

## TITLE XIII—GOVERNMENT SPONSORED ENTERPRISES

### SEC. 1301. SHORT TITLE.

This title may be cited as the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992”.

### SEC. 1302. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (referred to in this section collectively as the “enterprises”), and the Federal Home Loan Banks (referred to in this section as the “Banks”), have important public missions that are reflected in the statutes and charter Acts establishing the Banks and the enterprises;

(2) because the continued ability of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to accomplish their public missions is important to providing housing in the United States and the health of the Nation’s economy, more effective Federal regulation is needed to reduce the risk of failure of the enterprises;

(3) considering the current operating procedures of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, the enterprises and the Banks currently pose low financial risk of insolvency;

(4) neither the enterprises nor the Banks, nor any securities or obligations issued by the enterprises or the Banks, are backed by the full faith and credit of the United States;

(5) an entity regulating the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should have sufficient autonomy from the enterprises and special interest groups;

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

(7) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return; and

(8) the Federal Home Loan Bank Act should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

### SEC. 1303. DEFINITIONS.

For purposes of this title:

(1) **AFFILIATE.**—Except as provided by the Director, the term “affiliate” means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) **CAPITAL DISTRIBUTION.**—

(A) **IN GENERAL.**—The term “capital distribution” means—

(i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of the enterprise;

(ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and

(iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) **EXCEPTION.**—Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of the enterprise under an employee stock ownership plan that

is qualified under section 401 of the Internal Revenue Code of 1986 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(3) COMPENSATION.—The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(4) CORE CAPITAL.—The term “core capital” means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

- (A) The par or stated value of outstanding common stock.
- (B) The par or stated value of outstanding perpetual, noncumulative preferred stock.
- (C) Paid-in capital.
- (D) Retained earnings.

The core capital of an enterprise shall not include any amounts that the enterprise could be required to pay, at the option of investors, to retire capital instruments.

(5) DIRECTOR.—The term “Director” means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(6) ENTERPRISE.—The term “enterprise” means—

- (A) the Federal National Mortgage Association and any affiliate thereof; and
- (B) the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(7) EXECUTIVE OFFICER.—The term “executive officer” means, with respect to an enterprise, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(8) LOW-INCOME.—The term “low-income” means—

- (A) in the case of owner-occupied units, income not in excess of 80 percent of area median income; and
- (B) in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(9) MEDIAN INCOME.—The term “median income” means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the Secretary.

(10) MODERATE-INCOME.—The term “moderate-income” means—

- (A) in the case of owner-occupied units, income not in excess of area median income; and
- (B) in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(11) MORTGAGE PURCHASES.—The term “mortgage purchases” includes mortgages purchased for portfolio or securitization.

(12) MULTIFAMILY HOUSING.—The term “multifamily housing” means a residence consisting of more than 4 dwelling units.

(13) NEW PROGRAM.—The term “new program” means any program for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in, conventional mortgages that—

- (A) is significantly different from programs that have been approved under this Act or that were approved or engaged in by an enterprise before the date of the enactment of this Act; or
- (B) represents an expansion, in terms of the dollar volume or number of mortgages or securities involved, of programs above limits expressly contained in any prior approval.

(14) OFFICE.—The term “Office” means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

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

(16) SINGLE FAMILY HOUSING.—The term “single family housing” means a residence consisting of 1 to 4 dwelling units.

(17) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(18) TOTAL CAPITAL.—The term “total capital” means, with respect to an enterprise, the sum of the following:

- (A) The core capital of the enterprise;
- (B) A general allowance for foreclosure losses, which—
  - (i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and
  - (ii) shall not include any reserves of the enterprise made or held against specific assets.
- (C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(19) VERY LOW-INCOME.—The term “very low-income” means—

(A) in the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(B) in the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

#### **SEC. 1304. PROTECTION OF TAXPAYERS AGAINST LIABILITY.**

This title and the amendments made by this title may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks. This title and the amendments made by this title may not be construed as implying that any such enterprise or Bank, or any obligations or securities of such an enterprise or Bank, are backed by the full faith and credit of the United States.

### **Subtitle A—Supervision and Regulation of Enterprises**

#### **PART 1—FINANCIAL SAFETY AND SOUNDNESS REGULATOR**

#### **SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT.**

There is hereby established an office within the Department of Housing and Urban Development, which shall be known as the Office of Federal Housing Enterprise Oversight.

#### **SEC. 1312. DIRECTOR.**

(a) APPOINTMENT.—The Office shall be under the management of a Director, who shall be appointed by the President, by and with citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the nomination of such individual for appointment as Director.

(b) TERM.—The Director shall be appointed for a term of 5 years.

(c) VACANCY.—A vacancy in the position of Director shall be filled in the manner in which the original appointment was made under subsection (a).

(d) SERVICE AFTER END OF TERM.—A Director may serve after the expiration of the term for which the Director was appointed until a successor Director has been appointed.

(e) DEPUTY DIRECTOR.—

(1) IN GENERAL.—The Office shall have a Deputy Director who shall be appointed 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 security markets and housing finance. An individual may not be appointed as Deputy

Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the appointment of such individual as Deputy Director.

(2) FUNCTIONS.—The Deputy Director shall have such functions, powers, and duties as the Director shall prescribe. In the event of the death, resignation, sickness, or absence of the Director, the Deputy Director shall serve as acting Director until the return of the Director or the appointment of a successor pursuant to subsection (c).

### **SEC. 1313. DUTY AND AUTHORITY OF DIRECTOR.**

(a) DUTY.—The duty of the Director shall be to ensure that the enterprises are adequately capitalized and operating safely, in accordance with this title.

(b) AUTHORITY EXCLUSIVE OF SECRETARY.—The Director is authorized, without the review or approval of the Secretary, to make such determinations, take such actions, and perform such functions as the Director determines necessary regarding—

(1) the issuance of regulations to carry out this part, subtitle B, and subtitle C (including the establishment of capital standards pursuant to subtitle B);

(2) examinations of the enterprises under section 1317;

(3) determining the capital levels of the enterprises and classification of the enterprises within capital classifications established under subtitle B;

(4) decisions to appoint conservators for the enterprises;

(5) administrative and enforcement actions under subtitle B, actions taken under subtitle C with respect to enforcement of subtitle B, and other matters relating to safety and soundness;

(6) approval of payments of capital distributions by the enterprises under section 303(c)(2) of the Federal National Mortgage Association Charter Act and section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act;

(7) requiring the enterprises to submit reports under section 1314 of this title, section 309(k) of the Federal National Mortgage Association Charter Act, and section 307(c) of the Federal Home Loan Mortgage Corporation Act;

(8) prohibiting the payment of excessive compensation by the enterprises to any executive officer of the enterprises under section 1318;

(9) the management of the Office, including the establishment and implementation of annual budgets, the hiring of, and compensation levels for, personnel of the Office, and annual assessments for the costs of the Office;

(10) conducting research and financial analysis; and

(11) the submission of reports required by the Director under this title.

(c) AUTHORITY SUBJECT TO APPROVAL OF SECRETARY.—Any determinations, actions, and functions of the Director not referred to in subsection (b) shall be subject to the review and approval of the Secretary.

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

(e) INDEPENDENCE IN PROVIDING INFORMATION TO CONGRESS.—The Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.

### **SEC. 1314. AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.**

(a) SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION.—

(1) FINANCIAL CONDITION.—The Director may require an enterprise to submit reports of financial condition and operations (in addition to the annual and quarterly reports required under section 309(k) of the Federal National Mortgage Association Charter Act and section 307(c) of the Federal Home Loan Mortgage Corporation Act).

(2) SPECIAL REPORTS.—The Director may also require an enterprise to submit special reports whenever, in the judgment of the Director, such reports are necessary to carry out the purposes of this title.

(3) LIMITATION.—The Director may not require the inclusion, in any report pursuant to paragraph (1) or (2), of any information that is not reasonably obtainable by the enterprise.

(4) NOTICE AND DECLARATION.—The Director shall notify the enterprise, a reasonable period in advance of the date for submission of any report under this subsection, of any specific information to be contained in the report and the date for the submission of the report. Each report under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the enterprise to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(b) CAPITAL DISTRIBUTIONS.—The Director may require an enterprise to submit a report to the Director after the declaration of any capital distribution by the enterprise and before making the capital distribution. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.

### **SEC. 1315. PERSONNEL.**

(a) OFFICE PERSONNEL.—The Director may appoint and fix the compensation of such officers and employees of the Office as the Director considers necessary to carry out the functions of the Director and the Office. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

(b) COMPARABILITY OF COMPENSATION WITH FEDERAL BANKING AGENCIES.—In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(c) PERSONNEL OF OTHER FEDERAL AGENCIES.—In carrying out the duties of the Office, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

(d) REIMBURSEMENT OF HUD.—The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office.

(e) OUTSIDE EXPERTS AND CONSULTANTS.—Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the Office.

(f) EQUAL OPPORTUNITY REPORT.—Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 1312, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) a complete description of the equal opportunity, affirmative action, and minority business enterprise utilization programs of the Office; and

(2) such recommendations for administrative and legislative action as the Director determines appropriate to carry out such programs.

### **SEC. 1316. FUNDING.**

(a) ANNUAL ASSESSMENTS.—The Director may, to the extent provided in appropriation Acts, establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office, including the expenses of any examinations under section 1317. The initial annual assessment shall include any startup costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year.

(b) ALLOCATION OF ANNUAL ASSESSMENT TO ENTERPRISES.—

(1) AMOUNT OF PAYMENT.—Each enterprise shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of each enterprise bears to the total assets of both enterprises.

(2) TIMING OF PAYMENT.—The annual assessment shall be payable semiannually on September 1 and March 1 of the year for which the assessment is made.

(3) DEFINITION.—For the purpose of this section, the term “total assets” means, with respect to an enterprise, the sum of—

(A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(B) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and

(C) other off-balance-sheet obligations as determined by the Director.

(c) DEFICIENCIES DUE TO INCREASED COSTS OF REGULATION.—The semiannual payments made pursuant to subsection (b) by any enterprise 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 enterprise.

(d) SURPLUS.—If any amount from any annual assessment collected from an enterprise remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the enterprise for the following year.

(e) INITIAL SPECIAL ASSESSMENT.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the enterprises shall each pay into the Federal Housing Enterprises Oversight Fund established under subsection (f) an initial assessment of \$1,500,000 to cover the startup costs of the Office, including space and modifications thereof, capital equipment, supplies, recruitment, and activities of the Office during the period preceding the first annual assessment under subsection (a). Any amounts collected from an enterprise under this subsection shall be credited against the first annual assessment collected pursuant to subsection (a), and are hereby appropriated, and shall be available and used, without fiscal year limitation, as provided in this section.

(f) FUND.—There is established in the Treasury of the United States a fund to be known as the Federal Housing Enterprises Oversight Fund. Any assessments collected pursuant to this section shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriation Acts and subsection (e), for—

(1) carrying out the responsibilities of the Director relating to the enterprises; and

(2) necessary administrative and nonadministrative expenses of the Office to carry out the purposes of this title.

(g) BUDGET AND FINANCIAL REPORTS.—

(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Director shall submit a copy of the financial operating plans and forecasts for the Office to the Secretary and the Director of the Office of Management and Budget.

(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Director shall submit a copy of the report of the results of the operations of the Office during such period to the Secretary and the Director of the Office of Management and Budget.

(3) INCLUSION IN PRESIDENT’S BUDGET.—The annual plans, forecasts, and reports required under this subsection shall be included (A) in the Budget of the United States in the appropriate form, and (B) in the congressional justifications of the Department of Housing and Urban Development for each fiscal year in a form determined by the Secretary.

## **SEC. 1317. EXAMINATIONS.**

(a) ANNUAL EXAMINATION.—The Director shall annually conduct an on-site examination under this section of each enterprise to determine the condition of the enterprise for the purpose of ensuring its financial safety and soundness.

(b) OTHER EXAMINATIONS.—In addition to annual examinations under subsection (a), the Director may conduct an examination under this section whenever the Director determines that an examination is necessary to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness.

(c) **EXAMINERS.**—The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision for the services of examiners. The Director shall reimburse such agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

(d) **LAW APPLICABLE TO EXAMINERS.**—The Director and each examiner shall have the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.

(e) **TECHNICAL EXPERTS.**—The Director may obtain the services of any technical experts the Director considers appropriate to provide temporary technical assistance relating to examinations to the Director, officers, and employees of the Office. The Director shall describe, in the record of each examination, the nature and extent of any such temporary technical assistance.

(f) **OATHS, EVIDENCE, AND SUBPOENA POWERS.**—In connection with examinations under this section, the Director shall have the authority provided under section 1379B.

### **SEC. 1318. PROHIBITION OF EXCESSIVE COMPENSATION.**

(a) **IN GENERAL.**—The Director shall prohibit the enterprises from providing compensation to any executive officer of the enterprise that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

(b) **PROHIBITION OF SETTING COMPENSATION.**—In carrying out subsection (a), the Director may not prescribe or set a specific level or range of compensation.

### **SEC. 1319. AUTHORITY TO PROVIDE FOR REVIEW OF ENTERPRISES BY RATING ORGANIZATION.**

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers, to conduct a review of the enterprises.

### **SEC. 1319A. EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS.**

(a) **IN GENERAL.**—Each enterprise shall establish a minority outreach program to ensure the inclusion (to the maximum extent possible) in contracts entered into by the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

(b) **REPORT.**—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act, each enterprise shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken by the enterprise pursuant to subsection (a).

### **SEC. 1319B. ANNUAL REPORTS BY DIRECTOR.**

(a) **GENERAL REPORT.**—The Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than June 15 of each year, a written report, which shall include—

- (1) a description of the actions taken, and being undertaken, by the Director to carry out this title;
- (2) a description of the financial safety and soundness of each enterprise, including the results and conclusions of the annual examinations of the enterprises conducted under section 1317(a);
- (3) any recommendations for legislation to enhance the financial safety and soundness of the enterprises; and
- (4) a description of —

(A) whether the procedures established by each enterprise pursuant to section 102(b)(3) of the Flood Disaster Protection Act of 1973 are adequate and being complied with, and

(B) the results and conclusions of any examination, as determined necessary by the Director, to determine the compliance of the enterprises with the requirements of section 102(b)(3) of such

Act, which shall include a description of the methods used to determine compliance and the types and sources of deficiencies (if any), and identify any corrective measures that have been taken to remedy any such deficiencies,

except that the information described in this paragraph shall be included only in each of the first, third, and fifth annual reports under this subsection required to be submitted after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(b) **REPORT ON ENFORCEMENT ACTIONS.**—Not later than March 15 of each year, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subtitle C and describing the disposition of each request, which shall include statements of—

(1) the total number of requests made by the Director;

(2) the number of requests that resulted in the commencement of litigation by the Department of Justice;

(3) the number of requests that did not result in the commencement of litigation by the Department of Justice;

(4) with respect to requests that resulted in the commencement of litigation—

(A) the number of days between the date of the request and the commencement of the litigation; and

(B) the number of days between the date of the commencement and termination of the litigation; and

(5) the number of litigation requests pending at the beginning of the calendar year, the number of requests made during the calendar year, the number of requests for which action was completed during the calendar year, and the number of requests pending at the end of the calendar year.

#### **SEC. 1319C. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.**

(a) **IN GENERAL.**—The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under subtitle C and that has become final; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) **HEARINGS.**—All hearings on the record with respect to any action of the Director or notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) **DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.**—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) **DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.**—The Director may file any document or part thereof under seal in any hearing under subtitle C if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) **RETENTION OF DOCUMENTS.**—The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under subtitle C.

(f) **DISCLOSURES TO CONGRESS.**—This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

**SEC. 1319D. LIMITATION ON SUBSEQUENT EMPLOYMENT.**

Neither the Director nor any former officer or employee of the Office who, while employed by the Office, was compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under section 5107 of title 5, United States Code, may accept compensation from an enterprise during the 2-year period beginning on the date of separation from employment by the Office.

**SEC. 1319E. AUDITS BY GAO.**

The Comptroller General may audit the operations of the Office, and any such audit shall be conducted in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the Office shall be made available to the Comptroller General.

**SEC. 1319F. INFORMATION, RECORDS, AND MEETINGS.**

For purposes of subchapter II of chapter 5 of title 5, United States Code—

- (1) the Office, and
  - (2) the Department of Housing and Urban Development, with respect to activities under this title,
- shall be considered agencies responsible for the regulation or supervision of financial institutions.

**SEC. 1319G. REGULATIONS AND ORDERS.**

(a) **AUTHORITY.**—The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this title before the expiration of the 18-month period beginning on the appointment of the Director under section 1312. Such regulations and orders shall be subject to the approval of the Secretary only to the extent provided in subsections (b) and (c) of section 1313.

(b) **NOTICE AND COMMENT.**—Any regulations issued by the Director under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

(c) **CONGRESSIONAL REVIEW.**—The Director may not publish any regulation for comment under subsection (b) unless, not less than 15 days before it is published for comment, the Director has submitted a copy of the regulation, in the form it is intended to be proposed, to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

**PART 2—AUTHORITY OF SECRETARY**

**Subpart A—General Authority**

**SEC. 1321. REGULATORY AUTHORITY.**

Except for the authority of the Director of the Office of Federal Housing Enterprise Oversight described in section 1313(b) and all other matters relating to the safety and soundness of the enterprises, the Secretary of Housing and Urban Development shall have general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act are accomplished.

**SEC. 1322. PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.**

(a) **AUTHORITY.**—The Secretary shall require each enterprise to obtain the approval of the Secretary for any new program of the enterprise before implementing the program.

(b) **STANDARD FOR APPROVAL.**—

(1) **PERMANENT STANDARD.**—Except as provided in paragraph (2), the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

(A) for a new program of the Federal National Mortgage Association, the Secretary determines that the program is not authorized under paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act, or under section 304 of such Act;

(B) for a new program of the Federal Home Loan Mortgage Corporation, the Secretary determines that the program is not authorized under section 305(a) (1), (4), or (5) of the Federal Home Loan Mortgage Corporation Act; or

(C) the Secretary determines that the new program is not in the public interest.

(2) TRANSITION STANDARD.—Before the date occurring 12 months after the date of the effectiveness of the regulations under section 1361(e) establishing the risk-based capital test, the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

(A) The Secretary makes a determination as described in paragraph (1) (A), (B), or (C); or

(B) the Director determines that the new program would risk significant deterioration of the financial condition of the enterprise.

(c) PROCEDURE FOR APPROVAL.—

(1) SUBMISSION OF REQUEST.—To obtain the approval of the Secretary for purposes of subsection (a), an enterprise shall submit to the Secretary a written request for approval of the new program that describes the program.

(2) RESPONSE.—The Secretary shall, not later than the expiration of the 45-day period beginning upon the submission of a request for approval, approve the request or submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report explaining the reasons for not approving the request. The Secretary may extend such period for a single additional 15-day period only if the Secretary requests additional information from the enterprise.

(3) FAILURE TO RESPOND.—If the Secretary fails to approve the request or fails to submit a report under paragraph (2) during the period under such paragraph, the request shall be considered to have been approved.

(4) REVIEW OF DISAPPROVAL.—

(A) UNAUTHORIZED NEW PROGRAMS.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subparagraph (A) or (B) of subsection (b)(1), the Secretary shall provide the enterprise submitting the request with a timely opportunity to review and supplement the administrative record.

(B) NEW PROGRAMS NOT IN PUBLIC INTEREST.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subsection (b)(1)(C) or (b)(2)(B), the Secretary shall provide the enterprise submitting the request notice of, and opportunity for, a hearing on the record regarding such disapproval.

### **SEC. 1323. PUBLIC ACCESS TO MORTGAGE INFORMATION.**

(a) IN GENERAL.—The Secretary shall make available to the public, in forms useful to the public (including forms accessible by computers), the data submitted by the enterprises in the reports required under section 309(m) of the Federal National Mortgage Association Charter Act or section 307(e) of the Federal Home Loan Mortgage Corporation Act.

(b) ACCESS.—

(1) PROPRIETARY DATA.—Except as provided in paragraph (2), the Secretary may not make available to the public data that the Secretary determines pursuant to section 1326 are proprietary information.

(2) EXCEPTION.—The Secretary shall not restrict access to the data provided in accordance with section 309(m)(1)(A) of the Federal National Mortgage Association Charter Act or section 307(e)(1)(A) of the Federal Home Loan Mortgage Corporation Act.

(c) FEES.—The Secretary may charge reasonable fees to cover the cost of making data available under this section to the public.

### **SEC. 1324. ANNUAL HOUSING REPORT.**

(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 Secretary shall submit a report, as part of the annual report under section 1328(a) of this title, on the extent to which each enterprise is achieving the annual housing goals established under subpart B of this part and the purposes of the enterprise established by law.

(b) CONTENTS.—The report shall—

(1) aggregate and analyze census tract data to assess the compliance of each enterprise with the central cities, rural areas, and other underserved areas housing goal and to determine levels of business in central cities, rural areas, underserved areas, low- and moderate-income census tracts, minority census tracts and other geographical areas deemed appropriate by the Secretary;

(2) aggregate and analyze data on income to assess the compliance of each enterprise with the low- and moderate-income and special affordable housing goals;

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

(4) examine actions that each enterprise has undertaken or could undertake to promote and expand the annual goals established under sections 1332, 1333, and 1334, and the purposes of the enterprise established by law;

(5) examine the primary and secondary multifamily housing mortgage markets and describe—

(A) the availability and liquidity of mortgage credit;

(B) the status of efforts to provide standard credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products; and

(C) any factors inhibiting such standardization and securitization;

(6) examine actions each enterprise has undertaken and could undertake to promote and expand opportunities for first-time homebuyers; and

(7) describe any actions taken under section 1325(5) with respect to originators found to violate fair lending procedures.

#### **SEC. 1325. FAIR HOUSING.**

The Secretary shall—

(1) by regulation, prohibit each enterprise from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(2) by regulation, require each enterprise to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act;

(3) by regulation, require each enterprise to submit data to the Secretary to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act, and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act, for appropriate action;

(4) obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act and the Equal Credit Opportunity Act and make such information available to the enterprises;

(5) direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the Equal Credit Opportunity Act, 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; and

(6) periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and this section.

#### **SEC. 1326. PROHIBITION OF PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION.**

(a) IN GENERAL.—The Secretary may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 1323 of this title, section 309(n)(3) of the Federal National Mortgage Association Charter Act, or section 307(f)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) PROTECTION OF INFORMATION ON HOUSING ACTIVITIES.—The Secretary shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 309(n) of the Federal National Mortgage Association Charter Act or section 307(f) of the Federal Home Loan Mortgage Corporation Act that the Secretary determines is proprietary.

(c) NONDISCLOSURE PENDING CONSIDERATION.—This section may not be construed to authorize the disclosure of information to, or examination of data by, the public or a representative of any person or agency pending the issuance of a final decision under this section.

**SEC. 1327. AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.**

The Secretary shall require each enterprise to submit reports on its activities to the Secretary as the Secretary considers appropriate.

**SEC. 1328. REPORTS BY SECRETARY.**

(a) ANNUAL REPORT.—The Secretary shall, not later than June 30 of each year, submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of each enterprise.

(b) VIEWS ON BUDGET AND FINANCIAL PLANS OF ENTERPRISES.—On an annual basis, the Secretary shall provide the Committees referred to in subsection (a) with comments on the plans, forecasts, and reports required under section 1316(g).

**Subpart B—Housing Goals**

**SEC. 1331. ESTABLISHMENT.**

(a) IN GENERAL.—The Secretary shall establish, by regulation, housing goals under this subpart for each enterprise. The housing goals shall include a low- and moderate-income housing goal pursuant to section 1332, a special affordable housing goal pursuant to section 1333, and a central cities, rural areas, and other underserved areas housing goal pursuant to section 1334. The Secretary shall implement this subpart in a manner consistent with section 301(3) of the Federal National Mortgage Association Charter Act and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) CONSIDERATION OF UNITS IN MULTIFAMILY HOUSING.—In establishing any goal under this subpart, the Secretary may take into consideration the number of housing units financed by any mortgage on multifamily housing purchased by an enterprise.

(c) ADJUSTMENT OF HOUSING GOALS.—Except as otherwise provided in this title, from year to year the Secretary may, by regulation, adjust any housing goal established under this subpart.

**SEC. 1332. LOW- AND MODERATE-INCOME HOUSING GOAL.**

(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing for low- and moderate-income families. The Secretary may establish separate specific subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

(b) FACTORS TO BE APPLIED.—In establishing the goal under this section, the Secretary shall consider—

- (1) national housing needs;
- (2) economic, housing, and demographic conditions;
- (3) the performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;
- (4) the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;
- (5) the ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
- (6) the need to maintain the sound financial condition of the enterprises.

(c) USE OF BORROWER AND TENANT INCOME.—

(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

(B) in the case of a rental dwelling—

(i) the income of the prospective or actual tenants of the property, where such data are available; or

(ii) the rent levels affordable to low- and moderate-income families, where the data referred to in clause (i) are not available.

(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) TRANSITION.—

(1) INTERIM TARGET.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for low- and moderate-income mortgage purchases for each enterprise shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

(2) INTERIM GOAL.—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

(3) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

### **SEC. 1333. SPECIAL AFFORDABLE HOUSING GOAL.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families. The special affordable housing goal established under this section for an enterprise shall not be less than 1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year.

(2) STANDARDS.—In establishing the special affordable housing goal for an enterprise, the Secretary shall consider—

(A) data submitted to the Secretary in connection with the special affordable housing goal for previous years;

(B) the performance and efforts of the enterprise toward achieving the special affordable housing goal in previous years;

(C) national housing needs within the categories set forth in this section;

(D) the ability of the enterprise to lead the industry in making mortgage credit available for low-income and very low-income families; and

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

(b) FULL CREDIT ACTIVITIES.—

(1) IN GENERAL.—The Secretary shall give full credit toward achievement of the special affordable housing goal under this section (for purposes of section 1336) to the following activities:

(A) FEDERALLY RELATED MORTGAGES.—The purchase or securitization of federally insured or guaranteed mortgages, if—

- (i) such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal agency;
- (ii) participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and
- (iii) the mortgages involved are on housing that otherwise qualifies under such goal to be considered for purposes of such goal.

(B) PORTFOLIOS.—The purchase or refinancing of existing, seasoned portfolios of loans, if—

- (i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and
- (ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal.

(C) RTC AND FDIC LOANS.—The purchase of direct loans made by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation, if such loans—

- (i) are not guaranteed by such agencies themselves or other Federal agencies;
- (ii) are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and
- (iii) are made for the purchase of housing that otherwise qualifies under such goal to be considered for purposes of such goal.

(2) EXCLUSION.—No credit toward the achievement of the special affordable housing goal may be given to the purchase or securitization of mortgages associated with the refinancing of the existing enterprise portfolios.

(c) USE OF BORROWER AND TENANT INCOME.—

(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

(B) in the case of a rental dwelling—

- (i) the income of the prospective or actual tenants of the property, where such data are available; or
- (ii) the rent levels affordable to low-income and very low-income families, where the data referred to in clause (i) are not available.

(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) TRANSITION.—

(1) FNMA MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal National Mortgage Association shall include mortgage purchases of not less than \$2,000,000,000 (for such 2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

(2) FHLMC MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal Home Loan Mortgage Corporation shall include mortgage purchases of not less than \$1,500,000,000 (for such 2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

(3) INCOME CHARACTERISTICS FOR MORTGAGE PURCHASES.—

(A) MULTIFAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on multifamily housing that are purchased and contribute to the achievement of such goals—

- (i) 45 percent shall be mortgages on multifamily housing affordable to low-income families; and
- (ii) 55 percent shall be mortgages on multifamily housing in which—

(I) at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the median income for the area; or

(II) at least 40 percent of the units are affordable to very low-income families.

(B) SINGLE FAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on single family housing that are purchased and contribute to the achievement of such goals—

(i) 45 percent shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income; and

(ii) 55 percent shall be mortgages of very low-income families.

(C) COMPLIANCE WITH SPECIAL AFFORDABLE HOUSING GOALS.—Only the portion of mortgages on multifamily housing purchased by an enterprise that are attributable to units affordable to low-income families shall contribute to the achievement of the special affordable housing goals under subparagraph (A)(ii).

(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

#### **SEC. 1334. CENTRAL CITIES, RURAL AREAS, AND OTHER UNDERSERVED AREAS HOUSING GOAL.**

(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas. The Secretary may establish separate subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

(b) FACTORS TO BE APPLIED.—In establishing the housing goal under this section, the Secretary shall consider—

(1) urban and rural housing needs and the housing needs of underserved areas;

(2) economic, housing, and demographic conditions;

(3) the performance and efforts of the enterprises toward achieving the central cities, rural areas, and other underserved areas housing goal in previous years;

(4) the size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

(5) the ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

(6) the need to maintain the sound financial condition of the enterprises.

(c) LOCATION OF PROPERTIES.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on the location of the properties subject to mortgages purchased by each enterprise.

(d) TRANSITION.—

(1) INTERIM TARGET.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for purchases by each enterprise of mortgages on housing located in central cities shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

(2) INTERIM GOAL.—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

(3) DEFINITION OF CENTRAL CITY.—For purposes of this subsection, the term “central city” means any political subdivision designated as a central city by the Office of Management and Budget.

(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

#### **SEC. 1335. OTHER REQUIREMENTS.**

To meet the low- and moderate-income housing goal under section 1332, the special affordable housing goal under section 1333, and the central cities, rural areas, and other underserved areas housing goal under section 1334, each enterprise shall—

(1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;

(2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(3) take affirmative steps to—

(A) assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, and

(B) assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977,

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures; and

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

#### **SEC. 1336. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.**

(a) IN GENERAL.—

(1) AUTHORITY.—The Secretary shall monitor and enforce compliance with the housing goals established under sections 1332, 1333, and 1334, as provided in this section.

(2) GUIDELINES.—The Secretary shall establish guidelines to measure the extent of compliance with the housing goals, which may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Secretary deems appropriate.

(3) EXTENT OF COMPLIANCE.—In determining compliance with the housing goals established under this subpart, the Secretary—

(A) shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which such mortgage purchase qualifies; and

(B) may take into consideration the number of housing units financed by any mortgage on housing purchased by an enterprise.

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

(1) NOTICE.—If the Secretary determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, the Secretary shall provide written notice to the enterprise of such a determination, the reasons for such determination, the requirement to submit a housing plan under subsection (c) of this section, and the information on which the Secretary based the determination or imposed such requirement.

(2) RESPONSE PERIOD.—

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

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

(C) SHORTENED PERIOD.—The Secretary 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 Secretary.

(3) CONSIDERATION OF INFORMATION AND 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 Secretary shall determine (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 such determinations, the Secretary shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) NOTICE.—The Secretary shall provide written notice to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, of—

- (i) each determination that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;
- (ii) each determination that the achievement of a housing goal was or is feasible; and
- (iii) the reasons for each such determination.

Such notice shall respond to any information submitted during the response period.

(c) HOUSING PLANS.—

(1) REQUIREMENT.—If the Secretary finds pursuant to subsection (b), that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, and that the achievement of the housing goal was or is feasible, the Secretary shall require the enterprise to submit a housing plan under this subsection for approval by the Secretary.

(2) CONTENTS.—Each housing plan shall be a feasible plan describing the specific actions the enterprise will take—

(A) to achieve the goal for the next calendar year; or

(B) if the Secretary determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements as are reasonable in the remainder of such year.

The plan shall be sufficiently specific to enable the Secretary to monitor compliance periodically.

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

(4) APPROVAL.—The Secretary shall review each housing plan submitted under this subsection and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Secretary may extend the period for approval or disapproval for a single additional 30-day period if the Secretary determines it necessary. The Secretary shall approve any plan that the Secretary 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 laws and regulations.

(5) NOTICE OF APPROVAL AND DISAPPROVAL.—The Secretary 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.

(6) RESUBMISSION.—If the initial housing plan submitted by an enterprise is disapproved, the enterprise shall submit an amended plan acceptable to the Secretary within 30 days or such longer period that the Secretary determines is in the public interest.

**SEC. 1337. REPORTS DURING TRANSITION.**

Each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report for each transitional housing goal for the enterprise under section 1332(d), 1333(d), or 1334(d), describing the actions the enterprise plans to take to meet such goal. Each such report shall be submitted within 45 days after the establishment of the goal for which the report is submitted.

**SEC. 1338. EFFECTIVE DATE OF TRANSITION GOALS.**

The housing goals established under sections 1332(d), 1333(d) and 1334(d) shall not become effective until January 1, 1993.

**Subpart C—Enforcement of Housing Goals**

**SEC. 1341. CEASE-AND-DESIST PROCEEDINGS.**

(a) GROUNDS FOR ISSUANCE.—The Secretary may issue and serve a notice of charges under this section upon an enterprise if, in the determination of the Secretary—

(1) the enterprise has failed to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

(2) the enterprise is engaging or has engaged, or the Secretary has reasonable cause to believe that the enterprise is about to engage, in any failure to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

(3) 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, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

(b) PROCEDURE.—

(1) NOTICE OF CHARGES.—Each notice of charges 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 Secretary finds on the record made at such hearing that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 1342(a)(4)), the Secretary may issue and serve upon the enterprise an order requiring the enterprise to (A) submit a housing plan in compliance with section 1336(c), (B) comply with the housing plan, or (C) provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

(c) EFFECTIVE DATE.—An order under this section shall become effective upon the expiration of the 30-day period beginning on the 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 Secretary or otherwise, as provided in this subpart.

(d) TRANSITION PERIOD LIMITATION.—The Secretary may not impose any cease-and-desist order under this section for any failure by an enterprise, during the 2-year period beginning on the January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with the approved plan.

**SEC. 1342. HEARINGS.**

(a) REQUIREMENTS.—

(1) VENUE AND RECORD.—Any hearing under section 1341 or 1345 shall be held on the record and in the District of Columbia.

(2) **TIMING.**—Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 1341(b)(1) or determination to impose a penalty under section 1345(c)(1), unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) **PROCEDURE.**—Any such hearing shall be conducted in accordance with chapter 5 of title 5, United States Code.

(4) **FAILURE TO APPEAR.**—If the enterprise served fails to appear at the hearing through a duly authorized representative, such enterprise shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) **ISSUANCE OF ORDER.**—

(1) **IN GENERAL.**—After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the Secretary for final decision, the Secretary shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an order or orders consistent with the provisions of this subpart.

(2) **MODIFICATION.**—Judicial review of any such order shall be exclusively as provided in section 1343. Unless such a petition for review is timely filed as provided in section 1343, and thereafter until the record in the proceeding has been filed as so provided, the Secretary may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Secretary considers proper. Upon such filing of the record, the Secretary may modify, terminate, or set aside any such order with permission of the court.

### **SEC. 1343. JUDICIAL REVIEW.**

(a) **COMMENCEMENT.**—An enterprise that is a party to a proceeding under section 1341 or 1345 may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Secretary.

(b) **FILING OF RECORD.**—Upon receiving a copy of a petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(c) **JURISDICTION.**—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Secretary shall (except as provided in the last sentence of section 1342(b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Secretary.

(d) **REVIEW.**—Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(e) **ORDER TO PAY PENALTY.**—Such court shall have the authority in any such review to order payment of any penalty imposed by the Secretary under this subpart.

(f) **NO AUTOMATIC STAY.**—The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.

### **SEC. 1344. ENFORCEMENT AND JURISDICTION.**

(a) **ENFORCEMENT.**—The Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 1341 or 1345. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) **LIMITATION ON JURISDICTION.**—Except as otherwise provided in this subpart, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 1341 or 1345, or to review, modify, suspend, terminate, or set aside any such notice or order.

### **SEC. 1345. CIVIL MONEY PENALTIES.**

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

(1) to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

(2) to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

(3) to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

(b) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed—

(1) for any failure described in subsection (a)(1), \$25,000 for each day that the failure occurs; and

(2) for any failure described in subsection (a)(2) or (3), \$10,000 for each day that the failure occurs.

(c) PROCEDURES.—

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

(A) shall provide for the Secretary to notify the enterprise in writing of the Secretary's determination 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 for 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 Secretary shall give consideration to such factors as the gravity of the offense, any history of prior offenses, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the Secretary may determine, by regulation, to be appropriate.

(d) ACTION TO COLLECT PENALTY.—If an enterprise fails to comply with an order by the Secretary imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 1342 and 1343, the Secretary may request the Attorney General of the United States to 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 SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) TRANSITION PERIOD LIMITATION.—The Secretary may not impose any civil money penalty under this section for any failure by an enterprise, during the 2-year period beginning on January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with an approved plan.

(g) DEPOSIT OF PENALTIES.—The Secretary shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

#### **SEC. 1346. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.**

(a) IN GENERAL.—The Secretary shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Secretary or any modification to or termination thereof unless the Secretary, in the Secretary's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Secretary under this subpart and that has become final in accordance with sections 1342 and 1343; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) HEARINGS.—All hearings with respect to any notice of charges issued by the Secretary shall be open to the public, unless the Secretary, in the Secretary’s discretion, determines that holding an open hearing would be contrary to the public interest.

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Secretary makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial soundness of the enterprise, the Secretary may delay the public disclosure of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Secretary may file any document or part thereof under seal in any hearing under this subpart if the Secretary determines in writing that disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Secretary shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Secretary under this subpart.

(f) DISCLOSURES TO CONGRESS.—This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

#### **SEC. 1347. NOTICE OF SERVICE.**

Any service required or authorized to be made by the Secretary under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the Secretary may by regulation or otherwise provide.

#### **SEC. 1348. SUBPOENA AUTHORITY.**

(a) IN GENERAL.—In the course of or in connection with any administrative proceeding under this subpart, the Secretary shall have the authority—

- (1) to administer oaths and affirmations;
- (2) to take and preserve testimony under oath;
- (3) to issue subpoenas and subpoenas duces tecum; and
- (4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Secretary.

(b) WITNESSES AND DOCUMENTS.—The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) ENFORCEMENT.—The Secretary may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) FEES AND EXPENSES.—Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an enterprise may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

#### **SEC. 1349. REGULATIONS.**

The Secretary shall issue any final regulations necessary to implement the provisions of this part (not including the provisions of sections 1332(d), 1333(d), and 1334(d), relating to transition housing goals) not later than the expiration of the 18-month period beginning on the date of the enactment of this Act. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

### **PART 3—MISCELLANEOUS PROVISIONS**

#### **SEC. 1351. AMENDMENTS TO TITLE 5, UNITED STATES CODE.**

(a) DIRECTOR AT LEVEL II OF EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by inserting at the end the following new item:

“Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.”

(b) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by inserting “the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development,” after “Farm Credit Administration.”

#### **SEC. 1352. PROHIBITION OF MERGER OF OFFICE.**

Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by adding at the end the following new subsection:

“(d) Notwithstanding any other provision of this Act, the Secretary may not merge or consolidate the Office of Federal Housing Enterprise Oversight of the Department, or any of the functions or responsibilities of such Office, with any function or program administered by the Secretary.”

#### **SEC. 1353. PROTECTION OF CONFIDENTIAL INFORMATION.**

Section 1905 of title 18, United States Code, is amended by inserting “any person acting on behalf of the Office of Federal Housing Enterprise Oversight,” after “or agency thereof,”.

#### **SEC. 1354. REVIEW OF UNDERWRITING GUIDELINES.**

(a) STUDY.—Each of the enterprises shall conduct a study to review the underwriting guidelines of the enterprise. The studies shall examine—

(1) the extent to which the underwriting guidelines prevent or inhibit the purchase or securitization of mortgages for housing located in mixed-use, urban center, and predominantly minority neighborhoods and for housing for low- and moderate-income families;

(2) the standards employed by private mortgage insurers and the extent to which such standards inhibit the purchase and securitization by the enterprises of mortgages described in paragraph (1); and

(3) the implications of implementing underwriting standards that—

(A) establish a down payment requirement for mortgagors of 5 percent or less;

(B) allow the use of cash on hand as a source for down payments; and

(C) approve borrowers who have a credit history of delinquencies if the borrower can demonstrate a satisfactory credit history for at least the 12-month period ending on the date of the application for the mortgage.

(b) REPORT.—Not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report regarding the study conducted by the enterprise under subsection (a). Each report shall include any recommendations of the enterprise for better meeting the housing needs of low- and moderate income families.

#### **SEC. 1355. STUDIES OF EFFECTS OF PRIVATIZATION OF FNMA AND FHLMC.**

(a) IN GENERAL.—The Comptroller General of the United States, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each conduct and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than the expiration of the 2-year period beginning on the date of the enactment of this Act, a study regarding the desirability and feasibility of repealing the Federal charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, eliminating any Federal sponsorship of the enterprises, and allowing the enterprises to continue to operate as fully private entities.

(b) REQUIREMENTS.—Each study shall particularly examine the effects of such privatization on—

(1) the requirements applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under Federal law and the costs to the enterprises;

- (2) the cost of capital to the enterprises;
- (3) housing affordability and availability and the cost of homeownership;
- (4) the level of secondary mortgage market competition subsequently available in the private sector;
- (5) whether increased amounts of capital would be necessary for the enterprises to continue operation;
- (6) the secondary market for residential loans and the liquidity of such loans; and
- (7) any other factors that the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, or the Director of the Congressional Budget Office deems appropriate to enable the Congress to evaluate the desirability and feasibility of privatization of the enterprises.

(c) INFORMATION.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall provide full and prompt access to the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office to any books, records, and other information requested for the purposes of conducting the studies under this section.

(d) VIEWS OF THE FNMA AND FHLMC.—

(1) CONSIDERATION IN STUDIES.—In conducting the studies under this section, the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each consider the views of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) DIRECT REPORT.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation may each report directly to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its own analysis of the desirability and feasibility of repealing the Federal charters of the enterprises, eliminating any Federal sponsorship, and allowing the enterprises to continue to operate as fully private entities.

#### **SEC. 1356. TRANSITION.**

Before the expiration of the period ending 18 months after the appointment of the Director under section 1312, any rules and regulations promulgated before the date of the enactment of this Act by the Secretary pursuant to the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act shall remain in effect unless modified, terminated, superseded, or revoked by operation of law or in accordance with law. Such rules and regulations shall terminate, effective upon the expiration of such period.

### **Subtitle B—Required Capital Levels for Enterprises and Special Enforcement Powers**

#### **SEC. 1361. RISK-BASED CAPITAL LEVELS.**

(a) RISK-BASED CAPITAL TEST.—The Director shall, by regulation, establish a risk-based capital test under this section for the enterprises. When applied to an enterprise the risk-based capital test shall determine the amount of total capital for the enterprise that is sufficient for the enterprise to maintain positive capital during a 10-year period in which the following circumstances occur (in this section referred to as the “stress period”):

(1) CREDIT RISK.—With respect to mortgages owned or guaranteed by the enterprise and other obligations of the enterprise, losses occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing practice for that industry in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years, experienced the highest rates of default and severity of mortgage losses, in comparison with such rates of default and severity of mortgage losses in other such areas for any period of such duration.

(2) INTEREST RATE RISK.—

(A) IN GENERAL.—Interest rates decrease as described in subparagraph (B) or increase as described in subparagraph (C), whichever would require more capital for the enterprise.

(B) DECREASES.—The 10-year constant maturity Treasury yield decreases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield decreases to the lesser of—

- (i) 600 basis points below the average yield during the preceding 9 months, or
- (ii) 60 percent of the average yield during the preceding 3 years,

but in no case to a yield less than 50 percent of the average yield during the preceding 9 months.

(C) INCREASES.—The 10-year constant maturity Treasury yield increases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield increases to the greater of—

- (i) 600 basis points above the average yield during the preceding 9 months, or
- (ii) 160 percent of the average yield during the preceding 3 years,

but in no case to a yield greater than 175 percent of the average yield during the preceding 9 months.

(D) DIFFERENT TERMS TO MATURITY.—Yields of Treasury instruments with other terms to maturity will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director.

(E) LARGE INCREASES IN YIELDS.—If the 10-year constant maturity Treasury yield is assumed to increase by more than 50 percent over the average yield during the preceding 9 months, the Director shall adjust the losses in paragraphs (1) and (3) to reflect a correspondingly higher rate of general price inflation.

(3) NEW BUSINESS.—

(A) IN GENERAL.—Any contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period. No other purchases of mortgages shall be assumed, except as provided in subparagraph (B).

(B) ADDITIONAL NEW BUSINESS.—The Director may, after consideration of each of the studies required by subparagraph (C), assume that the enterprise conducts additional new business during the stress period consistent with the following—

(i) AMOUNT AND PRODUCT TYPES.—The amount and types of mortgages purchased and their financing will be reasonably related to recent experience and the economic characteristics of the stress period.

(ii) LOSSES.—Default and loss severity characteristics of mortgages purchased will be reasonably related to historical experience.

(iii) PRICING.—Prices charged by the enterprise in purchasing new mortgages will be reasonably related to recent experience and the economic characteristics of the stress period. The Director may assume that a reasonable period of time would lapse before the enterprise would recognize and react to the characteristics of the stress period.

(iv) INTEREST RATE RISK.—Interest rate risk on new mortgages purchased will occur to an extent reasonably related to historical experience.

(v) RESERVES.—The enterprise must maintain reserves during and at the end of the stress period on new business conducted during the first 5 years of the stress period reasonably related to the expected future losses on such business, consistent with generally accepted accounting principles and industry accounting practice.

(C) STUDIES.—Within 1 year after regulations are first issued under subsection (e), the Director of the Congressional Budget Office, and the Comptroller General of the United States shall each submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study of the advisability and appropriate form of any new business assumptions under subparagraph (B).

(D) EFFECTIVE DATE.—The provisions of subparagraph (B) shall become effective 4 years after regulations are first issued under subsection (e).

(4) OTHER ACTIVITIES.—Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, on the basis of available information, to be consistent with the stress period.

(b) CONSIDERATIONS.—

(1) IN GENERAL.—In establishing the risk-based capital test under subsection (a), the Director shall take into account appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and any other factors the Director considers appropriate.

(2) CONSISTENCY.—Characteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period.

(c) RISK-BASED CAPITAL LEVEL.—For purposes of this subtitle, the risk-based capital level for an enterprise shall be equal to the sum of the following amounts:

(1) CREDIT AND INTEREST RATE RISK.—The amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

(2) MANAGEMENT AND OPERATIONS RISK.—To provide for management and operations risk, 30 percent of the amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

(d) DEFINITIONS.—For purposes of this section:

(1) SEASONING.—The term “seasoning” means the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured, determined on an annual basis by region, in accordance with the Constant Quality Home Price Index published by the Secretary of Commerce (or any index of similar quality, authority, and public availability that is regularly used by the Federal Government).

(2) TYPE OF MORTGAGE PRODUCT.—The term “type of mortgage product” means a classification of one or more mortgage products, as established by the Director, which have similar characteristics from each set of characteristics under the following subparagraphs:

(A) The property securing the mortgage is—

- (i) a residential property consisting of 1 to 4 dwelling unit; or
- (ii) a residential property consisting of more than 4 dwelling units.

(B) The interest rate on the mortgage is—

- (i) fixed; or
- (ii) adjustable.

(C) The priority of the lien securing the mortgage is—

- (i) first; or
- (ii) second or other.

(D) The term of the mortgage is—

- (i) 1 to 15 years;
- (ii) 16 to 30 years; or
- (iii) more than 30 years.

(E) The owner of the property is—

- (i) an owner-occupant; or
- (ii) an investor.

(F) The unpaid principal balance of the mortgage—

- (i) will amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage;
- (ii) will not amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage; or
- (iii) may increase significantly at some time during the term of the mortgage.

(G) Any other characteristics of the mortgage, as the Director may determine.

(e) REGULATIONS.—

(1) ISSUANCE.—The Director shall issue final regulations establishing the risk-based capital test under this section not later than the expiration of the 18-month period beginning on the date of the

appointment of the Director. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code, and shall take effect upon issuance.

(2) CONTENTS.—The regulations under this subsection shall contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, and prepayment rates). The regulations shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(3) CONFIDENTIALITY OF INFORMATION.—Any person that receives any book, record, or information from the Director or an enterprise to enable the risk-based capital test to be applied shall—

(A) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the enterprise; and

(B) be exempt from section 552 of title 5, United States Code, with respect to the book, record, or information.

(f) AVAILABILITY OF MODEL.—The Director shall provide copies of the statistical model or models used to implement the risk-based capital test under this section to the Secretary, the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Comptroller General of the United States, and the Director of the Congressional Budget Office. The Director shall make copies of such model or models available for public acquisition and may charge a reasonable fee for such copies.

#### **SEC. 1362. MINIMUM CAPITAL LEVELS.**

(a) IN GENERAL.—For purposes of this subtitle, the minimum capital level for each enterprise shall be the sum of—

(1) 2.50 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.45 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.45 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) TRANSITION.—Notwithstanding subsection (a), during the 18-month period beginning upon the date of the enactment of this Act, the minimum capital level for each enterprise shall be the sum of—

(1) 2.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.40 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.40 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

#### **SEC. 1363. CRITICAL CAPITAL LEVELS.**

For purposes of this subtitle, the critical capital level for each enterprise shall be the sum of—

(1) 1.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.25 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.25 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

#### **SEC. 1364. CAPITAL CLASSIFICATIONS.**

(a) **IN GENERAL.**—For purposes of this subtitle, the Director shall classify the enterprises according to the following capital classifications:

(1) **ADEQUATELY CAPITALIZED.**—An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise under section 1361; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 1362.

(2) **UNDERCAPITALIZED.**—An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; or

(B) the enterprise is otherwise classified as undercapitalized under subsection (b)(1) of this section.

(3) **SIGNIFICANTLY UNDERCAPITALIZED.**—An enterprise shall be classified as significantly undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise;

(ii) does not maintain an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; and

(iii) maintains an amount of core capital that is equal to or exceeds the critical capital level established for the enterprise under section 1363; or

(B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 1365(b).

(4) **CRITICALLY UNDERCAPITALIZED.**—An enterprise shall be classified as critically undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) does not maintain an amount of core capital that is equal to or exceeds the critical capital level for the enterprise; or

(B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 1366(b)(5).

(b) **DISCRETIONARY CLASSIFICATION.**—If at any time the Director determines in writing that an enterprise is engaging in conduct not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly, the Director may classify the enterprise—

(1) as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;

(2) as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized;

and

(3) as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized.

(c) QUARTERLY DETERMINATION.—The Director shall determine the capital classification of the enterprises for purposes of this subtitle on not less than a quarterly basis (and as appropriate under subsection (b)). The first such determination shall be made during the 3-month period beginning on the appointment of the Director.

(d) IMPLEMENTATION.—Notwithstanding any other provision of this section, during the period beginning on the date of the enactment of this Act and ending upon the effective date of section 1365 (as provided in section 1365(c)), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 1362.

#### **SEC. 1365. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED ENTERPRISES.**

(a) MANDATORY ACTIONS.—

(1) CAPITAL RESTORATION PLAN.—An enterprise that is classified as undercapitalized shall, within the time period provided in section 1369C(b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.

(2) RESTRICTION ON CAPITAL DISTRIBUTIONS.—An enterprise that is classified as undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as significantly undercapitalized or critically undercapitalized.

(b) DISCRETIONARY RECLASSIFICATION FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED.—The Director may reclassify as significantly undercapitalized an enterprise that is classified as undercapitalized (and the enterprise shall be subject to the provisions of section 1366) if—

(1) the enterprise does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by the enterprise; or

(2) the Director determines that the enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(c) EFFECTIVE DATE.—This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 1361(e) establishing the risk-based capital test.

#### **SEC. 1366. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED ENTERPRISES.**

(a) MANDATORY SUPERVISORY ACTIONS.—

(1) CAPITAL RESTORATION PLAN.—An enterprise that is classified as significantly undercapitalized shall, within the time period under section 1369C(b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.

(2) RESTRICTIONS ON CAPITAL DISTRIBUTIONS.—

(A) PRIOR APPROVAL.—An enterprise that is classified as significantly undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as critically undercapitalized. An enterprise that is classified as significantly undercapitalized enterprise may not make any other capital distribution unless the Director approves the distribution.

(B) STANDARD FOR APPROVAL.—The Director may approve a capital distribution by an enterprise classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of the enterprise to meet the risk-based capital level and the minimum capital level for the enterprise promptly, (ii) will contribute to the long-term financial safety and soundness of the enterprise, or (iii) is otherwise in the public interest.

(b) DISCRETIONARY SUPERVISORY ACTIONS.—In addition to any other actions taken by the Director (including actions under subsection (a)), the Director may, at any time, take any of the following actions with respect to an enterprise that is classified as significantly undercapitalized:

(1) **LIMITATION ON INCREASE IN OBLIGATIONS.**—Limit any increase in, or order the reduction of, any obligations of the enterprise, including off-balance sheet obligations.

(2) **LIMITATION ON GROWTH.**—Limit or prohibit the growth of the assets of the enterprise or require contraction of the assets of the enterprise.

(3) **ACQUISITION OF NEW CAPITAL.**—Require the enterprise to acquire new capital in a form and amount determined by the Director.

(4) **RESTRICTION OF ACTIVITIES.**—Require the enterprise to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the enterprise.

(5) **RECLASSIFICATION FROM SIGNIFICANTLY TO CRITICALLY UNDERCAPITALIZED.**—The Director may reclassify as critically undercapitalized an enterprise that is classified as significantly undercapitalized (and the enterprise shall be subject to the provisions of section 1367) if—

(A) the enterprise does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by the enterprise; or

(B) the Director determines that the enterprise has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(6) **CONSERVATORSHIP.**—Appoint a conservator for the enterprise in accordance with the provisions of section 1369 (excluding subsection (a)(1) and (2)), but only if the Director determines—

(A) that the amount of core capital of the enterprise is less than the minimum capital level established for the enterprise under section 1362; and

(B) that alternative remedies available to the Director under this title are not satisfactory.

(c) **EFFECTIVE DATE.**—This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 1364.

#### **SEC. 1367. APPOINTMENT OF CONSERVATORS FOR CRITICALLY UNDERCAPITALIZED ENTERPRISES.**

(a) **APPOINTMENT.**—

(1) **IN GENERAL.**—Upon a determination and notice under section 1368(d) that an enterprise is critically undercapitalized and not later than 30 days after providing notice under section 1369(a)(3), the Director shall appoint a conservator for the enterprise in accordance with the provisions of section 1369 (excluding subsections (a)(1) and (2)).

(2) **EXCEPTION.**—Notwithstanding paragraph (1), the Director may determine not to appoint a conservator for an enterprise classified as critically undercapitalized, but only pursuant to a written finding by the Director, with the written concurrence of the Secretary of the Treasury, that—

(A) the appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

(B) the public interest would be better served by taking some other enforcement action authorized under this title.

(b) **AUTHORITY.**—The Director shall have the authority to take any actions under sections 1365 and 1366 with respect to an enterprise under conservatorship.

(c) **APPROVAL OF ACTIVITIES.**—

(1) **CONSERVATOR.**—The conservator of any enterprise classified as critically undercapitalized may undertake an activity subject to the approval of the Secretary under section 1322 of this title only with the additional approval of the Director.

(2) **NO CONSERVATOR.**—If the Director determines under subsection (a)(2) not to appoint a conservator for an enterprise classified as critically undercapitalized, the provisions of section 1366 shall apply with respect to the enterprise.

(d) **EFFECTIVE DATE.**—This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 1364.

#### **SEC. 1368. NOTICE OF CLASSIFICATION AND ENFORCEMENT ACTION.**

(a) NOTICE.—Before taking any action referred to in subsection (b), the Director shall provide to the enterprise written notice of the proposed action, which states the reasons for the proposed action and the information on which the proposed action is based.

(b) APPLICABILITY.—The requirements of subsection (a) shall apply to the following actions:

(1) Classification or reclassification of an enterprise within a particular capital classification under section 1364.

(2) Any discretionary supervisory action pursuant to section 1365.

(3) Any discretionary supervisory action pursuant to section 1366 except a decision to appoint a conservator under section 1366(b)(6).

Notice of classification under paragraph (1) and notice of supervisory actions under paragraph (2) or (3) may be provided together in a single notice under subsection (a).

(c) RESPONSE PERIOD.—

(1) IN GENERAL.—During the 30-day period beginning on the date that an enterprise is provided notice under subsection (a) of a proposed action, the enterprise may submit to the Director any information relevant to the action that the enterprise considers appropriate for consideration by the Director in determining whether to take such action. The Director may, at the discretion of the Director, hold an informal administrative hearing to receive and discuss such information and the proposed determination.

(2) EXTENDED PERIOD.—The Director may extend the period under paragraph (1) for good cause for not more than 30 additional days.

(3) SHORTENED PERIOD.—The Director may shorten the period under paragraph (1) if the Director determines that the condition of the enterprise so requires or the enterprise consents.

(4) FAILURE TO RESPOND.—The failure of an enterprise to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the enterprise to comment on the proposed action of the Director.

(d) CONSIDERATION OF INFORMATION AND DETERMINATION.—After the expiration of the response period under subsection (c) or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by the enterprise during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

(e) EFFECTIVE DATE OF ACTIONS.—An action referred to in subsection (b) shall take effect upon receipt by the enterprise of notice of the determination of the Director under subsection (d), unless otherwise provided in such notice.

## **SEC. 1369. APPOINTMENT OF CONSERVATORS.**

(a) APPOINTMENT.—

(1) DISCRETIONARY AUTHORITY.—The Director may, after providing notice under paragraph (3), appoint a conservator for an enterprise upon a determination in writing—

(A) that alternative remedies available to the Director under this title are not satisfactory;

and

(B) that—

(i) the enterprise is not likely to pay its obligations in the normal course of business;

(ii) the enterprise has incurred or is reasonably likely to incur losses that would deplete substantially all of its core capital and it is unlikely that the enterprise will replenish its core capital within a reasonable period;

(iii) the enterprise has concealed or is concealing books, papers, records, or assets of the enterprise that are material to the discharge of the Director's responsibilities under this subtitle, or has refused or is refusing to submit such books, papers, records, or information regarding the affairs of the enterprise for inspection to the Director upon request; or

(iv) the enterprise has willfully violated, or is willfully violating, a final cease-and-desist order under section 1371.

(2) CONSENT OF ENTERPRISE.—Notwithstanding paragraph (1), the Director may appoint a conservator for an enterprise if the enterprise, by an affirmative vote of a majority of the members of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

(3) NOTICE.—Upon making a determination under paragraph (1) of this subsection or under section 1366 or 1367 to appoint a conservator for an enterprise, or upon consent of the enterprise under paragraph (2) to such an appointment, the Director shall provide written notice to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate—

(A) that a conservator will be appointed for the enterprise;

(B) stating the reasons for the appointment of the conservator; and

(C) identifying the person or governmental agency that the Director intends to appoint as conservator.

(4) QUALIFICATIONS.—The conservator shall be—

(A) the Director or any other governmental agency; or

(B) any person that—

(i) has no claim against, or financial interest in, the enterprise or other basis for a conflict of interest; and

(ii) has the financial and management expertise necessary to direct the operations and affairs of the enterprise.

(b) JUDICIAL REVIEW.—

(1) TIMING AND JURISDICTION.—Except as provided in paragraph (2), an enterprise for which a conservator is appointed (pursuant to this section or section 1366 or 1367) may bring an action in the United States District Court for the District of Columbia for an order requiring the Director to terminate the appointment of the conservator. The court, upon the merits, shall dismiss such action or shall direct the Director to terminate the appointment of the conservator. Such an action may be commenced only during the 20-day period beginning upon the appointment of the conservator.

(2) CONSENSUAL APPOINTMENTS.—Appointment of a conservator pursuant to consent of the enterprise under subsection (a)(2) shall not be subject to judicial review under this subsection.

(3) STANDARD OF REVIEW.—A decision of the Director to appoint a conservator may be set aside under this subsection only if the court finds that the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(4) LIMITATION ON JURISDICTION.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of powers or functions of a conservator.

(c) REPLACEMENT.—The Director may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the right of the enterprise under subsection (b) to obtain judicial review of the decision of the Director to appoint a conservator.

(d) EXAMINATIONS.—The Director may examine and supervise any enterprise in conservatorship during the period in which the enterprise continues to operate as a going concern.

(e) TERMINATION.—

(1) DISCRETIONARY.—At any time the Director determines that termination of a conservatorship pursuant to an appointment under subsection (a) is in the public interest and may safely be accomplished, the Director may terminate the conservatorship and permit the enterprise to resume the transaction of its business subject to such terms, conditions, and limitations as the Director may prescribe.

(2) MANDATORY.—The Director shall terminate a conservatorship initiated pursuant to section 1366 or 1367 upon a determination by the Director that the enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise established under section 1362, and may by written order prescribe such terms, conditions, and limitations on the enterprise as the Director considers appropriate.

(3) TERMS.—Any terms, conditions, and limitations imposed by the Director upon termination of a conservatorship shall be enforceable and reviewable under the provisions of sections 1374 and 1375, to the same extent as any cease-and-desist order issued pursuant to subtitle C.

## **SEC. 1369A. POWERS OF CONSERVATORS.**

(a) **GENERAL POWERS.**—A conservator shall have all the powers of the shareholders, directors, and officers of the enterprise under conservatorship and may operate the enterprise in the name of the enterprise, unless the Director provides otherwise.

(b) **ADDITIONAL POWER.**—A conservator may avoid any security interest taken by a creditor with the intent to hinder, delay, or defraud the enterprise or the creditors of the enterprise.

(c) **LIMITATIONS BY DIRECTOR.**—A conservator shall be subject to any rules, regulations, and orders issued from time to time by the Director and, except as otherwise specifically provided in such rules, regulations, or orders or in section 1369B, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations applicable to directors, officers, or employees of the enterprise.

(d) **ENFORCEMENT OF CONTRACTS.**—

(1) **IN GENERAL.**—A conservator may enforce any contract described in paragraph (2), notwithstanding any provision of the contract providing for the termination, default, acceleration, or other exercise of rights upon, or solely by reason of, the insolvency of the enterprise or the appointment of a conservator.

(2) **ENFORCEABLE CONTRACTS.**—Any contract that is within a class of contracts shall be enforceable under paragraph (1) if the Director—

(A) determines that the continued enforceability of such class of contracts is necessary to achieve the purpose of the conservatorship; and

(B) specifically provides for the enforceability of such class of contracts in regulation or order, issued for the purpose of this subsection, which describes such class.

(3) **APPLICABILITY.**—This subsection and any regulation or order issued under this subsection shall apply only to contracts entered into, modified, extended, or renewed after the effective date of the regulation or order.

(e) **STAYS.**—

(1) **IN GENERAL.**—Not later than 45 days after appointment pursuant to section 1366, 1367, or 1369, or 45 days after receipt of actual notice of an action or proceeding that is pending at the time of appointment, a conservator may request that any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period not exceeding 45 days after the request. Upon petition, the court shall grant such stay as to all parties.

(2) **FEDERAL AGENCY AS CONSERVATOR.**—In any case in which the conservator appointed for an enterprise is a Federal agency or an officer or employee of the Federal Government, the conservator may make a request for a stay under paragraph (1) only with the prior consent of the Attorney General and subject to the direction and control of the Attorney General.

(f) **PAYMENT OF CREDITORS.**—The Director may require a conservator to set aside and make available for payment to creditors any amounts that the Director determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

(g) **COMPENSATION OF CONSERVATOR AND EMPLOYEES.**—A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Director may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(h) **EXPENSES.**—All expenses of a conservatorship pursuant to this section (including compensation pursuant to subsection (f)) shall be paid by the enterprise under conservatorship and shall be secured by a lien on the enterprise, which shall have priority over any other lien.

(i) **CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE.**—A conservator shall be subject to any laws and regulations relating to conflicts of interest and financial disclosure that apply to employees of the Office.

### **SEC. 1369B. LIABILITY PROTECTION FOR CONSERVATORS.**

(a) **FEDERAL AGENCIES AND EMPLOYEES.**—In any case in which a conservator appointed under this subtitle is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) **OTHER CONSERVATORS.**—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.

(c) **INDEMNIFICATION.**—The Director, with the approval of the Attorney General, may indemnify the conservator on such terms as the Director considers appropriate.

### **SEC. 1369C. CAPITAL RESTORATION PLANS.**

(a) **CONTENTS.**—Each capital restoration plan submitted under this subtitle shall set forth a feasible plan for restoring the core capital of the enterprise subject to the plan to an amount not less than the minimum capital level for the enterprise and for restoring the total capital of the enterprise to an amount not less than the risk-based capital level for the enterprise. Each capital restoration plan shall—

- (1) specify the level of capital the enterprise will achieve and maintain;
- (2) describe the actions that the enterprise will take to become classified as adequately capitalized;
- (3) establish a schedule for completing the actions set forth in the plan;
- (4) specify the types and levels of activities (including existing and new programs) in which the enterprise will engage during the term of the plan; and
- (5) describe the actions that the enterprise will take to comply with any mandatory and discretionary requirements imposed under this subtitle.

(b) **DEADLINES FOR SUBMISSION.**—The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the enterprise is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary. Any extension of the deadline shall be in writing and for a time certain.

(c) **APPROVAL.**—The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to any enterprise submitting a 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.

(d) **RESUBMISSION.**—If the Director disapproves the initial capital restoration plan submitted by the enterprise, the enterprise shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

### **SEC. 1369D. JUDICIAL REVIEW OF DIRECTOR ACTION.**

(a) **JURISDICTION.**—

(1) **FILING OF PETITION.**—An enterprise that is not classified as critically undercapitalized and is the subject of a classification under section 1364 or a discretionary supervisory action taken under this subtitle by the Director (other than action to appoint a conservator under section 1366 or 1367 or action under section 1369) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) **PLACE FOR FILING.**—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) **SCOPE OF REVIEW.**—The Court may modify, terminate, or set aside an action taken by the Director and reviewed by the Court pursuant to this section only if the court finds, on the record on which the

Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) UNAVAILABILITY OF STAY.—The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall not have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to an enterprise that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of an enterprise as significantly or critically undercapitalized.

(d) LIMITATION ON JURISDICTION.—Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subtitle (other than appointment of a conservator under section 1366 or 1367 or action under section 1369) or to review, modify, suspend, terminate, or set aside such classification or action.

### **Subtitle C—Enforcement Provisions**

#### **SEC. 1371. CEASE-AND-DESIST PROCEEDINGS.**

(a) GROUNDS FOR ISSUANCE AGAINST ADEQUATELY CAPITALIZED ENTERPRISES.—The Director may issue and serve a notice of charges under this section upon an enterprise that is classified (for purposes of subtitle B) as adequately capitalized or upon any executive officer or director of such an enterprise, if in the determination of the Director, the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

- (1) any conduct that threatens to cause a significant depletion of the core capital of the enterprise;
- (2) any conduct or violation that may result in the issuance of an order described in subsection (d)(1); or
- (3) any conduct that violates—

(A) any provision of this title, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any order, rule, or regulation under any such title or Act, except that the Director may not 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, or with 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; or

(B) any written agreement entered into by the enterprise with the Director.

(b) GROUNDS FOR ISSUANCE AGAINST UNDERCAPITALIZED, SIGNIFICANTLY UNDERCAPITALIZED, AND CRITICALLY UNDERCAPITALIZED ENTERPRISES.—The Director may issue and serve a notice of charges under this section upon an enterprise classified (for purposes of subtitle B) as undercapitalized, significantly undercapitalized, or critically undercapitalized, or any executive officer or director of any such enterprise, if in the determination of the Director the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

- (1) any conduct likely to result in a material depletion of the core capital of the enterprise, or
- (2) any conduct or violation described in paragraph (2) or (3) of subsection (a),

except that the Director may not 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, or with 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) PROCEDURE.—

(1) NOTICE OF CHARGES.—Each notice of charges under this section shall contain a statement of the facts constituting the alleged conduct or violation 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 or violation should issue.

(2) ISSUANCE OF ORDER.—If the Director finds on the record made at such hearing that any conduct or violation specified in the notice of charges has been established (or the enterprise consents

pursuant to section 1373(a)(4)), the Director may issue and serve upon the enterprise, executive officer, or director an order requiring such party to cease and desist from any such conduct or violation and to take affirmative action to correct or remedy the conditions resulting from any such conduct or violation.

(d) **AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR ACTIVITIES.**—The authority under this section and section 1372 to issue any order requiring an enterprise, executive officer, or director to take affirmative action to correct or remedy any condition resulting from any conduct or violation with respect to which such order is issued includes the authority—

(1) to require an executive officer or a director to make restitution to, or provide reimbursement, indemnification, or guarantee against loss to the enterprise to the extent that such person—

(A) was unjustly enriched in connection with such conduct or violation; or

(B) engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 1376(b)(3);

(2) to require an enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the enterprise;

(4) to require the enterprise to dispose of any asset involved;

(5) to require the enterprise to rescind agreements or contracts;

(6) to require the enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the enterprise to take such other action as the Director determines appropriate.

(e) **AUTHORITY TO LIMIT ACTIVITIES.**—The authority to issue an order under this section or section 1372 includes the authority to place limitations on the activities or functions of the enterprise or any executive officer or director of the enterprise.

(f) **EFFECTIVE DATE.**—An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the enterprise, executive officer, or director concerned (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 subtitle.

## **SEC. 1372. TEMPORARY CEASE-AND-DESIST ORDERS.**

(a) **GROUND FOR ISSUANCE AND SCOPE.**—Whenever the Director determines that any conduct or violation, or threatened conduct or violation, specified in the notice of charges served upon the enterprise, executive officer, or director pursuant to section 1371(a) or (b), or the continuation thereof, is likely—

(1) to cause insolvency,

(2) to cause a significant depletion of the core capital of the enterprise, or

(3) otherwise to cause irreparable harm to the enterprise, prior to the completion of the proceedings conducted pursuant to section 1371(c), the Director may issue a temporary order requiring the enterprise, executive officer, or director to cease and desist from any such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).

(b) **EFFECTIVE DATE.**—An order issued pursuant to subsection (a) shall become effective upon service upon the enterprise, executive officer, or director and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 1371.

(c) **INCOMPLETE OR INACCURATE RECORDS.**—

(1) **TEMPORARY ORDER.**—If a notice of charges served under section 1371(a) or (b) specifies on the basis of particular facts and circumstances that the books and records of the enterprise served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the enterprise or the details or the purpose of any transaction or

transactions that may have a material effect on the financial condition of that enterprise, the Director may issue a temporary order requiring—

- (A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or
  - (B) affirmative action to restore the books or records to a complete and accurate state.
- (2) EFFECTIVE PERIOD.—Any temporary order issued under paragraph (1)—
- (A) shall become effective upon service; and
  - (B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—
    - (i) the completion of the proceeding initiated under section 1371 in connection with the notice of charges; or
    - (ii) the date the Director determines, by examination or otherwise, that the books and records of the enterprise are accurate and reflect the financial condition of the enterprise.

(d) JUDICIAL REVIEW.—An enterprise, executive officer, or director that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, executive officer, or director under section 1371(a) or (b). Such court shall have jurisdiction to issue such injunction.

(e) ENFORCEMENT BY ATTORNEY GENERAL.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order or may, under the direction and control of the Attorney General, bring such an action. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

### **SEC. 1373. HEARINGS.**

(a) REQUIREMENTS.—

(1) VENUE AND RECORD.—Any hearing under section 1371 or 1376(c) shall be held on the record and in the District of Columbia.

(2) TIMING.—Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 1371 or determination to impose a penalty under section 1376, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) PROCEDURE.—Any such hearing shall be conducted in accordance with chapter 5 of title 5, United States Code.

(4) FAILURE TO APPEAR.—If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) ISSUANCE OF ORDER.—

(1) IN GENERAL.—After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subtitle.

(2) MODIFICATION.—Judicial review of any such order shall be exclusively as provided in section 1374. Unless such a petition for review is timely filed as provided in section 1374, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

### **SEC. 1374. JUDICIAL REVIEW.**

(a) **COMMENCEMENT.**—Any party to a proceeding under section 1371 or 1376 may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) **FILING OF RECORD.**—Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(c) **JURISDICTION.**—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 1373(b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) **REVIEW.**—Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(e) **ORDER TO PAY PENALTY.**—Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subtitle.

(f) **NO AUTOMATIC STAY.**—The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

### **SEC. 1375. ENFORCEMENT AND JURISDICTION.**

(a) **ENFORCEMENT.**—The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subtitle or subtitle B or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) **LIMITATION ON JURISDICTION.**—Except as otherwise provided in this subtitle and sections 1369 and 1369D, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 1371, 1372, or 1376, or subtitle B, or to review, modify, suspend, terminate, or set aside any such notice or order.

### **SEC. 1376. CIVIL MONEY PENALTIES.**

(a) **IN GENERAL.**—The Director may impose a civil money penalty in accordance with this section on any enterprise, or any executive officer or director of any enterprise, that—

(1) violates any provision of this title, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any order, rule, or regulation under any such title or Act, except that the Director may not 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, or with 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;

(2) violates any final or temporary order issued pursuant to section 1365, 1366, 1371, or 1372;

(3) violates any written agreement between the enterprise and the Director; or

(4) engages in any conduct that causes or is likely to cause a loss to the enterprise.

(b) **AMOUNT OF PENALTY.**—

(1) **FIRST TIER.**—The Director may impose a penalty on an enterprise for any violation described in paragraphs (1) through (3) of subsection (a). The amount of a penalty under this paragraph shall not exceed \$5,000 for each day that a violation continues.

(2) **SECOND TIER.**—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$10,000, or on an enterprise in an amount not to exceed \$25,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct—

(A) is part of a pattern of misconduct; or

(B) involved recklessness and caused or would be likely to cause a material loss to the enterprise.

(3) **THIRD TIER.**—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$100,000, or on an enterprise in an amount not to exceed \$1,000,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the

violation or conduct was knowing and caused or would be likely to cause a substantial loss to the enterprise.

(c) PROCEDURES.—

(1) ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b). Such standards and procedures—

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

(B) shall provide for the imposition of a penalty only after the enterprise, executive officer, or director has been given an opportunity for a hearing on the record pursuant to section 1373; 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 such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of the enterprise, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) REVIEW OF IMPOSITION OF PENALTY.—The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 1374.

(d) ACTION TO COLLECT PENALTY.—If an enterprise, executive officer, or director fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, executive officer, or director and such other relief as may be available, or may, under the direction and control of the Attorney General, bring such an action. The monetary judgment may, in the discretion of the court, include any 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 of the Director 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) AVAILABILITY OF OTHER REMEDIES.—Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) PROHIBITION OF REIMBURSEMENT OR INDEMNIFICATION.—An enterprise may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3).

(h) DEPOSIT OF PENALTIES.—The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) APPLICABILITY.—A penalty under this section may be imposed only for conduct or violations under subsection (a) occurring after the date of the enactment of this Act.

**SEC. 1377. NOTICE AFTER SEPARATION FROM SERVICE.**

The resignation, termination of employment or participation, or separation of a director or executive officer of an enterprise shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subtitle against any such director or executive officer, if such notice is served before the end of the 2-year period beginning on the date such director or executive officer ceases to be associated with the enterprise.

**SEC. 1378. PRIVATE RIGHTS OF ACTION.**

This title and the amendments made by this title shall not create any private right of action on behalf of any person against an enterprise, or any director or executive officer of an enterprise, or impair any existing private right of action under other applicable law.

**SEC. 1379. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.**

(a) IN GENERAL.—The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subtitle and that has become final in accordance with sections 1373 and 1374; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) HEARINGS.—All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Director's discretion, determines that holding an open hearing would be contrary to the public interest.

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Director under this subtitle or any other law.

(f) DISCLOSURES TO CONGRESS.—This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

#### **SEC. 1379A. NOTICE OF SERVICE.**

Any service required or authorized to be made by the Director under this subtitle may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

#### **SEC. 1379B. SUBPOENA AUTHORITY.**

(a) IN GENERAL.—In the course of or in connection with any administrative proceeding under this subtitle, the Director shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(b) WITNESSES AND DOCUMENTS.—The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) ENFORCEMENT.—The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) FEES AND EXPENSES.—Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an enterprise may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the enterprise or from its assets.

### **Subtitle D—Amendments to Charter Acts of Enterprises**

**SEC. 1381. AMENDMENTS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT.**

(a) **PURPOSES.**—Section 301 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) is amended—

(1) by striking “home” each place it appears and inserting “residential”;

(2) in paragraph (3)—

(A) by striking the parentheses and all the matter contained therein and inserting the following: “(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)”;

(B) by striking “and” at the end;

(3) by redesignating paragraph (4) as paragraph (5);

(4) by inserting after paragraph (3) the following new paragraph:

“(4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and”.

(b) **HIGH COST AREAS.**—The last sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by striking “and Hawaii” and inserting “Hawaii, and the Virgin Islands”.

(c) **SECRETARY’S APPROVAL AUTHORITY.**—Section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended—

(1) in the first sentence of paragraph (2), by striking “and with the approval of the Secretary of Housing and Urban Development,”;

(2) in the first sentence of paragraph (3), by striking “, with the approval of the Secretary of Housing and Urban Development,”;

(3) in the first sentence of paragraph (4), by striking “, with the approval of the Secretary of Housing and Urban Development,”; and

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

“(6) The corporation may not implement any new program (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) before obtaining the approval of the Secretary under section 1322 of such Act.”.

(d) **CAPITALIZATION.**—Section 303 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1718) is amended—

(1) in subsection (a), by inserting after the period at the end the following new sentence: “The corporation may issue shares of common stock in return for appropriate payments into capital or capital and surplus.”;

(2) by striking subsections (b) and (c) and inserting the following new subsections:

“(b)(1) The corporation may impose charges or fees, which may be regarded as elements of pricing, with the objective that all costs and expenses of the operations of the corporation should be within its income derived from such operations and that such operations should be fully self-supporting.

“(2) All earnings from the operations of the corporation shall annually be transferred to the general surplus account of the corporation. At any time, funds of the general surplus account may, in the discretion of the board of directors, be transferred to reserves.

“(c)(1) Except as provided in paragraph (2), the corporation may make such capital distributions (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) as may be declared by the board of directors. All capital distributions shall be charged against the general surplus account of the corporation.

“(2) The corporation may not make any capital distribution that would decrease the total capital of the corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the corporation established under section 1361 of such Act or that would decrease the core capital of the corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the corporation established under section 1362 of such Act, without prior written approval of the distribution

by the Director of Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.”;

(3) in subsection (f)—

(A) by striking “to make payments” and all that follows through “such capital contributions,”; and

(B) by striking “additional shares of such stock,” and inserting “shares of common stock of the corporation”; and

(4) by redesignating subsection (f) (as so amended) as subsection (d).

(e) RATIO OF OBLIGATIONS.—Section 304 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719) is amended—

(1) in subsection (b), by striking the semicolon in the first sentence and all that follows through the end of the second sentence and inserting a period; and

(2) in subsection (e), by striking the fourth sentence.

(f) STATEMENT IN SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by inserting after the period at the end the following sentence: “The corporation shall insert appropriate language in all of the securities issued under this subsection clearly indicating such securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the corporation.”.

(g) ASSESSMENTS FOR OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT.—The first sentence of section 304(f) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(f)) is amended by inserting before the first comma the following: “of this Act and assessments pursuant to section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992”.

(h) BOARD OF DIRECTORS—

(1) IN GENERAL.—The second sentence of section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended—

(A) by striking “and” after the second comma; and

(B) by inserting before the period at the end the following: “, and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated career commitment to the provision of housing for low-income households”.

(2) IMPLEMENTATION.—The amendments made by paragraph (1) shall apply to the first annual appointment by the President of members to the board of directors of the Federal National Mortgage Association that occurs after the date of the enactment of this Act.

(i) REMOVAL AUTHORITY OF PRESIDENT.—The third sentence of section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by inserting “appointed” after “any such”.

(j) COMPENSATION.—Section 309(d) of the Federal National, Mortgage Association Charter Act (12 U.S.C. 1723a(d)) is amended—

(1) in the first sentence of paragraph (2) by striking “as it may determine” and inserting the following: “as the board of directors determines reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in paragraph (3)(C)) of the corporation shall be based on the performance of the corporation”; and

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

“(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (i) the comparability of the compensation policies of the corporation with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation’s proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation’s performance, and (iii) the comparability of the

corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

“(B) Notwithstanding the first sentence of paragraph (2), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the corporation, unless such agreement or contract is approved in advance by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

“(C) For purposes of this paragraph, the term ‘executive officer’ has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”

(k) GENERAL REGULATORY AUTHORITY.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by striking subsections (h) and (i).

(l) GAO AUDITS.—Section 309(j) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(j)) is amended—

(1) by inserting “(1)” after “(j)”;

(2) by striking the first sentence and inserting the following new sentence: “The programs, activities, receipts, expenditures, and financial transactions of the corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.”; and

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

“(2) To carry out this subsection, the representatives of the General Accounting Office shall have access, upon request to the corporation or any auditor for an audit of the corporation under subsection (l), to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.”

(m) FINANCIAL REPORTS TO DIRECTOR.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by adding at the end the following new subsection:

“(k)(1) The corporation shall submit to the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development annual and quarterly reports of the financial condition and operations of the corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

“(2) Each such annual report shall include—

“(A) financial statements prepared in accordance with generally accepted accounting principles;

“(B) any supplemental information or alternative presentation that the Director may require; and

“(C) an assessment (as of the end of the corporation's most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the corporation, of—

“(i) the effectiveness of the internal control structure and procedures of the corporation; and

“(ii) the compliance of the corporation with designated safety and soundness laws.

“(3) The corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

“(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of the corporation to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.”

(n) AUDITS OF FINANCIAL STATEMENTS.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by adding after subsection (k) (as added by subsection (m) of this section) the following new subsection:

“(1)(1) The corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

“(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the corporation (A) are presented fairly in accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (k)(2)(B).”.

(o) MORTGAGE DATA COLLECTION AND REPORTING REQUIREMENTS.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by adding after subsection (l) (as added by subsection (n) of this section) the following new subsection:

“(m)(l) The corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

“(A) the income, census tract location, race, and gender of mortgagors under such mortgages;

“(B) the loan-to-value ratios of purchased mortgages at the time of origination;

“(C) whether a particular mortgage purchased is newly originated or seasoned;

“(D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

“(E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

“(2) The corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

“(A) census tract location of the housing;

“(B) income levels and characteristics of tenants of the housing (to the extent practicable);

“(C) rent levels for units in the housing;

“(D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

“(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);

“(F) use of funds (such as new construction, rehabilitation, refinancing);

“(G) type of originating institution; and

“(H) any other information that the Secretary considers appropriate, to the extent practicable.

“(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the corporation after December 31, 1992.

“(B) This subsection shall apply to any mortgage purchased by the corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the corporation.”.

(p) REPORT ON HOUSING ACTIVITIES.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by adding after subsection (m) (as added by subsection (o) of this section) the following new subsection:

“(n)(1) The corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Secretary a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

“(2) The report under this subsection shall—

“(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

“(B) include, in aggregate form and by appropriate category, statements of the number of families served by the corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

“(C) include a statement of the extent to which the mortgages purchased by the corporation have been used in conjunction with public subsidy programs under Federal law;

“(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the corporation that have been made to first-time homebuyers, as soon as

providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

“(E) include, in aggregate form and by appropriate category, the data provided to the Secretary under subsection (m)(1)(B);

“(F) compare the level of securitization versus portfolio activity;

“(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

“(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress toward standardization and securitization of mortgage products for multifamily housing;

“(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with incomes above the median level that have been purchased by the corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

“(J) describe in the aggregate the seller and servicer network of the corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

“(K) describe the activities undertaken by the corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the corporation’s activities support the objectives of comprehensive housing affordability strategies under section 105 of the Cranston-Gonzalez National Affordable Housing Act; and

“(L) include any other information that the Secretary considers appropriate.

“(3)(A) The corporation shall make each report under this subsection available to the public at the principal and regional offices of the corporation.

“(B) Before making a report under this subsection available to the public, the corporation may exclude from the report information that the Secretary has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”.

(q) HOUSING ADVISORY COUNCIL.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by adding after subsection (n) (as added by subsection (p) of this section) the following new subsection:

“(o)(1) Not later than 4 months after the date of enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the corporation shall appoint an Affordable Housing Advisory Council to advise the corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

“(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.”.

(r) STOCK ISSUANCES.—The second sentence of section 311 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723c) is amended by striking all that follows “Commission” and inserting a period.

(s) TECHNICAL AMENDMENTS.—

(1) Section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(c)) is amended—

(A) in paragraph (2)—

(i) in the first sentence following subparagraph (F), by striking “him” and inserting “the trustor”; and

(ii) in the last sentence, by striking “his” each place it appears and inserting “the trustor’s”; and

(B) in paragraph (3), by striking “he” each place it appears and inserting “the trustor”.

(2) Section 304(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(c)) is amended—

- (A) by striking “his” each place it appears and inserting “the Secretary’s”; and
- (B) in the fourth sentence—
  - (i) by striking “he” and inserting “the Secretary”; and
  - (ii) by striking “him” and inserting “the Secretary”.

(3) Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended—

- (A) in subsection (d)(2)—
  - (i) in the third sentence, by striking “his employment” each place it appears and inserting “the employment of such officer or employee”; and
  - (ii) in the last sentence, by striking “his basic pay” and inserting “the basic pay of such person”; and
- (B) in subsection (e) by striking “he or it” and inserting “the individual, association, partnership, or corporation”.

## **SEC. 1382. AMENDMENTS TO FEDERAL HOME LOAN MORTGAGE CORPORATION ACT.**

(a) PURPOSES.—Section 301(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) is amended—

- (1) by striking “home” each place it appears in paragraphs (1) and (3) and inserting “residential”;
- (2) by striking “and” at the end of paragraph (2);
- (3) in paragraph (3)—
  - (A) by striking the parentheses and all the matter contained therein and inserting the following: “(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)”;
  - (B) by striking the period at the end and inserting “; and”; and
- (4) by adding at the end the following new paragraph:

“(4) to promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and the distribution of investment capital available for residential mortgage financing.”.

(b) DEFINITIONS.—The third sentence of section 302(h) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451(h)) is amended by striking “made” and all that follows through “305(a)(1)” and inserting “purchased from any public utility carrying out activities in accordance with the requirements of title II of the National Energy Conservation Policy Act if the residential mortgage to be purchased is a loan or advance of credit the original proceeds of which are applied for in order to finance the purchase and installation of residential energy conservation measures (as defined in section 210(11) of the National Energy Conservation Policy Act) in residential real estate”.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The second sentence of section 303(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended—

- (A) by striking “and” after the second comma; and
- (B) by inserting before the period at the end the following: “, and at least 1 person from an organization that has represented consumer or community interests for not less than 2 years or 1 person who has demonstrated a career commitment to the provision of housing for low-income households”

(2) IMPLEMENTATION.—The amendments made by paragraph (1) shall apply to the first annual appointment by the President of members to the Board of Directors of the Federal Home Loan Mortgage Corporation that occurs after the date of the enactment of this Act.

(d) REMOVAL AUTHORITY OF PRESIDENT.—Section 303(a)(2)(B) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(B)) is amended by inserting before the period at the end the

following: “, except that any appointed member may be removed from office by the President for good cause”.

(e) GENERAL REGULATORY AUTHORITY.—Section 303(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(b)) is amended to read as follows:

“(b)(1) Except as provided in paragraph (2), the Corporation may make such capital distributions (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) as may be declared by the Board of Directors.

“(2) The Corporation may not make any capital distribution that would decrease the total capital of the Corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the Corporation established under section 1361 of such Act or that would decrease the core capital of the Corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the Corporation established under section 1362 of such Act, without prior written approval of the distribution by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.”.

(f) COMPENSATION.—Section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452) is amended—

(1) in clause (9) of the first sentence of subsection (c), by inserting after “agents” the following: “as the Board of Directors determines reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or other major financial services companies) involving similar duties and responsibilities, except that a significant portion of potential compensation of all executive officers (as such term is defined in subsection (h)(3)) of the Corporation shall be based on the performance of the Corporation”; and

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

“(h)(1) Not later than June 30, 1993, and annually thereafter, the Corporation shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (A) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses, (B) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Corporation’s proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the Corporation’s performance, and (C) the comparability of the Corporation’s financial performance with the performance of other similar businesses. The report shall include a copy of the Corporation’s proxy statement for the annual meeting of shareholders for the preceding year.

“(2) Notwithstanding the first sentence of subsection (c), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the Corporation, unless such agreement or contract is approved in advance by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreement for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this paragraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

“(3) For purposes of this subsection, the term ‘executive officer’ has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”.

(g) POWERS OF CORPORATION.—Section 303(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c)) is amended by striking the second sentence.

(h) REPEAL OF PROHIBITION ON PREJUDGMENT ATTACHMENT.—Section 303(f) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(f)) is amended by striking the last sentence.

(i) CAPITAL STOCK.—Section 304 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1453) is amended—

(1) by striking subsections (b), (c), and (d);

(2) in subsection (a)(1), by striking “(1) The common stock” and all that follows and inserting the following: “The common stock of the Corporation shall consist of voting common stock, which shall be issued to such holders in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.”; and

(3) in subsection (a)(2)—

(A) in the first sentence, by striking “nonvoting common stock and the”;

(B) by striking the last sentence; and

(C) by striking the paragraph designation and inserting “(b)”.

(j) MORTGAGE SELLERS.—Section 305(a)(1) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(1)) is amended—

(1) in the first sentence, by striking “from any Federal home loan bank” and all that follows through the end of the sentence and inserting a period; and

(2) in the second sentence, by striking “, and the servicing” and all that follows through the end of the sentence and inserting a period.

(k) HIGH COST AREAS.—The last sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by striking “and Hawaii” and inserting “Hawaii, and the Virgin Islands”.

(l) REPEAL OF PROHIBITION ON MORTGAGE LIMITATIONS.—Section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) is amended by striking subsection (c).

(m) PRIOR APPROVAL OF SECRETARY FOR NEW PROGRAMS.—Section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) is amended by inserting after subsection (b) the following new subsection:

“(c) The Corporation may not implement any new program (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) before obtaining the approval of the Secretary under section 1322 of such Act.”.

(n) OBLIGATIONS AND SECURITIES AND ASSESSMENTS FOR OFFICE.—Section 306 of the Federal Home Loan Mortgage Corporation (12 U.S.C. 1455) is amended—

(1) in subsection (h)—

(A) by inserting “(1)” after “(h)”;

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

“(2) The Corporation shall insert appropriate language in all of the obligations and securities of the Corporation issued under this section and section 305 clearly indicating that such obligations and securities, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Corporation.”; and

(2) in the first sentence of subsection (i), by striking “section 303(c) or 306(c)” and inserting the following: “sections 303(c) and 1316(c) of this Act and assessments pursuant to section 106 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992”.

(o) GAO AUDITS.—Section 307(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(b)) is amended—

(1) by inserting “(1)” after “(b)”;

(2) by striking the first sentence and inserting the following new sentence: “The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.”; and

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

“(2) To carry out this subsection, the representatives of the General Accounting Office shall have access, upon request to the Corporation or any auditor for an audit of the Corporation under subsection (d), to any books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use by the Corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.”.

(p) FINANCIAL REPORTS TO DIRECTOR.—Section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456) is amended by adding at the end the following new subsection:

“(c)(1) The Corporation shall submit to the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development annual and quarterly reports of the financial condition and operations of the Corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

“(2) Each such annual report shall include—

“(A) financial statements prepared in accordance with generally accepted accounting principles;

“(B) any supplemental information or alternative presentation that the Director may require; and

“(C) an assessment (as of the end of the Corporation’s most recent fiscal year), signed by the chief executive officer and chief accounting or financial officer of the Corporation, of—

“(i) the effectiveness of the internal control structure and procedures of the Corporation; and

“(ii) the compliance of the Corporation with designated safety and soundness laws.

“(3) The Corporation shall also submit to the Director any other reports required by the Director pursuant to section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

“(4) Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other office designated by the Board of Directors of the Corporation to make such declaration, that the report is true and correct to the best of such officer’s knowledge and belief.”.

(q) AUDITS OF FINANCIAL STATEMENTS.—Section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456) is amended by adding after subsection (c) (as added by subsection (p) of this section) the following new subsection:

“(d)(1) The Corporation shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

“(2) In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the Corporation (A) are presented fairly in accordance with generally accepted accounting principles, and (B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under subsection (c)(2)(B).”.

(r) MORTGAGE DATA COLLECTION AND REPORTING REQUIREMENTS.—Section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456) is amended by adding after subsection (d) (as added by subsection (q) of this section) the following new subsection:

“(e)(1) The Corporation shall collect, maintain, and provide the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

“(A) the income, census tract location, race, and gender of mortgagors under such mortgages;

“(B) the loan-to-value ratios of purchased mortgages at the time of origination;

“(C) whether a particular mortgage purchased is newly originated or seasoned;

“(D) the number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

“(E) any other characteristics that the Secretary considers appropriate, to the extent practicable.

“(2) The Corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

“(A) census tract location of the housing;

“(B) income levels and characteristics of tenants of the housing (to the extent practicable);

“(C) rent levels for units in the housing;

“(D) mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

“(E) mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperatives);

“(F) use of funds (such as new construction, rehabilitation, refinancing);

“(G) type of originating institution; and

“(H) any other information that the Secretary considers appropriate, to the extent practicable.

“(3)(A) Except as provided in subparagraph (B), this subsection shall apply only to mortgages purchased by the Corporation after December 21, 1992.

“(B) This subsection shall apply to any mortgage purchased by the Corporation after the date determined under subparagraph (A) if the mortgage was originated before such date, but only to the extent that the data referred in paragraph (1) or (2), as applicable, is available to the Corporation.”.

(s) REPORT ON HOUSING ACTIVITIES.—Section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456) is amended by adding after subsection (e) (as added by subsection (r) of this section) the following new subsection:

“(f)(1) The Corporation shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Secretary a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

“(2) The report under this subsection shall—

“(A) include, in aggregate form and by appropriate category, statements of the dollar volume and number of mortgages on owner-occupied and rental properties purchased which relate to each of the annual housing goals established under such subpart;

“(B) include, in aggregate form and by appropriate category, statements of the number of families served by the Corporation, the income class, race, and gender of homebuyers served, the income class of tenants of rental housing (to the extent such information is available), the characteristics of the census tracts, and the geographic distribution of the housing financed;

“(C) include a statement of the extent to which the mortgages purchased by the Corporation have been used in conjunction with public subsidy programs under Federal law;

“(D) include statements of the proportion of mortgages on housing consisting of 1 to 4 dwelling units purchased by the Corporation that have been made to first-time homebuyers, as soon as providing such data is practicable, and identifying any special programs (or revisions to conventional practices) facilitating homeownership opportunities for first-time homebuyers;

“(E) include, in aggregate form and by appropriate category, the data provided to the Secretary under subsection (e)(1)(B);

“(F) compare the level of securitization versus portfolio activity;

“(G) assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

“(H) describe trends in both the primary and secondary multifamily housing mortgage markets, including a description of the progress made, and any factors impeding progress toward standardization and securitization of mortgage product for multifamily housing;

“(I) describe trends in the delinquency and default rates of mortgages secured by housing for low- and moderate-income families that have been purchased by the Corporation, including a comparison of such trends with delinquency and default information for mortgage products serving households with income above the median level that have been purchased by the Corporation, and evaluate the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

“(J) describe in the aggregate the seller and servicer network of the Corporation, including the volume of mortgages purchased from minority-owned, women-owned, and community-oriented lenders, and any efforts to facilitate relationships with such lenders;

“(K) describe the activities undertaken by the Corporation with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including how the Corporation’s activities support the objectives of comprehensive housing affordability strategies under section 105 of the Cranston-Gonzalez National Affordable Housing Act; and

“(L) include any other information that the Secretary considers appropriate.

“(3)(A) The Corporation shall make each report under this subsection available to the public at the principal and regional offices of the Corporation.

“(B) Before making a report under this subsection available to the public, the Corporation may exclude from the report information that the Secretary has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.”.

(t) HOUSING ADVISORY COUNCIL.—Section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456) is amended by adding after subsection (f) (as added by subsection (s) of this section) the following new subsection:

“(g)(1) Not later than 4 months after the date of enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Corporation shall appoint an Affordable Housing Advisory Council to advise the Corporation regarding possible methods for promoting affordable housing for low- and moderate-income families.

“(2) The Affordable Housing Advisory Council shall consist of 15 individuals, who shall include representatives of community-based and other nonprofit and for-profit organizations and State and local government agencies actively engaged in the promotion, development, or financing of housing for low- and moderate-income families.”.

#### **SEC. 1383. IMPLEMENTATION.**

(a) IN GENERAL.—The Secretary of Housing and Urban Development and the Director, as appropriate, shall issue any final regulations necessary to implement the amendments made by this subtitle not later than the expiration of the 18-month period beginning on the date of the enactment of this Act.

(b) NOTICE AND COMMENT.—The regulations under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.

### **Subtitle E—Regulation of Federal Home Loan Bank System**

#### **SEC. 1391. PRIMACY OF FINANCIAL SAFETY AND SOUNDNESS FOR FEDERAL HOUSING FINANCE BOARD.**

Section 2A(a)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(a)(3)) is amended to read as follows:

“(3) DUTIES.—

“(A) SAFETY AND SOUNDNESS.—The primary duty of the Board shall be to ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.

“(B) OTHER DUTIES.—To the extent consistent with subparagraph (A), the duties of the Board shall also be—

“(i) to supervise the Federal Home Loan Banks;

“(ii) to ensure that the Federal Home Loan Banks carry out their housing finance mission;  
and

“(iii) to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets.”.

#### **SEC. 1392. ADVANCES UNDER FEDERAL HOME LOAN BANK ACT.**

(a) ADVANCES TO NONQUALIFIED THRIFT LENDER MEMBERS.—Section 10(e)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(2)) is amended by striking the second sentence and inserting the following new sentence: “The aggregate amount of the advances by the Federal Home Loan Bank System to members that are not qualified thrift lenders shall not exceed 30 percent of the total advances of the Federal Home Loan Bank System.”.

(b) EXCEPTION TO REQUIREMENTS FOR ADVANCES.—Section 10b of the Federal Home Loan Bank Act (12 U.S.C. 1430b) is amended—

(1) in the first sentence, by inserting before “Each” the following new subsection designation and heading “(a) IN GENERAL.—”; and

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

“(b) EXCEPTION.—An advance made to a State housing finance agency for the purpose of facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f) of the Internal Revenue Code of 1986, need not be collateralized by a mortgage insured under title II of the National Housing Act or otherwise, if—

“(1) such advance otherwise meets the requirements of this subsection; and

“(2) such advance meets the requirements of section 10(a) of this Act, and any real estate collateral for such loan comprises single family or multifamily residential mortgages.”.

**SEC. 1393. STUDIES REGARDING FEDERAL HOME LOAN BANK SYSTEM.**

(a) IN GENERAL.—The Federal Housing Finance Board, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of Housing and Urban Development shall each conduct a study analyzing and making appropriate recommendations with respect to the following topics:

- (1) The appropriate capital standards for the Federal Home Loan Bank System.
- (2) The relationship between the capital standards for the Federal Home Loan Bank System and the capital standards under this title for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
- (3) The relationship between the capital standards for federally insured depository institutions and the capital standards under this title for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
- (4) The advantages and disadvantages of expanding credit products and services for member institutions of the Federal Home Loan Bank System, including a determination of the feasibility of Federal Home Loan Banks (A) purchasing housing-related assets from member institutions, (B) providing credit enhancements and other products to members in addition to making advances, and (C) making direct loans for housing construction.
- (5) The advantages and disadvantages of expanding eligible collateral for advances to member institutions of the Federal Home Loan Bank System by removing the limits on the amount of housing-related assets that member institutions can use to collateralize advances.
- (6) The advantages and disadvantages of further measures to expand the role of the Federal Home Loan Bank System as a support mechanism for community-based lenders and to reinforce the overall role of the System in housing finance.
- (7) The advantages and disadvantages of measures to increase membership in, and increase the profitability of, the System by modifying—
  - (A) restrictions on membership and stock purchases of nonqualified thrift lenders;
  - (B) the overall advance limit imposed on the Federal Home Loan Bank System to nonqualified thrift lenders; and
  - (C) the membership requirement for qualified thrift lenders.
- (8) The competitive effect of the mortgage activities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation on the home mortgage activities of federally insured depository institutions and the cost of such activities to such institutions, the Savings Association Insurance Fund, and the Resolution Trust Corporation.
- (9) The likelihood that the Federal Home Loan Banks will be able to continue to pay the amounts required under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- (10) The extent to which a reduction in the number of Federal Home Loan Banks would reduce noninterest costs of the System.
- (11) The impact that a reduction in the number of Federal Home Loan Banks would have on the effectiveness of affordable housing programs and community support programs under the Federal Home Loan Bank System.
- (12) The impact that a reduction in the number of Federal Home Loan Banks would have on the availability of affordable housing in rural areas and the ability of small rural financial institutions to provide housing financing.
- (13) The current and prospective impact of the Federal Home Loan Bank System on—
  - (A) the availability and affordability of housing for low- and moderate-income households; and
  - (B) the relative availability of housing credit across geographic areas, with particular regard to differences depending on whether properties are inside or outside of central cities.
- (14) The appropriateness of extending to the Federal Home Loan Bank System the public purposes and housing goals established for the Federal National Mortgage Association and the

Federal Home Loan Mortgage Corporation under this title, the Federal National Mortgage Association Charter Act, and the Federal Home Loan Mortgage Corporation Act.

(b) **REPORTS.**—Not later than 6 months after the date of the enactment of this Act, the Federal Housing Finance Board, the Comptroller General, the Director of the Congressional Budget Office, and the Secretary of Housing and Urban Development shall each submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, Urban Affairs of the Senate a report on the studies required under subsection (a) containing any recommendations for legislative action based on the results of the studies.

(c) **COMMENTS.**—The Secretary of the Treasury, the Director the Office of Federal Housing Enterprise Oversight, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association shall each submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate any recommendations and opinions regarding the studies under subsection (a), to the extent that the recommendations and views of such officers and entities differ from the recommendations and opinions of the Federal Housing Finance Board, the Comptroller General, the Director of Congressional Budget Office, and the Secretary of Housing and Urban Development.

(d) **DEFINITION.**—For purposes of this section, the term “housing-related assets” means residential mortgages, residential mortgage-related securities, loans or loan participations secured by residential real estate, housing production loans, and warehouse lines of credit for residential mortgage banking activities.

#### **SEC. 1394. REPORT OF FEDERAL HOME LOAN BANK MEMBERS.**

(a) **IN GENERAL.**—The Federal Home Loan Banks shall establish a committee to be known as the Study Committee. The Study Committee shall be comprised of 24 members, of whom 2 shall be elected by the Board of Directors of each Federal Home Loan Bank from among officers or directors of stockholder institutions of the Federal Home Loan Bank. Each Federal Home Loan Bank shall elect members to the Study Committee not later than 45 days after the date of the enactment of this Act.

(b) **STUDY AND REPORT.**—The Study Committee referred to in subsection (a) shall conduct a study on the topics referred to in section 1391(a) and on the costs and benefits of consolidation of the Federal Home Loan Bank System. Not later than 6 months after the date of the enactment of this Act, the Study Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Federal Housing Finance Board, and the presidents of the Federal Home Loan Banks on its findings, including any recommendations for legislative or administrative action, together with any minority views or recommendations.

#### **SEC. 1395. REPORTS REGARDING CONSOLIDATION OF FEDERAL HOME LOAN BANK SYSTEM.**

Not later than 6 months after the date of the enactment of this Act, the Board of Directors of each Federal Home Loan Bank shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report of the director’s evaluation of the costs and benefits of consolidating the Federal Home Loan Bank System.

