to ensure that the purchase of products referred to in sub-
23 section (o) is appropriate for the consumer. In conducting
24 such study, the Secretary shall consult with consumer ad-
25 vocates (including recognized experts in consumer protec-

1 tion), industry representatives, representatives of coun-
2 seling organizations, and other interested parties.”.

3 (b) MORTGAGES FOR COOPERATIVES.—Subsection
4 (b) of section 255 of the National Housing Act (12 U.S.C.
5 1715z–20(b)) is amended—

6 (1) in paragraph (4)—

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

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

10 and

11 (C) by inserting “a first mortgage or first
12 lien” before “on a leasehold”; and

13 (2) in paragraph (5), by inserting “a first or
14 subordinate lien on” before “all stock”.

15 (c) LIMITATION ON ORIGINATION FEES.—Section
16 255 of the National Housing Act (12 U.S.C. 1715z–20),
17 as amended by the preceding provisions of this section,
18 is further amended by adding at the end the following new
19 subsection:

20 “(r) LIMITATION ON ORIGINATION FEES.—The Sec-
21 retary shall establish limits on the origination fee that may
22 be charged to a mortgagor under a mortgage insured
23 under this section, which limitations shall—

1 “(1) equal 1.5 percent of the maximum claim
2 amount of the mortgage unless adjusted thereafter
3 on the basis of—

4 “(A) the costs to the mortgagor; and

5 “(B) the impact of such fees on the reverse
6 mortgage market;

7 “(2) be subject to a minimum allowable
8 amount;

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

11 “(4) include any fees paid to correspondent
12 mortgagees approved by the Secretary; and

13 “(5) have the same effective date as subsection
14 (m)(2) regarding the limitation on principal obliga-
15 tion.”.

16 (d) STUDY REGARDING PROGRAM COSTS AND CRED-
17 IT AVAILABILITY.—

18 (1) IN GENERAL.—The Comptroller General of
19 the United States shall conduct a study regarding
20 the costs and availability of credit under the home
21 equity conversion mortgages for elderly homeowners
22 program under section 255 of the National Housing
23 Act (12 U.S.C. 1715z–20) (in this subsection re-
24 ferred to as the “program”).

1 (2) PURPOSE.—The purpose of the study re-
2 quired under paragraph (1) is to help Congress ana-
3 lyze and determine the effects of limiting the
4 amounts of the costs or fees under the program
5 from the amounts charged under the program as of
6 the date of the enactment of this title.

7 (3) CONTENT OF REPORT.—The study required
8 under paragraph (1) should focus on—

9 (A) the cost to mortgagors of participating
10 in the program;

11 (B) the financial soundness of the pro-
12 gram;

13 (C) the availability of credit under the pro-
14 gram; and

15 (D) the costs to elderly homeowners par-
16 ticipating in the program, including—

17 (i) mortgage insurance premiums
18 charged under the program;

19 (ii) up-front fees charged under the
20 program; and

21 (iii) margin rates charged under the
22 program.

23 (4) TIMING OF REPORT.—Not later than 12
24 months after the date of the enactment of this title,
25 the Comptroller General shall submit a report to the

1 Committee on Banking, Housing, and Urban Affairs
2 of the Senate and the Committee on Financial Serv-
3 ices of the House of Representatives setting forth
4 the results and conclusions of the study required
5 under paragraph (1).

6 **SEC. 2123. ENERGY EFFICIENT MORTGAGES PROGRAM.**

7 Section 106(a)(2) of the Energy Policy Act of 1992
8 (42 U.S.C. 12712 note) is amended—

9 (1) by amending subparagraph (C) to read as
10 follows:

11 “(C) COSTS OF IMPROVEMENTS.—The cost
12 of cost-effective energy efficiency improvements
13 shall not exceed the greater of—

14 “(i) 5 percent of the property value
15 (not to exceed 5 percent of the limit estab-
16 lished under section 203(b)(2)(A)) of the
17 National Housing Act (12 U.S.C.
18 1709(b)(2)(A); or

19 “(ii) 2 percent of the limit established
20 under section 203(b)(2)(B) of such Act.”;
21 and

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

23 “(D) LIMITATION.—In any fiscal year, the
24 aggregate number of mortgages insured pursu-
25 ant to this section may not exceed 5 percent of

1 the aggregate number of mortgages for 1- to 4-
2 family residences insured by the Secretary of
3 Housing and Urban Development under title II
4 of the National Housing Act (12 U.S.C. 1707
5 et seq.) during the preceding fiscal year.”.

6 **SEC. 2124. PILOT PROGRAM FOR AUTOMATED PROCESS**
7 **FOR BORROWERS WITHOUT SUFFICIENT**
8 **CREDIT HISTORY.**

9 (a) ESTABLISHMENT.—Title II of the National Hous-
10 ing Act (12 U.S.C. 1707 et seq.) is amended by adding
11 at the end the following new section:

12 **“SEC. 257. PILOT PROGRAM FOR AUTOMATED PROCESS**
13 **FOR BORROWERS WITHOUT SUFFICIENT**
14 **CREDIT HISTORY.**

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

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

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

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

17 (b) GAO REPORT.—Not later than the expiration of
18 the two-year period beginning on the date of the enact-
19 ment of this subtitle, the Comptroller General of the
20 United States shall submit to the Congress a report identi-
21 fying the number of additional mortgagors served using
22 the automated process established pursuant to section 257
23 of the National Housing Act (as added by the amendment
24 made by subsection (a) of this section) and the impact
25 of such process and the insurance of mortgages pursuant

1 to such process on the safety and soundness of the insur-
2 ance funds under the National Housing Act of which such
3 mortgages are obligations.

4 **SEC. 2125. HOMEOWNERSHIP PRESERVATION.**

5 The Secretary of Housing and Urban Development
6 and the Commissioner of the Federal Housing Adminis-
7 tration, in consultation with industry, the Neighborhood
8 Reinvestment Corporation, and other entities involved in
9 foreclosure prevention activities, shall—

10 (1) develop and implement a plan to improve
11 the Federal Housing Administration's loss mitiga-
12 tion process; and

13 (2) report such plan to the Committee on
14 Banking, Housing, and Urban Affairs of the Senate
15 and the Committee on Financial Services of the
16 House of Representatives.

17 **SEC. 2126. USE OF FHA SAVINGS FOR IMPROVEMENTS IN**
18 **FHA TECHNOLOGIES, PROCEDURES, PROC-**
19 **ESSES, PROGRAM PERFORMANCE, STAFFING,**
20 **AND SALARIES.**

21 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There is
22 authorized to be appropriated for each of fiscal years 2009
23 through 2013, \$25,000,000, from negative credit subsidy
24 for the mortgage insurance programs under title II of the
25 National Housing Act, to the Secretary of Housing and

1 Urban Development for increasing funding for the purpose
2 of improving technology, processes, program performance,
3 eliminating fraud, and for providing appropriate staffing
4 in connection with the mortgage insurance programs
5 under title II of the National Housing Act.

6 (b) CERTIFICATION.—The authorization under sub-
7 section (a) shall not be effective for a fiscal year unless
8 the Secretary of Housing and Urban Development has, by
9 rulemaking in accordance with section 553 of title 5,
10 United States Code (notwithstanding subsections (a)(2),
11 (b)(B), and (d)(3) of such section), made a determination
12 that—

13 (1) premiums being, or to be, charged during
14 such fiscal year for mortgage insurance under title
15 II of the National Housing Act are established at
16 the minimum amount sufficient to—

17 (A) comply with the requirements of sec-
18 tion 205(f) of such Act (relating to required
19 capital ratio for the Mutual Mortgage Insur-
20 ance Fund); and

21 (B) ensure the safety and soundness of the
22 other mortgage insurance funds under such
23 Act; and

24 (2) any negative credit subsidy for such fiscal
25 year resulting from such mortgage insurance pro-

1 grams adequately ensures the efficient delivery and
2 availability of such programs.

3 (c) **STUDY AND REPORT.**—The Secretary of Housing
4 and Urban Development shall conduct a study to obtain
5 recommendations from participants in the private residen-
6 tial (both single family and multifamily) mortgage lending
7 business and the secondary market for such mortgages on
8 how best to update and upgrade processes and tech-
9 nologies for the mortgage insurance programs under title
10 II of the National Housing Act so that the procedures for
11 originating, insuring, and servicing of such mortgages con-
12 form with those customarily used by secondary market
13 purchasers of residential mortgage loans. Not later than
14 the expiration of the 12-month period beginning on the
15 date of the enactment of this title, the Secretary shall sub-
16 mit a report to the Congress describing the progress made
17 and to be made toward updating and upgrading such pro-
18 cesses and technology, and providing appropriate staffing
19 for such mortgage insurance programs.

20 **SEC. 2127. POST-PURCHASE HOUSING COUNSELING ELIGI-**
21 **BILITY IMPROVEMENTS.**

22 Section 106(c)(4) of the Housing and Urban Devel-
23 opment Act of 1968 (12 U.S.C. 1701x(c)(4)) is amended:

24 (1) in subparagraph (C)—

1 (A) in clause (i), by striking “; or” and in-
2 serting a semicolon;

3 (B) in clause (ii), by striking the period at
4 the end and inserting a semicolon; and

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

6 “(iii) a significant reduction in the in-
7 come of the household due to divorce or
8 death; or

9 “(iv) a significant increase in basic ex-
10 penses of the homeowner or an immediate
11 family member of the homeowner (includ-
12 ing the spouse, child, or parent for whom
13 the homeowner provides substantial care or
14 financial assistance) due to—

15 “(I) an unexpected or significant
16 increase in medical expenses;

17 “(II) a divorce;

18 “(III) unexpected and significant
19 damage to the property, the repair of
20 which will not be covered by private or
21 public insurance; or

22 “(IV) a large property-tax in-
23 crease; or”;

24 (2) by striking the matter that follows subpara-
25 graph (C); and

1 (3) by adding at the end the following:

2 “(D) the Secretary of Housing and Urban
3 Development determines that the annual in-
4 come of the homeowner is no greater than the
5 annual income established by the Secretary as
6 being of low- or moderate-income.”.

7 **SEC. 2128. PRE-PURCHASE HOMEOWNERSHIP COUNSELING**
8 **DEMONSTRATION.**

9 (a) ESTABLISHMENT OF PROGRAM.—For the period
10 beginning on the date of enactment of this title and ending
11 on the date that is 3 years after such date of enactment,
12 the Secretary of Housing and Urban Development shall
13 establish and conduct a demonstration program to test the
14 effectiveness of alternative forms of pre-purchase home-
15 ownership counseling for eligible homebuyers.

16 (b) FORMS OF COUNSELING.—The Secretary of
17 Housing and Urban Development shall provide to eligible
18 homebuyers pre-purchase homeownership counseling
19 under this section in the form of—

20 (1) telephone counseling;

21 (2) individualized in-person counseling;

22 (3) web-based counseling;

23 (4) counseling classes; or

1 (5) any other form or type of counseling that
2 the Secretary may, in his discretion, determine ap-
3 propriate.

4 (c) SIZE OF PROGRAM.—The Secretary shall make
5 available the pre-purchase homeownership counseling de-
6 scribed in subsection (b) to not more than 3,000 eligible
7 homebuyers in any given year.

8 (d) INCENTIVE TO PARTICIPATE.—The Secretary of
9 Housing and Urban Development may provide incentives
10 to eligible homebuyers to participate in the demonstration
11 program established under subsection (a). Such incentives
12 may include the reduction of any insurance premium
13 charges owed by the eligible homebuyer to the Secretary.

14 (e) ELIGIBLE HOMEBUYER DEFINED.—For purposes
15 of this section an “eligible homebuyer” means a first-time
16 homebuyer who has been approved for a home loan with
17 a loan-to-value ratio between 97 percent and 98.5 percent.

18 (f) REPORT TO CONGRESS.—The Secretary of Hous-
19 ing and Urban Development shall report to the Committee
20 on Banking, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the House of
22 Representative—

23 (1) on an annual basis, on the progress and re-
24 sults of the demonstration program established
25 under subsection (a); and

1 (2) for the period beginning on the date of en-
2 actment of this title and ending on the date that is
3 5 years after such date of enactment, on the pay-
4 ment history and delinquency rates of eligible home-
5 buyers who participated in the demonstration pro-
6 gram.

7 **SEC. 2129. FRAUD PREVENTION.**

8 Section 1014 of title 18, United States Code, is
9 amended in the first sentence—

10 (1) by inserting “the Federal Housing Adminis-
11 tration,” before “the Farm Credit Administration”;
12 and

13 (2) by striking “commitment, or loan” and in-
14 serting “commitment, loan, or insurance agreement
15 or application for insurance or a guarantee”.

16 **SEC. 2130. LIMITATION ON MORTGAGE INSURANCE PRE-**
17 **MIUM INCREASES.**

18 (a) IN GENERAL.—Notwithstanding any other provi-
19 sion of law, including any provision of this title and any
20 amendment made by this title—

21 (1) for the period beginning on the date of the
22 enactment of this title and ending on October 1,
23 2009, the premiums charged for mortgage insurance
24 under multifamily housing programs under the Na-
25 tional Housing Act may not be increased above the

1 premium amounts in effect under such program on
2 October 1, 2006, unless the Secretary of Housing
3 and Urban Development determines that, absent
4 such increase, insurance of additional mortgages
5 under such program would, under the Federal Credit
6 Reform Act of 1990, require the appropriation of
7 new budget authority to cover the costs (as such
8 term is defined in section 502 of the Federal Credit
9 Reform Act of 1990 (2 U.S.C. 661a) of such insur-
10 ance; and

11 (2) a premium increase pursuant to paragraph
12 (1) may be made only if not less than 30 days prior
13 to such increase taking effect, the Secretary of
14 Housing and Urban Development—

15 (A) notifies the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and
17 the Committee on Financial Services of the
18 House of Representatives of such increase; and

19 (B) publishes notice of such increase in the
20 Federal Register.

21 (b) WAIVER.—The Secretary of Housing and Urban
22 Development may waive the 30-day notice requirement
23 under subsection (a)(2), if the Secretary determines that
24 waiting 30-days before increasing premiums would cause

1 substantial damage to the solvency of multifamily housing
2 programs under the National Housing Act.

3 **SEC. 2131. SAVINGS PROVISION.**

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

10 **SEC. 2132. IMPLEMENTATION.**

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

15 **SEC. 2133. MORATORIUM ON IMPLEMENTATION OF RISK-
16 BASED PREMIUMS.**

17 (a) IN GENERAL.—During the 12-month period be-
18 ginning on the date of enactment of this Act, the Secretary
19 of Housing and Urban Development shall not enact, exe-
20 cute, or take any action to make effective the planned im-
21 plementation of risk-based premiums, which are designed
22 for mortgage lenders to offer borrowers an FHA-insured
23 product that provides a range of mortgage insurance pre-
24 mium pricing, based on the risk that the insurance con-
25 tract represents, as such planned implementation was set

1 forth in the Notice published in the Federal Register on
2 May 13, 2008 (Vol. 73, No. 93, Pages 27703 through
3 27711)(effective July 14, 2008).

4 (b) INSURANCE OF MORTGAGES UNDER THE NA-
5 TIONAL HOUSING ACT.—During the 12-month period be-
6 ginning on the date of enactment of this Act, the Secretary
7 of Housing and Urban Development shall not enact, exe-
8 cute, or take any action to make effective the implementa-
9 tion of any other new risk-based premium product related
10 to the insurance of any mortgage on a single family resi-
11 dence under title II of the National Housing Act, where
12 the premium price for such new product is based in whole
13 or in part on a borrower’s Decision Credit Score, as that
14 term is defined in the Notice described under subsection
15 (a), or any successor thereto.

16 **Subtitle B—Manufactured Housing** 17 **Loan Modernization**

18 **SEC. 2141. SHORT TITLE.**

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

21 **SEC. 2142. PURPOSES.**

22 The purposes of this subtitle are—

23 (1) to provide adequate funding for FHA-in-
24 sured manufactured housing loans for low- and mod-

1 erate-income homebuyers during all economic cycles
2 in the manufactured housing industry;

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

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

11 **SEC. 2143. EXCEPTION TO LIMITATION ON FINANCIAL IN-**
12 **STITUTION PORTFOLIO.**

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

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

19 (2) by striking “: *Provided*, That with” and in-
20 sserting “. With”.

21 **SEC. 2144. INSURANCE BENEFITS.**

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

1 “(8) INSURANCE BENEFITS FOR MANUFAC-
2 TURED HOUSING LOANS.—Any contract of insurance
3 with respect to loans, advances of credit, or pur-
4 chases in connection with a manufactured home or
5 a lot on which to place a manufactured home (or
6 both) for a financial institution that is executed
7 under this title after the date of the enactment of
8 the FHA Manufactured Housing Loan Moderniza-
9 tion Act of 2008 by the Secretary shall be conclusive
10 evidence of the eligibility of such financial institution
11 for insurance, and the validity of any contract of in-
12 surance so executed shall be incontestable in the
13 hands of the bearer from the date of the execution
14 of such contract, except for fraud or misrepresenta-
15 tion on the part of such institution.”.

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

20 **SEC. 2145. MAXIMUM LOAN LIMITS.**

21 (a) DOLLAR AMOUNTS.—Paragraph (1) of section
22 2(b) of the National Housing Act (12 U.S.C. 1703(b)(1))
23 is amended—

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

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

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

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

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

11 (b) ANNUAL INDEXING.—Subsection (b) of section 2
12 of the National Housing Act (12 U.S.C. 1703(b)), as
13 amended by the preceding provisions of this title, is fur-
14 ther amended by adding at the end the following new para-
15 graph:

16 “(9) ANNUAL INDEXING OF MANUFACTURED
17 HOUSING LOANS.—The Secretary shall develop a
18 method of indexing in order to annually adjust the
19 loan limits established in subparagraphs (A)(ii), (C),
20 (D), and (E) of this subsection. Such index shall be
21 based on the manufactured housing price data col-
22 lected by the United States Census Bureau. The
23 Secretary shall establish such index no later than 1
24 year after the date of the enactment of the FHA

1 Manufactured Housing Loan Modernization Act of
2 2008.”

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

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

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

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

16 **SEC. 2146. INSURANCE PREMIUMS.**

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

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

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

23 “(2) MANUFACTURED HOME LOANS.—Notwith-
24 standing paragraph (1), in the case of a loan, advance of
25 credit, or purchase in connection with a manufactured

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

5 “(A) At the time of the making of the loan, ad-
6 vance of credit, or purchase, a single premium pay-
7 ment in an amount not to exceed 2.25 percent of the
8 amount of the original insured principal obligation.

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

18 “(C) Premium charges under this paragraph
19 shall be established in amounts that are sufficient,
20 but do not exceed the minimum amounts necessary,
21 to maintain a negative credit subsidy for the pro-
22 gram under this section for insurance of loans, ad-
23 vances of credit, or purchases in connection with a
24 manufactured home or a lot on which to place such
25 a home (or both), as determined based upon risk to

1 the Federal Government under existing underwriting
2 requirements.

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

9 **SEC. 2147. TECHNICAL CORRECTIONS.**

10 (a) DATES.—Subsection (a) of section 2 of the Na-
11 tional Housing Act (12 U.S.C. 1703(a)) is amended—

12 (1) by striking “on and after July 1, 1939,”
13 each place such term appears; and

14 (2) by striking “made after the effective date of
15 the Housing Act of 1954”.

16 (b) AUTHORITY OF SECRETARY.—Subsection (c) of
17 section 2 of the National Housing Act (12 U.S.C. 1703(c))
18 is amended to read as follows:

19 “(c) HANDLING AND DISPOSAL OF PROPERTY.—

20 “(1) AUTHORITY OF SECRETARY.—Notwith-
21 standing any other provision of law, the Secretary
22 may—

23 “(A) deal with, complete, rent, renovate,
24 modernize, insure, or assign or sell at public or
25 private sale, or otherwise dispose of, for cash or

1 credit in the Secretary's discretion, and upon
2 such terms and conditions and for such consid-
3 eration as the Secretary shall determine to be
4 reasonable, any real or personal property con-
5 veyed to or otherwise acquired by the Secretary,
6 in connection with the payment of insurance
7 heretofore or hereafter granted under this title,
8 including any evidence of debt, contract, claim,
9 personal property, or security assigned to or
10 held by him in connection with the payment of
11 insurance heretofore or hereafter granted under
12 this section; and

13 “(B) pursue to final collection, by way of
14 compromise or otherwise, all claims assigned to
15 or held by the Secretary and all legal or equi-
16 table rights accruing to the Secretary in con-
17 nection with the payment of such insurance, in-
18 cluding unpaid insurance premiums owed in
19 connection with insurance made available by
20 this title.

21 “(2) ADVERTISEMENTS FOR PROPOSALS.—Sec-
22 tion 3709 of the Revised Statutes shall not be con-
23 strued to apply to any contract of hazard insurance
24 or to any purchase or contract for services or sup-

1 plies on account of such property if the amount
2 thereof does not exceed \$25,000.

3 “(3) DELEGATION OF AUTHORITY.—The power
4 to convey and to execute in the name of the Sec-
5 retary, deeds of conveyance, deeds of release, assign-
6 ments and satisfactions of mortgages, and any other
7 written instrument relating to real or personal prop-
8 erty or any interest therein heretofore or hereafter
9 acquired by the Secretary pursuant to the provisions
10 of this title may be exercised by an officer appointed
11 by the Secretary without the execution of any ex-
12 press delegation of power or power of attorney.
13 Nothing in this subsection shall be construed to pre-
14 vent the Secretary from delegating such power by
15 order or by power of attorney, in the Secretary’s dis-
16 cretion, to any officer or agent the Secretary may
17 appoint.”.

18 **SEC. 2148. REVISION OF UNDERWRITING CRITERIA.**

19 (a) IN GENERAL.—Subsection (b) of section 2 of the
20 National Housing Act (12 U.S.C. 1703(b)), as amended
21 by the preceding provisions of this title, is further amend-
22 ed by adding at the end the following new paragraph:

23 “(10) FINANCIAL SOUNDNESS OF MANUFAC-
24 TURED HOUSING PROGRAM.—The Secretary shall es-
25 tablish such underwriting criteria for loans and ad-

1 vances of credit in connection with a manufactured
2 home or a lot on which to place a manufactured
3 home (or both), including such loans and advances
4 represented by obligations purchased by financial in-
5 stitutions, as may be necessary to ensure that the
6 program under this title for insurance for financial
7 institutions against losses from such loans, advances
8 of credit, and purchases is financially sound.”.

9 (b) **TIMING.**—Not later than the expiration of the 6-
10 month period beginning on the date of the enactment of
11 this title, the Secretary of Housing and Urban Develop-
12 ment shall revise the existing underwriting criteria for the
13 program referred to in paragraph (10) of section 2(b) of
14 the National Housing Act (as added by subsection (a) of
15 this section) in accordance with the requirements of such
16 paragraph.

17 **SEC. 2149. PROHIBITION AGAINST KICKBACKS AND UN-**
18 **EARNED FEES.**

19 Title I of the National Housing Act is amended by
20 adding at the end of section 9 the following new section:

21 **“SEC. 10. PROHIBITION AGAINST KICKBACKS AND UN-**
22 **EARNED FEES.**

23 “(a) **IN GENERAL.**—Except as provided in subsection
24 (b), the provisions of sections 3, 8, 16, 17, 18, and 19
25 of the Real Estate Settlement Procedures Act of 1974 (12

1 U.S.C. 2601 et seq.) shall apply to each sale of a manufac-
2 tured home financed with an FHA-insured loan or exten-
3 sion of credit, as well as to services rendered in connection
4 with such transactions.

5 “(b) AUTHORITY OF THE SECRETARY.—The Sec-
6 retary is authorized to determine the manner and extent
7 to which the provisions of sections 3, 8, 16, 17, 18, and
8 19 of the Real Estate Settlement Procedures Act of 1974
9 (12 U.S.C. 2601 et seq.) may reasonably be applied to
10 the transactions described in subsection (a), and to grant
11 such exemptions as may be necessary to achieve the pur-
12 poses of this section.

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) the term ‘federally related mortgage loan’
15 as used in sections 3, 8, 16, 17, 18, and 19 of the
16 Real Estate Settlement Procedures Act of 1974 (12
17 U.S.C. 2601 et seq.) shall include an FHA-insured
18 loan or extension of credit made to a borrower for
19 the purpose of purchasing a manufactured home
20 that the borrower intends to occupy as a personal
21 residence; and

22 “(2) the term ‘real estate settlement service’ as
23 used in sections 3, 8, 16, 17, 18, and 19 of the Real
24 Estate Settlement Procedures Act of 1974 (12
25 U.S.C. 2601 et seq.) shall include any service ren-

1 dered in connection with a loan or extension of cred-
2 it insured by the Federal Housing Administration
3 for the purchase of a manufactured home.

4 “(d) UNFAIR AND DECEPTIVE PRACTICES.—In con-
5 nection with the purchase of a manufactured home fi-
6 nanced with a loan or extension of credit insured by the
7 Federal Housing Administration under this title, the Sec-
8 retary shall prohibit acts or practices in connection with
9 loans or extensions of credit that the Secretary finds to
10 be unfair, deceptive, or otherwise not in the interests of
11 the borrower.”.

12 **SEC. 2150. LEASEHOLD REQUIREMENTS.**

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

17 “(11) LEASEHOLD REQUIREMENTS.—No insur-
18 ance shall be granted under this section to any such
19 financial institution with respect to any obligation
20 representing any such loan, advance of credit, or
21 purchase by it, made for the purposes of financing
22 a manufactured home which is intended to be situ-
23 ated in a manufactured home community pursuant
24 to a lease, unless such lease—

1 “(A) expires not less than 3 years after the
2 origination date of the obligation;

3 “(B) is renewable upon the expiration of
4 the original 3 year term by successive 1 year
5 terms; and

6 “(C) requires the lessor to provide the les-
7 see written notice of termination of the lease
8 not less than 180 days prior to the expiration
9 of the current lease term in the event the lessee
10 is required to move due to the closing of the
11 manufactured home community, and further
12 provides that failure to provide such notice to
13 the mortgagor in a timely manner will cause the
14 lease term, at its expiration, to automatically
15 renew for an additional 1 year term.”.

16 **TITLE II—MORTGAGE FORE-**
17 **CLOSURE PROTECTIONS FOR**
18 **SERVICEMEMBERS**

19 **SEC. 2201. TEMPORARY INCREASE IN MAXIMUM LOAN**
20 **GUARANTY AMOUNT FOR CERTAIN HOUSING**
21 **LOANS GUARANTEED BY THE SECRETARY OF**
22 **VETERANS AFFAIRS.**

23 Notwithstanding subparagraph (C) of section
24 3703(a)(1) of title 38, United States Code, for purposes
25 of any loan described in subparagraph (A)(i)(IV) of such

1 section that is originated during the period beginning on
2 the date of the enactment of this Act and ending on De-
3 cember 31, 2008, the term “maximum guaranty amount”
4 shall mean an amount equal to 25 percent of the higher
5 of—

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

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

16 **SEC. 2202. COUNSELING ON MORTGAGE FORECLOSURES**
17 **FOR MEMBERS OF THE ARMED FORCES RE-**
18 **TURNING FROM SERVICE ABROAD.**

19 (a) **IN GENERAL.**—The Secretary of Defense shall
20 develop and implement a program to advise members of
21 the Armed Forces (including members of the National
22 Guard and Reserve) who are returning from service on
23 active duty abroad (including service in Operation Iraqi
24 Freedom and Operation Enduring Freedom) on actions to

1 be taken by such members to prevent or forestall mortgage
2 foreclosures.

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

5 (1) Credit counseling.

6 (2) Home mortgage counseling.

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

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

16 **SEC. 2203. ENHANCEMENT OF PROTECTIONS FOR**
17 **SERVICEMEMBERS RELATING TO MORT-**
18 **GAGES AND MORTGAGE FORECLOSURES.**

19 (a) EXTENSION OF PERIOD OF PROTECTIONS
20 AGAINST MORTGAGE FORECLOSURES.—

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

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

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

8 (1) in subsection (a)(1), by striking “in excess
9 of 6 percent” the second place it appears and all
10 that follows and inserting “in excess of 6 percent—

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

16 “(B) during the period of military service,
17 in the case of any other obligation or liability.”;
18 and

19 (2) by striking subsection (d) and inserting the
20 following new subsection:

21 “(d) DEFINITIONS.—In this section:

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

1 “(2) OBLIGATION OR LIABILITY.—The term
2 ‘obligation or liability’ includes an obligation or li-
3 ability consisting of a mortgage, trust deed, or other
4 security in the nature of a mortgage.”.

5 (c) EFFECTIVE DATE; SUNSET.—

6 (1) EFFECTIVE DATE.—The amendment made
7 by subsection (a) shall take effect on the date of en-
8 actment of this Act.

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

16 **TITLE III—EMERGENCY ASSIST-**
17 **ANCE FOR THE REDEVELOP-**
18 **MENT OF ABANDONED AND**
19 **FORECLOSED HOMES**

20 **SEC. 2301. EMERGENCY ASSISTANCE FOR THE REDEVELOP-**
21 **MENT OF ABANDONED AND FORECLOSED**
22 **HOMES.**

23 (a) DIRECT APPROPRIATIONS.—There are appro-
24 priated out of any money in the Treasury not otherwise
25 appropriated for the fiscal year 2008, \$4,000,000,000, to

1 remain available until expended, for assistance to States
2 and units of general local government (as such terms are
3 defined in section 102 of the Housing and Community De-
4 velopment Act of 1974 (42 U.S.C. 5302)) for the redevel-
5 opment of abandoned and foreclosed upon homes and resi-
6 dential properties.

7 (b) ALLOCATION OF APPROPRIATED AMOUNTS.—

8 (1) IN GENERAL.—The amounts appropriated
9 or otherwise made available to States and units of
10 general local government under this section shall be
11 allocated based on a funding formula established by
12 the Secretary of Housing and Urban Development
13 (in this title referred to as the “Secretary”).

14 (2) FORMULA TO BE DEVISED SWIFTLY.—The
15 funding formula required under paragraph (1) shall
16 be established not later than 60 days after the date
17 of enactment of this section.

18 (3) CRITERIA.—The funding formula required
19 under paragraph (1) shall ensure that any amounts
20 appropriated or otherwise made available under this
21 section are allocated to States and units of general
22 local government with the greatest need, as such
23 need is determined in the discretion of the Secretary
24 based on—

1 (A) the number and percentage of home
2 foreclosures in each State or unit of general
3 local government;

4 (B) the number and percentage of homes
5 financed by a subprime mortgage related loan
6 in each State or unit of general local govern-
7 ment; and

8 (C) the number and percentage of homes
9 in default or delinquency in each State or unit
10 of general local government.

11 (4) DISTRIBUTION.—Amounts appropriated or
12 otherwise made available under this section shall be
13 distributed according to the funding formula estab-
14 lished by the Secretary under paragraph (1) not
15 later than 30 days after the establishment of such
16 formula.

17 (c) USE OF FUNDS.—

18 (1) IN GENERAL.—Any State or unit of general
19 local government that receives amounts pursuant to
20 this section shall, not later than 18 months after the
21 receipt of such amounts, use such amounts to pur-
22 chase and redevelop abandoned and foreclosed
23 homes and residential properties.

24 (2) PRIORITY.—Any State or unit of general
25 local government that receives amounts pursuant to

1 this section shall in distributing such amounts give
2 priority emphasis and consideration to those metro-
3 politan areas, metropolitan cities, urban areas, rural
4 areas, low- and moderate-income areas, and other
5 areas with the greatest need, including those—

6 (A) with the greatest percentage of home
7 foreclosures;

8 (B) with the highest percentage of homes
9 financed by a subprime mortgage related loan;
10 and

11 (C) identified by the State or unit of gen-
12 eral local government as likely to face a signifi-
13 cant rise in the rate of home foreclosures.

14 (3) ELIGIBLE USES.—Amounts made available
15 under this section may be used to—

16 (A) establish financing mechanisms for
17 purchase and redevelopment of foreclosed upon
18 homes and residential properties, including such
19 mechanisms as soft-seconds, loan loss reserves,
20 and shared-equity loans for low- and moderate-
21 income homebuyers;

22 (B) purchase and rehabilitate homes and
23 residential properties that have been abandoned
24 or foreclosed upon, in order to sell, rent, or re-
25 develop such homes and properties;

1 (C) establish land banks for homes that
2 have been foreclosed upon;

3 (D) demolish blighted structures; and

4 (E) redevelop demolished or vacant prop-
5 erties.

6 (d) LIMITATIONS.—

7 (1) ON PURCHASES.—Any purchase of a fore-
8 closed upon home or residential property under this
9 section shall be at a discount from the current mar-
10 ket appraised value of the home or property, taking
11 into account its current condition, and such discount
12 shall ensure that purchasers are paying below-mar-
13 ket value for the home or property.

14 (2) SALE OF HOMES.—If an abandoned or fore-
15 closed upon home or residential property is pur-
16 chased, redeveloped, or otherwise sold to an indi-
17 vidual as a primary residence, then such sale shall
18 be in an amount equal to or less than the cost to
19 acquire and redevelop or rehabilitate such home or
20 property up to a decent, safe, and habitable condi-
21 tion.

22 (3) REINVESTMENT OF PROFITS.—

23 (A) PROFITS FROM SALES, RENTALS, AND
24 REDEVELOPMENT.—

1 (i) 5-YEAR REINVESTMENT PERIOD.—

2 During the 5-year period following the
3 date of enactment of this Act, any revenue
4 generated from the sale, rental, redevelop-
5 ment, rehabilitation, or any other eligible
6 use that is in excess of the cost to acquire
7 and redevelop (including reasonable devel-
8 opment fees) or rehabilitate an abandoned
9 or foreclosed upon home or residential
10 property shall be provided to and used by
11 the State or unit of general local govern-
12 ment in accordance with, and in further-
13 ance of, the intent and provisions of this
14 section.

15 (ii) DEPOSITS IN THE TREASURY.—

16 (I) PROFITS.—Upon the expira-
17 tion of the 5-year period set forth
18 under clause (i), any revenue gen-
19 erated from the sale, rental, redevelop-
20 ment, rehabilitation, or any other
21 eligible use that is in excess of the
22 cost to acquire and redevelop (includ-
23 ing reasonable development fees) or
24 rehabilitate an abandoned or fore-
25 closed upon home or residential prop-

1 erty shall be deposited in the Treas-
2 ury of the United States as miscella-
3 neous receipts, unless the Secretary
4 approves a request to use the funds
5 for purposes under this Act.

6 (II) OTHER AMOUNTS.—Upon
7 the expiration of the 5-year period set
8 forth under clause (i), any other rev-
9 enue not described under subclause
10 (I) generated from the sale, rental, re-
11 development, rehabilitation, or any
12 other eligible use of an abandoned or
13 foreclosed upon home or residential
14 property shall be deposited in the
15 Treasury of the United States as mis-
16 cellaneous receipts.

17 (B) OTHER REVENUES.—Any revenue gen-
18 erated under subparagraphs (A), (C) or (D) of
19 subsection (c)(3) shall be provided to and used
20 by the State or unit of general local government
21 in accordance with, and in furtherance of, the
22 intent and provisions of this section.

23 (e) RULES OF CONSTRUCTION.—

24 (1) IN GENERAL.—Except as otherwise pro-
25 vided by this section, amounts appropriated, reve-

1 nues generated, or amounts otherwise made avail-
2 able to States and units of general local government
3 under this section shall be treated as though such
4 funds were community development block grant
5 funds under title I of the Housing and Community
6 Development Act of 1974 (42 U.S.C. 5301 et seq.).

7 (2) NO MATCH.—No matching funds shall be
8 required in order for a State or unit of general local
9 government to receive any amounts under this sec-
10 tion.

11 (f) AUTHORITY TO SPECIFY ALTERNATIVE REQUIRE-
12 MENTS.—

13 (1) IN GENERAL.—In administering any
14 amounts appropriated or otherwise made available
15 under this section, the Secretary may specify alter-
16 native requirements to any provision under title I of
17 the Housing and Community Development Act of
18 1974 (except for those related to fair housing, non-
19 discrimination, labor standards, and the environ-
20 ment) in accordance with the terms of this section
21 and for the sole purpose of expediting the use of
22 such funds.

23 (2) NOTICE.—The Secretary shall provide writ-
24 ten notice of its intent to exercise the authority to
25 specify alternative requirements under paragraph (1)

1 to the Committee on Banking, Housing and Urban
2 Affairs of the Senate and the Committee on Finan-
3 cial Services of the House of Representatives not
4 later than 10 business days before such exercise of
5 authority is to occur.

6 (3) LOW AND MODERATE INCOME REQUIRE-
7 MENT.—

8 (A) IN GENERAL.—Notwithstanding the
9 authority of the Secretary under paragraph
10 (1)—

11 (i) all of the funds appropriated or
12 otherwise made available under this section
13 shall be used with respect to individuals
14 and families whose income does not exceed
15 120 percent of area median income; and

16 (ii) not less than 25 percent of the
17 funds appropriated or otherwise made
18 available under this section shall be used
19 for the purchase and redevelopment of
20 abandoned or foreclosed upon homes or
21 residential properties that will be used to
22 house individuals or families whose in-
23 comes do not exceed 50 percent of area
24 median income.

1 (B) RECURRENT REQUIREMENT.—The
2 Secretary shall, by rule or order, ensure, to the
3 maximum extent practicable and for the longest
4 feasible term, that the sale, rental, or redevelop-
5 ment of abandoned and foreclosed upon homes
6 and residential properties under this section re-
7 main affordable to individuals or families de-
8 scribed in subparagraph (A).

9 (g) PERIODIC AUDITS.—In consultation with the Sec-
10 retary of Housing and Urban Development, the Comp-
11 troller General of the United States shall conduct periodic
12 audits to ensure that funds appropriated, made available,
13 or otherwise distributed under this section are being used
14 in a manner consistent with the criteria provided in this
15 section.

16 **SEC. 2302. NATIONWIDE DISTRIBUTION OF RESOURCES.**

17 Notwithstanding any other provision of this Act or
18 the amendments made by this Act, each State shall receive
19 not less than 0.5 percent of funds made available under
20 section 2301 (relating to emergency assistance for the re-
21 development of abandoned and foreclosed homes).

22 **SEC. 2303. LIMITATION ON USE OF FUNDS WITH RESPECT**
23 **TO EMINENT DOMAIN.**

24 No State or unit of general local government may use
25 any amounts received pursuant to section 2301 to fund

1 any project that seeks to use the power of eminent domain,
2 unless eminent domain is employed only for a public use:
3 *Provided*, That for purposes of this section, public use
4 shall not be construed to include economic development
5 that primarily benefits private entities.

6 **SEC. 2304. LIMITATION ON DISTRIBUTION OF FUNDS.**

7 (a) IN GENERAL.—None of the funds made available
8 under this title or title IV shall be distributed to—

9 (1) an organization which has been indicted for
10 a violation under Federal law relating to an election
11 for Federal office; or

12 (2) an organization which employs applicable
13 individuals.

14 (b) APPLICABLE INDIVIDUALS DEFINED.—In this
15 section, the term “applicable individual” means an indi-
16 vidual who—

17 (1) is—

18 (A) employed by the organization in a per-
19 manent or temporary capacity;

20 (B) contracted or retained by the organiza-
21 tion; or

22 (C) acting on behalf of, or with the express
23 or apparent authority of, the organization; and

24 (2) has been indicted for a violation under Fed-
25 eral law relating to an election for Federal office.

1 **SEC. 2305. COUNSELING INTERMEDIARIES.**

2 Notwithstanding any other provision of this Act, the
3 amount appropriated under section 2301(a) of this Act
4 shall be \$3,920,000,000 and the amount appropriated
5 under section 2401 of this Act shall be \$180,000,000: *Pro-*
6 *vided*, That of amounts appropriated under such section
7 2401 \$30,000,000 shall be used by the Neighborhood Re-
8 investment Corporation (referred to in this section as the
9 “NRC”) to make grants to counseling intermediaries ap-
10 proved by the Department of Housing and Urban Devel-
11 opment or the NRC to hire attorneys to assist homeowners
12 who have legal issues directly related to the homeowner’s
13 foreclosure, delinquency or short sale. Such attorneys shall
14 be capable of assisting homeowners of owner-occupied
15 homes with mortgages in default, in danger of default, or
16 subject to or at risk of foreclosure and who have legal
17 issues that cannot be handled by counselors already em-
18 ployed by such intermediaries: *Provided*, That of the
19 amounts provided for in the prior provisos the NRC shall
20 give priority consideration to counseling intermediaries
21 and legal organizations that (1) provide legal assistance
22 in the 100 metropolitan statistical areas (as defined by
23 the Director of the Office of Management and Budget)
24 with the highest home foreclosure rates, and (2) have the
25 capacity to begin using the financial assistance within 90
26 days after receipt of the assistance: *Provided further*, That

1 no funds provided under this Act shall be used to provide,
2 obtain, or arrange on behalf of a homeowner, legal rep-
3 resentation involving or for the purposes of civil litigation.

4 **TITLE IV—HOUSING**
5 **COUNSELING RESOURCES**

6 **SEC. 2401. HOUSING COUNSELING RESOURCES.**

7 There are appropriated out of any money in the
8 Treasury not otherwise appropriated for the fiscal year
9 2008, for an additional amount for the “Neighborhood Re-
10 investment Corporation—Payment to the Neighborhood
11 Reinvestment Corporation” \$100,000,000, to remain
12 available until September 30, 2008, for foreclosure mitiga-
13 tion activities under the terms and conditions contained
14 in the second undesignated paragraph (beginning with the
15 phrase “For an additional amount”) under the heading
16 “Neighborhood Reinvestment Corporation—Payment to
17 the Neighborhood Reinvestment Corporation” of Public
18 Law 110–161.

19 **SEC. 2402. CREDIT COUNSELING.**

20 (a) IN GENERAL.—Entities approved by the Neigh-
21 borhood Reinvestment Corporation or the Secretary and
22 State housing finance entities receiving funds under this
23 title shall work to identify and coordinate with non-profit
24 organizations operating national or statewide toll-free
25 foreclosure prevention hotlines, including those that—

1 (1) serve as a consumer referral source and
2 data repository for borrowers experiencing some
3 form of delinquency or foreclosure;

4 (2) connect callers with local housing counseling
5 agencies approved by the Neighborhood Reinvest-
6 ment Corporation or the Secretary to assist with
7 working out a positive resolution to their mortgage
8 delinquency or foreclosure; or

9 (3) facilitate or offer free assistance to help
10 homeowners to understand their options, negotiate
11 solutions, and find the best resolution for their par-
12 ticular circumstances.

13 **TITLE V—MORTGAGE DISCLO-** 14 **SURE IMPROVEMENT ACT**

15 **SEC. 2501. SHORT TITLE.**

16 This title may be cited as the “Mortgage Disclosure
17 Improvement Act of 2008”.

18 **SEC. 2502. ENHANCED MORTGAGE LOAN DISCLOSURES.**

19 (a) **TRUTH IN LENDING ACT DISCLOSURES.**—Sec-
20 tion 128(b)(2) of the Truth in Lending Act (15 U.S.C.
21 1638(b)(2)) is amended—

22 (1) by inserting “(A)” before “In the”;

23 (2) by striking “a residential mortgage trans-
24 action, as defined in section 103(w)” and inserting

1 “any extension of credit that is secured by the dwell-
2 ing of a consumer”;

3 (3) by striking “before the credit is extended,
4 or”;

5 (4) by inserting “, which shall be at least 7
6 business days before consummation of the trans-
7 action” after “written application”;

8 (5) by striking “, whichever is earlier”; and

9 (6) by striking “If the” and all that follows
10 through the end of the paragraph and inserting the
11 following:

12 “(B) In the case of an extension of credit that
13 is secured by the dwelling of a consumer, the disclo-
14 sures provided under subparagraph (A), shall be in
15 addition to the other disclosures required by sub-
16 section (a), and shall—

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

22 “(ii) be provided in the form of final dis-
23 closures at the time of consummation of the
24 transaction, in the form and manner prescribed
25 by this section.

1 “(C) In the case of an extension of credit that
2 is secured by the dwelling of a consumer, under
3 which the annual rate of interest is variable, or with
4 respect to which the regular payments may other-
5 wise be variable, in addition to the other disclosures
6 required by subsection (a), the disclosures provided
7 under this subsection shall do the following:

8 “(i) Label the payment schedule as follows:
9 ‘Payment Schedule: Payments Will Vary Based
10 on Interest Rate Changes’.

11 “(ii) State in conspicuous type size and
12 format examples of adjustments to the regular
13 required payment on the extension of credit
14 based on the change in the interest rates speci-
15 fied by the contract for such extension of credit.
16 Among the examples required to be provided
17 under this clause is an example that reflects the
18 maximum payment amount of the regular re-
19 quired payments on the extension of credit,
20 based on the maximum interest rate allowed
21 under the contract, in accordance with the rules
22 of the Board. Prior to issuing any rules pursu-
23 ant to this clause, the Board shall conduct con-
24 sumer testing to determine the appropriate for-
25 mat for providing the disclosures required

1 under this subparagraph to consumers so that
2 such disclosures can be easily understood.

3 “(D) In any case in which the disclosure state-
4 ment under subparagraph (A) contains an annual
5 percentage rate of interest that is no longer accu-
6 rate, as determined under section 107(c), the cred-
7 itor shall furnish an additional, corrected statement
8 to the borrower, not later than 3 business days be-
9 fore the date of consummation of the transaction.

10 “(E) The consumer shall receive the disclosures
11 required under this paragraph before paying any fee
12 to the creditor or other person in connection with
13 the consumer’s application for an extension of credit
14 that is secured by the dwelling of a consumer. If the
15 disclosures are mailed to the consumer, the con-
16 sumer is considered to have received them 3 busi-
17 ness days after they are mailed. A creditor or other
18 person may impose a fee for obtaining the con-
19 sumer’s credit report before the consumer has re-
20 ceived the disclosures under this paragraph, provided
21 the fee is bona fide and reasonable in amount.

22 “(F) WAIVER OF TIMELINESS OF DISCLO-
23 SURES.—To expedite consummation of a trans-
24 action, if the consumer determines that the exten-
25 sion of credit is needed to meet a bona fide personal

1 financial emergency, the consumer may waive or
2 modify the timing requirements for disclosures
3 under subparagraph (A), provided that—

4 “(i) the term ‘bona fide personal emer-
5 gency’ may be further defined in regulations
6 issued by the Board;

7 “(ii) the consumer provides to the creditor
8 a dated, written statement describing the emer-
9 gency and specifically waiving or modifying
10 those timing requirements, which statement
11 shall bear the signature of all consumers enti-
12 tled to receive the disclosures required by this
13 paragraph; and

14 “(iii) the creditor provides to the con-
15 sumers at or before the time of such waiver or
16 modification, the final disclosures required by
17 paragraph (1).

18 “(G) The requirements of subparagraphs (B),
19 (C), (D) and (E) shall not apply to extensions of
20 credit relating to plans described in section
21 101(53D) of title 11, United States Code.”.

22 (b) CIVIL LIABILITY.—Section 130(a) of the Truth
23 in Lending Act (15 U.S.C. 1640(a)) is amended—

24 (1) in paragraph (2)(A)(iii), by striking “not
25 less than \$200 or greater than \$2,000” and insert-

1 ing “not less than \$400 or greater than \$4,000”;
2 and

3 (2) in the penultimate sentence of the undesig-
4 nated matter following paragraph (4)—

5 (A) by inserting “or section
6 128(b)(2)(C)(ii),” after “128(a),”; and

7 (B) by inserting “or section
8 128(b)(2)(C)(ii)” before the period.

9 (c) EFFECTIVE DATES.—

10 (1) GENERAL DISCLOSURES.—Except as pro-
11 vided in paragraph (2), the amendments made by
12 subsection (a) shall become effective 12 months after
13 the date of enactment of this Act.

14 (2) VARIABLE INTEREST RATES.—Subpara-
15 graph (C) of section 128(b)(2) of the Truth in
16 Lending Act (15 U.S.C. 1638(b)(2)(C)), as added by
17 subsection (a) of this section, shall become effective
18 on the earlier of—

19 (A) the compliance date established by the
20 Board for such purpose, by regulation; or

21 (B) 30 months after the date of enactment
22 of this Act.

1 **SEC. 2503. COMMUNITY DEVELOPMENT INVESTMENT AU-**
2 **THORITY FOR DEPOSITORY INSTITUTIONS.**

3 (a) NATIONAL BANKS.—The first sentence of the
4 paragraph designated as the “Eleventh” of section 5136
5 of the Revised Statutes of the United States (12 U.S.C.
6 24) is amended by striking “promotes the public welfare
7 by benefitting primarily” and inserting “is designed pri-
8 marily to promote the public welfare, including the welfare
9 of”.

10 (b) STATE MEMBER BANKS.—The first sentence of
11 the 23rd paragraph of section 9 of the Federal Reserve
12 Act (12 U.S.C. 338a) is amended by striking “promotes
13 the public welfare by benefitting primarily” and inserting
14 “is designed primarily to promote the public welfare, in-
15 cluding the welfare of”.

16 **TITLE VI—VETERANS HOUSING**
17 **MATTERS**

18 **SEC. 2601. HOME IMPROVEMENTS AND STRUCTURAL AL-**
19 **TERATIONS FOR TOTALLY DISABLED MEM-**
20 **BERS OF THE ARMED FORCES BEFORE DIS-**
21 **CHARGE OR RELEASE FROM THE ARMED**
22 **FORCES.**

23 Section 1717 of title 38, United States Code, is
24 amended by adding at the end the following new sub-
25 section:

1 “(d)(1) In the case of a member of the Armed Forces
2 who, as determined by the Secretary, has a disability per-
3 manent in nature incurred or aggravated in the line of
4 duty in the active military, naval, or air service, the Sec-
5 retary may furnish improvements and structural alter-
6 ations for such member for such disability or as otherwise
7 described in subsection (a)(2) while such member is hos-
8 pitalized or receiving outpatient medical care, services, or
9 treatment for such disability if the Secretary determines
10 that such member is likely to be discharged or released
11 from the Armed Forces for such disability.

12 “(2) The furnishing of improvements and alterations
13 under paragraph (1) in connection with the furnishing of
14 medical services described in subparagraph (A) or (B) of
15 subsection (a)(2) shall be subject to the limitation speci-
16 fied in the applicable subparagraph.”.

17 **SEC. 2602. ELIGIBILITY FOR SPECIALLY ADAPTED HOUSING**
18 **BENEFITS AND ASSISTANCE FOR MEMBERS**
19 **OF THE ARMED FORCES WITH SERVICE-CON-**
20 **NECTED DISABILITIES AND INDIVIDUALS RE-**
21 **SIDING OUTSIDE THE UNITED STATES.**

22 (a) **ELIGIBILITY.**—Chapter 21 of title 38, United
23 States Code, is amended by inserting after section 2101
24 the following new section:

1 **“§ 2101A. Eligibility for benefits and assistance: mem-**
2 **bers of the Armed Forces with service-**
3 **connected disabilities; individuals resid-**
4 **ing outside the United States**

5 “(a) MEMBERS WITH SERVICE-CONNECTED DIS-
6 ABILITIES.—(1) The Secretary may provide assistance
7 under this chapter to a member of the Armed Forces serv-
8 ing on active duty who is suffering from a disability that
9 meets applicable criteria for benefits under this chapter
10 if the disability is incurred or aggravated in line of duty
11 in the active military, naval, or air service. Such assistance
12 shall be provided to the same extent as assistance is pro-
13 vided under this chapter to veterans eligible for assistance
14 under this chapter and subject to the same requirements
15 as veterans under this chapter.

16 “(2) For purposes of this chapter, any reference to
17 a veteran or eligible individual shall be treated as a ref-
18 erence to a member of the Armed Forces described in sub-
19 section (a) who is similarly situated to the veteran or other
20 eligible individual so referred to.

21 “(b) BENEFITS AND ASSISTANCE FOR INDIVIDUALS
22 RESIDING OUTSIDE THE UNITED STATES.—(1) Subject
23 to paragraph (2), the Secretary may, at the Secretary’s
24 discretion, provide benefits and assistance under this
25 chapter (other than benefits under section 2106 of this

1 title) to any individual otherwise eligible for such benefits
2 and assistance who resides outside the United States.

3 “(2) The Secretary may provide benefits and assist-
4 ance to an individual under paragraph (1) only if—

5 “(A) the country or political subdivision in
6 which the housing or residence involved is or will be
7 located permits the individual to have or acquire a
8 beneficial property interest (as determined by the
9 Secretary) in such housing or residence; and

10 “(B) the individual has or will acquire a bene-
11 ficial property interest (as so determined) in such
12 housing or residence.

13 “(c) REGULATIONS.—Benefits and assistance under
14 this chapter by reason of this section shall be provided
15 in accordance with such regulations as the Secretary may
16 prescribe.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) REPEAL OF SUPERSEDED AUTHORITY.—
19 Section 2101 of title 38, United States Code, is
20 amended—

21 (A) by striking subsection (c); and

22 (B) by redesignating subsection (d) as sub-
23 section (c).

24 (2) LIMITATIONS ON ASSISTANCE.—Section
25 2102 of title 38, United States Code, is amended—

1 (A) in subsection (a)—

2 (i) by striking “veteran” each place it
3 appears and inserting “individual”; and

4 (ii) in paragraph (3), by striking “vet-
5 eran’s” and inserting “individual’s”;

6 (B) in subsection (b)(1), by striking “a
7 veteran” and inserting “an individual”;

8 (C) in subsection (c)—

9 (i) by striking “a veteran” and insert-
10 ing “an individual”; and

11 (ii) by striking “the veteran” each
12 place it appears and inserting “the indi-
13 vidual”; and

14 (D) in subsection (d), by striking “a vet-
15 eran” each place it appears and inserting “an
16 individual”.

17 (3) ASSISTANCE FOR INDIVIDUALS TEMPO-
18 RARILY RESIDING IN HOUSING OF FAMILY MEM-
19 BER.—Section 2102A of title 38, United States
20 Code, is amended—

21 (A) by striking “veteran” each place it ap-
22 pears (other than in subsection (b)) and insert-
23 ing “individual”;

1 (B) in subsection (a), by striking “vet-
2 eran’s” each place it appears and inserting “in-
3 dividual’s”; and

4 (C) in subsection (b), by striking “a vet-
5 eran” each place it appears and inserting “an
6 individual”.

7 (4) FURNISHING OF PLANS AND SPECIFICA-
8 TIONS.—Section 2103 of title 38, United States
9 Code, is amended by striking “veterans” both places
10 it appears and inserting “individuals”.

11 (5) CONSTRUCTION OF BENEFITS.—Section
12 2104 of title 38, United States Code, is amended—

13 (A) in subsection (a), by striking “veteran”
14 each place it appears and inserting “indi-
15 vidual”; and

16 (B) in subsection (b)—

17 (i) in the first sentence, by striking
18 “A veteran” and inserting “An individual”;

19 (ii) in the second sentence, by striking
20 “a veteran” and inserting “an individual”;

21 and

22 (iii) by striking “such veteran” each
23 place it appears and inserting “such indi-
24 vidual”.

1 (6) VETERANS' MORTGAGE LIFE INSURANCE.—
2 Section 2106 of title 38, United States Code, is
3 amended—

4 (A) in subsection (a)—

5 (i) by striking “any eligible veteran”
6 and inserting “any eligible individual”; and

7 (ii) by striking “the veterans’” and
8 inserting “the individual’s”;

9 (B) in subsection (b), by striking “an eligi-
10 ble veteran” and inserting “an eligible indi-
11 vidual”;

12 (C) in subsection (e), by striking “an eligi-
13 ble veteran” and inserting “an individual”;

14 (D) in subsection (h), by striking “each
15 veteran” and inserting “each individual”;

16 (E) in subsection (i), by striking “the vet-
17 eran’s” each place it appears and inserting “the
18 individual’s”;

19 (F) by striking “the veteran” each place it
20 appears and inserting “the individual”; and

21 (G) by striking “a veteran” each place it
22 appears and inserting “an individual”.

23 (7) HEADING AMENDMENTS.—(A) The heading
24 of section 2101 of title 38, United States Code, is
25 amended to read as follows:

1 **“§ 2101. Acquisition and adaptation of housing: eligi-**
2 **ble veterans”.**

3 (B) The heading of section 2102A of such title
4 is amended to read as follows:

5 **“§ 2102A. Assistance for individuals residing tempo-**
6 **rarily in housing owned by a family mem-**
7 **ber”.**

8 (8) CLERICAL AMENDMENTS.—The table of sec-
9 tions at the beginning of chapter 21 of title 38,
10 United States Code, is amended—

11 (A) by striking the item relating to section
12 2101 and inserting the following new item:

“2101. Acquisition and adaptation of housing: eligible veterans.”;

13 (B) by inserting after the item relating to
14 section 2101, as so amended, the following new
15 item:

“2101A. Eligibility for benefits and assistance: members of the Armed Forces
with service-connected disabilities; individuals residing outside
the United States.”;

16 and

17 (C) by striking the item relating to section
18 2102A and inserting the following new item:

“2102A. Assistance for individuals residing temporarily in housing owned by a
family member.”.

19 **SEC. 2603. SPECIALLY ADAPTED HOUSING ASSISTANCE FOR**
20 **INDIVIDUALS WITH SEVERE BURN INJURIES.**

21 Section 2101 of title 38, United States Code, is
22 amended—

1 (1) in subsection (a)(2), by adding at the end
2 the following new subparagraph:

3 “(E) The disability is due to a severe burn in-
4 jury (as determined pursuant to regulations pre-
5 scribed by the Secretary).”; and

6 (2) in subsection (b)(2)—

7 (A) by striking “either” and inserting
8 “any”; and

9 (B) by adding at the end the following new
10 subparagraph:

11 “(C) The disability is due to a severe burn in-
12 jury (as so determined).”.

13 **SEC. 2604. EXTENSION OF ASSISTANCE FOR INDIVIDUALS**
14 **RESIDING TEMPORARILY IN HOUSING**
15 **OWNED BY A FAMILY MEMBER.**

16 Section 2102A(e) of title 38, United States Code, is
17 amended by striking “after the end of the five-year period
18 that begins on the date of the enactment of the Veterans’
19 Housing Opportunity and Benefits Improvement Act of
20 2006” and inserting “after December 31, 2011”.

21 **SEC. 2605. INCREASE IN SPECIALLY ADAPTED HOUSING**
22 **BENEFITS FOR DISABLED VETERANS.**

23 (a) IN GENERAL.—Section 2102 of title 38, United
24 States Code, is amended—

1 (1) in subsection (b)(2), by striking “\$10,000”
2 and inserting “\$12,000”;

3 (2) in subsection (d)—

4 (A) in paragraph (1), by striking
5 “\$50,000” and inserting “\$60,000”; and

6 (B) in paragraph (2), by striking
7 “\$10,000” and inserting “\$12,000”; and

8 (3) by adding at the end the following new sub-
9 section:

10 “(e)(1) Effective on October 1 of each year (begin-
11 ning in 2009), the Secretary shall increase the amounts
12 described in subsection (b)(2) and paragraphs (1) and (2)
13 of subsection (d) in accordance with this subsection.

14 “(2) The increase in amounts under paragraph (1)
15 to take effect on October 1 of a year shall be by an amount
16 of such amounts equal to the percentage by which—

17 “(A) the residential home cost-of-construction
18 index for the preceding calendar year, exceeds

19 “(B) the residential home cost-of-construction
20 index for the year preceding the year described in
21 subparagraph (A).

22 “(3) The Secretary shall establish a residential home
23 cost-of-construction index for the purposes of this sub-
24 section. The index shall reflect a uniform, national average
25 change in the cost of residential home construction, deter-

1 mined on a calendar year basis. The Secretary may use
2 an index developed in the private sector that the Secretary
3 determines is appropriate for purposes of this sub-
4 section.”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 this section shall take effect on July 1, 2008, and shall
7 apply with respect to payments made in accordance with
8 section 2102 of title 38, United States Code, on or after
9 that date.

10 **SEC. 2606. REPORT ON SPECIALLY ADAPTED HOUSING FOR**
11 **DISABLED INDIVIDUALS.**

12 (a) **IN GENERAL.**—Not later than December 31,
13 2008, the Secretary of Veterans Affairs shall submit to
14 the Committee on Veterans’ Affairs of the Senate and the
15 Committee on Veterans’ Affairs of the House of Rep-
16 resentatives a report that contains an assessment of the
17 adequacy of the authorities available to the Secretary
18 under law to assist eligible disabled individuals in acquir-
19 ing—

20 (1) suitable housing units with special fixtures
21 or movable facilities required for their disabilities,
22 and necessary land therefor;

23 (2) such adaptations to their residences as are
24 reasonably necessary because of their disabilities;
25 and

1 (3) residences already adapted with special fea-
2 tures determined by the Secretary to be reasonably
3 necessary as a result of their disabilities.

4 (b) FOCUS ON PARTICULAR DISABILITIES.—The re-
5 port required by subsection (a) shall set forth a specific
6 assessment of the needs of—

7 (1) veterans who have disabilities that are not
8 described in subsections (a)(2) and (b)(2) of section
9 2101 of title 38, United States Code; and

10 (2) other disabled individuals eligible for spe-
11 cially adapted housing under chapter 21 of such title
12 by reason of section 2101A of such title (as added
13 by section 2602(a) of this Act) who have disabilities
14 that are not described in such subsections.

15 **SEC. 2607. REPORT ON SPECIALLY ADAPTED HOUSING AS-**
16 **SISTANCE FOR INDIVIDUALS WHO RESIDE IN**
17 **HOUSING OWNED BY A FAMILY MEMBER ON**
18 **PERMANENT BASIS.**

19 Not later than December 31, 2008, the Secretary of
20 Veterans Affairs shall submit to the Committee on Vet-
21 erans' Affairs of the Senate and the Committee on Vet-
22 erans' Affairs of the House of Representatives a report
23 on the advisability of providing assistance under section
24 2102A of title 38, United States Code, to veterans de-
25 scribed in subsection (a) of such section, and to members

1 of the Armed Forces covered by such section 2102A by
2 reason of section 2101A of title 38, United States Code
3 (as added by section 2602(a) of this Act), who reside with
4 family members on a permanent basis.

5 **SEC. 2608. DEFINITION OF ANNUAL INCOME FOR PUR-**
6 **POSES OF SECTION 8 AND OTHER PUBLIC**
7 **HOUSING PROGRAMS.**

8 Section 3(b)(4) of the United States Housing Act of
9 1937 (42 U.S.C. 1437a(3)(b)(4)) is amended by inserting
10 “or any deferred Department of Veterans Affairs dis-
11 ability benefits that are received in a lump sum amount
12 or in prospective monthly amounts” before “may not be
13 considered”.

14 **SEC. 2609. PAYMENT OF TRANSPORTATION OF BAGGAGE**
15 **AND HOUSEHOLD EFFECTS FOR MEMBERS**
16 **OF THE ARMED FORCES WHO RELOCATE DUE**
17 **TO FORECLOSURE OF LEASED HOUSING.**

18 Section 406 of title 37, United States Code, is
19 amended—

20 (1) by redesignating subsections (k) and (l) as
21 subsections (l) and (m), respectively; and

22 (2) by inserting after subsection (j) the fol-
23 lowing new subsection (k):

24 “(k) A member of the armed forces who relocates
25 from leased or rental housing by reason of the foreclosure

1 of such housing is entitled to transportation of baggage
2 and household effects under subsection (b)(1) in the same
3 manner, and subject to the same conditions and limita-
4 tions, as similarly circumstanced members entitled to
5 transportation of baggage and household effects under
6 that subsection.”.

7 **DIVISION C—TAX-RELATED** 8 **PROVISIONS**

9 **SECTION 3000. SHORT TITLE; ETC.**

10 (a) **SHORT TITLE.**—This division may be cited as the
11 “Housing Assistance Tax Act of 2008”.

12 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
13 wise expressly provided, whenever in this division an
14 amendment or repeal is expressed in terms of an amend-
15 ment to, or repeal of, a section or other provision, the ref-
16 erence shall be considered to be made to a section or other
17 provision of the Internal Revenue Code of 1986.

18 **TITLE I—HOUSING TAX** 19 **INCENTIVES**

20 **Subtitle A—Multi-Family Housing**

21 **PART I—LOW-INCOME HOUSING TAX CREDIT**

22 **SEC. 3001. TEMPORARY INCREASE IN VOLUME CAP FOR** 23 **LOW-INCOME HOUSING TAX CREDIT.**

24 Paragraph (3) of section 42(h) is amended by adding
25 at the end the following new subparagraph:

1 “(I) INCREASE IN STATE HOUSING CREDIT
2 CEILING FOR 2008 AND 2009.—In the case of
3 calendar years 2008 and 2009—

4 “(i) the dollar amount in effect under
5 subparagraph (C)(ii)(I) for such calendar
6 year (after any increase under subpara-
7 graph (H)) shall be increased by \$0.20,
8 and

9 “(ii) the dollar amount in effect under
10 subparagraph (C)(ii)(II) for such calendar
11 year (after any increase under subpara-
12 graph (H)) shall be increased by an
13 amount equal to 10 percent of such dollar
14 amount (rounded to the next lowest mul-
15 tiple of \$5,000).”.

16 **SEC. 3002. DETERMINATION OF CREDIT RATE.**

17 (a) TEMPORARY MINIMUM CREDIT RATE FOR NON-
18 FEDERALLY SUBSIDIZED NEW BUILDINGS.—Subsection
19 (b) of section 42 is amended by redesignating paragraph
20 (3) as paragraph (4) and by inserting after paragraph (2)
21 the following new paragraph:

22 “(3) TEMPORARY MINIMUM CREDIT RATE FOR
23 NON-FEDERALLY SUBSIDIZED NEW BUILDINGS.—In
24 the case of any new building—

1 “(A) which is placed in service by the tax-
2 payer after the date of the enactment of this
3 paragraph and before December 31, 2013, and

4 “(B) which is not federally subsidized for
5 the taxable year,

6 the applicable percentage shall not be less than 9
7 percent.”.

8 (b) MODIFICATIONS TO DEFINITION OF FEDERALLY
9 SUBSIDIZED BUILDING.—

10 (1) IN GENERAL.—Subparagraph (A) of section
11 42(i)(2) is amended by striking “, or any below mar-
12 ket Federal loan,”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Subparagraph (B) of section 42(i)(2)
15 is amended—

16 (i) by striking “BALANCE OF LOAN
17 OR” in the heading thereof,

18 (ii) by striking “loan or” in the mat-
19 ter preceding clause (i), and

20 (iii) by striking “subsection (d)—”
21 and all that follows and inserting “sub-
22 section (d) the proceeds of such obliga-
23 tion.”.

24 (B) Subparagraph (C) of section 42(i)(2)
25 is amended—

1 (i) by striking “or below market Fed-
2 eral loan” in the matter preceding clause

3 (i),

4 (ii) in clause (i)—

5 (I) by striking “or loan (when
6 issued or made)” and inserting
7 “(when issued)”, and

8 (II) by striking “the proceeds of
9 such obligation or loan” and inserting
10 “the proceeds of such obligation”, and

11 (iii) by striking “, and such loan is re-
12 paid,” in clause (ii).

13 (C) Paragraph (2) of section 42(i) is
14 amended by striking subparagraphs (D) and
15 (E).

16 (c) EFFECTIVE DATE.—The amendments made by
17 this subsection shall apply to buildings placed in service
18 after the date of the enactment of this Act.

19 **SEC. 3003. MODIFICATIONS TO DEFINITION OF ELIGIBLE**
20 **BASIS.**

21 (a) INCREASE IN CREDIT FOR CERTAIN STATE DES-
22 IGNATED BUILDINGS.—Subparagraph (C) of section
23 42(d)(5) (relating to increase in credit for buildings in
24 high cost areas), before redesignation under subsection

1 (B) by striking “\$3,000” in subclause (II)
2 and inserting “\$6,000”.

3 (2) INFLATION ADJUSTMENT.—Paragraph (3)
4 of section 42(e) is amended by adding at the end the
5 following new subparagraph:

6 “(D) INFLATION ADJUSTMENT.—In the
7 case of any expenditures which are treated
8 under paragraph (4) as placed in service during
9 any calendar year after 2009, the \$6,000
10 amount in subparagraph (A)(ii)(II) shall be in-
11 creased by an amount equal to—

12 “(i) such dollar amount, multiplied by

13 “(ii) the cost-of-living adjustment de-
14 termined under section 1(f)(3) for such
15 calendar year by substituting ‘calendar
16 year 2008’ for ‘calendar year 1992’ in sub-
17 paragraph (B) thereof.

18 Any increase under the preceding sentence
19 which is not a multiple of \$100 shall be round-
20 ed to the nearest multiple of \$100.”.

21 (3) CONFORMING AMENDMENT.—Subclause (II)
22 of section 42(f)(5)(B)(ii) is amended by striking “if
23 subsection (e)(3)(A)(ii)(II)” and all that follows and
24 inserting “if the dollar amount in effect under sub-

1 section (e)(3)(A)(ii)(II) were two-thirds of such
2 amount.”.

3 (c) INCREASE IN ALLOWABLE COMMUNITY SERVICE
4 FACILITY SPACE FOR SMALL PROJECTS.—Clause (ii) of
5 section 42(d)(4)(C) (relating to limitation) is amended by
6 striking “10 percent of the eligible basis of the qualified
7 low-income housing project of which it is a part. For pur-
8 poses of” and inserting “the sum of—

9 “(I) 25 percent of so much of the
10 eligible basis of the qualified low-in-
11 come housing project of which it is a
12 part as does not exceed \$15,000,000,
13 plus

14 “(II) 10 percent of so much of
15 the eligible basis of such project as is
16 not taken into account under sub-
17 clause (I).

18 For purposes of”.

19 (d) CLARIFICATION OF TREATMENT OF FEDERAL
20 GRANTS.—Subparagraph (A) of section 42(d)(5) is
21 amended to read as follows:

22 “(A) FEDERAL GRANTS NOT TAKEN INTO
23 ACCOUNT IN DETERMINING ELIGIBLE BASIS.—
24 The eligible basis of a building shall not include

1 any costs financed with the proceeds of a Fed-
2 erally funded grant.”.

3 (e) SIMPLIFICATION OF RELATED PARTY RULES.—

4 Clause (iii) of section 42(d)(2)(D), before redesignation
5 under subsection (g)(2), is amended—

6 (1) by striking all that precedes subclause (II),

7 (2) by redesignating subclause (II) as clause

8 (iii) and moving such clause two ems to the left, and

9 (3) by striking the last sentence thereof.

10 (f) EXCEPTION TO 10-YEAR NONACQUISITION PE-

11 RIOD FOR EXISTING BUILDINGS APPLICABLE TO

12 FEDERALLY- OR STATE-ASSISTED BUILDINGS.—Para-

13 graph (6) of section 42(d) is amended to read as follows:

14 “(6) CREDIT ALLOWABLE FOR CERTAIN BUILD-

15 INGS ACQUIRED DURING 10-YEAR PERIOD DE-

16 SCRIBED IN PARAGRAPH (2)(B)(ii).—

17 “(A) IN GENERAL.—Paragraph (2)(B)(ii)

18 shall not apply to any Federally- or State-as-

19 sisted building.

20 “(B) BUILDINGS ACQUIRED FROM IN-

21 SURED DEPOSITORY INSTITUTIONS IN DE-

22 FAULT.—On application by the taxpayer, the

23 Secretary may waive paragraph (2)(B)(ii) with

24 respect to any building acquired from an in-

25 sured depository institution in default (as de-

1 fined in section 3 of the Federal Deposit Insur-
2 ance Act) or from a receiver or conservator of
3 such an institution.

4 “(C) FEDERALLY- OR STATE-ASSISTED
5 BUILDING.—For purposes of this paragraph—

6 “(i) FEDERALLY-ASSISTED BUILD-
7 ING.—The term ‘Federally-assisted build-
8 ing’ means any building which is substan-
9 tially assisted, financed, or operated under
10 section 8 of the United States Housing Act
11 of 1937, section 221(d)(3), 221(d)(4), or
12 236 of the National Housing Act, or sec-
13 tion 515 of the Housing Act of 1949 (as
14 such Acts are in effect on the date of the
15 enactment of the Tax Reform Act of
16 1986).

17 “(ii) STATE-ASSISTED BUILDING.—
18 The term ‘State-assisted building’ means
19 any building which is substantially as-
20 sisted, financed, or operated under any
21 State law similar in purposes to any of the
22 laws referred to in clause (i).”.

23 (g) REPEAL OF DEADWOOD.—

24 (1) Clause (ii) of section 42(d)(2)(B) is amend-
25 ed by striking “the later of—” and all that follows

1 and inserting “the date the building was last placed
2 in service,”.

3 (2) Subparagraph (D) of section 42(d)(2) is
4 amended by striking clause (i) and by redesignating
5 clauses (ii) and (iii) as clauses (i) and (ii), respec-
6 tively.

7 (3) Paragraph (5) of section 42(d) is amended
8 by striking subparagraph (B) and by redesignating
9 subparagraph (C) as subparagraph (B).

10 (h) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as otherwise pro-
12 vided in paragraph (2), the amendments made by
13 this subsection shall apply to buildings placed in
14 service after the date of the enactment of this Act.

15 (2) REHABILITATION REQUIREMENTS.—

16 (A) IN GENERAL.—The amendments made
17 by subsection (b) shall apply with respect to
18 housing credit dollar amounts allocated after
19 the date of the enactment of this Act.

20 (B) BUILDINGS NOT SUBJECT TO ALLOCA-
21 TION LIMITS.—To the extent paragraph (1) of
22 section 42(h) of the Internal Revenue Code of
23 1986 does not apply to any building by reason
24 of paragraph (4) thereof, the amendments made
25 by subsection (b) shall apply to buildings placed

1 in service after the date of the enactment of
2 this Act.

3 **SEC. 3004. OTHER SIMPLIFICATION AND REFORM OF LOW-**
4 **INCOME HOUSING TAX INCENTIVES.**

5 (a) REPEAL PROHIBITION ON MODERATE REHABILI-
6 TATION ASSISTANCE.—Paragraph (2) of section 42(c) (de-
7 fining qualified low-income building) is amended by strik-
8 ing the flush sentence at the end.

9 (b) MODIFICATION OF TIME LIMIT FOR INCURRING
10 10 PERCENT OF PROJECT’S COST.—Clause (ii) of section
11 42(h)(1)(E) is amended by striking “(as of the later of
12 the date which is 6 months after the date that the alloca-
13 tion was made or the close of the calendar year in which
14 the allocation is made)” and inserting “(as of the date
15 which is 1 year after the date that the allocation was
16 made)”.

17 (c) REPEAL OF BONDING REQUIREMENT ON DIS-
18 POSITION OF BUILDING.—Paragraph (6) of section 42(j)
19 (relating to no recapture on disposition of building (or in-
20 terest therein) where bond posted) is amended to read as
21 follows:

22 “(6) NO RECAPTURE ON DISPOSITION OF
23 BUILDING WHICH CONTINUES IN QUALIFIED USE.—

24 “(A) IN GENERAL.—The increase in tax
25 under this subsection shall not apply solely by

1 reason of the disposition of a building (or an in-
2 terest therein) if it is reasonably expected that
3 such building will continue to be operated as a
4 qualified low-income building for the remaining
5 compliance period with respect to such building.

6 “(B) STATUTE OF LIMITATIONS.—If a
7 building (or an interest therein) is disposed of
8 during any taxable year and there is any reduc-
9 tion in the qualified basis of such building
10 which results in an increase in tax under this
11 subsection for such taxable or any subsequent
12 taxable year, then—

13 “(i) the statutory period for the as-
14 sessment of any deficiency with respect to
15 such increase in tax shall not expire before
16 the expiration of 3 years from the date the
17 Secretary is notified by the taxpayer (in
18 such manner as the Secretary may pre-
19 scribe) of such reduction in qualified basis,
20 and

21 “(ii) such deficiency may be assessed
22 before the expiration of such 3-year period
23 notwithstanding the provisions of any
24 other law or rule of law which would other-
25 wise prevent such assessment.”.

1 (d) ENERGY EFFICIENCY AND HISTORIC NATURE
2 TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—Sub-
3 paragraph (C) of section 42(m)(1) (relating to plans for
4 allocation of credit among projects) is amended by striking
5 “and” at the end of clause (vii), by striking the period
6 at the end of clause (viii) and inserting a comma, and by
7 adding at the end the following new clauses:

8 “(ix) the energy efficiency of the
9 project, and

10 “(x) the historic nature of the
11 project.”.

12 (e) CONTINUED ELIGIBILITY FOR STUDENTS WHO
13 RECEIVED FOSTER CARE ASSISTANCE.—Clause (i) of sec-
14 tion 42(i)(3)(D) is amended by striking “or” at the end
15 of subclause (I), by redesignating subclause (II) as sub-
16 clause (III), and by inserting after subclause (I) the fol-
17 lowing new subclause:

18 “(II) a student who was pre-
19 viously under the care and placement
20 responsibility of the State agency re-
21 sponsible for administering a plan
22 under part B or part E of title IV of
23 the Social Security Act, or”.

1 (f) TREATMENT OF RURAL PROJECTS.—Section
2 42(i) (relating to definitions and special rules) is amended
3 by adding at the end the following new paragraph:

4 “(8) TREATMENT OF RURAL PROJECTS.—For
5 purposes of this section, in the case of any project
6 for residential rental property located in a rural area
7 (as defined in section 520 of the Housing Act of
8 1949), any income limitation measured by reference
9 to area median gross income shall be measured by
10 reference to the greater of area median gross income
11 or national non-metropolitan median income. The
12 preceding sentence shall not apply with respect to
13 any building if paragraph (1) of section 42(h) does
14 not apply by reason of paragraph (4) thereof to any
15 portion of the credit determined under this section
16 with respect to such building.”.

17 (g) CLARIFICATION OF GENERAL PUBLIC USE RE-
18 QUIREMENT.—Subsection (c) of section 42 is amended by
19 adding at the end the following new paragraph:

20 “(3) CLARIFICATION OF GENERAL PUBLIC USE
21 REQUIREMENT.—

22 “(A) IN GENERAL.—A building which
23 meets the requirements of subparagraph (B)
24 shall not fail to be treated as a qualified low-
25 income building solely because occupancy in

1 such building is restricted to individuals who
2 have special needs, share a common occupation
3 or common interests, or are members of a spec-
4 ified group based on Federal, State, or local
5 programs or requirements.

6 “(B) BASIC PUBLIC USE REQUIRE-
7 MENTS.—A building meets the requirements of
8 this subparagraph if—

9 “(i) such building is used consistent
10 with housing policy governing non-discrimi-
11 nation as evidenced by rules and regula-
12 tions of the Department of Housing and
13 Urban Development,

14 “(ii) occupancy in such building is not
15 restricted on the basis of membership in a
16 social organization or on the basis of em-
17 ployment by specific employers, and

18 “(iii) such building is not part of a
19 hospital, nursing home, sanitarium, lifecare
20 facility, trailer park, or intermediate care
21 facility for the mentally or physically
22 handicapped.”.

23 (h) GAO STUDY REGARDING MODIFICATIONS TO
24 LOW-INCOME HOUSING TAX CREDIT.—Not later than
25 December 31, 2012, the Comptroller General of the

1 United States shall submit to Congress a report which
2 analyzes the implementation of the modifications made by
3 this subtitle to the low-income housing tax credit under
4 section 42 of the Internal Revenue Code of 1986. Such
5 report shall include an analysis of the distribution of credit
6 allocations before and after the effective date of such
7 modifications.

8 (i) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as otherwise pro-
10 vided in this subsection, the amendments made by
11 this section shall apply to buildings placed in service
12 after the date of the enactment of this Act.

13 (2) REPEAL OF BONDING REQUIREMENT ON
14 DISPOSITION OF BUILDING.—The amendment made
15 by subsection (c) shall apply to—

16 (A) interests in buildings disposed after
17 the date of the enactment of this Act, and

18 (B) interests in buildings disposed of on or
19 before such date if—

20 (i) it is reasonably expected that such
21 building will continue to be operated as a
22 qualified low-income building (within the
23 meaning of section 42 of the Internal Rev-
24 enue Code of 1986) for the remaining com-

1 pliance period (within the meaning of such
2 section) with respect to such building, and
3 (ii) the taxpayer elects the application
4 of this subparagraph with respect to such
5 disposition.

6 (3) ENERGY EFFICIENCY AND HISTORIC NA-
7 TURE TAKEN INTO ACCOUNT IN MAKING ALLOCA-
8 TIONS.—The amendments made by subsection (d)
9 shall apply to allocations made after December 31,
10 2008.

11 (4) CONTINUED ELIGIBILITY FOR STUDENTS
12 WHO RECEIVED FOSTER CARE ASSISTANCE.—The
13 amendments made by subsection (e) shall apply to
14 determinations made after the date of the enactment
15 of this Act.

16 (5) TREATMENT OF RURAL PROJECTS.—The
17 amendment made by subsection (f) shall apply to de-
18 terminations made after the date of the enactment
19 of this Act.

20 (6) CLARIFICATION OF GENERAL PUBLIC USE
21 REQUIREMENT.—The amendment made by sub-
22 section (g) shall apply to buildings placed in service
23 before, on, or after the date of the enactment of this
24 Act.

1 **SEC. 3005. TREATMENT OF MILITARY BASIC PAY.**

2 (a) IN GENERAL.—Subparagraph (B) of section
3 142(d)(2) (relating to income of individuals; area median
4 gross income) is amended—

5 (1) by striking “The income” and inserting the
6 following:

7 “(i) IN GENERAL.—The income”, and
8 (2) by adding at the end the following:

9 “(ii) SPECIAL RULE RELATING TO
10 BASIC HOUSING ALLOWANCES.—For pur-
11 poses of determining income under this
12 subparagraph, payments under section 403
13 of title 37, United States Code, as a basic
14 pay allowance for housing shall be dis-
15 regarded with respect to any qualified
16 building.

17 “(iii) QUALIFIED BUILDING.—For
18 purposes of clause (ii), the term ‘qualified
19 building’ means any building located—

20 “(I) in any county in which is lo-
21 cated a qualified military installation
22 to which the number of members of
23 the Armed Forces of the United
24 States assigned to units based out of
25 such qualified military installation, as
26 of June 1, 2008, has increased by not

1 less than 20 percent, as compared to
2 such number on December 31, 2005,
3 or

4 “(II) in any county adjacent to a
5 county described in subclause (I).

6 “(iv) QUALIFIED MILITARY INSTALLA-
7 TION.—For purposes of clause (iii), the
8 term ‘qualified military installation’ means
9 any military installation or facility the
10 number of members of the Armed Forces
11 of the United States assigned to which, as
12 of June 1, 2008, is not less than 1,000.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to—

15 (1) determinations made after the date of the
16 enactment of this Act and before January 1, 2012,
17 in the case of any qualified building (as defined in
18 section 142(d)(2)(B)(iii) of the Internal Revenue
19 Code of 1986)—

20 (A) with respect to which housing credit
21 dollar amounts have been allocated before the
22 date of the enactment of this Act, or

23 (B) with respect to buildings placed in
24 service before such date of enactment, to the
25 extent paragraph (1) of section 42(h) of such

1 Code does not apply to such building by reason
2 of paragraph (4) thereof, but only with respect
3 to bonds issued before such date of enactment,
4 and

5 (2) determinations made after the date of en-
6 actment of this Act, in the case of qualified build-
7 ings (as so defined)—

8 (A) with respect to which housing credit
9 dollar amounts are allocated after the date of
10 the enactment of this Act and before January
11 1, 2012, or

12 (B) with respect to which buildings placed
13 in service after the date of enactment of this
14 Act and before January 1, 2012, to the extent
15 paragraph (1) of section 42(h) of such Code
16 does not apply to such building by reason of
17 paragraph (4) thereof, but only with respect to
18 bonds issued after such date of enactment and
19 before January 1, 2012.

1 **PART II—MODIFICATIONS TO TAX-EXEMPT**
2 **HOUSING BOND RULES**
3 **SEC. 3007. RECYCLING OF TAX-EXEMPT DEBT FOR FINANC-**
4 **ING RESIDENTIAL RENTAL PROJECTS.**

5 (a) IN GENERAL.—Subsection (i) of section 146 (re-
6 lating to treatment of refunding issues) is amended by
7 adding at the end the following new paragraph:

8 “(6) TREATMENT OF CERTAIN RESIDENTIAL
9 RENTAL PROJECT BONDS AS REFUNDING BONDS IR-
10 RESPECTIVE OF OBLIGOR.—

11 “(A) IN GENERAL.—If, during the 6-
12 month period beginning on the date of a repay-
13 ment of a loan financed by an issue 95 percent
14 or more of the net proceeds of which are used
15 to provide projects described in section 142(d),
16 such repayment is used to provide a new loan
17 for any project so described, any bond which is
18 issued to refinance such issue shall be treated
19 as a refunding issue to the extent the principal
20 amount of such refunding issue does not exceed
21 the principal amount of the bonds refunded.

22 “(B) LIMITATIONS.—Subparagraph (A)
23 shall apply to only one refunding of the original
24 issue and only if—

1 “(i) the refunding issue is issued not
2 later than 4 years after the date on which
3 the original issue was issued,

4 “(ii) the latest maturity date of any
5 bond of the refunding issue is not later
6 than 34 years after the date on which the
7 refunded bond was issued, and

8 “(iii) the refunding issue is approved
9 in accordance with section 147(f) before
10 the issuance of the refunding issue.”.

11 (b) **LOW-INCOME HOUSING CREDIT.**—Clause (ii) of
12 section 42(h)(4)(A) is amended by inserting “or such fi-
13 nancing is refunded as described in section 146(i)(6)” be-
14 fore the period at the end.

15 (c) **EFFECTIVE DATE.**—The amendments made by
16 this section shall apply to repayments of loans received
17 after the date of the enactment of this Act.

18 **SEC. 3008. COORDINATION OF CERTAIN RULES APPLICA-**
19 **BLE TO LOW-INCOME HOUSING CREDIT AND**
20 **QUALIFIED RESIDENTIAL RENTAL PROJECT**
21 **EXEMPT FACILITY BONDS.**

22 (a) **DETERMINATION OF NEXT AVAILABLE UNIT.**—
23 Paragraph (3) of section 142(d) (relating to current in-
24 come determinations) is amended by adding at the end
25 the following new subparagraph:

1 “(C) EXCEPTION FOR PROJECTS WITH RE-
2 SPECT TO WHICH AFFORDABLE HOUSING CRED-
3 IT IS ALLOWED.—In the case of a project with
4 respect to which credit is allowed under section
5 42, the second sentence of subparagraph (B)
6 shall be applied by substituting ‘building (with-
7 in the meaning of section 42)’ for ‘project’.”.

8 (b) STUDENTS.—Paragraph (2) of section 142(d)
9 (relating to definitions and special rules) is amended by
10 adding at the end the following new subparagraph:

11 “(C) STUDENTS.—Rules similar to the
12 rules of 42(i)(3)(D) shall apply for purposes of
13 this subsection.”.

14 (c) SINGLE-ROOM OCCUPANCY UNITS.—Paragraph
15 (2) of section 142(d) (relating to definitions and special
16 rules), as amended by subsection (b), is amended by add-
17 ing at the end the following new subparagraph:

18 “(D) SINGLE-ROOM OCCUPANCY UNITS.—A
19 unit shall not fail to be treated as a residential
20 unit merely because such unit is a single-room
21 occupancy unit (within the meaning of section
22 42).”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to determinations of the status of
25 qualified residential rental projects for periods beginning

1 after the date of the enactment of this Act, with respect
2 to bonds issued before, on, or after such date.

3 **PART III—REFORMS RELATED TO THE LOW-IN-**
4 **COME HOUSING CREDIT AND TAX-EXEMPT**
5 **HOUSING BONDS**

6 **SEC. 3009. HOLD HARMLESS FOR REDUCTIONS IN AREA ME-**
7 **DIAN GROSS INCOME.**

8 (a) IN GENERAL.—Paragraph (2) of section 142(d),
9 as amended by section 3008, is amended by adding at the
10 end the following new subparagraph:

11 “(E) HOLD HARMLESS FOR REDUCTIONS
12 IN AREA MEDIAN GROSS INCOME.—

13 “(i) IN GENERAL.—Any determination
14 of area median gross income under sub-
15 paragraph (B) with respect to any project
16 for any calendar year after 2008 shall not
17 be less than the area median gross income
18 determined under such subparagraph with
19 respect to such project for the calendar
20 year preceding the calendar year for which
21 such determination is made.

22 “(ii) SPECIAL RULE FOR CERTAIN
23 CENSUS CHANGES.—In the case of a HUD
24 hold harmless impacted project, the area
25 median gross income with respect to such

1 project for any calendar year after 2008
2 (hereafter in this clause referred to as the
3 current calendar year) shall be the greater
4 of the amount determined without regard
5 to this clause or the sum of—

6 “(I) the area median gross in-
7 come determined under the HUD hold
8 harmless policy with respect to such
9 project for calendar year 2008, plus

10 “(II) any increase in the area
11 median gross income determined
12 under subparagraph (B) (determined
13 without regard to the HUD hold
14 harmless policy and this subpara-
15 graph) with respect to such project
16 for the current calendar year over the
17 area median gross income (as so de-
18 termined) with respect to such project
19 for calendar year 2008.

20 “(iii) HUD HOLD HARMLESS POL-
21 ICY.—The term ‘HUD hold harmless pol-
22 icy’ means the regulations under which a
23 policy similar to the rules of clause (i) ap-
24 plied to prevent a change in the method of
25 determining area median gross income

1 from resulting in a reduction in the area
2 median gross income determined with re-
3 spect to certain projects in calendar years
4 2007 and 2008.

5 “(iv) HUD HOLD HARMLESS IM-
6 PACTED PROJECT.—The term ‘HUD hold
7 harmless impacted project’ means any
8 project with respect to which area median
9 gross income was determined under sub-
10 paragraph (B) for calendar year 2007 or
11 2008 if such determination would have
12 been less but for the HUD hold harmless
13 policy.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to determinations of area median
16 gross income for calendar years after 2008.

17 **SEC. 3010. EXCEPTION TO ANNUAL CURRENT INCOME DE-**
18 **TERMINATION REQUIREMENT WHERE DE-**
19 **TERMINATION NOT RELEVANT.**

20 (a) IN GENERAL.—Subparagraph (A) of section
21 142(d)(3) is amended by adding at the end the following
22 new sentence: “The preceding sentence shall not apply
23 with respect to any project for any year if during such
24 year no residential unit in the project is occupied by a

1 new resident whose income exceeds the applicable income
2 limit.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to years ending after the date of
5 the enactment of this Act.

6 **Subtitle B—Single Family Housing**

7 **SEC. 3011. FIRST-TIME HOMEBUYER CREDIT.**

8 (a) **IN GENERAL.**—Subpart C of part IV of sub-
9 chapter A of chapter 1 is amended by redesignating sec-
10 tion 36 as section 37 and by inserting after section 35
11 the following new section:

12 **“SEC. 36. FIRST-TIME HOMEBUYER CREDIT.**

13 “(a) **ALLOWANCE OF CREDIT.**—In the case of an in-
14 dividual who is a first-time homebuyer of a principal resi-
15 dence in the United States during a taxable year, there
16 shall be allowed as a credit against the tax imposed by
17 this subtitle for such taxable year an amount equal to 10
18 percent of the purchase price of the residence.

19 “(b) **LIMITATIONS.**—

20 “(1) **DOLLAR LIMITATION.**—

21 “(A) **IN GENERAL.**—Except as otherwise
22 provided in this paragraph, the credit allowed
23 under subsection (a) shall not exceed \$8,000.

24 “(B) **MARRIED INDIVIDUALS FILING SEPA-**
25 **RATELY.**—In the case of a married individual

1 filing a separate return, subparagraph (A) shall
2 be applied by substituting ‘\$4,000’ for ‘\$8,000’.

3 “(C) OTHER INDIVIDUALS.—If two or
4 more individuals who are not married purchase
5 a principal residence, the amount of the credit
6 allowed under subsection (a) shall be allocated
7 among such individuals in such manner as the
8 Secretary may prescribe, except that the total
9 amount of the credits allowed to all such indi-
10 viduals shall not exceed \$8,000.

11 “(2) LIMITATION BASED ON MODIFIED AD-
12 JUSTED GROSS INCOME.—

13 “(A) IN GENERAL.—The amount allowable
14 as a credit under subsection (a) (determined
15 without regard to this paragraph) for the tax-
16 able year shall be reduced (but not below zero)
17 by the amount which bears the same ratio to
18 the amount which is so allowable as—

19 “(i) the excess (if any) of—

20 “(I) the taxpayer’s modified ad-
21 justed gross income for such taxable
22 year, over

23 “(II) \$75,000 (\$150,000 in the
24 case of a joint return), bears to

25 “(ii) \$20,000.

1 “(B) MODIFIED ADJUSTED GROSS IN-
2 COME.—For purposes of subparagraph (A), the
3 term ‘modified adjusted gross income’ means
4 the adjusted gross income of the taxpayer for
5 the taxable year increased by any amount ex-
6 cluded from gross income under section 911,
7 931, or 933.

8 “(c) DEFINITIONS.—For purposes of this section—

9 “(1) FIRST-TIME HOMEBUYER.—The term
10 ‘first-time homebuyer’ means any individual if such
11 individual (and if married, such individual’s spouse)
12 had no present ownership interest in a principal resi-
13 dence during the 3-year period ending on the date
14 of the purchase of the principal residence to which
15 this section applies.

16 “(2) PRINCIPAL RESIDENCE.—The term ‘prin-
17 cipal residence’ has the same meaning as when used
18 in section 121.

19 “(3) PURCHASE.—

20 “(A) IN GENERAL.—The term ‘purchase’
21 means any acquisition, but only if—

22 “(i) the property is not acquired from
23 a person related to the person acquiring it,
24 and

1 “(ii) the basis of the property in the
2 hands of the person acquiring it is not de-
3 termined—

4 “(I) in whole or in part by ref-
5 erence to the adjusted basis of such
6 property in the hands of the person
7 from whom acquired, or

8 “(II) under section 1014(a) (re-
9 lating to property acquired from a de-
10 cedent).

11 “(B) CONSTRUCTION.—A residence which
12 is constructed by the taxpayer shall be treated
13 as purchased by the taxpayer on the date the
14 taxpayer first occupies such residence.

15 “(4) PURCHASE PRICE.—The term ‘purchase
16 price’ means the adjusted basis of the principal resi-
17 dence on the date such residence is purchased.

18 “(5) RELATED PERSONS.—A person shall be
19 treated as related to another person if the relation-
20 ship between such persons would result in the dis-
21 allowance of losses under section 267 or 707(b) (but,
22 in applying section 267(b) and (c) for purposes of
23 this section, paragraph (4) of section 267(c) shall be
24 treated as providing that the family of an individual

1 shall include only his spouse, ancestors, and lineal
2 descendants).

3 “(d) EXCEPTIONS.—No credit under subsection (a)
4 shall be allowed to any taxpayer for any taxable year with
5 respect to the purchase of a residence if—

6 “(1) a credit under section 1400C (relating to
7 first-time homebuyer in the District of Columbia) is
8 allowable to the taxpayer (or the taxpayer’s spouse)
9 for such taxable year or any prior taxable year,

10 “(2) the residence is financed by the proceeds
11 of a qualified mortgage issue the interest on which
12 is exempt from tax under section 103,

13 “(3) the taxpayer is a nonresident alien, or

14 “(4) the taxpayer disposes of such residence (or
15 such residence ceases to be the principal residence of
16 the taxpayer (and, if married, the taxpayer’s
17 spouse)) before the close of such taxable year.

18 “(e) REPORTING.—If the Secretary requires informa-
19 tion reporting under section 6045 by a person described
20 in subsection (e)(2) thereof to verify the eligibility of tax-
21 payers for the credit allowable by this section, the excep-
22 tion provided by section 6045(e) shall not apply.

23 “(f) RECAPTURE OF CREDIT.—

24 “(1) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection, if a credit under subsection

1 (a) is allowed to a taxpayer, the tax imposed by this
2 chapter shall be increased by $6\frac{2}{3}$ percent of the
3 amount of such credit for each taxable year in the
4 recapture period.

5 “(2) ACCELERATION OF RECAPTURE.—If a tax-
6 payer disposes of the principal residence with respect
7 to which a credit was allowed under subsection (a)
8 (or such residence ceases to be the principal resi-
9 dence of the taxpayer (and, if married, the tax-
10 payer’s spouse)) before the end of the recapture pe-
11 riod—

12 “(A) the tax imposed by this chapter for
13 the taxable year of such disposition or ces-
14 sation, shall be increased by the excess of the
15 amount of the credit allowed over the amounts
16 of tax imposed by paragraph (1) for preceding
17 taxable years, and

18 “(B) paragraph (1) shall not apply with
19 respect to such credit for such taxable year or
20 any subsequent taxable year.

21 “(3) LIMITATION BASED ON GAIN.—In the case
22 of the sale of the principal residence to a person who
23 is not related to the taxpayer, the increase in tax de-
24 termined under paragraph (2) shall not exceed the
25 amount of gain (if any) on such sale. Solely for pur-

1 poses of the preceding sentence, the adjusted basis
2 of such residence shall be reduced by the amount of
3 the credit allowed under subsection (a) to the extent
4 not previously recaptured under paragraph (1).

5 “(4) EXCEPTIONS.—

6 “(A) DEATH OF TAXPAYER.—Paragraphs
7 (1) and (2) shall not apply to any taxable year
8 ending after the date of the taxpayer’s death.

9 “(B) INVOLUNTARY CONVERSION.—Para-
10 graph (2) shall not apply in the case of a resi-
11 dence which is compulsorily or involuntarily
12 converted (within the meaning of section
13 1033(a)) if the taxpayer acquires a new prin-
14 cipal residence during the 2-year period begin-
15 ning on the date of the disposition or cessation
16 referred to in paragraph (2). Paragraph (2)
17 shall apply to such new principal residence dur-
18 ing the recapture period in the same manner as
19 if such new principal residence were the con-
20 verted residence.

21 “(C) TRANSFERS BETWEEN SPOUSES OR
22 INCIDENT TO DIVORCE.—In the case of a trans-
23 fer of a residence to which section 1041(a) ap-
24 plies—

1 “(i) paragraph (2) shall not apply to
2 such transfer, and

3 “(ii) in the case of taxable years end-
4 ing after such transfer, paragraphs (1) and
5 (2) shall apply to the transferee in the
6 same manner as if such transferee were
7 the transferor (and shall not apply to the
8 transferor).

9 “(5) JOINT RETURNS.—In the case of a credit
10 allowed under subsection (a) with respect to a joint
11 return, half of such credit shall be treated as having
12 been allowed to each individual filing such return for
13 purposes of this subsection.

14 “(6) RECAPTURE PERIOD.—For purposes of
15 this subsection, the term ‘recapture period’ means
16 the 15 taxable years beginning with the second tax-
17 able year following the taxable year in which the
18 purchase of the principal residence for which a cred-
19 it is allowed under subsection (a) was made.

20 “(g) APPLICATION OF SECTION.—This section shall
21 only apply to a principal residence purchased by the tax-
22 payer on or after April 9, 2008, and before April 1,
23 2009.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 26(b)(2) is amended by striking
2 “and” at the end of subparagraph (U), by striking
3 the period and inserting “, and” and the end of sub-
4 paragraph (V), and by inserting after subparagraph
5 (V) the following new subparagraph:

6 “(W) section 36(f) (relating to recapture of
7 homebuyer credit).”.

8 (2) Section 6211(b)(4)(A) is amended by strik-
9 ing “34,” and all that follows through “6428” and
10 inserting “34, 35, 36, 53(e), and 6428”.

11 (3) Section 1324(b)(2) of title 31, United
12 States Code, is amended by inserting “, 36,” after
13 “section 35”.

14 (4) The table of sections for subpart C of part
15 IV of subchapter A of chapter 1 is amended by re-
16 designating the item relating to section 36 as an
17 item relating to section 37 and by inserting before
18 such item the following new item:

 “Sec. 36. First-time homebuyer credit.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to residences purchased on or after
21 April 9, 2008, in taxable years ending on or after such
22 date.

1 **SEC. 3012. ADDITIONAL STANDARD DEDUCTION FOR REAL**
2 **PROPERTY TAXES FOR NONITEMIZERS.**

3 (a) IN GENERAL.—Section 63(c)(1) (defining stand-
4 ard deduction) is amended by striking “and” at the end
5 of subparagraph (A), by striking the period at the end
6 of subparagraph (B) and inserting “, and”, and by adding
7 at the end the following new subparagraph:

8 “(C) in the case of any taxable year begin-
9 ning in 2008, the real property tax deduction.”.

10 (b) DEFINITION.—Section 63(c) is amended by add-
11 ing at the end the following new paragraph:

12 “(8) REAL PROPERTY TAX DEDUCTION.—

13 “(A) IN GENERAL.—For purposes of para-
14 graph (1), the real property tax deduction is the
15 lesser of—

16 “(i) the amount allowable as a deduc-
17 tion under this chapter for State and local
18 taxes described in section 164(a)(1), or

19 “(ii) \$500 (\$1,000 in the case of a
20 joint return).

21 Any taxes taken into account under section
22 62(a) shall not be taken into account under this
23 paragraph.

24 “(B) EXCEPTION.—The real property tax
25 deduction shall not be allowed in the case of a
26 taxpayer living in a jurisdiction in which the

1 rate of tax for all residential real property taxes
2 is increased, net of any tax rebates, through
3 rate increases or the repeal or reduction of oth-
4 erwise applicable deductions, credits, or offsets,
5 at any time after the date of the enactment of
6 this paragraph and before December 31, 2008.
7 This subparagraph shall not apply in the case
8 of a jurisdiction in which the rate of tax for all
9 residential real property taxes is increased pur-
10 suant to an equalization policy in effect before
11 the date of the enactment of this paragraph or
12 as a result of any votes of the residents of such
13 jurisdiction to increase funding for pre-school,
14 primary, secondary, or higher education.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2007.

18 **Subtitle C—General Provisions**

19 **SEC. 3021. TEMPORARY LIBERALIZATION OF TAX-EXEMPT** 20 **HOUSING BOND RULES.**

21 (a) TEMPORARY INCREASE IN VOLUME CAP.—

22 (1) IN GENERAL.—Subsection (d) of section
23 146 is amended by adding at the end the following
24 new paragraph:

1 “(5) INCREASE AND SET ASIDE FOR HOUSING
2 BONDS FOR 2008.—

3 “(A) INCREASE FOR 2008.—In the case of
4 calendar year 2008, the State ceiling for each
5 State shall be increased by an amount equal to
6 \$11,000,000,000 multiplied by a fraction—

7 “(i) the numerator of which is the
8 State ceiling applicable to the State for
9 calendar year 2008, determined without re-
10 gard to this paragraph, and

11 “(ii) the denominator of which is the
12 sum of the State ceilings determined under
13 clause (i) for all States.

14 “(B) SET ASIDE.—

15 “(i) IN GENERAL.—Any amount of
16 the State ceiling for any State which is at-
17 tributable to an increase under this para-
18 graph shall be allocated solely for one or
19 more qualified housing issues.

20 “(ii) QUALIFIED HOUSING ISSUE.—
21 For purposes of this paragraph, the term
22 ‘qualified housing issue’ means—

23 “(I) an issue described in section
24 142(a)(7) (relating to qualified resi-
25 dential rental projects), or

1 “(II) a qualified mortgage issue
2 (determined by substituting ‘12-month
3 period’ for ‘42-month period’ each
4 place it appears in section
5 143(a)(2)(D)(i)).”.

6 (2) CARRYFORWARD OF UNUSED LIMITA-
7 TIONS.—Subsection (f) of section 146 is amended by
8 adding at the end the following new paragraph:

9 “(6) SPECIAL RULES FOR INCREASED VOLUME
10 CAP UNDER SUBSECTION (d)(5).—No amount which
11 is attributable to the increase under subsection
12 (d)(5) may be used—

13 “(A) for any issue other than a qualified
14 housing issue (as defined in subsection (d)(5)),
15 or

16 “(B) to issue any bond after calendar year
17 2010.”.

18 (b) TEMPORARY RULE FOR USE OF QUALIFIED
19 MORTGAGE BONDS PROCEEDS FOR SUBPRIME REFI-
20 NANCING LOANS.—

21 (1) IN GENERAL.—Section 143(k) (relating to
22 other definitions and special rules) is amended by
23 adding at the end the following new paragraph:

24 “(12) SPECIAL RULES FOR SUBPRIME
25 REFINANCINGS.—

1 “(A) IN GENERAL.—Notwithstanding the
2 requirements of subsection (i)(1), the proceeds
3 of a qualified mortgage issue may be used to re-
4 finance a mortgage on a residence which was
5 originally financed by the mortgagor through a
6 qualified subprime loan.

7 “(B) SPECIAL RULES.—In applying sub-
8 paragraph (A) to any refinancing—

9 “(i) subsection (a)(2)(D)(i) shall be
10 applied by substituting ‘12-month period’
11 for ‘42-month period’ each place it ap-
12 pears,

13 “(ii) subsection (d) (relating to 3-year
14 requirement) shall not apply, and

15 “(iii) subsection (e) (relating to pur-
16 chase price requirement) shall be applied
17 by using the market value of the residence
18 at the time of refinancing in lieu of the ac-
19 quisition cost.

20 “(C) QUALIFIED SUBPRIME LOAN.—The
21 term ‘qualified subprime loan’ means an adjust-
22 able rate single-family residential mortgage loan
23 made after December 31, 2001, and before
24 January 1, 2008, that the bond issuer deter-

1 mines would be reasonably likely to cause finan-
2 cial hardship to the borrower if not refinanced.

3 “(D) TERMINATION.—This paragraph
4 shall not apply to any bonds issued after De-
5 cember 31, 2010.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to bonds issued after the date of
8 the enactment of this Act.

9 **SEC. 3022. REPEAL OF ALTERNATIVE MINIMUM TAX LIMI-**
10 **TATIONS ON TAX-EXEMPT HOUSING BONDS,**
11 **LOW-INCOME HOUSING TAX CREDIT, AND RE-**
12 **HABILITATION CREDIT.**

13 (a) TAX-EXEMPT INTEREST ON CERTAIN HOUSING
14 BONDS EXEMPTED FROM ALTERNATIVE MINIMUM
15 TAX.—

16 (1) IN GENERAL.—Subparagraph (C) of section
17 57(a)(5) (relating to specified private activity bonds)
18 is amended by redesignating clauses (iii) and (iv) as
19 clauses (iv) and (v), respectively, and by inserting
20 after clause (ii) the following new clause:

21 “(iii) EXCEPTION FOR CERTAIN HOUS-
22 ING BONDS.—For purposes of clause (i),
23 the term ‘private activity bond’ shall not
24 include any bond issued after the date of

1 the enactment of this clause if such bond
2 is—

3 “(I) an exempt facility bond
4 issued as part of an issue 95 percent
5 or more of the net proceeds of which
6 are to be used to provide qualified res-
7 idential rental projects (as defined in
8 section 142(d)),

9 “(II) a qualified mortgage bond
10 (as defined in section 143(a)), or

11 “(III) a qualified veterans’ mort-
12 gage bond (as defined in section
13 143(b)).

14 The preceding sentence shall not apply to
15 any refunding bond unless such preceding
16 sentence applied to the refunded bond (or
17 in the case of a series of refundings, the
18 original bond).”.

19 (2) NO ADJUSTMENT TO ADJUSTED CURRENT
20 EARNINGS.—Subparagraph (B) of section 56(g)(4)
21 is amended by adding at the end the following new
22 clause:

23 “(iii) TAX EXEMPT INTEREST ON CER-
24 TAIN HOUSING BONDS.—Clause (i) shall
25 not apply in the case of any interest on a

1 bond to which section 57(a)(5)(C)(iii) ap-
2 plies.”.

3 (b) ALLOWANCE OF LOW-INCOME HOUSING CREDIT
4 AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph
5 (B) of section 38(c)(4) (relating to specified credits) is
6 amended by redesignating clauses (ii) through (iv) as
7 clauses (iii) through (v) and inserting after clause (i) the
8 following new clause:

9 “(ii) the credit determined under sec-
10 tion 42 to the extent attributable to build-
11 ings placed in service after December 31,
12 2007,”.

13 (c) ALLOWANCE OF REHABILITATION CREDIT
14 AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph
15 (B) of section 38(c)(4), as amended by subsection (b), is
16 amended by striking “and” at the end of clause (iv), by
17 redesignating clause (v) as clause (vi), and by inserting
18 after clause (iv) the following new clause:

19 “(v) the credit determined under sec-
20 tion 47 to the extent attributable to quali-
21 fied rehabilitation expenditures properly
22 taken into account for periods after De-
23 cember 31, 2007, and”.

24 (d) EFFECTIVE DATE.—

1 (1) HOUSING BONDS.—The amendments made
2 by subsection (a) shall apply to bonds issued after
3 the date of the enactment of this Act.

4 (2) LOW INCOME HOUSING CREDIT.—The
5 amendments made by subsection (b) shall apply to
6 credits determined under section 42 of the Internal
7 Revenue Code of 1986 to the extent attributable to
8 buildings placed in service after December 31, 2007.

9 (3) REHABILITATION CREDIT.—The amend-
10 ments made by subsection (c) shall apply to credits
11 determined under section 47 of the Internal Revenue
12 Code of 1986 to the extent attributable to qualified
13 rehabilitation expenditures properly taken into ac-
14 count for periods after December 31, 2007.

15 **SEC. 3023. BONDS GUARANTEED BY FEDERAL HOME LOAN**
16 **BANKS ELIGIBLE FOR TREATMENT AS TAX-**
17 **EXEMPT BONDS.**

18 (a) IN GENERAL.—Subparagraph (A) of section
19 149(b)(3) (relating to exceptions for certain insurance
20 programs) is amended by striking “or” at the end of
21 clause (ii), by striking the period at the end of clause (iii)
22 and inserting “, or” and by adding at the end the following
23 new clause:

24 “(iv) subject to subparagraph (E),
25 any guarantee by a Federal home loan

1 bank made in connection with the original
2 issuance of a bond during the period begin-
3 ning on the date of the enactment of this
4 clause and ending on December 31, 2010
5 (or a renewal or extension of a guarantee
6 so made).”.

7 (b) SAFETY AND SOUNDNESS REQUIREMENTS.—
8 Paragraph (3) of section 149(b) is amended by adding at
9 the end the following new subparagraph:

10 “(E) SAFETY AND SOUNDNESS REQUIRE-
11 MENTS FOR FEDERAL HOME LOAN BANKS.—
12 Clause (iv) of subparagraph (A) shall not apply
13 to any guarantee by a Federal home loan bank
14 unless such bank meets safety and soundness
15 collateral requirements for such guarantees
16 which are at least as stringent as such require-
17 ments which apply under regulations applicable
18 to such guarantees by Federal home loan banks
19 as in effect on April 9, 2008.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to guarantees made after the date
22 of the enactment of this Act.

1 **SEC. 3024. MODIFICATION OF RULES PERTAINING TO**
2 **FIRPTA NONFOREIGN AFFIDAVITS.**

3 (a) **IN GENERAL.**—Subsection (b) of section 1445
4 (relating to exemptions) is amended by adding at the end
5 the following:

6 “(9) **ALTERNATIVE PROCEDURE FOR FUR-**
7 **NISHING NONFOREIGN AFFIDAVIT.**—For purposes of
8 paragraphs (2) and (7)—

9 “(A) **IN GENERAL.**—Paragraph (2) shall
10 be treated as applying to a transaction if, in
11 connection with a disposition of a United States
12 real property interest—

13 “(i) the affidavit specified in para-
14 graph (2) is furnished to a qualified sub-
15 stitute, and

16 “(ii) the qualified substitute furnishes
17 a statement to the transferee stating,
18 under penalty of perjury, that the qualified
19 substitute has such affidavit in his posses-
20 sion.

21 “(B) **REGULATIONS.**—The Secretary shall
22 prescribe such regulations as may be necessary
23 or appropriate to carry out this paragraph.”.

24 (b) **QUALIFIED SUBSTITUTE.**—Subsection (f) of sec-
25 tion 1445 (relating to definitions) is amended by adding
26 at the end the following new paragraph:

1 “(6) QUALIFIED SUBSTITUTE.—The term
2 ‘qualified substitute’ means, with respect to a dis-
3 position of a United States real property interest—

4 “(A) the person (including any attorney or
5 title company) responsible for closing the trans-
6 action, other than the transferor’s agent, and

7 “(B) the transferee’s agent.”.

8 (c) EXEMPTION NOT TO APPLY IF KNOWLEDGE OR
9 NOTICE THAT AFFIDAVIT OR STATEMENT IS FALSE.—

10 (1) IN GENERAL.—Paragraph (7) of section
11 1445(b) (relating to special rules for paragraphs (2)
12 and (3)) is amended to read as follows:

13 “(7) SPECIAL RULES FOR PARAGRAPHS (2), (3),
14 AND (9).—Paragraph (2), (3), or (9) (as the case
15 may be) shall not apply to any disposition—

16 “(A) if—

17 “(i) the transferee or qualified sub-
18 stitute has actual knowledge that the affi-
19 davit referred to in such paragraph, or the
20 statement referred to in paragraph
21 (9)(A)(ii), is false, or

22 “(ii) the transferee or qualified sub-
23 stitute receives a notice (as described in
24 subsection (d)) from a transferor’s agent,

1 transferee’s agent, or qualified substitute
2 that such affidavit or statement is false, or
3 “(B) if the Secretary by regulations re-
4 quires the transferee or qualified substitute to
5 furnish a copy of such affidavit or statement to
6 the Secretary and the transferee or qualified
7 substitute fails to furnish a copy of such affi-
8 davit or statement to the Secretary at such
9 time and in such manner as required by such
10 regulations.”.

11 (2) LIABILITY.—

12 (A) NOTICE.—Paragraph (1) of section
13 1445(d) (relating to notice of false affidavit;
14 foreign corporations) is amended to read as fol-
15 lows:

16 “(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN
17 CORPORATIONS.—If—

18 “(A) the transferor furnishes the trans-
19 feree or qualified substitute an affidavit de-
20 scribed in paragraph (2) of subsection (b) or a
21 domestic corporation furnishes the transferee
22 an affidavit described in paragraph (3) of sub-
23 section (b), and

24 “(B) in the case of—

25 “(i) any transferor’s agent—

1 “(I) such agent has actual knowl-
2 edge that such affidavit is false, or

3 “(II) in the case of an affidavit
4 described in subsection (b)(2) fur-
5 nished by a corporation, such corpora-
6 tion is a foreign corporation, or

7 “(ii) any transferee’s agent or quali-
8 fied substitute, such agent or substitute
9 has actual knowledge that such affidavit is
10 false,

11 such agent or qualified substitute shall so notify
12 the transferee at such time and in such manner
13 as the Secretary shall require by regulations.”.

14 (B) FAILURE TO FURNISH NOTICE.—Para-
15 graph (2) of section 1445(d) (relating to failure
16 to furnish notice) is amended to read as follows:

17 “(2) FAILURE TO FURNISH NOTICE.—

18 “(A) IN GENERAL.—If any transferor’s
19 agent, transferee’s agent, or qualified substitute
20 is required by paragraph (1) to furnish notice,
21 but fails to furnish such notice at such time or
22 times and in such manner as may be required
23 by regulations, such agent or substitute shall
24 have the same duty to deduct and withhold that

1 the transferee would have had if such agent or
2 substitute had complied with paragraph (1).

3 “(B) LIABILITY LIMITED TO AMOUNT OF
4 COMPENSATION.—An agent’s or substitute’s li-
5 ability under subparagraph (A) shall be limited
6 to the amount of compensation the agent or
7 substitute derives from the transaction.”.

8 (C) CONFORMING AMENDMENT.—The
9 heading for section 1445(d) is amended by
10 striking “OR TRANSFEREE’S AGENTS” and in-
11 serting “, TRANSFEREE’S AGENTS, OR QUALI-
12 FIED SUBSTITUTES”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to dispositions of United States
15 real property interests after the date of the enactment of
16 this Act.

17 **SEC. 3025. MODIFICATION OF DEFINITION OF TAX-EXEMPT**

18 **USE PROPERTY FOR PURPOSES OF THE RE-**

19 **HABILITATION CREDIT.**

20 (a) IN GENERAL.—Subclause (I) of section
21 47(c)(2)(B)(v) is amended by striking “section 168(h)”
22 and inserting “section 168(h), except that ‘50 percent’
23 shall be substituted for ‘35 percent’ in paragraph
24 (1)(B)(iii) thereof”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to expenditures properly taken into
3 account for periods after December 31, 2007.

4 **SEC. 3026. EXTENSION OF SPECIAL RULE FOR MORTGAGE**
5 **REVENUE BONDS FOR RESIDENCES LOCATED**
6 **IN DISASTER AREAS.**

7 (a) IN GENERAL.—Paragraph (11) of section 143(k)
8 is amended—

9 (1) by striking “December 31, 1996” and in-
10 sserting “May 1, 2008”, and

11 (2) by striking “January 1, 1999” and insert-
12 ing “January 1, 2010”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to bonds issued after May 1, 2008.

15 **TITLE II—REFORMS RELATED**
16 **TO REAL ESTATE INVEST-**
17 **MENT TRUSTS**

18 **Subtitle A—Foreign Currency and**
19 **Other Qualified Activities**

20 **SEC. 3031. REVISIONS TO REIT INCOME TESTS.**

21 (a) FOREIGN CURRENCY GAINS NOT GROSS INCOME
22 IN APPLYING REIT INCOME TESTS.—Section 856 (defin-
23 ing real estate investment trust) is amended by adding at
24 the end the following new subsection:

1 “(n) RULES REGARDING FOREIGN CURRENCY
2 TRANSACTIONS.—

3 “(1) IN GENERAL.—For purposes of this part—

4 “(A) passive foreign exchange gain for any
5 taxable year shall not constitute gross income
6 for purposes of subsection (c)(2), and

7 “(B) real estate foreign exchange gain for
8 any taxable year shall not constitute gross in-
9 come for purposes of subsection (c)(3).

10 “(2) REAL ESTATE FOREIGN EXCHANGE
11 GAIN.—For purposes of this subsection, the term
12 ‘real estate foreign exchange gain’ means—

13 “(A) foreign currency gain (as defined in
14 section 988(b)(1)) which is attributable to—

15 “(i) any item of income or gain de-
16 scribed in subsection (c)(3),

17 “(ii) the acquisition or ownership of
18 obligations secured by mortgages on real
19 property or on interests in real property
20 (other than foreign currency gain attrib-
21 utable to any item of income or gain de-
22 scribed in clause (i)), or

23 “(iii) becoming or being the obligor
24 under obligations secured by mortgages on
25 real property or on interests in real prop-

1 erty (other than foreign currency gain at-
2 tributable to any item of income or gain
3 described in clause (i)),

4 “(B) section 987 gain attributable to a
5 qualified business unit (as defined by section
6 989) of the real estate investment trust, but
7 only if such qualified business unit meets the
8 requirements under—

9 “(i) subsection (c)(3) for the taxable
10 year, and

11 “(ii) subsection (c)(4)(A) at the close
12 of each quarter that the real estate invest-
13 ment trust has directly or indirectly held
14 the qualified business unit, and

15 “(C) any other foreign currency gain as
16 determined by the Secretary.

17 “(3) PASSIVE FOREIGN EXCHANGE GAIN.—For
18 purposes of this subsection, the term ‘passive foreign
19 exchange gain’ means—

20 “(A) real estate foreign exchange gain,

21 “(B) foreign currency gain (as defined in
22 section 988(b)(1)) which is not described in
23 subparagraph (A) and which is attributable
24 to—

1 “(i) any item of income or gain de-
2 scribed in subsection (c)(2),

3 “(ii) the acquisition or ownership of
4 obligations (other than foreign currency
5 gain attributable to any item of income or
6 gain described in clause (i)), or

7 “(iii) becoming or being the obligor
8 under obligations (other than foreign cur-
9 rency gain attributable to any item of in-
10 come or gain described in clause (i)), and

11 “(C) any other foreign currency gain as
12 determined by the Secretary.

13 “(4) EXCEPTION FOR INCOME FROM SUBSTAN-
14 TIAL AND REGULAR TRADING.—Notwithstanding
15 this subsection or any other provision of this part,
16 any section 988 gain derived by a corporation, trust,
17 or association from engaging in substantial and reg-
18 ular trading or dealing in securities (as defined in
19 section 475(c)(2)) shall constitute gross income
20 which does not qualify under paragraph (2) or (3)
21 of subsection (c). This paragraph shall not apply to
22 income which does not constitute gross income by
23 reason of subsection (c)(5)(G).”.

1 (b) ADDITION TO REIT HEDGING RULE.—Subpara-
2 graph (G) of section 856(c)(5) is amended to read as fol-
3 lows:

4 “(G) TREATMENT OF CERTAIN HEDGING
5 INSTRUMENTS.—Except to the extent as deter-
6 mined by the Secretary—

7 “(i) any income of a real estate in-
8 vestment trust from a hedging transaction
9 (as defined in clause (ii) or (iii) of section
10 1221(b)(2)(A)) which is clearly identified
11 pursuant to section 1221(a)(7), including
12 gain from the sale or disposition of such a
13 transaction, shall not constitute gross in-
14 come under paragraphs (2) and (3) to the
15 extent that the transaction hedges any in-
16 debtedness incurred or to be incurred by
17 the trust to acquire or carry real estate as-
18 sets, and

19 “(ii) any income of a real estate in-
20 vestment trust from a transaction entered
21 into by the trust primarily to manage risk
22 of currency fluctuations with respect to
23 any item of income or gain described in
24 paragraph (2) or (3) (or any property
25 which generates such income or gain), in-

1 cluding gain from the termination of such
2 a transaction, shall not constitute gross in-
3 come under paragraphs (2) and (3), but
4 only if such transaction is clearly identified
5 as such before the close of the day on
6 which it was acquired, originated, or en-
7 tered into (or such other time as the Sec-
8 retary may prescribe).”

9 (c) AUTHORITY TO EXCLUDE ITEMS OF INCOME
10 FROM REIT INCOME TESTS.—Section 856(c)(5), as
11 amended by the Heartland, Habitat, Harvest, and Horti-
12 culture Act of 2008, is amended by adding at the end the
13 following new subparagraph:

14 “(J) SECRETARIAL AUTHORITY TO EX-
15 CLUDE OTHER ITEMS OF INCOME.—To the ex-
16 tent necessary to carry out the purposes of this
17 part, the Secretary is authorized to determine,
18 solely for purposes of this part, whether any
19 item of income or gain which—

20 “(i) does not otherwise qualify under
21 paragraph (2) or (3) may be considered as
22 not constituting gross income, or

23 “(ii) otherwise constitutes gross in-
24 come not qualifying under paragraph (2)
25 or (3) may be considered as gross income

1 which qualifies under paragraph (2) or
2 (3).”.

3 **SEC. 3032. REVISIONS TO REIT ASSET TESTS.**

4 (a) CLARIFICATION OF VALUATION TEST.—The first
5 sentence in the matter following section
6 856(c)(4)(B)(iii)(III) is amended by inserting “(including
7 a discrepancy caused solely by the change in the foreign
8 currency exchange rate used to value a foreign asset)”
9 after “such requirements”.

10 (b) CLARIFICATION OF PERMISSIBLE ASSET CAT-
11 EGORY.—Section 856(c)(5), as amended by section
12 3031(c), is amended by adding at the end the following
13 new subparagraph:

14 “(K) CASH.—If the real estate investment
15 trust or its qualified business unit (as defined
16 in section 989) uses any foreign currency as its
17 functional currency (as defined in section
18 985(b)), the term ‘cash’ includes such foreign
19 currency but only to the extent such foreign
20 currency—

21 “(i) is held for use in the normal
22 course of the activities of the trust or
23 qualified business unit which give rise to
24 items of income or gain described in para-
25 graph (2) or (3) of subsection (c) or are

1 directly related to acquiring or holding as-
2 sets described in subsection (c)(4), and
3 “(ii) is not held in connection with an
4 activity described in subsection (n)(4).”.

5 **SEC. 3033. CONFORMING FOREIGN CURRENCY REVISIONS.**

6 (a) NET INCOME FROM FORECLOSURE PROPERTY.—
7 Clause (i) of section 857(b)(4)(B) is amended to read as
8 follows:

9 “(i) gain (including any foreign cur-
10 rency gain, as defined in section 988(b)(1))
11 from the sale or other disposition of fore-
12 closure property described in section
13 1221(a)(1) and the gross income for the
14 taxable year derived from foreclosure prop-
15 erty (as defined in section 856(e)), but
16 only to the extent such gross income is not
17 described in (or, in the case of foreign cur-
18 rency gain, not attributable to gross in-
19 come described in) section 856(e)(3) other
20 than subparagraph (F) thereof, over”.

21 (b) NET INCOME FROM PROHIBITED TRANS-
22 ACTIONS.—Clause (i) of section 857(b)(6)(B) is amended
23 to read as follows:

24 “(i) the term ‘net income derived from
25 prohibited transactions’ means the excess

1 of the gain (including any foreign currency
2 gain, as defined in section 988(b)(1)) from
3 prohibited transactions over the deductions
4 (including any foreign currency loss, as de-
5 fined in section 988(b)(2)) allowed by this
6 chapter which are directly connected with
7 prohibited transactions;”.

8 **Subtitle B—Taxable REIT** 9 **Subsidiaries**

10 **SEC. 3041. CONFORMING TAXABLE REIT SUBSIDIARY ASSET**

11 **TEST.**

12 Section 856(c)(4)(B)(ii) is amended—

13 (1) by striking “20 percent” and inserting “25
14 percent”, and

15 (2) by striking “REIT subsidiaries” and all
16 that follows, and inserting “REIT subsidiaries,”.

17 **Subtitle C—Dealer Sales**

18 **SEC. 3051. HOLDING PERIOD UNDER SAFE HARBOR.**

19 Section 857(b)(6) (relating to income from prohibited
20 transactions) is amended—

21 (1) by striking “4 years” in subparagraphs
22 (C)(i), (C)(iv), and (D)(i) and inserting “2 years”,

23 (2) by striking “4-year period” in subpara-
24 graphs (C)(ii), (D)(ii), and (D)(iii) and inserting “2-
25 year period”, and

1 (3) by striking “real estate asset” and all that
2 follows through “if” in the matter preceding clause
3 (i) of subparagraphs (C) and (D), respectively, and
4 inserting “real estate asset (as defined in section
5 856(c)(5)(B)) and which is described in section
6 1221(a)(1) if”.

7 **SEC. 3052. DETERMINING VALUE OF SALES UNDER SAFE**
8 **HARBOR.**

9 Section 857(b)(6) is amended—

10 (1) by striking the semicolon at the end of sub-
11 paragraph (C)(iii) and inserting “, or (III) the fair
12 market value of property (other than sales of fore-
13 closure property or sales to which section 1033 ap-
14 plies) sold during the taxable year does not exceed
15 10 percent of the fair market value of all of the as-
16 sets of the trust as of the beginning of the taxable
17 year;”, and

18 (2) by adding “or” at the end of subclause (II)
19 of subparagraph (D)(iv) and by adding at the end
20 of such subparagraph the following new subclause:

21 “(III) the fair market value of prop-
22 erty (other than sales of foreclosure prop-
23 erty or sales to which section 1033 applies)
24 sold during the taxable year does not ex-
25 ceed 10 percent of the fair market value of

1 all of the assets of the trust as of the be-
2 ginning of the taxable year.”.

3 **Subtitle D—Health Care REITs**

4 **SEC. 3061. CONFORMITY FOR HEALTH CARE FACILITIES.**

5 (a) RELATED PARTY RENTALS.—Subparagraph (B)
6 of section 856(d)(8) (relating to special rule for taxable
7 REIT subsidiaries) is amended to read as follows:

8 “(B) EXCEPTION FOR CERTAIN LODGING
9 FACILITIES AND HEALTH CARE PROPERTY.—

10 The requirements of this subparagraph are met
11 with respect to an interest in real property
12 which is a qualified lodging facility (as defined
13 in paragraph (9)(D)) or a qualified health care
14 property (as defined in subsection (e)(6)(D)(i))
15 leased by the trust to a taxable REIT sub-
16 sidiary of the trust if the property is operated
17 on behalf of such subsidiary by a person who is
18 an eligible independent contractor. For pur-
19 poses of this section, a taxable REIT subsidiary
20 is not considered to be operating or managing
21 a qualified health care property or qualified
22 lodging facility solely because it—

23 “(i) directly or indirectly possesses a
24 license, permit, or similar instrument ena-
25 bling it to do so, or

1 “(ii) employs individuals working at
2 such facility or property located outside
3 the United States, but only if an eligible
4 independent contractor is responsible for
5 the daily supervision and direction of such
6 individuals on behalf of the taxable REIT
7 subsidiary pursuant to a management
8 agreement or similar service contract.”.

9 (b) **ELIGIBLE INDEPENDENT CONTRACTOR.**—Sub-
10 paragraphs (A) and (B) of section 856(d)(9) (relating to
11 eligible independent contractor) are amended to read as
12 follows:

13 “(A) **IN GENERAL.**—The term ‘eligible
14 independent contractor’ means, with respect to
15 any qualified lodging facility or qualified health
16 care property (as defined in subsection
17 (e)(6)(D)(i)), any independent contractor if, at
18 the time such contractor enters into a manage-
19 ment agreement or other similar service con-
20 tract with the taxable REIT subsidiary to oper-
21 ate such qualified lodging facility or qualified
22 health care property, such contractor (or any
23 related person) is actively engaged in the trade
24 or business of operating qualified lodging facili-
25 ties or qualified health care properties, respec-

1 tively, for any person who is not a related per-
2 son with respect to the real estate investment
3 trust or the taxable REIT subsidiary.

4 “(B) SPECIAL RULES.—Solely for purposes
5 of this paragraph and paragraph (8)(B), a per-
6 son shall not fail to be treated as an inde-
7 pendent contractor with respect to any qualified
8 lodging facility or qualified health care property
9 (as so defined) by reason of the following:

10 “(i) The taxable REIT subsidiary
11 bears the expenses for the operation of
12 such qualified lodging facility or qualified
13 health care property pursuant to the man-
14 agement agreement or other similar service
15 contract.

16 “(ii) The taxable REIT subsidiary re-
17 ceives the revenues from the operation of
18 such qualified lodging facility or qualified
19 health care property, net of expenses for
20 such operation and fees payable to the op-
21 erator pursuant to such agreement or con-
22 tract.

23 “(iii) The real estate investment trust
24 receives income from such person with re-
25 spect to another property that is attrib-

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1 utable to a lease of such other property to
2 such person that was in effect as of the
3 later of—

4 “(I) January 1, 1999, or

5 “(II) the earliest date that any
6 taxable REIT subsidiary of such trust
7 entered into a management agreement
8 or other similar service contract with
9 such person with respect to such
10 qualified lodging facility or qualified
11 health care property.”.

12 (c) TAXABLE REIT SUBSIDIARIES.—The last sen-
13 tence of section 856(l)(3) is amended—

14 (1) by inserting “or a health care facility” after
15 “a lodging facility”, and

16 (2) by inserting “or health care facility” after
17 “such lodging facility”.

18 **Subtitle E—Effective Dates**

19 **SEC. 3071. EFFECTIVE DATES.**

20 (a) IN GENERAL.—Except as otherwise provided in
21 this section, the amendments made by this title shall apply
22 to taxable years beginning after the date of the enactment
23 of this Act.

24 (b) REIT INCOME TESTS.—

1 (1) The amendments made by section 3031(a)
2 and (c) shall apply to gains and items of income rec-
3 ognized after the date of the enactment of this Act.

4 (2) The amendment made by section 3031(b)
5 shall apply to transactions entered into after the
6 date of the enactment of this Act.

7 (c) CONFORMING FOREIGN CURRENCY REVISIONS.—

8 (1) The amendment made by section 3033(a)
9 shall apply to gains recognized after the date of the
10 enactment of this Act.

11 (2) The amendment made by section 3033(b)
12 shall apply to gains and deductions recognized after
13 the date of the enactment of this Act.

14 (d) DEALER SALES.—The amendments made by sub-
15 title C shall apply to sales made after the date of the en-
16 actment of this Act.

17 **TITLE III—REVENUE**
18 **PROVISIONS**

19 **Subtitle A—General Provisions**

20 **SEC. 3081. ELECTION TO ACCELERATE AMT AND R AND D**
21 **CREDITS IN LIEU OF BONUS DEPRECIATION.**

22 (a) IN GENERAL.—Section 168(k) is amended by
23 adding at the end the following new paragraph:

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1 “(4) ELECTION TO ACCELERATE AMT AND R
2 AND D CREDITS IN LIEU OF BONUS DEPRECI-
3 TION.—

4 “(A) IN GENERAL.—If a corporation elects
5 to have this paragraph apply—

6 “(i) no additional depreciation shall be
7 allowed under paragraph (1) for any eligi-
8 ble qualified property placed in service dur-
9 ing any taxable year to which paragraph
10 (1) would otherwise apply,

11 “(ii) the applicable depreciation meth-
12 od used under this section with respect to
13 such eligible qualified property shall be the
14 straight line method rather than the meth-
15 od that would otherwise be used, and

16 “(iii) the limitations described in sub-
17 paragraph (B) for such taxable year shall
18 be increased by an aggregate amount not
19 in excess of the bonus depreciation amount
20 for such taxable year.

21 “(B) LIMITATIONS TO BE INCREASED.—
22 The limitations described in this subparagraph
23 are—

24 “(i) the limitation under section 38(e),
25 and

1 “(ii) the limitation under section
2 53(c).

3 “(C) BONUS DEPRECIATION AMOUNT.—

4 For purposes of this paragraph—

5 “(i) IN GENERAL.—The bonus depre-
6 ciation amount for any applicable taxable
7 year is an amount equal to the product of
8 20 percent and the excess (if any) of—

9 “(I) the aggregate amount of de-
10 preciation which would be determined
11 under this section for property placed
12 in service during the taxable year if
13 no election under this paragraph were
14 made, over

15 “(II) the aggregate amount of
16 depreciation allowable under this sec-
17 tion for property placed in service
18 during the taxable year.

19 In the case of property which is a pas-
20 senger aircraft, the amount determined
21 under subclause (I) shall be calculated
22 without regard to the written binding con-
23 tract limitation under paragraph
24 (2)(A)(iii)(I).

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1 “(ii) MAXIMUM AMOUNT.—The bonus
2 depreciation amount for any applicable
3 taxable year shall not exceed the applicable
4 limitation under clause (iii), reduced (but
5 not below zero) by the bonus depreciation
6 amount for any preceding taxable year.

7 “(iii) APPLICABLE LIMITATION.—For
8 purposes of clause (ii), the term ‘applicable
9 limitation’ means, with respect to any eligi-
10 ble taxpayer, the lesser of—

11 “(I) \$30,000,000, or

12 “(II) 6 percent of the sum of the
13 amounts determined with respect to
14 the taxpayer under clauses (ii) and
15 (iii) of subparagraph (E).

16 “(iv) AGGREGATION RULE.—All cor-
17 porations which are treated as a single em-
18 ployer under section 52(a) shall be treated
19 as 1 taxpayer for purposes of applying the
20 limitation under this subparagraph and de-
21 termining the applicable limitation under
22 clause (iii).

23 “(D) ELIGIBLE QUALIFIED PROPERTY.—
24 For purposes of this paragraph, the term ‘eligi-
25 ble qualified property’ means qualified property

1 under paragraph (2), except that in applying
2 paragraph (2) for purposes of this clause—

3 “(i) ‘March 31, 2008’ shall be sub-
4 stituted for ‘December 31, 2007’ each
5 place it appears in subparagraph (A) and
6 clauses (i) and (ii) of subparagraph (E)
7 thereof,

8 “(ii) only adjusted basis attributable
9 to manufacture, construction, or produc-
10 tion after March 31, 2008, and before Jan-
11 uary 1, 2009, shall be taken into account
12 under subparagraph (B)(ii) thereof, and

13 “(iii) in the case of property which is
14 a passenger aircraft, the written binding
15 contract limitation under subparagraph
16 (A)(iii)(I) thereof shall not apply.

17 “(E) ALLOCATION OF BONUS DEPRECI-
18 ATION AMOUNTS.—

19 “(i) IN GENERAL.—Subject to clauses
20 (ii) and (iii), the taxpayer shall, at such
21 time and in such manner as the Secretary
22 may prescribe, specify the portion (if any)
23 of the bonus depreciation amount which is
24 to be allocated to each of the limitations
25 described in subparagraph (B).

1 “(ii) BUSINESS CREDIT LIMITA-
2 TION.—The portion of the bonus deprecia-
3 tion amount allocated to the limitation de-
4 scribed in subparagraph (B)(i) shall not
5 exceed an amount equal to the portion of
6 the credit allowable under section 38 for
7 the taxable year which is allocable to busi-
8 ness credit carryforwards to such taxable
9 year which are—

10 “(I) from taxable years beginning
11 before January 1, 2006, and

12 “(II) properly allocable (deter-
13 mined under the rules of section
14 38(d)) to the research credit deter-
15 mined under section 41(a).

16 “(iii) ALTERNATIVE MINIMUM TAX
17 CREDIT LIMITATION.—The portion of the
18 bonus depreciation amount allocated to the
19 limitation described in subparagraph
20 (B)(ii) shall not exceed an amount equal to
21 the portion of the minimum tax credit al-
22 lowable under section 53 for the taxable
23 year which is allocable to the adjusted min-
24 imum tax imposed for taxable years begin-
25 ning before January 1, 2006. For purposes

1 of the preceding sentence, credits shall be
2 treated as allowed on a first-in, first-out
3 basis.

4 “(F) CREDIT REFUNDABLE.—Any aggre-
5 gate increases in the credits allowed under sec-
6 tion 38 or 53 by reason of this paragraph shall,
7 for purposes of this title, be treated as a credit
8 allowed to the taxpayer under subpart C of part
9 IV of subchapter A.

10 “(G) OTHER RULES.—

11 “(i) ELECTION.—Any election under
12 this paragraph (including any allocation
13 under subparagraph (E)) may be revoked
14 only with the consent of the Secretary.

15 “(ii) DEDUCTION ALLOWED IN COM-
16 PUTING MINIMUM TAX.—Notwithstanding
17 this paragraph, paragraph (2)(G) shall
18 apply with respect to the deduction com-
19 puted under this section (after application
20 of this paragraph) with respect to property
21 placed in service during any applicable tax-
22 able year.”.

23 (b) APPLICATION TO CERTAIN AUTOMOTIVE PART-
24 NERSHIPS.—

1 (1) IN GENERAL.—If an applicable partnership
2 elects the application of this subsection—

3 (A) the partnership shall be treated as
4 having made a payment against the tax im-
5 posed by chapter 1 of the Internal Revenue
6 Code of 1986 for any applicable taxable year of
7 the partnership in the amount determined
8 under paragraph (3),

9 (B) in the case of any eligible qualified
10 property placed in service by the partnership
11 during any applicable taxable year—

12 (i) section 168(k) of such Code shall
13 not apply in determining the amount of the
14 deduction allowable to the partnership or
15 any partner with respect to such property
16 under section 168 of such Code,

17 (ii) the applicable depreciation method
18 used by the partnership or any partner
19 under such section with respect to such
20 property shall be the straight line method
21 rather than the method that would other-
22 wise be used,

23 (C) no election may be made under section
24 168(k)(4) of such Code with respect to the
25 partnership, and

1 (D) the amount of the credit determined
2 under section 41 of such Code for any applica-
3 ble taxable year with respect to the partnership
4 shall be reduced by the amount of the deemed
5 payment under subparagraph (A) for the tax-
6 able year.

7 (2) TREATMENT OF DEEMED PAYMENT.—

8 (A) IN GENERAL.—Notwithstanding any
9 other provision of the Internal Revenue Code of
10 1986, the Secretary of the Treasury or his dele-
11 gate shall not use the payment of tax described
12 in paragraph (1) as an offset or credit against
13 any tax liability of the applicable partnership or
14 any partner but shall refund such payment to
15 the applicable partnership.

16 (B) NO INTEREST.—The payment de-
17 scribed in paragraph (1) shall not be taken into
18 account in determining any amount of interest
19 under such Code.

20 (3) AMOUNT OF DEEMED PAYMENT.—The
21 amount determined under this paragraph for any
22 applicable taxable year shall be the least of the fol-
23 lowing:

24 (A) The amount which would be deter-
25 mined for the taxable year under section

1 168(k)(4)(C)(i) of the Internal Revenue Code of
2 1986 (as added by the amendments made by
3 this section) if an election under such section
4 were in effect with respect to the partnership.

5 (B) The amount of the credit determined
6 under section 41 of such Code for the taxable
7 year with respect to the partnership.

8 (C) \$30,000,000, reduced by the amount
9 of any payment under this subsection for any
10 preceding taxable year.

11 (4) DEFINITIONS.—For purposes of this sub-
12 section—

13 (A) APPLICABLE PARTNERSHIP.—The
14 term “applicable partnership” means a domes-
15 tic partnership that—

16 (i) was formed effective on August 3,
17 2007, and

18 (ii) will produce in excess of 675,000
19 automobiles during the period beginning on
20 January 1, 2008, and ending on June 30,
21 2008.

22 (B) APPLICABLE TAXABLE YEAR.—The
23 term “applicable taxable year” means any tax-
24 able year during which eligible qualified prop-
25 erty is placed in service.

1 (C) ELIGIBLE QUALIFIED PROPERTY.—

2 The term “eligible qualified property” has the
3 meaning given such term by section
4 168(k)(4)(D) of the Internal Revenue Code of
5 1986 (as added by the amendments made by
6 this section).

7 (c) CONFORMING AMENDMENT.—Section 1324(b)(2)
8 of title 31, United States Code, as amended by this Act,
9 is amended—

10 (1) by inserting “168(k)(4)(F),” after “36,”
11 and

12 (2) by inserting “, or due under section
13 3081(b)(2) of the Housing Assistance Tax Act of
14 2008” before the period at the end.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years ending after
17 March 31, 2008.

18 **SEC. 3082. CERTAIN GO ZONE INCENTIVES.**

19 (a) USE OF AMENDED INCOME TAX RETURNS TO
20 TAKE INTO ACCOUNT RECEIPT OF CERTAIN HURRICANE-
21 RELATED CASUALTY LOSS GRANTS BY DISALLOWING
22 PREVIOUSLY TAKEN CASUALTY LOSS DEDUCTIONS.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of the Internal Revenue Code of 1986, if
25 a taxpayer claims a deduction for any taxable year

1 with respect to a casualty loss to a principal resi-
2 dence (within the meaning of section 121 of such
3 Code) resulting from Hurricane Katrina, Hurricane
4 Rita, or Hurricane Wilma and in a subsequent tax-
5 able year receives a grant under Public Law 109–
6 148, 109–234, or 110–116 as reimbursement for
7 such loss, such taxpayer may elect to file an amend-
8 ed income tax return for the taxable year in which
9 such deduction was allowed (and for any taxable
10 year to which such deduction is carried) and reduce
11 (but not below zero) the amount of such deduction
12 by the amount of such reimbursement.

13 (2) TIME OF FILING AMENDED RETURN.—
14 Paragraph (1) shall apply with respect to any grant
15 only if any amended income tax returns with respect
16 to such grant are filed not later than the later of—

17 (A) the due date for filing the tax return
18 for the taxable year in which the taxpayer re-
19 ceives such grant, or

20 (B) the date which is 1 year after the date
21 of the enactment of this Act.

22 (3) WAIVER OF PENALTIES AND INTEREST.—
23 Any underpayment of tax resulting from the reduc-
24 tion under paragraph (1) of the amount otherwise
25 allowable as a deduction shall not be subject to any

1 penalty or interest under such Code if such tax is
2 paid not later than 1 year after the filing of the
3 amended return to which such reduction relates.

4 (b) WAIVER OF DEADLINE ON CONSTRUCTION OF
5 GO ZONE PROPERTY ELIGIBLE FOR BONUS DEPRECIATION.—
6 TION.—

7 (1) IN GENERAL.—Subparagraph (B) of section
8 1400N(d)(3) is amended to read as follows:

9 “(B) without regard to ‘and before January
10 1, 2009’ in clause (i) thereof, and”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by this subsection shall apply to property placed in
13 service after December 31, 2007.

14 (c) INCLUSION OF CERTAIN COUNTIES IN GULF OP-
15 PORTUNITY ZONE FOR PURPOSES OF TAX-EXEMPT BOND
16 FINANCING.—

17 (1) IN GENERAL.—Subsection (a) of section
18 1400N is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(8) INCLUSION OF CERTAIN COUNTIES.—For
21 purposes of this subsection, the Gulf Opportunity
22 Zone includes Colbert County, Alabama and Dallas
23 County, Alabama.”.

24 (2) EFFECTIVE DATE.—The amendment made
25 by this subsection shall take effect as if included in

1 the provisions of the Gulf Opportunity Zone Act of
2 2005 to which it relates.

3 **Subtitle B—Revenue Offsets**

4 **SEC. 3091. RETURNS RELATING TO PAYMENTS MADE IN** 5 **SETTLEMENT OF PAYMENT CARD AND THIRD** 6 **PARTY NETWORK TRANSACTIONS.**

7 (a) IN GENERAL.—Subpart B of part III of sub-
8 chapter A of chapter 61 is amended by adding at the end
9 the following new section:

10 **“SEC. 6050W. RETURNS RELATING TO PAYMENTS MADE IN** 11 **SETTLEMENT OF PAYMENT CARD AND THIRD** 12 **PARTY NETWORK TRANSACTIONS.**

13 “(a) IN GENERAL.—Each payment settlement entity
14 shall make a return for each calendar year setting forth—

15 “(1) the name, address, and TIN of each par-
16 ticipating payee to whom one or more payments in
17 settlement of reportable transactions are made, and

18 “(2) the gross amount of the reportable trans-
19 actions with respect to each such participating
20 payee.

21 Such return shall be made at such time and in such form
22 and manner as the Secretary may require by regulations.

23 “(b) PAYMENT SETTLEMENT ENTITY.—For pur-
24 poses of this section—

1 “(1) IN GENERAL.—The term ‘payment settle-
2 ment entity’ means—

3 “(A) in the case of a payment card trans-
4 action, the merchant acquiring bank, and

5 “(B) in the case of a third party network
6 transaction, the third party settlement organi-
7 zation.

8 “(2) MERCHANT ACQUIRING BANK.—The term
9 ‘merchant acquiring bank’ means the bank or other
10 organization which has the contractual obligation to
11 make payment to participating payees in settlement
12 of payment card transactions.

13 “(3) THIRD PARTY SETTLEMENT ORGANIZA-
14 TION.—The term ‘third party settlement organiza-
15 tion’ means the central organization which has the
16 contractual obligation to make payment to partici-
17 pating payees of third party network transactions.

18 “(4) SPECIAL RULES RELATED TO INTER-
19 MEDIARIES.—For purposes of this section—

20 “(A) AGGREGATED PAYEES.—In any case
21 where reportable transactions of more than one
22 participating payee are settled through an inter-
23 mediary—

24 “(i) such intermediary shall be treated
25 as the participating payee for purposes of

1 determining the reporting obligations of
2 the payment settlement entity with respect
3 to such transactions, and

4 “(ii) such intermediary shall be treat-
5 ed as the payment settlement entity with
6 respect to the settlement of such trans-
7 actions with the participating payees.

8 “(B) ELECTRONIC PAYMENT
9 FACILITATORS.—In any case where an elec-
10 tronic payment facilitator or other third party
11 makes payments in settlement of reportable
12 transactions on behalf of the payment settle-
13 ment entity, the return under subsection (a)
14 shall be made by such electronic payment
15 facilitator or other third party in lieu of the
16 payment settlement entity.

17 “(c) REPORTABLE TRANSACTION.—For purposes of
18 this section—

19 “(1) IN GENERAL.—The term ‘reportable trans-
20 action’ means any payment card transaction and any
21 third party network transaction.

22 “(2) PAYMENT CARD TRANSACTION.—The term
23 ‘payment card transaction’ means any transaction in
24 which a payment card is accepted as payment.

1 “(3) THIRD PARTY NETWORK TRANSACTION.—

2 The term ‘third party network transaction’ means
3 any transaction which is settled through a third
4 party payment network.

5 “(d) OTHER DEFINITIONS.—For purposes of this
6 section—

7 “(1) PARTICIPATING PAYEE.—

8 “(A) IN GENERAL.—The term ‘partici-
9 pating payee’ means—

10 “(i) in the case of a payment card
11 transaction, any person who accepts a pay-
12 ment card as payment, and

13 “(ii) in the case of a third party net-
14 work transaction, any person who accepts
15 payment from a third party settlement or-
16 ganization in settlement of such trans-
17 action.

18 “(B) EXCLUSION OF FOREIGN PERSONS.—

19 To the extent provided by the Secretary in reg-
20 ulations or other guidance, such term shall not
21 include any foreign person.

22 “(C) INCLUSION OF GOVERNMENTAL
23 UNITS.—The term ‘person’ includes any govern-
24 mental unit (and any agency or instrumentality
25 thereof).

1 “(2) PAYMENT CARD.—The term ‘payment
2 card’ means any card which is issued pursuant to an
3 agreement or arrangement which provides for—

4 “(A) one or more issuers of such cards,

5 “(B) a network of persons unrelated to
6 each other, and to the issuer, who agree to ac-
7 cept such cards as payment, and

8 “(C) standards and mechanisms for set-
9 tling the transactions between the merchant ac-
10 quiring banks and the persons who agree to ac-
11 cept such cards as payment.

12 The acceptance as payment of any account number
13 or other indicia associated with a payment card shall
14 be treated for purposes of this section in the same
15 manner as accepting such payment card as payment.

16 “(3) THIRD PARTY PAYMENT NETWORK.—The
17 term ‘third party payment network’ means any
18 agreement or arrangement—

19 “(A) which involves the establishment of
20 accounts with a central organization for the
21 purpose of settling transactions between per-
22 sons who establish such accounts,

23 “(B) which provides for standards and
24 mechanisms for settling such transactions,

1 “(C) which involves a substantial number
2 of persons unrelated to such central organiza-
3 tion who provide goods or services and who
4 have agreed to settle transactions for the provi-
5 sion of such goods or services pursuant to such
6 agreement or arrangement, and

7 “(D) which guarantees persons providing
8 goods or services pursuant to such agreement
9 or arrangement that such persons will be paid
10 for providing such goods or services.

11 Such term shall not include any agreement or ar-
12 rangement which provides for the issuance of pay-
13 ment cards.

14 “(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY
15 THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third
16 party settlement organization shall not be required to re-
17 port any information under subsection (a) with respect to
18 third party network transactions of any participating
19 payee if the amount which would otherwise be reported
20 under subsection (a)(2) with respect to such transactions
21 does not exceed \$10,000 and the aggregate number of
22 such transactions does not exceed 200.

23 “(f) STATEMENTS TO BE FURNISHED TO PERSONS
24 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—
25 Every person required to make a return under subsection

1 (a) shall furnish to each person with respect to whom such
2 a return is required a written statement showing—

3 “(1) the name, address, and phone number of
4 the information contact of the person required to
5 make such return, and

6 “(2) the gross amount of payments made to the
7 person required to be shown on the return.

8 The written statement required under the preceding sen-
9 tence shall be furnished to the person on or before Janu-
10 ary 31 of the year following the calendar year for which
11 the return under subsection (a) was required to be made.

12 “(g) REGULATIONS.—The Secretary may prescribe
13 such regulations or other guidance as may be necessary
14 or appropriate to carry out this section, including rules
15 to prevent the reporting of the same transaction more
16 than once.”.

17 (b) PENALTY FOR FAILURE TO FILE.—

18 (1) RETURN.—Subparagraph (B) of section
19 6724(d)(1) is amended—

20 (A) by striking “or” at the end of clause
21 (xx),

22 (B) by redesignating the clause (xix) that
23 follows clause (xx) as clause (xxi),

1 (C) by striking “and” at the end of clause
2 (xxi), as redesignated by subparagraph (B) and
3 inserting “or”, and

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

5 “(xxii) section 6050W (relating to re-
6 turns to payments made in settlement of
7 payment card transactions), and”.

8 (2) STATEMENT.—Paragraph (2) of section
9 6724(d) is amended by striking “or” at the end of
10 subparagraph (BB), by striking the period at the
11 end of the subparagraph (CC) and inserting “, or”,
12 and by inserting after subparagraph (CC) the fol-
13 lowing:

14 “(DD) section 6050W(e) (relating to re-
15 turns relating to payments made in settlement
16 of payment card transactions).”.

17 (c) APPLICATION OF BACKUP WITHHOLDING.—
18 Paragraph (3) of section 3406(b) is amended by striking
19 “or” at the end of subparagraph (D), by striking the pe-
20 riod at the end of subparagraph (E) and inserting “, or”,
21 and by adding at the end the following new subparagraph:

22 “(F) section 6050W (relating to returns
23 relating to payments made in settlement of pay-
24 ment card transactions).”.

1 (d) CLERICAL AMENDMENT.—The table of sections
2 for subpart B of part III of subchapter A of chapter 61
3 is amended by inserting after the item relating to section
4 6050V the following:

“Sec. 6050W. Returns relating to payments made in settlement of payment
card transactions.”.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as otherwise pro-
7 vided in this subsection, the amendments made by
8 this section shall apply to returns for calendar years
9 beginning after December 31, 2010.

10 (2) APPLICATION OF BACKUP WITHHOLDING.—

11 The amendment made by subsection (c) shall apply
12 to amounts paid after December 31, 2011.

13 **SEC. 3092. GAIN FROM SALE OF PRINCIPAL RESIDENCE AL-**
14 **LOCATED TO NONQUALIFIED USE NOT EX-**
15 **CLUDED FROM INCOME.**

16 (a) IN GENERAL.—Subsection (b) of section 121 of
17 the Internal Revenue Code of 1986 (relating to limita-
18 tions) is amended by adding at the end the following new
19 paragraph:

20 “(4) EXCLUSION OF GAIN ALLOCATED TO NON-
21 QUALIFIED USE.—

22 “(A) IN GENERAL.—Subsection (a) shall
23 not apply to so much of the gain from the sale

1 or exchange of property as is allocated to peri-
2 ods of nonqualified use.

3 “(B) GAIN ALLOCATED TO PERIODS OF
4 NONQUALIFIED USE.—For purposes of subpara-
5 graph (A), gain shall be allocated to periods of
6 nonqualified use based on the ratio which—

7 “(i) the aggregate periods of non-
8 qualified use during the period such prop-
9 erty was owned by the taxpayer, bears to

10 “(ii) the period such property was
11 owned by the taxpayer.

12 “(C) PERIOD OF NONQUALIFIED USE.—
13 For purposes of this paragraph—

14 “(i) IN GENERAL.—The term ‘period
15 of nonqualified use’ means any period
16 (other than the portion of any period pre-
17 ceding January 1, 2009) during which the
18 property is not used as the principal resi-
19 dence of the taxpayer or the taxpayer’s
20 spouse or former spouse.

21 “(ii) EXCEPTIONS.—The term ‘period
22 of nonqualified use’ does not include—

23 “(I) any portion of the 5-year pe-
24 riod described in subsection (a) which
25 is after the last date that such prop-

1 erty is used as the principal residence
2 of the taxpayer or the taxpayer's
3 spouse,

4 “(II) any period (not to exceed
5 an aggregate period of 10 years) dur-
6 ing which the taxpayer or the tax-
7 payer's spouse is serving on qualified
8 official extended duty (as defined in
9 subsection (d)(9)(C)) described in
10 clause (i), (ii), or (iii) of subsection
11 (d)(9)(A), and

12 “(III) any other period of tem-
13 porary absence (not to exceed an ag-
14 gregate period of 2 years) due to
15 change of employment, health condi-
16 tions, or such other unforeseen cir-
17 cumstances as may be specified by the
18 Secretary.

19 “(D) COORDINATION WITH RECOGNITION
20 OF GAIN ATTRIBUTABLE TO DEPRECIATION.—
21 For purposes of this paragraph—

22 “(i) subparagraph (A) shall be applied
23 after the application of subsection (d)(6),
24 and

1 “(ii) subparagraph (B) shall be ap-
2 plied without regard to any gain to which
3 subsection (d)(6) applies.”.

4 (b) **EFFECTIVE DATE.**—The amendment made by
5 this section shall apply to sales and exchanges after De-
6 cember 31, 2008.

7 **SEC. 3093. INCREASE IN INFORMATION RETURN PEN-**
8 **ALTIES.**

9 (a) **FAILURE TO FILE CORRECT INFORMATION RE-**
10 **URNS.**—

11 (1) **IN GENERAL.**—Subsections (a)(1),
12 (b)(1)(A), and (b)(2)(A) of section 6721 are each
13 amended by striking “\$50” and inserting “\$100”.

14 (2) **AGGREGATE ANNUAL LIMITATION.**—Sub-
15 sections (a)(1), (d)(1)(A), and (e)(3)(A) of section
16 6721 are each amended by striking “\$250,000” and
17 inserting “\$1,500,000”.

18 (b) **REDUCTION WHERE CORRECTION WITHIN 30**
19 **DAYS.**—

20 (1) **IN GENERAL.**—Subparagraph (A) of section
21 6721(b)(1) is amended by striking “\$15” and insert-
22 ing “\$50”.

23 (2) **AGGREGATE ANNUAL LIMITATION.**—Sub-
24 sections (b)(1)(B) and (d)(1)(B) of section 6721 are

1 each amended by striking “\$75,000” and inserting
2 “\$500,000”.

3 (c) REDUCTION WHERE CORRECTION ON OR BEFORE
4 AUGUST 1.—

5 (1) IN GENERAL.—Subparagraph (A) of section
6 6721(b)(2) is amended by striking “\$30” and insert-
7 ing “\$75”.

8 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
9 sections (b)(2)(B) and (d)(1)(C) of section 6721are
10 each amended by striking “\$150,000” and inserting
11 “\$1,000,000”.

12 (d) AGGREGATE ANNUAL LIMITATIONS FOR PER-
13 SONS WITH GROSS RECEIPTS OF NOT MORE THAN
14 \$5,000,000.—Paragraph (1) of section 6721(d) is amend-
15 ed—

16 (1) by striking “\$100,000” in subparagraph
17 (A) and inserting “\$500,000”,

18 (2) by striking “\$25,000” in subparagraph (B)
19 and inserting “\$100,000”, and

20 (3) by striking “\$50,000” in subparagraph (C)
21 and inserting “\$250,000”.

22 (e) PENALTY IN CASE OF INTENTIONAL DIS-
23 REGARD.—Paragraph (2) of section 6721(e) is amended
24 by striking “\$100” and inserting “\$250”.

1 (f) FAILURE TO FURNISH CORRECT PAYEE STATE-
2 MENTS.—

3 (1) IN GENERAL.—Subsection (a) of section
4 6722 is amended by striking “\$50” and inserting
5 “\$100”.

6 (2) AGGREGATE ANNUAL LIMITATION.—Sub-
7 sections (a) and (c)(2)(A) of section 6722 are each
8 amended by striking “\$100,000” and inserting
9 “\$500,000”.

10 (3) PENALTY IN CASE OF INTENTIONAL DIS-
11 REGARD.—Paragraph (1) of section 6722(c) is
12 amended by striking “\$100” and inserting “\$250”.

13 (g) FAILURE TO COMPLY WITH OTHER INFORMA-
14 TION REPORTING REQUIREMENTS.—Section 6723 is
15 amended—

16 (1) by striking “\$50” and inserting “\$100”,
17 and

18 (2) by striking “\$100,000” and inserting
19 “\$500,000”.

20 (h) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to information returns
22 required to be filed on or after January 1, 2009.

1 **SEC. 3094. INCREASE IN PENALTY FOR FAILURE TO FILE S**
2 **CORPORATION RETURNS.**

3 (a) IN GENERAL.—Paragraph (1) of section 6699(b)
4 (relating to amount per month) is amended by striking
5 “\$85” and inserting “\$100”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to returns the due date for the
8 filing of which (including extensions) is after the date of
9 the enactment of this Act.

10 **SEC. 3095. INCREASE IN PENALTY FOR FAILURE TO FILE**
11 **PARTNERSHIP RETURNS.**

12 (a) INCREASE IN PENALTY AMOUNT.—Paragraph (1)
13 of section 6698(b) (relating to amount per month) is
14 amended by striking “\$85” and inserting “\$100”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to returns the due date for the
17 filing of which (including extensions) is after the date of
18 the enactment of this Act.

19 **SEC. 3096. INCREASE IN MINIMUM PENALTY ON FAILURE**
20 **TO FILE A RETURN OF TAX.**

21 (a) IN GENERAL.—Subsection (a) of section 6651, as
22 amended by section 303(a) of the Heroes Earnings Assist-
23 ance and Relief Tax Act of 2008, is amended by striking
24 “\$135” in the last sentence and inserting “\$225”.

25 (b) EFFECTIVE DATE.—The amendment made by
26 this section shall apply to returns the due date for the

630

- 1 filing of which (including extensions) is after the date of
- 2 the enactment of this Act.

631

Amend the title so as to read: “An Act to provide needed housing reform and for other purposes.”.