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PUBLIC LAW 110–289—JULY 30, 2008

HOUSING AND ECONOMIC RECOVERY ACT OF 2008

Public Law 110–289
110th Congress

An Act

July 30, 2008
[H.R. 3221]

To provide needed housing reform and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Housing and Economic Recovery Act of 2008.
42 USC 4501 note.

SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Housing and Economic Recovery Act of 2008".

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

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DIVISION A—HOUSING FINANCE REFORM

Federal Housing Finance Regulatory Reform Act of 2008.
12 USC 4501 note.

SEC. 1001. SHORT TITLE.

This division may be cited as the "Federal Housing Finance Regulatory Reform Act of 2008".

SEC. 1002. DEFINITIONS.

(a) FEDERAL SAFETY AND SOUNDNESS ACT DEFINITIONS.—Section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502) is amended—

(1) in each of paragraphs (8), (9), (10), and (19), by striking "Secretary" each place that term appears and inserting "Director";

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

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

"(19) OFFICE OF FINANCE.—The term 'Office of Finance' means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

"(20) REGULATED ENTITY.—The term 'regulated entity' means—

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

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

"(C) any Federal Home Loan Bank.";

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

(5) by redesignating paragraph (7) as paragraph (12);

(6) by redesignating paragraphs (8) through (10) as paragraphs (14) through (16), respectively;

(7) in paragraph (5)—

(A) by striking "(5)" and inserting "(9)"; and

(B) by striking "Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "Federal Housing Finance Agency";

(8) by redesignating paragraph (6) as paragraph (10);

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

(10) by inserting after paragraph (7), as redesignated, the following:

"(8) DEFAULT; IN DANGER OF DEFAULT.—

"(A) DEFAULT.—The term 'default' means, with respect to a regulated entity, any adjudication or other official determination by any court of competent jurisdiction, or the Agency, pursuant to which a conservator, receiver, limited-life regulated entity, or legal custodian is appointed for a regulated entity.

"(B) IN DANGER OF DEFAULT.—The term 'in danger of default' means a regulated entity with respect to which, in the opinion of the Agency—

"(i) the regulated entity is not likely to be able to pay the obligations of the regulated entity in the normal course of business; or

"(ii) the regulated entity—

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

"(II) there is no reasonable prospect that the capital of the regulated entity will be replenished.";

(11) by inserting after paragraph (1) the following:

"(2) AGENCY.—The term 'Agency' means the Federal Housing Finance Agency established under section 1311.

"(3) AUTHORIZING STATUTES.—The term 'authorizing statutes' means—

"(A) the Federal National Mortgage Association Charter Act;

"(B) the Federal Home Loan Mortgage Corporation Act; and

"(C) the Federal Home Loan Bank Act.

"(4) BOARD.—The term 'Board' means the Federal Housing Finance Oversight Board established under section 1313A.";

(12) by inserting after paragraph (10), as redesignated by this section, the following:

"(11) ENTITY-AFFILIATED PARTY.—The term 'entity-affiliated party' means—

"(A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

"(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;

"(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

"(i) the independent contractor knowingly or recklessly participates in—

"(I) any violation of any law or regulation;

"(II) any breach of fiduciary duty; or

"(III) any unsafe or unsound practice; and

"(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss

to, or a significant adverse effect on, the regulated entity;

"(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

"(E) the Office of Finance.";

(13) by inserting after paragraph (12), as redesignated by this section, the following:

"(13) LIMITED-LIFE REGULATED ENTITY.—The term 'limited-life regulated entity' means an entity established by the Agency under section 1367(i) with respect to a Federal Home Loan Bank in default or in danger of default or with respect to an enterprise in default or in danger of default."; and

(14) by adding at the end the following:

"(25) VIOLATION.—The term 'violation' includes any action (alone or in combination with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.".

(b) REFERENCES IN THIS ACT.—As used in this Act, unless otherwise specified— 12 USC 4511 note.

(1) the term "Agency" means the Federal Housing Finance Agency;

(2) the term "Director" means the Director of the Agency; and

(3) the terms "enterprise", "regulated entity", and "authorizing statutes" have the same meanings as in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by this Act.

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

SEC. 1101. ESTABLISHMENT OF THE FEDERAL HOUSING FINANCE AGENCY.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1311 and 1312 and inserting the following: 12 USC 4511, 4512.

"SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING FINANCE AGENCY.

"(a) ESTABLISHMENT.—There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government.

"(b) GENERAL SUPERVISORY AND REGULATORY AUTHORITY.—

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

"(2) AUTHORITY OVER FANNIE MAE, FREDDIE MAC, THE FEDERAL HOME LOAN BANKS, AND THE OFFICE OF FINANCE.—The Director shall have general regulatory authority over each regulated entity and the Office of Finance, and shall exercise such

general regulatory authority, including such duties and authorities set forth under section 1313, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.

"(c) SAVINGS PROVISION.—The authority of the Director to take actions under subtitles B and C shall not in any way limit the general supervisory and regulatory authority granted to the Director under subsection (b).

"SEC. 1312. DIRECTOR.

"(a) ESTABLISHMENT OF POSITION.—There is established the position of the Director of the Agency, who shall be the head of the Agency.

"(b) APPOINTMENT; TERM.—

President.

"(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of capital markets, including the mortgage securities markets and housing finance.

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

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

"(4) SERVICE AFTER END OF TERM.—An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed.

Effective date.
Termination date.

"(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), during the period beginning on the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and ending on the date on which the Director is appointed and confirmed, the person serving as the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development on that effective date shall act for all purposes as, and with the full powers of, the Director.

"(c) DEPUTY DIRECTOR OF THE DIVISION OF ENTERPRISE REGULATION.—

"(1) IN GENERAL.—The Agency shall have a Deputy Director of the Division of Enterprise Regulation, who shall be designated by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage securities markets and housing finance.

"(2) FUNCTIONS.—The Deputy Director of the Division of Enterprise Regulation shall have such functions, powers, and duties with respect to the oversight of the enterprises as the Director shall prescribe.

"(d) DEPUTY DIRECTOR OF THE DIVISION OF FEDERAL HOME LOAN BANK REGULATION.—

"(1) IN GENERAL.—The Agency shall have a Deputy Director of the Division of Federal Home Loan Bank Regulation, who shall be designated by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of the Federal Home Loan Bank System and housing finance.

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

"(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND GOALS.—

"(1) IN GENERAL.—The Agency shall have a Deputy Director for Housing Mission and Goals, who shall be designated by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of the housing markets and housing finance.

"(2) FUNCTIONS.—The Deputy Director for Housing Mission and Goals shall have such functions, powers, and duties with respect to the oversight of the housing mission and goals of the enterprises, and with respect to oversight of the housing finance and community and economic development mission of the Federal Home Loan Banks, as the Director shall prescribe.

"(3) CONSIDERATIONS.—In exercising such functions, powers, and duties, the Deputy Director for Housing Mission and Goals shall consider the differences between the enterprises and the Federal Home Loan Banks, including those described in section 1313(d).

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

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

"(1) have any direct or indirect financial interest in any regulated entity or entity-affiliated party;

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

"(3) have served as an executive officer or director of any regulated entity or entity-affiliated party at any time during the 3-year period preceding the date of appointment or designation of such individual as Director or Deputy Director, as applicable.".

SEC. 1102. DUTIES AND AUTHORITIES OF THE DIRECTOR.

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

"SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

"(a) DUTIES.—

"(1) PRINCIPAL DUTIES.—The principal duties of the Director shall be—

"(A) to oversee the prudential operations of each regulated entity; and

"(B) to ensure that—

"(i) each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;

"(ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities);

"(iii) each regulated entity complies with this title and the rules, regulations, guidelines, and orders issued under this title and the authorizing statutes;

"(iv) each regulated entity carries out its statutory mission only through activities that are authorized under and consistent with this title and the authorizing statutes; and

"(v) the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.

"(2) SCOPE OF AUTHORITY.—The authority of the Director shall include the authority—

"(A) to review and, if warranted based on the principal duties described in paragraph (1), reject any acquisition or transfer of a controlling interest in a regulated entity; and

"(B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

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

"(c) LITIGATION AUTHORITY.—

"(1) IN GENERAL.—In enforcing any provision of this title, any regulation or order prescribed under this title, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys.

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

(b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking "the Federal Housing Finance Board" and inserting "the Director of the Federal Housing Finance Agency".

SEC. 1103. FEDERAL HOUSING FINANCE OVERSIGHT BOARD.

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

"SEC. 1313A. FEDERAL HOUSING FINANCE OVERSIGHT BOARD. 12 USC 4513a.

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

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

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

"(1) 1 member shall be the Secretary of the Treasury;

"(2) 1 member shall be the Secretary of Housing and Urban Development;

"(3) 1 member shall be the Chairman of the Securities and Exchange Commission; and

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

"(d) MEETINGS.— Notices.

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

"(2) SPECIAL MEETINGS.—Either the Secretary of the Treasury, the Secretary of Housing and Urban Development, or the Chairman of the Securities and Exchange Commission may, upon giving written notice to the Director, require a special meeting of the Board.

"(e) TESTIMONY.—On an annual basis, the Board shall testify before Congress regarding— Deadline.

"(1) the safety and soundness of the regulated entities;

"(2) any material deficiencies in the conduct of the operations of the regulated entities;

"(3) the overall operational status of the regulated entities;

"(4) an evaluation of the performance of the regulated entities in carrying out their respective missions;

"(5) operations, resources, and performance of the Agency; and

"(6) such other matters relating to the Agency and its fulfillment of its mission, as the Board determines appropriate.".

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

(1) by striking "enterprise" each place that term appears and inserting "regulated entity";

(2) by striking "enterprises" each place that term appears and inserting "regulated entities";

(3) in paragraph (3), by striking "; and" and inserting a semicolon;

(4) in paragraph (4), by striking "1994." and inserting "1994; and"; and

(5) by adding at the end the following:

"(5) the assessment of the Board or any of its members with respect to—

"(A) the safety and soundness of the regulated entities;

"(B) any material deficiencies in the conduct of the operations of the regulated entities;

"(C) the overall operational status of the regulated entities; and

"(D) an evaluation of the performance of the regulated entities in carrying out their respective missions;

"(6) operations, resources, and performance of the Agency; and

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

SEC. 1104. AUTHORITY TO REQUIRE REPORTS BY REGULATED ENTITIES.

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

(1) in the section heading, by striking "**ENTERPRISES**" and inserting "**REGULATED ENTITIES**";

(2) by striking "an enterprise" each place that term appears and inserting "a regulated entity";

(3) by striking "the enterprise" and inserting "the regulated entity";

(4) in subsection (a)—

(A) by striking the subsection heading and all that follows through "and operations" in paragraph (1) and inserting the following:

"(a) REGULAR AND SPECIAL REPORTS.—

"(1) REGULAR REPORTS.—The Director may require, by general or specific orders, a regulated entity to submit regular reports, including financial statements determined on a fair value basis, on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate"; and

(B) in paragraph (2)—

(i) by inserting ", by general or specific orders," after "may also require"; and

(ii) by striking "whenever" and inserting "on any of the topics specified in paragraph (1) or any other relevant topics, if"; and

(5) by adding at the end the following:

"(c) PENALTIES FOR FAILURE TO MAKE REPORTS.—

"(1) VIOLATIONS.—It shall be a violation of this section for any regulated entity—

"(A) to fail to make, transmit, or publish any report or obtain any information required by the Director under this section, section 309(k) of the Federal National Mortgage Association Charter Act, section 307(c) of the Federal Home Loan Mortgage Corporation Act, or section 20 of the Federal Home Loan Bank Act, within the period of time specified in such provision of law or otherwise by the Director; or

"(B) to submit or publish any false or misleading report or information under this section.

"(2) PENALTIES.—

"(A) FIRST TIER.—

"(i) IN GENERAL.—A violation described in paragraph (1) shall be subject to a penalty of not more than $2,000 for each day during which such violation continues, in any case in which—

"(I) the subject regulated entity maintains procedures reasonably adapted to avoid any inadvertent error and the violation was unintentional and a result of such an error; or

"(II) the violation was an inadvertent transmittal or publication of any report which was minimally late.

"(ii) BURDEN OF PROOF.—For purposes of this subparagraph, the regulated entity shall have the burden of proving that the error was inadvertent or that a report was inadvertently transmitted or published late.

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

"(C) THIRD TIER.—A violation described in paragraph (1) shall be subject to a penalty of not more than $1,000,000 per day for each day during which such violation continues or such false or misleading information is not corrected, in any case in which the subject regulated entity committed such violation knowingly or with reckless disregard for the accuracy of any such information or report.

"(3) ASSESSMENTS.—Any penalty imposed under this subsection shall be in lieu of a penalty under section 1376, but shall be assessed and collected by the Director in the manner provided in section 1376 for penalties imposed under that section, and any such assessment (including the determination of the amount of the penalty) shall be otherwise subject to the provisions of section 1376.

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

(b) CONFORMING AMENDMENT.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1327 and 1328. 12 USC 4547, 4548.

SEC. 1105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO CONTRACT FOR REVIEWS OF REGULATED ENTITIES; OMBUDSMAN.

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

(1) in subsection (a), by striking "enterprise" each place that term appears and inserting "regulated entity";

(2) in subsection (b)—

(A) by inserting "of a regulated entity" after "under this section"; and

(B) by striking "to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness" and inserting "or appropriate";

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

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

(5) by inserting after subsection (c) the following:

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

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

"(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS, AND EXAMINERS.—

"(1) APPLICABILITY.—This section shall apply with respect to any position of examiner, accountant, economist, and specialist in financial markets and in technology at the Agency, with respect to supervision and regulation of the regulated entities, that is in the competitive service.

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

"(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

"(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.".

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

(1) in paragraph (1), by inserting "; the Director of the Federal Housing Finance Agency" after "Social Security Administration"; and

(2) in paragraph (2), by inserting ", the Federal Housing Finance Agency" after "Social Security Administration".

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

(1) in the section heading, by striking "**ENTERPRISES BY RATING ORGANIZATION**" and inserting "**REGULATED ENTITIES**"; and

(2) by striking "enterprises" and inserting "regulated entities".

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

Establishment. Regulations.

"(i) OMBUDSMAN.—The Director shall establish, by regulation, an Office of the Ombudsman within the Agency, which shall be responsible for considering complaints and appeals, from any regulated entity and any person that has a business relationship with a regulated entity, regarding any matter relating to the regulation and supervision of such regulated entity by the Agency. The regulation issued by the Director under this subsection shall specify the authority and duties of the Office of the Ombudsman.".

SEC. 1106. ASSESSMENTS.

Section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4516) is amended—

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

"(a) ANNUAL ASSESSMENTS.—The Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency, including—

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

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

"(3) such amounts in excess of actual expenses for any given year as deemed necessary by the Director to maintain a working capital fund in accordance with subsection (e); and

"(4) the windup of the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board under title III of the Federal Housing Finance Regulatory Reform Act of 2008.";

(2) in subsection (b)—

(A) by realigning the margins of paragraph (2) two ems from the left, so as to align the left margin of such paragraph with the left margins of paragraph (1);

(B) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(C) by inserting after paragraph (1) the following:

"(2) SEPARATE TREATMENT OF FEDERAL HOME LOAN BANK AND ENTERPRISE ASSESSMENTS.—Assessments collected from the enterprises shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the enterprises. Assessments collected from the Federal Home Loan Banks shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the Federal Home Loan Banks.";

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

"(c) INCREASED COSTS OF REGULATION.—

"(1) INCREASE FOR INADEQUATE CAPITALIZATION.—The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.

"(2) ADJUSTMENT FOR ENFORCEMENT ACTIVITIES.—The Director may adjust the amounts of any semiannual payments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

"(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount

available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.";

(4) in subsection (d), by striking "If" and inserting "Except with respect to amounts collected pursuant to subsection (a)(3), if"; and

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

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

"(f) TREATMENT OF ASSESSMENTS.—

"(1) DEPOSIT.—Amounts received by the Director from assessments under this section may be deposited by the Director in the manner provided in section 5234 of the Revised Statutes of the United States (12 U.S.C. 192) for monies deposited by the Comptroller of the Currency.

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

"(3) NO APPORTIONMENT OF FUNDS.—Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

"(4) USE OF FUNDS.—The Director may use any amounts received by the Director from assessments under this section for compensation of the Director and other employees of the Agency and for all other expenses of the Director and the Agency.

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

"(6) TREASURY INVESTMENTS.—

"(A) AUTHORITY.—The Director may request the Secretary of the Treasury to invest such portions of amounts received by the Director from assessments paid under this section that, in the Director's discretion, are not required to meet the current working needs of the Agency.

"(B) GOVERNMENT OBLIGATIONS.—Pursuant to a request under subparagraph (A), the Secretary of the Treasury shall invest such amounts in Government obligations guaranteed as to principal and interest by the United States with maturities suitable to the needs of the Agency and bearing interest at a rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

"(g) BUDGET AND FINANCIAL MANAGEMENT.—

"(1) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the Director's financial operating plans and forecasts, as prepared by the Director in the ordinary course of the Agency's operations, and copies of the quarterly reports of the Agency's financial condition and results of operations, as prepared by the Director in the ordinary course of the Agency's operations. Reports.

"(2) FINANCIAL STATEMENTS.—The Agency shall prepare annually a statement of— Deadline.

"(A) assets and liabilities and surplus or deficit;

"(B) income and expenses; and

"(C) sources and application of funds.

"(3) FINANCIAL MANAGEMENT SYSTEMS.—The Agency shall implement and maintain financial management systems that—

"(A) comply substantially with Federal financial management systems requirements and applicable Federal accounting standards; and

"(B) use a general ledger system that accounts for activity at the transaction level.

"(4) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Agency, using the standards established in section 3512(c) of title 31, United States Code.

"(5) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in paragraph (1) or any jurisdiction or oversight over the affairs or operations of the Agency.

"(h) AUDIT OF AGENCY.—

"(1) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the United States generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying Deadline. Records.

transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

"(2) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.

"(3) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Agency shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.".

SEC. 1107. REGULATIONS AND ORDERS.

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

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

Guidelines.

"(a) AUTHORITY.—The Director shall issue any regulations, guidelines, or orders necessary to carry out the duties of the Director under this title or the authorizing statutes, and to ensure that the purposes of this title and the authorizing statutes are accomplished."; and

(2) by striking subsection (c).

SEC. 1108. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.

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

"SEC. 1313B. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS. 12 USC 4513b.

"(a) STANDARDS.—The Director shall establish standards, by regulation or guideline, for each regulated entity relating to— Regulations. Guidelines.

"(1) adequacy of internal controls and information systems taking into account the nature and scale of business operations;

"(2) independence and adequacy of internal audit systems;

"(3) management of interest rate risk exposure;

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

"(5) adequacy and maintenance of liquidity and reserves;

"(6) management of asset and investment portfolio growth;

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

"(8) overall risk management processes, including adequacy of oversight by senior management and the board of directors and of processes and policies to identify, measure, monitor, and control material risks, including reputational risks, and for adequate, well-tested business resumption plans for all major systems with remote site facilities to protect against disruptive events;

"(9) management of credit and counterparty risk, including systems to identify concentrations of credit risk and prudential limits to restrict exposure of the regulated entity to a single counterparty or groups of related counterparties;

"(10) maintenance of adequate records, in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of the regulated entity; and

"(11) such other operational and management standards as the Director determines to be appropriate.

"(b) FAILURE TO MEET STANDARDS.—

"(1) PLAN REQUIREMENT.—

"(A) IN GENERAL.—If the Director determines that a regulated entity fails to meet any standard established under subsection (a)—

"(i) if such standard is established by regulation, the Director shall require the regulated entity to submit an acceptable plan to the Director within the time allowed under subparagraph (C); and

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

"(B) CONTENTS.—Any plan required under subparagraph (A) shall specify the actions that the regulated entity will take to correct the deficiency. If the regulated entity is undercapitalized, the plan may be a part of the capital restoration plan for the regulated entity under section 1369C.

"(C) DEADLINES FOR SUBMISSION AND REVIEW.—The Director shall by regulation establish deadlines that— Regulations.

"(i) provide the regulated entities with reasonable time to submit plans required under subparagraph (A), and generally require a regulated entity to submit

a plan not later than 30 days after the Director determines that the entity fails to meet any standard established under subsection (a); and

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

Applicability.

"(2) REQUIRED ORDER UPON FAILURE TO SUBMIT OR IMPLEMENT PLAN.—If a regulated entity fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the Director, the following shall apply:

"(A) REQUIRED CORRECTION OF DEFICIENCY.—The Director shall, by order, require the regulated entity to correct the deficiency.

"(B) OTHER AUTHORITY.—The Director may, by order, take one or more of the following actions until the deficiency is corrected:

"(i) Prohibit the regulated entity from permitting its average total assets (as such term is defined in section 1316(b)) during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the entity may increase from one calendar quarter to another.

"(ii) Require the regulated entity—

"(I) in the case of an enterprise, to increase its ratio of core capital to assets.

"(II) in the case of a Federal Home Loan Bank, to increase its ratio of total capital (as such term is defined in section 6(a)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1426(a)(5)) to assets.

"(iii) Require the regulated entity to take any other action that the Director determines will better carry out the purposes of this section than any of the actions described in this subparagraph.

"(3) MANDATORY RESTRICTIONS.—In complying with paragraph (2), the Director shall take one or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

"(A) the Director determines that the regulated entity fails to meet any standard prescribed under subsection (a);

"(B) the regulated entity has not corrected the deficiency; and

"(C) during the 18-month period before the date on which the regulated entity first failed to meet the standard, the entity underwent extraordinary growth, as defined by the Director.

"(c) OTHER ENFORCEMENT AUTHORITY NOT AFFECTED.—The authority of the Director under this section is in addition to any other authority of the Director.".

SEC. 1109. REVIEW OF AND AUTHORITY OVER ENTERPRISE ASSETS AND LIABILITIES.

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

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

"Subtitle B—Required Capital Levels for Regulated Entities, Special Enforcement Powers, and Reviews of Assets and Liabilities";

and

(2) by adding at the end the following new section:

"SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABILITIES. 12 USC 4624.

"(a) IN GENERAL.—The Director shall, by regulation, establish criteria governing the portfolio holdings of the enterprises, to ensure that the holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the enterprises. In establishing such criteria, the Director shall consider the ability of the enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to the standards specified in section 1313B. Regulations. Criteria.

"(b) TEMPORARY ADJUSTMENTS.—The Director may, by order, make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.

"(c) AUTHORITY TO REQUIRE DISPOSITION OR ACQUISITION.—The Director shall monitor the portfolio of each enterprise. Pursuant to subsection (a) and notwithstanding the capital classifications of the enterprises, the Director may, by order, require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset, if the Director determines that such action is consistent with the purposes of this Act or any of the authorizing statutes.".

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date of this Act, the Director shall issue regulations pursuant to section 1369E(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section. Deadline. Standards. 12 USC 4624 note.

SEC. 1110. RISK-BASED CAPITAL REQUIREMENTS.

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

"SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED ENTITIES.

"(a) IN GENERAL.—

"(1) ENTERPRISES.—The Director shall, by regulation, establish risk-based capital requirements for the enterprises to ensure that the enterprises operate in a safe and sound manner, maintaining sufficient capital and reserves to support the risks that arise in the operations and management of the enterprises. Regulations.

"(2) FEDERAL HOME LOAN BANKS.—The Director shall establish risk-based capital standards under section 6 of the Federal Home Loan Bank Act for the Federal Home Loan Banks. Standards.

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

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

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

Regulations.

"(A) RISK-BASED CAPITAL STANDARDS.—The Director shall, by regulation, establish risk-based capital standards for the Federal Home Loan Banks to ensure that the Federal Home Loan Banks operate in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise in the operations and management of the Federal Home Loans Banks."; and

(2) in subparagraph (B), by striking "(A)(ii)" and inserting "(A)".

SEC. 1111. MINIMUM CAPITAL LEVELS.

Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612) is amended—

(1) in subsection (a), by striking "IN GENERAL" and inserting "ENTERPRISES"; and

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

"(b) FEDERAL HOME LOAN BANKS.—For purposes of this subtitle, the minimum capital level for each Federal Home Loan Bank shall be the minimum capital required to be maintained to comply with the leverage requirement for the bank established under section 6(a)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1426(a)(2)).

"(c) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 1319G, establish a minimum capital level for the enterprises, for the Federal Home Loan Banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal Home Loan Banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

"(d) AUTHORITY TO REQUIRE TEMPORARY INCREASE.—

"(1) IN GENERAL.—Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity on a temporary basis, when the Director determines that such an increase is necessary and consistent with the prudential regulation and the safe and sound operations of a regulated entity.

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

"(3) REGULATIONS REQUIRED.—The Director shall issue regulations establishing—

"(A) standards for the imposition of a temporary increase in minimum capital under paragraph (1);

"(B) the standards and procedures that the Director will use to make the determination referred to in paragraph (2); and

"(C) a reasonable time frame for periodic review of any temporary increase in minimum capital for the purpose of making the determination referred to in paragraph (2).

"(e) AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL AND RESERVE REQUIREMENTS FOR PARTICULAR PURPOSES.—The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any product or activity of a regulated entity, as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

"(f) PERIODIC REVIEW.—The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal Home Loan Banks, and the minimum capital levels established for such regulated entities pursuant to this section.".

SEC. 1112. REGISTRATION UNDER THE SECURITIES LAWS.

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

"SEC. 38. FEDERAL NATIONAL MORTGAGE ASSOCIATION, FEDERAL HOME LOAN MORTGAGE CORPORATION, FEDERAL HOME LOAN BANKS. 15 USC 7800.

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

"(b) FEDERAL HOME LOAN BANKS.—

"(1) REGISTRATION.—Each Federal Home Loan Bank shall register a class of its common stock under section 12(g), not later than 120 days after the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, and shall thereafter maintain such registration and be treated for purposes of this title as an 'issuer', the securities of which are required to be registered under section 12, regardless of the number of members holding such stock at any given time. Deadline.

"(2) STANDARDS RELATING TO AUDIT COMMITTEES.—Each Federal Home Loan Bank shall comply with the rules issued by the Commission under section 10A(m).

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

"(1) FEDERAL HOME LOAN BANK; MEMBER.—The terms 'Federal Home Loan Bank' and 'member', have the same meanings as in section 2 of the Federal Home Loan Bank Act.

"(2) FEDERAL NATIONAL MORTGAGE ASSOCIATION.—The term 'Federal National Mortgage Association' means the corporation created by the Federal National Mortgage Association Charter Act.

"(3) FEDERAL HOME LOAN MORTGAGE CORPORATION.—The term 'Federal Home Loan Mortgage Corporation' means the corporation created by the Federal Home Loan Mortgage Corporation Act.".

SEC. 1113. PROHIBITION AND WITHHOLDING OF EXECUTIVE COMPENSATION.

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

(1) in the section heading, by striking "**OF EXCESSIVE**" and inserting "**AND WITHHOLDING OF EXECUTIVE**";

(2) in subsection (a)—

(A) by striking "enterprise" and inserting "regulated entity"; and

(B) by striking "enterprises" and inserting "regulated entities";

(3) by redesignating subsection (b) as subsection (d); and

(4) by inserting after subsection (a) the following:

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

"(c) WITHHOLDING OF COMPENSATION.—In carrying out subsection (a), the Director may require a regulated entity to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, during the review of the reasonableness and comparability of compensation.".

(b) CONFORMING AMENDMENTS.—

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

"(4) Notwithstanding any other provision of this section, the corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).".

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

"(4) Notwithstanding any other provision of this section, the Corporation shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).".

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

"(l) WITHHOLDING OF COMPENSATION.—Notwithstanding any other provision of this section, a Federal Home Loan Bank shall not transfer, disburse, or pay compensation to any executive officer,

or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).".

SEC. 1114. LIMIT ON GOLDEN PARACHUTES.

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

"(e) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

"(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Director may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

"(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Director shall prescribe, by regulation, the factors to be considered by the Director in taking any action pursuant to paragraph (1), which may include such factors as— Regulations.

"(A) whether there is a reasonable basis to believe that the affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

"(B) whether there is a reasonable basis to believe that the affiliated party is substantially responsible for the insolvency of the regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

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

"(D) whether the affiliated party was in a position of managerial or fiduciary responsibility; and

"(E) the length of time that the party was affiliated with the regulated entity, and the degree to which—

"(i) the payment reasonably reflects compensation earned over the period of employment; and

"(ii) the compensation involved represents a reasonable payment for services rendered.

"(3) CERTAIN PAYMENTS PROHIBITED.—No regulated entity may prepay the salary or any liability or legal expense of any affiliated party if such payment is made—

"(A) in contemplation of the insolvency of such regulated entity, or after the commission of an act of insolvency; and

"(B) with a view to, or having the result of—

"(i) preventing the proper application of the assets of the regulated entity to creditors; or

"(ii) preferring one creditor over another.

"(4) GOLDEN PARACHUTE PAYMENT DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'golden parachute payment' means any payment (or

any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any affiliated party pursuant to an obligation of such regulated entity that—

"(i) is contingent on the termination of such party's affiliation with the regulated entity; and

"(ii) is received on or after the date on which—

"(I) the regulated entity became insolvent;

"(II) any conservator or receiver is appointed for such regulated entity; or

"(III) the Director determines that the regulated entity is in a troubled condition (as defined in the regulations of the Director).

"(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

"(C) CERTAIN PAYMENTS NOT INCLUDED.—For purposes of this subsection, the term 'golden parachute payment' shall not include—

"(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986, or other nondiscriminatory benefit plan;

"(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Director determines, by regulation or order, to be permissible; or

"(iii) any payment made by reason of the death or disability of an affiliated party.

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

"(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term 'indemnification payment' means any payment (or any agreement to make any payment) by any regulated entity for the benefit of any person who is or was an affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Agency which results in a final order under which such person—

"(i) is assessed a civil money penalty;

"(ii) is removed or prohibited from participating in conduct of the affairs of the regulated entity; or

"(iii) is required to take any affirmative action to correct certain conditions resulting from violations or practices, by order of the Director.

"(B) LIABILITY OR LEGAL EXPENSE.—The term 'liability or legal expense' means—

"(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

"(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

"(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

"(C) PAYMENT.—The term 'payment' includes—

"(i) any direct or indirect transfer of any funds or any asset; and

"(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

"(I) the determination, after such date, of the liability for the payment of such amount; or

"(II) the liquidation, after such date, of the amount of such payment.

"(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any regulated entity from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the regulated entity which is described in paragraph (5)(A).".

SEC. 1115. REPORTING OF FRAUDULENT LOANS.

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

"SEC. 1379E. REPORTING OF FRAUDULENT LOANS. 12 USC 4642.

"(a) REQUIREMENT TO REPORT.—The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The Director shall require each regulated entity to establish and maintain procedures designed to discover any such transactions. Procedures.

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

SEC. 1116. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

Section 1319A of the Housing and Community Development Act of 1992 (12 U.S.C. 4520) is amended—

(1) in the section heading, by striking "**EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS**" and inserting

"**MINORITY AND WOMEN INCLUSION; DIVERSITY REQUIREMENTS**";

(2) in subsection (a), by striking "(a) IN GENERAL.—Each enterprise" and inserting "(e) OUTREACH.—Each regulated entity"; and

(3) by striking subsection (b);

(4) by inserting before subsection (e), as so redesignated by paragraph (2) of this section, the following new subsections:

Establishment.

"(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—Each regulated entity shall establish an Office of Minority and Women Inclusion, or designate an office of the entity, that shall be responsible for carrying out this section and all matters of the entity relating to diversity in management, employment, and business activities in accordance with such standards and requirements as the Director shall establish.

Standards. Procedures.

"(b) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—Each regulated entity shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the regulated entity at all levels, including in procurement, insurance, and all types of contracts (including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives). The processes established by each regulated entity for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

Contracts.

"(c) APPLICABILITY.—This section shall apply to all contracts of a regulated entity for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

"(d) INCLUSION IN ANNUAL REPORTS.—Each regulated entity shall include, in the annual report submitted by the entity to the Director pursuant to section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440), as applicable, detailed information describing the actions taken by the entity pursuant to this section, which shall include a statement of the total amounts paid by the entity to third party contractors since the last such report and the percentage of such amounts paid to businesses described in subsection (b) of this section."; and

(5) by adding at the end the following new subsection:

"(f) DIVERSITY IN AGENCY WORKFORCE.—The Agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States, which shall include—

"(1) heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

"(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

"(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

"(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.".

SEC. 1117. TEMPORARY AUTHORITY FOR PURCHASE OF OBLIGATIONS OF REGULATED ENTITIES BY SECRETARY OF TREASURY.

(a) FANNIE MAE.—Section 304 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719) is amended by adding at the end the following new subsection:

"(g) TEMPORARY AUTHORITY OF TREASURY TO PURCHASE OBLIGATIONS AND SECURITIES; CONDITIONS.—

"(1) AUTHORITY TO PURCHASE.—

"(A) GENERAL AUTHORITY.—In addition to the authority under subsection (c) of this section, the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by the corporation under any section of this Act, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires the corporation to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the corporation. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the corporation, to engage in open market purchases of the common securities of the corporation.

"(B) EMERGENCY DETERMINATION REQUIRED.—In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

"(i) provide stability to the financial markets;

"(ii) prevent disruptions in the availability of mortgage finance; and

"(iii) protect the taxpayer.

"(C) CONSIDERATIONS.—To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

"(i) The need for preferences or priorities regarding payments to the Government.

"(ii) Limits on maturity or disposition of obligations or securities to be purchased.

"(iii) The corporation's plan for the orderly resumption of private market funding or capital market access.

"(iv) The probability of the corporation fulfilling the terms of any such obligation or other security, including repayment.

"(v) The need to maintain the corporation's status as a private shareholder-owned company.

"(vi) Restrictions on the use of corporation resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

"(D) REPORTS TO CONGRESS.—Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

"(2) RIGHTS; SALE OF OBLIGATIONS AND SECURITIES.—

"(A) EXERCISE OF RIGHTS.—The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

"(B) SALE OF OBLIGATION AND SECURITIES.—The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation or security acquired by the Secretary under this subsection.

"(C) APPLICATION OF SUNSET TO PURCHASED OBLIGATIONS OR SECURITIES.—The authority of the Secretary of the Treasury to hold, exercise any rights received in connection with, or sell, any obligations or securities purchased is not subject to the provisions of paragraph (4).

"(3) FUNDING.—For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under chapter 31 of Title 31 are extended to include such purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

"(4) TERMINATION OF AUTHORITY.—The authority under this subsection (g), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

"(5) AUTHORITY OF THE DIRECTOR WITH RESPECT TO EXECUTIVE COMPENSATION.—The Director shall have the power to approve, disapprove, or modify the executive compensation of the corporation, as defined under Regulation S-K, 17 C.F.R. 229.".

(b) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by adding at the end the following new subsection:

"(l) TEMPORARY AUTHORITY OF TREASURY TO PURCHASE OBLIGATIONS AND SECURITIES; CONDITIONS.—

"(1) AUTHORITY TO PURCHASE.—

"(A) GENERAL AUTHORITY.—In addition to the authority under subsection (c) of this section, the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by the Corporation under any section of this Act, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires the Corporation to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the Corporation. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the Corporation, to engage in open market purchases of the common securities of the Corporation.

"(B) EMERGENCY DETERMINATION REQUIRED.—In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

"(i) provide stability to the financial markets;

"(ii) prevent disruptions in the availability of mortgage finance; and

"(iii) protect the taxpayer.

"(C) CONSIDERATIONS.—To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

"(i) The need for preferences or priorities regarding payments to the Government.

"(ii) Limits on maturity or disposition of obligations or securities to be purchased.

"(iii) The Corporation's plan for the orderly resumption of private market funding or capital market access.

"(iv) The probability of the Corporation fulfilling the terms of any such obligation or other security, including repayment.

"(v) The need to maintain the Corporation's status as a private shareholder-owned company.

"(vi) Restrictions on the use of Corporation resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

"(D) REPORTS TO CONGRESS.—Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

"(2) RIGHTS; SALE OF OBLIGATIONS AND SECURITIES.—

"(A) EXERCISE OF RIGHTS.—The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

"(B) SALE OF OBLIGATION AND SECURITIES.—The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation or security acquired by the Secretary under this subsection.

"(C) APPLICATION OF SUNSET TO PURCHASED OBLIGATIONS OR SECURITIES.—The authority of the Secretary of the Treasury to hold, exercise any rights received in connection with, or sell, any obligations or securities purchased is not subject to the provisions of paragraph (4).

"(3) FUNDING.—For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under chapter 31 of Title 31 are extended to include such purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

"(4) TERMINATION OF AUTHORITY.—The authority under this subsection (l), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

"(5) AUTHORITY OF THE DIRECTOR WITH RESPECT TO EXECUTIVE COMPENSATION.—The Director shall have the power to approve, disapprove, or modify the executive compensation of the Corporation, as defined under Regulation S-K, 17 C.F.R. 229.".

(c) FEDERAL HOME LOAN BANKS.—Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended by adding at the end the following new subsection:

"(l) TEMPORARY AUTHORITY OF TREASURY TO PURCHASE OBLIGATIONS; CONDITIONS.—

"(1) AUTHORITY TO PURCHASE.—

"(A) GENERAL AUTHORITY.—In addition to the authority under subsection (i) of this section, the Secretary of the Treasury is authorized to purchase any obligations issued by any Federal Home Loan Bank under any section of this Act, on such terms and conditions as the Secretary may determine and in such amounts as the Secretary may determine. Nothing in this subsection requires a Federal Home Loan Bank to issue obligations or securities to the Secretary without mutual agreement between the Secretary and the Federal Home Loan Bank. Nothing in this subsection permits or authorizes the Secretary, without the agreement of the Federal Home Loan Bank, to engage in open market purchases of the common securities of any Federal Home Loan Bank.

"(B) EMERGENCY DETERMINATION REQUIRED.—In connection with any use of this authority, the Secretary must determine that such actions are necessary to—

"(i) provide stability to the financial markets;

"(ii) prevent disruptions in the availability of mortgage finance; and

"(iii) protect the taxpayer.

"(C) CONSIDERATIONS.—To protect the taxpayers, the Secretary of the Treasury shall take into consideration the following in connection with exercising the authority contained in this paragraph:

"(i) The need for preferences or priorities regarding payments to the Government.

"(ii) Limits on maturity or disposition of obligations or securities to be purchased.

"(iii) The Federal Home Loan Bank's plan for the orderly resumption of private market funding or capital market access.

"(iv) The probability of the Federal Home Loan Bank fulfilling the terms of any such obligation or other security, including repayment.

"(v) The need to maintain the Federal Home Loan Bank's status as a private shareholder-owned company.

"(vi) Restrictions on the use of Federal Home Loan Bank resources, including limitations on the payment of dividends and executive compensation and any such other terms and conditions as appropriate for those purposes.

"(D) REPORTS TO CONGRESS.—Upon exercise of this authority, the Secretary shall report to the Committees on the Budget, Financial Services, and Ways and Means of the House of Representatives and the Committees on the Budget, Finance, and Banking, Housing, and Urban Affairs of the Senate as to the necessity for the purchase and the determinations made by the Secretary under subparagraph (B) and with respect to the considerations required under subparagraph (C), and the size, terms, and probability of repayment or fulfillment of other terms of such purchase.

"(2) RIGHTS; SALE OF OBLIGATIONS AND SECURITIES.—

"(A) EXERCISE OF RIGHTS.—The Secretary of the Treasury may, at any time, exercise any rights received in connection with such purchases.

"(B) SALE OF OBLIGATIONS.—The Secretary of the Treasury may, at any time, subject to the terms of the security or otherwise upon terms and conditions and at prices determined by the Secretary, sell any obligation acquired by the Secretary under this subsection.

"(C) APPLICATION OF SUNSET TO PURCHASED OBLIGATIONS.—The authority of the Secretary of the Treasury to hold, exercise any rights received in connection with, or sell, any obligations purchased is not subject to the provisions of paragraph (4).

"(3) FUNDING.—For the purpose of the authorities granted in this subsection, the Secretary of the Treasury may use the proceeds of the sale of any securities issued under chapter 31 of Title 31, and the purposes for which securities may be issued under chapter 31 of Title 31 are extended to include such purchases and the exercise of any rights in connection with such purchases. Any funds expended for the purchase of, or modifications to, obligations and securities, or the exercise

of any rights received in connection with such purchases under this subsection shall be deemed appropriated at the time of such purchase, modification, or exercise.

"(4) TERMINATION OF AUTHORITY.—The authority under this subsection (l), with the exception of paragraphs (2) and (3) of this subsection, shall expire December 31, 2009.

"(5) AUTHORITY OF THE DIRECTOR WITH RESPECT TO EXECUTIVE COMPENSATION.—The Director shall have the power to approve, disapprove, or modify the executive compensation of the Federal Home Loan Bank, as defined under Regulation S-K, 17 C.F.R. 229.".

SEC. 1118. CONSULTATION BETWEEN THE DIRECTOR OF THE FEDERAL HOUSING FINANCE AGENCY AND THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM TO ENSURE FINANCIAL MARKET STABILITY .

Subsection (a) of section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4513), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new paragraph:

"(3) COORDINATION WITH THE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

"(A) CONSULTATION.— The Director shall consult with, and consider the views of, the Chairman of the Board of Governors of the Federal Reserve System, with respect to the risks posed by the regulated entities to the financial system, prior to issuing any proposed or final regulations, orders, and guidelines with respect to the exercise of the additional authority provided in this Act regarding prudential management and operations standards, safe and sound operations of, and capital requirements and portfolio standards applicable to the regulated entities (as such term is defined in section 1303). The Director also shall consult with the Chairman regarding any decision to place a regulated entity into conservatorship or receivership.

"(B) INFORMATION SHARING.—To facilitate the consultative process, the Director shall share information with the Board of Governors of the Federal Reserve System on a regular, periodic basis as determined by the Director and the Board regarding the capital, asset and liabilities, financial condition, and risk management practices of the regulated entities as well as any information related to financial market stability.

"(C) TERMINATION OF CONSULTATION REQUIREMENT.—The requirement of the Director to consult with the Board of Governors of the Federal Reserve System under this paragraph shall expire at the conclusion of December 31, 2009.".

Subtitle B—Improvement of Mission Supervision

SEC. 1121. TRANSFER OF PROGRAM APPROVAL AND HOUSING GOAL OVERSIGHT.

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

(1) by striking the heading for the part and inserting the following: 12 USC 4541.

"PART 2—ADDITIONAL AUTHORITIES OF THE DIRECTOR";

and

(2) by striking sections 1321 and 1322. 12 USC 4541, 4542.

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

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

(1) by striking "Secretary" each place that term appears and inserting "Director" in each of sections 1323, 1326, 1327, 1328, and 1336; and 12 USC 4543, 4546–4548, 4566.

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

(b) RETENTION OF FAIR HOUSING RESPONSIBILITIES.—Section 1325 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4545) is amended in the matter preceding paragraph (1), by inserting "of Housing and Urban Development" after "The Secretary".

SEC. 1123. REVIEW OF ENTERPRISE PRODUCTS.

Part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amended by inserting before section 1323 the following:

"SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS. 12 USC 4541.

"(a) IN GENERAL.—The Director shall require each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.

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

"(1) in the case of a product of the Federal National Mortgage Association, the product is authorized under paragraph (2), (3), (4), or (5) of section 302(b) or section 304 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b), 1719);

"(2) in the case of a product of the Federal Home Loan Mortgage Corporation, the product is authorized under paragraph (1), (4), or (5) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a));

"(3) the product is in the public interest; and

"(4) the product is consistent with the safety and soundness of the enterprise or the mortgage finance system.

"(c) PROCEDURE FOR APPROVAL.—

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

Publication. Notice.

"(2) REQUEST FOR PUBLIC COMMENT.—Immediately upon receipt of a request for approval of a product, as required under paragraph (1), the Director shall publish notice of such request and of the period for public comment pursuant to paragraph (3) regarding the product, and a description of the product proposed by the request. The Director shall give interested parties the opportunity to respond in writing to the proposed product.

"(3) PUBLIC COMMENT PERIOD.—During the 30-day period beginning on the date of publication pursuant to paragraph (2) of a request for approval of a product, the Director shall receive public comments regarding the proposed product.

"(4) OFFERING OF PRODUCT.—

Deadline.

"(A) IN GENERAL.—Not later than 30 days after the close of the public comment period described in paragraph (3), the Director shall approve or deny the product, specifying the grounds for such decision in writing.

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

"(C) TEMPORARY APPROVAL.—The Director may, subject to the rules of the Director, provide for temporary approval of the offering of a product without a public comment period, if the Director finds that the existence of exigent circumstances makes such delay contrary to the public interest.

"(d) CONDITIONAL APPROVAL.—If the Director approves the offering of any product by an enterprise, the Director may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

"(e) EXCLUSIONS.—

"(1) IN GENERAL.—The requirements of subsections (a) through (d) do not apply with respect to—

"(A) the automated loan underwriting system of an enterprise in existence as of the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

"(B) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or

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

"(i) the activities described in subparagraphs (A) and (B); and

"(ii) other activities that have been approved by the Director in accordance with this section.

"(2) EXPEDITED REVIEW.—

"(A) ENTERPRISE NOTICE.—For any new activity that an enterprise considers not to be a product, the enterprise shall provide written notice to the Director of such activity, and may not commence such activity until the date of receipt of a notice under subparagraph (B) or the expiration of the period described in subparagraph (C). The Director shall establish, by regulation, the form and content of such written notice. Regulations.

"(B) DIRECTOR DETERMINATION.—Not later than 15 days after the date of receipt of a notice under subparagraph (A), the Director shall determine whether such activity is a product subject to approval under this section. The Director shall, immediately upon so determining, notify the enterprise. Deadline. Notification.

"(C) FAILURE TO ACT.—If the Director fails to determine whether such activity is a product within the 15-day period described in subparagraph (B), the enterprise may commence the new activity in accordance with subparagraph (A).

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

"(1) the safety and soundness authority of the Director over all new and existing products or activities; or

"(2) the authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an enterprise.".

SEC. 1124. CONFORMING LOAN LIMITS.

(a) FANNIE MAE.—

(1) GENERAL LIMIT.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by striking the 7th and 8th sentences and inserting the following new sentences: "Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541)). If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the Effective dates.

house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines.".

(2) HIGH-COST AREA LIMIT.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding after the period at the end the following: "Such foregoing limitations shall also be increased, with respect to properties of a particular size located in any area for which 115 percent of the median house price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such limitation for such size residence or the amount that is equal to 115 percent of the median house price in such area for such size residence.".

12 USC 1717 note.

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

(b) FREDDIE MAC.—

(1) GENERAL LIMIT.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by striking the 6th and 7th sentences and inserting the following new sentences: "Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541)). If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines.".

Effective dates.

(2) HIGH-COST AREA LIMIT.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding after the period at the end the following: "Such foregoing limitations shall also be increased, with respect to properties of a particular size located in any area for which 115 percent of the median house price for such size residence exceeds the foregoing limitation for such size residence, to

the lesser of 150 percent of such limitation for such size residence or the amount that is equal to 115 percent of the median house price in such area for such size residence.".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) of this subsection shall take effect upon the expiration of the date described in section 201(a) of the Economic Stimulus Act of 2008 (Public Law 110–185). 12 USC 1454 note.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that the securitization of mortgages by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation plays an important role in providing liquidity to the United States housing markets. Therefore, the Congress encourages the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to securitize mortgages acquired under the increased conforming loan limits established under this Act.

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

"SEC. 1322. HOUSING PRICE INDEX. 12 USC 4542.

"The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.". Assessments.

SEC. 1125. ANNUAL HOUSING REPORT.

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

(b) ANNUAL HOUSING REPORT.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting after section 1323 the following:

"SEC. 1324. ANNUAL HOUSING REPORT. 12 USC 4544.

"(a) IN GENERAL.—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act and section 307(f) of the Federal Home Loan Mortgage Corporation Act, the Director shall submit a report, not later than October 30 of each year, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the activities of each enterprise.

"(b) CONTENTS.—The report required under subsection (a) shall—

"(1) discuss—

"(A) the extent to and manner in which—

"(i) each enterprise is achieving the annual housing goals established under subpart B;

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

"(iii) each enterprise is complying with section 1337;

"(iv) each enterprise received credit towards achieving each of its goals resulting from a transaction or activity pursuant to section 1331(b)(2); and

"(v) each enterprise is achieving the purposes of the enterprise established by law; and

"(B) the actions that each enterprise could undertake to promote and expand the purposes of the enterprise;

"(2) aggregate and analyze relevant data on income to assess the compliance of each enterprise with the housing goals established under subpart B;

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

"(4) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime and nontraditional loans;

"(5) compare the characteristics of subprime and nontraditional loans both purchased and securitized by each enterprise to other loans purchased and securitized by each enterprise; and

"(6) compare the characteristics of high-cost loans purchased and securitized, where such securities are not held on portfolio to loans purchased and securitized, where such securities are either retained on portfolio or repurchased by the enterprise, including such characteristics as—

"(A) the purchase price of the property that secures the mortgage;

"(B) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

"(C) the terms of the mortgage;

"(D) the creditworthiness of the borrower; and

"(E) any other relevant data, as determined by the Director.

"(c) DATA COLLECTION AND REPORTING.—

Deadlines.
Surveys.

"(1) IN GENERAL.—To assist the Director in analyzing the matters described in subsection (b), the Director shall conduct, on a monthly basis, a survey of mortgage markets in accordance with this subsection.

"(2) DATA POINTS.—Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

"(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

"(i) the price of the house that secures the mortgage;

"(ii) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;

"(iii) the terms of the mortgage;

"(iv) the creditworthiness of the borrower or borrowers; and

"(v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise;

"(B) the characteristics of individual subprime and nontraditional mortgages that are eligible for purchase by the enterprises and the characteristics of borrowers under such mortgages, including the creditworthiness of such borrowers and determination whether such borrowers would qualify for prime lending; and

"(C) such other matters as the Director determines to be appropriate.

"(3) PUBLIC AVAILABILITY.—The Director shall make any data collected by the Director in connection with the conduct of a monthly survey available to the public in a timely manner, provided that the Director may modify the data released to the public to ensure that the data—

"(A) is not released in an identifiable form; and

"(B) is not otherwise obtainable from other publicly available data sets.

"(4) DEFINITION.—For purposes of this subsection, the term 'identifiable form' means any representation of information that permits the identity of a borrower to which the information relates to be reasonably inferred by either direct or indirect means.".

SEC. 1126. PUBLIC USE DATABASE.

Section 1323 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (42 U.S.C. 4543) is amended—

(1) in subsection (a)—

(A) by striking "(a) IN GENERAL.—The Secretary" and inserting the following:

"(a) AVAILABILITY.—

"(1) IN GENERAL.—The Director"; and

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

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

(2) in subsection (b)(2), by inserting before the period at the end the following: "or with subsection (a)(2)"; and

(3) by adding at the end the following new subsection:

"(d) TIMING.—Data submitted under this section by an enterprise in connection with a provision referred to in subsection (a) shall be made publicly available in accordance with this section not later than September 30 of the year following the year to which the data relates.". Deadline.

SEC. 1127. REPORTING OF MORTGAGE DATA.

Section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4546) is amended—

(1) in subsection (a), by striking "The Director" and inserting "Subject to subsection (d), the Director"; and

(2) by adding at the end the following:

Public information. Regulations. Order.

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

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

"(2) information collected by the Director under section 1324(b)(6).".

SEC. 1128. REVISION OF HOUSING GOALS.

(a) REPEAL.—Sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 through 4564) are hereby repealed.

(b) HOUSING GOALS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting before section 1335 the following:

12 USC 4561.

"SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

Regulations. Effective date.

"(a) IN GENERAL.—The Director shall, by regulation, establish effective for 2010 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

"(1) SINGLE-FAMILY HOUSING GOALS.—Four single-family housing goals under section 1332.

"(2) MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOAL.—One multifamily special affordable housing goal under section 1333.

Deadline. Regulations.

"(b) TIMING.—The Director shall, by regulation, establish an annual deadline by which the Director shall establish the annual housing goals under this subpart for each year, taking into consideration the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such annual goals.

Deadline. Review.

"(c) TRANSITION.—The annual housing goals effective for 2008 pursuant to this subpart, as in effect before the enactment of the Federal Housing Finance Regulatory Reform Act of 2008, shall remain in effect for 2009, except that not later than the expiration of the 270-day period beginning on the date of the enactment of such Act, the Director shall review such goals applicable for 2009 to determine the feasibility of such goals given the market conditions current at such time and, after seeking public comment for a period not to exceed 30 days, may make appropriate adjustments consistent with such market conditions.

"(d) ELIMINATING INTEREST RATE DISPARITIES.—

Records.

"(1) IN GENERAL.—Upon request by the Director, an enterprise shall provide to the Director, in a form determined by the Director, data the Director may review to determine whether there exist disparities in interest rates charged on mortgages to borrowers who are minorities as compared with comparable mortgages to borrowers of similar creditworthiness who are not minorities.

"(2) REMEDIAL ACTIONS UPON PRELIMINARY FINDING.—Upon a preliminary finding by the Director that a pattern of disparities in interest rates with respect to any lender or lenders

exists pursuant to the data provided by an enterprise in paragraph (1), the Director shall—

"(A) refer the preliminary finding to the appropriate regulatory or enforcement agency for further review; and

"(B) require the enterprise to submit additional data with respect to any lender or lenders, as appropriate and to the extent practicable, to the Director who shall submit any such additional data to the regulatory or enforcement agency for appropriate action.

"(3) ANNUAL REPORT TO CONGRESS.—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken, and being taken, by the Director to carry out this subsection. No such report shall identify any lender or lenders who have not been found to have engaged in discriminatory lending practices pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5, United States Code.

"(4) PROTECTION OF IDENTITY OF INDIVIDUALS.—In carrying out this subsection, the Director shall ensure that no property-related or financial information that would enable a borrower to be identified shall be made public.

"SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

12 USC 4562.

"(a) IN GENERAL.—The Director shall, by regulation, establish annual goals for the purchase by each enterprise of the following types of mortgages for the following categories of families:

Regulations.

"(1) PURCHASE-MONEY MORTGAGES.—A goal for purchase of conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing for each of the following categories of families:

"(A) Low-income families.

"(B) Families that reside in low-income areas.

"(C) Very low-income families.

"(2) REFINANCING MORTGAGES.—A goal for purchase of conventional, conforming mortgages on owner-occupied, single-family housing for low-income families that are given to pay off or prepay an existing loan secured by the same property.

"(b) GOALS AS A PERCENTAGE OF TOTAL MORTGAGE PURCHASES.—The goals established under paragraphs (1) and (2) of subsection (a) shall be established as a percentage of the total number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise, or as percentage of the total number of conventional, single-family, owner-occupied refinance mortgages purchased by the enterprise, as applicable, that are mortgages for the types of families specified in paragraphs (1) and (2) of subsection (a).

"(c) SINGLE-FAMILY, OWNER-OCCUPIED RENTAL HOUSING UNITS.—The Director shall require each enterprise to report the number of rental housing units affordable to low-income families each year which are contained in mortgages purchased by the enterprise financing 2- to 4-unit single-family, owner-occupied properties and may, by regulation, establish additional requirements relating to such units.

Reports. Deadline.

"(d) DETERMINATION OF COMPLIANCE.—

"(1) IN GENERAL.—The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 1331(a), whether each enterprise has complied with each such goal established under subsection (a) of this section and any additional requirements which may be established under subsection (c) of this section.

"(2) PURCHASE-MONEY MORTGAGE GOALS.—An enterprise shall be considered to be in compliance with a housing goal under subparagraph (A), (B), or (C) of subsection (a)(1) for a year only if, for the type of family described in such subparagraph, the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (e).

"(3) REFINANCE GOAL.—An enterprise shall be considered to be in compliance with the refinance goal under subsection (a)(2) for a year only if the percentage of the number of conventional, conforming, single-family, owner-occupied refinance mortgages purchased by the enterprise in such year that serve low-income families meets or exceeds the target for the year that is established under subsection (e).

"(e) ANNUAL TARGETS.—

Regulations.

"(1) IN GENERAL.—The Director shall, by regulation, establish annual targets for each goal and subgoal under this section, provided that the Director shall not set prospective targets longer than three years. In establishing such targets, the Director shall not consider segments of the market determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises.

"(2) GOALS TARGETS.—

"(A) CALCULATION.—The Director shall calculate, for each of the types of families described in subsection (a), the percentage, for each of the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 is publicly available—

"(i) of the number of conventional, conforming, single-family, owner-occupied purchase money mortgages originated in such year that serve such type of family, or

"(ii) the number of conventional, conforming, single-family, owner-occupied refinance mortgages originated in such year that serve low-income families,

as applicable, as determined by the Director using the information obtained and determined pursuant to paragraphs (4) and (5).

Regulations.

"(B) ESTABLISHMENT OF GOAL TARGETS.—The Director shall, by regulation, establish targets for each of the goal categories, taking into consideration the calculations under subparagraph (A) and the following factors:

"(i) National housing needs.

"(ii) Economic, housing, and demographic conditions, including expected market developments.

"(iii) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.

"(iv) The ability of the enterprise to lead the industry in making mortgage credit available.

"(v) Such other reliable mortgage data as may be available.

"(vi) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively.

"(vii) The need to maintain the sound financial condition of the enterprises.

"(3) AUTHORITY TO ADJUST TARGETS.—The Director may, by regulation, adjust the percentage targets previously established by regulation pursuant to paragraph (2)(B) for any year, to reflect subsequent available data and market developments.

"(4) HMDA INFORMATION.—The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 regarding conventional, conforming, single-family, owner-occupied, purchase money and refinance mortgages originated and purchased for the previous year. Deadline.

"(5) CONFORMING MORTGAGES.—In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (4), as rounded to the nearest thousand dollars.

"(f) NOTICE OF DETERMINATION AND ENTERPRISE COMMENT.—

"(1) NOTICE.—Within 30 days of making a determination under subsection (d) regarding compliance of an enterprise for a year with a housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (e). Deadline.

"(2) COMMENT PERIOD.—The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

"(g) USE OF BORROWER INCOME.—In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 1336), the Director shall consider a mortgagor's income to be such income at the time of origination of the mortgage.

"(h) CONSIDERATION OF PROPERTIES WITH RENTAL UNITS.—Mortgages financing two- to four-unit owner-occupied properties shall count toward the achievement of the single-family housing goals under this section, if such properties otherwise meet the requirements under this section, notwithstanding the use of one or more units for rental purposes.

"(i) GOALS CREDIT.—The Director shall determine whether an enterprise shall receive full, partial, or no credit for a transaction

toward achievement of any of the housing goals established pursuant to section 1332 and 1333. In making any such determination, the Director shall consider whether a transaction or activity of an enterprise is substantially equivalent to a mortgage purchase and either (1) creates a new market, or (2) adds liquidity to an existing market. No credit toward the achievement of the housing goals and subgoals established under this section may be given to the purchase of mortgages, including any transaction or activity of an enterprise determined to be substantially equivalent to a mortgage purchase, that is determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises, pursuant to regulations issued by the Director.

12 USC 4563.

"SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOAL.

"(a) ESTABLISHMENT OF GOAL.—

Regulations.

"(1) IN GENERAL.—The Director shall, by regulation, establish a single annual goal, by either unit or dollar volume, of purchases by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to low-income families.

"(2) ADDITIONAL REQUIREMENTS FOR UNITS AFFORDABLE TO VERY LOW-INCOME FAMILIES.—When establishing the goal under this section, the Director shall establish additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families.

"(3) REPORTING ON SMALLER PROPERTIES.—The Director shall require each enterprise to report on the purchase by each enterprise of multifamily housing of a smaller or limited size that is affordable to low-income families, which may be based on multifamily projects of 5 to 50 units (as such numbers may be adjusted by the Director) or on mortgages of up to $5,000,000 (as such amount may be adjusted by the Director), and may, by regulation, establish such aditional requirements related to such units.

"(4) FACTORS.—In establishing the goal and additional requirements under this section, the Director shall not consider segments of the market determined to be inconsistent with safety and soundness or unauthorized for purchase by the enterprises, and shall take into consideration—

"(A) national multifamily mortgage credit needs and the ability of the enterprise to provide additional liquidity and stability for the multifamily mortgage market;

"(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

"(C) the size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

"(D) the ability of the enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing described in paragraphs (1) and (2);

"(E) the availability of public subsidies; and

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

"(b) UNITS FINANCED BY HOUSING FINANCE AGENCY BONDS.—The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 1336) to dwelling units in multifamily housing that otherwise qualifies under such goal and that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, if such bonds, in whole or in part—

"(1) are secured by a guarantee of the enterprise; or

"(2) are purchased by the enterprise, except that the Director may give less than full credit for purchases of investment grade bonds, to the extent that such purchases do not provide a new market or add liquidity to an existing market.

"(c) MEASUREMENT OF PERFORMANCE.—The Director shall monitor the performance of each enterprise in meeting the goals established under this section and shall evaluate such performance (for purposes of section 1336) based on whether the rent levels are affordable. A rent level shall be considered to be affordable for purposes of this subsection for low-income families if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

"(d) DETERMINATION OF COMPLIANCE.—The Director shall determine, for each year that the housing goal under this section is in effect pursuant to section 1331(a), whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

"SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS. 12 USC 4564.

"(a) AUTHORITY.—An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal or subgoal for such year established pursuant to this subpart.

"(b) STANDARD FOR REDUCTION.—The Director may reduce the level for a goal or subgoal pursuant to such a petition only if—

"(1) market and economic conditions or the financial condition of the enterprise require such action; or

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

"(c) DETERMINATION.—The Director shall, promptly upon receipt of a petition regarding a reduction, seek public comment on the reduction for a period of 30 days. The Director shall make a determination regarding any proposed reduction within 30 days after the expiration of such public comment period. The Director may extend such determination period for a single additional 15-day period, but only if the Director requests additional information from the enterprise.". Public comment. Deadline.

(c) CONFORMING AMENDMENTS.—The Housing and Community Development Act of 1992 is amended

(1) in section 1335(a) (12 U.S.C. 4565(a)), in the matter preceding paragraph (1), by striking "low- and moderate-income

housing goal" and all that follows through "section 1334" and inserting "housing goals established under this subpart"; and

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

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

(1) by striking paragraph (24), as so designated by section 1002 of this Act, and inserting the following:

"(24) VERY LOW-INCOME.—

"(A) IN GENERAL.—The term 'very low-income' means—

"(i) in the case of owner-occupied units, families having incomes not greater than 50 percent of the area median income; and

"(ii) in the case of rental units, families having incomes not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

"(B) RULE OF CONSTRUCTION.—For purposes of section 1338 and 1339, the term 'very low-income' means—

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

"(ii) in the case of rental units, income in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director."; and

(2) by adding at the end the following:

"(26) CONFORMING MORTGAGE.—The term 'conforming mortgage' means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the dollar amount limitation in effect at the time of such origination and applicable to such mortgage, under, as applicable—

"(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act; or

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

"(27) EXTREMELY LOW-INCOME.—The term 'extremely low-income' means—

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

"(B) in the case of rental units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

"(28) LOW-INCOME AREA.—The term 'low-income area' means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 1332(a)(1)(B), shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts and shall include families having incomes not greater than 100 percent of the area median income who reside in designated disaster areas.

"(29) MINORITY CENSUS TRACT.—The term 'minority census tract' means a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of the area family median income.

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

"(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to extremely low-income renter households' means the gap between—

"(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Director that are occupied by extremely low-income renter households or are vacant for rent; and

"(ii) the number of extremely low-income renter households.

"(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

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

"(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to very low-income renter households' means the gap between—

"(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Director that are occupied by either extremely low- or very low-income renter households or are vacant for rent; and

"(ii) the number of extremely low- and very low-income renter households.

"(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of extremely low- and very low-income households as described in subparagraph (A)(ii), there is no shortage.".

SEC. 1129. DUTY TO SERVE UNDERSERVED MARKETS.

(a) ESTABLISHMENT AND EVALUATION OF PERFORMANCE.—Section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4565) is amended—

(1) in the section heading, by inserting "**DUTY TO SERVE UNDERSERVED MARKETS AND**" before "**OTHER**";

(2) by striking subsection (b);

(3) in subsection (a)—

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

(B) in paragraph (3), by inserting "and" after the semicolon at the end;

(C) in paragraph (4), by striking "; and" and inserting a period;

(D) by striking paragraph (5); and

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

(4) by inserting before subsection (b) (as so redesignated by paragraph (3)(E) of this subsection) the following new subsection:

"(a) DUTY TO SERVE UNDERSERVED MARKETS.—

"(1) DUTY.—To increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets, each enterprise shall provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate-income families with respect to the following underserved markets:

"(A) MANUFACTURED HOUSING.—The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

"(B) AFFORDABLE HOUSING PRESERVATION.—The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—

"(i) the project-based and tenant-based rental assistance programs under section 8 of the United States Housing Act of 1937;

"(ii) the program under section 236 of the National Housing Act;

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

"(iv) the supportive housing for the elderly program under section 202 of the Housing Act of 1959;

"(v) the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act;

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

"(vii) the rural rental housing program under section 515 of the Housing Act of 1949;

"(viii) the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986; and

"(ix) comparable state and local affordable housing programs.

Guidelines.

"(C) RURAL MARKETS.—The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, and low-, and moderate-income families in rural areas."; and

(5) by adding at the end the following new subsections:

"(c) ADDITIONAL CATEGORIES.—The Director may submit recommendations to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate for the establishment of additional categories under subsection (a), provided that the Director makes

a preliminary determination that any such category is important to the mission of the enterprises, that the category is an underserved market, and that the establishment of such category is warranted.

"(d) EVALUATION AND REPORTING OF COMPLIANCE.—

Regulations.

"(1) IN GENERAL.—The Director shall, by regulation, establish effective for 2010 and thereafter a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for 2010 and each year thereafter, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).

"(2) SEPARATE EVALUATIONS.—In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration—

"(A) the development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of such underserved markets;

"(B) the extent of outreach to qualified loan sellers and other market participants in each of such underserved markets;

"(C) the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the enterprise, except that the Director shall not establish specific quantitative targets nor evaluate the enterprises based solely on the volume of loans purchased; and

"(D) the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.

"(3) MANUFACTURED HOUSING MARKET.—In determining whether an enterprise has complied with the duty under subparagraph (A) of subsection (a)(1), the Director may consider loans secured by both real and personal property.

"(4) PROHIBITION OF CONSIDERATION OF AFFORDABLE HOUSING FUND GRANTS FOR MEETING DUTY TO SERVE.— In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director may not consider any affordable housing fund grant amounts used under section 1337 for eligible activities under subsection (g) of such section.".

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

(1) in paragraph (1), by inserting "and with the duty under section 1335(a) of each enterprise with respect to underserved markets," before "as provided in this section"; and

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

"(4) ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—The duty under section 1335(a)

of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall be enforceable only under this section, except that such duty shall not be subject to subsection (c)(7) of this section and shall not be enforceable under any other provision of this title (including subpart C of this part) or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.".

(c) ADDITIONAL CREDIT FOR CERTAIN MORTGAGES.—Section 1336(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 4566(a)) is amended—

(1) in paragraph (2), by inserting ", except as provided in paragraph (5)," after "which"; and

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

"(5) ADDITIONAL CREDIT.—The Director may assign additional credit toward achievement, under this section, of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support housing that includes a licensed childcare center. The availability of additional credit under this paragraph shall not be used to increase any housing goal, subgoal, or target established under this subpart.".

SEC. 1130. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

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

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

"(1) NOTICE.—If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.

"(2) RESPONSE PERIOD.—

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

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

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

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

of the enterprise to comment on the proposed determination or action of the Director.

"(3) CONSIDERATION OF INFORMATION AND FINAL DETERMINATION.—

"(A) IN GENERAL.—After the expiration of the response period under paragraph (2), or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall issue a final determination on—

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

"(ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

"(B) CONSIDERATIONS.—In making a final determination under subparagraph (A), the Director shall take into consideration any relevant information submitted by the enterprise during the response period.

"(C) NOTICE.—The Director shall provide written notice, including a response to any information submitted during the response period, to the enterprise, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, of—

"(i) each final determination under this paragraph that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;

"(ii) each final determination that the achievement of a housing goal was or is feasible; and

"(iii) the reasons for each such final determination.

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

"(1) REQUIREMENT.—If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart, and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 1341 and impose civil money penalties in accordance with section 1345.

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

"(A) a feasible plan describing the specific actions the enterprise will take—

"(i) to achieve the goal for the next calendar year; and

"(ii) if the Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of such year; and

"(B) sufficiently specific to enable the Director to monitor compliance periodically.

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

Review. Deadline.

"(4) APPROVAL.—The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act (as applicable), this title, and any other applicable provision of law.

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

Deadline.

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

"(7) CEASE AND DESIST ORDERS; CIVIL MONEY PENALTIES.—Solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), if the Director requires an enterprise to submit a housing plan under this subsection and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, exercise other appropriate enforcement authority or seek other appropriate actions.".

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

"Subpart C—Enforcement".

(c) CEASE AND DESIST PROCEEDINGS .—

(1) REPEAL.—Section 1341 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4581) is hereby repealed.

(2) CEASE AND DESIST PROCEEDINGS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting before section 1342 the following:

12 USC 4581.

"SEC. 1341. CEASE AND DESIST PROCEEDINGS.

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

"(1) the enterprise has failed to submit a report under section 1327, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

"(2) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

"(3) solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), the enterprise has failed to submit a housing plan that complies with section 1336(c) within the applicable period; or

"(4) solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), the enterprise has failed to comply with a housing plan under section 1336(c).

"(b) PROCEDURE.—

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

"(2) ISSUANCE OF ORDER.—If the Director finds on the record made at a hearing described in paragraph (1) that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 1342(a)(4)), the Director may issue and serve upon the enterprise an order requiring the enterprise to—

"(A) submit a report under section 1327;

"(B) solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), submit a housing plan in compliance with section 1336(c);

"(C) solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), comply with the housing plan in compliance with section 1336(c); or

"(D) provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act.

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

(d) CIVIL MONEY PENALTIES.—

(1) REPEAL.—Section 1345 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4585) is hereby repealed.

(2) CIVIL MONEY PENALTIES.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by inserting after section 1344 the following:

12 USC 4585.

"SEC. 1345. CIVIL MONEY PENALTIES.

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

"(1) submit a report under section 1327, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

"(2) submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

"(3) solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 1336(c) within the required period; or

"(4) solely with respect to the housing goals established under sections 1332(a) and 1333(a)(1), comply with a housing plan for the enterprise under section 1336(c).

"(b) AMOUNT OF PENALTY.—The amount of a penalty under this section, as determined by the Director, may not exceed—

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

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

"(c) PROCEDURES.—

Standards.

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

Records.

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

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

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

"(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the Director shall give consideration to factors including—

"(A) the gravity of the offense;

"(B) any history of prior offenses;

"(C) ability to pay the penalty;

"(D) injury to the public;

"(E) benefits received;

"(F) deterrence of future violations;

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

"(H) such other factors as the Director may determine, by regulation, to be appropriate.

"(d) ACTION TO COLLECT PENALTY.—If an enterprise fails to comply with an order by the Director imposing a civil money penalty under this section, after the order is no longer subject to review, as provided in sections 1342 and 1343, the Director may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise,

and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

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

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

(e) DIRECTOR AUTHORITY.—

(1) AUTHORITY TO BRING A CIVIL ACTION.—Section 1344(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4584) is amended by striking "The Secretary may request the Attorney General of the United States to bring a civil action" and inserting "The Director may bring a civil action".

(2) SUBPOENA ENFORCEMENT.—Section 1348(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4588(c)) is amended by inserting "may bring an action or" before "may request".

(3) CONFORMING AMENDMENTS.—Subpart C of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4581 et seq.) is amended by striking "Secretary" each place that term appears and inserting "Director" in each of—

(A) section 1342 (12 U.S.C. 4582);
(B) section 1343 (12 U.S.C. 4583);
(C) section 1346 (12 U.S.C. 4586);
(D) section 1347 (12 U.S.C. 4587); and
(E) section 1348 (12 U.S.C. 4588).

SEC. 1131. AFFORDABLE HOUSING PROGRAMS.

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

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

"SEC. 1337. AFFORDABLE HOUSING ALLOCATIONS. 12 USC 4567.

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

"(1) the Federal Home Loan Mortgage Corporation shall—

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

"(B) allocate or otherwise transfer—

"(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 1338; and

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

"(2) the Federal National Mortgage Association shall—

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

"(B) allocate or otherwise transfer—

"(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 1338; and

"(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 1339.

"(b) SUSPENSION OF CONTRIBUTIONS.—The Director shall temporarily suspend allocations under subsection (a) by an enterprise upon a finding by the Director that such allocations—

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

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

"(3) are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan under section 1369C.

Regulations.

"(c) PROHIBITION OF PASS-THROUGH OF COST OF ALLOCATIONS.—The Director shall, by regulation, prohibit each enterprise from redirecting the costs of any allocation required under this section, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise.

"(d) ENFORCEMENT OF REQUIREMENTS ON ENTERPRISE.—Compliance by the enterprises with the requirements under this section shall be enforceable under subpart C. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.

"(e) REQUIRED AMOUNT FOR HOPE RESERVE FUND.—Of the aggregate amount allocated under subsection (a), 25 percent shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

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

12 USC 4568.

"SEC. 1338. HOUSING TRUST FUND.

"(a) ESTABLISHMENT AND PURPOSE.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the 'Secretary') shall establish and manage a Housing Trust Fund, which shall be funded with amounts allocated by the enterprises under section 1337 and any amounts as are or may be appropriated, transferred, or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States (as such term is defined in section 1303) for use—

"(A) to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and

"(B) to increase homeownership for extremely low- and very low-income families.

"(2) FEDERAL ASSISTANCE.—For purposes of the application of Federal civil rights laws, all assistance provided from the Housing Trust Fund shall be considered Federal financial assistance.

"(b) ALLOCATIONS FOR HOPE BOND PAYMENTS.—

"(1) IN GENERAL.—Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts allocated pursuant to clauses (i) and (ii) of section 1337(a)(1)(B) and clauses (i) and (ii) of section 1337(a)(2)(B) in excess of amounts described in section 1337(e)—

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

"(B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and

"(C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

"(2) EXCESS FUNDS.—At the termination of the HOPE for Homeowners Program established under section 257 of the National Housing Act, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in paragraphs (1)(B) and (2)(B) of section 1337(a).

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

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

"(1) IN GENERAL.—Except as provided in subsection (b), the Secretary shall distribute the amounts allocated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

"(2) PERMISSIBLE DESIGNEES.—A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)), or any other qualified instrumentality of the State to receive such grant amounts.

"(3) DISTRIBUTION TO STATES BY NEEDS-BASED FORMULA.—

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

Regulations. Deadline. Disadvantaged persons.

"(B) BASIS FOR FORMULA.—The formula required under subparagraph (A) shall include the following:

"(i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

"(ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

"(iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

"(iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

"(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause, the term 'cost of construction'—

"(I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

"(II) shall be calculated such that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

"(C) PRIORITY.—The formula required under subparagraph (A) shall give priority emphasis and consideration to the factor described in subparagraph (B)(i).

"(4) ALLOCATION OF GRANT AMOUNTS.—

Deadline. Federal Register, publication.

"(A) NOTICE.—Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused to be published in the Federal Register a notice that such amounts shall be so available.

State and local governments.

"(B) GRANT AMOUNT.—In each fiscal year other than fiscal year 2009, the Secretary shall make a grant to each State in an amount that is equal to the formula amount determined under paragraph (3) for that State.

"(C) MINIMUM STATE ALLOCATIONS.—If the formula amount determined under paragraph (3) for a fiscal year would allocate less than $3,000,000 to any of the 50 States of the United States or the District of Columbia, the allocation for such State of the United States or the District of Columbia shall be $3,000,000, and the increase shall be deducted pro rata from the allocations made to all other of the States (as such term is defined in section 1303).

"(5) ALLOCATION PLANS REQUIRED.—

"(A) IN GENERAL.—For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall—

"(i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;

"(ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(D);

"(iii) comply with paragraph (6); and

"(iv) include performance goals that comply with the requirements established by the Secretary pursuant to subsection (g)(2).

Notification. Public comments.

"(B) ESTABLISHMENT.—In establishing an allocation plan under this paragraph, a State or State designated entity shall—

"(i) notify the public of the establishment of the plan;

"(ii) provide an opportunity for public comments regarding the plan;

"(iii) consider any public comments received regarding the plan; and

Public information.

"(iv) make the completed plan available to the public.

"(C) CONTENTS.—An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include—

"(i) a description of the eligible activities to be conducted using such assistance; and

"(ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

"(6) SELECTION OF ACTIVITIES FUNDED USING HOUSING TRUST FUND GRANT AMOUNTS.—Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

"(A) are eligible under paragraph (7) for such use;

"(B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and

"(C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(D).

Disadvantaged persons.

"(7) ELIGIBLE ACTIVITIES.—Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

"(A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B) and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families or families with incomes at or below the poverty line (as such term is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902), including any revision required by such section) applicable to a family of the size involved, and not more than 25 percent for the benefit only of very low-income families; and

"(B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, that—

"(i) is available for purchase only for use as a principal residence by families that qualify both as—

"(I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

"(II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

"(ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act;

"(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

"(iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.

"(8) TENANT PROTECTIONS AND PUBLIC PARTICIPATION.—All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subtitle (including housing

provided with such grant amounts) shall comply with and be operated in compliance with—

"(A) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;

"(B) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

"(C) fair housing laws and laws regarding accessibility in federally assisted housing, including section 504 of the Rehabilitation Act of 1973.

"(9) ELIGIBLE RECIPIENTS.—Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

"(A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—

"(i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

"(ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

"(iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

"(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

"(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

"(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts. Regulations.

"(10) LIMITATIONS ON USE.—

"(A) REQUIRED AMOUNT FOR HOMEOWNERSHIP ACTIVITIES.—Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

"(B) DEADLINE FOR COMMITMENT OR USE.—Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

Regulations.

"(C) USE OF RETURNS.—The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

Regulations.

"(D) PROHIBITED USES.—The Secretary shall, by regulation—

"(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for—

"(I) political activities;

"(II) advocacy;

"(III) lobbying, whether directly or through other parties;

"(IV) counseling services;

"(V) travel expenses; and

"(VI) preparing or providing advice on tax returns;

and for the purposes of this subparagraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

"(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

"(I) the State or State designated entity; or

"(II) any other recipient of such grant amounts; and

"(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

"(E) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 1335, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

"(d) REDUCTION FOR FAILURE TO OBTAIN RETURN OF MISUSED FUNDS.—If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required

under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

"(1) except as provided in paragraph (2)—

"(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

"(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

Payments.

"(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

"(e) ACCOUNTABILITY OF RECIPIENTS AND GRANTEES.—

"(1) RECIPIENTS.—

"(A) TRACKING OF FUNDS.—The Secretary shall—

"(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

Requirements.

"(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

Reports.
Recordkeeping.

"(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

"(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

"(B) MISUSE OF FUNDS.—

Deadline.

"(i) REIMBURSEMENT REQUIREMENT.—If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity

for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

"(ii) DETERMINATION.—A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

Notification.

"(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

"(II) the Secretary does not subsequently reverse the determination.

"(2) GRANTEES.—

"(A) REPORT.—

"(i) IN GENERAL.—The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this section to submit a report, for such year, to the Secretary that—

"(I) describes the activities funded under this section during such year with such grant amounts; and

"(II) the manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

"(ii) PUBLIC AVAILABILITY.—The Secretary shall make such reports pursuant to this subparagraph publicly available.

Notification.

"(B) MISUSE OF FUNDS.—If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

"(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

"(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

"(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

"(iv) terminate any assistance under this section to the State or State designated entity.

"(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) EXTREMELY LOW-INCOME RENTER HOUSEHOLD.—The term 'extremely low-income renter household' means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

"(2) RECIPIENT.—The term 'recipient' means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

"(3) SHORTAGE OF STANDARD RENTAL UNITS BOTH AFFORDABLE AND AVAILABLE TO EXTREMELY LOW-INCOME RENTER HOUSEHOLDS.—

"(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to extremely low-income renter households' means for any State or other geographical area the gap between—

"(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Secretary that are occupied by extremely low-income renter households or are vacant for rent; and

"(ii) the number of extremely low-income renter households.

"(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

"(4) SHORTAGE OF STANDARD RENTAL UNITS BOTH AFFORDABLE AND AVAILABLE TO VERY LOW-INCOME RENTER HOUSEHOLDS.—

"(A) IN GENERAL.—The term 'shortage of standard rental units both affordable and available to very low-income renter households' means for any State or other geographical area the gap between—

"(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Secretary that are occupied by very low-income renter households or are vacant for rent; and

"(ii) the number of very low-income renter households.

"(B) RULE OF CONSTRUCTION.—If the number of units described in subparagraph (A)(i) exceeds the number of very low-income households as described in subparagraph (A)(ii), there is no shortage.

"(5) VERY LOW-INCOME FAMILY.—The term 'very low-income family' has the meaning given such term in section 1303, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section) applicable to a family of the size involved.

"(6) VERY LOW-INCOME RENTER HOUSEHOLDS.—The term 'very low-income renter households' means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

"(g) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall issue regulations to carry out this section.

"(2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—

Deadline.

"(A) a requirement that the Secretary ensure that the use of grant amounts under this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

"(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a State or State designated entity's activities to ensure compliance with this section;

"(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee or recipient to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants;

"(D) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity's priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

"(i) geographic diversity;

"(ii) ability to obligate amounts and undertake activities so funded in a timely manner;

"(iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

"(iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;

"(v) the extent to which the application makes use of other funding sources; and

"(vi) the merits of an applicant's proposed eligible activity;

"(E) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

"(F) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

"(h) AFFORDABLE HOUSING TRUST FUND.—If, after the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in

subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

"(i) FUNDING ACCOUNTABILITY AND TRANSPARENCY.—Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence. Records.

"SEC. 1339. CAPITAL MAGNET FUND. 12 USC 4569.

"(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.

"(b) DEPOSITS TO TRUST FUND.—The Capital Magnet Fund shall consist of—

"(1) any amounts transferred to the Fund pursuant to section 1337; and

"(2) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Capital Magnet Fund shall be available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for and increase investment in— Grants.

"(1) the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families; and

"(2) economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

"(d) FEDERAL ASSISTANCE.—For purposes of the application of Federal civil rights laws, all assistance provided using amounts in the Capital Magnet Fund shall be considered Federal financial assistance.

"(e) ELIGIBLE GRANTEES.—A grant under this section may be made, pursuant to such requirements as the Secretary of the Treasury shall establish for experience and success in attracting private financing and carrying out the types of activities proposed under the application of the grantee, only to— Requirements.

"(1) a Treasury certified community development financial institution; or

"(2) a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing.

"(f) ELIGIBLE USES.—Grant amounts awarded from the Capital Magnet Fund pursuant to this section may be used for the purposes described in paragraphs (1) and (2) of subsection (c), including for the following uses:

"(1) To provide loan loss reserves.

"(2) To capitalize a revolving loan fund.

"(3) To capitalize an affordable housing fund.

"(4) To capitalize a fund to support activities described in subsection (c)(2).

"(5) For risk-sharing loans.

"(g) APPLICATIONS.—

Regulations.

"(1) IN GENERAL.—The Secretary of the Treasury shall provide, in a competitive application process established by regulation, for eligible grantees under subsection (e) to submit applications for Capital Magnet Fund grants to the Secretary at such time and in such manner as the Secretary shall determine.

"(2) CONTENT OF APPLICATION.—The application required under paragraph (1) shall include a detailed description of—

"(A) the types of affordable housing, economic, and community revitalization projects that support or sustain residents of an affordable housing project funded by a grant under this section for which such grant amounts would be used, including the proposed use of eligible grants as authorized under this section;

"(B) the types, sources, and amounts of other funding for such projects; and

"(C) the expected time frame of any grant used for such project.

"(h) GRANT LIMITATION.—

"(1) IN GENERAL.—Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund.

"(2) GEOGRAPHIC DIVERSITY.—

"(A) GOAL.—The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and underserved rural areas in every State.

"(B) DIVERSITY DEFINED.—For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, which may include—

"(i) the percentage of low-income families or the extent of poverty;

"(ii) the rate of unemployment or underemployment;

"(iii) extent of blight and disinvestment;

"(iv) projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or

"(v) any other criteria designated by the Secretary of the Treasury.

"(3) LEVERAGE OF FUNDS.—Each grant from the Capital Magnet Fund awarded under this section shall be reasonably

expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.

"(4) COMMITMENT FOR USE DEADLINE.—Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation. The Secretary of the Treasury shall recapture into the Capital Magnet Fund any amounts not so used or committed for use and allocate such amounts in the first year after such recapture.

"(5) PROHIBITED USES.—The Secretary shall, by regulation, set forth prohibited uses of grant amounts awarded under this section, which shall include use for— Regulations.

"(A) political activities;

"(B) advocacy;

"(C) lobbying, whether directly or through other parties;

"(D) counseling services;

"(E) travel expenses; and

"(F) preparing or providing advice on tax returns;

and for the purposes of this paragraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section §501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

"(6) ADDITIONAL LOBBYING RESTRICTIONS.—No assistance or amounts made available under this section may be expended by an eligible grantee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement as such terms are defined in section 1352 of title 31, United States Code.

"(7) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—In determining the compliance of the enterprises with the housing goals under this section and the duty to serve underserved markets under section 1335, the Director of the Federal Housing Finance Agency may not consider any Capital Magnet Fund amounts used under this section for eligible activities under subsection (f). The Director of the Federal Housing Finance Agency shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from Capital Magnet Fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

"(8) ACCOUNTABILITY OF RECIPIENTS AND GRANTEES.—

"(A) TRACKING OF FUNDS.—The Secretary of the Treasury shall—

"(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from the Capital Magnet Fund uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and Records.

"(ii) establish minimum requirements for agreements, between the grantee and the Capital Magnet Fund, regarding assistance from the Capital Magnet Fund, which shall include—

"(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

"(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

"(B) MISUSE OF FUNDS.—If the Secretary of the Treasury determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

"(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Capital Magnet Fund grant amounts which were not used in accordance with this section;

"(ii) require the grantee to repay the Secretary any amount of the Capital Magnet Fund grant amounts which were not used in accordance with this section;

"(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or

"(iv) terminate any assistance under this section to the grantee.

"(i) PERIODIC REPORTS.—

"(1) IN GENERAL.—The Secretary of the Treasury shall submit a report, on a periodic basis, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the activities to be funded under this section.

"(2) REPORTS AVAILABLE TO PUBLIC.—The Secretary of the Treasury shall make the reports required under paragraph (1) publicly available.

"(j) REGULATIONS.—

"(1) IN GENERAL.—The Secretary of the Treasury shall issue regulations to carry out this section.

"(2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—

"(A) authority for the Secretary to audit, provide for an audit, or otherwise verify an enterprise's activities, to ensure compliance with this section;

Deadline.

"(B) a requirement that the Secretary ensure that the allocation of each enterprise is audited not less than annually to ensure compliance with this section;

"(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee to the Secretary shall be reviewed by an independent certified public accountant in accordance with

Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants; and

"(D) requirements for a process for application to, and selection by, the Secretary for activities to be funded with amounts from the Capital Magnet Fund, which shall provide that—

"(i) funds be fairly distributed to urban, suburban, and rural areas; and

"(ii) selection shall be based upon specific criteria, including a prioritization of funding based upon—

"(I) the ability to use such funds to generate additional investments;

"(II) affordable housing need (taking into account the distinct needs of different regions of the country); and

"(III) ability to obligate amounts and undertake activities so funded in a timely manner.".

SEC. 1132. FINANCIAL EDUCATION AND COUNSELING.

12 USC 1701x note.

(a) GOALS.—Financial education and counseling under this section shall have the goal of—

(1) increasing the financial knowledge and decision making capabilities of prospective homebuyers;

(2) assisting prospective homebuyers to develop monthly budgets, build personal savings, finance or plan for major purchases, reduce their debt, improve their financial stability, and set and reach their financial goals;

(3) helping prospective homebuyers to improve their credit scores by understanding the relationship between their credit histories and their credit scores; and

(4) educating prospective homebuyers about the options available to build savings for short- and long-term goals.

(b) GRANTS.—

(1) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall make grants to eligible organizations to enable such organizations to provide a range of financial education and counseling services to prospective homebuyers.

(2) SELECTION.—The Secretary shall select eligible organizations to receive assistance under this section based on their experience and ability to provide financial education and counseling services that result in documented positive behavioral changes.

(c) ELIGIBLE ORGANIZATIONS.—

(1) IN GENERAL.—For purposes of this section, the term "eligible organization" means an organization that is—

(A) certified in accordance with section 106(e)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)); or

(B) certified by the Office of Financial Education of the Department of the Treasury for purposes of this section, in accordance with paragraph (2).

(2) OFE CERTIFICATION.—To be certified by the Office of Financial Education for purposes of this section, an eligible organization shall be—

(A) a housing counseling agency certified by the Secretary of Housing and Urban Development under section 106(e) of the Housing and Urban Development Act of 1968;

(B) a State, local, or tribal government agency;

(C) a community development financial institution (as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) or a credit union; or

(D) any collaborative effort of entities described in any of subparagraphs (A) through (C).

(d) AUTHORITY FOR PILOT PROJECTS.—

Grants.

(1) IN GENERAL.—The Secretary of the Treasury shall authorize not more than 5 pilot project grants to eligible organizations under subsection (c) in order to—

(A) carry out the services under this section; and

(B) provide such other services that will improve the financial stability and economic condition of low- and moderate-income and low-wealth individuals.

(2) GOAL.—The goal of the pilot project grants under this subsection is to—

(A) identify successful methods resulting in positive behavioral change for financial empowerment; and

(B) establish program models for organizations to carry out effective counseling services.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this section and for the provision of additional financial educational services.

(f) STUDY AND REPORT ON EFFECTIVENESS AND IMPACT.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the effectiveness and impact of the grant program established under this section. Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit a report on the results of such study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) CONTENT OF STUDY.—The study required under paragraph (1) shall include an evaluation of the following:

(A) The effectiveness of the grant program established under this section in improving the financial situation of homeowners and prospective homebuyers served by the grant program.

(B) The extent to which financial education and counseling services have resulted in positive behavioral changes.

(C) The effectiveness and quality of the eligible organizations providing financial education and counseling services under the grant program.

(g) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be necessary to implement and administer the grant program authorized by this section.

12 USC 4511 note.

SEC. 1133. TRANSFER AND RIGHTS OF CERTAIN HUD EMPLOYEES.

Deadline.

(a) TRANSFER.—Each employee of the Department of Housing and Urban Development whose position responsibilities primarily involve the establishment and enforcement of the housing goals under subpart B of part 2 of subtitle A of the Federal Housing

Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 et seq.) shall be transferred to the Federal Housing Finance Agency for employment, not later than the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee described under subsection (a) accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on such effective date, if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—

Payments.

(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Department of Housing and Urban Development and those provided by this section shall be paid by the Director.

Deadline.

(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

Subtitle C—Prompt Corrective Action

SEC. 1141. CRITICAL CAPITAL LEVELS.

(a) IN GENERAL.—Section 1363 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4613) is amended—

(1) by striking "For" and inserting "(a) ENTERPRISES.—FOR"; and

(2) by adding at the end the following new subsection: "(b) FEDERAL HOME LOAN BANKS.—

Regulations.

"(1) IN GENERAL.—For purposes of this subtitle, the critical capital level for each Federal Home Loan Bank shall be such amount of capital as the Director shall, by regulation, require.

"(2) CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.—In establishing the critical capital level under paragraph (1) for the Federal Home Loan Banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.".

Deadline. 12 USC 4613 note.

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the date of enactment of this Act, the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as added by this section) establishing the critical capital level under such section.

SEC. 1142. CAPITAL CLASSIFICATIONS.

(a) IN GENERAL.—Section 1364 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4614) is amended—

(1) in the heading for subsection (a) by striking "In General" and inserting "Enterprises";

(2) in subsection (c)—

(A) by striking "subsection (b)" and inserting "subsection (c)";

(B) by striking "enterprises" and inserting "regulated entities"; and

(C) by striking the last sentence;

(3) by redesignating subsections (c) (as so amended by paragraph (2) of this subsection) and (d) as subsections (d) and (f), respectively;

(4) by striking subsection (b) and inserting the following: "(b) FEDERAL HOME LOAN BANKS.—

"(1) ESTABLISHMENT AND CRITERIA.—For purposes of this subtitle, the Director shall, by regulation— Regulations.

"(A) establish the capital classifications specified under paragraph (2) for the Federal Home Loan Banks;

"(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

"(C) shall classify the Federal Home Loan Banks according to such capital classifications.

"(2) CLASSIFICATIONS.—The capital classifications specified under this paragraph are—

"(A) adequately capitalized;

"(B) undercapitalized;

"(C) significantly undercapitalized; and

"(D) critically undercapitalized.

"(c) DISCRETIONARY CLASSIFICATION.—

"(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify a regulated entity under paragraph (2) if—

"(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or the value of collateral pledged as security has decreased significantly or that the value of the property subject to mortgages held by the regulated entity (or securitized in the case of an enterprise) has decreased significantly;

"(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

"(C) pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

"(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may classify a regulated entity—

"(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

"(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

"(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized."; and

(5) by inserting after subsection (d) (as so redesignated by paragraph (3) of this subsection), the following new subsection:

"(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

"(1) IN GENERAL.—A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

"(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

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

"(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.".

Deadline.

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the date of enactment of this Act, the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as added by this section), relating to capital classifications for the Federal Home Loan Banks.

SEC. 1143. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED REGULATED ENTITIES.

Section 1365 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4615) is amended—

(1) by striking "the enterprise" each place that term appears and inserting "the regulated entity";

(2) by striking "An enterprise" each place that term appears and inserting "A regulated entity";

(3) by striking "an enterprise" each place that term appears and inserting "a regulated entity";

(4) in subsection (a)—

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

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

"(1) REQUIRED MONITORING.—The Director shall—

"(A) closely monitor the condition of any undercapitalized regulated entity;

"(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and

Review.

"(C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section."; and

(C) by adding at the end the following:

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

"(A) the Director has accepted the capital restoration plan of the regulated entity;

"(B) any increase in total assets is consistent with the capital restoration plan; and

"(C) the ratio of tangible equity to assets of the regulated entity increases during the calendar quarter at a

rate sufficient to enable the regulated entity to become adequately capitalized within a reasonable time.

"(5) PRIOR APPROVAL OF ACQUISITIONS AND NEW ACTIVITIES.—An undercapitalized regulated entity shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

"(A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

"(B) the Director determines that the proposed action will further the purpose of this subtitle.";

(5) in subsection (b)—

(A) in the subsection heading, by striking "DISCRETIONARY";

(B) in the matter preceding paragraph (1), by striking "may" and inserting "shall"; and

(C) in paragraph (2)—

(i) by striking "make, in good faith, reasonable efforts necessary to"; and

(ii) by striking the period at the end and inserting "in any material respect."; and

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

"(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 1366 with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.".

SEC. 1144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED REGULATED ENTITIES.

Section 1366 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4616) is amended—

(1) in subsection (a)(2), by striking "undercapitalized enterprise" and inserting "undercapitalized";

(2) by striking "the enterprise" each place that term appears and inserting "the regulated entity";

(3) by striking "An enterprise" each place that term appears and inserting "A regulated entity";

(4) by striking "an enterprise" each place that term appears and inserting "a regulated entity";

(5) in subsection (b)—

(A) in the subsection heading, by striking "DISCRETIONARY SUPERVISORY" and inserting "SPECIFIC";

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

(C) by striking paragraph (6);

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

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

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

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

"(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the regulated entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 1377.

"(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director)."; and

(F) by adding at the end the following:

"(7) OTHER ACTION.—Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the other actions specified in this subsection."; and

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

"(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—A regulated entity that is classified as significantly undercapitalized in accordance with section 1364 may not, without prior written approval by the Director—

"(1) pay any bonus to any executive officer; or

"(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became significantly undercapitalized.".

SEC. 1145. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

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

"SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

"(a) APPOINTMENT OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Director may appoint the Agency as conservator or receiver for a regulated entity in the manner provided under paragraph (2) or (4). All references to the conservator or receiver under this section are references to the Agency acting as conservator or receiver.

"(2) DISCRETIONARY APPOINTMENT.—The Agency may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

"(3) GROUNDS FOR DISCRETIONARY APPOINTMENT OF CONSERVATOR OR RECEIVER.—The grounds for appointing conservator or receiver for any regulated entity under paragraph (2) are as follows:

"(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

"(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

"(i) any violation of any provision of Federal or State law; or

"(ii) any unsafe or unsound practice.

"(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

"(D) CEASE AND DESIST ORDERS.—Any willful violation of a cease and desist order that has become final.

"(E) CONCEALMENT.—Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

"(F) INABILITY TO MEET OBLIGATIONS.—The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

"(G) LOSSES.—The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).

"(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

"(i) cause insolvency or substantial dissipation of assets or earnings; or

"(ii) weaken the condition of the regulated entity.

"(I) CONSENT.—The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

"(J) UNDERCAPITALIZATION.—The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3)), and—

"(i) has no reasonable prospect of becoming adequately capitalized;

"(ii) fails to become adequately capitalized, as required by—

"(I) section 1365(a)(1) with respect to a regulated entity; or

"(II) section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;

"(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

"(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

"(K) CRITICAL UNDERCAPITALIZATION.—The regulated entity is critically undercapitalized, as defined in section 1364(a)(4).

"(L) MONEY LAUNDERING.—The Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code. Notification.

"(4) MANDATORY RECEIVERSHIP.—

"(A) IN GENERAL.—The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

"(i) the assets of the regulated entity are, and during the preceding 60 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or

"(ii) the regulated entity is not, and during the preceding 60 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

Deadlines.

"(B) PERIODIC DETERMINATION REQUIRED FOR CRITICALLY UNDERCAPITALIZED REGULATED ENTITY.—If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

"(i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and

"(ii) at least once during each succeeding 30-calendar day period.

"(C) DETERMINATION NOT REQUIRED IF RECEIVERSHIP ALREADY IN PLACE.—Subparagraph (B) does not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

"(D) RECEIVERSHIP TERMINATES CONSERVATORSHIP.—The appointment of the Agency as receiver of a regulated entity under this section shall immediately terminate any conservatorship established for the regulated entity under this title.

"(5) JUDICIAL REVIEW.—

Deadline.

"(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States district court for the judicial district in which the home office of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

"(B) REVIEW.—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

"(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

"(7) AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

"(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

"(1) RULEMAKING AUTHORITY OF THE AGENCY.—The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships. Regulations.

"(2) GENERAL POWERS.—

"(A) SUCCESSOR TO REGULATED ENTITY.—The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

"(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

"(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

"(B) OPERATE THE REGULATED ENTITY.—The Agency may, as conservator or receiver—

"(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

"(ii) collect all obligations and money due the regulated entity;

"(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver;

"(iv) preserve and conserve the assets and property of the regulated entity; and

"(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

"(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

"(D) POWERS AS CONSERVATOR.—The Agency may, as conservator, take such action as may be—

"(i) necessary to put the regulated entity in a sound and solvent condition; and

"(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

"(E) ADDITIONAL POWERS AS RECEIVER.—In any case in which the Agency is acting as receiver, the Agency shall place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity in such manner as the Agency deems appropriate, including through the sale of assets, the transfer of assets to a limited-life regulated entity established under subsection (i), or the exercise of any other rights or privileges granted to the Agency under this paragraph.

"(F) ORGANIZATION OF NEW ENTERPRISE.—The Agency may, as receiver for an enterprise, organize a successor enterprise that will operate pursuant to subsection (i).

"(G) TRANSFER OR SALE OF ASSETS AND LIABILITIES.—The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale.

"(H) PAYMENT OF VALID OBLIGATIONS.—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver, in accordance with the prescriptions and limitations of this section.

"(I) SUBPOENA AUTHORITY.—

"(i) IN GENERAL.—

"(I) AGENCY AUTHORITY.—The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

"(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power under this subparagraph, in the same manner as such provisions apply under that section.

"(ii) SUBPOENA.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

"(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379B.

"(J) INCIDENTAL POWERS.—The Agency may, as conservator or receiver—

"(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

"(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

"(K) OTHER PROVISIONS.—

"(i) SHAREHOLDERS AND CREDITORS OF FAILED REGULATED ENTITY.—Notwithstanding any other provision of law, the appointment of the Agency as receiver for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all

rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

"(ii) ASSETS OF REGULATED ENTITY.—Notwithstanding any other provision of law, for purposes of this section, the charter of a regulated entity shall not be considered an asset of the regulated entity.

"(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

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

"(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall— Publication. Deadline.

"(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the date of publication of such notice; and

"(ii) republish such notice approximately 1 month and 2 months, respectively, after the date of publication under clause (i).

"(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity— Notice.

"(i) at the last address of the creditor appearing in such books; or

"(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity, within 30 days after the discovery of such name and address. Deadline.

"(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

"(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

"(A) DETERMINATION PERIOD.—

"(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim. Deadline. Notification.

"(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

"(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any

claim is mailed to the last address of the claimant which appears—

"(I) on the books of the regulated entity;

"(II) in the claim filed by the claimant; or

"(III) in documents submitted in proof of the claim.

"(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

"(I) a statement of each reason for the disallowance; and

"(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

"(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

"(C) DISALLOWANCE OF CLAIMS FILED AFTER FILING PERIOD.—Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

"(D) AUTHORITY TO DISALLOW CLAIMS.—

"(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

"(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

"(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

"(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

"(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

"(I) any extension of credit from any Federal Reserve Bank, Federal Home Loan Bank, or the United States Treasury; or

"(II) any security interest in the assets of the regulated entity securing any such extension of credit.

"(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the determination of the Agency under subparagraph (D) to disallow a claim.

"(F) LEGAL EFFECT OF FILING.—

"(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of

a claim with the receiver shall constitute a commencement of an action.

"(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

"(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

"(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of— Deadline.

"(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

"(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

"(B) STATUTE OF LIMITATIONS.—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

"(7) REVIEW OF CLAIMS.—

"(A) OTHER REVIEW PROCEDURES.—

"(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

"(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

"(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Agency may establish both binding and nonbinding processes under this subparagraph, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

"(B) CONSIDERATION OF INCENTIVES.—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

"(8) EXPEDITED DETERMINATION OF CLAIMS.—

"(A) ESTABLISHMENT REQUIRED.—The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who— Procedures.

"(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

"(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

Deadline.

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

"(i) determine—

"(I) whether to allow or disallow such claim; or

"(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

Notification.

"(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

"(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the date of appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

"(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

"(ii) the date on which the Agency denies the claim.

Deadline.

"(D) STATUTE OF LIMITATIONS.—If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

"(E) LEGAL EFFECT OF FILING.—

"(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

"(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

"(9) PAYMENT OF CLAIMS.—

"(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent that funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

"(i) allowed by the receiver;

"(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

"(iii) determined by the final judgment of any court of competent jurisdiction.

"(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing and executed by an authorized officer or representative of the regulated entity.

"(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

"(D) RULEMAKING AUTHORITY OF THE DIRECTOR.—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of the regulated entity, following satisfaction by the receiver of the principal amount of all creditor claims.

"(10) SUSPENSION OF LEGAL ACTIONS.—

"(A) IN GENERAL.—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

"(i) 45 days, in the case of any conservator; and

"(ii) 90 days, in the case of any receiver.

"(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

"(11) ADDITIONAL RIGHTS AND DUTIES.—

"(A) PRIOR FINAL ADJUDICATION.—The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

"(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Agency as conservator or receiver—

"(i) shall have all of the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

"(ii) shall not be required to post any bond in order to pursue such remedies.

"(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the

possession of the receiver, or upon the charter, of a regulated entity for which the Agency has been appointed receiver.

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

"(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets or charter of any regulated entity for which the Agency has been appointed receiver; or

"(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

"(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which—

"(i) maximizes the net present value return from the sale or disposition of such assets;

"(ii) minimizes the amount of any loss realized in the resolution of cases; and

"(iii) ensures adequate competition and fair and consistent treatment of offerors.

"(12) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

"(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

"(i) in the case of any contract claim, the longer of—

"(I) the 6-year period beginning on the date on which the claim accrues; or

"(II) the period applicable under State law; and

"(ii) in the case of any tort claim, the longer of—

"(I) the 3-year period beginning on the date on which the claim accrues; or

"(II) the period applicable under State law.

"(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

Effective date.

"(i) the date of the appointment of the Agency as conservator or receiver; or

"(ii) the date on which the cause of action accrues.

"(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

"(A) IN GENERAL.—In the case of any tort claim described under clause (ii) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitations applicable under State law.

"(B) CLAIMS DESCRIBED.—A tort claim referred to under clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

"(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

"(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

"(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

"(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

"(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date on which the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

"(15) FRAUDULENT TRANSFERS.—

"(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of an entity-affiliated party, or any person determined by the conservator or receiver to be a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

"(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

"(i) the initial transferee of such transfer or the entity-affiliated party or person for whose benefit such transfer was made; or

"(ii) any immediate or mediate transferee of any such initial transferee.

"(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The conservator or receiver may not recover under subparagraph (B) from—

"(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

"(ii) any immediate or mediate good faith transferee of such transferee.

"(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

"(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the conservator or receiver under the control of the court, and appointing a trustee to hold such assets.

Applicability.

"(17) STANDARDS OF PROOF.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

"(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CONSERVATOR OR RECEIVER.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the conservator or receiver for the breach of an agreement executed or approved in writing by the conservator or receiver after the date of its appointment, shall be paid as an administrative expense of the conservator or receiver.

"(B) NO LIMITATION OF POWER.—Nothing in this paragraph shall be construed to limit the power of the conservator or receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

"(19) GENERAL EXCEPTIONS.—

"(A) LIMITATIONS.—The rights of the conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

"(B) MORTGAGES HELD IN TRUST.—

"(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed to expand or otherwise affect the authority of any regulated entity.

"(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement

creating such trust, custodial, or other agency arrangement.

"(iii) LIABILITY OF CONSERVATOR OR RECEIVER.—The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with the regulations of the Director.

"(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

"(1) IN GENERAL.—Unsecured claims against a regulated entity, or the receiver therefor, that are proven to the satisfaction of the receiver shall have priority in the following order:

"(A) Administrative expenses of the receiver.

"(B) Any other general or senior liability of the regulated entity (which is not a liability described under subparagraph (C) or (D).

"(C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).

"(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

"(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

"(A) the Director determines that such action is necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

"(B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (e)(2).

"(3) DEFINITION.—As used in this subsection, the term 'administrative expenses of the receiver' includes—

"(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a failed regulated entity or liquidating or otherwise resolving the affairs of a failed regulated entity; and

"(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

"(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

"(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

"(A) to which such regulated entity is a party;

"(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

"(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

"(2) TIMING OF REPUDIATION.—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

"(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

"(A) IN GENERAL.—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

"(i) limited to actual direct compensatory damages; and

"(ii) determined as of—

"(I) the date of the appointment of the conservator or receiver; or

"(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

"(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term 'actual direct compensatory damages' shall not include—

"(i) punitive or exemplary damages;

"(ii) damages for lost profits or opportunity; or

"(iii) damages for pain and suffering.

"(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

"(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

"(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

"(4) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.—

"(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

"(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

"(i) be entitled to the contractual rent accruing before the later of the date on which—

"(I) the notice of disaffirmance or repudiation is mailed; or

"(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

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

"(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

"(5) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.—

"(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

"(i) treat the lease as terminated by such repudiation; or

"(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

"(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of subparagraph (A)—

"(i) the lessee—

"(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and Payments.

"(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

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

"(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

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

"(i) treat the contract as terminated by such repudiation; or

"(ii) remain in possession of such real property.

"(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of subparagraph (A)—

"(i) the purchaser—

Payments.

"(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

"(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

"(ii) the conservator or receiver shall—

"(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

"(II) deliver title to the purchaser in accordance with the provisions of the contract; and

"(III) have no obligation under the contract other than the performance required under subclause (II).

"(C) ASSIGNMENT AND SALE ALLOWED.—

"(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

"(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

"(7) SERVICE CONTRACTS.—

"(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or receiver shall be—

"(i) a claim to be paid in accordance with subsections (b) and (e); and

"(ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

"(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

Payments.

"(i) the other party shall be paid under the terms of the contract for the services performed; and

"(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

"(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the conservator or receiver of services referred to under subparagraph (B)

in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

"(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

"(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10), and notwithstanding any other provision of this title (other than subsection (b)(9)(B) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

"(i) any right of that person to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

"(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts; or

"(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

"(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (b)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

"(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

"(i) IN GENERAL.—Notwithstanding paragraph (11), or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

"(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

"(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection the following definitions shall apply:

"(i) QUALIFIED FINANCIAL CONTRACT.—The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

"(III) means any option entered into on a national securities exchange relating to foreign currencies;

"(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(V) means any margin loan;

"(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) means any combination of the agreements or transactions referred to in this clause;

"(VIII) means any option to enter into any agreement or transaction referred to in this clause;

"(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

"(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right,

or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date on which the contract is entered into, including a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (including a reverse repurchase agreement)—

"(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined for purposes of this clause as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the appropriate Federal banking authority), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor

thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

"(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

"(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

"(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type

that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

"(III) any combination of agreements or transactions referred to in this clause;

"(IV) any option to enter into any agreement or transaction referred to in this clause;

"(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

"(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this section, any other Federal law, or the law of any State (other than paragraph (10) of this subsection and subsection (b)(9)(B)), no person shall be stayed or prohibited from exercising—

"(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

"(ii) any right under any security agreement or arrangement or other credit enhancement relating to 1 or more such qualified financial contracts; or

"(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10), or to disaffirm or repudiate any such contract in accordance with subsection (d)(1).

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the status of such party as a nondefaulting party.

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

"(A) transfer to 1 person—

"(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

"(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the

claims of general unsecured creditors of such regulated entity);

"(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

"(iv) all property securing, or any other credit enhancement for any contract described in clause (i), or any claim described in clause (ii) or (iii) under any such contract; or

"(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

"(10) NOTIFICATION OF TRANSFER.—

Deadline. Contracts.

"(A) IN GENERAL.—The conservator or receiver shall notify any person that is a party to a contract or transfer by 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship, if—

"(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity; and

"(ii) such transfer includes any qualified financial contract.

"(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

Effective dates.

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or under section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

"(I) until 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or under section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this paragraph, the conservator or receiver of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated

entity, if the conservator or receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

"(C) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term 'business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the regulated entity in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

"(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

"(13) AUTHORITY TO ENFORCE CONTRACTS.—

"(A) IN GENERAL.—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of, or the exercise of rights or powers by, a conservator or receiver, the conservator or receiver may enforce any contract, other than a contract for liability insurance for a director or officer, or a contract or a regulated entity bond, entered into by the regulated entity.

"(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract for an officer or director, or regulated entity bond under other applicable law.

"(C) CONSENT REQUIREMENT.—

"(i) IN GENERAL.—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of— Effective dates.

"(I) 45 days after the date of appointment of a conservator; or

"(II) 90 days after the date of appointment of a receiver.

"(ii) EXCEPTIONS.—This subparagraph shall not—

"(I) apply to a contract for liability insurance for an officer or director;

"(II) apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and

"(III) be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

"(14) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

"(15) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

"(A) any extension of credit from any Federal Home Loan Bank or Federal Reserve Bank to any regulated entity; or

"(B) any security interest in the assets of the regulated entity securing any such extension of credit.

"(e) VALUATION OF CLAIMS IN DEFAULT.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

"(2) MAXIMUM LIABILITY.—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall be not more than the amount that such claimant would have received if the Agency had liquidated the assets and liabilities of the regulated entity without exercising the authority of the Agency under subsection (i).

"(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

"(g) LIABILITY OF DIRECTORS AND OFFICERS.—

"(1) IN GENERAL.—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action described in paragraph (2) brought by, on behalf of, or at the request or direction of the Agency, and prosecuted wholly or partially for the benefit of the Agency—

"(A) acting as conservator or receiver of such regulated entity; or

"(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator.

"(2) ACTIONS ADDRESSED.—Paragraph (1) applies in any civil action for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct, as such terms are defined and determined under applicable State law. Applicability.

"(3) NO LIMITATION.—Nothing in this subsection shall impair or affect any right of the Agency under other applicable law.

"(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

"(i) LIMITED-LIFE REGULATED ENTITIES.—

"(1) ORGANIZATION.—

"(A) PURPOSE.—The Agency, as receiver appointed pursuant to subsection (a)—

"(i) may, in the case of a Federal Home Loan Bank, organize a limited-life regulated entity with those powers and attributes of the Federal Home Loan Bank in default or in danger of default as the Director determines necessary, subject to the provisions of this subsection, and the Director shall grant a temporary charter to that limited-life regulated entity, and that limited-life regulated entity may operate subject to that charter; and

"(ii) shall, in the case of an enterprise, organize a limited-life regulated entity with respect to that enterprise in accordance with this subsection.

"(B) AUTHORITIES.—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

"(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the regulated entity to the limited-life regulated entity;

"(ii) purchase such assets of the regulated entity that is in default, or in danger of default as the Agency may, in its discretion, determine to be appropriate; and

"(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

"(2) CHARTER AND ESTABLISHMENT.—

"(A) TRANSFER OF CHARTER.—

"(i) FANNIE MAE.—If the Agency is appointed as receiver for the Federal National Mortgage Association, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by

operation of law and immediately upon its organization—

"(I) succeed to the charter of the Federal National Mortgage Association, as set forth in the Federal National Mortgage Association Charter Act; and

"(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal National Mortgage Association is subject, except as otherwise provided in this subsection.

"(ii) FREDDIE MAC.—If the Agency is appointed as receiver for the Federal Home Loan Mortgage Corporation, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

"(I) succeed to the charter of the Federal Home Loan Mortgage Corporation, as set forth in the Federal Home Loan Mortgage Corporation Charter Act; and

"(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal Home Loan Mortgage Corporation is subject, except as otherwise provided in this subsection.

"(B) INTERESTS IN AND ASSETS AND OBLIGATIONS OF REGULATED ENTITY IN DEFAULT.—Notwithstanding subparagraph (A) or any other provision of law—

"(i) a limited-life regulated entity shall assume, acquire, or succeed to the assets or liabilities of a regulated entity only to the extent that such assets or liabilities are transferred by the Agency to the limited-life regulated entity in accordance with, and subject to the restrictions set forth in, paragraph (1)(B);

"(ii) a limited-life regulated entity shall not assume, acquire, or succeed to any obligation that a regulated entity for which a receiver has been appointed may have to any shareholder of the regulated entity that arises as a result of the status of that person as a shareholder of the regulated entity; and

"(iii) no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the Agency has been appointed receiver for the regulated entity and a limited-life regulated entity succeeds to the charter pursuant to subparagraph (A).

"(C) LIMITED-LIFE REGULATED ENTITY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

"(D) MANAGEMENT.—Upon its establishment, a limited-life regulated entity shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

"(E) BYLAWS.—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

"(3) CAPITAL STOCK.—

"(A) NO AGENCY REQUIREMENT.—The Agency is not required to pay capital stock into a limited-life regulated entity or to issue any capital stock on behalf of a limited-life regulated entity established under this subsection.

"(B) AUTHORITY.—If the Director determines that such action is advisable, the Agency may cause capital stock or other securities of a limited-life regulated entity established with respect to an enterprise to be issued and offered for sale, in such amounts and on such terms and conditions as the Director may determine, in the discretion of the Director.

"(4) INVESTMENTS.—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal reserve bank.

"(5) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

"(6) WINDING UP.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), not later than 2 years after the date of its organization, the Agency shall wind up the affairs of a limited-life regulated entity. Deadline.

"(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of a limited-life regulated entity for 3 additional 1-year periods.

"(C) TERMINATION OF STATUS AS LIMITED-LIFE REGULATED ENTITY.—

"(i) IN GENERAL.—Upon the sale by the Agency of 80 percent or more of the capital stock of a limited-life regulated entity, as defined in clause (iv), to 1 or more persons (other than the Agency)—

"(I) the status of the limited-life regulated entity as such shall terminate; and

"(II) the entity shall cease to be a limited-life regulated entity for purposes of this subsection.

"(ii) DIVESTITURE OF REMAINING STOCK, IF ANY.—

"(I) IN GENERAL.—Not later than 1 year after the date on which the status of a limited-life regulated entity is terminated pursuant to clause (i), the Agency shall sell to 1 or more persons (other than the Agency) any remaining capital stock of the former limited-life regulated entity. Deadline.

"(II) EXTENSION AUTHORIZED.—The Director may extend the period referred to in subclause (I) for not longer than an additional 2 years, if the Director determines that such action would be in the public interest.

"(iii) SAVINGS CLAUSE.—Notwithstanding any provision of law, other than clause (ii), the Agency shall not be required to sell the capital stock of an enterprise or a limited-life regulated entity established with respect to an enterprise.

"(iv) APPLICABILITY.—This subparagraph applies only with respect to a limited-life regulated entity that is established with respect to an enterprise.

"(7) TRANSFER OF ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—

"(i) TRANSFER OF ASSETS AND LIABILITIES.—The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with and subject to the restrictions of paragraph (1).

"(ii) SUBSEQUENT TRANSFERS.—At any time after the establishment of a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of the regulated entity in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

"(iii) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities of a regulated entity in default or in danger of default to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

"(iv) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Agency shall treat all creditors of a regulated entity in default or in danger of default that are similarly situated under subsection (c)(1) in a similar manner in exercising the authority of the Agency under this subsection to transfer any assets or liabilities of the regulated entity to the limited-life regulated entity established with respect to such regulated entity, except that the Agency may take actions (including making payments) that do not comply with this clause, if—

"(I) the Director determines that such actions are necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

"(II) all creditors that are similarly situated under subsection (c)(1) receive not less than the amount provided in subsection (e)(2).

"(v) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a regulated entity that are transferred to, or assumed by, a limited-life regulated entity may not exceed the aggregate amount of assets

of the regulated entity that are transferred to, or purchased by, the limited-life regulated entity.

"(8) REGULATIONS.—The Agency may promulgate such regulations as the Agency determines to be necessary or appropriate to implement this subsection.

"(9) POWERS OF LIMITED-LIFE REGULATED ENTITIES.—

"(A) IN GENERAL.—Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

"(i) the Agency may—

"(I) remove the directors of a limited-life regulated entity;

"(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity; and

"(III) indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

"(ii) the board of directors of a limited-life regulated entity—

"(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

"(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

"(B) STAY OF JUDICIAL ACTION.—Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of not longer than 45 days, at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

"(10) NO FEDERAL STATUS.—

"(A) AGENCY STATUS.—A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

"(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

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

"(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

"(11) AUTHORITY TO OBTAIN CREDIT.—

"(A) IN GENERAL.—A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

"(B) INABILITY TO OBTAIN CREDIT.—If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity—

"(i) with priority over any or all of the obligations of the limited-life regulated entity;

"(ii) secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien; or

"(iii) secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

"(C) LIMITATIONS.—

"(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a limited-life regulated entity that is secured by a senior or equal lien on property of the limited-life regulated entity that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an enterprise) only if—

"(I) the limited-life regulated entity is unable to otherwise obtain such credit or issue such debt; and

"(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

"(D) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

"(12) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

"(j) OTHER AGENCY EXEMPTIONS.—

"(1) APPLICABILITY.—The provisions of this subsection shall apply with respect to the Agency in any case in which the Agency is acting as a conservator or a receiver.

"(2) TAXATION.—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

"(3) PROPERTY PROTECTION.—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

"(4) PENALTIES AND FINES.—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

"(k) PROHIBITION OF CHARTER REVOCATION.—In no case may the receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) in section 1368 (12 U.S.C. 4618)—

(A) by striking "an enterprise" each place that term appears and inserting "a regulated entity"; and

(B) by striking "the enterprise" each place that term appears and inserting "the regulated entity";

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

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

(A) by striking "an enterprise" each place that term appears and inserting "a regulated entity"; and

(B) in subsection (a)(1), by striking "An enterprise" and inserting "A regulated entity"; and

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

Subtitle D—Enforcement Actions

SEC. 1151. CEASE AND DESIST PROCEEDINGS.

Section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

"(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS.—

"(1) AUTHORITY OF DIRECTOR.—If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice

in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

"(2) LIMITATION.—The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

"(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).";

(2) in subsection (c)—

(A) in paragraph (1), by inserting before the period at the end the following: ", unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order"; and

(B) in paragraph (2)—

(i) by striking "or director" and inserting "director, or entity-affiliated party"; and

(ii) by inserting "or entity-affiliated party" before "consents";

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

(A) by striking "the enterprise" each place that term appears and inserting "the regulated entity";

(B) by striking "an enterprise" each place that term appears and inserting "a regulated entity"; and

(C) by striking "conduct" each place that term appears and inserting "practice";

(4) in subsection (d)—

(A) in the matter preceding paragraph (1)—

(i) by striking "or director" and inserting "director, or entity-affiliated party"; and

(ii) by inserting "to require a regulated entity or entity-affiliated party" after "includes the authority";

(B) in paragraph (1)—

(i) by striking "to require an executive officer or a director to"; and

(ii) by striking "loss" and all that follows through "person" and inserting "loss, if";

(iii) in subparagraph (A), by inserting "such entity or party or finance facility" before "was"; and

(iv) by striking subparagraph (B) and inserting the following:

"(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;"; and

(C) in paragraph (4), by inserting "loan or" before "asset";

(5) in subsection (e), by inserting "or entity-affiliated party"—

(A) before "or any executive"; and

(B) before the period at the end; and

(6) in subsection (f)—

(A) by striking "enterprise" and inserting "regulated entity, finance facility,"; and

(B) by striking "or director" and inserting "director, or entity-affiliated party".

SEC. 1152. TEMPORARY CEASE AND DESIST PROCEEDINGS.

Section 1372 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4632) is amended—

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

"(a) GROUNDS FOR ISSUANCE.—

"(1) IN GENERAL.—If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may—

"(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

"(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

"(2) ADDITIONAL REQUIREMENTS.—An order issued under paragraph (1) may include any requirement authorized under subsection 1371(d).";

(2) in subsection (b)—

(A) by striking "or director" and inserting "director, or entity-affiliated party"; and

(B) by striking "enterprise" each place that term appears and inserting "regulated entity";

(3) in subsection (c), by striking "enterprise" each place that term appears and inserting "regulated entity";

(4) in subsection (d)—

(A) by striking "or director" each place that term appears and inserting "director, or entity-affiliated party"; and

(B) by striking "An enterprise" and inserting "A regulated entity"; and

(5) in subsection (e)—

(A) by striking "request the Attorney General of the United States to"; and

(B) by striking "or may, under the direction and control of the Attorney General, bring such action".

SEC. 1153. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Part 1 of subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.) is amended—

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

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

12 USC 4636a.

"SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

"(a) AUTHORITY TO ISSUE ORDER.—

"(1) IN GENERAL.—The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Office of Finance a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

"(2) APPLICABILITY.—A party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that—

"(A) that party, officer, or director has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease and desist order which has become final;

"(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

"(IV) any written agreement between such regulated entity and the Director;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

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

"(i) such regulated entity or business institution has suffered or will probably suffer financial loss or other damage; or

"(ii) such party has received financial gain or other benefit; and

"(C) the violation, practice, or breach described in subparagraph (A)—

"(i) involves personal dishonesty on the part of such party; or

"(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

"(b) SUSPENSION ORDER.—

"(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

"(A) determines that such action is necessary for the protection of the regulated entity; and

"(B) serves such party with written notice of the order.

"(2) EFFECTIVE PERIOD.—Any order issued under this subsection—

"(A) shall become effective upon service; and

"(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

"(i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

"(ii) the effective date of an order issued under subsection (b).

"(3) COPY OF ORDER.—If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

"(c) NOTICE, HEARING, AND ORDER.—

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

"(2) TIMING OF HEARING.—A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

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

"(B) the Attorney General of the United States.

"(3) CONSENT.—Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

"(4) ISSUANCE OF ORDER OF SUSPENSION.—The Director may issue an order under this section, as the Director may deem appropriate, if—

"(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

"(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

"(5) EFFECTIVENESS OF ORDER.—Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified,

terminated, or set aside by action of the Director or a reviewing court.

"(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

"(1) participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;

"(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

"(3) violate any voting agreement previously approved by the Director; or

"(4) vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

"(e) INDUSTRY-WIDE PROHIBITION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

"(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Office of Finance described in the written consent. Any such consent shall be publicly disclosed.

"(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

"(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

Deadline.

"(g) STAY OF SUSPENSION AND PROHIBITION OF ENTITY-AFFILIATED PARTY.—Not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

"(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.—

"(1) SUSPENSION OR PROHIBITION.—

"(A) IN GENERAL.—Whenever any entity-affiliated party is charged in any information, indictment, or complaint,

with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

"(B) PROVISIONS APPLICABLE TO NOTICE.—

"(i) COPY.—A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

"(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

"(2) REMOVAL OR PROHIBITION.—

"(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

"(B) PROVISIONS APPLICABLE TO ORDER.—

"(i) COPY.—A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

"(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a) or (b).

"(iii) EFFECTIVE PERIOD.—Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

"(3) AUTHORITY OF REMAINING BOARD MEMBERS.—

"(A) IN GENERAL.—If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such

board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

"(B) APPOINTMENT OF TEMPORARY DIRECTORS.—If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

"(4) HEARING REGARDING CONTINUED PARTICIPATION.—

"(A) IN GENERAL.—Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the entity-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

"(B) TIMING AND FORM OF HEARING.—Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the entity-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

Deadline. Notification.

"(C) DETERMINATION.—Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

"(5) RULES.—The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.".

(b) CONFORMING AMENDMENTS.—

(1) SAFETY AND SOUNDNESS ACT.—Subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

12 USC 4517.

(A) in section 1317(f), by striking "section 1379B" and inserting "section 1379D";

12 USC 4633.

(B) in section 1373(a)—

(i) in paragraph (1), by striking "or 1376(c)" and inserting ", 1376(c), or 1377";

(ii) in paragraph (2), by inserting "or 1377" after" 1371"; and

(iii) in paragraph (4), by inserting "or removal or prohibition" after "cease and desist"; and

(C) in section 1374(a)—

(i) by striking "or 1376" and inserting "1313B, 1376, or 1377"; and

(ii) by striking "such section" and inserting "this title".

(2) FANNIE MAE CHARTER ACT.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended in the second sentence, by striking "The" and inserting "Except to the extent that action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the".

(3) FREDDIE MAC CHARTER ACT.—Section 303(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended, in the second sentence, by striking "The" and inserting "Except to the extent action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the".

SEC. 1154. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4635) is amended—

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

"(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order."; and

(2) in subsection (b), by striking "or 1376" and inserting "1313B, 1376, or 1377".

SEC. 1155. CIVIL MONEY PENALTIES.

Section 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4636) is amended—

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

"(a) IN GENERAL.—The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 1345(a).";

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

"(b) AMOUNT OF PENALTY.—

"(1) FIRST TIER.—A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $10,000 for each day during which a violation continues, if such regulated entity or party—

"(A) violates any provision of this title, the authorizing statutes, or any order, condition, rule, or regulation under this title or any authorizing statute;

"(B) violates any final or temporary order or notice issued pursuant to this title;

"(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

"(D) violates any written agreement between the regulated entity and the Director.

"(2) SECOND TIER.—Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which a violation, practice, or breach continues, if—

"(A) the regulated entity or entity-affiliated party, respectively—

"(i) commits any violation described in any subparagraph of paragraph (1);

"(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

"(iii) breaches any fiduciary duty; and

"(B) the violation, practice, or breach—

"(i) is part of a pattern of misconduct;

"(ii) causes or is likely to cause more than a minimal loss to the regulated entity; or

"(iii) results in pecuniary gain or other benefit to such party.

"(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

"(A) knowingly—

"(i) commits any violation described in any subparagraph of paragraph (1);

"(ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

"(iii) breaches any fiduciary duty; and

"(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

"(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

"(A) in the case of any entity-affiliated party, an amount not to exceed $2,000,000; and

"(B) in the case of any regulated entity, $2,000,000.";

(3) in subsection (c)—

(A) by striking "enterprise" each place that term appears and inserting "regulated entity";

(B) by inserting "or entity-affiliated party" before "in writing"; and

(C) by inserting "or entity-affiliated party" before "has been given";

(4) in subsection (d)—

(A) by striking "or director" each place such term appears and inserting "director, or entity-affiliated party";

(B) by striking "an enterprise" and inserting "a regulated entity";

(C) by striking "the enterprise" and inserting "the regulated entity";

(D) by striking "request the Attorney General of the United States to";

(E) by inserting ", or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located," after "District of Columbia";

(F) by striking ", or may, under the direction and control of the Attorney General of the United States, bring such an action"; and

(G) by striking "and section 1374"; and

(5) in subsection (g), by striking "An enterprise" and inserting "A regulated entity".

SEC. 1156. CRIMINAL PENALTY.

(a) IN GENERAL.—Subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377, as added by this Act, the following:

"SEC. 1378. CRIMINAL PENALTY. 12 USC 4636b.

"Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) in section 1379 (as so designated by this Act)— 12 USC 4637.

(A) by striking "an enterprise" and inserting "a regulated entity"; and

(B) by striking "the enterprise" and inserting "the regulated entity";

(2) in section 1379A (as so designated by this Act), by striking "an enterprise" and inserting "a regulated entity"; 12 USC 4638.

(3) in section 1379B(c) (as so designated by this Act), by striking "enterprise" and inserting "regulated entity"; and 12 USC 4639.

(4) in section 1379D (as so designated by this Act), by striking "enterprise" and inserting "regulated entity". 12 USC 4641.

SEC. 1157. NOTICE AFTER SEPARATION FROM SERVICE.

Section 1379 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4637), as so designated by this Act, is amended—

(1) by striking "2-year" and inserting "6-year";

(2) by striking "a director or executive officer of an enterprise" and inserting "an entity-affiliated party";

(3) by striking "director or officer" each place that term appears and inserting "entity-affiliated party"; and

(4) by striking "enterprise." and inserting "regulated entity.".

SEC. 1158. SUBPOENA AUTHORITY.

(a) IN GENERAL.—Section 1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking "administrative";

(ii) by inserting ", examination, or investigation" after "proceeding";

(iii) by striking "subtitle" and inserting "title"; and

(iv) by inserting "or any designated representative thereof, including any person designated to conduct any hearing under this subtitle" after "Director"; and

(B) in paragraph (4), by striking "issued by the Director";

(2) in subsection (b), by inserting "or in any territory or other place subject to the jurisdiction of the United States" after "State";

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

"(c) ENFORCEMENT.—

"(1) IN GENERAL.—The Director, or any party to proceedings under this subtitle, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

"(2) POWER OF COURT.—The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1).";

(4) in subsection (d), by inserting "enterprise-affiliated party" before "may allow"; and

(5) by adding at the end the following:

"(e) PENALTIES.—A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

"(1) attend court;

"(2) testify in court;

"(3) answer any lawful inquiry; or

"(4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.".

Subtitle E—General Provisions

SEC. 1161. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO 1992 ACT.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act, is amended—

(1) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) by striking "(a) OFFICE PERSONNEL.—The" and inserting "(a) IN GENERAL.—Subject to title III of the Federal Housing Finance Regulatory Reform Act of 2008, the"; and

(ii) by striking "the Office" each place that term appears and inserting "the Agency";

(B) in subsection (c), by striking "the Office" and inserting "the Agency";

(C) in subsection (e), by striking "the Office" and inserting "the Agency";

(D) by striking subsection (d) and redesignating subsection (e) as subsection (d); and

(E) by striking subsection (f);

(2) in section 1319A (12 U.S.C. 4520)—

(A) by striking "(a) IN GENERAL.—"; and

(B) by striking subsection (b);

(3) in section 1364(c) (12 U.S.C. 4614(c)), by striking the last sentence;

(4) by striking section 1383 (12 U.S.C. 1451 note);

(5) in each of sections 1319D, 1319E, and 1319F (12 U.S.C. 4523, 4524, 4525) by striking "the Office" each place that term appears and inserting "the Agency"; and

(6) in each of sections 1319B and 1369(a)(3) (12 U.S.C. 4521, 4619(a)(3)), by striking "Committee on Banking, Finance and Urban Affairs" each place such term appears and inserting "Committee on Financial Services".

(b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—The Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) is amended—

(1) in each of sections 303(c)(2) (12 U.S.C. 1718(c)(2)), 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C. 1723a(k)(1)), by striking "Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" each place that term appears, and inserting "Director of the Federal Housing Finance Agency"; and

(2) in section 309—

(A) in subsection (m) (12 U.S.C. 1723a(m))—

(i) in paragraph (1), by striking "to the Secretary, in a form determined by the Secretary" and inserting "to the Director of the Federal Housing Finance Agency, in a form determined by the Director"; and

(ii) in paragraph (2), by striking "to the Secretary, in a form determined by the Secretary" and inserting "to the Director of the Federal Housing Finance Agency, in a form determined by the Director";

(B) in subsection (n) (12 U.S.C. 1723a(n))—

(i) in paragraph (1), by striking "and the Secretary" and inserting "and the Director of the Federal Housing Finance Agency"; and

(ii) in paragraph (2), by striking "Secretary" each place that term appears and inserting "Director of the Federal Housing Finance Agency"; and

(C) in paragraph (3)(B), by striking "Secretary" and inserting "Director of the Federal Housing Finance Agency".

(c) AMENDMENTS TO FREDDIE MAC CHARTER ACT.—The Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.) is amended—

(1) in each of sections 303(b)(2) (12 U.S.C. 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and section 307(c)(1) (12 U.S.C. 1456(c)(1)), by striking "Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" each place that term appears, and inserting "Director of the Federal Housing Finance Agency";

(2) in section 306 (12 U.S.C. 1455)—

(A) in subsection (c)(2), by inserting "the" after "Secretary of";

(B) in subsection (i)—

(i) by striking "section 1316(c)" and inserting "section 306(c)"; and

(ii) by striking "section 106" and inserting "section 1316"; and

(C) in subsection (j)(2), by striking "of substantially" and inserting "or substantially"; and

(3) in section 307 (12 U.S.C. 1456)—

(A) in subsection (e)—

(i) in paragraph (1), by striking "to the Secretary, in a form determined by the Secretary" and inserting "to the Director of the Federal Housing Finance Agency, in a form determined by the Director"; and

(ii) in paragraph (2), by striking "to the Secretary, in a form determined by the Secretary" and inserting "to the Director of the Federal Housing Finance Agency, in a form determined by the Director"; and

(B) in subsection (f)—

(i) in paragraph (1), by striking "and the Secretary" and inserting "and the Director of the Federal Housing Finance Agency";

(ii) in paragraph (2), by striking "the Secretary" each place that term appears and inserting "the Director of the Federal Housing Finance Agency"; and

(iii) in paragraph (3)(B), by striking "Secretary" and inserting "Director of the Federal Housing Finance Agency".

(d) AMENDMENT TO TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking "Office of Federal Housing Enterprise Oversight" and inserting "Federal Housing Finance Agency".

(e) AMENDMENTS TO FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking "Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "Director of the Federal Housing Finance Agency".

(f) AMENDMENT TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(g) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(1) in section 5313, by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight,

Department of Housing and Urban Development and inserting the following new item:

"Director of the Federal Housing Finance Agency."; and

(2) in section 3132(a)(1)—

(A) in subparagraph (B), by striking ",, and" and inserting ", and";

(B) in subparagraph (D)—

(i) by striking "the Federal Housing Finance Board";

(ii) by striking "the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" and inserting "the Federal Housing Finance Agency"; and

(iii) by striking "or or" at the end;

(C) in subparagraph (E), as added by section 8(d)(1)(B)(iii) of Public Law 107–123, by adding "or" at the end; and

(D) by redesignating subparagraph (E), as added by section 10702(c)(1)(C) of Public Law 107–171, as subparagraph (F).

(h) AMENDMENT TO SARBANES-OXLEY ACT.—Section 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by inserting "and the Director of the Federal Housing Finance Agency," after "Commission,".

(i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Section 11(t)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding at the end the following:

"(vii) Federal Housing Finance Agency.".

SEC. 1162. PRESIDENTIALLY-APPOINTED DIRECTORS OF ENTERPRISES.

(a) FANNIE MAE.—

(1) IN GENERAL.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended—

(A) in the first sentence, by striking "eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom" and inserting "13 persons, or such other number that the Director determines appropriate, who";

(B) in the second sentence, by striking "appointed by the President";

(C) in the third sentence—

(i) by striking "appointed or"; and

(ii) by striking ", except that any such appointed member may be removed from office by the President for good cause";

(D) in the fourth sentence, by striking "elective"; and

(E) by striking the fifth sentence.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under section 1163 occurs. 12 USC 1723 note.

(b) FREDDIE MAC.—

(1) IN GENERAL.—Section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)) is amended—

(A) in subparagraph (A)—

(i) in the first sentence, by striking "18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom" and inserting "13 persons, or such other number as the Director determines appropriate, who"; and

(ii) in the second sentence, by striking "appointed by the President of the United States";

(B) in subparagraph (B)—

(i) by striking "such or"; and

(ii) by striking ", except that any appointed member may be removed from office by the President for good cause"; and

(C) in subparagraph (C)—

(i) by striking the first sentence; and

(ii) by striking "elective".

12 USC 1452 note.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under section 1163 occurs.

5 USC 13132 note.

SEC. 1163. EFFECTIVE DATE.

Except as otherwise specifically provided in this title, this title and the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act.

TITLE II—FEDERAL HOME LOAN BANKS

SEC. 1201. RECOGNITION OF DISTINCTIONS BETWEEN THE ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.

Section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4513) is amended by adding at the end the following:

"(f) RECOGNITION OF DISTINCTIONS BETWEEN THE ENTERPRISES AND THE FEDERAL HOME LOAN BANKS.—Prior to promulgating any regulation or taking any other formal or informal agency action of general applicability and future effect relating to the Federal Home Loan Banks (other than any regulation, advisory document, or examination guidance of the Federal Housing Finance Board that the Director reissues after the authority of the Director over the Federal Home Loan Banks takes effect), including the issuance of an advisory document or examination guidance, the Director shall consider the differences between the Federal Home Loan Banks and the enterprises with respect to—

"(1) the Banks'—

"(A) cooperative ownership structure;

"(B) the mission of providing liquidity to members;

"(C) affordable housing and community development mission;

"(D) capital structure; and

"(E) joint and several liability; and

"(2) any other differences that the Director considers appropriate.".

SEC. 1202. DIRECTORS.

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

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

"(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4), the management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate.

"(2) BOARD MAKEUP.—The board of directors of each Bank shall be comprised of—

"(A) member directors, who shall comprise at least the majority of the members of the board of directors; and

"(B) independent directors, who shall comprise not fewer than ⅖ of the members of the board of directors.

"(3) SELECTION CRITERIA.—

"(A) IN GENERAL.—Each member of the board of directors shall be—

"(i) elected by plurality vote of the members, in accordance with procedures established under this section; and

"(ii) a citizen of the United States.

"(B) INDEPENDENT DIRECTOR CRITERIA.—

"(i) IN GENERAL.—Each independent director that is not a public interest director under clause (ii) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

"(ii) PUBLIC INTEREST.—Not fewer than 2 of the independent directors shall have more than 4 years of experience in representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

"(iii) CONFLICTS OF INTEREST.—No independent director may, during the term of service on the board of directors, serve as an officer of any Federal Home Loan Bank or as a director, officer, or employee of any member of a Bank, or of any person that receives advances from a Bank.

"(4) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) INDEPENDENT DIRECTOR.—The terms 'independent director' and 'independent directorship' mean a member of the board of directors of a Federal Home Loan Bank who is a bona fide resident of the district in which the Federal Home Loan Bank is located, or the directorship held by such a person, respectively.

"(B) MEMBER DIRECTOR.—The terms 'member director' and 'member directorship' mean a member of the board

of directors of a Federal Home Loan Bank who is an officer or director of a member institution that is located in the district in which the Federal Home Loan Bank is located, or the directorship held by such a person, respectively.";

(2) by striking "elective" each place that term appears, other than in subsections (d), (e), and (f), and inserting "member";

(3) in subsection (b)—

(A) by striking the subsection heading and all that follows through "Each elective directorship" and inserting the following:

"(b) DIRECTORSHIPS.—

"(1) MEMBER DIRECTORSHIPS.—Each member directorship"; and

(B) by adding at the end the following:

"(2) INDEPENDENT DIRECTORSHIPS.—

"(A) ELECTIONS.—Each independent director—

"(i) shall be elected by the members entitled to vote, from among eligible persons nominated, after consultation with the Advisory Council of the Bank, by the board of directors of the Bank; and

"(ii) shall be elected by a plurality of the votes of the members of the Bank at large, with each member having the number of votes for each such directorship as it has under paragraph (1) in an election to fill member directorships.

"(B) CRITERIA.—Nominees shall meet all applicable requirements prescribed in this section.

"(C) NOMINATION AND ELECTION PROCEDURES.—Procedures for nomination and election of independent directors shall be prescribed by the bylaws of each Federal Home Loan Bank, in a manner consistent with the rules and regulations of the Agency.";

(4) in subsection (c)—

(A) by striking "elective" each place that term appears and inserting "member", except—

(i) in the second sentence, the second place that term appears; and

(ii) each place that term appears in the fifth sentence; and

(B) in the second sentence—

(i) by inserting "(A) except as provided in clause (B) of this sentence," before "if at any time"; and

(ii) by inserting before the period at the end the following: ", and (B) clause (A) of this sentence shall not apply to the directorships of any Federal Home Loan Bank resulting from the merger of any 2 or more such Banks";

(5) in subsection (d)—

(A) in the first sentence—

(i) by striking ", whether elected or appointed,"; and

(ii) by striking "3 years" and inserting "4 years";

(B) in the second sentence—

(i) by striking "Federal Home Loan Bank System Modernization Act of 1999" and inserting "Federal Housing Finance Regulatory Reform Act of 2008";

(ii) by striking "⅓" and inserting "¼"; and

(iii) by striking "or appointed"; and

(C) in the third sentence—

(i) by striking "an elective" each place that term appears and inserting "a"; and

(ii) by striking "in any elective directorship or elective directorships";

(6) in subsection (f)—

(A) by striking paragraph (2);

(B) by striking "appointed or" each place that term appears; and

(C) in paragraph (3)—

(i) by striking "(3) ELECTED BANK DIRECTORS.—" and inserting "(2) ELECTION PROCESS.—"; and

(ii) by striking "elective" each place that term appears;

(7) in subsection (i)—

(A) in paragraph (1), by striking "Subject to paragraph (2), each" and inserting "Each"; and

(B) by striking paragraph (2) and inserting the following:

"(2) ANNUAL REPORT.—The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal Home Loan Banks to the directors on the boards of directors of the Banks."; and

(8) by adding at the end the following:

"(l) TRANSITION RULE.—Any member of the board of directors of a Bank elected or appointed in accordance with this section prior to the date of enactment of this subsection may continue to serve as a member of that board of directors for the remainder of the existing term of service.".

SEC. 1203. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) by striking paragraphs (1), (10), and (11);

(2) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively;

(3) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10), respectively; and

(4) by adding at the end the following:

"(11) DIRECTOR.—The term 'Director' means the Director of the Federal Housing Finance Agency.

"(12) AGENCY.—The term 'Agency' means the Federal Housing Finance Agency, established under section 1311 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.".

SEC. 1204. AGENCY OVERSIGHT OF FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), other than in provisions of that Act added or amended otherwise by this Act, is amended—

(1) by striking sections 2A and 2B (12 U.S.C. 1422a, 1422b);

(2) in section 18 (12 U.S.C. 1438), by striking subsection (b);

(3) in section 11 (12 U.S.C. 1431)—

(A) in subsection (b)—

(i) in the first sentence—

(I) by striking "The Board" and inserting "The Office of Finance, as agent for the Banks,"; and

(II) by striking "the Board" and inserting "such Office"; and

(ii) in the second and fourth sentences, by striking "the Board" each place such term appears and inserting "the Office of Finance";

(B) in subsection (c)—

(i) by striking "the Board" the first place such term appears and inserting "the Office of Finance, as agent for the Banks,"; and

(ii) by striking "the Board" the second place such term appears and inserting "such Office"; and

(C) in subsection (f)—

(i) by striking the 2 commas after "permit" and inserting "or"; and

(ii) by striking the comma after "require";

(4) in section 6 (12 U.S.C. 1426)—

(A) in subsection (b)(1), in the matter preceding subparagraph (A), by striking "Finance Board approval" and inserting "approval by the Director"; and

(B) in each of subsections (c)(4)(B) and (d)(2), by striking "Finance Board regulations" each place that term appears and inserting "regulations of the Director";

(5) in section 10(b) (12 U.S.C. 1430(b))—

(A) in the subsection heading, by striking "FORMAL BOARD RESOLUTION" and inserting "APPROVAL OF DIRECTOR"; and

(B) by striking "by formal resolution";

(6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)), by striking "Chairperson of the Federal Housing Finance Board" and inserting "Director";

(7) in section 15 (12 U.S.C. 1435), by inserting "or the Director" after "the Board";

12 USC 1422 *et al.*

(8) by striking "the Board" each place that term appears and inserting "the Director";

12 USC 1427 *et al.*

(9) by striking "The Board" each place that term appears and inserting "The Director";

12 USC 1422 *et al.*

(10) by striking "the Finance Board" each place that term appears and inserting "the Director";

(11) by striking "The Finance Board" each place that term appears and inserting "The Director"; and

12 USC 1430 *et al.*

(12) by striking "Federal Housing Finance Board" each place that term appears and inserting "Director".

SEC. 1205. HOUSING GOALS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 10b the following new section:

12 USC 1430c.

"SEC. 10C. HOUSING GOALS.

"(a) IN GENERAL.—The Director shall establish housing goals with respect to the purchase of mortgages, if any, by the Federal

Home Loan Banks. Such goals shall be consistent with the goals established under sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

"(b) CONSIDERATIONS.—In establishing the goals required by subsection (a), the Director shall consider the unique mission and ownership structure of the Federal Home Loan Banks.

"(c) TRANSITION PERIOD.—To facilitate an orderly transition, the Director shall establish interim target goals for purposes of this section for each of the 2 calendar years following the date of enactment of this section.

"(d) MONITORING AND ENFORCEMENT OF GOALS.—The requirements of section 1336 of the Federal Housing Enterprises Safety and Soundness Act of 1992, shall apply to this section, in the same manner and to the same extent as that section applies to the Federal housing enterprises.

"(e) ANNUAL REPORT.—The Director shall annually report to Congress on the performance of the Banks in meeting the goals established under this section.".

SEC. 1206. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS.

Section 4(a)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)(1)) is amended—

(1) by inserting after "savings bank," the following: "community development financial institution,"; and

(2) in subparagraph (B), by inserting after "United States," the following: "or, in the case of a community development financial institution, is certified as a community development financial institution under the Community Development Banking and Financial Institutions Act of 1994.".

SEC. 1207. SHARING OF INFORMATION AMONG FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act is amended by inserting after section 20 (12 U.S.C. 1440) the following new section:

"SEC. 20A. SHARING OF INFORMATION AMONG FEDERAL HOME LOAN BANKS. 12 USC 1440a.

"(a) INFORMATION ON FINANCIAL CONDITION.—In order to enable each Federal Home Loan Bank to evaluate the financial condition of one or more of the other Federal Home Loan Banks individually and the Federal Home Loan Bank System (including any risks associated with the issuance or repayment of consolidated Federal Home Loan Bank bonds and debentures or other borrowings and the joint and several liabilities of the Banks incurred due to such borrowings), as well as to comply with any of its obligations under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Director shall make available to the Banks such reports, records, or other information as may be available, relating to the condition of any Federal Home Loan Bank. Reports. Records.

"(b) SHARING OF INFORMATION.—

"(1) IN GENERAL.—The Director shall promulgate regulations to facilitate the sharing of information made available under subsection (a) directly among the Federal Home Loan Banks. Regulations.

"(2) LIMITATION.—Notwithstanding paragraph (1), a Federal Home Loan Bank responding to a request from another Bank or from the Director for information pursuant to this section may request that the Director determine that such

information is proprietary and that the public interest requires that such information not be shared.

"(c) LIMITATION.—Nothing in this section shall affect the obligations of any Federal Home Loan Bank under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the regulations issued by the Securities and Exchange Commission thereunder.

"(d) NO WAIVER OF PRIVILEGE.—The Director shall not be deemed to have waived any privilege applicable to any information concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purposes set out in subsection (a).".

12 USC 1426a.

SEC. 1208. EXCLUSION FROM CERTAIN REQUIREMENTS.

(a) IN GENERAL.—The Federal Home Loan Banks shall be exempt from compliance with—

(1) sections 13(e), 14(a), and 14(c) of the Securities Exchange Act of 1934, and related Commission regulations;

(2) section 15 of the Securities Exchange Act of 1934, and related Commission regulations, with respect to transactions in the capital stock of a Federal Home Loan Bank;

(3) section 17A of the Securities Exchange Act of 1934, and related Commission regulations, with respect to the transfer of the securities of a Federal Home Loan Bank; and

(4) the Trust Indenture Act of 1939.

(b) MEMBER EXEMPTION.—The members of the Federal Home Loan Bank System shall be exempt from compliance with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Securities Exchange Act of 1934, and related Commission regulations, with respect to ownership of or transactions in the capital stock of the Federal Home Loan Banks by such members.

(c) EXEMPTED AND GOVERNMENT SECURITIES.—

(1) CAPITAL STOCK.—The capital stock issued by each of the Federal Home Loan Banks under section 6 of the Federal Home Loan Bank Act are—

(A) exempted securities, within the meaning of section 3(a)(2) of the Securities Act of 1933; and

(B) exempted securities, within the meaning of section 3(a)(12)(A) of the Securities Exchange Act of 1934, except to the extent provided in section 38 of that Act.

(2) OTHER OBLIGATIONS.—The debentures, bonds, and other obligations issued under section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) are—

(A) exempted securities, within the meaning of section 3(a)(2) of the Securities Act of 1933;

(B) government securities, within the meaning of section 3(a)(42) of the Securities Exchange Act of 1934; and

(C) government securities, within the meaning of section 2(a)(16) of the Investment Company Act of 1940.

(3) BROKERS AND DEALERS.—A person (other than a Federal Home Loan Bank effecting transactions for members of the Federal Home Loan Bank System) that effects transactions in the capital stock or other obligations of a Federal Home Loan Bank, for the account of others or for that person's own account, as applicable, is a broker or dealer, as those terms are defined in paragraphs (4) and (5), respectively, of section 3(a) of the Securities Exchange Act of 1934, but is excluded from the definition of—

(A) the term "government securities broker" under section 3(a)(43) of the Securities Exchange Act of 1934; and

(B) the term "government securities dealer" under section 3(a)(44) of the Securities Exchange Act of 1934.

(d) EXEMPTION FROM REPORTING REQUIREMENTS.—The Federal Home Loan Banks shall be exempt from periodic reporting requirements under the securities laws pertaining to the disclosure of—

(1) related party transactions that occur in the ordinary course of the business of the Banks with members; and

(2) the unregistered sales of equity securities.

(e) TENDER OFFERS.—Commission rules relating to tender offers shall not apply in connection with transactions in the capital stock of the Federal Home Loan Banks.

(f) REGULATIONS.—

(1) IN GENERAL.—The Commission shall promulgate such rules and regulations as may be necessary or appropriate in the public interest or in furtherance of this section and the exemptions provided in this section.

(2) CONSIDERATIONS.—In issuing regulations under this section, the Commission shall consider the distinctive characteristics of the Federal Home Loan Banks when evaluating—

(A) the accounting treatment with respect to the payment to the Resolution Funding Corporation;

(B) the role of the combined financial statements of the Federal Home Loan Banks;

(C) the accounting classification of redeemable capital stock; and

(D) the accounting treatment related to the joint and several nature of the obligations of the Banks.

(g) DEFINITIONS.—As used in this section—

(1) the terms "Bank", "Federal Home Loan Bank", "member", and "Federal Home Loan Bank System" have the same meanings as in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(2) the term "Commission" means the Securities and Exchange Commission; and

(3) the term "securities laws" has the same meaning as in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)).

SEC. 1209. VOLUNTARY MERGERS.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended—

(1) by striking "Whenever" and inserting "(a) IN GENERAL.—Whenever"; and

(2) by adding at the end the following:

"(b) VOLUNTARY MERGERS AUTHORIZED.—

"(1) IN GENERAL.—Any Federal Home Loan Bank may, with the approval of the Director and of the boards of directors of the Banks involved, merge with another Bank.

"(2) REGULATIONS REQUIRED.—The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any voluntary merger described in paragraph (1), including the procedures for Bank member approval.".

SEC. 1210. AUTHORITY TO REDUCE DISTRICTS.

Section 3 of the Federal Home Loan Bank Act (12 U.S.C. 1423) is amended—

(1) by striking "As soon" and inserting "(a) IN GENERAL.—As soon"; and

(2) by adding at the end the following:

"(b) AUTHORITY TO REDUCE DISTRICTS.—Notwithstanding subsection (a), the number of districts may be reduced to a number less than 8—

"(1) pursuant to a voluntary merger between Banks, as approved pursuant to section 26(b); or

"(2) pursuant to a decision by the Director to liquidate a Bank pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.".

SEC. 1211. COMMUNITY FINANCIAL INSTITUTION MEMBERS.

(a) TOTAL ASSET REQUIREMENT.—Paragraph (10) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(10)), as so redesignated by section 201(3) of this Act, is amended by striking "$500,000,000" each place such term appears and inserting "$1,000,000,000".

(b) USE OF ADVANCES FOR COMMUNITY DEVELOPMENT ACTIVITIES.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) in paragraph (2)(B)—

(A) by striking "and"; and

(B) by inserting ", and community development activities" before the period at the end;

(2) in paragraph (3)(E), by inserting "or community development activities" after "agriculture,"; and

(3) in paragraph (6)—

(A) by striking "and"; and

(B) by inserting ", and 'community development activities'" before "shall".

SEC. 1212. PUBLIC USE DATABASE; REPORTS TO CONGRESS.

Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(1) in subsection (j)(12)—

(A) by striking subparagraph (C) and inserting the following:

"(C) REPORTS.—The Director shall annually report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the collateral pledged to the Banks, including an analysis of collateral by type and by Bank district."; and

(B) by adding at the end the following:

Deadline.

"(D) SUBMISSION TO CONGRESS.—The Director shall submit the reports under subparagraphs (A) and (C) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 180 days after the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008."; and

(2) by adding at the end the following:

"(k) PUBLIC USE DATABASE.—

"(1) DATA.—Each Federal Home Loan Bank shall provide to the Director, in a form determined by the Director, census tract level data relating to mortgages purchased, if any, including—

"(A) data consistent with that reported under section 1323 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

"(B) data elements required to be reported under the Home Mortgage Disclosure Act of 1975; and

"(C) any other data elements that the Director considers appropriate.

"(2) PUBLIC USE DATABASE.—

"(A) IN GENERAL.—The Director shall make available to the public, in a form that is useful to the public (including forms accessible electronically), and to the extent practicable, the data provided to the Director under paragraph (1).

"(B) PROPRIETARY INFORMATION.—Not withstanding subparagraph (A), the Director may not provide public access to, or disclose to the public, any information required to be submitted under this subsection that the Director determines is proprietary or that would provide personally identifiable information and that is not otherwise publicly accessible through other forms, unless the Director determines that it is in the public interest to provide such information.".

SEC. 1213. SEMIANNUAL REPORTS.

Section 21B of the Federal Home Loan Bank Act is amended in subsection (f)(2)(C), by adding at the end the following: 12 USC 1441b.

"(v) SEMIANNUAL REPORTS.—The Director shall report semiannually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the projected date for the completion of contributions required by this section.".

SEC. 1214. LIQUIDATION OR REORGANIZATION OF A FEDERAL HOME LOAN BANK.

Deadline. Notification.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended by adding at the end the following: "At least 30 days prior to liquidating or reorganizing any Bank under this section, the Director shall notify the Bank of its determination and the facts and circumstances upon which such determination is based. The Bank may contest that determination in a hearing before the Director, in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code.". Records.

SEC. 1215. STUDY AND REPORT TO CONGRESS ON SECURITIZATION OF ACQUIRED MEMBER ASSETS.

(a) STUDY.—The Director shall conduct a study on securitization of home mortgage loans purchased or to be purchased from member financial institutions under the Acquired Member Assets programs. In conducting the study, the Director shall establish a process for the formal submission of comments.

(b) ELEMENTS.—The study shall encompass—

(1) the benefits and risks associated with securitization of Acquired Member Assets;

(2) the potential impact of securitization upon liquidity in the mortgage and broader credit markets;

(3) the ability of the Federal Home Loan Bank or Banks in question to manage the risks associated with such a program;

(4) the impact of such a program on the existing activities of the Banks, including their mortgage portfolios and advances; and

(5) the joint and several liability of the Banks and the cooperative structure of the Federal Home Loan Bank System.

(c) CONSULTATIONS.—In conducting the study under this section, the Director shall consult with the Federal Home Loan Banks, the Banks' fiscal agent, representatives of the mortgage lending industry, practitioners in the structured finance field, and other experts as needed.

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Director shall submit a report to Congress on the results of the study conducted under subsection (a), including policy recommendations based on the analysis of the Director of the feasibility of mortgage-backed securities issuance by a Federal Home Loan Bank or Banks and the risks and benefits associated with such program or programs.

(e) DEFINITIONS.—As used in this section, the terms "member", "Bank", and "Federal Home Loan Bank" have the same meanings as in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422).

SEC. 1216. TECHNICAL AND CONFORMING AMENDMENTS.

(a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1113(o) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(o)) is amended—

(1) by striking "Federal Housing Finance Board" and inserting "Federal Housing Finance Agency"; and

(2) by striking "Federal Housing Finance Board's" and inserting "Federal Housing Finance Agency's".

(b) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking "Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(c) TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by striking "Federal Housing Finance Board" each place such term appears in each of sections 212, 657, 1006, and 1014, and inserting "Federal Housing Finance Agency".

(d) MAHRA ACT OF 1997.—Section 517(b)(4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking "Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(e) TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking "Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(f) ACCESS TO LOCAL TV ACT OF 2000.—Section 1004(d)(2)(D)(iii) of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)(iii)) is amended by striking "Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(g) FIRREA.—Section 1216 of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) the Federal Housing Finance Agency;";

(2) in subsection (b), by striking "Federal National Mortgage Association" and inserting "Federal Home Loan Banks, the Federal National Mortgage Association,"; and

(3) in subsection (c), by striking "Finance Board" and inserting "Finance Agency".

SEC. 1217. STUDY ON FEDERAL HOME LOAN BANK ADVANCES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House or Representatives on the extent to which loans and securities used as collateral to support Federal Home Loan Bank advances are consistent with the interagency guidance on nontraditional mortgage products. Deadline.

(b) REQUIRED CONTENT.—The study required under subsection (a) shall—

(1) consider and recommend any additional regulations, guidance, advisory bulletins, or other administrative actions necessary to ensure that the Federal Home Loan Banks are not supporting loans with predatory characteristics; and Recommendations.

(2) include an opportunity for the public to comment on any recommendations made under paragraph (1). Public comment.

SEC. 1218. FEDERAL HOME LOAN BANK REFINANCING AUTHORITY FOR CERTAIN RESIDENTIAL MORTGAGE LOANS.

Section 10(j)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)(2)) is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(C) during the 2-year period beginning on the date of enactment of this subparagraph, use such percentage as the Director may by regulation establish of any subsidized advances set aside to finance homeownership under subparagraph (A) to refinance loans that are secured by a first mortgage on a primary residence of any family having an income at or below 80 percent of the median income for the area.". Effective date.

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

Subtitle A—OFHEO

12 USC 4511 note.

SEC. 1301. ABOLISHMENT OF OFHEO.

Effective date.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

Effective date.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

(1) shall manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1303; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1303.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Office of Federal Housing Enterprise Oversight, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions

pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(f) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under—

(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

(ii) the Federal National Mortgage Association Charter Act;

(iii) the Federal Home Loan Mortgage Corporation Act; or

(iv) any other provision of law applicable with respect to such Office; and

(B) existed on the day before the date of abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 1302. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

12 USC 4511 note.

(a) IN GENERAL.—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, and determinations, and shall be enforceable by or against the Director or the Secretary of Housing and Urban Development, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by the Director or the Secretary, as the case may be, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, or determination is described in this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight;

(B) the Secretary of Housing and Urban Development, and relates to the authority of the Secretary under—

(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992;

(ii) the Federal National Mortgage Association Charter Act, with respect to the Federal National Mortgage Association; or

(iii) the Federal Home Loan Mortgage Corporation Act, with respect to the Federal Home Loan Mortgage Corporation; or

(C) a court of competent jurisdiction, and relates to functions transferred by this Act; and

(2) is in effect on the effective date of the abolishment under section 1301(a).

12 USC 4511 note.

SEC. 1303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

Deadline.

(a) TRANSFER.—Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1301(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

Effective date.

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

Effective date.

(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1301(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 1301(a), if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—

(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Office of Federal Housing Enterprise Oversight and those provided by this section shall be paid by the Director.

(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season. Deadline.

SEC. 1304. TRANSFER OF PROPERTY AND FACILITIES. 12 USC 4511 note.

Upon the effective date of its abolishment under section 1301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Agency.

Subtitle B—Federal Housing Finance Board

SEC. 1311. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD. 12 USC 4511 note. Effective date. Termination date.

(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Federal Housing Finance Board (in this subtitle referred to as the "Board") is abolished.

(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act, the Board, solely for the purpose of winding up the affairs of the Board— Effective date.

(1) shall manage the employees of the Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1313; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by titles I and II and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of the Board as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1313.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director may use the property of the Board to perform functions which have been transferred to the Director, for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the 1-year period under subsection (a) in connection with functions that are transferred to the Director shall— Deadline.

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Board, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(f) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

(A) arises under the Federal Home Loan Bank Act, or any other provision of law applicable with respect to the Board; and

(B) existed on the day before the effective date of the abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred under this Act to the Director shall abate by reason of the enactment of this Act, except that the Director shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

12 USC 4511 note.

SEC. 1312. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

Regulations. Orders.

(a) IN GENERAL.—All regulations, orders, determinations, and resolutions described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, determination, or resolution is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Board; or

(B) a court of competent jurisdiction, and relates to functions transferred by this Act; and

(2) is in effect on the effective date of the abolishment under section 1311(a).

12 USC 4511 note.

SEC. 1313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

Deadline.

(a) TRANSFER.—Each employee of the Board shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1311(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, if the employee is a temporary employee, separated in accordance with the terms of the appointment of the employee. Effective date.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1), to the extent that such authority relates to a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character.

(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1311(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code. Deadline.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Board accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 1311(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director.

(2) COST DIFFERENTIAL.—

(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director.

(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.

Effective date. 12 USC 4511 note.

Upon the effective date of the abolishment under section 1311(a), all property of the Board shall transfer to the Agency.

TITLE IV—HOPE FOR HOMEOWNERS

12 USC 1701 note.

SEC. 1401. SHORT TITLE.

This title may be cited as the "HOPE for Homeowners Act of 2008".

SEC. 1402. ESTABLISHMENT OF HOPE FOR HOMEOWNERS PROGRAM.

(a) ESTABLISHMENT.—Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end the following:

12 USC 1715z–23.

"SEC. 257. HOPE FOR HOMEOWNERS PROGRAM.

"(a) ESTABLISHMENT.—There is established in the Federal Housing Administration a HOPE for Homeowners Program.

"(b) PURPOSE.—The purpose of the HOPE for Homeowners Program is—

"(1) to create an FHA program, participation in which is voluntary on the part of homeowners and existing loan holders to insure refinanced loans for distressed borrowers to support long-term, sustainable homeownership;

"(2) to allow homeowners to avoid foreclosure by reducing the principle balance outstanding, and interest rate charged, on their mortgages;

"(3) to help stabilize and provide confidence in mortgage markets by bringing transparency to the value of assets based on mortgage assets;

"(4) to target mortgage assistance under this section to homeowners for their principal residence;

"(5) to enhance the administrative capacity of the FHA to carry out its expanded role under the HOPE for Homeowners Program;

"(6) to ensure the HOPE for Homeowners Program remains in effect only for as long as is necessary to provide stability to the housing market; and

"(7) to provide servicers of delinquent mortgages with additional methods and approaches to avoid foreclosure.

"(c) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM REQUIREMENTS.—

"(1) DUTIES OF THE BOARD.—In order to carry out the purposes of the HOPE for Homeowners Program, the Board shall—

Standards.

"(A) establish requirements and standards for the program; and

Regulations.

"(B) prescribe such regulations and provide such guidance as may be necessary or appropriate to implement such requirements and standards.

"(2) DUTIES OF THE SECRETARY.—In carrying out any of the program requirements or standards established under paragraph (1), the Secretary may issue such interim guidance and mortgagee letters as the Secretary determines necessary or appropriate.

"(d) INSURANCE OF MORTGAGES.—The Secretary is authorized upon application of a mortgagee to make commitments to insure or to insure any eligible mortgage that has been refinanced in a manner meeting the requirements under subsection (e).

"(e) REQUIREMENTS OF INSURED MORTGAGES.—To be eligible for insurance under this section, a refinanced eligible mortgage shall comply with all of the following requirements:

"(1) LACK OF CAPACITY TO PAY EXISTING MORTGAGE.—

"(A) BORROWER CERTIFICATION.—

"(i) IN GENERAL.—The mortgagor shall provide certification to the Secretary that the mortgagor has not intentionally defaulted on the mortgage or any other debt, and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining any eligible mortgage.

"(ii) PENALTIES.—

"(I) FALSE STATEMENT.—Any certification filed pursuant to clause (i) shall contain an acknowledgment that any willful false statement made in such certification is punishable under section 1001, of title 18, United States Code, by fine or imprisonment of not more than 5 years, or both.

"(II) LIABILITY FOR REPAYMENT.—The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Federal Housing Administration any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made in the certifications and documentation required under this subparagraph, subject to the discretion of the Secretary. Records.

"(B) CURRENT BORROWER DEBT-TO-INCOME RATIO.—As of March 1, 2008, the mortgagor shall have had a ratio of mortgage debt to income, taking into consideration all existing mortgages of that mortgagor at such time, greater than 31 percent (or such higher amount as the Board determines appropriate).

"(2) DETERMINATION OF PRINCIPAL OBLIGATION AMOUNT.—The principal obligation amount of the refinanced eligible mortgage to be insured shall—

"(A) be determined by the reasonable ability of the mortgagor to make his or her mortgage payments, as such ability is determined by the Secretary pursuant to section 203(b)(4) or by any other underwriting standards established by the Board; and

"(B) not exceed 90 percent of the appraised value of the property to which such mortgage relates.

"(3) REQUIRED WAIVER OF PREPAYMENT PENALTIES AND FEES.—All penalties for prepayment or refinancing of the eligible mortgage, and all fees and penalties related to default or delinquency on the eligible mortgage, shall be waived or forgiven.

"(4) EXTINGUISHMENT OF SUBORDINATE LIENS.—

"(A) REQUIRED AGREEMENT.—All holders of outstanding mortgage liens on the property to which the eligible mortgage relates shall agree to accept the proceeds of the insured loan as payment in full of all indebtedness under the eligible mortgage, and all encumbrances related to such eligible mortgage shall be removed. The Secretary may take such actions, subject to standards established by the Board under subparagraph (B), as may be necessary and appropriate to facilitate coordination and agreement

between the holders of the existing senior mortgage and any existing subordinate mortgages, taking into consideration the subordinate lien status of such subordinate mortgages.

"(B) SHARED APPRECIATION.—

Standards. Policies.

"(i) IN GENERAL.—The Board shall establish standards and policies that will allow for the payment to the holder of any existing subordinate mortgage of a portion of any future appreciation in the property secured by such eligible mortgage that is owed to the Secretary pursuant to subsection (k).

"(ii) FACTORS.—In establishing the standards and policies required under clause (i), the Board shall take into consideration—

"(I) the status of any subordinate mortgage;

"(II) the outstanding principal balance of and accrued interest on the existing senior mortgage and any outstanding subordinate mortgages;

"(III) the extent to which the current appraised value of the property securing a subordinate mortgage is less than the outstanding principal balance and accrued interest on any other liens that are senior to such subordinate mortgage; and

"(IV) such other factors as the Board determines to be appropriate.

"(C) VOLUNTARY PROGRAM.—This paragraph may not be construed to require any holder of any existing mortgage to participate in the program under this section generally, or with respect to any particular loan.

"(5) TERM OF MORTGAGE.—The refinanced eligible mortgage to be insured shall—

"(A) bear interest at a single rate that is fixed for the entire term of the mortgage; and

"(B) have a maturity of not less than 30 years from the date of the beginning of amortization of such refinanced eligible mortgage.

"(6) MAXIMUM LOAN AMOUNT.—The principal obligation amount of the eligible mortgage to be insured shall not exceed 132 percent of the dollar amount limitation in effect for 2007 under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a property of the applicable size.

"(7) PROHIBITION ON SECOND LIENS.—A mortgagor may not grant a new second lien on the mortgaged property during the first 5 years of the term of the mortgage insured under this section, except as the Board determines to be necessary to ensure the maintenance of property standards; and provided that such new outstanding liens (A) do not reduce the value of the Government's equity in the borrower's home; and (B) when combined with the mortgagor's existing mortgage indebtedness, do not exceed 95 percent of the home's appraised value at the time of the new second lien.

"(8) APPRAISALS.—Any appraisal conducted in connection with a mortgage insured under this section shall—

"(A) be based on the current value of the property;

"(B) be conducted in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.);

"(C) be completed by an appraiser who meets the competency requirements of the Uniform Standards of Professional Appraisal Practice;

"(D) be wholly consistent with the appraisal standards, practices, and procedures under section 202(e) of this Act that apply to all loans insured under this Act; and

"(E) comply with the requirements of subsection (g) of this section (relating to appraisal independence).

Procedures. Standards.

"(9) DOCUMENTATION AND VERIFICATION OF INCOME.—In complying with the FHA underwriting requirements under the HOPE for Homeowners Program under this section, the mortgagee shall document and verify the income of the mortgagor or non-filing status by procuring (A) an income tax return transcript of the income tax returns of the mortgagor, or(B) a copy of the income tax returns from the Internal Revenue Service, for the two most recent years for which the filing deadline for such years has passed and by any other method, in accordance with procedures and standards that the Board shall establish.

"(10) MORTGAGE FRAUD.—The mortgagor shall not have been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section.

"(11) PRIMARY RESIDENCE.—The mortgagor shall provide documentation satisfactory in the determination of the Secretary to prove that the residence covered by the mortgage to be insured under this section is occupied by the mortgagor as the primary residence of the mortgagor, and that such residence is the only residence in which the mortgagor has any present ownership interest.

"(f) STUDY OF AUCTION OR BULK REFINANCE PROGRAM.—

"(1) STUDY.—The Board shall conduct a study of the need for and efficacy of an auction or bulk refinancing mechanism to facilitate refinancing of existing residential mortgages that are at risk for foreclosure into mortgages insured under this section. The study shall identify and examine various options for mechanisms under which lenders and servicers of such mortgages may make bids for forward commitments for such insurance in an expedited manner.

"(2) CONTENT.—

"(A) ANALYSIS.—The study required under paragraph (1) shall analyze—

"(i) the feasibility of establishing a mechanism that would facilitate the more rapid refinancing of borrowers at risk of foreclosure into performing mortgages insured under this section;

"(ii) whether such a mechanism would provide an effective and efficient mechanism to reduce foreclosures on qualified existing mortgages;

"(iii) whether the use of an auction or bulk refinance program is necessary to stabilize the housing market and reduce the impact of turmoil in that market on the economy of the United States;

"(iv) whether there are other mechanisms or authority that would be useful to reduce foreclosure; and

"(v) and any other factors that the Board considers relevant.

"(B) DETERMINATIONS.—To the extent that the Board finds that a facility of the type described in subparagraph (A) is feasible and useful, the study shall—

"(i) determine and identify any additional authority or resources needed to establish and operate such a mechanism;

"(ii) determine whether there is a need for additional authority with respect to the loan underwriting criteria established in this section or with respect to eligibility of participating borrowers, lenders, or holders of liens;

"(iii) determine whether such underwriting criteria should be established on the basis of individual loans, in the aggregate, or otherwise to facilitate the goal of refinancing borrowers at risk of foreclosure into viable loans insured under this section.

"(3) REPORT.—Not later than the expiration of the 60-day period beginning on the date of the enactment of this section, the Board shall submit a report regarding the results of the study conducted under this subsection to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include a detailed description of the analysis required under paragraph (2)(A) and of the determinations made pursuant to paragraph (2)(B), and shall include any other findings and recommendations of the Board pursuant to the study, including identifying various options for mechanisms described in paragraph (1).

"(g) APPRAISAL INDEPENDENCE.—

"(1) PROHIBITIONS ON INTERESTED PARTIES IN A REAL ESTATE TRANSACTION.—No mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, nor any other person with an interest in a real estate transaction involving an appraisal in connection with a mortgage insured under this section shall improperly influence, or attempt to improperly influence, through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the mortgage.

"(2) CIVIL MONETARY PENALTIES.—The Secretary may impose a civil money penalty for any knowing and material violation of paragraph (1) under the same terms and conditions as are authorized in section 536(a) of this Act.

"(h) STANDARDS TO PROTECT AGAINST ADVERSE SELECTION.—

Regulations. Orders.

"(1) IN GENERAL.—The Board shall, by rule or order, establish standards and policies to require the underwriter of the insured loan to provide such representations and warranties as the Board considers necessary or appropriate to enforce compliance with all underwriting and appraisal standards of the HOPE for Homeowners Program.

"(2) EXCLUSION FOR VIOLATIONS.—The Board shall prohibit the Secretary from paying insurance benefits to a mortgagee who violates the representations and warranties, as established under paragraph (1), or in any case in which a mortgagor fails to make the first payment on a refinanced eligible mortgage.

"(3) OTHER AUTHORITY.—The Board may establish such other standards or policies as necessary to protect against adverse selection, including requiring loans identified by the Secretary as higher risk loans to demonstrate payment performance for a reasonable period of time prior to being insured under the program.

"(i) PREMIUMS.—For each refinanced eligible mortgage insured under this section, the Secretary shall establish and collect—

"(1) at the time of insurance, a single premium payment in an amount equal to 3 percent of the amount of the original insured principal obligation of the refinanced eligible mortgage, which shall be paid from the proceeds of the mortgage being insured under this section, through the reduction of the amount of indebtedness that existed on the eligible mortgage prior to refinancing; and

"(2) in addition to the premium required under paragraph (1), an annual premium in an amount equal to 1.5 percent of the amount of the remaining insured principal balance of the mortgage.

"(j) ORIGINATION FEES AND INTEREST RATE.—The Board shall establish—

"(1) a reasonable limitation on origination fees for refinanced eligible mortgages insured under this section; and

"(2) procedures to ensure that interest rates on such mortgages shall be commensurate with market rate interest rates on such types of loans.

"(k) EQUITY AND APPRECIATION.—

"(1) FIVE-YEAR PHASE-IN FOR EQUITY AS A RESULT OF SALE OR REFINANCING.—For each eligible mortgage insured under this section, the Secretary and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, or upon the subsequent refinancing of such mortgage, be entitled to the following with respect to any equity created as a direct result of such sale or refinancing: Effective dates.

"(A) If such sale or refinancing occurs during the period that begins on the date that such mortgage is insured and ends 1 year after such date of insurance, the Secretary shall be entitled to 100 percent of such equity.

"(B) If such sale or refinancing occurs during the period that begins 1 year after such date of insurance and ends 2 years after such date of insurance, the Secretary shall be entitled to 90 percent of such equity and the mortgagor shall be entitled to 10 percent of such equity.

"(C) If such sale or refinancing occurs during the period that begins 2 years after such date of insurance and ends 3 years after such date of insurance, the Secretary shall be entitled to 80 percent of such equity and the mortgagor shall be entitled to 20 percent of such equity.

"(D) If such sale or refinancing occurs during the period that begins 3 years after such date of insurance and ends

4 years after such date of insurance, the Secretary shall be entitled to 70 percent of such equity and the mortgagor shall be entitled to 30 percent of such equity.

"(E) If such sale or refinancing occurs during the period that begins 4 years after such date of insurance and ends 5 years after such date of insurance, the Secretary shall be entitled to 60 percent of such equity and the mortgagor shall be entitled to 40 percent of such equity.

"(F) If such sale or refinancing occurs during any period that begins 5 years after such date of insurance, the Secretary shall be entitled to 50 percent of such equity and the mortgagor shall be entitled to 50 percent of such equity.

"(2) APPRECIATION IN VALUE.—For each eligible mortgage insured under this section, the Secretary and the mortgagor of such mortgage shall, upon any sale or disposition of the property to which such mortgage relates, each be entitled to 50 percent of any appreciation in value of the appraised value of such property that has occurred since the date that such mortgage was insured under this section.

"(l) ESTABLISHMENT OF HOPE FUND.—

"(1) IN GENERAL.—There is established in the Federal Housing Administration a revolving fund to be known as the Home Ownership Preservation Entity Fund, which shall be used by the Board for carrying out the mortgage insurance obligations under this section.

"(2) MANAGEMENT OF FUND.—The HOPE Fund shall be administered and managed by the Secretary, who shall establish reasonable and prudent criteria for the management and operation of any amounts in the HOPE Fund.

"(m) LIMITATION ON AGGREGATE INSURANCE AUTHORITY.—The aggregate original principal obligation of all mortgages insured under this section may not exceed $300,000,000,000.

"(n) REPORTS BY THE BOARD.—The Board shall submit monthly reports to the Congress identifying the progress of the HOPE for Homeowners Program, which shall contain the following information for each month:

"(1) The number of new mortgages insured under this section, including the location of the properties subject to such mortgages by census tract.

"(2) The aggregate principal obligation of new mortgages insured under this section.

"(3) The average amount by which the principle balance outstanding on mortgages insured this section was reduced.

"(4) The amount of premiums collected for insurance of mortgages under this section.

"(5) The claim and loss rates for mortgages insured under this section.

"(6) Any other information that the Board considers appropriate.

"(o) REQUIRED OUTREACH EFFORTS.—The Secretary shall carry out outreach efforts to ensure that homeowners, lenders, and the general public are aware of the opportunities for assistance available under this section.

"(p) ENHANCEMENT OF FHA CAPACITY.—Under the direction of the Board, the Secretary shall take such actions as may be necessary to—

"(1) contract for the establishment of underwriting criteria, automated underwriting systems, pricing standards, and other factors relating to eligibility for mortgages insured under this section;

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

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

"(q) GNMA COMMITMENT AUTHORITY.—

"(1) GUARANTEES.—The Secretary shall take such actions as may be necessary to ensure that securities based on and backed by a trust or pool composed of mortgages insured under this section are available to be guaranteed by the Government National Mortgage Association as to the timely payment of principal and interest.

"(2) GUARANTEE AUTHORITY.—To carry out the purposes of section 306 of the National Housing Act (12 U.S.C. 1721), the Government National Mortgage Association may enter into new commitments to issue guarantees of securities based on or backed by mortgages insured under this section, not exceeding $300,000,000,000. The amount of authority provided under the preceding sentence to enter into new commitments to issue guarantees is in addition to any amount of authority to make new commitments to issue guarantees that is provided to the Association under any other provision of law.

"(r) SUNSET.—The Secretary may not enter into any new commitment to insure any refinanced eligible mortgage, or newly insure any refinanced eligible mortgage pursuant to this section before October 1, 2008 or after September 30, 2011.

"(s) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) APPROVED FINANCIAL INSTITUTION OR MORTGAGEE.—The term 'approved financial institution or mortgagee' means a financial institution or mortgagee approved by the Secretary under section 203 as responsible and able to service mortgages responsibly.

"(2) BOARD.—The term 'Board' means the Board of Directors of the HOPE for Homeowners Program. The Board shall be composed of the Secretary, the Secretary of the Treasury, the Chairperson of the Board of Governors of the Federal Reserve System, and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, or their designees.

"(3) ELIGIBLE MORTGAGE.—The term 'eligible mortgage' means a mortgage—

"(A) the mortgagor of which—

"(i) occupies such property as his or her principal residence; and

"(ii) cannot, subject to subsection (e)(1)(B) and such other standards established by the Board, afford his or her mortgage payments; and

"(B) originated on or before January 1, 2008.

"(4) EXISTING SENIOR MORTGAGE.—The term 'existing senior mortgage' means, with respect to a mortgage insured under this section, the existing mortgage that has superior priority.

"(5) EXISTING SUBORDINATE MORTGAGE.—The term 'existing subordinate mortgage' means, with respect to a mortgage insured under this section, an existing mortgage that has subordinate priority to the existing senior mortgage.

"(6) HOPE FOR HOMEOWNERS PROGRAM.—The term 'HOPE for Homeowners Program' means the program established under this section.

"(7) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development, except where specifically provided otherwise.

"(t) REQUIREMENTS RELATED TO THE BOARD.—

"(1) COMPENSATION, ACTUAL, NECESSARY, AND TRANSPORTATION EXPENSES.—

"(A) FEDERAL EMPLOYEES.—A member of the Board who is an officer or employee of the Federal Government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Board.

"(B) TRAVEL EXPENSES.—Members of the Board shall be entitled to receive travel expenses, including per diem in lieu of subsistence, equivalent to those set forth in subchapter I of chapter 57 of title 5, United States Code.

"(2) BYLAWS.—The Board may prescribe, amend, and repeal such bylaws as may be necessary for carrying out the functions of the Board.

"(3) QUORUM.—A majority of the Board shall constitute a quorum.

"(4) STAFF; EXPERTS AND CONSULTANTS.—

"(A) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Board, any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

"(B) EXPERTS AND CONSULTANTS.—The Board shall procure the services of experts and consultants as the Board considers appropriate.

"(u) RULE OF CONSTRUCTION RELATED TO VOLUNTARY NATURE OF THE PROGRAM.—This section shall not be construed to require that any approved financial institution or mortgagee participate in any activity authorized under this section, including any activity related to the refinancing of an eligible mortgage.

"(v) RULE OF CONSTRUCTION RELATED TO INSURANCE OF MORTGAGES.—Except as otherwise provided for in this section or by action of the Board, the provisions and requirements of section 203(b) shall apply with respect to the insurance of any eligible mortgage under this section.

"(w) HOPE BONDS.—

"(1) ISSUANCE AND REPAYMENT OF BONDS.—Notwithstanding section 504(b) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661d(b)), the Secretary of the Treasury shall—

"(A) subject to such terms and conditions as the Secretary of the Treasury deems necessary, issue Federal credit instruments, to be known as 'HOPE Bonds', that are callable at the discretion of the Secretary of the

Treasury and do not, in the aggregate, exceed the amount specified in subsection (m);

"(B) provide the subsidy amounts necessary for loan guarantees under the HOPE for Homeowners Program, not to exceed the amount specified in subsection (m), in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), except as provided in this paragraph; and

"(C) use the proceeds from HOPE Bonds only to pay for the net costs to the Federal Government of the HOPE for Homeowners Program, including administrative costs.

"(2) REIMBURSEMENTS TO TREASURY.—Funds received pursuant to section 1338(b) of the Federal Housing Enterprises Regulatory Reform Act of 1992 shall be used to reimburse the Secretary of the Treasury for amounts borrowed under paragraph (1).

"(3) USE OF RESERVE FUND.—If the net cost to the Federal Government for the HOPE for Homeowners Program exceeds the amount of funds received under paragraph (2), remaining debts of the HOPE for Homeowners Program shall be paid from amounts deposited into the fund established by the Secretary under section 1337(e) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, remaining amounts in such fund to be used to reduce the National debt.

"(4) REDUCTION OF NATIONAL DEBT.—Amounts collected under the HOPE for Homeowners Program in accordance with subsections (i) and (k) in excess of the net cost to the Federal Government for such Program shall be used to reduce the National debt.".

SEC. 1403. FIDUCIARY DUTY OF SERVICERS OF POOLED RESIDENTIAL MORTGAGE LOANS.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 129 the following new section:

"SEC. 129A. FIDUCIARY DUTY OF SERVICERS OF POOLED RESIDENTIAL MORTGAGES. 15 USC 1639a.

"(a) IN GENERAL.—Except as may be established in any investment contract between a servicer of pooled residential mortgages and an investor, a servicer of pooled residential mortgages—

"(1) owes any duty to maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest in such investment, not to any individual party or group of parties; and

"(2) shall be deemed to act in the best interests of all such investors and parties if the servicer agrees to or implements a modification or workout plan, including any modification or refinancing undertaken pursuant to the HOPE for Homeowners Act of 2008, for a residential mortgage or a class of residential mortgages that constitute a part or all of the pooled mortgages in such investment, provided that any mortgage so modified meets the following criteria:

"(A) Default on the payment of such mortgage has occurred or is reasonably foreseeable.

"(B) The property securing such mortgage is occupied by the mortgagor of such mortgage.

"(C) The anticipated recovery on the principal outstanding obligation of the mortgage under the modification

or workout plan exceeds, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage through foreclosure.

"(b) DEFINITION.—As used in this section, the term 'servicer' means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).".

SEC. 1404. REVISED STANDARDS FOR FHA APPRAISERS.

Section 202(e) of the National Housing Act (12 U.S.C. 1708(e)) is amended by adding at the end the following:

Effective date.

"(5) ADDITIONAL APPRAISER STANDARDS.—Beginning on the date of enactment of the Federal Housing Finance Regulatory Reform Act of 2008, any appraiser chosen or approved to conduct appraisals for mortgages under this title shall—

Certification.

"(A) be certified—

"(i) by the State in which the property to be appraised is located; or

"(ii) by a nationally recognized professional appraisal organization; and

"(B) have demonstrated verifiable education in the appraisal requirements established by the Federal Housing Administration under this subsection.".

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

12 USC 5101 note.

SEC. 1501. SHORT TITLE.

This title may be cited as the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E. Mortgage Licensing Act of 2008".

States. 12 USC 5101 note.

SEC. 1502. PURPOSES AND METHODS FOR ESTABLISHING A MORTGAGE LICENSING SYSTEM AND REGISTRY.

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

(1) Provides uniform license applications and reporting requirements for State-licensed loan originators.

(2) Provides a comprehensive licensing and supervisory database.

(3) Aggregates and improves the flow of information to and between regulators.

(4) Provides increased accountability and tracking of loan originators.

(5) Streamlines the licensing process and reduces the regulatory burden.

(6) Enhances consumer protections and supports anti-fraud measures.

(7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly

adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.

(10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

SEC. 1503. DEFINITIONS. 12 USC 5102.

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

(1) FEDERAL BANKING AGENCIES.—The term "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(3) LOAN ORIGINATOR.—

(A) IN GENERAL.—The term "loan originator"—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—For purposes of this subsection, an individual "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry

and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

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

(4) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term "loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term "clerical or support duties" may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

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

(5) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary under section 1509.

(6) NONTRADITIONAL MORTGAGE PRODUCT.—The term "nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

(7) REGISTERED LOAN ORIGINATOR.—The term "registered loan originator" means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(8) RESIDENTIAL MORTGAGE LOAN.—The term "residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(9) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

(10) STATE.—The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(11) STATE-LICENSED LOAN ORIGINATOR.—The term "State-licensed loan originator" means any individual who—

(A) is a loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the Secretary under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(12) UNIQUE IDENTIFIER.—

(A) IN GENERAL.—The term "unique identifier" means a number or other identifier that—

(i) permanently identifies a loan originator;

(ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(iii) shall not be used for purposes other than those set forth under this title.

(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States

shall use unique identifiers in lieu of social security numbers.

12 USC 5103.

SEC. 1504. LICENSE OR REGISTRATION REQUIRED.

(a) IN GENERAL.—Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first—

(1) obtaining, and maintaining annually—

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

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

(2) obtaining a unique identifier.

(b) LOAN PROCESSORS AND UNDERWRITERS.—

(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator.

(2) INDEPENDENT CONTRACTORS.—An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.

12 USC 5104.

SEC. 1505. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.

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

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

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

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

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

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

(1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—

(A) during the 7-year period preceding the date of the application for licensing and registration; or

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

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

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

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

(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 1508(d)(6).

(c) PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.—

(1) MINIMUM EDUCATIONAL REQUIREMENTS.—In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(d) TESTING OF LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) QUALIFIED TEST.—A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

(A) ethics;

(B) Federal law and regulation pertaining to mortgage origination;

(C) State law and regulation pertaining to mortgage origination;

(D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) MINIMUM COMPETENCE.—

(A) PASSING SCORE.—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) INITIAL RETESTS.—An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) SUBSEQUENT RETESTS.—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

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

(e) MORTGAGE CALL REPORTS.—Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

12 USC 5105.

SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.

(a) IN GENERAL.—The minimum standards for license renewal for State-licensed loan originators shall include the following:

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

(2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

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

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

(A) 3 hours of Federal law and regulations;

(B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

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

(A) may only receive credit for a continuing education course in the year in which the course is taken; and

(B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

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

(5) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL AGENCIES. 12 USC 5106.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of this title. Deadline.

(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator under this subsection, the appropriate Federal banking agency and the Farm Credit Administration shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees's identity, including—

(A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

(1) UNIQUE IDENTIFIER.—The Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators. Public information.

(2) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the Financial Institutions

Examination Council, and the Farm Credit Administration concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

Information technology.

(c) CONSIDERATION OF FACTORS AND PROCEDURES.—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 1504(a), shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this title.

States. Deadlines. 12 USC 5107.

SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.

(a) BACKUP LICENSING SYSTEM.—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) LICENSING AND REGISTRATION REQUIREMENTS.—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 1505 and 1506 for State-licensed loan originators.

Public infomation.

(c) UNIQUE IDENTIFIER.—The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) STATE LICENSING LAW REQUIREMENTS.—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements:

(1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

Reports.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well

as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

(5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

(6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

(e) TEMPORARY EXTENSION OF PERIOD.—The Secretary may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 1505 and 1506 and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM. 12 USC 5108.

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of loan originators.

SEC. 1510. FEES. 12 USC 5109.

The Federal banking agencies, the Farm Credit Administration, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.

SEC. 1511. BACKGROUND CHECKS OF LOAN ORIGINATORS. 12 USC 5110.

(a) ACCESS TO RECORDS.—Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) AGENT.—For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting

and distributing information between the Department of Justice and the appropriate State agencies.

12 USC 5111.

SEC. 1512. CONFIDENTIALITY OF INFORMATION.

Applicability.

(a) SYSTEM CONFIDENTIALITY.—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

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

(d) PUBLIC ACCESS TO INFORMATION.—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

12 USC 5112.

SEC. 1513. LIABILITY PROVISIONS.

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM. 12 USC 5113.

(a) SUMMONS AUTHORITY.—The Secretary may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this title.

(b) EXAMINATION AUTHORITY.—

(1) IN GENERAL.—If the Secretary establishes a licensing system under section 1508 for any State, the Secretary shall appoint examiners for the purposes of administering such section.

(2) POWER TO EXAMINE.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.

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

(4) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 1508, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) ASSESSMENTS.—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

(1) AUTHORITY OF SECRETARY.—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 1508, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation

of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

Notification. Deadline.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

Effective date.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY SECRETARY.—At any time after the respondent has been served with a temporary cease and desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing before the Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the Secretary,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease and desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease and desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

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

Notification. Hearings.

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this title or any regulation prescribed by the Secretary under this title or order issued under subsection (c).

(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $25,000.

SEC. 1515. STATE EXAMINATION AUTHORITY.

12 USC 5114.

In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:

(1) For the purposes of investigating violations or complaints arising under this title, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this title, as often as necessary in order to carry out the purposes of this title.

Records.

(2) Each such loan originator shall make available upon request to the State licensing agency the books and records relating to the operations of such originator. The State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.

(3) The authority of this section shall remain in effect, whether such a loan originator acts or claims to act under

any licensing or registration law of such State, or claims to act without such authority.

(4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

12 USC 5115.

SEC. 1516. REPORTS AND RECOMMENDATIONS TO CONGRESS.

(a) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this title, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

Deadline.

(b) LEGISLATIVE RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this title, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

12 USC 5116.

SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.

(a) STUDY REQUIRED.—The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

Deadline.

(b) PRELIMINARY REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this title, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.

Deadline.

(c) FINAL REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

TITLE VI—MISCELLANEOUS

12 USC 4514a.

SEC. 1601. STUDY AND REPORTS ON GUARANTEE FEES.

(a) ONGOING STUDY OF FEES.—The Director shall conduct an ongoing study of fees charged by enterprises for guaranteeing a mortgage.

Regulations.
Orders.
Procedures.
Deadline.

(b) COLLECTION OF DATA.—The Director shall, by regulation or order, establish procedures for the collection of data from enterprises for purposes of this subsection, including the format and the process for collection of such data.

(c) REPORTS TO CONGRESS.—The Director shall annually submit a report to Congress on the results of the study conducted under subsection (a), based on the aggregated data collected under subsection (a) for the subject year, regarding the amount of such fees and the criteria used by the enterprises to determine such fees.

(d) CONTENTS OF REPORTS.—The reports required under subsection (c) shall identify and analyze—

(1) the factors considered in determining the amount of the guarantee fees charged;

(2) the total revenue earned by the enterprises from guarantee fees;

(3) the total costs incurred by the enterprises for providing guarantees;

(4) the average guarantee fee charged by the enterprises;

(5) an analysis of any increase or decrease in guarantee fees from the preceding year;

(6) a breakdown of the revenue and costs associated with providing guarantees, based on product type and risk classifications; and

(7) a breakdown of guarantee fees charged based on asset size of the originator and the number of loans sold or transferred to an enterprise.

(e) PROTECTION OF INFORMATION.—Nothing in this section may be construed to require or authorize the Director to publicly disclose information that is confidential or proprietary.

SEC. 1602. STUDY AND REPORT ON DEFAULT RISK EVALUATION.

(a) STUDY.—The Director shall conduct a study of ways to improve the overall default risk evaluation used with respect to residential mortgage loans. Particular attention shall be paid to the development and utilization of processes and technologies that provide a means to standardize the measurement of risk.

(b) REPORT.—The Director shall submit a report on the study conducted under this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 1 year after the date of enactment of this Act. Deadline.

SEC. 1603. CONVERSION OF HUD CONTRACTS. 42 USC 1437f note.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may, at the request of an owner of a multifamily housing project that exceeds 5,000 units to which a contract for project-based rental assistance under section 8 of the United States Housing Act of 1937 ("Act") (42 U.S.C. 1437f) and a Rental Assistance Payment contract is subject, convert such contracts to a contract for project-based rental assistance under section 8 of the Act.

(b) INITIAL RENEWAL.—

(1) At the request of an owner under subsection (a) made no later than 90 days prior to a conversion, the Secretary may, to the extent sufficient amounts are made available in appropriation Acts and notwithstanding any other law, treat the contemplated resulting contract as if such contract were eligible for initial renewal under section 524(a) of the Multi-Family Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) ("MAHRA") (42 U.S.C. 1437f note).

(2) A request by an owner pursuant to paragraph (1) shall be upon such terms and conditions as the Secretary may require.

(c) RESULTING CONTRACT.—The resulting contract shall—

(1) be subject to section 524(a) of MAHRA (42 U.S.C. 1437f note);

(2) be considered for all purposes a contract that has been renewed under section 524(a) of MAHRA (42 U.S.C. 1437f note) for a term not to exceed 20 years;

(3) be subsequently renewable at the request of an owner, under any renewal option for which the project is eligible under MAHRA (42 U.S.C. 1437f note);

(4) contain provisions limiting distributions, as the Secretary determines appropriate, not to exceed 10 percent of the initial investment of the owner;

(5) be subject to the availability of sufficient amounts in appropriation Acts; and

(6) be subject to such other terms and conditions as the Secretary considers appropriate.

(d) INCOME TARGETING.—To the extent that assisted dwelling units, subject to the resulting contract under subsection (a), serve low-income families, as defined in section 3(b)(2) of the Act (42 U.S.C. 1437a(b)(2)) the units shall be considered to be in compliance with all income targeting requirements under the Act (42 U.S.C. 1437 et seq).

(e) TENANT ELIGIBILITY.—Notwithstanding any other provision of law, each family residing in an assisted dwelling unit on the date of conversion of a contract under this section, subject to the resulting contract under subsection (a), shall be considered to meet the applicable requirements for income eligibility and occupancy.

(f) DEFINITIONS.—As used in this section—

(1) the term "Secretary" means the Secretary of Housing and Urban Development;

(2) the term "conversion" means the action under which a contract for project-based rental assistance under section 8 of the Act and a Rental Assistance Payment contract become a contract for project-based rental assistance under section 8 of the Act (42 U.S.C. 1437f) pursuant to subsection (a);

(3) the term "resulting contract" means the new contract after a conversion pursuant to subsection (a); and

(4) the term "assisted dwelling unit" means a dwelling unit in a multifamily housing project that exceeds 5,000 units that, on the date of conversion of a contract under this section, is subject to a contract for project-based rental assistance under section 8 of the Act (42 U.S.C. 1437f) or a Rental Assistance Payment contract.

SEC. 1604. BRIDGE DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (d)(2)—

(A) in subparagraph (F), by striking "as receiver" and all that follows through clause (ii) and inserting the following: "as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).";

(B) in subparagraph (G), by striking "new bank or a bridge bank" and inserting "new depository institution or a bridge depository institution";

(2) in the heading for subsection (e)(10)(C), by striking "BRIDGE BANKS" and inserting "BRIDGE DEPOSITORY INSTITUTIONS";

(3) in subsection (e)(10)(C)(i), by striking "bridge bank" and inserting "bridge depository institution";

(4) in subsection (m)—

(A) in the subsection heading, by striking "BANKS" and inserting "DEPOSITORY INSTITUTIONS";

(B) by striking "insured bank" each place such term appears and inserting "insured depository institution";

(C) by striking "new bank" each place such term appears and inserting "new depository institution";

(D) by striking "such bank" each place such term appears and inserting "such depository institution";

(E) by striking "the bank" each place such term appears and inserting "the insured depository institution";

(F) in paragraph (1), by inserting "or Federal savings association" after "national bank";

(G) in paragraph (6), by striking "only bank" and inserting "only depository institution";

(H) in paragraph (9), by inserting "or the Director of the Office of Thrift Supervision, as appropriate" after "Comptroller of the Currency";

(I) in paragraph (15), by striking ", but in no event" and all that follows through "located";

(J) in paragraph (16)—

(i) by inserting "or the Director of the Office of Thrift Supervision, as appropriate," after "Comptroller of the Currency" each place such term appears;

(ii) by striking "the bank" each place such term appears and inserting "the depository institution";

(iii) by inserting "or Federal savings association" after "national bank" each place such term appears;

(iv) by inserting "or Federal savings associations" after "national banks"; and

(v) by striking "Such bank" and inserting "Such depository institution"; and

(K) in paragraph (18), by inserting "or the Director of the Office of Thrift Supervision, as appropriate," after "Comptroller of the Currency" each place such term appears;

(5) in subsection (n)—

(A) in the subsection heading, by striking "BANKS" and inserting "DEPOSITORY INSTITUTIONS";

(B) by striking "bridge bank" each place such term appears and inserting "bridge depository institution";

(C) by striking "bridge banks" each place such term appears (other than in paragraph (1)(A))and inserting "bridge depository institutions";

(D) by striking "bridge bank's" each place such term appears and inserting "bridge depository institution's";

(E) by striking "insured bank" each place such term appears and inserting "insured depository institution";

(F) by striking "insured banks" each place such term appears and inserting "insured depository institutions";

(G) by striking "such bank" each place such term appears (other than in paragraph (4)(J)) and inserting "such depository institution";

(H) by striking "the bank" each place such term appears and inserting "the depository institution";

(I) by striking "bank or banks" each place such term appears and inserting "depository institution or institutions";

(J) in paragraph (1)(A)—

(i) by inserting ", with respect to 1 or more insured banks, or the Director of the Office of Thrift Supervision, with respect to 1 or more insured savings associations," after "Comptroller of the Currency";

(ii) by inserting "or Federal savings associations, as appropriate," after "national banks";

(iii) by inserting "or Federal savings associations, as applicable," after "banking associations"; and

(iv) by striking "as bridge banks" and inserting "as 'bridge depository institutions'";

(K) in paragraph (1)(B)—

(i) by striking "of a bank"; and

(ii) by striking "of that bank";

(L) in the heading for paragraph (1)(E), by inserting "OR FEDERAL SAVINGS ASSOCIATION" before the period;

(M) in paragraph (1)(E), by inserting before the period ", in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations";

(N) in paragraph (2)—

(i) by inserting "or Federal savings association" after "national bank" each place such term appears;

(ii) in subparagraph (A), by inserting "or the Director of the Office of Thrift Supervision" after "Comptroller of the Currency"; and

(iii) in the heading for subparagraph (B), by inserting "OR FEDERAL SAVINGS ASSOCIATION" before the period;

(O) in paragraph (4)—

(i) in the matter preceding subparagraph (A), by inserting "or Federal savings association, as appropriate" after "national bank";

(ii) in subparagraph (C), by striking "under section 5138 of the Revised Statutes or any other" and inserting "under any";

(iii) by inserting "and the Director of the Office of Thrift Supervision, as appropriate," after "Comptroller of the Currency" each place such term appears;

(iv) in subparagraph (D), by striking "bank's" and inserting "depository institution's"; and

(v) in subparagraph (H), by striking "a bank in default" and inserting "a depository institution in default";

(P) in paragraph (8)—

(i) in subparagraph (A), by striking "the banks" and inserting "the depository institutions";

(ii) in subparagraph (B), by striking "bank's" and inserting "depository institution's";

(Q) by striking "BRIDGE BANK" or "BRIDGE BANKS" as the case may be in the headings for paragraphs (9), (10), (12), and (13) and inserting "BRIDGE DEPOSITORY INSTITUTION" or "BRIDGE DEPOSITORY INSTITUTIONS" as appropriate;

(R) in paragraph (11), by inserting "or a Federal savings association, as the case may be," after "national bank" each place such term appears;

(S) in paragraph (12)—

(i) by inserting "or the Director of the Office of Thrift Supervision, as appropriate," after "Comptroller of the Currency" each place such term appears; and

(ii) by inserting "or Federal savings associations, as appropriate" after "national banks"; and

(T) in paragraph (13), by striking "single bank" and inserting "single depository institution".

(b) OTHER CONFORMING AMENDMENTS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(A) in section 3 (12 U.S.C. 1813), by striking subsection (i) and inserting the following:

"(i) NEW DEPOSITORY INSTITUTION AND BRIDGE DEPOSITORY INSTITUTION DEFINED.—

"(1) NEW DEPOSITORY INSTITUTION.—The term 'new depository institution' means a new national bank or Federal savings association, other than a bridge depository institution, organized by the Corporation in accordance with section 11(m).

"(2) BRIDGE DEPOSITORY INSTITUTION.—The term 'bridge depository institution' means a new national bank or Federal savings association organized by the Corporation in accordance with section 11(n).";

(B) in section 10(d)(5)(B) (12 U.S.C. 1820(d)(5)(B)), by striking "bridge bank" and inserting "bridge depository institution";

(C) in section 12 (12 U.S.C. 1822), by striking "new bank" each place such term appears and inserting "new depository institution";and

(D) in section 38(j)(2) (12 U.S.C. 1831o(j)(2)), by striking "bridge bank" and inserting "bridge depository institution".

(2) FEDERAL CREDIT UNION ACT.—Section 207(c)(10)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)(C)(i)) is amended by striking "bridge bank" and inserting "bridge depository institution".

(3) TITLE 11, UNITED STATES CODE.—Section 783 of title 11, United States Code, is amended by striking "bridge bank" and inserting "bridge depository institution".

(4) TITLE 26, UNITED STATES CODE.—Section 414(l)(2)(G) of the Internal Revenue Code of 1986, is amended by striking "bridge bank" and inserting "bridge depository institution".

(c) REPEAL OF DEPOSIT LIMITATION.—Section 11(n)(1)(B)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)(1)(B)(i)) is amended by striking ", except that" and all that follows through "another insured depository institution".

(d) FEDERAL RESERVE BANK LENDING TO BRIDGE DEPOSITORY INSTITUTIONS.—Section 11(n)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)(5)) is amended by adding at the end the following new subparagraph:

"(D) CAPITAL LEVELS.—A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 10B(b) of the Federal Reserve Act.".

SEC. 1605. SENSE OF THE SENATE.

It is the sense of the Senate that in implementing or carrying out any provision of this Act, or any amendment made by this Act, the Senate supports a policy of noninterference regarding local government requirements that the holder of a foreclosed property maintain that property.

Foreclosure Prevention Act of 2008.

DIVISION B—FORECLOSURE PREVENTION

12 USC 1701 note.

SEC. 2001. SHORT TITLE.

This division may be cited as the "Foreclosure Prevention Act of 2008".

SEC. 2002. EMERGENCY DESIGNATION.

For purposes of Senate enforcement, all provisions of this division are designated as emergency requirements and necessary to meet emergency needs pursuant to section 204 of S. Con. Res. 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008.

TITLE I—FHA MODERNIZATION ACT OF 2008

12 USC 1701 note.

SEC. 2101. SHORT TITLE.

This title may be cited as the "FHA Modernization Act of 2008".

Building American Homeownership Act of 2008.

Subtitle A—Building American Homeownership

12 USC 1701 note.

SEC. 2111. SHORT TITLE.

This subtitle may be cited as the "Building American Homeownership Act of 2008".

SEC. 2112. MAXIMUM PRINCIPAL LOAN OBLIGATION.

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

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

"(A) not to exceed the lesser of—

"(i) in the case of a 1-family residence, 115 percent of the median 1-family house price in the area, as determined by the Secretary; and in the case of a 2-, 3-, or 4-family residence, the percentage of such median price that bears the same ratio to such median price as the dollar amount limitation determined under the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a 2-, 3-, or 4-family residence, respectively, bears to the dollar amount limitation determined under such section for a 1-family residence; or

"(ii) 150 percent of the dollar amount limitation determined under the sixth sentence of such section 305(a)(2) for a residence of applicable size;

except that the dollar amount limitation in effect under this subparagraph for any size residence for any area may not be less than the greater of: (I) the dollar amount limitation in effect under this section for the area on October 21, 1998; or (II) 65 percent of the dollar amount limitation determined under the sixth sentence of such section 305(a)(2) for a residence of the applicable size; and

"(B) not to exceed 100 percent of the appraised value of the property."; and

(2) in the matter following subparagraph (B), by striking the second sentence (relating to a definition of "average closing cost") and all that follows through "section 3103A(d) of title 38, United States Code.".

(b) TREATMENT OF UP-FRONT PREMIUMS.—Section 203(d) of the National Housing Act (12 U.S.C. 1709(d)) is amended—

(1) by striking "Notwithstanding any" and inserting the following: "Except as provided in paragraph (2) of this subsection, notwithstanding";

(2) by inserting "(1)" after "(d)"; and

(3) by adding at the end the following new paragraph:

"(2) The maximum amount of a mortgage determined under subsection (b)(2)(B) of this section may not be increased as provided in paragraph (1).".

(c) EFFECTIVE DATE.— The amendments made by subsection (a) shall take effect upon the expiration of the date described in section 202(a) of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 620). 12 USC 1709 note.

SEC. 2113. CASH INVESTMENT REQUIREMENT AND PROHIBITION OF SELLER-FUNDED DOWN PAYMENT ASSISTANCE.

Paragraph (9) of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(9)) is amended to read as follows:

"(9) CASH INVESTMENT REQUIREMENT.—

"(A) IN GENERAL.—A mortgage insured under this section shall be executed by a mortgagor who shall have paid, in cash or its equivalent, on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property or such larger amount as the Secretary may determine.

"(B) FAMILY MEMBERS.—For purposes of this paragraph, the Secretary shall consider as cash or its equivalent any amounts borrowed from a family member (as such term is defined in section 201), subject only to the requirements that, in any case in which the repayment of such borrowed amounts is secured by a lien against the property, that—

"(i) such lien shall be subordinate to the mortgage; and

"(ii) the sum of the principal obligation of the mortgage and the obligation secured by such lien may not exceed 100 percent of the appraised value of the property plus any initial service charges, appraisal,

inspection, and other fees in connection with the mortgage.

"(C) PROHIBITED SOURCES.—In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

"(i) The seller or any other person or entity that financially benefits from the transaction.

"(ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i).

Applicability. Effective date.

This subparagraph shall apply only to mortgages for which the mortgagee has issued credit approval for the borrower on or after October 1, 2008.".

SEC. 2114. MORTGAGE INSURANCE PREMIUMS.

Section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking "or of the General Insurance Fund" and all that follows through "section 234(c),,"; and

(2) in subparagraph (A)—

(A) by striking "2.25 percent" and inserting "3 percent"; and

(B) by striking "2.0 percent" and inserting "2.75 percent".

SEC. 2115. REHABILITATION LOANS.

Subsection (k) of section 203 of the National Housing Act (12 U.S.C. 1709(k)) is amended—

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

(2) in paragraph (5)—

(A) by striking "General Insurance Fund" the first place it appears and inserting "Mutual Mortgage Insurance Fund"; and

(B) in the second sentence, by striking the comma and all that follows through "General Insurance Fund".

SEC. 2116. DISCRETIONARY ACTION.

The National Housing Act is amended—

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

(A) in paragraph (3)(B), by striking "section 202(e) of the National Housing Act" and inserting "this subsection"; and

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

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

"(4) the Secretary of Agriculture;"; and

(3) by transferring subsection (s) of section 203 (as amended by paragraph (2) of this section) to section 202, inserting such subsection after subsection (d) of section 202, and redesignating such subsection as subsection (e).

SEC. 2117. INSURANCE OF CONDOMINIUMS.

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

(1) in subsection (c), in the first sentence—

(A) by striking "and" before "(2)"; and

(B) by inserting before the period at the end the following: ", and (3) the project has a blanket mortgage insured by the Secretary under subsection (d)"; and

(2) in subsection (g), by striking ", except that" and all that follows and inserting a period.

(b) DEFINITION OF MORTGAGE.—Section 201(a) of the National Housing Act (12 U.S.C. 1707(a)) is amended—

(1) before "a first mortgage" insert "(A)";

(2) by striking "or on a leasehold (1)" and inserting "(B) a first mortgage on a leasehold on real estate (i)";

(3) by striking "or (2)" and inserting ", or (ii)"; and

(4) by inserting before the semicolon the following: ", or (C) a first mortgage given to secure the unpaid purchase price of a fee interest in, or long-term leasehold interest in, real estate consisting of a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project".

(c) DEFINITION OF REAL ESTATE.—Section 201 of the National Housing Act (12 U.S.C. 1707) is amended by adding at the end the following new subsection:

"(g) The term 'real estate' means land and all natural resources and structures permanently affixed to the land, including residential buildings and stationary manufactured housing. The Secretary may not require, for treatment of any land or other property as real estate for purposes of this title, that such land or property be treated as real estate for purposes of State taxation.".

SEC. 2118. MUTUAL MORTGAGE INSURANCE FUND.

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

"(a) MUTUAL MORTGAGE INSURANCE FUND.—

"(1) ESTABLISHMENT.—Subject to the provisions of the Federal Credit Reform Act of 1990, there is hereby created a Mutual Mortgage Insurance Fund (in this title referred to as the 'Fund'), which shall be used by the Secretary to carry out the provisions of this title with respect to mortgages insured under section 203. The Secretary may enter into commitments to guarantee, and may guarantee, such insured mortgages.

"(2) LIMIT ON LOAN GUARANTEES.—The authority of the Secretary to enter into commitments to guarantee such insured mortgages shall be effective for any fiscal year only to the extent that the aggregate original principal loan amount under such mortgages, any part of which is guaranteed, does not exceed the amount specified in appropriations Acts for such fiscal year.

"(3) FIDUCIARY RESPONSIBILITY.—The Secretary has a responsibility to ensure that the Mutual Mortgage Insurance Fund remains financially sound.

"(4) ANNUAL INDEPENDENT ACTUARIAL STUDY.—The Secretary shall provide for an independent actuarial study of the Fund to be conducted annually, which shall analyze the financial position of the Fund. The Secretary shall submit a report annually to the Congress describing the results of such study and assessing the financial status of the Fund. The report

Reports.

shall recommend adjustments to underwriting standards, program participation, or premiums, if necessary, to ensure that the Fund remains financially sound. The report shall also include an evaluation of the quality control procedures and accuracy of information utilized in the process of underwriting loans guaranteed by the Fund. Such evaluation shall include a review of the risk characteristics of loans based not only on borrower information and performance, but on risks associated with loans originated or funded by various entities or financial institutions.

"(5) QUARTERLY REPORTS.—During each fiscal year, the Secretary shall submit a report to the Congress for each calendar quarter, which shall specify for mortgages that are obligations of the Fund—

"(A) the cumulative volume of loan guarantee commitments that have been made during such fiscal year through the end of the quarter for which the report is submitted;

"(B) the types of loans insured, categorized by risk;

"(C) any significant changes between actual and projected claim and prepayment activity;

"(D) projected versus actual loss rates; and

"(E) updated projections of the annual subsidy rates to ensure that increases in risk to the Fund are identified and mitigated by adjustments to underwriting standards, program participation, or premiums, and the financial soundness of the Fund is maintained.

Deadline. The first quarterly report under this paragraph shall be submitted on the last day of the first quarter of fiscal year 2008, or on the last day of the first full calendar quarter following the enactment of the Building American Homeownership Act of 2008, whichever is later.

"(6) ADJUSTMENT OF PREMIUMS.—If, pursuant to the independent actuarial study of the Fund required under paragraph (4), the Secretary determines that the Fund is not meeting the operational goals established under paragraph (7) or there is a substantial probability that the Fund will not maintain its established target subsidy rate, the Secretary may either make programmatic adjustments under this title as necessary to reduce the risk to the Fund, or make appropriate premium adjustments.

"(7) OPERATIONAL GOALS.—The operational goals for the Fund are—

Deadline. "(A) to minimize the default risk to the Fund and to homeowners by among other actions instituting fraud prevention quality control screening not later than 18 months after the date of enactment of the Building American Homeownership Act of 2008; and

"(B) to meet the housing needs of the borrowers that the single family mortgage insurance program under this title is designed to serve.".

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

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

(A) by striking "Notwithstanding section 202 of this title, the" and inserting "The"; and

(B) by striking "General Insurance Fund" the first place such term appears and all that follows through the end of the subsection and inserting "Mutual Mortgage Insurance Fund.".

(2) HOME EQUITY CONVERSION MORTGAGES.—Section 255(i)(2)(A) of the National Housing Act (12 U.S.C. 1715z–20(i)(2)(A)) is amended by striking "General Insurance Fund" and inserting "Mutual Mortgage Insurance Fund".

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

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

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

SEC. 2119. HAWAIIAN HOME LANDS AND INDIAN RESERVATIONS.

(a) HAWAIIAN HOME LANDS.—Section 247(c) of the National Housing Act (12 U.S.C. 1715z–12(c)) is amended—

(1) by striking "General Insurance Fund established in section 519" and inserting "Mutual Mortgage Insurance Fund"; and

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

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

(1) by striking "General Insurance Fund" the first place it appears through "519" and inserting "Mutual Mortgage Insurance Fund"; and

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

SEC. 2120. CONFORMING AND TECHNICAL AMENDMENTS.

(a) REPEALS.—The following provisions of the National Housing Act are repealed:

(1) Subsection (i) of section 203 (12 U.S.C. 1709(i)).
(2) Subsection (o) of section 203 (12 U.S.C. 1709(o)).
(3) Subsection (p) of section 203 (12 U.S.C. 1709(p)).
(4) Subsection (q) of section 203 (12 U.S.C. 1709(q)).
(5) Section 222 (12 U.S.C. 1715m).
(6) Section 237 (12 U.S.C. 1715z–2).
(7) Section 245 (12 U.S.C. 1715z–10).

(b) DEFINITION OF AREA.—Section 203(u)(2)(A) of the National Housing Act (12 U.S.C. 1709(u)(2)(A)) is amended by striking "shall" and all that follows and inserting "means a metropolitan statistical area as established by the Office of Management and Budget;".

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

SEC. 2121. INSURANCE OF MORTGAGES.

Subsection (n)(2) of section 203 of the National Housing Act (12 U.S.C. 1709(n)(2)) is amended—

(1) in subparagraph (A), by inserting "or subordinate mortgage or" before "lien given"; and

(2) in subparagraph (C), by inserting "or subordinate mortgage or" before "lien".

SEC. 2122. HOME EQUITY CONVERSION MORTGAGES.

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

(1) in subsection (b)(2), insert "'real estate,'" after "'mortgagor',";

(2) by amending subsection (d)(1) to read as follows:

"(1) have been originated by a mortgagee approved by the Secretary;";

(3) by amending subsection (d)(2)(B) to read as follows:

"(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in—

"(i) originating or servicing the mortgage;

"(ii) funding the loan underlying the mortgage; or

"(iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;";

(4) in subsection (f)—

(A) by striking "(f) INFORMATION SERVICES FOR MORTGAGORS.—" and inserting "(f) COUNSELING SERVICES AND INFORMATION FOR MORTGAGORS.—"; and

(B) by amending the matter preceding paragraph (1) to read as follows: "The Secretary shall provide or cause to be provided adequate counseling for the mortgagor, as described in subsection (d)(2)(B). Such counseling shall be provided by counselors that meet qualification standards and follow uniform counseling protocols. The qualification standards and counseling protocols shall be established by the Secretary within 12 months of the date of enactment of the Building American Homeownership Act of 2008. The protocols shall require a qualified counselor to discuss with each mortgagor information which shall include—
"

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Deadline.

(5) in subsection (g), by striking "established under section 203(b)(2)" and all that follows through "located" and inserting "limitation established under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence";

(6) by striking subsection (l);

(7) by redesignating subsection (m) as subsection (l);

(8) by amending subsection (l), as so redesignated, to read as follows:

"(l) FUNDING FOR COUNSELING.—The Secretary may use a portion of the mortgage insurance premiums collected under the program under this section to adequately fund the counseling and disclosure activities required under subsection (f), including counseling for those homeowners who elect not to take out a home equity conversion mortgage, provided that the use of such funds is based upon accepted actuarial principles."; and

(9) by adding at the end the following new subsection:

"(m) AUTHORITY TO INSURE HOME PURCHASE MORTGAGE.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary may insure, upon application by a mortgagee, a home equity conversion mortgage upon such terms and conditions as the Secretary may prescribe, when the home equity conversion mortgage will be used to purchase

a 1- to 4-family dwelling unit, one unit of which the mortgagor will occupy as a primary residence, and to provide for any future payments to the mortgagor, based on available equity, as authorized under subsection (d)(9).

"(2) LIMITATION ON PRINCIPAL OBLIGATION.—A home equity conversion mortgage insured pursuant to paragraph (1) shall involve a principal obligation that does not exceed the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence.

"(n) REQUIREMENTS ON MORTGAGE ORIGINATORS.—

"(1) IN GENERAL.—The mortgagee and any other party that participates in the origination of a mortgage to be insured under this section shall—

"(A) not participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity; or

"(B) demonstrate to the Secretary that the mortgagee or other party maintains, or will maintain, firewalls and other safeguards designed to ensure that—

"(i) individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the mortgagor with, any other financial or insurance product; and

"(ii) the mortgagor shall not be required, directly or indirectly, as a condition of obtaining a mortgage under this section, to purchase any other financial or insurance product.

"(2) APPROVAL OF OTHER PARTIES.—All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary.

"(o) PROHIBITION AGAINST REQUIREMENTS TO PURCHASE ADDITIONAL PRODUCTS.—The mortgagor or any other party shall not be required by the mortgagee or any other party to purchase an insurance, annuity, or other similar product as a requirement or condition of eligibility for insurance under subsection (c), except for title insurance, hazard, flood, or other peril insurance, or other such products that are customary and normal under subsection (c), as determined by the Secretary.

"(p) STUDY TO DETERMINE CONSUMER PROTECTIONS AND UNDERWRITING STANDARDS.—The Secretary shall conduct a study to examine and determine appropriate consumer protections and underwriting standards to ensure that the purchase of products referred to in subsection (o) is appropriate for the consumer. In conducting such study, the Secretary shall consult with consumer advocates (including recognized experts in consumer protection), industry representatives, representatives of counseling organizations, and other interested parties.".

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

(1) in paragraph (4)—

(A) by inserting "a first or subordinate mortgage or lien" before "on all stock";

(B) by inserting "unit" after "dwelling"; and

(C) by inserting "a first mortgage or first lien" before "on a leasehold"; and

(2) in paragraph (5), by inserting "a first or subordinate lien on" before "all stock".

(c) LIMITATION ON ORIGINATION FEES.—Section 255 of the National Housing Act (12 U.S.C. 1715z–20), as amended by the preceding provisions of this section, is further amended by adding at the end the following new subsection:

"(r) LIMITATION ON ORIGINATION FEES.—The Secretary shall establish limits on the origination fee that may be charged to a mortgagor under a mortgage insured under this section, which limitations shall—

"(1) be equal to 2.0 percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000 plus 1 percent of any portion of the maximum claim amount that is greater than $200,000, unless adjusted thereafter on the basis of an analysis of—

"(A) the costs to mortgagors; and

"(B) the impact on the reverse mortgage market;

"(2) be subject to a minimum allowable amount;

"(3) provide that the origination fee may be fully financed with the mortgage;

"(4) include any fees paid to correspondent mortgagees approved by the Secretary;

"(5) have the same effective date as subsection (m)(2) regarding the limitation on principal obligation; and

"(6) be subject to a maximum origination fee of $6,000, except that such maximum limit shall be adjusted in accordance with the annual percentage increase in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor in increments of $500 only when the percentage increase in such index, when applied to the maximum origination fee, produces dollar increases that exceed $500.".

(d) STUDY REGARDING PROGRAM COSTS AND CREDIT AVAILABILITY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the costs and availability of credit under the home equity conversion mortgages for elderly homeowners program under section 255 of the National Housing Act (12 U.S.C. 1715z–20) (in this subsection referred to as the "program").

(2) PURPOSE.—The purpose of the study required under paragraph (1) is to help Congress analyze and determine the effects of limiting the amounts of the costs or fees under the program from the amounts charged under the program as of the date of the enactment of this title.

(3) CONTENT OF REPORT.—The study required under paragraph (1) should focus on—

(A) the cost to mortgagors of participating in the program;

(B) the financial soundness of the program;

(C) the availability of credit under the program; and

(D) the costs to elderly homeowners participating in the program, including—

(i) mortgage insurance premiums charged under the program;

(ii) up-front fees charged under the program; and

(iii) margin rates charged under the program.

(4) TIMING OF REPORT.—Not later than 12 months after the date of the enactment of this title, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives setting forth the results and conclusions of the study required under paragraph (1).

SEC. 2123. ENERGY EFFICIENT MORTGAGES PROGRAM.

Section 106(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 12712 note) is amended—

(1) by amending subparagraph (C) to read as follows:

"(C) COSTS OF IMPROVEMENTS.—The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

"(i) 5 percent of the property value (not to exceed 5 percent of the limit established under section 203(b)(2)(A)) of the National Housing Act (12 U.S.C. 1709(b)(2)(A); or

"(ii) 2 percent of the limit established under section 203(b)(2)(B) of such Act."; and

(2) by adding at the end the following:

"(D) LIMITATION.—In any fiscal year, the aggregate number of mortgages insured pursuant to this section may not exceed 5 percent of the aggregate number of mortgages for 1- to 4-family residences insured by the Secretary of Housing and Urban Development under title II of the National Housing Act (12 U.S.C. 1707 et seq.) during the preceding fiscal year.".

SEC. 2124. PILOT PROGRAM FOR AUTOMATED PROCESS FOR BORROWERS WITHOUT SUFFICIENT CREDIT HISTORY.

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

"SEC. 257. PILOT PROGRAM FOR AUTOMATED PROCESS FOR BORROWERS WITHOUT SUFFICIENT CREDIT HISTORY.

12 USC 1715z–24.

"(a) ESTABLISHMENT.—The Secretary shall carry out a pilot program to establish, and make available to mortgagees, an automated process for providing alternative credit rating information for mortgagors and prospective mortgagors under mortgages on 1- to 4-family residences to be insured under this title who have insufficient credit histories for determining their creditworthiness. Such alternative credit rating information may include rent, utilities, and insurance payment histories, and such other information as the Secretary considers appropriate.

"(b) SCOPE.—The Secretary may carry out the pilot program under this section on a limited basis or scope, and may consider limiting the program to first-time homebuyers.

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

"(d) SUNSET.—After the expiration of the 5-year period beginning on the date of the enactment of the Building American Homeownership Act of 2008, the Secretary may not enter into

any new commitment to insure any mortgage, or newly insure any mortgage, pursuant to the automated process established under this section.".

Deadline.

(b) GAO REPORT.—Not later than the expiration of the two-year period beginning on the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Congress a report identifying the number of additional mortgagors served using the automated process established pursuant to section 257 of the National Housing Act (as added by the amendment made by subsection (a) of this section) and the impact of such process and the insurance of mortgages pursuant to such process on the safety and soundness of the insurance funds under the National Housing Act of which such mortgages are obligations.

12 USC 1710 note.

SEC. 2125. HOMEOWNERSHIP PRESERVATION.

The Secretary of Housing and Urban Development and the Commissioner of the Federal Housing Administration, in consultation with industry, the Neighborhood Reinvestment Corporation, and other entities involved in foreclosure prevention activities, shall—

Plans.

(1) develop and implement a plan to improve the Federal Housing Administration's loss mitigation process; and

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(2) report such plan to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 2126. USE OF FHA SAVINGS FOR IMPROVEMENTS IN FHA TECHNOLOGIES, PROCEDURES, PROCESSES, PROGRAM PERFORMANCE, STAFFING, AND SALARIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2009 through 2013, $25,000,000, from negative credit subsidy for the mortgage insurance programs under title II of the National Housing Act, to the Secretary of Housing and Urban Development for increasing funding for the purpose of improving technology, processes, program performance, eliminating fraud, and for providing appropriate staffing in connection with the mortgage insurance programs under title II of the National Housing Act.

Regulations.

(b) CERTIFICATION.—The authorization under subsection (a) shall not be effective for a fiscal year unless the Secretary of Housing and Urban Development has, by rulemaking in accordance with section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section), made a determination that—

(1) premiums being, or to be, charged during such fiscal year for mortgage insurance under title II of the National Housing Act are established at the minimum amount sufficient to—

(A) comply with the requirements of section 205(f) of such Act (relating to required capital ratio for the Mutual Mortgage Insurance Fund); and

(B) ensure the safety and soundness of the other mortgage insurance funds under such Act; and

(2) any negative credit subsidy for such fiscal year resulting from such mortgage insurance programs adequately ensures the efficient delivery and availability of such programs.

(c) STUDY AND REPORT.—The Secretary of Housing and Urban Development shall conduct a study to obtain recommendations from

participants in the private residential (both single family and multifamily) mortgage lending business and the secondary market for such mortgages on how best to update and upgrade processes and technologies for the mortgage insurance programs under title II of the National Housing Act so that the procedures for originating, insuring, and servicing of such mortgages conform with those customarily used by secondary market purchasers of residential mortgage loans. Not later than the expiration of the 12-month period beginning on the date of the enactment of this title, the Secretary shall submit a report to the Congress describing the progress made and to be made toward updating and upgrading such processes and technology, and providing appropriate staffing for such mortgage insurance programs.

Deadline. Reports.

SEC. 2127. POST-PURCHASE HOUSING COUNSELING ELIGIBILITY IMPROVEMENTS.

Section 106(c)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(4)) is amended:

(1) in subparagraph (C)—

(A) in clause (i), by striking "; or" and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(iii) a significant reduction in the income of the household due to divorce or death; or

"(iv) a significant increase in basic expenses of the homeowner or an immediate family member of the homeowner (including the spouse, child, or parent for whom the homeowner provides substantial care or financial assistance) due to—

"(I) an unexpected or significant increase in medical expenses;

"(II) a divorce;

"(III) unexpected and significant damage to the property, the repair of which will not be covered by private or public insurance; or

"(IV) a large property-tax increase; or";

(2) by striking the matter that follows subparagraph (C); and

(3) by adding at the end the following:

"(D) the Secretary of Housing and Urban Development determines that the annual income of the homeowner is no greater than the annual income established by the Secretary as being of low- or moderate-income.".

SEC. 2128. PRE-PURCHASE HOMEOWNERSHIP COUNSELING DEMONSTRATION.

12 USC 1701x note.

(a) ESTABLISHMENT OF PROGRAM.—For the period beginning on the date of enactment of this title and ending on the date that is 3 years after such date of enactment, the Secretary of Housing and Urban Development shall establish and conduct a demonstration program to test the effectiveness of alternative forms of pre-purchase homeownership counseling for eligible homebuyers.

(b) FORMS OF COUNSELING.—The Secretary of Housing and Urban Development shall provide to eligible homebuyers pre-purchase homeownership counseling under this section in the form of—

(1) telephone counseling;
(2) individualized in-person counseling;
(3) web-based counseling;
(4) counseling classes; or
(5) any other form or type of counseling that the Secretary may, in his discretion, determine appropriate.

(c) SIZE OF PROGRAM.—The Secretary shall make available the pre-purchase homeownership counseling described in subsection (b) to not more than 3,000 eligible homebuyers in any given year.

(d) INCENTIVE TO PARTICIPATE.—The Secretary of Housing and Urban Development may provide incentives to eligible homebuyers to participate in the demonstration program established under subsection (a). Such incentives may include the reduction of any insurance premium charges owed by the eligible homebuyer to the Secretary.

(e) ELIGIBLE HOMEBUYER DEFINED.—For purposes of this section an "eligible homebuyer" means a first-time homebuyer who has been approved for a home loan with a loan-to-value ratio between 97 percent and 98.5 percent.

(f) REPORT TO CONGRESS.—The Secretary of Housing and Urban Development shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representative—

Deadline.

(1) on an annual basis, on the progress and results of the demonstration program established under subsection (a); and

(2) for the period beginning on the date of enactment of this title and ending on the date that is 5 years after such date of enactment, on the payment history and delinquency rates of eligible homebuyers who participated in the demonstration program.

SEC. 2129. FRAUD PREVENTION.

Section 1014 of title 18, United States Code, is amended in the first sentence—

(1) by inserting "the Federal Housing Administration," before "the Farm Credit Administration"; and

(2) by striking "commitment, or loan" and inserting "commitment, loan, or insurance agreement or application for insurance or a guarantee".

12 USC 1709 note.

SEC. 2130. LIMITATION ON MORTGAGE INSURANCE PREMIUM INCREASES.

(a) IN GENERAL.—Notwithstanding any other provision of law, including any provision of this title and any amendment made by this title—

(1) for the period beginning on the date of the enactment of this title and ending on October 1, 2009, the premiums charged for mortgage insurance under multifamily housing programs under the National Housing Act may not be increased above the premium amounts in effect under such program on October 1, 2006, unless the Secretary of Housing and Urban Development determines that, absent such increase, insurance of additional mortgages under such program would, under the Federal Credit Reform Act of 1990, require the appropriation of new budget authority to cover the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) of such insurance; and

(2) a premium increase pursuant to paragraph (1) may be made only if not less than 30 days prior to such increase taking effect, the Secretary of Housing and Urban Development—

(A) notifies the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of such increase; and Notification.

(B) publishes notice of such increase in the Federal Register. Federal Register, publication.

(b) WAIVER.—The Secretary of Housing and Urban Development may waive the 30-day notice requirement under subsection (a)(2), if the Secretary determines that waiting 30-days before increasing premiums would cause substantial damage to the solvency of multifamily housing programs under the National Housing Act.

SEC. 2131. SAVINGS PROVISION. 12 USC 1701 note.

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

SEC. 2132. IMPLEMENTATION. Requirements. Notification. Effective date. 12 USC 1701 note.

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

SEC. 2133. MORATORIUM ON IMPLEMENTATION OF RISK-BASED PREMIUMS.

(a) IN GENERAL.—During the 12-month period beginning on October 1, 2008, the Secretary of Housing and Urban Development shall not take any action to implement or carry out risk-based premiums, which are designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk that the insurance contract represents, as such planned implementation was set forth in the Notice published in the Federal Register on May 13, 2008 (Vol. 73, No. 93, Pages 27703 through 27711) (effective July 14, 2008). Effective date.

(b) INSURANCE OF MORTGAGES UNDER THE NATIONAL HOUSING ACT.—During the 12-month period beginning on October 1, 2008, the Secretary of Housing and Urban Development shall not take any action to implement or carry out any other risk-based premium product related to the insurance of any mortgage on a single family residence under title II of the National Housing Act, where the premium price for such new product is based in whole or in part on a borrower's Decision Credit Score, as that term is defined in the Notice described under subsection (a), or any successor thereto. Effective date.

FHA Manufactured Housing Loan Modernization Act of 2008. 12 USC 1701 note.

Subtitle B—Manufactured Housing Loan Modernization

SEC. 2141. SHORT TITLE.

This subtitle may be cited as the "FHA Manufactured Housing Loan Modernization Act of 2008".

12 USC 1703 note.

SEC. 2142. PURPOSES.

The purposes of this subtitle are—

(1) to provide adequate funding for FHA-insured manufactured housing loans for low- and moderate-income homebuyers during all economic cycles in the manufactured housing industry;

(2) to modernize the FHA title I insurance program for manufactured housing loans to enhance participation by Ginnie Mae and the private lending markets; and

(3) to adjust the low loan limits for title I manufactured home loan insurance to reflect the increase in costs since such limits were last increased in 1992 and to index the limits to inflation.

SEC. 2143. EXCEPTION TO LIMITATION ON FINANCIAL INSTITUTION PORTFOLIO.

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

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

(2) by striking ": *Provided*, That with" and inserting ". With".

SEC. 2144. INSURANCE BENEFITS.

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

Contracts.

"(8) INSURANCE BENEFITS FOR MANUFACTURED HOUSING LOANS.—Any contract of insurance with respect to loans, advances of credit, or purchases in connection with a manufactured home or a lot on which to place a manufactured home (or both) for a financial institution that is executed under this title after the date of the enactment of the FHA Manufactured Housing Loan Modernization Act of 2008 by the Secretary shall be conclusive evidence of the eligibility of such financial institution for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of the bearer from the date of the execution of such contract, except for fraud or misrepresentation on the part of such institution.".

12 USC 1703 note.

(b) APPLICABILITY.—The amendment made by subsection (a) shall only apply to loans that are registered or endorsed for insurance after the date of the enactment of this title.

SEC. 2145. MAXIMUM LOAN LIMITS.

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

(1) in clause (ii) of subparagraph (A), by striking "$17,500" and inserting "$25,090";

(2) in subparagraph (C) by striking "$48,600" and inserting "$69,678";

(3) in subparagraph (D) by striking "$64,800" and inserting "$92,904";

(4) in subparagraph (E) by striking "$16,200" and inserting "$23,226"; and

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

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

"(9) ANNUAL INDEXING OF MANUFACTURED HOUSING LOANS.—The Secretary shall develop a method of indexing in order to annually adjust the loan limits established in subparagraphs (A)(ii), (C), (D), and (E) of this subsection. Such index shall be based on the manufactured housing price data collected by the United States Census Bureau. The Secretary shall establish such index no later than 1 year after the date of the enactment of the FHA Manufactured Housing Loan Modernization Act of 2008." Deadline.

(c) TECHNICAL AND CONFORMING CHANGES.—Paragraph (1) of section 2(b) of the National Housing Act (12 U.S.C. 1703(b)(1)) is amended—

(1) by striking "No" and inserting "Except as provided in the last sentence of this paragraph, no"; and

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

"The Secretary shall, by regulation, annually increase the dollar amount limitations in subparagraphs (A)(ii), (C), (D), and (E) (as such limitations may have been previously adjusted under this sentence) in accordance with the index established pursuant to paragraph (9).". Regulations.

SEC. 2146. INSURANCE PREMIUMS.

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

(1) by inserting "(1) PREMIUM CHARGES.—" after "(f)"; and

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

"(2) MANUFACTURED HOME LOANS.—Notwithstanding paragraph (1), in the case of a loan, advance of credit, or purchase in connection with a manufactured home or a lot on which to place such a home (or both), the premium charge for the insurance granted under this section shall be paid by the borrower under the loan or advance of credit, as follows:

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

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

"(C) Premium charges under this paragraph shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section for insurance of loans, advances of credit, or purchases in connection with a manufactured home or a lot on which to place such a home (or both), as determined based upon risk to the Federal Government under existing underwriting requirements.

"(D) The Secretary may increase the limitations on premium payments to percentages above those set forth in subparagraphs (A) and (B), but only if necessary, and not in excess of the minimum increase necessary, to maintain a negative credit subsidy as described in subparagraph (C).".

SEC. 2147. TECHNICAL CORRECTIONS.

(a) DATES.—Subsection (a) of section 2 of the National Housing Act (12 U.S.C. 1703(a)) is amended—

(1) by striking "on and after July 1, 1939," each place such term appears; and

(2) by striking "made after the effective date of the Housing Act of 1954".

(b) AUTHORITY OF SECRETARY.—Subsection (c) of section 2 of the National Housing Act (12 U.S.C. 1703(c)) is amended to read as follows:

"(c) HANDLING AND DISPOSAL OF PROPERTY.—

"(1) AUTHORITY OF SECRETARY.—Notwithstanding any other provision of law, the Secretary may—

"(A) deal with, complete, rent, renovate, modernize, insure, or assign or sell at public or private sale, or otherwise dispose of, for cash or credit in the Secretary's discretion, and upon such terms and conditions and for such consideration as the Secretary shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by the Secretary, in connection with the payment of insurance heretofore or hereafter granted under this title, including any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of insurance heretofore or hereafter granted under this section; and

"(B) pursue to final collection, by way of compromise or otherwise, all claims assigned to or held by the Secretary and all legal or equitable rights accruing to the Secretary in connection with the payment of such insurance, including unpaid insurance premiums owed in connection with insurance made available by this title.

"(2) ADVERTISEMENTS FOR PROPOSALS.—Section 3709 of the Revised Statutes shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $25,000.

"(3) DELEGATION OF AUTHORITY.—The power to convey and to execute in the name of the Secretary, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this title may be exercised by an officer appointed by the Secretary without

the execution of any express delegation of power or power of attorney. Nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney, in the Secretary's discretion, to any officer or agent the Secretary may appoint.".

SEC. 2148. REVISION OF UNDERWRITING CRITERIA.

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

"(10) FINANCIAL SOUNDNESS OF MANUFACTURED HOUSING PROGRAM.—The Secretary shall establish such underwriting criteria for loans and advances of credit in connection with a manufactured home or a lot on which to place a manufactured home (or both), including such loans and advances represented by obligations purchased by financial institutions, as may be necessary to ensure that the program under this title for insurance for financial institutions against losses from such loans, advances of credit, and purchases is financially sound.".

(b) TIMING.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this title, the Secretary of Housing and Urban Development shall revise the existing underwriting criteria for the program referred to in paragraph (10) of section 2(b) of the National Housing Act (as added by subsection (a) of this section) in accordance with the requirements of such paragraph. 12 USC 1703 note.

SEC. 2149. PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES.

Title I of the National Housing Act is amended by adding at the end of section 9 the following new section:

"SEC. 10. PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES. 12 USC 1706f.

"(a) IN GENERAL.—Except as provided in subsection (b), the provisions of sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) shall apply to each sale of a manufactured home financed with an FHA-insured loan or extension of credit, as well as to services rendered in connection with such transactions.

"(b) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to determine the manner and extent to which the provisions of sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) may reasonably be applied to the transactions described in subsection (a), and to grant such exemptions as may be necessary to achieve the purposes of this section.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'federally related mortgage loan' as used in sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) shall include an FHA-insured loan or extension of credit made to a borrower for the purpose of purchasing a manufactured home that the borrower intends to occupy as a personal residence; and

"(2) the term 'real estate settlement service' as used in sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) shall include any service rendered in connection with a loan or extension

of credit insured by the Federal Housing Administration for the purchase of a manufactured home.

"(d) UNFAIR AND DECEPTIVE PRACTICES.—In connection with the purchase of a manufactured home financed with a loan or extension of credit insured by the Federal Housing Administration under this title, the Secretary shall prohibit acts or practices in connection with loans or extensions of credit that the Secretary finds to be unfair, deceptive, or otherwise not in the interests of the borrower.".

SEC. 2150. LEASEHOLD REQUIREMENTS.

Subsection (b) of section 2 of the National Housing Act (12 U.S.C. 1703(b)), as amended by the preceding provisions of this title, is further amended by adding at the end the following new paragraph:

"(11) LEASEHOLD REQUIREMENTS.—No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it, made for the purposes of financing a manufactured home which is intended to be situated in a manufactured home community pursuant to a lease, unless such lease—

"(A) expires not less than 3 years after the origination date of the obligation;

"(B) is renewable upon the expiration of the original 3 year term by successive 1 year terms; and

"(C) requires the lessor to provide the lessee written notice of termination of the lease not less than 180 days prior to the expiration of the current lease term in the event the lessee is required to move due to the closing of the manufactured home community, and further provides that failure to provide such notice to the mortgagor in a timely manner will cause the lease term, at its expiration, to automatically renew for an additional 1 year term.".

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.

Definition.

Notwithstanding subparagraph (C) of section 3703(a)(1) of title 38, United States Code, for purposes of any loan described in subparagraph (A)(i)(IV) of such section that is originated during the period beginning on the date of the enactment of this Act and ending on December 31, 2008, the term "maximum guaranty amount" shall mean an amount equal to 25 percent of the higher of—

(1) the limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for the calendar year in which the loan is originated for a single-family residence; or

(2) 125 percent of the area median price for a single-family residence, but in no case to exceed 175 percent of the

limitation determined under such section 305(a)(2) for the calendar year in which the loan is originated for a single-family residence.

SEC. 2202. COUNSELING ON MORTGAGE FORECLOSURES FOR MEMBERS OF THE ARMED FORCES RETURNING FROM SERVICE ABROAD.

10 USC 992 note.

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

(b) ELEMENTS.—The program required by subsection (a) shall include the following:

(1) Credit counseling.

(2) Home mortgage counseling.

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

(c) TIMING OF PROVISION OF COUNSELING.—Counseling and other information under the program required by subsection (a) shall be provided to a member of the Armed Forces covered by the program as soon as practicable after the return of the member from service as described in subsection (a).

SEC. 2203. ENHANCEMENT OF PROTECTIONS FOR SERVICEMEMBERS RELATING TO MORTGAGES AND MORTGAGE FORECLOSURES.

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

(1) EXTENSION OF PROTECTION PERIOD.—Subsection (c) of section 303 of the Servicemembers Civil Relief Act (50 U.S.C. App. 533) is amended by striking "90 days" and inserting "9 months".

(2) EXTENSION OF STAY OF PROCEEDINGS PERIOD.—Subsection (b) of such section is amended by striking "90 days" and inserting "9 months".

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

(1) in subsection (a)(1), by striking "in excess of 6 percent" the second place it appears and all that follows and inserting "in excess of 6 percent—

"(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

"(B) during the period of military service, in the case of any other obligation or liability."; and

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

"(d) DEFINITIONS.—In this section:

"(1) INTEREST.—The term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

"(2) OBLIGATION OR LIABILITY.—The term 'obligation or liability' includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.".

50 USC app. 533 note.

(c) EFFECTIVE DATE; SUNSET.—

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

(2) SUNSET.—The amendments made by subsection (a) shall expire on December 31, 2010. Effective January 1, 2011, the provisions of subsections (b) and (c) of section 303 of the Servicemembers Civil Relief Act, as in effect on the day before the date of the enactment of this Act, are hereby revived.

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

42 USC 5301 note.

SEC. 2301. EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES.

(a) DIRECT APPROPRIATIONS.—There are appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year 2008, $4,000,000,000, to remain available until expended, for assistance to States and units of general local government (as such terms are defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) for the redevelopment of abandoned and foreclosed upon homes and residential properties.

(b) ALLOCATION OF APPROPRIATED AMOUNTS.—

State and local governments.

(1) IN GENERAL.—The amounts appropriated or otherwise made available to States and units of general local government under this section shall be allocated based on a funding formula established by the Secretary of Housing and Urban Development (in this title referred to as the "Secretary").

Deadline.

(2) FORMULA TO BE DEVISED SWIFTLY.—The funding formula required under paragraph (1) shall be established not later than 60 days after the date of enactment of this section.

(3) CRITERIA.—The funding formula required under paragraph (1) shall ensure that any amounts appropriated or otherwise made available under this section are allocated to States and units of general local government with the greatest need, as such need is determined in the discretion of the Secretary based on—

(A) the number and percentage of home foreclosures in each State or unit of general local government;

(B) the number and percentage of homes financed by a subprime mortgage related loan in each State or unit of general local government; and

(C) the number and percentage of homes in default or delinquency in each State or unit of general local government.

Deadline.

(4) DISTRIBUTION.—Amounts appropriated or otherwise made available under this section shall be distributed according to the funding formula established by the Secretary under paragraph (1) not later than 30 days after the establishment of such formula.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Any State or unit of general local government that receives amounts pursuant to this section shall, not later than 18 months after the receipt of such amounts, use such amounts to purchase and redevelop abandoned and foreclosed homes and residential properties. Deadline.

(2) PRIORITY.—Any State or unit of general local government that receives amounts pursuant to this section shall in distributing such amounts give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, including those— Urban and rural areas.

(A) with the greatest percentage of home foreclosures;

(B) with the highest percentage of homes financed by a subprime mortgage related loan; and

(C) identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures.

(3) ELIGIBLE USES.—Amounts made available under this section may be used to—

(A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;

(B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;

(C) establish land banks for homes that have been foreclosed upon;

(D) demolish blighted structures; and

(E) redevelop demolished or vacant properties.

(d) LIMITATIONS.—

(1) ON PURCHASES.—Any purchase of a foreclosed upon home or residential property under this section shall be at a discount from the current market appraised value of the home or property, taking into account its current condition, and such discount shall ensure that purchasers are paying below-market value for the home or property. Discounts.

(2) REHABILITATION.—Any rehabilitation of a foreclosed-upon home or residential property under this section shall be to the extent necessary to comply with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties. Rehabilitation may include improvements to increase the energy efficiency or conservation of such homes and properties or provide a renewable energy source or sources for such homes and properties.

(3) SALE OF HOMES.—If an abandoned or foreclosed upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition.

(4) REINVESTMENT OF PROFITS.—

(A) PROFITS FROM SALES, RENTALS, AND REDEVELOPMENT.—

(i) 5-YEAR REINVESTMENT PERIOD.—During the 5-year period following the date of enactment of this Act, any revenue generated from the sale, rental, redevelopment, rehabilitation, or any other eligible use that is in excess of the cost to acquire and redevelop (including reasonable development fees) or rehabilitate an abandoned or foreclosed upon home or residential property shall be provided to and used by the State or unit of general local government in accordance with, and in furtherance of, the intent and provisions of this section.

(ii) DEPOSITS IN THE TREASURY.—

(I) PROFITS.—Upon the expiration of the 5-year period set forth under clause (i), any revenue generated from the sale, rental, redevelopment, rehabilitation, or any other eligible use that is in excess of the cost to acquire and redevelop (including reasonable development fees) or rehabilitate an abandoned or foreclosed upon home or residential property shall be deposited in the Treasury of the United States as miscellaneous receipts, unless the Secretary approves a request to use the funds for purposes under this Act.

(II) OTHER AMOUNTS.—Upon the expiration of the 5-year period set forth under clause (i), any other revenue not described under subclause (I) generated from the sale, rental, redevelopment, rehabilitation, or any other eligible use of an abandoned or foreclosed upon home or residential property shall be deposited in the Treasury of the United States as miscellaneous receipts.

State and local governments.

(B) OTHER REVENUES.—Any revenue generated under subparagraphs (A), (C) or (D) of subsection (c)(3) shall be provided to and used by the State or unit of general local government in accordance with, and in furtherance of, the intent and provisions of this section.

State and local governments.

(e) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—Except as otherwise provided by this section, amounts appropriated, revenues generated, or amounts otherwise made available to States and units of general local government under this section shall be treated as though such funds were community development block grant funds under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

(2) NO MATCH.—No matching funds shall be required in order for a State or unit of general local government to receive any amounts under this section.

(f) AUTHORITY TO SPECIFY ALTERNATIVE REQUIREMENTS.—

(1) IN GENERAL.—In administering any amounts appropriated or otherwise made available under this section, the Secretary may specify alternative requirements to any provision under title I of the Housing and Community Development Act of 1974 (except for those related to fair housing, nondiscrimination, labor standards, and the environment) in accordance with the terms of this section and for the sole purpose of expediting the use of such funds.

(2) NOTICE.—The Secretary shall provide written notice of its intent to exercise the authority to specify alternative requirements under paragraph (1) to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 10 business days before such exercise of authority is to occur. Deadline.

(3) LOW AND MODERATE INCOME REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding the authority of the Secretary under paragraph (1)—

(i) all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income; and

(ii) not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income.

(B) RECURRENT REQUIREMENT.—The Secretary shall, by rule or order, ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed upon homes and residential properties under this section remain affordable to individuals or families described in subparagraph (A). Regulations. Orders.

(g) PERIODIC AUDITS.—In consultation with the Secretary of Housing and Urban Development, the Comptroller General of the United States shall conduct periodic audits to ensure that funds appropriated, made available, or otherwise distributed under this section are being used in a manner consistent with the criteria provided in this section.

SEC. 2302. NATIONWIDE DISTRIBUTION OF RESOURCES. 42 USC 5301 note.

Notwithstanding any other provision of this Act or the amendments made by this Act, each State shall receive not less than 0.5 percent of funds made available under section 2301 (relating to emergency assistance for the redevelopment of abandoned and foreclosed homes).

SEC. 2303. LIMITATION ON USE OF FUNDS WITH RESPECT TO EMINENT DOMAIN. 42 USC 5301 note.

No State or unit of general local government may use any amounts received pursuant to section 2301 to fund any project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use: *Provided,* That for purposes of this section, public use shall not be construed to include economic development that primarily benefits private entities.

SEC. 2304. LIMITATION ON DISTRIBUTION OF FUNDS. 42 USC 5301 note.

(a) IN GENERAL.—None of the funds made available under this title or title IV shall be distributed to—

(1) an organization which has been indicted for a violation under Federal law relating to an election for Federal office; or

(2) an organization which employs applicable individuals.

(b) APPLICABLE INDIVIDUALS DEFINED.—In this section, the term "applicable individual" means an individual who—

(1) is—

(A) employed by the organization in a permanent or temporary capacity;

(B) contracted or retained by the organization; or

(C) acting on behalf of, or with the express or apparent authority of, the organization; and

(2) has been indicted for a violation under Federal law relating to an election for Federal office.

42 USC 5301 note.

SEC. 2305. COUNSELING INTERMEDIARIES.

Notwithstanding any other provision of this Act, the amount appropriated under section 2301(a) of this Act shall be $3,920,000,000 and the amount appropriated under section 2401 of this Act shall be $180,000,000: *Provided,* That of the amount appropriated under section 2401 of this Act pursuant to this section, not less than 15 percent shall be provided to counseling organizations that target counseling services regarding loss mitigation to minority and low-income homeowners or provide such services in neighborhoods with high concentrations of minority and low-income homeowners: *Provided further,* That of amounts appropriated under such section 2401 $30,000,000 shall be used by the Neighborhood Reinvestment Corporation (referred to in this section as the "NRC") to make grants to counseling intermediaries approved by the Department of Housing and Urban Development or the NRC to hire attorneys to assist homeowners who have legal issues directly related to the homeowner's foreclosure, delinquency or short sale. Such attorneys shall be capable of assisting homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure and who have legal issues that cannot be handled by counselors already employed by such intermediaries: *Provided further,* That of the amounts provided for in the prior provisos the NRC shall give priority consideration to counseling intermediaries and legal organizations that (1) provide legal assistance in the 100 metropolitan statistical areas (as defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates, and (2) have the capacity to begin using the financial assistance within 90 days after receipt of the assistance: *Provided further,* That no funds provided under this Act shall be used to provide, obtain, or arrange on behalf of a homeowner, legal representation involving or for the purposes of civil litigation: *Provided further,* That the NRC, in awarding counseling grants under section 2401 of this Act, may consider, where appropriate, whether the entity has implemented a written plan for providing in-person counseling and for making contact, including personal contact, with defaulted mortgagors, for the purpose of providing counseling or providing information about available counseling.

Disadvantaged persons.

Grants.

Legal assistance. Deadline.

TITLE IV—HOUSING COUNSELING RESOURCES

Appropriations authorization.

SEC. 2401. HOUSING COUNSELING RESOURCES.

There are appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year 2008, for an additional

amount for the "Neighborhood Reinvestment Corporation—Payment to the Neighborhood Reinvestment Corporation" $100,000,000, to remain available until December 31, 2008, for foreclosure mitigation activities under the terms and conditions contained in the second undesignated paragraph (beginning with the phrase "For an additional amount") under the heading "Neighborhood Reinvestment Corporation—Payment to the Neighborhood Reinvestment Corporation" of Public Law 110–161.

SEC. 2402. CREDIT COUNSELING.

(a) IN GENERAL.—Entities approved by the Neighborhood Reinvestment Corporation or the Secretary and State housing finance entities receiving funds under this title shall work to identify and coordinate with non-profit organizations operating national or statewide toll-free foreclosure prevention hotlines, including those that—

(1) serve as a consumer referral source and data repository for borrowers experiencing some form of delinquency or foreclosure;

(2) connect callers with local housing counseling agencies approved by the Neighborhood Reinvestment Corporation or the Secretary to assist with working out a positive resolution to their mortgage delinquency or foreclosure; or

(3) facilitate or offer free assistance to help homeowners to understand their options, negotiate solutions, and find the best resolution for their particular circumstances.

TITLE V—MORTGAGE DISCLOSURE IMPROVEMENT ACT

SEC. 2501. SHORT TITLE.

15 USC 1601 note.

This title may be cited as the "Mortgage Disclosure Improvement Act of 2008".

SEC. 2502. ENHANCED MORTGAGE LOAN DISCLOSURES.

Creditors.

(a) TRUTH IN LENDING ACT DISCLOSURES.—Section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)) is amended—

(1) by inserting "(A)" before "In the";

(2) by striking "a residential mortgage transaction, as defined in section 103(w)" and inserting "any extension of credit that is secured by the dwelling of a consumer";

(3) by striking "before the credit is extended, or" and inserting "and";

(4) by inserting ", which shall be at least 7 business days before consummation of the transaction" after "written application";

(5) by striking ", whichever is earlier"; and

(6) by striking "If the" and all that follows through the end of the paragraph and inserting the following:

"(B) In the case of an extension of credit that is secured by the dwelling of a consumer, the disclosures provided under subparagraph (A), shall be in addition to the other disclosures required by subsection (a), and shall—

"(i) state in conspicuous type size and format, the following: 'You are not required to complete this agreement

merely because you have received these disclosures or signed a loan application.'; and

"(ii) be provided in the form of final disclosures at the time of consummation of the transaction, in the form and manner prescribed by this section.

"(C) In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this subsection shall do the following:

"(i) Label the payment schedule as follows: 'Payment Schedule: Payments Will Vary Based on Interest Rate Changes'.

"(ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Board. Prior to issuing any rules pursuant to this clause, the Board shall conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount.

Consumer testing.

Deadline.

"(D) In any case in which the disclosure statement under subparagraph (A) contains an annual percentage rate of interest that is no longer accurate, as determined under section 107(c), the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.

"(E) The consumer shall receive the disclosures required under this paragraph before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer. If the disclosures are mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this paragraph, provided the fee is bona fide and reasonable in amount.

"(F) WAIVER OF TIMELINESS OF DISCLOSURES.—To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures under subparagraph (A), provided that—

Definition.
Regulations.

"(i) the term 'bona fide personal emergency' may be further defined in regulations issued by the Board;

"(ii) the consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement shall bear the signature of all consumers entitled to receive the disclosures required by this paragraph; and

"(iii) the creditor provides to the consumers at or before the time of such waiver or modification, the final disclosures required by paragraph (1).

"(G) The requirements of subparagraphs (B), (C), (D) and (E) shall not apply to extensions of credit relating to plans described in section 101(53D) of title 11, United States Code.".

(b) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) in paragraph (2)(A)(iii), by striking "not less than $200 or greater than $2,000" and inserting "not less than $400 or greater than $4,000"; and

(2) in the penultimate sentence of the undesignated matter following paragraph (4)—

(A) by inserting "or section 128(b)(2)(C)(ii)," after "128(a),"; and

(B) by inserting "or section 128(b)(2)(C)(ii)" before the period.

(c) EFFECTIVE DATES.—

15 USC 1638 note.

(1) GENERAL DISCLOSURES.—Except as provided in paragraph (2), the amendments made by subsection (a) shall become effective 12 months after the date of enactment of this Act.

(2) VARIABLE INTEREST RATES.—Subparagraph (C) of section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)(C)), as added by subsection (a) of this section, shall become effective on the earlier of—

(A) the compliance date established by the Board for such purpose, by regulation; or

(B) 30 months after the date of enactment of this Act.

SEC. 2503. COMMUNITY DEVELOPMENT INVESTMENT AUTHORITY FOR DEPOSITORY INSTITUTIONS.

(a) NATIONAL BANKS.—The first sentence of the paragraph designated as the "Eleventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking "promotes the public welfare by benefitting primarily" and inserting "is designed primarily to promote the public welfare, including the welfare of".

(b) STATE MEMBER BANKS.—The first sentence of the 23rd paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended by striking "promotes the public welfare by benefitting primarily" and inserting "is designed primarily to promote the public welfare, including the welfare of".

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.

Section 1717 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) In the case of a member of the Armed Forces who, as determined by the Secretary, has a disability permanent in nature incurred or aggravated in the line of duty in the active military, naval, or air service, the Secretary may furnish improvements and structural alterations for such member for such disability or as otherwise described in subsection (a)(2) while such member is hospitalized or receiving outpatient medical care, services, or treatment for such disability if the Secretary determines that such member is likely to be discharged or released from the Armed Forces for such disability.

"(2) The furnishing of improvements and alterations under paragraph (1) in connection with the furnishing of medical services described in subparagraph (A) or (B) of subsection (a)(2) shall be subject to the limitation specified in the applicable subparagraph.".

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.

(a) ELIGIBILITY.—Chapter 21 of title 38, United States Code, is amended by inserting after section 2101 the following new section:

"§ 2101A. Eligibility for benefits and assistance: members of the Armed Forces with service-connected disabilities; individuals residing outside the United States

"(a) MEMBERS WITH SERVICE-CONNECTED DISABILITIES.—(1) The Secretary may provide assistance under this chapter to a member of the Armed Forces serving on active duty who is suffering from a disability that meets applicable criteria for benefits under this chapter if the disability is incurred or aggravated in line of duty in the active military, naval, or air service. Such assistance shall be provided to the same extent as assistance is provided under this chapter to veterans eligible for assistance under this chapter and subject to the same requirements as veterans under this chapter.

"(2) For purposes of this chapter, any reference to a veteran or eligible individual shall be treated as a reference to a member of the Armed Forces described in subsection (a) who is similarly situated to the veteran or other eligible individual so referred to.

"(b) BENEFITS AND ASSISTANCE FOR INDIVIDUALS RESIDING OUTSIDE THE UNITED STATES.—(1) Subject to paragraph (2), the Secretary may, at the Secretary's discretion, provide benefits and assistance under this chapter (other than benefits under section

2106 of this title) to any individual otherwise eligible for such benefits and assistance who resides outside the United States.

"(2) The Secretary may provide benefits and assistance to an individual under paragraph (1) only if—

"(A) the country or political subdivision in which the housing or residence involved is or will be located permits the individual to have or acquire a beneficial property interest (as determined by the Secretary) in such housing or residence; and

"(B) the individual has or will acquire a beneficial property interest (as so determined) in such housing or residence.

"(c) REGULATIONS.—Benefits and assistance under this chapter by reason of this section shall be provided in accordance with such regulations as the Secretary may prescribe.".

(b) CONFORMING AMENDMENTS.—

(1) REPEAL OF SUPERSEDED AUTHORITY.—Section 2101 of title 38, United States Code, is amended—

(A) by striking subsection (c); and

(B) by redesignating subsection (d) as subsection (c).

(2) LIMITATIONS ON ASSISTANCE.—Section 2102 of title 38, United States Code, is amended—

(A) in subsection (a)—

(i) by striking "veteran" each place it appears and inserting "individual"; and

(ii) in paragraph (3), by striking "veteran's" and inserting "individual's";

(B) in subsection (b)(1), by striking "a veteran" and inserting "an individual";

(C) in subsection (c)—

(i) by striking "a veteran" and inserting "an individual"; and

(ii) by striking "the veteran" each place it appears and inserting "the individual"; and

(D) in subsection (d), by striking "a veteran" each place it appears and inserting "an individual".

(3) ASSISTANCE FOR INDIVIDUALS TEMPORARILY RESIDING IN HOUSING OF FAMILY MEMBER.—Section 2102A of title 38, United States Code, is amended—

(A) by striking "veteran" each place it appears (other than in subsection (b)) and inserting "individual";

(B) in subsection (a), by striking "veteran's" each place it appears and inserting "individual's"; and

(C) in subsection (b), by striking "a veteran" each place it appears and inserting "an individual".

(4) FURNISHING OF PLANS AND SPECIFICATIONS.—Section 2103 of title 38, United States Code, is amended by striking "veterans" both places it appears and inserting "individuals".

(5) CONSTRUCTION OF BENEFITS.—Section 2104 of title 38, United States Code, is amended—

(A) in subsection (a), by striking "veteran" each place it appears and inserting "individual"; and

(B) in subsection (b)—

(i) in the first sentence, by striking "A veteran" and inserting "An individual";

(ii) in the second sentence, by striking "a veteran" and inserting "an individual"; and

(iii) by striking "such veteran" each place it appears and inserting "such individual".

(6) VETERANS' MORTGAGE LIFE INSURANCE.—Section 2106 of title 38, United States Code, is amended—

(A) in subsection (a)—

(i) by striking "any eligible veteran" and inserting "any eligible individual"; and

(ii) by striking "the veterans'" and inserting "the individual's";

(B) in subsection (b), by striking "an eligible veteran" and inserting "an eligible individual";

(C) in subsection (e), by striking "an eligible veteran" and inserting "an individual";

(D) in subsection (h), by striking "each veteran" and inserting "each individual";

(E) in subsection (i), by striking "the veteran's" each place it appears and inserting "the individual's";

(F) by striking "the veteran" each place it appears and inserting "the individual"; and

(G) by striking "a veteran" each place it appears and inserting "an individual".

(7) HEADING AMENDMENTS.—(A) The heading of section 2101 of title 38, United States Code, is amended to read as follows:

"§ 2101. Acquisition and adaptation of housing: eligible veterans".

(B) The heading of section 2102A of such title is amended to read as follows:

"§ 2102A. Assistance for individuals residing temporarily in housing owned by a family member".

(8) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 21 of title 38, United States Code, is amended—

(A) by striking the item relating to section 2101 and inserting the following new item:

"2101. Acquisition and adaptation of housing: eligible veterans.";

(B) by inserting after the item relating to section 2101, as so amended, the following new item:

"2101A. Eligibility for benefits and assistance: members of the Armed Forces with service-connected disabilities; individuals residing outside the United States.";

and

(C) by striking the item relating to section 2102A and inserting the following new item:

"2102A. Assistance for individuals residing temporarily in housing owned by a family member.".

SEC. 2603. SPECIALLY ADAPTED HOUSING ASSISTANCE FOR INDIVIDUALS WITH SEVERE BURN INJURIES.

Section 2101 of title 38, United States Code, is amended—

(1) in subsection (a)(2), by adding at the end the following new subparagraph:

"(E) The disability is due to a severe burn injury (as determined pursuant to regulations prescribed by the Secretary).";

and

(2) in subsection (b)(2)—

(A) by striking "either" and inserting "any"; and

(B) by adding at the end the following new subparagraph:

"(C) The disability is due to a severe burn injury (as so determined).".

SEC. 2604. EXTENSION OF ASSISTANCE FOR INDIVIDUALS RESIDING TEMPORARILY IN HOUSING OWNED BY A FAMILY MEMBER.

Section 2102A(e) of title 38, United States Code, is amended by striking "after the end of the five-year period that begins on the date of the enactment of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006" and inserting "after December 31, 2011".

SEC. 2605. INCREASE IN SPECIALLY ADAPTED HOUSING BENEFITS FOR DISABLED VETERANS.

(a) IN GENERAL.—Section 2102 of title 38, United States Code, is amended—

(1) in subsection (b)(2), by striking "$10,000" and inserting "$12,000";

(2) in subsection (d)—

(A) in paragraph (1), by striking "$50,000" and inserting "$60,000"; and

(B) in paragraph (2), by striking "$10,000" and inserting "$12,000"; and

(3) by adding at the end the following new subsection:

"(e)(1) Effective on October 1 of each year (beginning in 2009), the Secretary shall increase the amounts described in subsection (b)(2) and paragraphs (1) and (2) of subsection (d) in accordance with this subsection. Effective date.

"(2) The increase in amounts under paragraph (1) to take effect on October 1 of a year shall be by an amount of such amounts equal to the percentage by which—

"(A) the residential home cost-of-construction index for the preceding calendar year, exceeds

"(B) the residential home cost-of-construction index for the year preceding the year described in subparagraph (A).

"(3) The Secretary shall establish a residential home cost-of-construction index for the purposes of this subsection. The index shall reflect a uniform, national average change in the cost of residential home construction, determined on a calendar year basis. The Secretary may use an index developed in the private sector that the Secretary determines is appropriate for purposes of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2008, and shall apply with respect to payments made in accordance with section 2102 of title 38, United States Code, on or after that date. 38 USC 2102 note.

SEC. 2606. REPORT ON SPECIALLY ADAPTED HOUSING FOR DISABLED INDIVIDUALS.

(a) IN GENERAL.—Not later than December 31, 2008, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report that contains an assessment of the adequacy of the authorities available to the Secretary under law to assist eligible disabled individuals in acquiring— Deadline.

(1) suitable housing units with special fixtures or movable facilities required for their disabilities, and necessary land therefor;

(2) such adaptations to their residences as are reasonably necessary because of their disabilities; and

(3) residences already adapted with special features determined by the Secretary to be reasonably necessary as a result of their disabilities.

(b) FOCUS ON PARTICULAR DISABILITIES.—The report required by subsection (a) shall set forth a specific assessment of the needs of—

(1) veterans who have disabilities that are not described in subsections (a)(2) and (b)(2) of section 2101 of title 38, United States Code; and

(2) other disabled individuals eligible for specially adapted housing under chapter 21 of such title by reason of section 2101A of such title (as added by section 2602(a) of this Act) who have disabilities that are not described in such subsections.

Deadline.

SEC. 2607. REPORT ON SPECIALLY ADAPTED HOUSING ASSISTANCE FOR INDIVIDUALS WHO RESIDE IN HOUSING OWNED BY A FAMILY MEMBER ON PERMANENT BASIS.

Not later than December 31, 2008, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the advisability of providing assistance under section 2102A of title 38, United States Code, to veterans described in subsection (a) of such section, and to members of the Armed Forces covered by such section 2102A by reason of section 2101A of title 38, United States Code (as added by section 2602(a) of this Act), who reside with family members on a permanent basis.

SEC. 2608. DEFINITION OF ANNUAL INCOME FOR PURPOSES OF SECTION 8 AND OTHER PUBLIC HOUSING PROGRAMS.

Section 3(b)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437a(3)(b)(4)) is amended by inserting "or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts" before "may not be considered".

SEC. 2609. PAYMENT OF TRANSPORTATION OF BAGGAGE AND HOUSEHOLD EFFECTS FOR MEMBERS OF THE ARMED FORCES WHO RELOCATE DUE TO FORECLOSURE OF LEASED HOUSING.

Section 406 of title 37, United States Code, is amended—

(1) by redesignating subsections (k) and (l) as subsections (l) and (m), respectively; and

(2) by inserting after subsection (j) the following new subsection (k):

"(k) A member of the armed forces who relocates from leased or rental housing by reason of the foreclosure of such housing is entitled to transportation of baggage and household effects under subsection (b)(1) in the same manner, and subject to the same conditions and limitations, as similarly circumstanced members entitled to transportation of baggage and household effects under that subsection.".

TITLE VII—SMALL PUBLIC HOUSING AUTHORITIES PAPERWORK REDUCTION ACT

SEC. 2701. SHORT TITLE.

42 USC 1437 note.

This title may be cited as the "Small Public Housing Authorities Paperwork Reduction Act".

SEC. 2702. PUBLIC HOUSING AGENCY PLANS FOR CERTAIN QUALIFIED PUBLIC HOUSING AGENCIES.

(a) IN GENERAL.—Section 5A(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c–1(b)) is amended by adding at the end the following:

"(3) EXEMPTION OF CERTAIN PHAS FROM FILING REQUIREMENT.—

"(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of this Act—

"(i) the requirement under paragraph (1) shall not apply to any qualified public housing agency; and

"(ii) except as provided in subsection (e)(4)(B), any reference in this section or any other provision of law to a 'public housing agency' shall not be considered to refer to any qualified public housing agency, to the extent such reference applies to the requirement to submit an annual public housing agency plan under this subsection.

Applicability.

"(B) CIVIL RIGHTS CERTIFICATION.—Notwithstanding that qualified public housing agencies are exempt under subparagraph (A) from the requirement under this section to prepare and submit an annual public housing plan, each qualified public housing agency shall, on an annual basis, make the certification described in paragraph (16) of subsection (d), except that for purposes of such qualified public housing agencies, such paragraph shall be applied by substituting 'the public housing program of the agency' for 'the public housing agency plan'.

"(C) DEFINITION.—For purposes of this section, the term 'qualified public housing agency' means a public housing agency that meets the following requirements:

"(i) The sum of (I) the number of public housing dwelling units administered by the agency, and (II) the number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the agency, is 550 or fewer.

"(ii) The agency is not designated under section 6(j)(2) as a troubled public housing agency, and does not have a failing score under the section 8 Management Assessment Program during the prior 12 months.".

(b) RESIDENT PARTICIPATION.—Section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) is amended—

(1) in subsection (e), by inserting after paragraph (3) the following:

"(4) QUALIFIED PUBLIC HOUSING AGENCIES.—

Establishment.

"(A) IN GENERAL.—Except as provided in subparagraph (B), nothing in this section may be construed to exempt a qualified public housing agency from the requirement under paragraph (1) to establish 1 or more resident advisory boards. Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under this section to prepare and submit an annual public housing plan, each qualified public housing agency shall consult with, and consider the recommendations of the resident advisory boards for the agency, at the annual public hearing required under subsection (f)(5), regarding any changes to the goals, objectives, and policies of that agency.

"(B) APPLICABILITY OF WAIVER AUTHORITY.—Paragraph (3) shall apply to qualified public housing agencies, except that for purposes of such qualified public housing agencies, subparagraph (B) of such paragraph shall be applied by substituting 'the functions described in the second sentence of paragraph (4)(A)' for 'the functions described in paragraph (2)'.

"(f) PUBLIC HEARINGS.—"; and

(2) in subsection (f) (as so designated by the amendment made by paragraph (1)), by adding at the end the following:

"(5) QUALIFIED PUBLIC HOUSING AGENCIES.—

"(A) REQUIREMENT.—Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under this section to conduct a public hearing regarding the annual public housing plan of the agency, each qualified public housing agency shall annually conduct a public hearing—

"(i) to discuss any changes to the goals, objectives, and policies of the agency; and

Public comment.

"(ii) to invite public comment regarding such changes.

Deadline.

"(B) AVAILABILITY OF INFORMATION AND NOTICE.—Not later than 45 days before the date of any hearing described in subparagraph (A), a qualified public housing agency shall—

"(i) make all information relevant to the hearing and any determinations of the agency regarding changes to the goals, objectives, and policies of the agency to be considered at the hearing available for inspection by the public at the principal office of the public housing agency during normal business hours; and

"(ii) publish a notice informing the public that—

"(I) the information is available as required under clause (i); and

"(II) a public hearing under subparagraph (A) will be conducted.".

TITLE VIII—HOUSING PRESERVATION

Subtitle A—Preservation Under Federal Housing Programs

SEC. 2801. CLARIFICATION OF DISPOSITION OF CERTAIN PROPERTIES. Deadlines.

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

(1) the Secretary of Housing and Urban Development has received, before the date of the enactment of such Act, written expressions of interest in purchasing the property from both a city government and the housing commission of such city;

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

(3) such city government and housing commission have resolved a previous disagreement with respect to the disposition of the property.

SEC. 2802. ELIGIBILITY OF CERTAIN PROJECTS FOR ENHANCED VOUCHER ASSISTANCE. Massachusetts. Disadvantaged persons.

Notwithstanding any other provision of law—

(1) the property known as The Heritage Apartments (FHA No. 023-44804), in Malden, Massachusetts, shall be considered eligible low-income housing for purposes of the eligibility of residents of the property for enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)), pursuant to paragraph (2)(A) of section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f)(2)(A));

(2) such residents shall receive enhanced rental housing vouchers upon the prepayment of the mortgage loan for the property under section 236 of the National Housing Act (12 U.S.C. 1715z-1); and

(3) the Secretary shall approve such prepayment and subsequent transfer of the property without any further condition, except that the property shall be restricted for occupancy, until the original maturity date of the prepaid mortgage loan, only by families with incomes not exceeding 80 percent of the adjusted median income for the area in which the property is located, as published by the Secretary. Public information.

Amounts for the enhanced vouchers pursuant to this section shall be provided under amounts appropriated for tenant-based rental assistance otherwise authorized under section 8(t) of the United States Housing Act of 1937.

SEC. 2803. TRANSFER OF CERTAIN RENTAL ASSISTANCE CONTRACTS.

(a) TRANSFER.—Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall, at the request of the owner, transfer or authorize the transfer, of the contracts, restrictions, and debt described in subsection (b)— Ohio.

(1) on the housing that is owned or managed by Community Properties of Ohio Management Services LLC or an affiliate of Ohio Capital Corporation for Housing and located in Franklin

County, Ohio, to other properties located in Franklin County, Ohio; and

(2) on the housing that is owned or managed by The Model Group, Inc., and located in Hamilton County, Ohio, to other properties located in Hamilton County, Ohio.

(b) CONTRACTS, RESTRICTIONS, AND DEBT COVERED.—The contracts, restrictions, and debt described in this subsection are as follows:

(1) All or a portion of a project-based rental assistance housing assistance payments contract under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(2) Existing Federal use restrictions, including without limitation use agreements, regulatory agreements, and accommodation agreements.

(3) Any subordinate debt held by the Secretary or assigned and any mortgages securing such debt, all related loan and security documentation and obligations, and reserve and escrow balances.

(c) RETENTION OF SAME NUMBER OF UNITS AND AMOUNT OF ASSISTANCE.—Any transfer pursuant to subsection (a) shall result in—

(1) a total number of dwelling units (including units retained by the owners and units transferred) covered by assistance described in subsection (b)(1) after the transfer remaining the same as such number assisted before the transfer, with such increases or decreases in unit sizes as may be contained in a plan approved by a local planning or development commission or department; and

(2) no reduction in the total amount of the housing assistance payments under contracts described in subsection (b)(1).

SEC. 2804. PUBLIC HOUSING DISASTER RELIEF.

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) is amended—

(1) by striking subsection (k); and

(2) by redesignating subsections (l), (m), and (n) as subsections (k), (l), and (m), respectively.

California.

SEC. 2805. PRESERVATION OF CERTAIN AFFORDABLE HOUSING.

Notwithstanding any other provision of law—

(1) for the property known as Nihonmachi Terrace (FHA No. 121-44284), in San Francisco, California, upon the refinancing of the existing federally insured mortgage pursuant to section 236(b) of the National Housing Act (12 U.S.C. 1715z–1(b)), unassisted low and moderate-income residents of the property shall be deemed eligible for and shall receive voucher assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)); and

(2) to preserve the affordability of the property, the housing authority shall utilize such additional voucher assistance pursuant to subsection 8(o)(13) of the United States Housing Act of 1937, without regard to the limitations of subparagraphs (B) and (D) of that subsection.

Amounts for the vouchers pursuant to this section shall be provided under amounts appropriated for tenant-based rental assistance otherwise authorized.

Subtitle B—Coordination of Federal Housing Programs and Tax Incentives for Housing

Housing Tax Credit Coordination Act of 2008. Disadvantaged persons.

SEC. 2831. SHORT TITLE.

12 USC 1701 note.

This subtitle may be cited as the "Housing Tax Credit Coordination Act of 2008".

SEC. 2832. APPROVALS BY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

12 USC 1715s.

(a) ADMINISTRATIVE AND PROCEDURAL CHANGES.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall, not later than the expiration of the 6-month period beginning upon after the date of the enactment of this Act, implement administrative and procedural changes to expedite approval of multifamily housing projects under the jurisdiction of the Department of Housing and Urban Development that meet the requirements of the Secretary for such approvals.

Deadline.

(2) PROJECTS.—The multifamily housing projects referred to in paragraph (1) shall include—

(A) projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds; and

(B) existing public housing projects and assisted housing projects, for which approval of the Secretary is necessary for transactions, in conjunction with any such low-income housing tax credits or tax-exempt housing bonds, involving the preservation or rehabilitation of the project.

(3) CHANGES.—The administrative and procedural changes referred to in paragraph (1) shall include all actions necessary to carry out paragraph (1), which may include—

(A) improving the efficiency of approval procedures;

(B) simplifying approval requirements,

(C) establishing time deadlines or target deadlines for required approvals;

(D) modifying division of approval authority between field and national offices;

(E) improving outreach to project sponsors regarding information that is required to be submitted for such approvals;

(F) requesting additional funding for increasing staff, if necessary; and

(G) any other actions which would expedite approvals.

Any such changes shall be made in a manner that provides for full compliance with any existing requirements under law or regulation that are designed to protect families receiving public and assisted housing assistance, including income targeting, rent, and fair housing provisions, and shall also comply with requirements regarding environmental review and protection and wages paid to laborers.

(b) CONSULTATION.—The Secretary shall consult with the Commissioner of the Internal Revenue Service and take such actions

as are appropriate in conjunction with such consultation to simplify the coordination of rules, regulations, forms, and approval requirements for multifamily housing projects projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds.

(c) RECOMMENDATIONS.—In implementing the changes required under this section, the Secretary shall solicit recommendations regarding such changes from project owners and sponsors, investors and stakeholders in housing tax credits, State and local housing finance agencies, public housing agencies, tenant advocates, and other stakeholders in such projects.

Deadline.

(d) REPORT.—Not later than the expiration of the 9-month period beginning on the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—

(1) identifies the actions taken by the Secretary to comply with this section;

(2) includes information regarding any resulting improvements in the expedited approval for multifamily housing projects;

(3) identifies recommendations made pursuant to subsection (c);

(4) identifies actions taken by the Secretary to implement the provisions in the amendments made by sections 2834 and 2835 of this Act; and

(5) makes recommendations for any legislative changes that are needed to facilitate prompt approval of assistance for such projects.

SEC. 2833. PROJECT APPROVALS BY RURAL HOUSING SERVICE.

Section 515(h) of the Housing Act of 1949 (42 U.S.C. 1485) is amended—

(1) by inserting "(1) CONDITION.—" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) ACTIONS TO EXPEDITE PROJECT APPROVALS.—

"(A) IN GENERAL.—The Secretary shall take actions to facilitate timely approval of requests to transfer ownership or control, for the purpose of rehabilitation or preservation, of multifamily housing projects for which assistance is provided by the Secretary of Agriculture in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds.

"(B) CONSULTATION.—The Secretary of Agriculture shall consult with the Commissioner of the Internal Revenue Service and take such actions as are appropriate in conjunction with such consultation to simplify the coordination of rules, regulations, forms (including applications forms for project transfers), and approval requirements multifamily housing projects for which assistance is provided by the Secretary of Agriculture in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds.

"(C) EXISTING REQUIREMENTS.—Any actions taken pursuant to this paragraph shall be taken in a manner that provides for full compliance with any existing requirements under law or regulation that are designed to protect families receiving Federal housing assistance, including income targeting, rent, and fair housing provisions, and shall also comply with requirements regarding environmental review and protection and wages paid to laborers.

"(D) RECOMMENDATIONS.—In implementing the changes required under this paragraph, the Secretary shall solicit recommendations regarding such changes from project owners and sponsors, investors and stakeholders in housing tax credits, State and local housing finance agencies, tenant advocates, and other stakeholders in such projects.".

SEC. 2834. USE OF FHA LOANS WITH HOUSING TAX CREDITS.

(a) SUBSIDY LAYERING REQUIREMENTS.—Subsection (d) of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) is amended—

(1) in the first sentence, by inserting after "assistance within the jurisdiction of the Department" the following: ", as such term is defined in subsection (m), except that for purposes of this subsection such term shall not include any mortgage insurance provided pursuant to title II of the National Housing Act (12 U.S.C. 1707 et seq.)"; and

(2) in the second sentence, by inserting "such" before "assistance".

(b) COST CERTIFICATION.—Section 227 of National Housing Act (12 U.S.C. 1715r) is amended—

(1) in the matter preceding paragraph (a) (relating to a definition of "new or rehabilitated multifamily housing")—

(A) in the first sentence—

(i) by striking "Notwithstanding" and inserting "Except as provided in subsection (b) and notwithstanding"; and

(ii) by redesignating clauses (a) and (b) as clauses (A) and (B), respectively; and

(B) by striking "As used in this section—";

(2) in paragraph (c) (relating to a definition of "actual cost")—

(A) in clause (i), by redesignating clauses (1) and (2) as clauses (I) and (II), respectively; and

(B) in clause (ii), by redesignating clauses (1) and (2) as clauses (I) and (II), respectively;

(3) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;

(4) by inserting before paragraph (1) (as so redesignated by paragraph (3) of this subsection) the following:

"(b) EXEMPTION FOR CERTAIN PROJECTS ASSISTED WITH LOW-INCOME HOUSING TAX CREDIT.—In the case of any mortgage insured under any provision of this title that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), if the Secretary determines at the time of issuance of the firm commitment for

insurance that the ratio of the loan proceeds to the actual cost of the project is less than 80 percent, subsection (a) of this section shall not apply.

"(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:"; and

(5) by inserting "(a) REQUIREMENT.—" after "227.".

(c) OTHER PROVISIONS REGARDING TREATMENT OF MORTGAGES COVERING TAX CREDIT PROJECTS.—Title II of the National Housing Act is amended by inserting after section 227 (12 U.S.C. 1715r) the following new section:

12 USC 1715s.

"SEC. 228. TREATMENT OF MORTGAGES COVERING TAX CREDIT PROJECTS.

"(a) DEFINITION.—For purposes of this section, the term 'insured mortgage covering a tax credit project' means a mortgage insured under any provision of this title that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

"(b) ACCEPTANCE OF LETTERS OF CREDIT.—In the case of an insured mortgage covering a tax credit project, the Secretary may not require the escrowing of equity provided by the sale of any low-income housing tax credits for the project pursuant to section 42 of the Internal Revenue Code of 1986, or any other form of security, such as a letter of credit.

"(c) ASSET MANAGEMENT REQUIREMENTS.—In the case of an insured mortgage covering a tax credit project for which project the applicable tax credit allocating agency is causing to be performed periodic inspections in compliance with the requirements of section 42 of the Internal Revenue Code of 1986, such project shall be exempt from requirements imposed by the Secretary regarding periodic inspections of the property by the mortgagee. To the extent that other compliance monitoring is being performed with respect to such a project by such an allocating agency pursuant to such section 42, the Secretary shall, to the extent that the Secretary determines such monitoring is sufficient to ensure compliance with any requirements established by the Secretary, accept such agency's evidence of compliance for purposes of determining compliance with the Secretary's requirements.

"(d) STREAMLINED PROCESSING PILOT PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a pilot program to demonstrate the effectiveness of streamlining the review process, which shall include all applications for mortgage insurance under any provision of this title for mortgages executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986. The Secretary shall issue instructions for implementing the pilot program under this subsection not later than the expiration of the 180-day period beginning upon the date of the enactment of the Housing Tax Credit Coordination Act of 2008.

Intructions.
Deadline.

"(2) REQUIREMENTS.—Such pilot program shall provide for—

"(A) the Secretary to appoint designated underwriters, who shall be responsible for reviewing such mortgage insurance applications and making determinations regarding the eligibility of such applications for such mortgage insurance in lieu of the processing functions regarding such applications that are otherwise performed by other employees of the Department of Housing and Urban Development;

"(B) submission of applications for such mortgage insurance by mortgagees who have previously been expressly approved by the Secretary; and

"(C) determinations regarding the eligibility of such applications for such mortgage insurance to be made by the chief underwriter pursuant to requirements prescribed by the Secretary, which shall include requiring submission of reports regarding applications of proposed mortgagees by third-party entities expressly approved by the chief underwriter.". Reports.

SEC. 2835. OTHER HUD PROGRAMS.

(a) SECTION 8 ASSISTANCE.—

(1) PHA PROJECT-BASED ASSISTANCE.—Section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) is amended—

(A) in subparagraph (D)(i)—

(i) by striking "building" and inserting "project"; and

(ii) by adding at the end the following: "For purposes of this subparagraph, the term"project" means a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land."; Definition.

(B) in the first sentence of subparagraph (F), by striking "10 years" and inserting "15 years";

(C) in subparagraph (G)—

(i) by inserting after the period at the end of the first sentence the following: "Such contract may, at the election of the public housing agency and the owner of the structure, specify that such contract shall be extended for renewal terms of up to 15 years each, if the agency makes the determination required by this subparagraph and the owner is in compliance with the terms of the contract."; and

(ii) by adding at the end the following: "A public housing agency may agree to enter into such a contract at the time it enters into the initial agreement for a housing assistance payment contract or at any time thereafter that is before the expiration of the housing assistance payment contract.";

(D) in subparagraph (H), by inserting before the period at the end of the first sentence the following: ", except that in the case of a contract unit that has been allocated low-income housing tax credits and for which the rent limitation pursuant to such section 42 is less than the amount that would otherwise be permitted under this subparagraph, the rent for such unit may, in the sole discretion of a public housing agency, be established at the higher section 8 rent, subject only to paragraph (10)(A)";

(E) in subparagraph (I)(i), by inserting before the semicolon the following: ", except that the contract may provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the unit"; and

(F) by adding at the end the following new subparagraphs:

"(L) USE IN COOPERATIVE HOUSING AND ELEVATOR BUILDINGS.—A public housing agency may enter into a housing assistance payments contract under this paragraph with respect to—

"(i) dwelling units in cooperative housing; and

"(ii) notwithstanding subsection (c), dwelling units in a high-rise elevator project, including such a project that is occupied by families with children, without review and approval of the contract by the Secretary.

"(M) REVIEWS.—

"(i) SUBSIDY LAYERING.—A subsidy layering review in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) shall not be required for assistance under this paragraph in the case of a housing assistance payments contract for an existing structure, or if a subsidy layering review has been conducted by the applicable State or local agency.

"(ii) ENVIRONMENTAL REVIEW.—A public housing agency shall not be required to undertake any environmental review before entering into a housing assistance payments contract under this paragraph for an existing structure, except to the extent such a review is otherwise required by law or regulation.".

(2) VOUCHER PROGRAM RENT REASONABLENESS.—Section 8(o)(10) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(10)) is amended by adding at the end the following new subparagraph;

"(F) TAX CREDIT PROJECTS.—In the case of a dwelling unit receiving tax credits pursuant to section 42 of the Internal Revenue Code of 1986 or for which assistance is provided under subtitle A of title II of the Cranston Gonzalez National Affordable Housing Act of 1990, for which a housing assistance contract not subject to paragraph (13) of this subsection is established, rent reasonableness shall be determined as otherwise provided by this paragraph, except that—

"(i) comparison with rent for units in the private, unassisted local market shall not be required if the rent is equal to or less than the rent for other comparable units receiving such tax credits or assistance in the project that are not occupied by families assisted with tenant-based assistance under this subsection; and

"(ii) the rent shall not be considered reasonable for purposes of this paragraph if it exceeds the greater of—

"(I) the rents charged for other comparable units receiving such tax credits or assistance in

the project that are not occupied by families assisted with tenant-based assistance under this subsection; and

"(II) the payment standard established by the public housing agency for a unit of the size involved.".

(b) SECTION 202 HOUSING FOR ELDERLY PERSONS.—Subsection (f) of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q(f)) is amended—

(1) by striking "SELECTION CRITERIA.—" and inserting "INITIAL SELECTION CRITERIA AND PROCESSING.— (1) SELECTION CRITERIA.—";

(2) by redesignating paragraphs (1) through (7) as subparagraphs (A) through (G), respectively; and

(3) by adding at the end the following new paragraph:

"(2) DELEGATED PROCESSING.—

"(A) In issuing a capital advance under this subsection for any project for which financing for the purposes described in the last two sentences of subsection (b) is provided by a combination of a capital advance under subsection (c)(1) and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that— Deadline.

"(i) is in geographic proximity to the property;

"(ii) has demonstrated experience in and capacity for underwriting multifamily housing loans that provide housing and supportive services;

"(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section, and

"(iv) agrees to issue a firm commitment within 12 months of delegation. Deadline.

"(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency has applied to provide delegated processing pursuant to this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.

"(C) An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.

"(D) Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital Deadline.

advance amounts or project rental assistance and such reductions shall be subject to appeal.".

(c) MCKINNEY-VENTO ACT HOMELESS ASSISTANCE UNDER SHELTER PLUS CARE PROGRAM.—

(1) TERM OF CONTRACTS WITH OWNER OR LESSOR.—Part I of subtitle F of the McKinney-Vento Homeless Assistance Act is amended—

(A) by redesignating sections 462 and 463 (42 U.S.C. 11403g, 11403h) as sections 463 and 464, respectively;

(B) by striking "section 463" each place such term appears in sections 471, 476, 481, 486, and 488 (42 U.S.C. 11404, 11405, 11406, 11407, and 11407b) and inserting "section 464"; and

(C) by inserting after section 461 (42 U.S.C. 11403f) the following new section:

42 USC 11403f–1.

"SEC. 462. TERM OF CONTRACT WITH OWNER OR LESSOR.

"An applicant under this subtitle may enter into a contract with the owner or lessor of a property that receives rental assistance under this subtitle having a term of not more than 15 years, subject to the availability of sufficient funds provided in appropriation Acts for the purpose of renewing expiring contracts for assistance payments. Such contract may, at the election of the applicant and owner or lessor, specify that such contract shall be extended for renewal terms of not more than 15 years each, subject to the availability of sufficient such appropriated funds.".

Termination date. Extension. 42 USC 11405b.

(2) PROJECT-BASED RENTAL ASSISTANCE CONTRACTS.—Section 478(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11405a(a)) is amended by inserting before the period at the end the following: "; except that, in the case of any project for which equity is provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), if an expenditure of such amount for each unit (including the prorated share of such work) is required to make the structure decent, safe, and sanitary, and the owner agrees to reach initial closing on permanent financing from such other sources within two years and agrees to carry out the rehabilitation with resources other than assistance under this subtitle within 60 months of notification of grant approval, the contract shall be for a term of 10 years (except that such period may be extended by up to 1 year by the Secretary, which extension shall be granted unless the Secretary determines that the sponsor is primarily responsible for the failure to meet such deadline)".

(d) DATA COLLECTION ON TENANTS OF HOUSING TAX CREDIT PROJECTS.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

42 USC 1437z–8.

"SEC. 36. COLLECTION OF INFORMATION ON TENANTS IN TAX CREDIT PROJECTS.

Deadline.

"(a) IN GENERAL.—Each State agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) shall furnish to the Secretary of Housing and Urban Development, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or

other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. Such State agencies shall, to the extent feasible, collect such information through existing reporting processes and in a manner that minimizes burdens on property owners. In the case of any household that continues to reside in the same dwelling unit, information provided by the household in a previous year may be used if the information is of a category that is not subject to change or if information for the current year is not readily available to the owner of the property. Reports.

"(b) STANDARDS.—The Secretary shall establish standards and definitions for the information collected under subsection (a), provide States with technical assistance in establishing systems to compile and submit such information, and, in coordination with other Federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs.

"(c) PUBLIC AVAILABILITY.—The Secretary shall, not less than annually, compile and make publicly available the information submitted to the Secretary pursuant to subsection (a). Deadline.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the cost of activities required under subsections (b) and (c) $2,500,000 for fiscal year 2009 and $900,000 for each of fiscal years 2010 through 2013.".

TITLE IX—MISCELLANEOUS

SEC. 2901. HOMELESS ASSISTANCE.

(a) APPROPRIATIONS.—Section 726 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11435) is amended by striking "$70,000,000" and all that follows and inserting "$100,000,000 for fiscal year 2009 and such sums as may be necessary for each subsequent fiscal year.".

(b) EMERGENCY ASSISTANCE.—Section 722 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432) is amended by adding at the end the following:

"(h) SPECIAL RULE FOR EMERGENCY ASSISTANCE.—

"(1) EMERGENCY ASSISTANCE.—

"(A) RESERVATION OF AMOUNTS.—Subject to paragraph (4) and notwithstanding any other provision of this title, the Secretary shall use funds appropriated under section 726 for fiscal year 2009, but not to exceed $30,000,000, for the purposes of providing emergency assistance through grants.

"(B) GENERAL AUTHORITY.—The Secretary shall use the funds to make grants to State educational agencies under paragraph (2), to enable the agencies to make subgrants to local educational agencies under paragraph (3), to provide activities described in section 723(d) for individuals referred to in subparagraph (C). State and local governments. Grants.

"(C) ELIGIBLE INDIVIDUALS.—Funds made available under this subsection shall be used to provide such activities for eligible individuals, consisting of homeless children and youths, and their families, who have become homeless due to home foreclosure, including children and youths,

and their families, who became homeless when lenders foreclosed on properties rented by the families.

"(2) GRANTS TO STATE EDUCATIONAL AGENCIES.—

"(A) DISBURSEMENT.—The Secretary shall make grants with funds provided under paragraph (1)(A) to State educational agencies based on need, consistent with the number of eligible individuals described in paragraph (1)(C) in the States involved, as determined by the Secretary.

"(B) ASSURANCE.—To be eligible to receive a grant under this paragraph, a State educational agency shall provide an assurance to the Secretary that the State educational agency, and each local educational agency receiving a subgrant from the State educational agency under this subsection shall ensure that the activities carried out under this subsection are consistent with the activities described in section 723(d).

"(3) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—A State educational agency that receives a grant under paragraph (2) shall use the funds made available through the grant to make subgrants to local educational agencies. The State educational agency shall make the subgrants to local educational agencies based on need, consistent with the number of eligible individuals described in paragraph (1)(C) in the areas served by the local educational agencies, as determined by the State educational agency.

"(4) RESTRICTION.—The Secretary—

"(A) shall determine the amount (if any) by which the funds appropriated under section 726 for fiscal year 2009 exceed $70,000,000; and

"(B) may only use funds from that amount to carry out this subsection.".

12 USC 1701z–17.

SEC. 2902. INCREASING ACCESS AND UNDERSTANDING OF ENERGY EFFICIENT MORTGAGES.

(a) DEFINITION.—As used in this section, the term "energy efficient mortgage" has the same meaning as given that term in paragraph (24) of section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(24)).

(b) RECOMMENDATIONS TO ELIMINATE BARRIERS TO USE OF ENERGY EFFICIENT MORTGAGES.—

Deadline.

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Secretary of Housing and Urban Development, in conjunction with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall consult with the residential mortgage industry and States to develop recommendations to eliminate the barriers that exist to increasing the availability, use, and purchase of energy efficient mortgages, including such barriers as—

(A) the lack of reliable and accessible information on such mortgages, including estimated energy savings and other benefits of energy efficient housing;

(B) the confusion regarding underwriting requirements and differences among various energy efficient mortgage programs;

(C) the complex and time consuming process of securing such mortgages;

(D) the lack of publicly available research on the default risk of such mortgages; and

(E) the availability of certified or accredited home energy rating services.

(2) REPORT TO CONGRESS.—The Secretary of Housing and Urban Development shall submit a report to Congress that—

(A) summarizes the recommendations developed under paragraph (1); and

(B) includes any recommendations for statutory, regulatory, or administrative changes that the Secretary deems necessary to institute such recommendations.

(c) ENERGY EFFICIENT MORTGAGES OUTREACH CAMPAIGN.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development, in consultation and coordination with the Secretary of Energy, the Administrator of the Environmental Protection Agency, and State Energy and Housing Finance Directors, shall carry out an education and outreach campaign to inform and educate consumers, home builders, residential lenders, and other real estate professionals on the availability, benefits, and advantages of—

(A) improved energy efficiency in housing; and

(B) energy efficient mortgages.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the education and outreach campaign described under paragraph (1).

DIVISION C—TAX-RELATED PROVISIONS

Housing Assistance Tax Act of 2008. 26 USC 1 note.

SEC. 3000. SHORT TITLE; ETC.

(a) SHORT TITLE.—This division may be cited as the "Housing Assistance Tax Act of 2008".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this division is as follows:

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.
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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.
Sec. 3027. Transfer of funds appropriated to carry out 2008 recovery rebates for individuals.

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 the AMT and research credits in lieu of bonus depreciation.
Sec. 3082. Certain GO Zone incentives.
Sec. 3083. Increase in statutory limit on the public debt.

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. Delay in application of worldwide allocation of interest.
Sec. 3094. Time for payment of corporate estimated taxes.

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.

Paragraph (3) of section 42(h) is amended by adding at the end the following new subparagraph:

"(I) INCREASE IN STATE HOUSING CREDIT CEILING FOR 2008 AND 2009.—In the case of calendar years 2008 and 2009—

"(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

"(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).".

SEC. 3002. DETERMINATION OF CREDIT RATE.

(a) TEMPORARY MINIMUM CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED NEW BUILDINGS.—

(1) IN GENERAL.—Subsection (b) of section 42 is amended by striking paragraph (1), by redesignating paragraph (2) as paragraph (1), and by inserting after paragraph (1), as so redesignated, the following new paragraph:

"(2) TEMPORARY MINIMUM CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED NEW BUILDINGS.—In the case of any new building—

"(A) which is placed in service by the taxpayer after the date of the enactment of this paragraph and before December 31, 2013, and

"(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 42, as amended by paragraph (1), is amended by striking "For purposes of this section—" and all that follows through "means the appropriate" and inserting the following:

"(1) DETERMINATION OF APPLICABLE PERCENTAGE.—For purposes of this section, the term 'applicable percentage' means, with respect to any building, the appropriate".

(B) Clause (i) of section 42(b)(1)(B), as redesignated by paragraph (1), is amended by striking "a building described in paragraph (1)(A)" and inserting "a new building which is not federally subsidized for the taxable year".

(C) Clause (ii) of section 42(b)(1)(B), as redesignated by paragraph (1), is amended by striking "a building described in paragraph (1)(B)" and inserting "a building not described in clause (i)".

(b) MODIFICATIONS TO DEFINITION OF FEDERALLY SUBSIDIZED BUILDING.—

(1) IN GENERAL.—Subparagraph (A) of section 42(i)(2) is amended by striking ", or any below market Federal loan,".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 42(i)(2) is amended—

(i) by striking "BALANCE OF LOAN OR" in the heading thereof,

(ii) by striking "loan or" in the matter preceding clause (i), and

(iii) by striking "subsection (d)—" and all that follows and inserting "subsection (d) the proceeds of such obligation.".

(B) Subparagraph (C) of section 42(i)(2) is amended—

(i) by striking "or below market Federal loan" in the matter preceding clause (i),

(ii) in clause (i)—

(I) by striking "or loan (when issued or made)" and inserting "(when issued)", and

(II) by striking "the proceeds of such obligation or loan" and inserting "the proceeds of such obligation", and

(iii) by striking ", and such loan is repaid," in clause (ii).

(C) Paragraph (2) of section 42(i) is amended by striking subparagraphs (D) and (E).

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to buildings placed in service after the date of the enactment of this Act.

SEC. 3003. MODIFICATIONS TO DEFINITION OF ELIGIBLE BASIS.

(a) INCREASE IN CREDIT FOR CERTAIN STATE DESIGNATED BUILDINGS.—Subparagraph (C) of section 42(d)(5) (relating to increase in credit for buildings in high cost areas), before redesignation under subsection (g), is amended by adding at the end the following new clause:

"(v) BUILDINGS DESIGNATED BY STATE HOUSING CREDIT AGENCY.—Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.".

(b) MODIFICATION TO REHABILITATION REQUIREMENTS.—

(1) IN GENERAL.—Clause (ii) of section 42(e)(3)(A) is amended—

(A) by striking "10 percent" in subclause (I) and inserting "20 percent", and

(B) by striking "$3,000" in subclause (II) and inserting "$6,000".

(2) INFLATION ADJUSTMENT.—Paragraph (3) of section 42(e) is amended by adding at the end the following new subparagraph:

"(D) INFLATION ADJUSTMENT.—In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.".

(3) CONFORMING AMENDMENT.—Subclause (II) of section 42(f)(5)(B)(ii) is amended by striking "if subsection (e)(3)(A)(ii)(II)" and all that follows and inserting "if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.".

(c) INCREASE IN ALLOWABLE COMMUNITY SERVICE FACILITY SPACE FOR SMALL PROJECTS.—Clause (ii) of section 42(d)(4)(C) (relating to limitation) is amended by striking "10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of" and inserting "the sum of—

"(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

"(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of".

(d) CLARIFICATION OF TREATMENT OF FEDERAL GRANTS.—Subparagraph (A) of section 42(d)(5) is amended to read as follows:

"(A) FEDERAL GRANTS NOT TAKEN INTO ACCOUNT IN DETERMINING ELIGIBLE BASIS.—The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.".

(e) SIMPLIFICATION OF RELATED PARTY RULES.—Clause (iii) of section 42(d)(2)(D), before redesignation under subsection (g)(2), is amended—

(1) by striking all that precedes subclause (II),

(2) by redesignating subclause (II) as clause (iii) and moving such clause two ems to the left, and

(3) by striking the last sentence thereof.

(f) EXCEPTION TO 10-YEAR NONACQUISITION PERIOD FOR EXISTING BUILDINGS APPLICABLE TO FEDERALLY- OR STATE-ASSISTED BUILDINGS.—Paragraph (6) of section 42(d) is amended to read as follows:

"(6) CREDIT ALLOWABLE FOR CERTAIN BUILDINGS ACQUIRED DURING 10-YEAR PERIOD DESCRIBED IN PARAGRAPH (2)(B)(ii).—

"(A) IN GENERAL.—Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

"(B) BUILDINGS ACQUIRED FROM INSURED DEPOSITORY INSTITUTIONS IN DEFAULT.—On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

"(C) FEDERALLY- OR STATE-ASSISTED BUILDING.—For purposes of this paragraph—

"(i) FEDERALLY-ASSISTED BUILDING.—The term 'federally-assisted building' means any building which is

substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

"(ii) STATE-ASSISTED BUILDING.—The term 'State-assisted building' means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).".

(g) REPEAL OF DEADWOOD.—

(1) Clause (ii) of section 42(d)(2)(B) is amended by striking "the later of—" and all that follows and inserting "the date the building was last placed in service,".

(2) Subparagraph (D) of section 42(d)(2) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(3) Paragraph (5) of section 42(d) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (2), the amendments made by this subsection shall apply to buildings placed in service after the date of the enactment of this Act.

26 USC 42 note.

(2) REHABILITATION REQUIREMENTS.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to buildings with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act.

(B) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—To the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, the amendments made by subsection (b) shall apply buildings financed with bonds issued pursuant to allocations made after the date of the enactment of this Act.

SEC. 3004. OTHER SIMPLIFICATION AND REFORM OF LOW-INCOME HOUSING TAX INCENTIVES.

(a) REPEAL PROHIBITION ON MODERATE REHABILITATION ASSISTANCE.—Paragraph (2) of section 42(c) (defining qualified low-income building) is amended by striking the flush sentence at the end.

(b) MODIFICATION OF TIME LIMIT FOR INCURRING 10 PERCENT OF PROJECT'S COST.—Clause (ii) of section 42(h)(1)(E) is amended by striking "(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)" and inserting "(as of the date which is 1 year after the date that the allocation was made)".

(c) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—Paragraph (6) of section 42(j) (relating to no recapture on disposition of building (or interest therein) where bond posted) is amended to read as follows:

"(6) NO RECAPTURE ON DISPOSITION OF BUILDING WHICH CONTINUES IN QUALIFIED USE.—

"(A) IN GENERAL.—The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

"(B) STATUTE OF LIMITATIONS.—If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

Notification.

"(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

"(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(d) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—Subparagraph (C) of section 42(m)(1) (relating to plans for allocation of credit among projects) is amended by striking "and" at the end of clause (vii), by striking the period at the end of clause (viii) and inserting a comma, and by adding at the end the following new clauses:

"(ix) the energy efficiency of the project, and

"(x) the historic nature of the project.".

(e) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—Clause (i) of section 42(i)(3)(D) is amended by striking "or" at the end of subclause (I), by redesignating subclause (II) as subclause (III), and by inserting after subclause (I) the following new subclause:

"(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or".

(f) TREATMENT OF RURAL PROJECTS.—Section 42(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF RURAL PROJECTS.—For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national nonmetropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.".

(g) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—Subsection (g) of section 42 is amended by adding at the end the following new paragraph:

"(9) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

"(A) with special needs,

"(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

"(C) who are involved in artistic or literary activities.".

Deadline. Reports.

(h) GAO STUDY REGARDING MODIFICATIONS TO LOW-INCOME HOUSING TAX CREDIT.—Not later than December 31, 2012, the Comptroller General of the United States shall submit to Congress a report which analyzes the implementation of the modifications made by this subtitle to the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986. Such report shall include an analysis of the distribution of credit allocations before and after the effective date of such modifications.

26 USC 42 note.

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to buildings placed in service after the date of the enactment of this Act.

(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) shall apply to—

(A) interests in buildings disposed after the date of the enactment of this Act, and

(B) interests in buildings disposed of on or before such date if—

(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

Applicability.

(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) shall apply to allocations made after December 31, 2008.

(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—The amendments made by subsection (e) shall apply to determinations made after the date of the enactment of this Act.

(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) shall apply to determinations made after the date of the enactment of this Act.

(6) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—The amendment made by subsection (g) shall apply to buildings placed in service before, on, or after the date of the enactment of this Act.

SEC. 3005. TREATMENT OF MILITARY BASIC PAY.

(a) IN GENERAL.—Subparagraph (B) of section 142(d)(2) (relating to income of individuals; area median gross income) is amended—

(1) by striking "The income" and inserting the following:

"(i) IN GENERAL.—The income", and

(2) by adding at the end the following:

"(ii) SPECIAL RULE RELATING TO BASIC HOUSING ALLOWANCES.—For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

"(iii) QUALIFIED BUILDING.—For purposes of clause (ii), the term 'qualified building' means any building located—

"(I) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

"(II) in any county adjacent to a county described in subclause (I).

"(iv) QUALIFIED MILITARY INSTALLATION.—For purposes of clause (iii), the term 'qualified military installation' means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to— 26 USC 142 note.

(1) determinations made after the date of the enactment of this Act and before January 1, 2012, in the case of any qualified building (as defined in section 142(d)(2)(B)(iii) of the Internal Revenue Code of 1986)—

(A) with respect to which housing credit dollar amounts have been allocated on or before the date of the enactment of this Act, or

(B) with respect to buildings placed in service before such date of enactment, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued before such date of enactment, and

(2) determinations made after the date of enactment of this Act, in the case of qualified buildings (as so defined)—

(A) with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act and before January 1, 2012, or

(B) with respect to which buildings placed in service after the date of enactment of this Act and before January 1, 2012, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date of enactment and before January 1, 2012.

PART II—MODIFICATIONS TO TAX-EXEMPT HOUSING BOND RULES

SEC. 3007. RECYCLING OF TAX-EXEMPT DEBT FOR FINANCING RESIDENTIAL RENTAL PROJECTS.

(a) IN GENERAL.—Subsection (i) of section 146 (relating to treatment of refunding issues) is amended by adding at the end the following new paragraph:

"(6) TREATMENT OF CERTAIN RESIDENTIAL RENTAL PROJECT BONDS AS REFUNDING BONDS IRRESPECTIVE OF OBLIGOR.—

"(A) IN GENERAL.—If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

Applicability.

"(B) LIMITATIONS.—Subparagraph (A) shall apply to only one refunding of the original issue and only if—

"(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

"(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

"(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.".

(b) LOW-INCOME HOUSING CREDIT.—Clause (ii) of section 42(h)(4)(A) is amended by inserting "or such financing is refunded as described in section 146(i)(6)" before the period at the end.

26 USC 42 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to repayments of loans received after the date of the enactment of this Act.

SEC. 3008. COORDINATION OF CERTAIN RULES APPLICABLE TO LOW-INCOME HOUSING CREDIT AND QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.

(a) DETERMINATION OF NEXT AVAILABLE UNIT.—Paragraph (3) of section 142(d) (relating to current income determinations) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR PROJECTS WITH RESPECT TO WHICH AFFORDABLE HOUSING CREDIT IS ALLOWED.—In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting 'building (within the meaning of section 42)' for 'project'.".

(b) STUDENTS.—Paragraph (2) of section 142(d) (relating to definitions and special rules) is amended by adding at the end the following new subparagraph:

"(C) STUDENTS.—Rules similar to the rules of 42(i)(3)(D) shall apply for purposes of this subsection.".

(c) SINGLE-ROOM OCCUPANCY UNITS.—Paragraph (2) of section 142(d) (relating to definitions and special rules), as amended by

subsection (b), is amended by adding at the end the following new subparagraph:

"(D) SINGLE-ROOM OCCUPANCY UNITS.—A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act, with respect to bonds issued before, on, or after such date. 26 USC 142 note.

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.

(a) IN GENERAL.—Paragraph (2) of section 142(d), as amended by section 3008, is amended by adding at the end the following new subparagraph:

"(E) HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.—

"(i) IN GENERAL.—Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

"(ii) SPECIAL RULE FOR CERTAIN CENSUS CHANGES.—In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

"(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

"(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

"(iii) HUD HOLD HARMLESS POLICY.—The term 'HUD hold harmless policy' means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

"(iv) HUD HOLD HARMLESS IMPACTED PROJECT.—The term 'HUD hold harmless impacted project' means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.".

26 USC 142 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations of area median gross income for calendar years after 2008.

SEC. 3010. EXCEPTION TO ANNUAL CURRENT INCOME DETERMINATION REQUIREMENT WHERE DETERMINATION NOT RELEVANT.

(a) IN GENERAL.—Subparagraph (A) of section 142(d)(3) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.".

26 USC 142 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years ending after the date of the enactment of this Act.

Subtitle B—Single Family Housing

SEC. 3011. FIRST-TIME HOMEBUYER CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. FIRST-TIME HOMEBUYER CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed $7,500.

"(B) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting '$3,750' for '$7,500'.

"(C) OTHER INDIVIDUALS.—If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $7,500.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not

below zero) by the amount which bears the same ratio to the amount which is so allowable as—

"(i) the excess (if any) of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $75,000 ($150,000 in the case of a joint return), bears to

"(ii) $20,000.

"(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

"(c) DEFINITIONS.—For purposes of this section—

"(1) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

"(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

"(3) PURCHASE.—

"(A) IN GENERAL.—The term 'purchase' means any acquisition, but only if—

"(i) the property is not acquired from a person related to the person acquiring such property, and

"(ii) the basis of the property in the hands of the person acquiring such property is not determined—

"(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

"(II) under section 1014(a) (relating to property acquired from a decedent).

"(B) CONSTRUCTION.—A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

"(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date such residence is purchased.

"(5) RELATED PERSONS.—A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

"(d) EXCEPTIONS.—No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

"(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

"(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103,

"(3) the taxpayer is a nonresident alien, or

"(4) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year.

"(e) REPORTING.—If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

"(f) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6⅔ percent of the amount of such credit for each taxable year in the recapture period.

"(2) ACCELERATION OF RECAPTURE.—If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

"(A) the tax imposed by this chapter for the taxable year of such disposition or cessation shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

"(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

"(3) LIMITATION BASED ON GAIN.—In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

"(4) EXCEPTIONS.—

"(A) DEATH OF TAXPAYER.—Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

"(B) INVOLUNTARY CONVERSION.—Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

"(C) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of a transfer of a residence to which section 1041(a) applies—

"(i) paragraph (2) shall not apply to such transfer, and

"(ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

"(5) JOINT RETURNS.—In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

"(6) RETURN REQUIREMENT.—If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

"(7) RECAPTURE PERIOD.—For purposes of this subsection, the term 'recapture period' means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

"(g) ELECTION TO TREAT PURCHASE IN PRIOR YEAR.—In the case of a purchase of a principal residence after December 31, 2008, and before July 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section (other than subsection (c)).

"(h) APPLICATION OF SECTION.—This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before July 1, 2009.".

(b) CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) is amended by striking "and" at the end of subparagraph (U), by striking the period and inserting ", and" and the end of subparagraph (V), and by inserting after subparagraph (V) the following new subparagraph:

"(W) section 36(f) (relating to recapture of homebuyer credit).".

(2) Section 6211(b)(4)(A) is amended by striking "34," and all that follows through "6428" and inserting "34, 35, 36, 53(e), and 6428".

(3) Section 1324(b)(2) of title 31, United States Code, is amended by inserting "36," after "35,".

(4) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting before such item the following new item:

"Sec. 36. First-time homebuyer credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased on or after April 9, 2008, in taxable years ending on or after such date. 26 USC 26 note.

SEC. 3012. ADDITIONAL STANDARD DEDUCTION FOR REAL PROPERTY TAXES FOR NONITEMIZERS.

(a) IN GENERAL.—Section 63(c)(1) (defining standard deduction) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) in the case of any taxable year beginning in 2008, the real property tax deduction.".

(b) DEFINITION.—Section 63(c) is amended by adding at the end the following new paragraph:

"(7) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

"(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

"(B) $500 ($1,000 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.".

26 USC 63 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

Subtitle C—General Provisions

SEC. 3021. TEMPORARY LIBERALIZATION OF TAX-EXEMPT HOUSING BOND RULES.

(a) TEMPORARY INCREASE IN VOLUME CAP.—

(1) IN GENERAL.—Subsection (d) of section 146 is amended by adding at the end the following new paragraph:

"(5) INCREASE AND SET ASIDE FOR HOUSING BONDS FOR 2008.—

"(A) INCREASE FOR 2008.—In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $11,000,000,000 multiplied by a fraction—

"(i) the numerator of which is the State ceiling applicable to the State for calendar year 2008, determined without regard to this paragraph, and

"(ii) the denominator of which is the sum of the State ceilings determined under clause (i) for all States.

"(B) SET ASIDE.—

"(i) IN GENERAL.—Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified housing issues.

"(ii) QUALIFIED HOUSING ISSUE.—For purposes of this paragraph, the term 'qualified housing issue' means—

"(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

"(II) a qualified mortgage issue (determined by substituting '12-month period' for '42-month period' each place it appears in section 143(a)(2)(D)(i)).".

(2) CARRYFORWARD OF UNUSED LIMITATIONS.—Subsection (f) of section 146 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULES FOR INCREASED VOLUME CAP UNDER SUBSECTION (d)(5).—No amount which is attributable to the increase under subsection (d)(5) may be used—

"(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

"(B) to issue any bond after calendar year 2010.".

(b) TEMPORARY RULE FOR USE OF QUALIFIED MORTGAGE BONDS PROCEEDS FOR SUBPRIME REFINANCING LOANS.—

(1) IN GENERAL.—Section 143(k) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

"(12) SPECIAL RULES FOR SUBPRIME REFINANCINGS.—

"(A) IN GENERAL.—Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

"(B) SPECIAL RULES.—In applying subparagraph (A) to any refinancing— Applicability.

"(i) subsection (a)(2)(D)(i) shall be applied by substituting '12-month period' for '42-month period' each place it appears,

"(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

"(iii) subsection (e) (relating to purchase price requirement) shall be applied by using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

"(C) QUALIFIED SUBPRIME LOAN.—The term 'qualified subprime loan' means an adjustable rate single-family residential mortgage loan made after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

"(D) TERMINATION.—This paragraph shall not apply to any bonds issued after December 31, 2010.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act. 26 USC 143 note.

SEC. 3022. REPEAL OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT HOUSING BONDS, LOW-INCOME HOUSING TAX CREDIT, AND REHABILITATION CREDIT.

(a) TAX-EXEMPT INTEREST ON CERTAIN HOUSING BONDS EXEMPTED FROM ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subparagraph (C) of section 57(a)(5) (relating to specified private activity bonds) is amended by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively, and by inserting after clause (ii) the following new clause:

"(iii) EXCEPTION FOR CERTAIN HOUSING BONDS.—For purposes of clause (i), the term 'private activity bond' shall not include any bond issued after the date of the enactment of this clause if such bond is—

"(I) an exempt facility bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)),

"(II) a qualified mortgage bond (as defined in section 143(a)), or

"(III) a qualified veterans' mortgage bond (as defined in section 143(b)).

The preceding sentence shall not apply to any refunding bond unless such preceding sentence applied to the refunded bond (or in the case of a series of refundings, the original bond).".

(2) NO ADJUSTMENT TO ADJUSTED CURRENT EARNINGS.—Subparagraph (B) of section 56(g)(4) is amended by adding at the end the following new clause:

"(iii) TAX EXEMPT INTEREST ON CERTAIN HOUSING BONDS.—Clause (i) shall not apply in the case of any interest on a bond to which section 57(a)(5)(C)(iii) applies.".

(b) ALLOWANCE OF LOW-INCOME HOUSING CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) (relating to specified credits) is amended by redesignating clauses (ii) through (iv) as clauses (iii) through (v) and inserting after clause (i) the following new clause:

"(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,".

(c) ALLOWANCE OF REHABILITATION CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4), as amended by subsection (b), is amended by striking "and" at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

"(v) the credit determined under section 47 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and".

(d) EFFECTIVE DATE.—

26 USC 56 note.

(1) HOUSING BONDS.—The amendments made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

26 USC 38 note.

(2) LOW INCOME HOUSING CREDIT.—The amendments made by subsection (b) shall apply to credits determined under section 42 of the Internal Revenue Code of 1986 to the extent attributable to buildings placed in service after December 31, 2007.

26 USC 38 note.

(3) REHABILITATION CREDIT.—The amendments made by subsection (c) shall apply to credits determined under section 47 of the Internal Revenue Code of 1986 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007.

SEC. 3023. BONDS GUARANTEED BY FEDERAL HOME LOAN BANKS ELIGIBLE FOR TREATMENT AS TAX-EXEMPT BONDS.

(a) IN GENERAL.—Subparagraph (A) of section 149(b)(3) (relating to exceptions for certain insurance programs) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or" and by adding at the end the following new clause:

"(iv) subject to subparagraph (E), any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this clause and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).".

(b) SAFETY AND SOUNDNESS REQUIREMENTS.—Paragraph (3) of section 149(b) is amended by adding at the end the following new subparagraph:

"(E) SAFETY AND SOUNDNESS REQUIREMENTS FOR FEDERAL HOME LOAN BANKS.—Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees made after the date of the enactment of this Act. 26 USC 149 note.

SEC. 3024. MODIFICATION OF RULES PERTAINING TO FIRPTA NONFOREIGN AFFIDAVITS.

(a) IN GENERAL.—Subsection (b) of section 1445 (relating to exemptions) is amended by adding at the end the following:

"(9) ALTERNATIVE PROCEDURE FOR FURNISHING NONFOREIGN AFFIDAVIT.—For purposes of paragraphs (2) and (7)—

"(A) IN GENERAL.—Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

"(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

"(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

"(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.".

(b) QUALIFIED SUBSTITUTE.—Subsection (f) of section 1445 (relating to definitions) is amended by adding at the end the following new paragraph:

"(6) QUALIFIED SUBSTITUTE.—The term 'qualified substitute' means, with respect to a disposition of a United States real property interest—

"(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

"(B) the transferee's agent.".

(c) EXEMPTION NOT TO APPLY IF KNOWLEDGE OR NOTICE THAT AFFIDAVIT OR STATEMENT IS FALSE.—

(1) IN GENERAL.—Paragraph (7) of section 1445(b) (relating to special rules for paragraphs (2) and (3)) is amended to read as follows:

"(7) SPECIAL RULES FOR PARAGRAPHS (2), (3), AND (9).—Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

"(A) if—

"(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

"(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

"(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.".

(2) LIABILITY.—

(A) NOTICE.—Paragraph (1) of section 1445(d) (relating to notice of false affidavit; foreign corporations) is amended to read as follows:

"(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

"(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

Regulations.

"(B) in the case of—

"(i) any transferor's agent—

"(I) such agent has actual knowledge that such affidavit is false, or

"(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

"(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.".

(B) FAILURE TO FURNISH NOTICE.—Paragraph (2) of section 1445(d) (relating to failure to furnish notice) is amended to read as follows:

"(2) FAILURE TO FURNISH NOTICE.—

"(A) IN GENERAL.—If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

"(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.".

(C) CONFORMING AMENDMENT.—The heading for section 1445(d) is amended by striking "OR TRANSFEREE'S AGENTS" and inserting ", TRANSFEREE'S AGENTS, OR QUALIFIED SUBSTITUTES".

Real property.
26 USC 1445 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions of United States real property interests after the date of the enactment of this Act.

SEC. 3025. MODIFICATION OF DEFINITION OF TAX-EXEMPT USE PROPERTY FOR PURPOSES OF THE REHABILITATION CREDIT.

(a) IN GENERAL.—Subclause (I) of section 47(c)(2)(B)(v) is amended by striking "section 168(h)" and inserting "section 168(h), except that '50 percent' shall be substituted for '35 percent' in paragraph (1)(B)(iii) thereof".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures properly taken into account for periods after December 31, 2007. 26 USC 47 note.

SEC. 3026. EXTENSION OF SPECIAL RULE FOR MORTGAGE REVENUE BONDS FOR RESIDENCES LOCATED IN DISASTER AREAS.

(a) IN GENERAL.—Paragraph (11) of section 143(k) is amended—

(1) by striking "December 31, 1996" and inserting "May 1, 2008", and

(2) by striking "January 1, 1999" and inserting "January 1, 2010".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after May 1, 2008. 26 USC 143 note.

SEC. 3027. TRANSFER OF FUNDS APPROPRIATED TO CARRY OUT 2008 RECOVERY REBATES FOR INDIVIDUALS.

Of the funds made available by section 101(e)(1)(A) of the Economic Stimulus Act of 2008 (Public Law 110-185), the Secretary of the Treasury may transfer funds among the accounts specified in such section to carry out section 6428 of the Internal Revenue Code of 1986. The Secretary shall provide advance notification of any such transfer to the Committees on Appropriations of the House of Representatives and the Senate, and any transfer greater than $5,000,000 shall be subject to the approval of such Committees. Notification.

TITLE II—REFORMS RELATED TO REAL ESTATE INVESTMENT TRUSTS

Subtitle A—Foreign Currency and Other Qualified Activities

SEC. 3031. REVISIONS TO REIT INCOME TESTS.

(a) FOREIGN CURRENCY GAINS NOT GROSS INCOME IN APPLYING REIT INCOME TESTS.—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

"(n) RULES REGARDING FOREIGN CURRENCY TRANSACTIONS.—

"(1) IN GENERAL.—For purposes of this part—

"(A) passive foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(2), and

"(B) real estate foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(3).

"(2) REAL ESTATE FOREIGN EXCHANGE GAIN.—For purposes of this subsection, the term 'real estate foreign exchange gain' means—

"(A) foreign currency gain (as defined in section 988(b)(1)) which is attributable to—

"(i) any item of income or gain described in subsection (c)(3),

"(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

"(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)),

"(B) section 987 gain attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

"(i) subsection (c)(3) for the taxable year, and

"(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

"(C) any other foreign currency gain as determined by the Secretary.

"(3) PASSIVE FOREIGN EXCHANGE GAIN.—For purposes of this subsection, the term 'passive foreign exchange gain' means—

"(A) real estate foreign exchange gain,

"(B) foreign currency gain (as defined in section 988(b)(1)) which is not described in subparagraph (A) and which is attributable to—

"(i) any item of income or gain described in subsection (c)(2),

"(ii) the acquisition or ownership of obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

"(iii) becoming or being the obligor under obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), and

"(C) any other foreign currency gain as determined by the Secretary.

"(4) EXCEPTION FOR INCOME FROM SUBSTANTIAL AND REGULAR TRADING.—Notwithstanding this subsection or any other provision of this part, any section 988 gain derived by a corporation, trust, or association from dealing, or engaging in substantial and regular trading, in securities (as defined in section 475(c)(2)) shall constitute gross income which does not qualify under paragraph (2) or (3) of subsection (c). This paragraph shall not apply to income which does not constitute gross income by reason of subsection (c)(5)(G).".

(b) ADDITION TO REIT HEDGING RULE.—Subparagraph (G) of section 856(c)(5) is amended to read as follows:

"(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

"(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from

the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

"(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item of income or gain described in paragraph (2) or (3) (or any property which generates such income or gain), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).".

(c) AUTHORITY TO EXCLUDE ITEMS OF INCOME FROM REIT INCOME TESTS.—Section 856(c)(5) is amended by adding at the end the following new subparagraph:

"(J) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—To the extent necessary to carry out the purposes of this part, the Secretary is authorized to determine, solely for purposes of this part, whether any item of income or gain which—

"(i) does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income for purposes of paragraphs (2) or (3), or

"(ii) otherwise constitutes gross income not qualifying under paragraph (2) or (3) may be considered as gross income which qualifies under paragraph (2) or (3).".

SEC. 3032. REVISIONS TO REIT ASSET TESTS.

(a) CLARIFICATION OF VALUATION TEST.—The first sentence in the matter following section 856(c)(4)(B)(iii)(III) is amended by inserting "(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)" after "such requirements".

(b) CLARIFICATION OF PERMISSIBLE ASSET CATEGORY.—Section 856(c)(5), as amended by section 3031(c), is amended by adding at the end the following new subparagraph:

"(K) CASH.—If the real estate investment trust or its qualified business unit (as defined in section 989) uses any foreign currency as its functional currency (as defined in section 985(b)), the term 'cash' includes such foreign currency but only to the extent such foreign currency—

"(i) is held for use in the normal course of the activities of the trust or qualified business unit which give rise to items of income or gain described in paragraph (2) or (3) of subsection (c) or are directly related to acquiring or holding assets described in subsection (c)(4), and

"(ii) is not held in connection with an activity described in subsection (n)(4).".

SEC. 3033. CONFORMING FOREIGN CURRENCY REVISIONS.

(a) NET INCOME FROM FORECLOSURE PROPERTY.—Clause (i) of section 857(b)(4)(B) is amended to read as follows:

"(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over".

(b) NET INCOME FROM PROHIBITED TRANSACTIONS.—Clause (i) of section 857(b)(6)(B) is amended to read as follows:

"(i) the term 'net income derived from prohibited transactions' means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;".

Subtitle B—Taxable REIT Subsidiaries

SEC. 3041. CONFORMING TAXABLE REIT SUBSIDIARY ASSET TEST.

Section 856(c)(4)(B)(ii) is amended—

(1) by striking "20 percent" and inserting "25 percent", and

(2) by striking "REIT subsidiaries" and all that follows, and inserting "REIT subsidiaries,".

Subtitle C—Dealer Sales

SEC. 3051. HOLDING PERIOD UNDER SAFE HARBOR.

(a) IN GENERAL.—Section 857(b)(6) (relating to income from prohibited transactions) is amended—

(1) by striking "4 years" in subparagraphs (C)(i), (C)(iv), and (D)(i) and inserting "2 years",

(2) by striking "4-year period" in subparagraphs (C)(ii), (D)(ii), and (D)(iii) and inserting "2-year period", and

(3) by striking "real estate asset"and all that follows through "if" in the matter preceding clause (i) of subparagraphs (C) and (D), respectively, and inserting "real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if".

(b) RETENTION OF EXISTING LAW.—Section 857(b)(6) is amended—

(1) by striking subparagraph (G) and redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively, and

(2) in subparagraph (G), as so redesignated, by adding at the end the following: "For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference

to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.".

SEC. 3052. DETERMINING VALUE OF SALES UNDER SAFE HARBOR.

Section 857(b)(6) is amended—

(1) by striking the semicolon at the end of subparagraph (C)(iii) and inserting ", or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;", and

(2) by adding "or" at the end of subclause (II) of subparagraph (D)(iv) and by adding at the end of such subparagraph the following new subclause:

"(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,".

Subtitle D—Health Care REITs

SEC. 3061. CONFORMITY FOR HEALTH CARE FACILITIES.

(a) RELATED PARTY RENTALS.—Subparagraph (B) of section 856(d)(8) (relating to special rule for taxable REIT subsidiaries) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN LODGING FACILITIES AND HEALTH CARE PROPERTY.—The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility (as defined in paragraph (9)(D)) or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it—

"(i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or

"(ii) employs individuals working at such facility or property located outside the United States, but only if an eligible independent contractor is responsible for the daily supervision and direction of such individuals on behalf of the taxable REIT subsidiary pursuant to a management agreement or similar service contract.".

(b) ELIGIBLE INDEPENDENT CONTRACTOR.—Subparagraphs (A) and (B) of section 856(d)(9) (relating to eligible independent contractor) are amended to read as follows:

"(A) IN GENERAL.—The term 'eligible independent contractor' means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection

(e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

"(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

"(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

"(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

"(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

"(I) January 1, 1999, or

"(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.".

(c) TAXABLE REIT SUBSIDIARIES.—The last sentence of section 856(l)(3) is amended—

(1) by inserting "or a health care facility" after "a lodging facility", and

(2) by inserting "or health care facility" after "such lodging facility".

Subtitle E—Effective Dates

26 USC 856 note.

SEC. 3071. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title shall apply to taxable years beginning after the date of the enactment of this Act.

(b) REIT INCOME TESTS.—

(1) The amendments made by section 3031(a) and (c) shall apply to gains and items of income recognized after the date of the enactment of this Act.

(2) The amendment made by section 3031(b) shall apply to transactions entered into after the date of the enactment of this Act.

(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

Applicability. Effective dates.

(1) The amendment made by section 3033(a) shall apply to gains recognized after the date of the enactment of this Act.

(2) The amendment made by section 3033(b) shall apply to gains and deductions recognized after the date of the enactment of this Act.

(d) DEALER SALES.—The amendments made by subtitle C shall apply to sales made after the date of the enactment of this Act.

TITLE III—REVENUE PROVISIONS

Subtitle A—General Provisions

SEC. 3081. ELECTION TO ACCELERATE THE AMT AND RESEARCH CREDITS IN LIEU OF BONUS DEPRECIATION.

(a) IN GENERAL.—Section 168(k) is amended by adding at the end the following new paragraph:

"(4) ELECTION TO ACCELERATE THE AMT AND RESEARCH CREDITS IN LIEU OF BONUS DEPRECIATION.—

"(A) IN GENERAL.—If a corporation elects to have this paragraph apply for the first taxable year of the taxpayer ending after March 31, 2008, in the case of such taxable year and each subsequent taxable year—

"(i) paragraph (1) shall not apply to any eligible qualified property placed in service by the taxpayer,

"(ii) the applicable depreciation method used under this section with respect to such property shall be the straight line method, and

"(iii) each of the limitations described in subparagraph (B) for any such taxable year shall be increased by the bonus depreciation amount which is—

"(I) determined for such taxable year under subparagraph (C), and

"(II) allocated to such limitation under subparagraph (E).

"(B) LIMITATIONS TO BE INCREASED.—The limitations described in this subparagraph are—

"(i) the limitation imposed by section 38(c), and

"(ii) the limitation imposed by section 53(c).

"(C) BONUS DEPRECIATION AMOUNT.—For purposes of this paragraph—

"(i) IN GENERAL.—The bonus depreciation amount for any taxable year is an amount equal to 20 percent of the excess (if any) of—

"(I) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) applied to all such property, over

"(II) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) did not apply to any such property.

The aggregate amounts determined under subclauses (I) and (II) shall be determined without regard to any election made under subsection (b)(2)(C), (b)(3)(D), or (g)(7) and without regard to subparagraph (A)(ii).

"(ii) MAXIMUM AMOUNT.—The bonus depreciation amount for any taxable year shall not exceed the maximum increase amount under clause (iii), reduced (but not below zero) by the sum of the bonus depreciation amounts for all preceding taxable years.

"(iii) MAXIMUM INCREASE AMOUNT.—For purposes of clause (ii), the term 'maximum increase amount' means, with respect to any corporation, the lesser of—

"(I) $30,000,000, or

"(II) 6 percent of the sum of the business credit increase amount, and the AMT credit increase amount, determined with respect to such corporation under subparagraph (E).

"(iv) AGGREGATION RULE.—All corporations which are treated as a single employer under section 52(a) shall be treated—

"(I) as 1 taxpayer for purposes of this paragraph, and

"(II) as having elected the application of this paragraph if any such corporation so elects.

"(D) ELIGIBLE QUALIFIED PROPERTY.—For purposes of this paragraph, the term 'eligible qualified property' means qualified property under paragraph (2), except that in applying paragraph (2) for purposes of this paragraph—

"(i) 'March 31, 2008' shall be substituted for 'December 31, 2007' each place it appears in subparagraph (A) and clauses (i) and (ii) of subparagraph (E) thereof, and

"(ii) only adjusted basis attributable to manufacture, construction, or production after March 31, 2008, and before January 1, 2009, shall be taken into account under subparagraph (B)(ii) thereof.

"(E) ALLOCATION OF BONUS DEPRECIATION AMOUNTS.—

"(i) IN GENERAL.—Subject to clauses (ii) and (iii), the taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the bonus depreciation amount for the taxable year which is to be allocated to each of the limitations described in subparagraph (B) for such taxable year.

"(ii) LIMITATION ON ALLOCATIONS.—The portion of the bonus depreciation amount which may be allocated under clause (i) to the limitations described in subparagraph (B) for any taxable year shall not exceed—

"(I) in the case of the limitation described in subparagraph (B)(i), the excess of the business credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years, and

"(II) in the case of the limitation described in subparagraph (B)(ii), the excess of the AMT credit increase amount over the bonus depreciation

amount allocated to such limitation for all preceding taxable years.

"(iii) BUSINESS CREDIT INCREASE AMOUNT.—For purposes of this paragraph, the term 'business credit increase amount' means the amount equal to the portion of the credit allowable under section 38 (determined without regard to subsection (c) thereof) for the first taxable year ending after March 31, 2008, which is allocable to business credit carryforwards to such taxable year which are—

"(I) from taxable years beginning before January 1, 2006, and

"(II) properly allocable (determined under the rules of section 38(d)) to the research credit determined under section 41(a).

"(iv) AMT CREDIT INCREASE AMOUNT.—For purposes of this paragraph, the term 'AMT credit increase amount' means the amount equal to the portion of the minimum tax credit under section 53(b) for the first taxable year ending after March 31, 2008, determined by taking into account only the adjusted minimum tax for taxable years beginning before January 1, 2006. For purposes of the preceding sentence, credits shall be treated as allowed on a first-in, first-out basis.

"(F) CREDIT REFUNDABLE.—For purposes of section 6401(b), the aggregate increase in the credits allowable under part IV of subchapter A for any taxable year resulting from the application of this paragraph shall be treated as allowed under subpart C of such part (and not any other subpart).

"(G) OTHER RULES.—

"(i) ELECTION.—Any election under this paragraph (including any allocation under subparagraph (E)) may be revoked only with the consent of the Secretary.

"(ii) PARTNERSHIPS WITH ELECTING PARTNERS.—In the case of a corporation making an election under subparagraph (A) and which is a partner in a partnership, for purposes of determining such corporation's distributive share of partnership items under section 702—

"(I) paragraph (1) shall not apply to any eligible qualified property, and

"(II) the applicable depreciation method used under this section with respect to such property shall be the straight line method.

"(iii) SPECIAL RULE FOR PASSENGER AIRCRAFT.—In the case of any passenger aircraft, the written binding contract limitation under paragraph (2)(A)(iii)(I) shall not apply for purposes of subparagraphs (C)(i)(I) and (D).".

(b) APPLICATION TO CERTAIN AUTOMOTIVE PARTNERSHIPS.—

(1) IN GENERAL.—If an applicable partnership elects the application of this subsection—

(A) the partnership shall be treated as having made a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any applicable taxable

year of the partnership in the amount determined under paragraph (3),

(B) in the case of any eligible qualified property placed in service by the partnership during any applicable taxable year—

(i) section 168(k) of such Code shall not apply in determining the amount of the deduction allowable with respect to such property under section 168 of such Code,

(ii) the applicable depreciation method used with respect to such property shall be the straight line method, and

(C) the amount of the credit determined under section 41 of such Code for any applicable taxable year with respect to the partnership shall be reduced by the amount of the deemed payment under subparagraph (A) for the taxable year.

(2) TREATMENT OF DEEMED PAYMENT.—

(A) IN GENERAL.—Notwithstanding any other provision of the Internal Revenue Code of 1986, the Secretary of the Treasury or his delegate shall not use the payment of tax described in paragraph (1) as an offset or credit against any tax liability of the applicable partnership or any partner but shall refund such payment to the applicable partnership.

(B) NO INTEREST.—The payment described in paragraph (1) shall not be taken into account in determining any amount of interest under such Code.

(3) AMOUNT OF DEEMED PAYMENT.—The amount determined under this paragraph for any applicable taxable year shall be the least of the following:

(A) The amount which would be determined for the taxable year under section 168(k)(4)(C)(i) of the Internal Revenue Code of 1986 (as added by the amendments made by this section) if an election under section 168(k)(4) of such Code were in effect with respect to the partnership.

(B) The amount of the credit determined under section 41 of such Code for the taxable year with respect to the partnership.

(C) $30,000,000, reduced by the amount of any payment under this subsection for any preceding taxable year.

(4) DEFINITIONS.—For purposes of this subsection—

(A) APPLICABLE PARTNERSHIP.—The term "applicable partnership" means a domestic partnership that—

(i) was formed effective on August 3, 2007, and

(ii) will produce in excess of 675,000 automobiles during the period beginning on January 1, 2008, and ending on June 30, 2008.

(B) APPLICABLE TAXABLE YEAR.—The term "applicable taxable year" means any taxable year during which eligible qualified property is placed in service.

(C) ELIGIBLE QUALIFIED PROPERTY.—The term "eligible qualified property" has the meaning given such term by section 168(k)(4)(D) of the Internal Revenue Code of 1986 (as added by the amendments made by this section).

(c) CONFORMING AMENDMENT.—Section 1324(b)(2) of title 31, United States Code, as amended by this Act, is amended—

(1) by inserting "168(k)(4)(F)," after "36,", and

(2) by inserting ", or due under section 3081(b)(2) of the Housing Assistance Tax Act of 2008" before the period at the end.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 31, 2008. 26 USC 168 note.

SEC. 3082. CERTAIN GO ZONE INCENTIVES.

(a) USE OF AMENDED INCOME TAX RETURNS TO TAKE INTO ACCOUNT RECEIPT OF CERTAIN HURRICANE-RELATED CASUALTY LOSS GRANTS BY DISALLOWING PREVIOUSLY TAKEN CASUALTY LOSS DEDUCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of the Internal Revenue Code of 1986, if a taxpayer claims a deduction for any taxable year with respect to a casualty loss to a principal residence (within the meaning of section 121 of such Code) resulting from Hurricane Katrina, Hurricane Rita, or Hurricane Wilma and in a subsequent taxable year receives a grant under Public Law 109–148, 109–234, or 110–116 as reimbursement for such loss, such taxpayer may elect to file an amended income tax return for the taxable year in which such deduction was allowed (and for any taxable year to which such deduction is carried) and reduce (but not below zero) the amount of such deduction by the amount of such reimbursement.

(2) TIME OF FILING AMENDED RETURN.—Paragraph (1) shall apply with respect to any grant only if any amended income tax returns with respect to such grant are filed not later than the later of—

(A) the due date for filing the tax return for the taxable year in which the taxpayer receives such grant, or

(B) the date which is 1 year after the date of the enactment of this Act.

(3) WAIVER OF PENALTIES AND INTEREST.—Any underpayment of tax resulting from the reduction under paragraph (1) of the amount otherwise allowable as a deduction shall not be subject to any penalty or interest under such Code if such tax is paid not later than 1 year after the filing of the amended return to which such reduction relates. Deadline.

(b) WAIVER OF DEADLINE ON CONSTRUCTION OF GO ZONE PROPERTY ELIGIBLE FOR BONUS DEPRECIATION.—

(1) IN GENERAL.—Subparagraph (B) of section 1400N(d)(3) is amended to read as follows:

"(B) without regard to 'and before January 1, 2009' in clause (i) thereof, and".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to property placed in service after December 31, 2007. 26 USC 1400N note.

(c) INCLUSION OF CERTAIN COUNTIES IN GULF OPPORTUNITY ZONE FOR PURPOSES OF TAX-EXEMPT BOND FINANCING.—

(1) IN GENERAL.—Subsection (a) of section 1400N is amended by adding at the end the following new paragraph: Alabama.

"(8) INCLUSION OF CERTAIN COUNTIES.—For purposes of this subsection, the Gulf Opportunity Zone includes Colbert County, Alabama and Dallas County, Alabama.".

26 USC 1400N note.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 to which it relates.

SEC. 3083. INCREASE IN STATUTORY LIMIT ON THE PUBLIC DEBT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof $10,615,000,000,000.

Subtitle B—Revenue Offsets

SEC. 3091. RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new section:

"SEC. 6050W. RETURNS RELATING TO PAYMENTS MADE IN SETTLEMENT OF PAYMENT CARD AND THIRD PARTY NETWORK TRANSACTIONS.

"(a) IN GENERAL.—Each payment settlement entity shall make a return for each calendar year setting forth—

"(1) the name, address, and TIN of each participating payee to whom one or more payments in settlement of reportable payment transactions are made, and

"(2) the gross amount of the reportable payment transactions with respect to each such participating payee.

Such return shall be made at such time and in such form and manner as the Secretary may require by regulations.

"(b) PAYMENT SETTLEMENT ENTITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'payment settlement entity' means—

"(A) in the case of a payment card transaction, the merchant acquiring entity, and

"(B) in the case of a third party network transaction, the third party settlement organization.

"(2) MERCHANT ACQUIRING ENTITY.—The term 'merchant acquiring entity' means the bank or other organization which has the contractual obligation to make payment to participating payees in settlement of payment card transactions.

"(3) THIRD PARTY SETTLEMENT ORGANIZATION.—The term 'third party settlement organization' means the central organization which has the contractual obligation to make payment to participating payees of third party network transactions.

"(4) SPECIAL RULES RELATED TO INTERMEDIARIES.—For purposes of this section—

"(A) AGGREGATED PAYEES.—In any case where reportable payment transactions of more than one participating payee are settled through an intermediary—

"(i) such intermediary shall be treated as the participating payee for purposes of determining the reporting obligations of the payment settlement entity with respect to such transactions, and

"(ii) such intermediary shall be treated as the payment settlement entity with respect to the settlement of such transactions with the participating payees.

"(B) ELECTRONIC PAYMENT FACILITATORS.—In any case where an electronic payment facilitator or other third party makes payments in settlement of reportable payment transactions on behalf of the payment settlement entity, the return under subsection (a) shall be made by such electronic payment facilitator or other third party in lieu of the payment settlement entity.

"(c) REPORTABLE PAYMENT TRANSACTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'reportable payment transaction' means any payment card transaction and any third party network transaction.

"(2) PAYMENT CARD TRANSACTION.—The term 'payment card transaction' means any transaction in which a payment card is accepted as payment.

"(3) THIRD PARTY NETWORK TRANSACTION.—The term 'third party network transaction' means any transaction which is settled through a third party payment network.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) PARTICIPATING PAYEE.—

"(A) IN GENERAL.—The term 'participating payee' means—

"(i) in the case of a payment card transaction, any person who accepts a payment card as payment, and

"(ii) in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

"(B) EXCLUSION OF FOREIGN PERSONS.—Except as provided by the Secretary in regulations or other guidance, such term shall not include any person with a foreign address.

"(C) INCLUSION OF GOVERNMENTAL UNITS.—The term 'person' includes any governmental unit (and any agency or instrumentality thereof).

"(2) PAYMENT CARD.—The term 'payment card' means any card which is issued pursuant to an agreement or arrangement which provides for—

"(A) one or more issuers of such cards,

"(B) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment, and

"(C) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.

The acceptance as payment of any account number or other indicia associated with a payment card shall be treated for purposes of this section in the same manner as accepting such payment card as payment.

"(3) THIRD PARTY PAYMENT NETWORK.—The term 'third party payment network' means any agreement or arrangement—

"(A) which involves the establishment of accounts with a central organization by a substantial number of persons who—

"(i) are unrelated to such organization,

"(ii) provide goods or services, and

"(iii) have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement,

"(B) which provides for standards and mechanisms for settling such transactions, and

"(C) which guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services.

Such term shall not include any agreement or arrangement which provides for the issuance of payment cards.

Reports.

"(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall be required to report any information under subsection (a) with respect to third party network transactions of any participating payee only if—

"(1) the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions exceeds $20,000, and

"(2) the aggregate number of such transactions exceeds 200.

Records.

"(f) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return, and

"(2) the gross amount of the reportable payment transactions with respect to the person required to be shown on the return.

Deadline.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection

E-mail.

(a) was required to be made. Such statement may be furnished electronically, and if so, the email address of the person required to make such return may be shown in lieu of the phone number.

"(g) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out this section, including rules to prevent the reporting of the same transaction more than once.".

(b) PENALTY FOR FAILURE TO FILE.—

(1) RETURN.—Subparagraph (B) of section 6724(d)(1) is amended—

(A) by striking "or" at the end of clause (xx),

(B) by redesignating the clause (xix) that follows clause (xx) as clause (xxi),

(C) by striking "and" at the end of clause (xxi), as redesignated by subparagraph (B) and inserting "or", and

(D) by adding at the end the following:

"(xxii) section 6050W (relating to returns to payments made in settlement of payment card transactions), and".

(2) STATEMENT.—Paragraph (2) of section 6724(d) is amended by striking "or" at the end of subparagraph (BB), by striking the period at the end of the subparagraph (CC) and inserting ", or", and by inserting after subparagraph (CC) the following:

"(DD) section 6050W(c) (relating to returns relating to payments made in settlement of payment card transactions).".

(c) APPLICATION OF BACKUP WITHHOLDING.—Paragraph (3) of section 3406(b) is amended by striking "or" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by adding at the end the following new subparagraph:

"(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).".

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050V the following:

"Sec. 6050W. Returns relating to payments made in settlement of payment card transactions.".

(e) EFFECTIVE DATE.— 26 USC 3406 note.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to returns for calendar years beginning after December 31, 2010.

(2) APPLICATION OF BACKUP WITHHOLDING.—

(A) IN GENERAL.—The amendment made by subsection (c) shall apply to amounts paid after December 31, 2011.

(B) ELIGIBILITY FOR TIN MATCHING PROGRAM.—Solely for purposes of carrying out any TIN matching program established by the Secretary under section 3406(i) of the Internal Revenue Code of 1986—

(i) the amendments made this section shall be treated as taking effect on the date of the enactment of this Act, and

(ii) each person responsible for setting the standards and mechanisms referred to in section 6050W(d)(2)(C) of such Code, as added by this section, for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity.

SEC. 3092. GAIN FROM SALE OF PRINCIPAL RESIDENCE ALLOCATED TO NONQUALIFIED USE NOT EXCLUDED FROM INCOME.

(a) IN GENERAL.—Subsection (b) of section 121 of the Internal Revenue Code of 1986 (relating to limitations) is amended by adding at the end the following new paragraph:

"(4) EXCLUSION OF GAIN ALLOCATED TO NONQUALIFIED USE.—

"(A) IN GENERAL.—Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

"(B) GAIN ALLOCATED TO PERIODS OF NONQUALIFIED USE.—For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

"(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

"(ii) the period such property was owned by the taxpayer.

"(C) PERIOD OF NONQUALIFIED USE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'period of nonqualified use' means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

"(ii) EXCEPTIONS.—The term 'period of nonqualified use' does not include—

"(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer's spouse,

"(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

"(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

Applicability.

"(D) COORDINATION WITH RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—For purposes of this paragraph—

"(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

"(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.".

26 USC 121 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales and exchanges after December 31, 2008.

SEC. 3093. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST.

(a) IN GENERAL.—Paragraphs (5)(D) and (6) of section 864(f) are each amended by striking "December 31, 2008" and inserting "December 31, 2010".

(b) TRANSITIONAL RULE.—Subsection (f) of section 864 is amended by adding at the end the following new paragraph:

"(7) TRANSITION.—In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 30 percent of the amount of such increase determined without regard to this paragraph.".

26 USC 864 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 3094. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

(a) REPEAL OF ADJUSTMENT FOR 2012.—Subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation

Act of 2005 is amended by striking the percentage contained therein and inserting "100 percent". No other provision of law which would change such percentage shall have any force and effect. 26 USC 6655 note.

(b) MODIFICATION OF ADJUSTMENT FOR 2013.—The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 16.75 percentage points. 26 USC 6655 note.

Approved July 30, 2008.

LEGISLATIVE HISTORY—H.R. 3221:

CONGRESSIONAL RECORD:
Vol. 153 (2007): Aug. 4, considered and passed House.
Vol. 154 (2008): Apr. 3, 4, 7–10, considered and passed Senate, amended.
May 8, House concurred in Senate amendment with amendments.
June 19, 20, 23–26, July 7–11, Senate considered and concurred in House amendments with amendment.
July 23, House concurred in Senate amendment with amendment.
July 25, 26, Senate considered and concurred in House amendment.

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