I

110TH CONGRESS
2D SESSION

H. R. 7094

To establish a term certain for the conservatorships of Fannie Mae and Freddie Mac, to provide conditions for continued operation of such enterprises, and to provide for the wind down of such operations and the dissolution of such enterprises.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2008

Mr. HENSARLING (for himself, Mr. GARRETT of New Jersey, Mr. FLAKE, Mr. PENCE, Mr. SALI, Mr. BROUN of Georgia, Mr. TANCREDO, Mr. GINGREY, Mr. SULLIVAN, Mr. LAMBORN, Mr. WALBERG, Mr. JORDAN of Ohio, Mr. GOHMERT, and Mr. BURTON of Indiana) introduced the following bill; which was referred to the Committee on Financial Services

---

A BILL

To establish a term certain for the conservatorships of Fannie Mae and Freddie Mac, to provide conditions for continued operation of such enterprises, and to provide for the wind down of such operations and the dissolution of such enterprises.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Government-Sponsored Enterprises Free Market Reform Act of 2008’’.

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CHARTER.—The term ''charter'' means—

(A) with respect to the Federal National Mortgage Association, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); and

(B) with respect to the Federal Home Loan Mortgage Corporation, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) DIRECTOR.—The term ''Director'' means the Director of the Federal Housing Finance Agency

(3) ENTERPRISE.—The term ''enterprise'' means—

(A) the Federal National Mortgage Association; and

(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term ''guarantee'' means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a government-sponsored enterprise.

SEC. 3. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the Director of the Federal Housing Finance Agency shall determine, with respect to each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for each of the enterprises; or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.

(b) TIMING.—The period referred to in this subsection is, with respect to an enterprise—

(1) except as provided in paragraph (2), the 24-month beginning upon the date of the enactment of this Act; or

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this

paragraph with respect to that enterprise, the 30-month period beginning upon the date of the enactment of this Act.

(c) FINANCIAL VIABILITY.—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

SEC. 4. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 3(b), if the Director makes the determination under section 3(a)(1), the following provisions shall take effect:

(1) PORTFOLIO LIMITATIONS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended by adding at the end the following new section:

"SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF ENTERPRISES.

"(a) RESTRICTION.—No enterprise shall own, as of any applicable date in this subsection or thereafter, mortgage assets in excess of—

"(1) upon the expiration of the period referred to in section 3(b) of the Government-Sponsored Enterprises Free Market Reform Act of 2008, $850,000,000,000; or

"(2) on December 31 of each year thereafter, 80.0 percent of the aggregate amount of mortgage assets of the enterprise as of December 31 of the immediately preceding calendar year;

except that in no event shall an enterprise be required under this section to own less than $250,000,000,000 in mortgage assets.

"(b) DEFINITION OF MORTGAGE ASSETS.—For purposes of this section, the term 'mortgage assets' means, with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise in accordance with generally accepted accounting principles in effect in the United States as of

September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).''.

(2) INCREASE IN MINIMUM CAPITAL REQUIREMENT.—Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612), as amended by section 1111 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is amended—

(A) in subsection (a), by striking ''For purposes of this subtitle, the minimum capital level for each enterprise shall be'' and inserting ''The minimum capital level established under subsection (g) for each enterprise may not be lower than'';

(B) in subsection (c)—

(i) by striking ''subsections (a) and'' and inserting ''subsection'';

(ii) by striking ‘‘regulated entities’’ the first place such term appears and inserting ‘‘Federal Home Loan Banks’’;

(iii) by striking ‘‘for the enterprises,’’;

(iv) by striking ‘‘, or for both the enterprises and the banks,’’;

(v) by striking ‘‘the level specified in subsection (a) for the enterprises or’’; and

(vi) by striking ‘‘the regulated entities operate’’ and inserting ‘‘such banks operate’’;

(C) in subsection (d)(1)—

(i) by striking ‘‘subsections (a) and’’ and inserting ‘‘subsection’’; and

(ii) by striking ‘‘regulated entity’’ each place such term appears and inserting ‘‘Federal home loan bank’’;

(D) in subsection (e), by striking ‘‘regulated entity’’ each place such term appears and inserting ‘‘Federal home loan bank’’;

(E) in subsection (f)—

(i) by striking ‘‘the amount of core capital maintained by the enterprises,’’; and

(ii) by striking ‘‘regulated entities’’ and inserting ‘‘banks’’; and

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

‘‘(g) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

‘‘(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for such the enterprises and by using such other methods as the Director deems appropriate.

‘‘(2) AUTHORITY.—The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director, in the Director's discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.

‘‘(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

‘‘(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of a enterprise to maintain capital at or above its minimum level as established pursuant to subsection (c) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

"(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

"(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (c) of this section.

"(B) PLAN.—Such directive may require the enterprise to submit and adhere to a plan acceptable to the Director describing the means and timing by which the enterprise shall achieve its required capital level.

"(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

"(3) ADHERENCE TO PLAN.—

"(A) CONSIDERATION.—The Director may consider such enterprise's progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which would divert earnings, diminish capital, or otherwise impede such enterprise's progress in achieving its minimum capital level.

"(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.".

(3) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASE IN ECONOMIC STIMULUS ACT.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185) is hereby repealed.

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

(C) REPEAL OF NEW HOUSING PRICE INDEX.—Section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as added by section 1124(d) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is hereby repealed.

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is hereby repealed.

(E) ESTABLISHMENT OF CONFORMING LOAN LIMIT.—For the year in which the expiration of the period referred to in section 3(b) of this section occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage

Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

(i) $417,000 for a mortgage secured by a single-family residence,

(ii) $533,850 for a mortgage secured by a 2-family residence,

(iii) $645,300 for a mortgage secured by a 3-family residence, and

(iv) $801,950 for a mortgage secured by a 4-family residence,

and such limits shall be adjusted effective each January 1 thereafter in accordance with such sections 302(b)(2) and 305(a)(2).

(F) PROHIBITION OF PURCHASE OF MORTGAGES EXCEEDING MEDIAN AREA HOME PRICE.—

(i) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: “Notwithstanding any other provision of this title, the corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.''.

(ii) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.''.

(4) REQUIREMENT TO PAY STATE AND LOCAL TAXES.—

(A) FANNIE MAE.—Paragraph (2) of section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)(2)) is amended—

(i) by striking ''shall be exempt from'' and inserting ''shall be subject to''; and

(ii) by striking ''except that any'' and inserting ''and any''.

(B) FREDDIE MAC.—Section 303(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(e)) is amended—

(i) by striking ‘‘shall be exempt from’’ and inserting ‘‘shall be subject to’’; and

(ii) by striking ‘‘except that any’’ and inserting ‘‘and any’’.

(5) REPEALS RELATING TO REGISTRATION OF SECURITIES.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

(ii) SUBORDINATE OBLIGATIONS.—Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by striking the fourth sentence.

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(6) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b) of this section.

(C) TREATMENT OF RECOUPED AMOUNTS.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO STUDY REGARDING RECOUPMENT OF COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

SEC. 5. REQUIREMENT TO PERIODICALLY RENEW CHARTER UNTIL WIND DOWN AND DISSOLUTION.

(a) Required Renewal; Wind Down and Dissolution Upon Non-Renewal.—Upon the expiration of the 3-year period that begins upon the expiration of the period referred to in section 3(b), unless the charter of an enterprise is renewed pursuant to subsection (b) of this section, section 6 (relating to wind down of operations and dissolution of enterprise) shall apply to the enterprise.

(b) Renewal Procedure.—

(1) Application; timing.—The Director shall provide for each enterprise to apply to the Director, before the expiration of the 3-year period under subsection (a), for renewal of the charter of the enterprise.

(2) Standard.—The Director shall approve the application of an enterprise for the renewal of the charter of the enterprise if—

(A) the application includes a certification by the enterprise that the enterprise is financially sound and is complying with all provisions of, and amendments made by, section 4 of this Act applicable to such enterprise; and

(B) the Director verifies that the certification made pursuant to subparagraph (A) is accurate.

(c) OPTION TO REAPPLY.—Nothing in this section may be construed to require an enterprise to apply under this section for renewal of the charter of the enterprise.

SEC. 6. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.

(a) APPLICABILITY.—This section shall apply to an enterprise—

(1) upon the expiration of the 3-year period referred to in such section 5(a), to the extent provided in such section; and

(2) if this section has not previously applied to the enterprise, upon the expiration of the 6-year period that begins upon the expiration of the period referred to in section 3(b).

(b) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this Act and the ongoing obligations of the enterprise.

(c) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (b)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection(b); and

(2) may provide for establishment of—

(A) a holding corporation organized under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring of the enterprise; and

(B) one or more trusts to which to transfer—

(i) remaining debt obligations of the enterprise, for the benefit of holders of such remaining obligations; or

(ii) remaining mortgages held for the purpose of backing mortgage-backed securities, for the benefit of holders of such remaining securities.

(d) REPEAL OF CHARTER.—Effective upon the expiration of the 10-year period referred to in subsection (b) for an enterprise, the charter for the enterprise is repealed, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of outstanding debt obligations and mortgage-backed securities of the enterprise.

○