H.R. 3221, supra; which was ordered to lie on the table.

SA 4423. Mr. NELSON of Florida (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 4424. Mrs. HUTCHISON (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 4425. Mrs. HUTCHISON (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill H.R. 3221, supra; which was ordered to lie on the table.

SA 4426. Mr. MARTINEZ (for himself and Mr. CARPER) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4387. Mr. DODD (for himself and Mr. SHELBY) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Foreclosure Prevention Act of 2008''.

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

Sec. 1. Short title; table of contents.

TITLE I—FHA MODERNIZATION ACT OF 2008

Sec. 101. Short title.

Subtitle A—Building American Homeownership

Sec. 111. Short title.
Sec. 112. Maximum principal loan obligation.
Sec. 113. Cash investment requirement and prohibition of seller-funded downpayment assistance.
Sec. 114. Mortgage insurance premiums.
Sec. 115. Rehabilitation loans.
Sec. 116. Discretionary action.
Sec. 117. Insurance of condominiums.
Sec. 118. Mutual Mortgage Insurance Fund.
Sec. 119. Hawaiian home lands and Indian reservations.
Sec. 120. Conforming and technical amendments.
Sec. 121. Insurance of mortgages.
Sec. 122. Home equity conversion mortgages.
Sec. 123. Energy efficient mortgages program.
Sec. 124. Pilot program for automated process for borrowers without sufficient credit history.
Sec. 125. Homeownership preservation.
Sec. 126. Use of FHA savings for improvements in FHA technologies, procedures, processes, program performance, staffing, and salaries.
Sec. 127. Post-purchase housing counseling eligibility improvements.
Sec. 128. Pre-purchase homeownership counseling demonstration.
Sec. 129. Fraud prevention.
Sec. 130. Limitation on mortgage insurance premium increases.
Sec. 131. Savings provision.
Sec. 132. Implementation.
Sec. 133. Moratorium on implementation of risk-based premiums.

Subtitle B—Manufactured Housing Loan Modernization

Sec. 141. Short title.
Sec. 142. Purposes.
Sec. 143. Exception to limitation on financial institution portfolio.
Sec. 144. Insurance benefits.
Sec. 145. Maximum loan limits.
Sec. 146. Insurance premiums.
Sec. 147. Technical corrections.
Sec. 148. Revision of underwriting criteria.
Sec. 149. Prohibition against kickbacks and unearned fees.
Sec. 150. Leasehold requirements.

TITLE II—MORTGAGE FORECLOSURE PROTECTIONS FOR SERVICEMEMBERS

Sec. 201. Temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by the Secretary of Veterans Affairs.
Sec. 202. Counseling on mortgage foreclosures for members of the Armed Forces returning from service abroad.
Sec. 203. Enhancement of protections for servicemembers relating to mortgages and mortgage foreclosures.

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

Sec. 301. Emergency assistance for the redevelopment of abandoned and foreclosed homes.

TITLE IV—HOUSING COUNSELING RESOURCES

Sec. 401. Housing counseling resources.

TITLE V—MORTGAGE DISCLOSURE IMPROVEMENT ACT

Sec. 501. Short title.
Sec. 502. Enhanced mortgage loan disclosures.

TITLE VI—TAX-RELATED PROVISIONS

Sec. 601. Election for 4-year carryback of certain net operating losses and temporary suspension of 90 percent AMT limit.
Sec. 602. Modifications on use of qualified mortgage bonds; temporary increased volume cap for certain housing bonds.
Sec. 603. Credit for certain home purchases.
Sec. 604. Additional standard deduction for real property taxes for nonitemizers.

TITLE VII—EMERGENCY DESIGNATION

Sec. 701. Emergency designation.

TITLE I—FHA MODERNIZATION ACT OF 2008

SEC. 101. SHORT TITLE.

This title may be cited as the ''FHA Modernization Act of 2008''.

Subtitle A—Building American Homeownership

SEC. 111. SHORT TITLE.

This subtitle may be cited as the ''Building American Homeownership Act of 2008''.

SEC. 112. MAXIMUM PRINCIPAL LOAN OBLIGATION.

(a) IN GENERAL.—Paragraph (2) of section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended—

(1) by amending subparagraphs (A) and (B) to read as follows:

''(A) not to exceed the lesser of—

''(i) in the case of a 1-family residence, 110 percent of the median 1-family house price in the area, as determined by the Secretary; and in the case of a 2-, 3-, or 4-family residence, the percentage of such median price that bears the same ratio to such median price as the dollar amount limitation in effect for 2007 under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a 2-, 3-, or 4-family residence, respectively, bears to the dollar amount limitation in effect for 2007 under such section for a 1-family residence; or

''(ii) 132 percent of the dollar amount limitation in effect for 2007 under such section 305(a)(2) for a residence of the applicable size (without regard to any authority to increase such limitations with respect to properties located in Alaska, Guam, Hawaii, or the Virgin Islands), except that each such maximum dollar amount shall be adjusted effective January 1 of each year beginning with 2009, by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recently completed 12-month or 4-quarter period ending before the time of determining such annual adjustment, in an housing price index developed or selected by the Secretary for purposes of adjustments under this clause;

except that the dollar amount limitation in effect under this subparagraph for any size residence for any area may not be less than the greater of: (I) the dollar amount limitation in effect under this section for the area on October 21, 1998; or (II) 65 percent of the dollar amount limitation in effect for 2007 under such section 305(a)(2) for a residence of the applicable size, as such limitation is adjusted by any subsequent percentage adjustments determined under clause (ii) of this subparagraph; and

''(B) not to exceed 100 percent of the appraised value of the property.''; and

(2) in the matter following subparagraph (B), by striking the second sentence (relating to a definition of ''average closing cost'') and all that follows through ''section 3103A(d) of title 38, United States Code.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the expiration of the date described in section 202(a) of the Economic Stimulus Act of 2008 (Public Law 110-185).

SEC. 113. CASH INVESTMENT REQUIREMENT AND PROHIBITION OF SELLER-FUNDED DOWNPAYMENT ASSISTANCE.

Paragraph 9 of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(9)) is amended to read as follows:

''(9) CASH INVESTMENT REQUIREMENT.—

''(A) IN GENERAL.—A mortgage insured under this section shall be executed by a mortgagor who shall have paid, in cash, on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property or such larger amount as the Secretary may determine.

''(B) FAMILY MEMBERS.—For purposes of this paragraph, the Secretary shall consider as cash or its equivalent any amounts borrowed from a family member (as such term is defined in section 201), subject only to the requirements that, in any case in which the repayment of such borrowed amounts is secured by a lien against the property, that—

''(i) such lien shall be subordinate to the mortgage; and

''(ii) the sum of the principal obligation of the mortgage and the obligation secured by such lien may not exceed 100 percent of the appraised value of the property.

''(C) PROHIBITED SOURCES.—In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

''(i) The seller or any other person or entity that financially benefits from the transaction.

''(ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i).''.

SEC. 114. MORTGAGE INSURANCE PREMIUMS.

Section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''or of the General Insurance Fund'' and all that follows through ''section 234(c),,''; and

(2) in subparagraph (A)—

(A) by striking ''2.25 percent'' and inserting ''3 percent''; and

(B) by striking ''2.0 percent'' and inserting ''2.75 percent''.

SEC. 115. REHABILITATION LOANS.

Subsection (k) of section 203 of the National Housing Act (12 U.S.C. 1709(k)) is amended—

(1) in paragraph (1), by striking ''on'' and all that follows through ''1978''; and

(2) in paragraph (5)—

(A) by striking ''General Insurance Fund'' the first place it appears and inserting ''Mutual Mortgage Insurance Fund''; and

(B) in the second sentence, by striking the comma and all that follows through ''General Insurance Fund''.

SEC. 116. DISCRETIONARY ACTION.

The National Housing Act is amended—

(1) in subsection (e) of section 202 (12 U.S.C. 1708(e))—

(A) in paragraph (3)(B), by striking ''section 202(e) of the National Housing Act'' and inserting ''this subsection''; and

(B) by redesignating such subsection as subsection (f);

(2) by striking paragraph (4) of section 203(s) (12 U.S.C. 1709(s)(4)) and inserting the following new paragraph:

''(4) the Secretary of Agriculture;''; and

(3) by transferring subsection (s) of section 203 (as amended by paragraph (2) of this section) to section 202, inserting such subsection after subsection (d) of section 202, and redesignating such subsection as subsection (e).

SEC. 117. INSURANCE OF CONDOMINIUMS.

(a) IN GENERAL.—Section 234 of the National Housing Act (12 U.S.C. 1715y) is amended—

(1) in subsection (c), in the first sentence—

(A) by striking ''and'' before ''(2)''; and

(B) by inserting before the period at the end the following: '', and (3) the project has a blanket mortgage insured by the Secretary under subsection (d)''; and

(2) in subsection (g), by striking '', except that'' and all that follows and inserting a period.

(b) DEFINITION OF MORTGAGE.—Section 201(a) of the National Housing Act (12 U.S.C. 1707(a)) is amended—

(1) before ''a first mortgage'' insert ''(A)'';

(2) by striking ''or on a leasehold (1)'' and inserting ''(B) a first mortgage on a leasehold on real estate (i)'';

(3) by striking ''or (2)'' and inserting '', or (ii)''; and

(4) by inserting before the semicolon the following: '', or (C) a first mortgage given to secure the unpaid purchase price of a fee interest in, or long-term leasehold interest in, real estate consisting of a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project''.

(c) DEFINITION OF REAL ESTATE.—Section 201 of the National Housing Act (12 U.S.C. 1707) is amended by adding at the end the following new subsection:

''(g) The term 'real estate' means land and all natural resources and structures permanently affixed to the land, including residential buildings and stationary manufactured housing. The Secretary may not require, for treatment of any land or other property as real estate for purposes of this title, that such land or property be treated as real estate for purposes of State taxation.''.

SEC. 118. MUTUAL MORTGAGE INSURANCE FUND.

(a) IN GENERAL.—Subsection (a) of section 202 of the National Housing Act (12 U.S.C. 1708(a)) is amended to read as follows:

''(a) MUTUAL MORTGAGE INSURANCE FUND.—

''(1) ESTABLISHMENT.—Subject to the provisions of the Federal Credit Reform Act of 1990, there is hereby created a Mutual Mortgage Insurance Fund (in this title referred to as the 'Fund'), which shall be used by the Secretary to carry out the provisions of this title with respect to mortgages insured under section 203. The Secretary may enter into commitments to guarantee, and may guarantee, such insured mortgages.

''(2) LIMIT ON LOAN GUARANTEES.—The authority of the Secretary to enter into commitments to guarantee such insured mortgages shall be effective for any fiscal year only to the extent that the aggregate original principal loan amount under such mortgages, any part of which is guaranteed, does not exceed the amount specified in appropriations Acts for such fiscal year.

''(3) FIDUCIARY RESPONSIBILITY.—The Secretary has a responsibility to ensure that the Mutual Mortgage Insurance Fund remains financially sound.

''(4) ANNUAL INDEPENDENT ACTUARIAL STUDY.—The Secretary shall provide for an independent actuarial study of the Fund to be conducted annually, which shall analyze the financial position of the Fund. The Secretary shall submit a report annually to the Congress describing the results of such study and assessing the financial status of the Fund. The report shall recommend adjustments to underwriting standards, program participation, or premiums, if necessary, to ensure that the Fund remains financially sound.

''(5) QUARTERLY REPORTS.—During each fiscal year, the Secretary shall submit a report to the Congress for each calendar quarter, which shall specify for mortgages that are obligations of the Fund—

''(A) the cumulative volume of loan guarantee commitments that have been made during such fiscal year through the end of the quarter for which the report is submitted;

''(B) the types of loans insured, categorized by risk;

''(C) any significant changes between actual and projected claim and prepayment activity;

''(D) projected versus actual loss rates; and

''(E) updated projections of the annual subsidy rates to ensure that increases in risk to the Fund are identified and mitigated by adjustments to underwriting standards, program participation, or premiums, and the financial soundness of the Fund is maintained.

The first quarterly report under this paragraph shall be submitted on the last day of the first quarter of fiscal year 2008, or on the last day of the first full calendar quarter following the enactment of the Building American Homeownership Act of 2008, whichever is later.

''(6) ADJUSTMENT OF PREMIUMS.—If, pursuant to the independent actuarial study of the Fund required under paragraph (4), the Secretary determines that the Fund is not meeting the operational goals established under paragraph (7) or there is a substantial probability that the Fund will not maintain its established target subsidy rate, the Secretary may either make programmatic adjustments under this title as necessary to reduce the risk to the Fund, or make appropriate premium adjustments.

''(7) OPERATIONAL GOALS.—The operational goals for the Fund are—

''(A) to minimize the default risk to the Fund and to homeowners by among other actions instituting fraud prevention quality control screening not later than 18 months after the date of enactment of the Building American Homeownership Act of 2008; and

''(B) to meet the housing needs of the borrowers that the single family mortgage insurance program under this title is designed to serve.''.

(b) OBLIGATIONS OF FUND.—The National Housing Act is amended as follows:

(1) HOMEOWNERSHIP VOUCHER PROGRAM MORTGAGES.—In section 203(v) (12 U.S.C. 1709(v))—

(A) by striking ''Notwithstanding section 202 of this title, the'' and inserting ''The''; and

(B) by striking ''General Insurance Fund'' the first place such term appears and all that follows through the end of the subsection and inserting ''Mutual Mortgage Insurance Fund.''.

(2) HOME EQUITY CONVERSION MORTGAGES.—Section 255(i)(2)(A) of the National Housing Act (12 U.S.C. 1715z–20(i)(2)(A)) is amended by striking ''General Insurance Fund'' and inserting ''Mutual Mortgage Insurance Fund''.

(c) CONFORMING AMENDMENTS.—The National Housing Act is amended—

(1) in section 205 (12 U.S.C. 1711), by striking subsections (g) and (h); and

(2) in section 519(e) (12 U.S.C. 1735c(e)), by striking ''203(b)'' and all that follows through ''203(i)'' and inserting ''203, except as determined by the Secretary''.

SEC. 119. HAWAIIAN HOME LANDS AND INDIAN RESERVATIONS.

(a) HAWAIIAN HOME LANDS.—Section 247(c) of the National Housing Act (12 U.S.C. 1715z–12(c)) is amended—

(1) by striking ''General Insurance Fund established in section 519'' and inserting ''Mutual Mortgage Insurance Fund''; and

(2) in the second sentence, by striking ''(1) all references'' and all that follows through ''and (2)''.

(b) INDIAN RESERVATIONS.—Section 248(f) of the National Housing Act (12 U.S.C. 1715z–13(f)) is amended—

(1) by striking ''General Insurance Fund'' the first place it appears through ''519'' and inserting ''Mutual Mortgage Insurance Fund''; and

(2) in the second sentence, by striking ''(1) all references'' and all that follows through ''and (2)''.

SEC. 120. CONFORMING AND TECHNICAL AMENDMENTS.

(a) REPEALS.—The following provisions of the National Housing Act are repealed:

(1) Subsection (i) of section 203 (12 U.S.C. 1709(i)).

(2) Subsection (o) of section 203 (12 U.S.C. 1709(o)).

(3) Subsection (p) of section 203 (12 U.S.C. 1709(p)).

(4) Subsection (q) of section 203 (12 U.S.C. 1709(q)).

(5) Section 222 (12 U.S.C. 1715m).

(6) Section 237 (12 U.S.C. 1715z–2).

(7) Section 245 (12 U.S.C. 1715z–10).

(b) DEFINITION OF AREA.—Section 203(u)(2)(A) of the National Housing Act (12 U.S.C. 1709(u)(2)(A)) is amended by striking ''shall'' and all that follows and inserting

''means a metropolitan statistical area as established by the Office of Management and Budget;''.

(c) DEFINITION OF STATE.—Section 201(d) of the National Housing Act (12 U.S.C. 1707(d)) is amended by striking ''the Trust Territory of the Pacific Islands'' and inserting ''the Commonwealth of the Northern Mariana Islands''.

SEC. 121. INSURANCE OF MORTGAGES.

Subsection (n)(2) of section 203 of the National Housing Act (12 U.S.C. 1709(n)(2)) is amended—

(1) in subparagraph (A), by inserting ''or subordinate mortgage or'' before ''lien given''; and

(2) in subparagraph (C), by inserting ''or subordinate mortgage or'' before ''lien''.

SEC. 122. HOME EQUITY CONVERSION MORTGAGES.

(a) IN GENERAL.—Section 255 of the National Housing Act (12 U.S.C. 1715z–20) is amended—

(1) in subsection (b)(2), insert '' 'real estate,' '' after '' 'mortgagor','';

(2) in subsection (g), by striking ''established under section 203(b)(2)'' and all that follows through ''located'' and inserting ''limitation established under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence'';

(3) in subsection (i)(1)(C), by striking ''limitations'' and inserting ''limitation''; and

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

''(o) AUTHORITY TO INSURE HOME PURCHASE MORTGAGE.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary may insure, upon application by a mortgagee, a home equity conversion mortgage upon such terms and conditions as the Secretary may prescribe, when the home equity conversion mortgage will be used to purchase a 1- to 4-family dwelling unit, one unit of which that the mortgagor will occupy as a primary residence, and to provide for any future payments to the mortgagor, based on available equity, as authorized under subsection (d)(9).

''(2) LIMITATION ON PRINCIPAL OBLIGATION.—A home equity conversion mortgage insured pursuant to paragraph (1) shall involve a principal obligation that does not exceed the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence.''.

(b) MORTGAGES FOR COOPERATIVES.—Subsection (b) of section 255 of the National Housing Act (12 U.S.C. 1715z–20(b)) is amended—

(1) in paragraph (4)—

(A) by inserting ''a first or subordinate mortgage or lien'' before ''on all stock'';

(B) by inserting ''unit'' after ''dwelling''; and

(C) by inserting ''a first mortgage or first lien'' before ''on a leasehold''; and

(2) in paragraph (5), by inserting ''a first or subordinate lien on'' before ''all stock''.

(c) LIMITATION ON ORIGINATION FEES.—Section 255 of the National Housing Act (12 U.S.C. 1715z–20), as amended by the preceding provisions of this section, is further amended—

(1) by redesignating subsections (k), (l), and (m) as subsections (l), (m), and (n), respectively; and

(2) by inserting after subsection (j) the following new subsection:

''(k) LIMITATION ON ORIGINATION FEES.—The Secretary shall establish limits on the origination fee that may be charged to a mortgagor under a mortgage insured under this section, which limitations shall—

''(1) equal 1.5 percent of the maximum claim amount of the mortgage unless adjusted thereafter on the basis of—

''(A) the costs to the mortgagor; and

''(B) the impact of such fees on the reverse mortgage market;

''(2) be subject to a minimum allowable amount;

''(3) provide that the origination fee may be fully financed with the mortgage;

''(4) include any fees paid to correspondent mortgagees approved by the Secretary; and

''(5) have the same effective date as subsection (o)(2) regarding the limitation on principal obligation.''.

(d) STUDY REGARDING PROGRAM COSTS AND CREDIT AVAILABILITY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the costs and availability of credit under the home equity conversion mortgages for elderly homeowners program under section 255 of the National Housing Act (12 U.S.C. 1715z–20) (in this subsection referred to as the ''program'').

(2) PURPOSE.—The purpose of the study required under paragraph (1) is to help Congress analyze and determine the effects of limiting the amounts of the costs or fees under the program from the amounts charged under the program as of the date of the enactment of this title.

(3) CONTENT OF REPORT.—The study required under paragraph (1) should focus on—

(A) the cost to mortgagors of participating in the program;

(B) the financial soundness of the program;

(C) the availability of credit under the program; and

(D) the costs to elderly homeowners participating in the program, including—

(i) mortgage insurance premiums charged under the program;

(ii) up-front fees charged under the program; and

(iii) margin rates charged under the program.

(4) TIMING OF REPORT.—Not later than 12 months after the date of the enactment of this title, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives setting forth the results and conclusions of the study required under paragraph (1).

SEC. 123. ENERGY EFFICIENT MORTGAGES PROGRAM.

Section 106(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 12712 note) is amended—

(1) by amending subparagraph (C) to read as follows:

''(C) COSTS OF IMPROVEMENTS.—The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

''(i) 5 percent of the property value (not to exceed 5 percent of the limit established under section 203(b)(2)(A)) of the National Housing Act (12 U.S.C. 1709(b)(2)(A); or

''(ii) 2 percent of the limit established under section 203(b)(2)(B) of such Act.''; and

(2) by adding at the end the following:

''(D) LIMITATION.—In any fiscal year, the aggregate number of mortgages insured pursuant to this section may not exceed 5 percent of the aggregate number of mortgages for 1- to 4-family residences insured by the Secretary of Housing and Urban Development under title II of the National Housing Act (12 U.S.C. 1707 et seq.) during the preceding fiscal year.''.

SEC. 124. PILOT PROGRAM FOR AUTOMATED PROCESS FOR BORROWERS WITHOUT SUFFICIENT CREDIT HISTORY.

(a) ESTABLISHMENT.—Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end the following new section:

''SEC. 257. PILOT PROGRAM FOR AUTOMATED PROCESS FOR BORROWERS WITHOUT SUFFICIENT CREDIT HISTORY.

''(a) ESTABLISHMENT.—The Secretary shall carry out a pilot program to establish, and make available to mortgagees, an automated process for providing alternative credit rating information for mortgagors and prospective mortgagors under mortgages on 1- to 4-family residences to be insured under this title who have insufficient credit histories for determining their creditworthiness. Such alternative credit rating information may include rent, utilities, and insurance payment histories, and such other information as the Secretary considers appropriate.

''(b) SCOPE.—The Secretary may carry out the pilot program under this section on a limited basis or scope, and may consider limiting the program to first-time homebuyers.

''(c) LIMITATION.—In any fiscal year, the aggregate number of mortgages insured pursuant to the automated process established under this section may not exceed 5 percent of the aggregate number of mortgages for 1- to 4-family residences insured by the Secretary under this title during the preceding fiscal year.

''(d) SUNSET.—After the expiration of the 5-year period beginning on the date of the enactment of the Building American Homeownership Act of 2008, the Secretary may not enter into any new commitment to insure any mortgage, or newly insure any mortgage, pursuant to the automated process established under this section.''.

(b) GAO REPORT.—Not later than the expiration of the two-year period beginning on the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Congress a report identifying the number of additional mortgagors served using the automated process established pursuant to section 257 of the National Housing Act (as added by the amendment made by subsection (a) of this section) and the impact of such process and the insurance of mortgages pursuant to such process on the safety and soundness of the insurance funds under the National Housing Act of which such mortgages are obligations.

SEC. 125. HOMEOWNERSHIP PRESERVATION.

The Secretary of Housing and Urban Development and the Commissioner of the Federal Housing Administration, in consultation with industry, the Neighborhood Reinvestment Corporation, and other entities involved in foreclosure prevention activities, shall—

(1) develop and implement a plan to improve the Federal Housing Administration's loss mitigation process; and

(2) report such plan to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 126. USE OF FHA SAVINGS FOR IMPROVEMENTS IN FHA TECHNOLOGIES, PROCEDURES, PROCESSES, PROGRAM PERFORMANCE, STAFFING, AND SALARIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2009 through 2013, $25,000,000, from negative credit subsidy for the mortgage insurance programs under title II of the National Housing Act, to the Secretary of Housing and Urban Development for increasing funding for the purpose of improving technology, processes, program performance, eliminating fraud, and for providing appropriate staffing in connection with the mortgage insurance programs under title II of the National Housing Act.

(b) CERTIFICATION.—The authorization under subsection (a) shall not be effective for a fiscal year unless the Secretary of Housing and Urban Development has, by rulemaking

in accordance with section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section), made a determination that—

(1) premiums being, or to be, charged during such fiscal year for mortgage insurance under title II of the National Housing Act are established at the minimum amount sufficient to—

(A) comply with the requirements of section 205(f) of such Act (relating to required capital ratio for the Mutual Mortgage Insurance Fund); and

(B) ensure the safety and soundness of the other mortgage insurance funds under such Act; and

(2) any negative credit subsidy for such fiscal year resulting from such mortgage insurance programs adequately ensures the efficient delivery and availability of such programs.

(c) STUDY AND REPORT.—The Secretary of Housing and Urban Development shall conduct a study to obtain recommendations from participants in the private residential (both single family and multifamily) mortgage lending business and the secondary market for such mortgages on how best to update and upgrade processes and technologies for the mortgage insurance programs under title II of the National Housing Act so that the procedures for originating, insuring, and servicing of such mortgages conform with those customarily used by secondary market purchasers of residential mortgage loans. Not later than the expiration of the 12-month period beginning on the date of the enactment of this title, the Secretary shall submit a report to the Congress describing the progress made and to be made toward updating and upgrading such processes and technology, and providing appropriate staffing for such mortgage insurance programs.

SEC. 127. POST-PURCHASE HOUSING COUNSELING ELIGIBILITY IMPROVEMENTS.

Section 106(c)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(4)) is amended:

(1) in subparagraph (C)—

(A) in clause (i), by striking ''; or'' and inserting a semicolon;

(B) in clause (ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(iii) a significant reduction in the income of the household due to divorce or death; or

''(iv) a significant increase in basic expenses of the homeowner or an immediate family member of the homeowner (including the spouse, child, or parent for whom the homeowner provides substantial care or financial assistance) due to—

''(I) an unexpected or significant increase in medical expenses;

''(II) a divorce;

''(III) unexpected and significant damage to the property, the repair of which will not be covered by private or public insurance; or

''(IV) a large property-tax increase; or'';

(2) by striking the matter that follows subparagraph (C); and

(3) by adding at the end the following:

''(D) the Secretary of Housing and Urban Development determines that the annual income of the homeowner is no greater than the annual income established by the Secretary as being of low- or moderate-income.''.

SEC. 128. PRE-PURCHASE HOMEOWNERSHIP COUNSELING DEMONSTRATION.

(a) ESTABLISHMENT OF PROGRAM.—For the period beginning on the date of enactment of this title and ending on the date that is 3 years after such date of enactment, the Secretary of Housing and Urban Development shall establish and conduct a demonstration program to test the effectiveness of alternative forms of pre-purchase homeownership counseling for eligible homebuyers.

(b) FORMS OF COUNSELING.—The Secretary of Housing and Urban Development shall provide to eligible homebuyers pre-purchase homeownership counseling under this section in the form of—

(1) telephone counseling;

(2) individualized in-person counseling;

(3) web-based counseling;

(4) counseling classes; or

(5) any other form or type of counseling that the Secretary may, in his discretion, determine appropriate.

(c) SIZE OF PROGRAM.—The Secretary shall make available the pre-purchase homeownership counseling described in subsection (b) to not more than 3,000 eligible homebuyers in any given year.

(d) INCENTIVE TO PARTICIPATE.—The Secretary of Housing and Urban Development may provide incentives to eligible homebuyers to participate in the demonstration program established under subsection (a). Such incentives may include the reduction of any insurance premium charges owed by the eligible homebuyer to the Secretary.

(e) ELIGIBLE HOMEBUYER DEFINED.—For purposes of this section an ''eligible homebuyer'' means a first-time homebuyer who has been approved for a home loan with a loan-to-value ratio between 97 percent and 98.5 percent.

(f) REPORT TO CONGRESS.—The Secretary of Housing and Urban Development shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representative—

(1) on an annual basis, on the progress and results of the demonstration program established under subsection (a); and

(2) for the period beginning on the date of enactment of this title and ending on the date that is 5 years after such date of enactment, on the payment history and delinquency rates of eligible homebuyers who participated in the demonstration program.

SEC. 129. FRAUD PREVENTION.

Section 1014 of title 18, United States Code, is amended in the first sentence—

(1) by inserting ''the Federal Housing Administration'' before ''the Farm Credit Administration''; and

(2) by striking ''commitment, or loan'' and inserting ''commitment, loan, or insurance agreement or application for insurance or a guarantee''.

SEC. 130. LIMITATION ON MORTGAGE INSURANCE PREMIUM INCREASES.

(a) IN GENERAL.—Notwithstanding any other provision of law, including any provision of this title and any amendment made by this title—

(1) for the period beginning on the date of the enactment of this title and ending on October 1, 2009, the premiums charged for mortgage insurance under multifamily housing programs under the National Housing Act may not be increased above the premium amounts in effect under such program on October 1, 2006, unless the Secretary of Housing and Urban Development determines that, absent such increase, insurance of additional mortgages under such program would, under the Federal Credit Reform Act of 1990, require the appropriation of new budget authority to cover the costs (as such term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) of such insurance; and

(2) a premium increase pursuant to paragraph (1) may be made only if not less than 30 days prior to such increase taking effect, the Secretary of Housing and Urban Development—

(A) notifies the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of such increase; and

(B) publishes notice of such increase in the Federal Register.

(b) WAIVER.—The Secretary of Housing and Urban Development may waive the 30-day notice requirement under subsection (a)(2), if the Secretary determines that waiting 30-days before increasing premiums would cause substantial damage to the solvency of multifamily housing programs under the National Housing Act.

SEC. 131. SAVINGS PROVISION.

Any mortgage insured under title II of the National Housing Act before the date of enactment of this subtitle shall continue to be governed by the laws, regulations, orders, and terms and conditions to which it was subject on the day before the date of the enactment of this subtitle.

SEC. 132. IMPLEMENTATION.

The Secretary of Housing and Urban Development shall by notice establish any additional requirements that may be necessary to immediately carry out the provisions of this subtitle. The notice shall take effect upon issuance.

SEC. 133. MORATORIUM ON IMPLEMENTATION OF RISK-BASED PREMIUMS.

For the 12-month period beginning on the date of enactment of this title, the Secretary of Housing and Urban Development shall not enact, execute, or take any action to make effective the planned implementation of risk-based premiums, which are designed for mortgage lenders to offer borrowers an FHA-insured product that provides a range of mortgage insurance premium pricing, based on the risk the insurance contract represents, as such planned implementation was set forth in the Notice published in the Federal Register on September 20, 2007 (Vol. 72, No. 182, Page 53872).

Subtitle B—Manufactured Housing Loan Modernization

SEC. 141. SHORT TITLE.

This subtitle may be cited as the ''FHA Manufactured Housing Loan Modernization Act of 2008''.

SEC. 142. PURPOSES.

The purposes of this subtitle are—

(1) to provide adequate funding for FHA-insured manufactured housing loans for low- and moderate-income homebuyers during all economic cycles in the manufactured housing industry;

(2) to modernize the FHA title I insurance program for manufactured housing loans to enhance participation by Ginnie Mae and the private lending markets; and

(3) to adjust the low loan limits for title I manufactured home loan insurance to reflect the increase in costs since such limits were last increased in 1992 and to index the limits to inflation.

SEC. 143. EXCEPTION TO LIMITATION ON FINANCIAL INSTITUTION PORTFOLIO.

The second sentence of section 2(a) of the National Housing Act (12 U.S.C. 1703(a)) is amended—

(1) by striking ''In no case'' and inserting ''Other than in connection with a manufactured home or a lot on which to place such a home (or both), in no case''; and

(2) by striking '': *Provided*, That with'' and inserting ''. With''.

SEC. 144. INSURANCE BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 2 of the National Housing Act (12 U.S.C. 1703(b)), is amended by adding at the end the following new paragraph:

''(8) INSURANCE BENEFITS FOR MANUFACTURED HOUSING LOANS.—Any contract of insurance with respect to loans, advances of

credit, or purchases in connection with a manufactured home or a lot on which to place a manufactured home (or both) for a financial institution that is executed under this title after the date of the enactment of the FHA Manufactured Housing Loan Modernization Act of 2008 by the Secretary shall be conclusive evidence of the eligibility of such financial institution for insurance, and the validity of any contract of insurance so executed shall be incontestable in the hands of the bearer from the date of the execution of such contract, except for fraud or misrepresentation on the part of such institution.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall only apply to loans that are registered or endorsed for insurance after the date of the enactment of this title.

SEC. 145. MAXIMUM LOAN LIMITS.

(a) DOLLAR AMOUNTS.—Paragraph (1) of section 2(b) of the National Housing Act (12 U.S.C. 1703(b)(1)) is amended—

(1) in clause (ii) of subparagraph (A), by striking ''$17,500'' and inserting ''$25,090'';

(2) in subparagraph (C) by striking ''$48,600'' and inserting ''$69,678'';

(3) in subparagraph (D) by striking ''$64,800'' and inserting ''$92,904'';

(4) in subparagraph (E) by striking ''$16,200'' and inserting ''$23,226''; and

(5) by realigning subparagraphs (C), (D), and (E) 2 ems to the left so that the left margins of such subparagraphs are aligned with the margins of subparagraphs (A) and (B).

(b) ANNUAL INDEXING.—Subsection (b) of section 2 of the National Housing Act (12 U.S.C. 1703(b)), as amended by the preceding provisions of this title, is further amended by adding at the end the following new paragraph:

''(9) ANNUAL INDEXING OF MANUFACTURED HOUSING LOANS.—The Secretary shall develop a method of indexing in order to annually adjust the loan limits established in subparagraphs (A)(ii), (C), (D), and (E) of this subsection. Such index shall be based on the manufactured housing price data collected by the United States Census Bureau. The Secretary shall establish such index no later than 1 year after the date of the enactment of the FHA Manufactured Housing Loan Modernization Act of 2008.''

(c) TECHNICAL AND CONFORMING CHANGES.—Paragraph (1) of section 2(b) of the National Housing Act (12 U.S.C. 1703(b)(1)) is amended—

(1) by striking ''No'' and inserting ''Except as provided in the last sentence of this paragraph, no''; and

(2) by adding after and below subparagraph (G) the following:

''The Secretary shall, by regulation, annually increase the dollar amount limitations in subparagraphs (A)(ii), (C), (D), and (E) (as such limitations may have been previously adjusted under this sentence) in accordance with the index established pursuant to paragraph (9).''.

SEC. 146. INSURANCE PREMIUMS.

Subsection (f) of section 2 of the National Housing Act (12 U.S.C. 1703(f)) is amended—

(1) by inserting ''(1) PREMIUM CHARGES.—'' after ''(f)''; and

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

''(2) MANUFACTURED HOME LOANS.—Notwithstanding paragraph (1), in the case of a loan, advance of credit, or purchase in connection with a manufactured home or a lot on which to place such a home (or both), the premium charge for the insurance granted under this section shall be paid by the borrower under the loan or advance of credit, as follows:

''(A) At the time of the making of the loan, advance of credit, or purchase, a single premium payment in an amount not to exceed 2.25 percent of the amount of the original insured principal obligation.

''(B) In addition to the premium under subparagraph (A), annual premium payments during the term of the loan, advance, or obligation purchased in an amount not exceeding 1.0 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).

''(C) Premium charges under this paragraph shall be established in amounts that are sufficient, but do not exceed the minimum amounts necessary, to maintain a negative credit subsidy for the program under this section for insurance of loans, advances of credit, or purchases in connection with a manufactured home or a lot on which to place such a home (or both), as determined based upon risk to the Federal Government under existing underwriting requirements.

''(D) The Secretary may increase the limitations on premium payments to percentages above those set forth in subparagraphs (A) and (B), but only if necessary, and not in excess of the minimum increase necessary, to maintain a negative credit subsidy as described in subparagraph (C).''.

SEC. 147. TECHNICAL CORRECTIONS.

(a) DATES.—Subsection (a) of section 2 of the National Housing Act (12 U.S.C. 1703(a)) is amended—

(1) by striking ''on and after July 1, 1939,'' each place such term appears; and

(2) by striking ''made after the effective date of the Housing Act of 1954''.

(b) AUTHORITY OF SECRETARY.—Subsection (c) of section 2 of the National Housing Act (12 U.S.C. 1703(c)) is amended to read as follows:

''(c) HANDLING AND DISPOSAL OF PROPERTY.—

''(1) AUTHORITY OF SECRETARY.—Notwithstanding any other provision of law, the Secretary may—

''(A) deal with, complete, rent, renovate, modernize, insure, or assign or sell at public or private sale, or otherwise dispose of, for cash or credit in the Secretary's discretion, and upon such terms and conditions and for such consideration as the Secretary shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by the Secretary, in connection with the payment of insurance heretofore or hereafter granted under this title, including any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of insurance heretofore or hereafter granted under this section; and

''(B) pursue to final collection, by way of compromise or otherwise, all claims assigned to or held by the Secretary and all legal or equitable rights accruing to the Secretary in connection with the payment of such insurance, including unpaid insurance premiums owed in connection with insurance made available by this title.

''(2) ADVERTISEMENTS FOR PROPOSALS.—Section 3709 of the Revised Statutes shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $25,000.

''(3) DELEGATION OF AUTHORITY.—The power to convey and to execute in the name of the Secretary, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein heretofore or hereafter acquired by the Secretary pursuant to the provisions of this title may be exercised by an officer appointed by the Secretary without the execution of any express delegation of power or power of attorney. Nothing in this subsection shall be construed to prevent the Secretary from delegating such power by order or by power of attorney, in the Secretary's discretion, to any officer or agent the Secretary may appoint.''.

SEC. 148. REVISION OF UNDERWRITING CRITERIA.

(a) IN GENERAL.—Subsection (b) of section 2 of the National Housing Act (12 U.S.C. 1703(b)), as amended by the preceding provisions of this title, is further amended by adding at the end the following new paragraph:

''(10) FINANCIAL SOUNDNESS OF MANUFACTURED HOUSING PROGRAM.—The Secretary shall establish such underwriting criteria for loans and advances of credit in connection with a manufactured home or a lot on which to place a manufactured home (or both), including such loans and advances represented by obligations purchased by financial institutions, as may be necessary to ensure that the program under this title for insurance for financial institutions against losses from such loans, advances of credit, and purchases is financially sound.''.

(b) TIMING.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this title, the Secretary of Housing and Urban Development shall revise the existing underwriting criteria for the program referred to in paragraph (10) of section 2(b) of the National Housing Act (as added by subsection (a) of this section) in accordance with the requirements of such paragraph.

SEC. 149. PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES.

Title I of the National Housing Act is amended by adding at the end of section 9 the following new section:

''SEC. 10. PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES.

''(a) IN GENERAL.—Except as provided in subsection (b), the provisions of sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) shall apply to each sale of a manufactured home financed with an FHA-insured loan or extension of credit, as well as to services rendered in connection with such transactions.

''(b) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to determine the manner and extent to which the provisions of sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) may reasonably be applied to the transactions described in subsection (a), and to grant such exemptions as may be necessary to achieve the purposes of this section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) the term 'federally related mortgage loan' as used in sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) shall include an FHA-insured loan or extension of credit made to a borrower for the purpose of purchasing a manufactured home that the borrower intends to occupy as a personal residence; and

''(2) the term 'real estate settlement service' as used in sections 3, 8, 16, 17, 18, and 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) shall include any service rendered in connection with a loan or extension of credit insured by the Federal Housing Administration for the purchase of a manufactured home.

''(d) UNFAIR AND DECEPTIVE PRACTICES.—In connection with the purchase of a manufactured home financed with a loan or extension

of credit insured by the Federal Housing Administration under this title, the Secretary shall prohibit acts or practices in connection with loans or extensions of credit that the Secretary finds to be unfair, deceptive, or otherwise not in the interests of the borrower.''.

SEC. 150. LEASEHOLD REQUIREMENTS.

Subsection (b) of section 2 of the National Housing Act (12 U.S.C. 1703(b)), as amended by the preceding provisions of this title, is further amended by adding at the end the following new paragraph:

''(11) LEASEHOLD REQUIREMENTS.—No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it, made for the purposes of financing a manufactured home which is intended to be situated in a manufactured home community pursuant to a lease, unless such lease—

''(A) expires not less than 3 years after the origination date of the obligation;

''(B) is renewable upon the expiration of the original 3 year term by successive 1 year terms; and

''(C) requires the lessor to provide the lessee written notice of termination of the lease not less than 180 days prior to the expiration of the current lease term in the event the lessee is required to move due to the closing of the manufactured home community, and further provides that failure to provide such notice to the mortgagor in a timely manner will cause the lease term, at its expiration, to automatically renew for an additional 1 year term.''.

TITLE II—MORTGAGE FORECLOSURE PROTECTIONS FOR SERVICEMEMBERS

SEC. 201. TEMPORARY INCREASE IN MAXIMUM LOAN GUARANTY AMOUNT FOR CERTAIN HOUSING LOANS GUARANTEED BY THE SECRETARY OF VETERANS AFFAIRS.

Notwithstanding subparagraph (C) of section 3703(a)(1) of title 38, United States Code, for purposes of any loan described in subparagraph (A)(i)(IV) of such section that is originated during the period beginning on the date of the enactment of this Act and ending on December 31, 2008, the term ''maximum guaranty amount'' shall mean an amount equal to 25 percent of the higher of—

(1) the limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for the calendar year in which the loan is originated for a single-family residence; or

(2) 125 percent of the area median price for a single-family residence, but in no case to exceed 175 percent of the limitation determined under such section 305(a)(2) for the calendar year in which the loan is originated for a single-family residence.

SEC. 202. COUNSELING ON MORTGAGE FORECLOSURES FOR MEMBERS OF THE ARMED FORCES RETURNING FROM SERVICE ABROAD.

(a) IN GENERAL.—The Secretary of Defense shall develop and implement a program to advise members of the Armed Forces (including members of the National Guard and Reserve) who are returning from service on active duty abroad (including service in Operation Iraqi Freedom and Operation Enduring Freedom) on actions to be taken by such members to prevent or forestall mortgage foreclosures.

(b) ELEMENTS.—The program required by subsection (a) shall include the following:

(1) Credit counseling.

(2) Home mortgage counseling.

(3) Such other counseling and information as the Secretary considers appropriate for purposes of the program.

(c) TIMING OF PROVISION OF COUNSELING.—Counseling and other information under the program required by subsection (a) shall be provided to a member of the Armed Forces covered by the program as soon as practicable after the return of the member from service as described in subsection (a).

SEC. 203. ENHANCEMENT OF PROTECTIONS FOR SERVICEMEMBERS RELATING TO MORTGAGES AND MORTGAGE FORECLOSURES.

(a) EXTENSION OF PERIOD OF PROTECTIONS AGAINST MORTGAGE FORECLOSURES.—

(1) EXTENSION OF PROTECTION PERIOD.—Subsection (c) of section 303 of the Servicemembers Civil Relief Act (50 U.S.C. App. 533) is amended by striking ''90 days'' and inserting ''9 months''.

(2) EXTENSION OF STAY OF PROCEEDINGS PERIOD.—Subsection (b) of such section is amended by striking ''90 days'' and inserting ''9 months''.

(b) TREATMENT OF MORTGAGES AS OBLIGATIONS SUBJECT TO INTEREST RATE LIMITATION.—Section 207 of the Servicemembers Civil Relief Act (50 U.S.C. App. 527) is amended—

(1) in subsection (a)(1), by striking ''in excess of 6 percent'' and all that follows and inserting ''in excess of 6 percent—

''(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

''(B) during the period of military service, in the case of any other obligation or liability.''; and

(2) by striking subsection (d) and inserting the following new subsection:

''(d) DEFINITIONS.—In this section:

''(1) INTEREST.—The term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

''(2) OBLIGATION OR LIABILITY.—The term 'obligation or liability' includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.''.

(c) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) SUNSET.—The amendments made by subsection (a) shall expire on December 31, 2010. Effective January 1, 2011, the provisions of subsections (b) and (c) of section 303 of the Servicemembers Civil Relief Act, as in effect on the day before the date of the enactment of this Act, are hereby revived.

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

SEC. 301. EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES.

(a) DIRECT APPROPRIATIONS.—There are appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year 2008, $4,000,000,000, to remain available until expended, for assistance to States and units of general local government (as such terms are defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) for the redevelopment of abandoned and foreclosed upon homes and residential properties.

(b) ALLOCATION OF APPROPRIATED AMOUNTS.—

(1) IN GENERAL.—The amounts appropriated or otherwise made available to States and units of general local government under this section shall be allocated based on a funding formula established by the Secretary of Housing and Urban Development (in this title referred to as the ''Secretary'').

(2) FORMULA TO BE DEVISED SWIFTLY.—The funding formula required under paragraph (1) shall be established not later than 60 days after the date of enactment of this section.

(3) CRITERIA.—The funding formula required under paragraph (1) shall ensure that any amounts appropriated or otherwise made available under this section are allocated to States and units of general local government with the greatest need, as such need is determined in the discretion of the Secretary based on—

(A) the number and percentage of home foreclosures in each State or unit of general local government;

(B) the number and percentage of homes financed by a subprime mortgage related loan in each State or unit of general local government; and

(C) the number and percentage of homes in default or delinquency in each State or unit of general local government.

(4) DISTRIBUTION.—Amounts appropriated or otherwise made available under this section shall be distributed according to the funding formula established by the Secretary under paragraph (1) not later than 30 days after the establishment of such formula.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Any State or unit of general local government that receives amounts pursuant to this section shall, not later than 18 months after the receipt of such amounts, use such amounts to purchase and redevelop abandoned and foreclosed homes and residential properties.

(2) PRIORITY.—Any State or unit of general local government that receives amounts pursuant to this section shall in distributing such amounts give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, including those—

(A) with the greatest percentage of home foreclosures;

(B) with the highest percentage of homes financed by a subprime mortgage related loan; and

(C) identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures.

(3) ELIGIBLE USES.—Amounts made available under this section may be used to—

(A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;

(B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;

(C) establish land banks for homes that have been foreclosed upon; and

(D) demolish blighted structures.

(d) LIMITATIONS.—

(1) ON PURCHASES.—Any purchase of a foreclosed upon home or residential property under this section shall be at a discount from the current market appraised value of the home or property, taking into account its current condition, and such discount shall ensure that purchasers are paying below-market value for the home or property.

(2) SALE OF HOMES.—If an abandoned or foreclosed upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition.

(3) REINVESTMENT OF PROFITS.—

(A) REVENUES GENERATED FROM SALES.—Any revenue generated from the sale, rental,

redevelopment, rehabilitation, or any other eligible use that is in excess of the cost to acquire and redevelop (including reasonable development fees) or rehabilitate an abandoned or foreclosed upon home or residential property shall be provided to and used by the State or unit of general local government in accordance with, and in furtherance of, the intent and provisions of this section.

(B) OTHER REVENUES.—Any revenue generated under subparagraphs (A), (C) or (D) of subsection (c)(3) shall be provided to and used by the State or unit of general local government in accordance with, and in furtherance of, the intent and provisions of this section.

(e) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—Except as otherwise provided by this section, amounts appropriated, revenues generated, or amounts otherwise made available to States and units of general local government under this section shall be treated as though such funds were community development block grant funds under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

(2) NO MATCH.—No matching funds shall be required in order for a State or unit of general local government to receive any amounts under this section.

(f) AUTHORITY TO SPECIFY ALTERNATIVE REQUIREMENTS.—

(1) IN GENERAL.—In administering any amounts appropriated or otherwise made available under this section, the Secretary may specify alternative requirements to any provision under title I of the Housing and Community Development Act of 1974 (except for those related to fair housing, nondiscrimination, labor standards, and the environment) in accordance with the terms of this section and for the sole purpose of expediting the use of such funds.

(2) NOTICE.—The Secretary shall provide written notice of its intent to exercise the authority to specify alternative requirements under paragraph (1) to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 10 business days before such exercise of authority is to occur.

(3) LOW AND MODERATE INCOME REQUIREMENT.—

(A) IN GENERAL.—Notwithstanding the authority of the Secretary under paragraph (1)—

(i) all of the funds appropriated or otherwise made available under this section shall be used with respect to individuals and families whose income does not exceed 120 percent of area median income; and

(ii) not less than 25 percent of the funds appropriated or otherwise made available under this section shall be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income.

(B) RECURRENT REQUIREMENT.—The Secretary shall, by rule or order, ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed upon homes and residential properties under this section remain affordable to individuals or families described in subparagraph (A).

(g) PERIODIC AUDITS.—In consultation with the Secretary of Housing and Urban Development, the Comptroller General of the United States shall conduct periodic audits to ensure that funds appropriated, made available, or otherwise distributed under this section are being used in a manner consistent with the criteria provided in this section.

TITLE IV—HOUSING COUNSELING RESOURCES

SEC. 401. HOUSING COUNSELING RESOURCES.

There are appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year 2008, for an additional amount for the ''Neighborhood Reinvestment Corporation—Payment to the Neighborhood Reinvestment Corporation'' $100,000,000, to remain available until September 30, 2008, for foreclosure mitigation activities under the terms and conditions contained in the second undesignated paragraph (beginning with the phrase ''For an additional amount'') under the heading ''Neighborhood Reinvestment Corporation—Payment to the Neighborhood Reinvestment Corporation'' of Public Law 110–161.

TITLE V—MORTGAGE DISCLOSURE IMPROVEMENT ACT

SEC. 501. SHORT TITLE.

This title may be cited as the ''Mortgage Disclosure Improvement Act of 2008''.

SEC. 502. ENHANCED MORTGAGE LOAN DISCLOSURES.

(a) TRUTH IN LENDING ACT DISCLOSURES.—Section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)) is amended—

(1) by inserting ''(A)'' before ''In the'';

(2) by striking ''a residential mortgage transaction, as defined in section 103(w)'' and inserting ''any extension of credit that is secured by the dwelling of a consumer'';

(3) by striking ''shall be made in accordance'' and all that follows through ''extended, or''; and

(4) by striking ''If the'' and all that follows through the end of the paragraph and inserting the following:

''(B) In the case of an extension of credit that is secured by the dwelling of a consumer, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall—

''(i) state in conspicuous type size and format, the following: 'You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'; and

''(ii) be furnished to the borrower not later than 7 business days before the date of consummation of the transaction, and at the time of consummation of the transaction, subject to subparagraph (D).

''(C) In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall do the following:

''(i) Label the payment schedule as follows: 'Payment Schedule: Payments Will Vary Based on Interest Rate Changes'.

''(ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Board. Prior to issuing any rules pursuant to this clause, the Board shall conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood.

''(D) In any case in which the disclosure statement provided 7 business days before the date of consummation of the transaction contains an annual percentage rate of interest that is no longer accurate, as determined under section 107(c), the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction. A consumer may modify or waive receipt of the additional, corrected statement 3 business days before the date of consummation of the transaction in order to meet a bona fide personal financial emergency, only if the consumer provides the creditor a dated, written statement that—

''(i) describes the emergency;

''(ii) specifically modifies or waives the right; and

''(iii) bears the signature of all the consumers entitled to receive the disclosure.

''(E) The consumer shall receive the disclosures required under this subsection before paying any fee to the creditor or other person in connection with the consumer's application for a residential mortgage transaction. If the disclosures are mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this subsection, provided the fee is bona fide and reasonable in amount.''.

(b) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) in paragraph (2)(A)(iii), by striking ''not less than $200 or greater than $2,000'' and inserting ''not less than $400 or greater than $4,000''; and

(2) in the penultimate sentence of the undesignated matter following paragraph (4)—

(A) by inserting ''or section 128(b)(2)(C)(ii),''after ''128(a),''; and

(B) by inserting ''or section 128(b)(2)(C)(ii)'' before the period.

TITLE VI—TAX-RELATED PROVISIONS

SEC. 601. ELECTION FOR 4-YEAR CARRYBACK OF CERTAIN NET OPERATING LOSSES AND TEMPORARY SUSPENSION OF 90 PERCENT AMT LIMIT.

(a) IN GENERAL.—

(1) 4-YEAR CARRYBACK OF CERTAIN LOSSES.—Subparagraph (H) of section 172(b)(1) of the Internal Revenue Code of 1986 (relating to years to which loss may be carried) is amended to read as follows:

''(H) ADDITIONAL CARRYBACK OF CERTAIN LOSSES.—

''(i) TAXABLE YEARS ENDING DURING 2001 AND 2002.—In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting '5' for '2' and subparagraph (F) shall not apply.

''(ii) TAXABLE YEARS ENDING DURING 2008 AND 2009.—In the case of a net operating loss with respect to any eligible taxpayer (within the meaning of section 168(k)(4)) for any taxable year ending during 2008 or 2009—

''(I) subparagraph (A)(i) shall be applied by substituting '4' for '2',

''(II) subparagraph (E)(ii) shall be applied by substituting '3' for '2', and

''(III) subparagraph (F) shall not apply.''.

(2) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT ON CERTAIN NOL CARRYBACKS AND CARRYOVERS.—

(A) IN GENERAL.—Section 56(d) of the Internal Revenue Code of 1986 (relating to definition of alternative tax net operating loss deduction) is amended by adding at the end the following new paragraph:

''(3) ADDITIONAL ADJUSTMENTS.—For purposes of paragraph (1)(A), in the case of an eligible taxpayer (within the meaning of section 168(k)(4)), the amount described in subclause (I) of paragraph (1)(A)(ii) shall be increased by the amount of the net operating

loss deduction allowable for the taxable year under section 172 attributable to the sum of—

''(A) carrybacks of net operating losses from taxable years ending during 2008 and 2009, and

''(B) carryovers of net operating losses to taxable years ending during 2008 or 2009.''.

(B) CONFORMING AMENDMENT.—Subclause (I) of section 56(d)(1)(A)(i) of such Code is amended by inserting ''amount of such'' before ''deduction described in clause (ii)(I)''.

(3) EFFECTIVE DATES.—

(A) NET OPERATING LOSSES.—The amendments made by paragraph (1) shall apply to net operating losses arising in taxable years ending in 2008 or 2009.

(B) SUSPENSION OF AMT LIMITATION.—The amendments made by paragraph (2) shall apply to taxable years ending after December 31, 1997.

(4) ANTI-ABUSE RULES.—The Secretary of Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this subsection, including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.

(b) ELECTION AMONG STIMULUS INCENTIVES.—

(1) IN GENERAL.—

(A) BONUS DEPRECIATION.—Section 168(k) of the Internal Revenue Code of 1986 (relating to special allowance for certain property acquired after December 31, 2007, and before January 1, 2009), as amended by the Economic Stimulus Act of 2008, is amended—

(i) in paragraph (1), by inserting ''placed in service by an eligible taxpayer'' after ''any qualified property'', and

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

''(4) ELIGIBLE TAXPAYER.—

''(A) IN GENERAL.—At such time and in such manner as the Secretary shall prescribe, each taxpayer may elect to be an eligible taxpayer with respect to 1 (and only 1) of the following:

''(i) This subsection and section 179(b)(7).

''(ii) The application of section 56(d)(1)(A)(ii)(I) and section 172(b)(1)(H)(ii) in connection with net operating losses relating to taxable years ending during 2008 and 2009.

''(B) ELIGIBLE TAXPAYER.—For purposes of each of the provisions described in subparagraph (A), a taxpayer shall only be treated as an eligible taxpayer with respect to the provision with respect to which the taxpayer made the election under subparagraph (A).

''(C) ELECTION IRREVOCABLE.—An election under subparagraph (A) may not be revoked except with the consent of the Secretary.''.

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect as if included in section 103 of the Economic Stimulus Act of 2008.

(2) ELECTION FOR INCREASED EXPENSING.—

(A) IN GENERAL.—Paragraph (7) of section 179(b) of the Internal Revenue Code of 1986 (relating to limitations), as added by the Economic Stimulus Act of 2008, is amended to read as follows:

''(7) SPECIAL RULE FOR ELIGIBLE TAXPAYERS IN 2008.—In the case of any taxable year of any eligible taxpayer (within the meaning of section 168(k)(4)) beginning in 2008—

''(A) the dollar limitation under paragraph (1) shall be $250,000,

''(B) the dollar limitation under paragraph (2) shall be $800,000, and

''(C) the amounts described in subparagraphs (A) and (B) shall not be adjusted under paragraph (5).''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect as if included in section 102 of the Economic Stimulus Act of 2008.

SEC. 602. MODIFICATIONS ON USE OF QUALIFIED MORTGAGE BONDS; TEMPORARY INCREASED VOLUME CAP FOR CERTAIN HOUSING BONDS.

(a) USE OF QUALIFIED MORTGAGE BONDS PROCEEDS FOR SUBPRIME REFINANCING LOANS.—Section 143(k) of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(12) SPECIAL RULES FOR SUBPRIME REFINANCINGS.—

''(A) IN GENERAL.—Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

''(B) SPECIAL RULES.—In applying this paragraph to any case in which the proceeds of a qualified mortgage issue are used for any refinancing described in subparagraph (A)—

''(i) subsection (a)(2)(D)(i) (relating to proceeds must be used within 42 months of date of issuance) shall be applied by substituting '12-month period' for '42-month period' each place it appears,

''(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

''(iii) subsection (e) (relating to purchase price requirement) shall be applied by using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

''(C) QUALIFIED SUBPRIME LOAN.—The term 'qualified subprime loan' means an adjustable rate single-family residential mortgage loan originated after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

''(D) TERMINATION.—This paragraph shall not apply to any bonds issued after December 31, 2010.''.

(b) INCREASED VOLUME CAP FOR CERTAIN BONDS.—

(1) IN GENERAL.—Subsection (d) of section 146 of the Internal Revenue Code of 1986 (relating to State ceiling) is amended by adding at the end the following new paragraph:

''(5) INCREASE AND SET ASIDE FOR HOUSING BONDS FOR 2008.—

''(A) INCREASE FOR 2008.—In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $10,000,000,000 multiplied by a fraction—

''(i) the numerator of which is the population of such State, and

''(ii) the denominator of which is the total population of all States.

''(B) SET ASIDE.—

''(i) IN GENERAL.—Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified purposes.

''(ii) QUALIFIED PURPOSE.—For purposes of this paragraph, the term 'qualified purpose' means—

''(I) the issuance of exempt facility bonds used solely to provide qualified residential rental projects, or

''(II) a qualified mortgage issue (determined by substituting '12-month period' for '42-month period' each place it appears in section 143(a)(2)(D)(i)).''.

(2) CARRYFORWARD OF UNUSED LIMITATIONS.—Subsection (f) of section 146 of such Code (relating to elective carryforward of unused limitation for specified purpose) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULES FOR INCREASED VOLUME CAP UNDER SUBSECTION (d)(5).—

''(A) IN GENERAL.—No amount which is attributable to the increase under subsection (d)(5) may be used—

''(i) for a carryforward purpose other than a qualified purpose (as defined in subsection (d)(5)), and

''(ii) to issue any bond after calendar year 2010.

''(B) ORDERING RULES.—For purposes of subparagraph (A), any carryforward of an issuing authority's volume cap for calendar year 2008 shall be treated as attributable to such increase to the extent of such increase.''.

(c) ALTERNATIVE MINIMUM TAX EXEMPTION FOR QUALIFIED MORTGAGE BONDS, QUALIFIED VETERANS' MORTGAGE BONDS, AND BONDS FOR QUALIFIED RESIDENTIAL RENTAL PROJECTS.—

(1) IN GENERAL.—Clause (ii) of section 57(a)(5)(C) of the Internal Revenue Code of 1986 (relating to specified private activity bonds) is amended by striking ''shall not include'' and all that follows and inserting ''shall not include—

''(I) any qualified 501(c)(3) bond (as defined in section 145), or

''(II) any qualified mortgage bond (as defined in section 143(a)), any qualified veterans' mortgage bond (as defined in section 143(b)), or any exempt facility bond (as defined in section 142(a)) issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)), but only if such bond is issued after the date of the enactment of this subclause and before January 1, 2011.

Subclause (II) shall not apply to a refunding bond unless such subclause applied to the refunded bond (or in the case of a series of refundings, the original bond).''.

(2) CONFORMING AMENDMENT.—The heading for section 57(a)(5)(C)(ii) of such Code is amended by striking ''QUALIFIED 501(c)(3) BONDS'' and inserting ''CERTAIN BONDS''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 603. CREDIT FOR CERTAIN HOME PURCHASES.

(a) ALLOWANCE OF CREDIT.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

''SEC. 25E. CREDIT FOR CERTAIN HOME PURCHASES.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—In the case of an individual who is a purchaser of a qualified principal residence during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to so much of the purchase price of the residence as does not exceed $7,000.

''(2) ALLOCATION OF CREDIT AMOUNT.—The amount of the credit allowed under paragraph (1) shall be equally divided among the 2 taxable years beginning with the taxable year in which the purchase of the qualified principal residence is made.

''(b) LIMITATIONS.—

''(1) DATE OF PURCHASE.—The credit allowed under subsection (a) shall be allowed only with respect to purchases made—

''(A) after the date of the enactment of this section, and

''(B) before the date that is 12 months after such date.

''(2) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 23) for the taxable year.

''(3) ONE-TIME ONLY.—

''(A) IN GENERAL.—If a credit is allowed under this section in the case of any individual (and such individual's spouse, if married) with respect to the purchase of any qualified principal residence, no credit shall be allowed under this section in any taxable year with respect to the purchase of any other qualified principal residence by such individual or a spouse of such individual.

''(B) JOINT PURCHASE.—In the case of a purchase of a qualified principal residence by 2 or more unmarried individuals or by 2 married individuals filing separately, no credit shall be allowed under this section if a credit under this section has been allowed to any of such individuals in any taxable year with respect to the purchase of any other qualified principal residence.

''(c) QUALIFIED PRINCIPAL RESIDENCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified principal residence' means an eligible single-family residence that is purchased to be the principal residence of the purchaser.

''(2) ELIGIBLE SINGLE-FAMILY RESIDENCE.—

''(A) IN GENERAL.—The term 'eligible single-family residence' means a single-family structure that is a residence—

''(i) upon which foreclosure has been filed pursuant to the laws of the State in which the residence is located, and

''(ii) which—

''(I) is a new previously unoccupied residence for which a building permit was issued and construction began on or before September 1, 2007, or

''(II) was occupied as a principal residence by the mortgagor for at least 1 year prior to the foreclosure filing.

''(B) CERTIFICATION.—In the case of an eligible single-family residence described in subparagraph (A)(ii)(I), no credit shall be allowed under this section unless the purchaser submits a certification by the seller of such residence that such residence meets the requirements of such subparagraph.

''(3) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

''(d) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any purchase for which a credit is allowed under section 1400C.

''(e) RECAPTURE IN THE CASE OF CERTAIN DISPOSITIONS.—In the event that a taxpayer—

''(1) disposes of the qualified principal residence with respect to which a credit is allowed under subsection (a), or

''(2) fails to occupy such residence as the taxpayer's principal residence,

at any time within 24 months after the date on which the taxpayer purchased such residence, then the remaining portion of the credit allowed under subsection (a) shall be disallowed in the taxable year during which such disposition occurred or in which the taxpayer failed to occupy the residence as a principal residence, and in any subsequent taxable year in which the remaining portion of the credit would, but for this subsection, have been allowed.

''(f) SPECIAL RULES.—

''(1) JOINT PURCHASE.—

''(A) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of 2 married individuals filing separately, subsection (a) shall be applied to each such individual by substituting '$3,500' for '$7,000' in paragraph (1) thereof.

''(B) UNMARRIED INDIVIDUALS.—If 2 or more individuals who are not married purchase a qualified principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $7,000.

''(2) PURCHASE; PURCHASE PRICE.—Rules similar to the rules of paragraphs (2) and (3) of section 1400C(e) (as in effect on the date of the enactment of this section) shall apply for purposes of this section.

''(3) REPORTING REQUIREMENT.—Rules similar to the rules of section 1400C(f) (as so in effect) shall apply for purposes of this section.

''(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) of the Internal Revenue Code of 1986 is amended by striking ''and 25B'' and inserting '', 25B, and 25E''.

(2) Section 25(e)(1)(C)(ii) of such Code is amended by inserting ''25E,'' after ''25D,''.

(3) Section 25B(g)(2) of such Code is amended by striking ''section 23'' and inserting ''sections 23 and 25E''.

(4) Section 25D(c)(2) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25E''.

(5) Section 26(a)(1) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25E''.

(6) Section 904(i) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25E''.

(7) Subsection (a) of section 1016 of such Code is amended by striking ''and'' at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting '', and'', and by adding at the end the following new paragraph:

''(38) to the extent provided in section 25E(g).''.

(8) Section 1400C(d)(2) of such Code is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

''Sec. 25E. Credit for certain home purchases.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases in taxable years ending after the date of the enactment of this Act.

(e) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (b)(1) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provisions of such Act to which such amendment relates.

SEC. 604. ADDITIONAL STANDARD DEDUCTION FOR REAL PROPERTY TAXES FOR NONITEMIZERS.

(a) IN GENERAL.—Section 63(c)(1) of the Internal Revenue Code of 1986 (defining standard deduction) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) in the case of any taxable year beginning in 2008, the real property tax deduction.''.

(b) DEFINITION.—Section 63(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(8) REAL PROPERTY TAX DEDUCTION.—

''(A) IN GENERAL.—For purposes of paragraph (1), the real property tax deduction is so much of the amount of the eligible State and local real property taxes paid or accrued by the taxpayer during the taxable year which do not exceed $500 ($1,000 in the case of a joint return).

''(B) ELIGIBLE STATE AND LOCAL REAL PROPERTY TAXES.—For purposes of subparagraph (A), the term 'eligible State and local real property taxes' means State and local real property taxes (within the meaning of section 164), but only if the rate of tax for all residential real property taxes in the jurisdiction has not been increased at any time after April 2, 2008, and before January 1, 2009.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

TITLE VII—EMERGENCY DESIGNATION

SEC. 701. EMERGENCY DESIGNATION.

For purposes of Senate enforcement, all provisions of this Act are designated as emergency requirements and necessary to meet emergency needs pursuant to section 204 of S. Con. Res. 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008.

SA 4388. Mr. DURBIN (for himself, Mr. REID, Mr. OBAMA, Mrs. CLINTON, Mr. WHITEHOUSE, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. MENENDEZ, Mrs. BOXER, Mr. BROWN, Mr. KENNEDY, Mr. HARKIN, Mr. KERRY, Mr. REED, and Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ____—BANKRUPTCY

SEC. ___1. SHORT TITLE.

This title may be cited as the ''Helping Families Save Their Homes in Bankruptcy Act of 2008''.

Subtitle A—Minimizing Foreclosures

SEC. ___21. DEFINITIONS.

Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (40A) and (40B) as paragraphs (40B) and (40C), respectively;

(2) by inserting after paragraph (40) the following:

''(40A) The term 'nontraditional mortgage' means a security interest in the debtor's principal residence that secures a debt for a loan that at any period during the term of the loan provides for the deferral of payment of principal or interest through permitting periodic payments that do not cover the full amount of interest due or that cover only the interest due, except that such term excludes—

''(A) a loan that at any period during the term of the loan provides for the deferral of payment of principal through permitting periodic payments that cover only the interest due, if the creditor demonstrates that it determined in good faith at the time the loan was consummated, after undergoing a

full underwriting process based on verified and documented information, that the debtor had a reasonable ability to repay at the full interest and principal payment amount (assuming an initial 30 year full amortization), and payments under the loan resulted in a debt-to-income ratio of the debtor in an amount equal to or less than that which would have been permitted under guidelines and directives established by the Secretary of Housing and Urban Development pursuant to section 203.33 of title 24, Code of Federal Regulations, for loans subject to such section;

''(B) a home equity line of credit that is in a subordinate lien position; and

''(C) a reverse mortgage.'';

(3) by redesignating paragraphs (53B) through (53D) as paragraphs (53C), (53D), (53E), and (53F), respectively; and

(4) by inserting after paragraph (53A) the following:

''(53B) The term 'subprime mortgage' means a security interest in the debtor's principal residence that secures a debt for a loan that has an annual percentage rate that is greater than—

''(A) the sum of 3 percent plus the yield on United States Treasury securities having comparable periods of maturity, if the loan is secured by a first mortgage or first deed of trust; or

''(B) the sum of 5 percent plus the yield on United States Treasury securities having comparable periods of maturity, if the loan is secured by a subordinate mortgage or subordinate deed of trust.

Without regard to whether such loan is subject to or reportable under the Home Mortgage Disclosure Act, the difference between the annual percentage rate of such loan and the yield on United States Treasury securities having comparable periods of maturity shall be determined using the procedures and calculation methods applicable to loans that are subject to the reporting requirements of such Act, except that such yield shall be determined as of the 15th day of the month preceding the month in which a completed application is submitted for such loan. If such loan provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable interest rate, the determination of the annual percentage rate shall be based on the greater of the introductory rate and the fully indexed rate. For purposes of this paragraph, the term 'fully indexed rate' means the prevailing index rate on a residential mortgage loan at the time at which the loan is made, plus the margin that will apply after the expiration of an introductory interest rate.''.

SEC. ___22. SPECIAL RULES FOR MODIFICATION OF LOANS SECURED BY RESIDENCES.

(a) IN GENERAL.—Section 1322(b) of title 11, United States Code, is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10) the following:

''(11) notwithstanding paragraph (2) and otherwise applicable nonbankruptcy law—

''(A) modify an allowed secured claim for a debt incurred prior to the effective date of this paragraph secured by a nontraditional mortgage, or a subprime mortgage, and any lien subordinate to such claim, on the debtor's principal residence, as described in subparagraph (B), if, after deduction from the debtor's current monthly income of the expenses permitted for debtors described in section 1325(b)(3) of this title (other than amounts contractually due to creditors holding such allowed secured claims and additional payments necessary to maintain possession of that residence), the debtor has insufficient remaining income to retain possession of the residence by curing a default and maintaining payments while the case is pending, as provided under paragraph (5);

''(B) provide for payment of such claim—

''(i) in an amount equal to the amount of the allowed secured claim;

''(ii) for a period that is the longer of 30 years (reduced by the period for which the loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

''(iii) at a rate of interest accruing after such date calculated at a fixed annual percentage rate, in an amount equal to the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as of the applicable time set forth in the rules of the Board, plus a reasonable premium for risk; and

''(C) if a claim has been modified to an amount below the original principal of the loan pursuant to subparagraph (B)(i) and the debtor's principal residence is sold during the term of the plan, the holder of the claim shall be entitled to receive, in addition to the unpaid portion of the allowed secured claim, the net proceeds of the sale, or the amount of the holder's allowed unsecured claim, whichever is less; and''.

(b) CONFORMING AMENDMENT.—Section 1325(a)(5) of title 11, United States Code, is amended by inserting before ''with respect'' the following: ''except as otherwise provided in section 1322(b)(11) of this title,''.

SEC. ___23. WAIVER OF COUNSELING REQUIREMENT WHEN HOMES ARE IN FORECLOSURE.

Section 109(h) of title 11, United States Code, is amended by adding at the end the following:

''(5) Paragraph (1) shall not apply with respect to a debtor who files with the court a certification that a foreclosure sale of the debtor's principal residence has been scheduled.''.

Subtitle B—Providing Other Debtor Protections

SEC. ___41. COMBATING EXCESSIVE FEES.

Section 1322(c) of title 11, the United States Code, is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(3) the plan need not provide for the payment of, and the debtor, the debtor's property, and property of the estate shall not be liable for, any fee, cost, or charge, notwithstanding section 506(b), that arises in connection with a claim secured by the debtor's principal residence if the event that gives rise to such fee, cost, or charge occurs while the case is pending but before the discharge order, except to the extent that—

''(A) notice of such fees, costs or charges is filed with the court, and served on the debtor and the trustee, before the expiration of the earlier of—

''(i) 1 year after the event that gives rise to such fee, cost, or charge occurs; or

''(ii) 60 days before the closing of the case; and

''(B) such fees, costs, or charges are lawful, reasonable, and provided for in the agreement under which such claim or security interest arose;

''(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) of this title or, if the violation occurs before the date of discharge, of section 362(a) of this title; and

''(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the principal residence of the debtor.''.

SEC. ___42. MAINTAINING DEBTORS' LEGAL CLAIMS.

Section 554(e) of title 11, United States Code, is amended by adding at the end the following:

''(e) In any action in State or Federal court with respect to a claim or defense asserted by an individual debtor in such action that was not scheduled under section 521(a)(1) of this title, the trustee shall be allowed a reasonable time to request joinder or substitution as the real party in interest. If the trustee does not request joinder or substitution in such action, the debtor may proceed as the real party in interest, and no such action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest or on the ground that the debtor's claims were not properly scheduled in a case under this title.''.

SEC. ___43. RESOLVING DISPUTES.

Section 1334 of title 28, United States Code, is amended by adding at the end the following: ''Notwithstanding any agreement for arbitration that is subject to chapter 1 of title 9, in any core proceeding under section 157(b) of this title involving an individual debtor whose debts are primarily consumer debts, the court may hear and determine the proceeding, and enter appropriate orders and judgments, in lieu of referral to arbitration.''.

SEC. ___44. ENACTING A HOMESTEAD FLOOR FOR DEBTORS OVER 55 YEARS OF AGE.

(a) IN GENERAL.—Section 522(b)(3) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end and inserting the following:

''(D) if the debtor, as of the date of the filing of the petition, is 55 years old or older, the debtor's aggregate interest, not to exceed $75,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a principal residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a principal residence.''.

(b) EXEMPTION AUTHORITY.—Section 522(d)(1) of title 11, United States Code, is amended by inserting ''or, if the debtor is 55 years of age or older, $75,000 in value,'' before ''in real property''.

SEC. ___45. DISALLOWING CLAIMS FROM VIOLATIONS OF CONSUMER PROTECTION LAWS.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) the claim is subject to any remedy for damages or rescission due to failure to comply with any applicable requirement under the Truth in Lending Act (15 U.S.C. 1601 et seq.), or any other provision of applicable State or Federal consumer protection law that was in force when the noncompliance took place, notwithstanding the prior entry of a foreclosure judgment.''.

SA 4389. Ms. LANDRIEU (for herself, Mr. COCHRAN, Mr. VITTER, and Mr. WICKER) submitted an amendment intended to be proposed by her to the bill

H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end add the following:

TITLE—HURRICANE-RELATED CASUALTY LOSSES

SEC. __01. USE OF AMENDED INCOME TAX RETURNS TO TAKE INTO ACCOUNT RECEIPT OF CERTAIN HURRICANE-RELATED CASUALTY LOSS GRANTS BY DISALLOWING PREVIOUSLY TAKEN CASUALTY LOSS DEDUCTIONS.

Notwithstanding any other provision of the Internal Revenue Code of 1986, if a taxpayer claims a deduction for any taxable year with respect to a casualty loss to a personal residence (within the meaning of section 121 of such Code) resulting from Hurricane Katrina or Hurricane Rita and in a subsequent taxable year receives a grant under Public Law 109-148, 109-234, or 110-116 as reimbursement for such loss from the State of Louisiana or the State of Mississippi, such taxpayer may elect to file an amended income tax return for the taxable year in which such deduction was allowed and disallow such deduction. If elected, such amended return must be filed not later than the due date for filing the tax return for the taxable year in which the taxpayer receives such reimbursement or the date that is 4 months after the date of the enactment of this Act, whichever is later. Any increase in Federal income tax resulting from such disallowance shall not be subject to any penalty or interest under such Code if such amended return is so filed.

TITLE—GO ZONE PROPERTY

SEC. __01. WAIVER OF DEADLINE ON CONSTRUCTION OF GO ZONE PROPERTY ELIGIBLE FOR BONUS DEPRECIATION.

(a) IN GENERAL.—Subparagraph (B) of section 1400N(d)(3) of the Internal Revenue Code of 1986 is amended to read as follows:

''(B) without regard to 'and before January 1, 2009' in clause (i) thereof,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2007.

SA 4390. Mr. HATCH (for himself, Mr. SALAZAR, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end add the following:

TITLE VIII—REIT INVESTMENT DIVERSIFICATION AND EMPOWERMENT

SEC. 800. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the ''REIT Investment Diversification and Empowerment Act of 2008''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Foreign Currency and Other Qualified Activities

SEC. 801. REVISIONS TO REIT INCOME TESTS.

(a) ADDITION OF PERMISSIBLE INCOME CATEGORIES.—Section 856(c) (relating to limitations) is amended—

(1) by striking ''and'' at the end of paragraph (2)(G) and by inserting after paragraph (2)(H) the following new subparagraphs:

''(I) passive foreign exchange gains; and

''(J) any other item of income or gain as determined by the Secretary;'', and

(2) by striking ''and'' at the end of paragraphs (3)(H) and (3)(I) and by inserting after paragraph (3)(I) the following new subparagraphs:

''(J) real estate foreign exchange gains; and

''(K) any other item of income or gain as determined by the Secretary; and''.

(b) RULES REGARDING FOREIGN CURRENCY TRANSACTIONS.—Section 856 (defining real estate investment trust) is amended by adding at the end the following new subsection:

''(n) RULES REGARDING FOREIGN CURRENCY TRANSACTIONS.—With respect to any taxable year—

''(1) REAL ESTATE FOREIGN EXCHANGE GAINS.—For purposes of subsection (c)(3)(J), the term 'real estate foreign exchange gains' means—

''(A) foreign currency gains (as defined in section 988(b)(1)) which are attributable to—

''(i) any item described in subsection (c)(3) (other than in subparagraph (J) thereof),

''(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gains attributable to any item described in clause (i)), or

''(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gains attributable to any item described in clause (i)),

''(B) gains described in section 987 attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

''(i) subsection (c)(3) (without regard to subparagraph (J) thereof) for the taxable year, and

''(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

''(C) any other foreign currency gains as determined by the Secretary.

''(2) PASSIVE FOREIGN EXCHANGE GAINS.—For purposes of subsection (c)(2)(I), the term 'passive foreign exchange gains' means—

''(A) real estate foreign exchange gains,

''(B) foreign currency gains (as defined in section 988(b)(1)) which are not described in subparagraph (A) and which are attributable to any item described in subsection (c)(2) (other than in subparagraph (I) thereof), and

''(C) any other foreign currency gains as determined by the Secretary.''.

(c) ADDITION TO REIT HEDGING RULE.—Subparagraph (G) of section 856(c)(5) is amended to read as follows:

''(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

''(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

''(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item described in paragraph (2) or (3), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).''.

(d) AUTHORITY TO EXCLUDE ITEMS OF INCOME FROM REIT INCOME TESTS.—Section 856(c)(5) is amended by adding at the end the following new subparagraph:

''(H) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—The Secretary is authorized to determine whether any item of income or gain which does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income solely for purposes of this part.''.

SEC. 802. REVISIONS TO REIT ASSET TESTS.

(a) CLARIFICATION OF VALUATION TEST.—The first sentence in the matter following section 856(c)(4)(B)(iii)(III) is amended by inserting ''(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)'' after ''such requirements''.

(b) CLARIFICATION OF PERMISSIBLE ASSET CATEGORY.—Section 856(c)(5), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(I) CASH.—The term 'cash' includes foreign currency if the real estate investment trust or its qualified business unit (as defined in section 989) uses such foreign currency as its functional currency (as defined in section 985(b)).''.

SEC. 803. CONFORMING FOREIGN CURRENCY REVISIONS.

(a) NET INCOME FROM FORECLOSURE PROPERTY.—Clause (i) of section 857(b)(4)(B) is amended to read as follows:

''(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over''.

(b) NET INCOME FROM PROHIBITED TRANSACTIONS.—Clause (i) of section 857(b)(6)(B) is amended to read as follows:

''(i) the term 'net income derived from prohibited transactions' means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;''.

Subtitle B—Taxable Reit Subsidiaries

SEC. 811. CONFORMING TAXABLE REIT SUBSIDIARY ASSET TEST.

Section 856(c)(4)(B)(ii) is amended by striking ''20 percent'' and inserting ''25 percent''.

Subtitle C—Dealer Sales

SEC. 821. HOLDING PERIOD UNDER SAFE HARBOR.

Section 857(b)(6) (relating to income from prohibited transactions) is amended—

(1) by striking ''4 years'' in subparagraphs (C)(i), (C)(iv), and (D)(i) and inserting ''2 years'',

(2) by striking ''4-year period'' in subparagraphs (C)(ii), (D)(ii), and (D)(iii) and inserting ''2-year period'', and

(3) by striking ''real estate asset''and all that follows through ''if'' in the matter preceding clause (i) of subparagraphs (C) and (D), respectively, and inserting ''real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if''.

SEC. 822. DETERMINING VALUE OF SALES UNDER SAFE HARBOR.

Section 857(b)(6) is amended—

(1) by striking the semicolon at the end of subparagraph (C)(iii) and inserting '', or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;'', and

(2) by adding ''or'' at the end of subclause (II) of subparagraph (D)(iv) and by adding at the end of such subparagraph the following new subclause:

''(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,''.

Subtitle D—Health Care Reits

SEC. 831. CONFORMITY FOR HEALTH CARE FACILITIES.

(a) RELATED PARTY RENTALS.—Subparagraph (B) of section 856(d)(8) (relating to special rule for taxable REIT subsidiaries) is amended to read as follows:

''(B) EXCEPTION FOR CERTAIN LODGING FACILITIES AND HEALTH CARE PROPERTY.—The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility (as defined in paragraph (9)(D)) or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it—

''(i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or

''(ii) employs individuals working at such property or facility located outside the United States, but only if an eligible independent contractor is responsible for the daily supervision and direction of such individuals on behalf of the taxable REIT subsidiary pursuant to a management agreement or similar service contract.''.

(b) ELIGIBLE INDEPENDENT CONTRACTOR.—Subparagraphs (A) and (B) of section 856(d)(9) (relating to eligible independent contractor) are amended to read as follows:

''(A) IN GENERAL.—The term 'eligible independent contractor' means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

''(B) SPECIAL RULES.—Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

''(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

''(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

''(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

''(I) January 1, 1999, or

''(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.''.

(c) TAXABLE REIT SUBSIDIARIES.—The last sentence of section 856(l)(3) is amended—

(1) by inserting ''or a health care facility'' after ''a lodging facility'', and

(2) by inserting ''or health care facility'' after ''such lodging facility''.

Subtitle E—Effective Dates and Sunset

SEC. 841 EFFECTIVE DATES AND SUNSET.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title shall apply to taxable years beginning after the date of the enactment of this Act.

(b) REIT INCOME TESTS.—

(1) The amendment made by section 801(a) and (b) shall apply to gains and items of income recognized after the date of the enactment of this Act.

(2) The amendment made by section 801(c) shall apply to transactions entered into after the date of the enactment of this Act.

(3) The amendment made by section 801(d) shall apply after the date of the enactment of this Act.

(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

(1) The amendment made by section 803(a) shall apply to gains recognized after the date of the enactment of this Act.

(2) The amendment made by section 803(b) shall apply to gains and deductions recognized after the date of the enactment of this Act.

(d) DEALER SALES.—The amendments made by subtitle C shall apply to sales made after the date of the enactment of this Act.

(e) SUNSET.—All amendments made by this title shall not apply to taxable years beginning after the date which is 5 years after the date of the enactment of this Act. The Internal Revenue Code of 1986 shall be applied and administered to taxable years described in the preceding sentence as if the amendments so described had never been enacted.

SA 4391. Mr. WICKER (for himself and Mr. COCHRAN) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end add the following:

TITLE—GO ZONE PROPERTY

SEC. __01. WAIVER OF DEADLINE ON CONSTRUCTION OF GO ZONE PROPERTY ELIGIBLE FOR BONUS DEPRECIATION.

(a) IN GENERAL.—Subparagraph (B) of section 1400N(d)(3) of the Internal Revenue Code of 1986 is amended to read as follows:

''(B) without regard to 'and before January 1, 2009' in clause (i) thereof,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 2007.

SA 4392. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE—BANKRUPTCY PROVISIONS

SEC. ___1. SHORT TITLE.

This title may be cited as the ''Home Owners' Mortgage and Equity Savings Act'' or the ''HOMES Act''.

SEC. ___2. AUTHORITY TO MODIFY CERTAIN MORTGAGES.

Section 1322(b) of title 11, United States Code, is amended—

(1) in paragraph (2), by inserting ''except as provided in paragraph (11),'' after ''residence,'';

(2) by redesignating paragraph (11) as paragraph (12);

(3) in paragraph (10), by striking ''and'' at the end; and

(4) by inserting after paragraph (10) the following:

''(11) with respect to a claim secured by a security interest in real property initiated before September 26, 2007, that is the debtor's principal residence, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than, in the case of a debtor in a household of 1 person, 150 percent of the median family income of the applicable State for 1 earner, in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals, or in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4—

''(A) modify the rights of any holder of such claim by lowering the principal amount of the loan to the fair market value of the real property securing the loan at the time of submission of the plan, to the extent that such fair market value is less than the principal amount outstanding on the loan, if

such action is agreed to in writing by the debtor and the holder of the claim;

''(B) waive any otherwise applicable early repayment or prepayment penalties; and

''(C) in any case in which the applicable rate of interest is adjustable under the mortgage contract, modify the rights of any holder of such claim, by prohibiting or delaying adjustments to the rate of interest applicable to the debt on and after the date of filing of the plan or voiding any such adjustments that occurred during the 2-year period preceding that date of filing; and''.

SEC. ___3. TREATMENT OF CERTAIN INTEREST AND FEES.

Section 548(a) of title 11, United States Code, is amended by adding at the end the following:

''(3) For purposes of chapter 13, where the court finds there was a substantial failure to disclose material terms regarding interest, late fees, or other fees related to a claim secured by a security interest in the debtor's principal residence, the court may consider such interest, late fees, or other fees to be a transfer covered under paragraph (1)(B).''.

SEC. ___4. DELAY OF COUNSELING REQUIREMENT WHEN HOUSES ARE IN FORECLOSURE.

Section 109(h) of title 11, United States Code, is amended by adding at the end the following:

''(5) The requirements of paragraph (1) may be delayed until after the date of filing, with respect to a debtor who submits to the court a certification that the holder of a claim secured by the debtor's principal residence has initiated a judicial or nonjudicial foreclosure on the debtor's principal residence.''.

SEC. ___5. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine the impact of allowing bankruptcy judges to restructure principal residence mortgages on the secondary market for mortgages.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study required under subsection (a).

SEC. ___6. SUNSET.

This title and the amendments made by this title shall apply with respect to filings under chapter 13 of title 11, United States Code, occurring during the 7-year period following the date of enactment of this Act.

SA 4393. Mrs. FEINSTEIN (for herself, Mr. MARTINEZ, Mr. OBAMA, Mrs. BOXER, Mr. SALAZAR, Mr. DURBIN and Ms. KLOBUCHAR) submitted an amendment intended to be proposed by her to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, add the following:

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

SEC. 701. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Secure and Fair Enforcement for Mortgage Licensing Act of 2008'' or ''S.A.F.E. Mortgage Licensing Act of 2008''.

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

Sec. 701. Short title; table of contents.
Sec. 702. Purposes and methods for establishing a mortgage licensing system and registry.
Sec. 703. Definitions.
Sec. 704. License or registration required.
Sec. 705. State license and registration application and issuance.
Sec. 706. Standards for State license renewal.
Sec. 707. System of registration administration by Federal banking agencies.
Sec. 708. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
Sec. 709. Backup authority to establish a nationwide mortgage licensing and registry system.
Sec. 710. Fees.
Sec. 711. Background checks of loan originators.
Sec. 712. Confidentiality of information.
Sec. 713. Liability provisions.
Sec. 714. Enforcement under HUD backup licensing system.
Sec. 715. Preemption of State law.
Sec. 716. Reports and recommendations to Congress.
Sec. 717. Study and reports on defaults and foreclosures.

SEC. 702. PURPOSES AND METHODS FOR ESTABLISHING A MORTGAGE LICENSING SYSTEM AND REGISTRY.

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

(1) Provides uniform license applications and reporting requirements for State-licensed loan originators.

(2) Provides a comprehensive licensing and supervisory database.

(3) Aggregates and improves the flow of information to and between regulators.

(4) Provides increased accountability and tracking of loan originators.

(5) Streamlines the licensing process and reduces the regulatory burden.

(6) Enhances consumer protections and supports anti-fraud measures.

(7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would be required to act in the best interests of the consumer, to the greatest extent possible.

SEC. 703. DEFINITIONS.

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

(1) FEDERAL BANKING AGENCIES.—The term ''Federal banking agencies'' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(2) DEPOSITORY INSTITUTION.—The term ''depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(3) LOAN ORIGINATOR.—

(A) IN GENERAL.—The term ''loan originator''—

(i) means an individual who—

(I) takes a residential mortgage loan application;

(II) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

(III) offers or negotiates terms of a residential mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(ii) includes any individual who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will provide or perform any of the activities described in clause (i);

(iii) does not include any individual who is not otherwise described in clause (i) or (ii) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause; and

(iv) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator.

(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—For purposes of this subsection, an individual ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term ''administrative or clerical tasks'' means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term ''real estate brokerage activity'' means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) listing or advertising real property for sale, purchase, lease, rental, or exchange;

(iii) providing advice in connection with sale, purchase, lease, rental, or exchange of real property;

(iv) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(v) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(vi) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(vii) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), (iv), (v), or (vi).

(4) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term ''loan processor or underwriter'' means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term ''clerical or support duties'' may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(5) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ''Nationwide Mortgage Licensing System and Registry'' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary under section 709.

(6) REGISTERED LOAN ORIGINATOR.—The term ''registered loan originator'' means any individual who—

(A) meets the definition of loan originator and is an employee of a depository institution or a wholly-owned subsidiary of a depository institution; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(7) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan'' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(9) STATE-LICENSED LOAN ORIGINATOR.—The term ''State-licensed loan originator'' means any individual who—

(A) is a loan originator;

(B) is not an employee of a depository institution or any wholly-owned subsidiary of a depository institution; and

(C) is licensed by a State or by the Secretary under section 708 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(10) SUBPRIME MORTGAGE.—The term ''subprime mortgage'' means a residential mortgage loan—

(A) that is secured by real property that is used or intended to be used as a principal dwelling;

(B) that is typically offered to borrowers having weakened credit histories and reduced repayment capacity, as measured by lower credit scores, debt-to-income ratios, and other relevant criteria; and

(C) the characteristics of which may include—

(i) low initial payments based on a fixed introductory rate that expires after a short period and then adjusts to a variable index rate plus a margin for the remaining term of the loan;

(ii) very high or no limits on how much the payment amount or the interest rate may increase (referred to as ''payment caps'' or ''rate caps'') on reset dates;

(iii) limited or no documentation of the income of the borrower;

(iv) product features likely to result in frequent refinancing to maintain an affordable monthly payment; and

(v) substantial prepayment penalties or prepayment penalties that extend beyond the initial fixed interest rate period.

(11) UNIQUE IDENTIFIER.—The term ''unique identifier'' means a number or other identifier that—

(A) permanently identifies a loan originator; and

(B) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

SEC. 704. LICENSE OR REGISTRATION REQUIRED.

(a) IN GENERAL.—An individual may not engage in the business of a loan originator without first—

(1) obtaining and maintaining, through an annual renewal—

(A) a registration as a registered loan originator; or

(B) a license and registration as a State-licensed loan originator; and

(2) obtaining a unique identifier.

(b) LOAN PROCESSORS AND UNDERWRITERS.—

(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator or a registered loan originator.

(2) INDEPENDENT CONTRACTORS.—A loan processor or underwriter may not work as an independent contractor unless such processor or underwriter is a State-licensed loan originator or a registered loan originator.

SEC. 705. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.

(a) BACKGROUND CHECKS.—In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain—

(A) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) ISSUANCE OF LICENSE.—The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has never had a loan originator or similar license revoked in any governmental jurisdiction.

(2) The applicant has never been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(6) The applicant has met a minimum net worth requirement.

(c) PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.—

(1) MINIMUM EDUCATIONAL REQUIREMENTS.—In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the subprime mortgage marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(d) TESTING OF LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) QUALIFIED TEST.—A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless—

(A) the test consists of a minimum of 100 questions; and

(B) the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

(i) ethics;

(ii) Federal law and regulation pertaining to mortgage origination;

(iii) State law and regulation pertaining to mortgage origination; and

(iv) Federal and State law and regulation, including instruction on fraud, consumer protection, subprime mortgage marketplace, and fair lending issues.

(3) MINIMUM COMPETENCE.—

(A) PASSING SCORE.—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) INITIAL RETESTS.—An individual may retake a test 3 consecutive times with each consecutive taking occurring in less than 14 days after the preceding test.

(C) SUBSEQUENT RETESTS.—After 3 consecutive tests, an individual shall wait at least 14 days before taking the test again.

(D) RETEST AFTER LAPSE OF LICENSE.—A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.

(e) MORTGAGE CALL REPORTS.—Each mortgage licensee shall submit to the Nationwide

Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

SEC. 706. STANDARDS FOR STATE LICENSE RENEWAL.

(a) IN GENERAL.—The minimum standards for license renewal for State-licensed loan originators shall include the following:

(1) The loan originator continues to meet the minimum standards for license issuance.

(2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) CONTINUING EDUCATION FOR STATE-LICENSED LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the subprime mortgage marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) CALCULATION OF CONTINUING EDUCATION CREDITS.—A State-licensed loan originator—

(A) may only receive credit for a continuing education course in the year in which the course is taken; and

(B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) INSTRUCTOR CREDIT.—A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(5) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

SEC. 707. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL BANKING AGENCIES.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, develop and maintain a system for registering employees of depository institutions or subsidiaries of depository institutions as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of the enactment of this title.

(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator who is an employee of a depository institution or a wholly-owned subsidiary of a depository institution with the Nationwide Mortgage Licensing System and Registry, the appropriate Federal banking agency shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees's identity, including—

(A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

(1) UNIQUE IDENTIFIER.—The Federal banking agencies, through the Financial Institutions Examination Council, shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the Financial Institutions Examination Council, concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) CONSIDERATION OF FACTORS AND PROCEDURES.—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 704(a), shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this title.

SEC. 708. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.

(a) BACK UP LICENSING SYSTEM.—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 705 and 706 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) LICENSING AND REGISTRATION REQUIREMENTS.—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 705 and 706 for State-licensed loan originators.

(c) UNIQUE IDENTIFIER.—The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) STATE LICENSING LAW REQUIREMENTS.—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements:

(1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(e) TEMPORARY EXTENSION OF PERIOD.—The Secretary may extend, by not more than 12 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 705 and 706 and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(f) LIMITATION ON HUD-LICENSED LOAN ORIGINATORS.—Any loan originator who is licensed by the Secretary under a system established under this section for any State may not use such license to originate loans in any other State.

(g) CONTRACTING AUTHORITY.—The Secretary may enter into contracts with qualified independent parties, as necessary to efficiently fulfill the obligations of the Secretary under this Section.

SEC. 709. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of loan originators.

SEC. 710. FEES.

The Federal banking agencies, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.

SEC. 711. BACKGROUND CHECKS OF LOAN ORIGINATORS.

(a) ACCESS TO RECORDS.—Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) AGENT.—For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing information between the Department of Justice and the appropriate State agencies.

SEC. 712. CONFIDENTIALITY OF INFORMATION.

(a) SYSTEM CONFIDENTIALITY.—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 709, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) COORDINATION WITH OTHER LAW.—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) PUBLIC ACCESS TO INFORMATION.—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

SEC. 713. LIABILITY PROVISIONS.

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 9, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

SEC. 714. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.

(a) SUMMONS AUTHORITY.—The Secretary may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 708; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this title.

(b) EXAMINATION AUTHORITY.—

(1) IN GENERAL.—If the Secretary establishes a licensing system under section 708 for any State, the Secretary shall appoint examiners for the purposes of administering such section.

(2) POWER TO EXAMINE.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 708 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.

(3) REPORT OF EXAMINATION.—Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Secretary.

(4) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 708, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) ASSESSMENTS.—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 708 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

(1) AUTHORITY OF SECRETARY.—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 708, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY SECRETARY.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior hearing before the Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior hearing before the Secretary,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease-and-desist proceeding under paragraph (1), the Secretary may issue

an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to licensing system established by the Secretary under section 708, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this title or any regulation prescribed by the Secretary under this title or order issued under subsection (c).

(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $5,000 for each day the violation continues.

SEC. 715. PREEMPTION OF STATE LAW.

Nothing in this title may be construed to preempt the law of any State, to the extent that such State law provides greater protection to consumers than is provided under this title.

SEC. 716. REPORTS AND RECOMMENDATIONS TO CONGRESS.

(a) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this title, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, and streamlining communication between all stakeholders involved in residential mortgage loan origination and processing.

(b) LEGISLATIVE RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this title, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

SEC. 717. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.

(a) STUDY REQUIRED.—The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) PRELIMINARY REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this title, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.

(c) FINAL REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

SA 4394. Ms. MIKULSKI (for herself, Mr. KENNEDY and Mr. HARKIN) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 58, line 10, strike ''$100,000,000'' and insert ''$137,500,000''.

On page 58, line 17, strike the period and insert the following: '': Provided, That, of such amounts $37,500,000 shall be used by the Neighborhood Reinvestment Corporation (referred to in this section as the 'NRC') to (1) make grants to counseling intermediaries approved by the Department of Housing and Urban Development or the NRC to hire attorneys trained and capable of assisting homeowners of owner-occupied homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure who have legal issues that cannot be handled by counselors already employed by such intermediaries, and (2) support NRC partnerships with State and local legal organizations and organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of that Code with demonstrated relevant legal experience in home foreclosure law, as such experience is determined by the Chief Executive Officer of NRC: Provided further, That for the purpose of the prior proviso the term 'relevant experience' means experience representing homeowners in negotiations and or legal proceedings aimed at preventing or mitigating foreclosure or providing legal research and technical legal expertise to community based organizations whose goal is to reduce, prevent, or mitigate foreclosure: Provided further, That of the amounts provided for in the prior provisos the NRC shall give priority consideration to counseling intermediaries and legal organizations that (1) provide legal assistance in the 100 metropolitan statistical areas (as defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates, and (2) have the capacity to begin using the financial assistance within 90 days after receipt of the assistance.''.

On page 58, between lines 17 and 18, insert the following:

SEC. 302. LEGAL ASSISTANCE RELATED TO HOME OWNERSHIP PRESERVATION AND FORECLOSURE PREVENTION.

(a) APPROPRIATION.—

(1) IN GENERAL.—There is authorized to be appropriated and there is appropriated to the Legal Services Corporation $37,500,000 to provide legal assistance related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.

(2) AVAILABILITY.—Such funds shall remain available until expended.

(b) FUNDING REQUIREMENTS.—Each limitation on expenditures, and each term or condition, that applies to funds appropriated to the Legal Services Corporation under the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008, shall apply to funds appropriated to the Corporation under subsection (a), except as provided in subsections (a)(1) and (c).

(c) PRIORITY.—In providing financial assistance from the funds appropriated under subsection (a), the Corporation shall give priority to eligible entities and individuals that—

(1) provide legal assistance in the 100 metropolitan statistical areas (as defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates; and

(2) have the capacity to begin using the financial assistance within 90 days after receipt of the assistance.

SA 4395. Mr. BUNNING submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI, add the following:

SEC. 605. DEDUCTION FOR POINTS ON HOME MORTGAGE REFINANCING ALLOWED IN YEAR PAID.

(a) IN GENERAL.—Paragraph (2) of section 461(g) of the Internal Revenue Code of 1986 (relating to prepaid interest) is amended—

(1) by striking ''This subsection'' and inserting the following:

''(A) IN GENERAL.—This subsection'', and

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

''(B) EXCEPTION FOR CERTAIN REFINANCINGS.—

''(i) IN GENERAL.—This subsection shall not apply to points paid—

''(I) in respect of indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the subparagraph (A), and

''(II) before January 1, 2011.

''(ii) LIMITATION.—Clause (i) shall apply only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the sum of—

''(I) the amount of the refinanced indebtedness, plus

''(II) the lesser of $10,000 or the points paid in respect of the indebtedness resulting from the refinancing to the extent that the indebtedness resulting from the refinancing does not exceed the refinanced indebtedness.

''(iii) ADJUSTMENT FOR INFLATION.—In the case of any calendar year beginning after 2008, the $10,000 amount under clause (ii)(II) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2007' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $100, such amount shall be rounded to the next nearest multiple of $100.''.

(b) CONFORMING AMENDMENT.—The heading of paragraph (2) of section 461(g) of such Code is amended by striking ''EXCEPTION'' and inserting ''EXCEPTIONS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid in taxable years beginning after December 31, 2007.

SA 4396. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing

innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE VIII—COMMISSION ON HOUSING AND REGULATORY ACCOUNTABILITY AND REVIEW

SEC. 801. DEFINITIONS.

In this title:

(1) AGENCY.—The term ''agency'' means—

(A) the Department of Housing and Urban Development; and

(B) the Department of the Treasury.

(2) CALENDAR DAY.—The term ''calendar day'' means a calendar day other than 1 on which either House is not in session because of an adjournment of more than 3 days to a date certain.

(3) COMMISSION BILL.—The term ''Commission bill'' means only a bill which is introduced as provided under section 806, and contains the proposed legislation included in the report submitted to Congress under section 803(a), without modification.

(4) PROGRAM.—The term ''program'' means any activity or function of an agency.

SEC. 802. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established the Commission on Housing and Regulatory Accountability and Review (referred to in this title as the ''Commission'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall consist of 15 members, of which, not later than 30 days after the date of enactment of this Act—

(A) 3 shall be appointed by the President;

(B) 3 shall be appointed by the majority leader of the Senate;

(C) 3 shall be appointed by the minority leader of the Senate;

(D) 3 shall be appointed by the Speaker of the House of Representatives; and

(E) 3 shall be appointed by the minority leader of the House of Representatives.

(2) COCHAIRPERSONS.—The President shall designate 2 Cochairpersons from among the members of the Commission. The Cochairpersons may not be affiliated with the same political party.

(c) DATE.—Members of the Commission shall be appointed by not later than 30 days after the date of enactment of this Act.

(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Cochairpersons or a majority of its members.

(f) QUORUM.—Eight members of the Commission shall constitute a quorum for purposes of voting, but a quorum is not required for members to meet and hold hearings.

SEC. 803. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) evaluate all agencies and programs within the Department of Housing and Urban Development and the Department of Treasury using the criteria under subsection (c); and

(2) not later than 18 months after the date of enactment of this Act, submit to Congress with respect to the evaluation under paragraph (1)—

(A) a plan with recommendations of the agencies and programs that should be realigned or eliminated; and

(B) proposed legislation to implement the plan described under subparagraph (A).

(b) RELOCATION OF FEDERAL EMPLOYEES.—The proposed legislation under subsection (a) shall provide that if the position of an employee of an agency is eliminated as a result of the implementation of the plan under subsection (a)(2), the affected agency shall make reasonable efforts to relocate such employee to another position within the agency or within another Federal agency (including Federal agencies other than the Department of Housing and Urban Development and the Department of the Treasury).

(c) CRITERIA.—

(1) DUPLICATIVE.—If 2 or more agencies or programs are performing the same essential function and the function can be consolidated or streamlined into a single agency or program, the Commission shall recommend that the agencies or programs be realigned.

(2) WASTEFUL OR INEFFICIENT.—The Commission may recommend the realignment or elimination of any agency or program that has wasted Federal funds by—

(A) egregious spending;

(B) mismanagement of resources and personnel; or

(C) use of such funds for personal benefit or the benefit of a special interest group.

(3) OUTDATED, IRRELEVANT, OR FAILED.—The Commission may recommend the elimination of any agency or program that—

(A) has completed its intended purpose;

(B) has become irrelevant; or

(C) has failed to meet its objectives.

SEC. 804. POWERS OF THE COMMISSION.

(a) HEARINGS.—Subject to subsection (d), the Cochairpersons of the Commission may, for the purpose of carrying out this title—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the chairperson of the Commission considers advisable;

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses as the chairperson of the Commission considers advisable; and

(3) require, by subpoena or otherwise, the production of such books, records, correspondence, memoranda, papers, documents, tapes, and other evidentiary materials relating to any matter under investigation by the Commission.

(b) SUBPOENAS.—

(1) ISSUANCE.—

(A) IN GENERAL.—A subpoena may be issued under this section only by—

(i) the agreement of the Cochairpersons; or

(ii) the affirmative vote of 8 members of the Commission.

(B) SIGNATURE.—Subpoenas issued under this section may be issued under the signature of both Cochairpersons of the Commission and may be served by any person designated by the Cochairpersons or by a member designated by a majority of the Commission.

(2) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under this section, the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(c) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(d) INFORMATION.—

(1) IN GENERAL.—The Commission shall have reasonable access to budgetary, performance or programmatic materials, resources, statistical data, and other information the Commission determines to be necessary to carry out its duties from the Congressional Budget Office, and other agencies and representatives of the executive and legislative branches of the Federal Government. The Cochairpersons shall make requests for such access in writing when necessary.

(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION OF INFORMATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(3) LIMITATION OF ACCESS TO PERSONAL TAX INFORMATION.—Information requested, subpoenaed, or otherwise accessed under this title shall not include tax data from the United States Internal Revenue Service, the release of which would otherwise be in violation of law.

(e) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

SEC. 805. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) NON-FEDERAL MEMBERS.—Except as provided under subsection (b), each member of the Commission who is not an officer or employee of the Federal Government shall not be compensated.

(2) FEDERAL OFFICERS OR EMPLOYEES.—All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—With the approval of the majority of the Commission, the Cochairpersons of the Commission may, appoint an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties.

(2) COMPENSATION.—Upon the approval of the Cochairpersons, the executive director may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the maximum rate payable for a position at GS–15 of the General Schedule under section 5332 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—With the approval of the majority of the Commission, the chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 806. EXPEDITED CONSIDERATION OF REFORM PROPOSALS.

(a) INTRODUCTION AND COMMITTEE CONSIDERATION.—

(1) INTRODUCTION.—The Commission bill language provisions submitted pursuant to section 803(a) shall be introduced in the Senate by the majority leader, or the majority leader's designee, and in the House of Representatives, by the Speaker, or the Speaker's designee. Upon such introduction, the Commission bill shall be referred to the appropriate committees of Congress under paragraph (2). If the Commission bill is not introduced in accordance with the preceding sentence, then any member of Congress may introduce the Commission bill in their respective House of Congress beginning on the date that is the 5th calendar day that such House is in session following the date of the submission of such aggregate legislative language provisions.

(2) COMMITTEE CONSIDERATION.—

(A) REFERRAL.—A Commission bill introduced under paragraph (1) shall be referred to any appropriate committee of jurisdiction in the Senate, any appropriate committee of jurisdiction in the House of Representatives, the Committee on the Budget of the Senate and the Committee on the Budget of the House of Representatives. A committee to which a Commission bill is referred under this paragraph may review and comment on such bill, may report such bill to the respective House, and may not amend such bill.

(B) REPORTING.—Not later than 30 calendar days after the introduction of the Commission bill, each Committee of Congress to which the Commission bill was referred shall report the bill.

(C) DISCHARGE OF COMMITTEE.—If a committee to which is referred a Commission bill has not reported such Commission bill at the end of 30 calendar days after its introduction or at the end of the first day after there has been reported to the House involved a Commission bill, whichever is earlier, such committee shall be deemed to be discharged from further consideration of such Commission bill, and such Commission bill shall be placed on the appropriate calendar of the House involved.

(b) EXPEDITED PROCEDURE.—

(1) CONSIDERATION.—

(A) IN GENERAL.—Not later than 5 calendar days after the date on which a committee has reported a Commission bill or been discharged from consideration of a Commission bill, the majority leader of the Senate, or the majority leader's designee, or the Speaker of the House of Representatives, or the Speaker's designee, shall move to proceed to the consideration of the Commission bill. It shall also be in order for any member of the Senate or the House of Representatives, respectively, to move to proceed to the consideration of the Commission bill at any time after the conclusion of such 5-day period.

(B) MOTION TO PROCEED.—A motion to proceed to the consideration of a Commission bill is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment or to a motion to postpone consideration of the Commission bill. A motion to proceed to the consideration of other business shall not be in order. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the Senate or the House of Representatives, as the case may be, shall immediately proceed to consideration of the Commission bill without intervening motion, order, or other business, and the Commission bill shall remain the unfinished business of the Senate or the House of Representatives, as the case may be, until disposed of.

(C) LIMITED DEBATE.—Debate on the Commission bill and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the Commission bill. A motion further to limit debate on the Commission bill is in order and is not debatable. All time used for consideration of the Commission bill, including time used for quorum calls (except quorum calls immediately preceding a vote) and voting, shall come from the 10 hours of debate.

(D) AMENDMENTS.—No amendment to the Commission bill shall be in order in the Senate and the House of Representatives.

(E) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the Commission bill, the vote on final passage of the Commission bill shall occur.

(F) OTHER MOTIONS NOT IN ORDER.—A motion to postpone consideration of the Commission bill, a motion to proceed to the consideration of other business, or a motion to recommit the Commission bill is not in order. A motion to reconsider the vote by which the Commission bill is agreed to or not agreed to is not in order.

(2) CONSIDERATION BY OTHER HOUSE.—If, before the passage by one House of the Commission bill that was introduced in such House, such House receives from the other House a Commission bill as passed by such other House—

(A) the Commission bill of the other House shall not be referred to a committee and may only be considered for final passage in the House that receives it under subparagraph (C);

(B) the procedure in the House in receipt of the Commission bill of the other House, with respect to the Commission bill that was introduced in the House in receipt of the Commission bill of the other House, shall be the same as if no Commission bill had been received from the other House; and

(C) notwithstanding subparagraph (B), the vote on final passage shall be on the Commission bill of the other House.

Upon disposition of a Commission bill that is received by one House from the other House, it shall no longer be in order to consider the Commission bill that was introduced in the receiving House.

(c) RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a Commission bill, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 807. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits the final evaluation and plan report under section 803.

SEC. 808. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for carrying out this title for each of the fiscal years 2008 through 2010.

SA 4397. Mrs. MURRAY (for herself, Mr. SCHUMER, Mr. CASEY, Mr. BROWN, Mrs. CLINTON, Mr. MENENDEZ, Mr. KERRY, Ms. KLOBUCHAR, Mr. LAUTENBERG, Mr. OBAMA, Ms. MIKULSKI, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; as follows:

On page 58, line 10, strike ''$100,000,000'' and all that follows through ''2008'' on line 11, and insert the following: ''$200,000,000, to remain available until December 31, 2008''.

SA 4398. Mr. SALAZAR submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

SEC. 402. CREDIT COUNSELING.

(a) IN GENERAL.—Entities approved by the Neighborhood Reinvestment Corporation or the Secretary and State housing finance entities receiving funds under this title shall work to identify and coordinate with State and local non-profit organizations operating statewide toll-free foreclosure prevention hotlines, including those that—

(1) serve as a consumer referral source and data repository for borrowers experiencing some form of delinquency or foreclosure;

(2) connect callers with local housing counseling agencies approved by the Neighborhood Reinvestment Corporation or the Secretary to assist with working out a positive resolution to their mortgage delinquency or foreclosure; or

(3) facilitate or offer free assistance to help homeowners to understand their options, negotiate solutions, and find the best resolution for their particular circumstances.

SA 4399. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy

independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. VETERANS HOUSING.

(a) SHORT TITLE.—This section may be cited as the ''Housing for Heroes Act of 2008''.

(b) AUTHORITY OF THE SECRETARY TO REPROGRAM FUNDS.—Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may reprogram any funds appropriated or otherwise made available under this or any other Act for the Department of Housing and Urban Development that are intended to be used for any congressionally directed spending item to provide housing assistance to veterans of the Armed Forces who are eligible for housing assistance under the laws administered by the Secretary.

(c) REPORT OF THE SECRETARY ON VETERANS HOUSING.—Prior to September 30 of each fiscal year beginning with fiscal year 2008, the Secretary of Housing and Urban Development shall report annually to Congress and make available on its public Internet website a description of:

(1) The total number of veterans of the Armed Forces who sought housing assistance under any law administered by the Secretary in the preceding 12 months.

(2) The total number of veterans of the Armed Forces who received any such housing assistance in the preceding 12 months.

(3) The total number of veterans of the Armed Forces who did not receive such housing assistance due to a lack of funding in the preceding 12 months.

(4) The total number of section 8 vouchers applied for by veterans of the Armed Forces

(5) The total number of section 8 vouchers provided to veterans of the Armed Forces who were eligible for such vouchers.

(6) The total number of section 8 vouchers that could not be provided to veterans of the Armed Forces who were determined eligible for such vouchers within 6 months of that veteran submitting an application pursuant to section 8(o)(19) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(19) due to a lack of funding.

(7) The total number and cost of congressionally directed spending items in the annual budget of the Department of Housing and Urban Development.

(8) The number and total amount of congressionally directed spending items in the annual budget of the Department of Housing and Urban Development that have been reprogrammed to support housing assistance for veterans of the Armed Forces.

(9) A listing of any congressionally directed spending items for which funding was not reprogrammed and an explanation for each why such funds were not reprogrammed if there are any veterans of the Armed Forces who are not receiving housing assistance due to a lack of funding.

(d) CURRENT FUNDING.—For fiscal year 2008, the Secretary of Housing and Urban Development may reprogram any unobligated funds appropriated or otherwise made available under any prior Act for the Department of Housing and Urban Development that are intended to be used for any congressionally directed spending item.

(e) DEFINITIONS.—As used in this section—

(1) the term ''congressionally directed spending item'' has the same meaning given that term under section 521 of the Honest Leadership and Open Government Act of 2007 (Public Law 110-81); and

(2) the term ''section 8 voucher'' means a voucher available to eligible veterans under section 8(o)(19) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(19)).

SA 4400. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. REPORT ON FEDERAL HOUSING ASSISTANCE PROGRAMS.

Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that contains—

(1) a complete list of all programs administered by the Department of Housing and Urban Development that provide housing assistance;

(2) for each program listed under paragraph (1)—

(A) the total amount of Federal funds used to carry out each program in the most recent fiscal year for which comparable data is available;

(B) the proportion of funding spent on direct housing assistance for each program in the most recent fiscal year and the proportion spent on administration, counseling, and other activities not directly related to housing support;

(C) the amount of improper payments or fraud identified or estimated in each program in the most recent fiscal year; and

(D) the findings of any performance reviews of effectiveness with respect to achieving the goals of the program conducted by the Director of the Office of Management and Budget, the Comptroller General, or other agencies of each program within the previous 10 years (noting if no such review was conducted);

(3) a description of the funding formula for each housing grant program administered by the Department of Housing and Urban Development with recommendations to ensure better equity in distribution and targeting of such funds to assist those without permanent housing;

(4) a description of the amounts the Federal Government has spent on housing assistance over the past 25 years and how the number of those in the country without permanent housing today compares to the same number 25 years ago; and

(5) as of the date of the completion of the report—

(A) the number of employees of the Department of Housing and Urban Development, including contractors and other individuals whose salary is paid in full or part by the Department; and

(B) the number of individuals who receive housing assistance from the Department.

SA 4401. Mr. SANDERS submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new section:

SEC. ___. NATIONAL CONSUMER CREDIT USURY RATE.

Section 107 of the Truth in Lending Act (15 U.S.C. 1606) is amended by adding at the end the following:

''(f) NATIONAL CONSUMER CREDIT USURY RATE.—The annual percentage rate applicable to any extension of credit may not exceed by more than 8 percentage points the rate established under section 6621(a)(2) of the Internal Revenue Code of 1986, as determined by the Board.''.

SA 4402. Mr. MENENDEZ submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title IV, insert the following:

SEC. ___. FINANCIAL EDUCATION AND COUNSELING ASSISTANCE ACT OF 2007.

(a) SHORT TITLE.—This section may be cited as the ''Financial Education and Counseling Assistance Act of 2007''.

(b) FINANCIAL EDUCATION AND COUNSELING.—

(1) DEMONSTRATION PROGRAM.—Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following:

''(g) FINANCIAL EDUCATION AND COUNSELING.—

''(1) PURPOSES.—The purposes of this subsection are to—

''(A) increase financial education and counseling services available to homeowners and prospective homebuyers;

''(B) assist homeowners and prospective homebuyers to develop monthly budgets, build personal savings, finance or plan for major purchases, reduce their debt, improve their financial stability, and set and reach their financial goals;

''(C) help homeowners and prospective homebuyers understand their credit histories and its relationship to their credit score, so as to improve their credit score;

''(D) educate homeowners and prospective homebuyers about the options available to build savings or plan for retirement; and

''(E) provide financial education and counseling for homeowners and prospective homebuyers seeking to understand or improve their credit, savings, bill payments, or other personal financial needs.

''(2) AUTHORITY.—The Secretary of Housing and Urban Development shall carry out a grant program to assist eligible organizations to provide financial education and

counseling services to homeowners and prospective homebuyers.

''(3) GRANTS.—

''(A) IN GENERAL.—The Secretary shall make grants to eligible organizations to enable such organization to provide a range of financial education and counseling services to homeowners and prospective homebuyers.

''(B) SELECTION.—The Secretary shall select organizations to receive assistance under this subsection based on their experience and ability to provide financial education and counseling services to homeowners and prospective homebuyers.

''(C) PREFERENCE.—The Secretary shall give preference to established community-based financial education and counseling organizations capable of providing in-person services.

''(4) ELIGIBLE ORGANIZATIONS.—To be eligible to receive a grant under this subsection, an eligible organization shall be a—

''(A) housing counseling agency certified by the Secretary under subsection (e);

''(B) nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code;

''(C) State, local, or tribal government agency; or

''(D) community development financial institution (as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) or a credit union.

''(5) ELIGIBLE USES.—A grant awarded to an eligible organization under this subsection shall be used to provide a range of financial education and counseling services, including—

''(A) assisting in the expansion of mortgage and housing-related financial counseling services;

''(B) providing information on important financial topics to homeowners and prospective homebuyers; and

''(C) assisting homeowners and prospective homebuyers to—

''(i) develop sustainable monthly budgets;

''(ii) understand their credit history and their credit scores, so as to improve their credit score;

''(iii) develop a plan to manage their bills, reduce their debt, and improve their savings; and

''(iv) set and reach their financial goals.

''(6) COUNSELING ACTIVITIES.—

''(A) REGULATIONS.—The Secretary shall develop and issue guidelines and regulations to carry out the financial education and counseling program established under this subsection.

''(B) CONTENT OF REGULATIONS.—The guidelines and regulations required under subparagraph (A) shall be modeled on the regulations issued by the Secretary pursuant to the housing counseling program under subsection (c) and shall require each eligible organization under this subsection to—

''(i) conduct a preliminary interview with a homeowner or prospective homebuyer to determine the financial needs of such homeowner or renter;

''(ii) develop a financial plan tailored to meet the financial needs of such homeowner or prospective homebuyer; and

''(iii) help each such homeowner or prospective homebuyer achieve their financial goals.

''(7) COORDINATION WITH THE FINANCIAL LITERACY AND EDUCATION COMMISSION.—In developing the guidelines and regulations required under paragraph (6) and in carrying out the grant program established under this subsection, the Secretary shall seek advice from and work in coordination with the Financial Literacy and Education Commission established under section 513 of the Fair and Accurate Credit Transactions Act of 2003 (20 U.S.C. 9702) in order to avoid duplication and to utilize the resources and experience of the Commission.

''(8) OUTREACH.—

''(A) TO INDIVIDUALS.—The Secretary, in cooperation with eligible organizations, shall—

''(i) carry out outreach efforts to ensure that homeowners and prospective homebuyers are aware of the financial education and counseling opportunities under this subsection; and

''(ii) make an special effort to serve individuals who—

''(I) qualify for the earned income tax credit under section 32 of the Internal Revenue Code;

''(II) have a low credit score, damaged credit, or are without sufficient data to create a credit score;

''(III) are in danger of filing for bankruptcy;

''(IV) are subject to, or are in danger of, becoming subject to foreclosure proceedings; and

''(V) have low levels of personal saving, low net-worth, or high levels of debt.

''(B) TO GRANTEES.—The Secretary shall also make an effort to publish grant opportunities under this subsection to eligible organizations who may not typically seek out such Federal funding.

''(9) STUDY AND REPORT ON EFFECTIVENESS AND IMPACT.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Financial Education and Counseling Assistance Act of 2007, the Inspector General of the Department of Housing and Urban Development shall conduct a study and report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the effectiveness and impact of the grant program established under this subsection.

''(B) CONTENT OF STUDY.—The study required under subparagraph (A) shall include the following:

''(i) The effectiveness of the grant program established under this subsection in improving the financial situation of homeowners and prospective homebuyers served by the grant program.

''(ii) The impact of the financial education and counseling services provided under this subsection on reducing debt, building savings, and improving the overall financial well-being of homeowners and prospective homebuyers served by the grant program.

''(iii) An evaluation of the effectiveness and quality of the counselors providing financial education and counseling services under the grant program.

''(10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.''.

(2) CERTIFICATION OF FINANCIAL COUNSELORS.—Section 106(e)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)(1)) is amended by striking ''(c), or (d),'' and inserting ''(c), (d), or (g)''.

SA 4403. Mr. KERRY (for himself and Ms. SNOWE) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, insert the following:

TITLE VIII—NATIONAL AFFORDABLE HOUSING TRUST FUND

SEC. 801. SHORT TITLE.

This title may be cited as the ''National Affordable Housing Trust Fund Act of 2008''.

SEC. 802. NATIONAL AFFORDABLE HOUSING TRUST FUND.

(a) IN GENERAL.—Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) is amended by adding at the end the following new subtitle:

''Subtitle G—National Affordable Housing Trust Fund

''SEC. 291. PURPOSES.

''The purposes of this subtitle are—

''(1) to address the national shortage of housing that is affordable to low-income families by creating a permanently appropriated fund, with dedicated sources of funding, to finance additional housing activities, without supplanting existing housing appropriations or existing State and local funding for affordable housing;

''(2) to enable rental housing to be built, for families with the greatest economic need, in mixed-income settings and in areas with the greatest economic opportunities;

''(3) to promote ownership of one-to-four family owner-occupied housing by low-income families; and

''(4) to construct, rehabilitate, and preserve at least 1,500,000 affordable dwelling units over the next decade.

''SEC. 292. TRUST FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the National Affordable Housing Trust Fund.

''(b) DEPOSITS TO TRUST FUND.—There shall be authorized to be appropriated to the Trust Fund such sums as necessary to carry out this subtitle for fiscal years 2009 and 2010.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be available to the Secretary of Housing and Urban Development, and are hereby appropriated, for providing assistance under this subtitle.

''(d) FEDERAL ASSISTANCE.—All assistance provided using amounts in the Trust Fund shall be considered to be Federal financial assistance.

''SEC. 293. ALLOCATIONS FOR STATES, INDIAN TRIBES, INSULAR AREAS, AND PARTICIPATING LOCAL JURISDICTIONS.

''(a) DETERMINATION OF AMOUNT AVAILABLE FOR FISCAL YEAR.—For fiscal year 2009 and for each fiscal year thereafter, the Secretary shall determine the total amount available from the Trust Fund pursuant to section 292(c) for assistance under this subtitle and shall use such amount to provide such assistance for such fiscal year.

''(b) ALLOCATION.—For each such fiscal year, of such total amount available from the Trust Fund, the Secretary shall allocate for use under section 294—

''(1) 40 percent for States, Indian tribes, and insular areas; and

''(2) 60 percent for participating local jurisdictions.

''SEC. 294. ASSISTANCE FROM TRUST FUND.

''(a) AFFORDABLE HOUSING NEEDS FORMULA.—

''(1) ESTABLISHMENT AND FACTORS.—The Secretary shall establish a formula to allocate amounts made available for a fiscal year for assistance under this subtitle among States, all Indian tribes, insular areas, and participating local jurisdictions based on the relative needs of such entities, for funds to

increase the supply of decent quality affordable housing. The formula shall be based upon a comparison of the following factors with respect to each State, Indian tribes, each insular area, and each participating local jurisdiction:

''(A) The ratio of the population of the State, Indian tribes, insular area, or participating jurisdiction, to the aggregate population of all States, Indian tribes, insular areas, and participating jurisdictions.

''(B) The percentage of families in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that live in substandard housing.

''(C) The percentage of families in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that pay more than 50 percent of their annual income for housing costs.

''(D) The percentage of persons in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction having an income at or below the poverty line.

''(E) The cost of constructing or carrying out rehabilitation of housing in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction.

''(F) The percentage of the population of the State, of Indian tribes, or of the insular area or participating jurisdiction that resides in counties having extremely low vacancy rates.

''(G) The percentage of housing stock in the jurisdiction of the State, of Indian tribes, or of the insular area or participating jurisdiction that is extremely old housing.

''(H) For the jurisdiction of a State, of Indian tribes, or of an insular area or participating jurisdiction that has an extremely low percentage of affordable rental housing, the extent to which the State, Indian tribes, or the insular area or participating jurisdiction has in the preceding fiscal year increased the percentage of rental housing within its jurisdiction that is affordable housing.

''(I) The relationship between the median family income for the area, as determined by the Secretary, and fair market rent.

''(J) Any other factors that the Secretary determines to be appropriate.

''(2) FAILURE TO ESTABLISH.—If, in any fiscal year referred to in section 293(a), the regulations establishing the formula required under paragraph (1) of this subsection have not been issued by the date that the Secretary determines the total amount available from the Trust Fund for assistance under this subtitle for such fiscal year pursuant to section 292(c), or there has been enacted before such date a joint resolution expressly disapproving the use of the formula required under paragraph (1) and submitted to the Congress pursuant to paragraph (3), for purposes of such fiscal year—

''(A) section 293(b), paragraphs (2) and (3) of subsection (b) of this section, and subsection (c) of this section shall not apply;

''(B) the allocation for Indian tribes shall be such amount as the Secretary shall establish; and

''(C) the formula amount for each State, insular area, or participating local jurisdiction shall be determined by applying, for such State, insular area, or participating local jurisdiction, the percentage that is equal to the percentage of the total amounts made available for such fiscal year for allocation under subtitle A of this title (42 U.S.C. 12741 et seq.) that are allocated in such year, pursuant to such subtitle, to such State, insular area, or participating local jurisdiction, respectively, and the allocation for each State, insular area, or participating jurisdiction, for purposes of subsection (e) shall, except as provided in subsection (d), be the formula amount for the State, insular area, or participating jurisdiction, respectively.

''(3) SUBMISSION TO CONGRESS.—Notwithstanding any other provision of this subtitle, any formula established by the Secretary pursuant to this subsection shall be submitted to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 120 days before application of the formula for purposes of determining formula amounts under subsection (b) for a fiscal year. Such submission shall be accompanied by a detailed explanation of the factors under the formula and anticipated effects of the formula.

''(b) FORMULA AMOUNT.—

''(1) IN GENERAL.—For each fiscal year referred to in section 293(a), the Secretary shall determine the formula amount under this subsection for each State, for Indian tribes, for each insular area, and for each participating local jurisdiction.

''(2) STATES, INDIAN TRIBES, AND INSULAR AREAS.—The formula amount for each State, for Indian tribes, and for each insular area shall be the amount determined for such State, for Indian tribes, or for such insular area by applying the formula under subsection (a) of this section to the total amount allocated under section 293(b)(1) for all States, Indian tribes, and insular areas for the fiscal year.

''(3) PARTICIPATING LOCAL JURISDICTIONS.—The formula amount for each participating local jurisdiction shall be the amount determined for such participating local jurisdiction by applying the formula under subsection (a) of this section to the total amount allocated under section 293(b)(2) for all participating local jurisdictions for the fiscal year.

''(4) NOTICE.—For each fiscal year referred to in section 293(a), not later than 60 days after the date that the Secretary determines the total amount available from the Trust Fund for such fiscal year pursuant to section 292(c) for assistance under this subtitle, the Secretary shall cause to be published in the Federal Register a notice that such amounts shall be so available.

''(c) ALLOCATION BASED ON AFFORDABLE HOUSING NEEDS FORMULA.—The allocation under this subsection for a State, for Indian tribes, for an insular area, or for a local participating jurisdiction for a fiscal year shall be determined as follows:

''(1) STATES.—Subject to subsection (d), the allocation for a State shall be as follows:

''(A) MINIMUM AMOUNT.—If the formula amount determined under subsection (b)(2) for the State for the fiscal year is less than 1 percent of the total amount allocated for such fiscal year under section 293(b)(1), the allocation for the State shall be 1 percent of the total amount allocated for such fiscal year under section 293(b)(1).

''(B) FORMULA AMOUNT.—If the formula amount determined under subsection (b)(2) for the State for the fiscal year is 0.5 percent or more of the total amount allocated for such fiscal year under section 293(b)(1), the allocation for the State shall be the formula amount for the State, except that—

''(i) the Secretary shall reduce such formula amounts for all States whose allocations are determined under this subparagraph on a pro rata basis, except as provided in clause (ii), by the amount necessary to account for any increases from the formula amount for allocations made under subparagraph (A), so that the total of the allocations for all States pursuant to this paragraph is equal to the aggregate of the formula amounts under subsection (b)(2) for all States; and

''(ii) no reduction pursuant to clause (i) for any State may reduce the formula amount for the State to less than 0.5 percent of such total amount allocated for such fiscal year.

''(2) INDIAN TRIBES AND INSULAR AREAS.—The allocation for Indian tribes and for each insular area shall be the formula amount for Indian tribes or for the insular area, respectively, determined under subsection (b), as applicable.

''(3) PARTICIPATING LOCAL JURISDICTIONS.—Subject to subsection (d), the allocation for each participating local jurisdiction shall be the formula amount for the jurisdiction determined under subsection (b).

''(d) ALLOCATION EXCEPTION FOR YEARS IN WHICH LESS THAN $2 BILLION IS AVAILABLE.—If, for any fiscal year, the total amount available pursuant to section 293(a) for assistance under this subtitle is less than $2,000,000,000—

''(1) for each participating local jurisdiction having a formula amount for such fiscal year of less than $750,000, the allocation shall be $0, except that the allocation for such a jurisdiction for such fiscal year shall be the formula amount for the jurisdiction for such fiscal year if—

''(A) the Secretary finds that the jurisdiction has demonstrated a capacity to carry out provisions of this subtitle and the State in which such jurisdiction is located has authorized the Secretary to transfer to the jurisdiction a portion of the State's allocation that is equal to or greater than the difference between the jurisdiction's formula amount and $750,000, or the State or jurisdiction has made available such an amount from the State's or jurisdiction's own sources available for use by the jurisdiction in accordance with this subtitle; or

''(B) the formula amount for such jurisdiction for such fiscal year is an amount that is greater than the formula amount for such fiscal year for any other participating local jurisdiction that is located in the same State; and

''(2) in the case of any jurisdiction whose allocation is $0 by operation of paragraph (1), the allocation for the State in which such participating local jurisdiction is located shall be increased by the amount of the formula amount for the participating local jurisdiction.

Any adjustments pursuant to paragraphs (1) and (2) shall be made notwithstanding the allocation percentages under section 293(b).

''(e) GRANT AWARDS.—For each fiscal year referred to in section 293(a), using the amounts made available to the Secretary from the Trust Fund for such fiscal year under section 292(c), the Secretary shall, subject to subsection (f), make a grant to each State, insular area, and participating local jurisdiction in the amount of the allocation under subsection (a)(2), (c), or (d), as applicable, for the State, area, or jurisdiction, respectively.

''(f) MATCHING REQUIREMENT.—

''(1) IN GENERAL.—Each grantee for a fiscal year shall contribute to eligible activities funded with Trust Fund grant amounts, or require the contribution to such eligible activities by recipients of such Trust Fund grant amounts of, in addition to any such grant amounts, not less than the following amount:

''(A) STATE, LOCAL, OR PRIVATE RESOURCES.—To the extent that such contributed amounts are derived from State, local, or private resources, 12.5 percent of such grant amounts.

''(B) FEDERAL AMOUNTS.—To the extent that such contributed amounts are derived from State- or locally-controlled amounts from Federal assistance, or from amounts made available under the affordable housing

program of a Federal Home Loan Bank pursuant to section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)), 25 percent of such grant amounts.

Nothing in this paragraph may be construed to prevent a grantee or recipient from complying with this paragraph only by contributions in accordance with subparagraph (A), only by contributions in accordance with subparagraph (B), or by a combination of such contributions.

''(2) REDUCTION OR WAIVER FOR RECIPIENTS IN FISCAL DISTRESS.—The Secretary may reduce or waive the requirement under paragraph (1) with respect to any grantee that the Secretary determines, pursuant to such demonstration by the recipient as the Secretary shall require, is in fiscal distress. The Secretary shall make determinations regarding fiscal distress for purposes of this paragraph in the same manner, and according to the same criteria, as fiscal distress is determined with respect to jurisdictions under section 220(d) (42 U.S.C. 12750(d)).

''(3) QUALIFICATION OF SERVICES FUNDING FOR MATCH.—For purposes of meeting the requirements of paragraph (1), amounts that a grantee, recipient, or other governmental or private agency or entity commits to contribute to provide services to residents of affordable housing provided using grant amounts under this subtitle, by entering into a binding commitment for such contribution as the Secretary shall require, shall be considered contributions to eligible activities. Amounts to be considered eligible contributions under this paragraph shall not exceed 33 percent of the total cost of the eligible activity.

''(4) REDUCTION OR WAIVER FOR CERTAIN ACTIVITIES.—With respect to Trust Fund grant amounts made available for a fiscal year, the Secretary shall reduce or waive the amount of contributions otherwise required under paragraph (1) to be made with respect to eligible activities to be carried out with such grant amounts and for which any variance from zoning laws or other waiver of regulatory requirements was approved by the local jurisdiction. Such reduction may be implemented in the year following the year in which such activities are funded with Trust Fund grant amounts.

''(5) WAIVER FOR DISASTER AREAS.—In the case of any area that is subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121), the Secretary shall, for the fiscal year following such declaration, waive the requirement under paragraph (1) with respect to any eligible activities to be carried out in such area.

''(g) COMPETITIVE GRANTS FOR INDIAN TRIBES.—For each fiscal year referred to in section 293(a), the Secretary shall, using amounts allocated for Indian tribes pursuant to subsection (a)(2)(B) or (c)(2), as applicable, and subject to subsection (f), make grants to Indian tribes on a competitive basis, based upon such criteria as the Secretary shall establish, which shall include the factors specified in section 295(c)(2)(B).

''(h) USE BY STATE OF UNUSED FUNDS OF LOCAL JURISDICTIONS.—If any participating local jurisdiction for which an allocation is made for a fiscal year pursuant to this section notifies the Secretary of an intent not to use all or part of such funds, any such funds that will not be used by the jurisdiction shall be added to the grant award under subsection (e) for the State in which such jurisdiction is located.

''(i) COMPETITIVE GRANTS FOR AREAS WITHOUT ALLOCATION PLANS AND RECIPIENTS WITH INSUFFICIENT MATCHING CONTRIBUTIONS.—

''(1) AVAILABLE AMOUNTS.—For a fiscal year, the following amounts shall be available for grants under this subsection:

''(A) ALLOCATION FOR AREAS NOT SUBMITTING ALLOCATION PLANS.—With respect to each State, insular area, or participating local jurisdiction that has not, before the expiration of the 12-month period beginning upon the date of the publication of the notice of funding availability for such fiscal year under subsection (b)(4), submitted to and had approved by the Secretary an allocation plan for such fiscal year meeting the requirements of section 295, the amount of the allocation for such State, insular area, or participating local jurisdiction for such fiscal year determined under this section.

''(B) UNMATCHED PORTION OF ALLOCATION.—With respect to any grantee for which the Trust Fund grant amount awarded for such fiscal year is reduced from the amount of the allocation determined under this section for the grantee by reason of failure comply with the requirements under subsection (f), the amount by which such allocation for the grantee for the fiscal year exceeds the Trust Fund grant amount for the grantee for the fiscal year.

''(C) UNCOMMITTED AMOUNTS.—Any Trust Fund grant amounts for a fiscal year that are not committed for use for eligible activities before the expiration of the 24-month period beginning upon the date of the publication of the notice of availability of amounts under subsection (b)(4) for such fiscal year.

''(D) UNUSED AMOUNTS.—Any Trust Fund grant amounts for which the grantee notifies the Secretary that such funds will not be used under this subtitle.

''(2) NOTICE.—For each fiscal year, not later than 60 days after the date that the Secretary determines that the amounts described in paragraph (1) shall be available for grants under this subsection, the Secretary shall cause to be published in the Federal Register a notice that such amounts shall be so available.

''(3) APPLICATIONS.—The Secretary shall provide for nonprofit and public entities (and consortia thereof, which may include regional consortia of units of local government) to submit applications, during the 9-month period beginning upon publication of a notice of funding availability under paragraph (2) for a fiscal year, for a grant of all or a portion of the amounts referred to in paragraph (1) for such fiscal year. Such an application shall include a certification that the applicant will comply with all requirements of this subtitle applicable to a grantee under this subsection.

''(4) SELECTION CRITERIA.—The Secretary shall, by regulation, establish criteria for selecting applicants that meet the requirements of paragraph (3) for funding under this subsection. Such criteria shall give priority to applications that provide that grant amounts under this subsection will be used for eligible activities relating to affordable housing that is located in the State or insular area, as applicable, for which such grant funds were originally allocated under this section.

''(5) AWARD AND USE OF GRANT ASSISTANCE.—

''(A) AWARD.—Subject only to the absence of applications meeting the requirements of paragraph (3), upon the expiration of the period referred to in such paragraph, the Secretary shall select an applicant or applicants under this subsection to receive the amounts available under paragraph (1) and shall make a grant or grants to such applicant or applicants. The selection shall be based upon the criteria established under paragraph (4).

''(B) USE.—Amounts from a grant under this subsection shall be Trust Fund grant amounts for purposes of this subtitle.

''SEC. 295. ALLOCATION PLANS.

''(a) IN GENERAL.—Each grantee that is a State, insular area, participating local jurisdiction, or grantee under section 294(i) for a fiscal year, shall establish an allocation plan in accordance with this section for the distribution of Trust Fund grant amounts provided to the grantee for such fiscal year, which shall be a plan that—

''(1) provides for use of such amounts in accordance with section 296;

''(2) is based on priority housing needs, including priority housing needs in rural areas, as determined by the grantee; and

''(3) is consistent with the comprehensive housing affordability strategy under section 105 (42 U.S.C. 12705) or any applicable consolidated submission used for purposes of applying for other community planning and development and housing assistance programs administered by the Secretary, for the applicable State, insular area, jurisdiction, or grantee under section 294(i).

''(b) ESTABLISHMENT.—In establishing an allocation plan, a grantee described in subsection (a) shall notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.

''(c) CONTENTS.—Each allocation plan of a grantee described in subsection (a) shall comply with the following requirements:

''(1) APPLICATION REQUIREMENTS FOR ELIGIBLE RECIPIENTS.—The allocation plan shall set forth the requirements for eligible recipients to apply to the grantee to receive assistance from Trust Fund grant amounts of the grantee for use for eligible activities, including a requirement that each such application include—

''(A) a description of the eligible activities to be conducted using such assistance;

''(B) a certification by the eligible recipient applying for such assistance that any housing assisted with such grant amounts will comply with—

''(i) all of the requirements under this subtitle, including the targeting requirements under section 296(c) and the affordable housing requirements under section 297;

''(ii) section 808(d) of the Fair Housing Act (relating to the obligation to affirmatively further fair housing); and

''(iii) section 504 of the Rehabilitation Act of 1973 (relating to prohibition of discrimination on the basis of disability); and

''(C) in the case of any recipient who has received assistance from Trust Fund grant amounts in any previous fiscal year, a report on the progress made in carrying out the eligible activities funded with such previous assistance.

''(2) SELECTION PROCESS AND CRITERIA FOR ASSISTANCE.—

''(A) SELECTION PROCESS.—The allocation plan shall set forth a process for the grantee to select eligible activities meeting the grantee's priority housing needs for funding with Trust Fund grant amounts of the grantee, which shall comply with requirements for such process as the Secretary shall, by regulation, establish.

''(B) SELECTION CRITERIA.—The allocation plan shall set forth the factors for consideration in selecting among applicants that meet the application requirements established pursuant to paragraph (1), which shall provide for geographic diversity among eligible activities to be assisted with Trust Fund grant amounts of the grantee and shall include—

''(i) the merits of the proposed eligible activity of the applicant, including the extent to which the activity addresses housing needs identified in the allocation plan of the grantee and the applicable comprehensive

housing affordability strategy or consolidated submission referred to in subsection (a)(3);

''(ii) the experience of the applicant, including its principals, in carrying out projects similar to the proposed eligible activity;

''(iii) the ability of the applicant to obligate grant amounts for the proposed eligible activities and to undertake such activities in a timely manner;

''(iv) the extent of leveraging of funds by the applicant from private and other non-Federal sources for carrying out the eligible activities to be funded with Trust Fund grant amounts, including assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that is devoted to the project that contains the affordable housing to be assisted with such assistance;

''(v) the extent of local assistance that will be provided in carrying out the eligible activities, including financial assistance;

''(vi) the efficiency of total project fund use as measured by the cost per unit of the proposal, as adjusted by factors which shall include whether the funding with Trust Fund grant amounts is for new construction, rehabilitation, preservation, or homeownership assistance, whether the project involves supportive housing, differences in construction and rehabilitation costs in different areas of the grantee, and other appropriate adjustments;

''(vii) the degree to which the project in which the affordable housing will be located will have residents of various incomes;

''(viii) the extent of employment and other economic opportunities for low-income families in the area in which the housing will be located;

''(ix) the extent to which the applicant demonstrates the ability to maintain dwelling units as affordable housing through the use of assistance made available under this subtitle, assistance leveraged from non-Federal sources, assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), State or local assistance, programs to increase tenant income, cross-subsidization, and any other resources;

''(x) the extent to which the applicant demonstrates that the county in which the housing is to be located is experiencing an extremely low vacancy rate;

''(xi) the extent to which the percentage of the housing located in such county that is extremely old housing exceeds 35 percent;

''(xii) the extent to which the housing assisted with the grant amounts will be accessible to persons with disabilities;

''(xiii) the extent to which the applicant demonstrates that the affordable housing assisted with the grant amounts will be located in proximity to public transportation, job opportunities, child care, and community revitalization projects;

''(xiv) the extent to which the applicant has provided that assistance from grant amounts will be used for eligible activities relating to housing located in census tracts in which the number of families having incomes less than the poverty line is less than 20 percent;

''(xv) the extent to which the housing assisted with grant amounts will comply with energy efficiency standards and the national Green Communities criteria checklist for residential construction that provides criteria for the design, development, and operation of affordable housing, as the Secretary shall by regulation provide; and

''(xvi) the extent to which the design, construction, and operation of the housing assisted with grant amounts reduces utility costs for residents and thereby reduces their total housing cost.

A grantee may allocate a portion of funds under this section for use by such grantee for eligible activities pursuant to the selection process under subparagraph (A).

''(3) USE FOR FIRST RESPONDERS AND TEACHERS.—To the extent that Trust Fund grant amounts of a grantee are made available for eligible activities involving one- to four-family owner-occupied housing, the grantee may give preference in the use of such grant amounts to eligible activities relating to affordable housing for first responders, public safety officers, teachers, and other public employees who have family incomes such that such use of the grant amounts complies with the requirements under section 296(c).

''(4) PERFORMANCE GOALS, BENCHMARKS, AND TIMETABLES.—The allocation plan shall include performance goals, benchmarks, and timetables for the grantee for the conducting of eligible activities with Trust Fund grant amounts that comply with requirements and standards for such goals, benchmarks, and timetables as the Secretary shall, by regulation, establish.

''(d) REVIEW AND APPROVAL BY SECRETARY.—

''(1) SUBMISSION.—A grantee described in subsection (a) shall submit an allocation plan for the fiscal year for which the grant is made to the Secretary not later than the expiration of the 6-month period beginning upon the notice of funding availability under section 294(b)(4) for such fiscal year amounts.

''(2) REVIEW AND APPROVAL OR DISAPPROVAL.—The Secretary shall review and approve or disapprove an allocation plan not later than the expiration of the 3-month period beginning upon submission of the plan.

''(3) STANDARD FOR DISAPPROVAL.—The Secretary may disapprove an allocation plan only if the plan fails to comply with requirements of this section or section 296.

''(4) RESUBMISSION UPON DISAPPROVAL.—If the Secretary disapproves a plan, the grantee may submit to the Secretary a revised plan for review and approval or disapproval under this subsection.

''(5) TIMING FOR FISCAL YEAR 2009.—With respect only to fiscal year 2009, the Secretary may extend each of the periods referred to in paragraphs (1) and (2), and the period referred to in section 294(i)(1)(A), by not more than 6 months.

''SEC. 296. USE OF ASSISTANCE BY RECIPIENTS.

''(a) DISTRIBUTION TO RECIPIENTS; USE REQUIREMENTS.—Each grantee shall distribute Trust Fund grant amounts of the grantee to eligible recipients for use in accordance with this section. Trust Fund grant amounts of a grantee may be used, or committed for use, only for eligible activities that—

''(1) are conducted in the jurisdiction of the grantee;

''(2) in the case of a grantee that is a State, insular area, participating local jurisdiction, or grantee under section 294(i), comply with the allocation plan of the grantee under section 295;

''(3) are selected for funding by the grantee in accordance with the process and criteria for such selection established pursuant to section 295(c)(2); and

''(4) comply with the targeting requirements under subsection (c) of this section and the affordable housing requirements under section 297.

''(b) ELIGIBLE RECIPIENTS.—Trust Fund grant amounts of a grantee may be provided only to an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, a faith-based organization, a community development financial institution, a community development corporation, and a State or local housing trust fund) that—

''(1) demonstrates the experience, ability, and capacity (including financial capacity) to undertake, comply, and manage the eligible activity;

''(2) demonstrates its familiarity with the requirements of any other Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

''(3) makes such assurances to the grantee as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subtitle during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all eligible activities that are engaged in by the recipient and funded with such grant amounts.

''(c) TARGETING REQUIREMENTS.—The targeting requirements under this subsection are as follows:

''(1) REQUIREMENT OF USE OF ALL AMOUNTS FOR AFFORDABLE HOUSING FOR LOW-INCOME FAMILIES.—All Trust Fund grant amounts of a grantee shall be distributed for use only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed 80 percent of the greater of—

''(A) the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families; and

''(B) the median family income for the State or insular area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

''(2) USE OF 75 PERCENT FOR AFFORDABLE HOUSING FOR EXTREMELY LOW-INCOME FAMILIES.—Not less than 75 percent of the Trust Fund grant amounts of a grantee for each fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed the higher of—

''(A) 30 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families; and

''(B) the poverty line (as such term is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902), including any revision required by such section) applicable to a family of the size involved.

''(3) USE OF 30 PERCENT FOR AFFORDABLE HOUSING FOR VERY POOR FAMILIES.—Not less than 30 percent of the Trust Fund grant amounts of a grantee for each fiscal year shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed the maximum amount of income that an individual or family could have, taking into consideration any income disregards, and remain eligible for benefits under the Supplemental Security Income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.).

''(4) LIMITATION FOR YEARS IN WHICH LESS THAN $2 BILLION IS AVAILABLE.—If, for any fiscal year, the total amount available pursuant to section 293(a) for assistance under this subtitle is less than $2,000,000,000, in addition to the other requirements under this subsection, all such amounts shall be used only for eligible activities relating to affordable housing that are for the benefit only of families whose incomes do not exceed 50 percent of the median family income for the area in which the housing is located, as determined by the Secretary with adjustments for smaller and larger families.

''(5) REVIEW OF TARGETING REQUIREMENTS.—The Secretary shall assess the need for, and the appropriateness of, the requirements

under paragraphs (1) through (3) and shall submit a report to the Congress on the results of the assessment not later than October 1, 2010, and not later than the expiration of the 5-year period beginning upon such date and each successive 5-year period thereafter. In each such report, the Secretary shall identify and make recommendations regarding the continuation or adjustment of the targeting requirements in paragraphs (1) through (3).

''(d) USE FOR RURAL AREAS.—Of the Trust Fund grant amounts for any fiscal year for any grantee that is a State or participating local jurisdiction that includes any rural areas, the State or participating local jurisdiction shall use a portion for eligible activities located in rural areas that is proportionate to the identified need for such activities in such rural areas.

''(e) COST LIMITS.—The Secretary shall establish limitations on the amount of Trust Fund grant amounts that may be used, on a per unit basis, for eligible activities. Such limitations shall be the same as the per unit cost limits established pursuant to section 212(e) (42 U.S.C. 12742(e)), as adjusted annually, and established by number of bedrooms, market area, and eligible activity.

''(f) FORMS OF ASSISTANCE.—

''(1) IN GENERAL.—Assistance may be distributed pursuant to this section in the form of—

''(A) capital grants, noninterest-bearing or low-interest loans or advances, deferred payment loans, guarantees, and loan loss reserves;

''(B) in the case of assistance for ownership of one- to four-family owner-occupied housing, downpayment assistance, closing cost assistance, and assistance for interest rate buy-downs; and

''(C) any other forms of assistance approved by the Secretary.

''(2) REPAYMENTS.—If a grantee awards assistance under this section in the form of a loan or other mechanism by which funds are later repaid to the grantee, any repayments and returns received by the grantee shall be distributed by the grantee in accordance with the allocation plan under section 295 for the grantee for the fiscal year in which such repayments are made or returns are received.

''(g) COORDINATION WITH OTHER ASSISTANCE.—In distributing assistance pursuant to this section, each grantee shall, to the maximum extent practicable, coordinate such distribution with the provision of other Federal, State, tribal, and local housing assistance, including—

''(1) in the case of any State, housing credit dollar amounts allocated by the State under section 42(h) of the Internal Revenue Code of 1986;

''(2) assistance made available under subtitles A through F (42 U.S.C. 12721 et seq.) or the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.);

''(3) private activity bonds;

''(4) assistance made available under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g);

''(5) assistance made available under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o));

''(6) assistance made available under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.);

''(7) assistance made available under section 101 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111);

''(8) assistance made available from any State or local housing trust fund established to provide or assist in making available affordable housing; and

''(9) any other housing assistance programs.

''(h) PROHIBITED USES.—The Secretary shall—

''(1) by regulation, set forth prohibited uses of grant amounts under this subtitle, which shall include use for—

''(A) political activities;

''(B) advocacy;

''(C) lobbying, whether directly or through other parties;

''(D) counseling services;

''(E) travel expenses; and

''(F) preparing or providing advice on tax returns;

''(2) by regulation, provide that, except as provided in paragraph (3), grant amounts under this subtitle may not be used for administrative, outreach, or other costs of—

''(A) a grantee; or

''(B) any recipient of such grant amounts; and

''(3) by regulation, limit the amount of any Trust Fund grant amounts for a fiscal year that may be used for administrative costs of the grantee of carrying out the program required under this subtitle to a percentage of such grant amounts of the grantee for such fiscal year, which may not exceed 10 percent.

''(i) LABOR STANDARDS.—Each grantee receiving Trust Fund grant amounts shall ensure that contracts for eligible activities assisted with such amounts comply with the same requirements under section 286 (42 U.S.C. 12836) that are applicable to contracts for construction of affordable housing assisted under subtitles A and D.

''(j) COMPLIANCE WITH OTHER FEDERAL LAWS.—All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subtitle (including housing provided with such grant amounts) shall comply with and be operated in compliance with, other applicable provisions of Federal law, including—

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

''(2) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

''(3) fair housing laws and laws regarding accessibility in federally assisted housing, including section 504 of the Rehabilitation Act of 1973.

''SEC. 297. AFFORDABLE HOUSING.

''(a) RENTAL HOUSING.—A rental dwelling unit (which may include a dwelling unit in limited equity cooperative housing, as such term is defined in section 143(k) of the Internal Revenue Code of 1986 (26 U.S.C. 143(k)) or in housing of a cooperative housing corporation, as such term is defined in section 216(b) of the Internal Revenue Code of 1986 (26 U.S.A. 216(b))), shall be considered affordable housing for purposes of this subtitle only if the dwelling unit is subject to legally binding commitments that ensure that the dwelling unit meets all of the following requirements:

''(1) RENTS.—The dwelling unit bears a rent not greater than the lesser of—

''(A) the existing fair market rental established by the Secretary under section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)) for a dwelling unit of the same size in the same market area, or the applicable payment standard for assistance under section 8(o) of such Act, if higher; and

''(B) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the findings of the Secretary that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

''(2) TENANT RENT CONTRIBUTION.—The contribution toward rent by the family residing in the dwelling unit will not exceed 30 percent of the adjusted income of such family.

''(3) NON-DISCRIMINATION AGAINST VOUCHER HOLDERS.—The dwelling unit is located in a project in which all dwelling units are subject to enforceable restrictions that provide that a unit may not be refused for leasing to a holder of a voucher of eligibility under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) because of the status of the prospective tenant as a holder of such voucher.

''(4) MIXED INCOME.—

''(A) IN GENERAL.—The dwelling unit is located in a project—

''(i) that receives assistance under this subtitle; and

''(ii) for which not more than 50 percent of the rental units in the project that are not previously occupied may be rented initially only to families with incomes described in section 296(c)(2), as determined at a reasonable time before occupancy.

''(B) REHABILITATION.—In the case of a dwelling unit in a project for which Trust Fund grant amounts are used for the rehabilitation of the project, the dwelling unit is located in a project in which the percentage of units being rented upon completion of the rehabilitation to families with incomes described in section 296(c)(2) may not exceed the higher of 50 percent or the percentage of such families occupying the project at the time funds are awarded for such project.

''(C) EXCEPTIONS.—Subparagraph (A) shall not apply in the case of a project that—

''(i) has 25 or fewer dwelling units and that is—

''(I) located in a census tract in which the number of families having incomes less than the poverty line is less than 20 percent;

''(II) located in a rural area, as such term is defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490); or

''(III) specifically made available only for households comprised of disabled families; or

''(ii) is specifically made available only for households comprised of elderly families.

''(5) VISITABILITY.—To the extent the dwelling unit is not required under Federal law to comply with standards relating to accessibility to persons with disabilities, the dwelling unit complies with such basic visitability standards as the Secretary shall by regulation provide.

''(6) DURATION OF USE.—The dwelling unit will continue to be subject to all requirements under this subsection for not less than 50 years.

''(b) OWNER-OCCUPIED HOUSING.—For purposes of any eligible activity involving one- to four-family owner-occupied housing (which may include housing of a cooperative housing corporation, as such term is defined in section 216(b) of the Internal Revenue Code of 1986 (26 U.S.C. 216(b))), such a residence shall be considered affordable housing for purposes of this subtitle only if—

''(1) in the case of housing to be made available for purchase—

''(A) the housing is available for purchase only for use as a principal residence by families that qualify as first-time homebuyers, as such term is defined in section 104 (42 U.S.C. 12704), except that any reference in such section to assistance under title II of this Act

shall for purposes of this section be considered to refer to assistance from Trust Fund grant amounts;

''(B) the housing has an initial purchase price that meets the requirements of section 215(b)(1); and

''(C) the housing is subject to the same resale restrictions established under section 215(b)(3) and applicable to the participating jurisdiction that is the State in which such housing is located; and

''(2) the housing is made available for purchase only by, or in the case of assistance to a homebuyer pursuant to this subsection, the assistance is made available only to, homebuyers who have, before purchase, completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary and includes counseling regarding financial literacy, strategies to save money, qualifying for a mortgage loan, methods to avoid predatory lenders and foreclosure, and, where appropriate by region, any requirements and costs associated with obtaining flood or other disaster-specific insurance coverage; except that the Secretary may, at the request of a State, waive the requirements of this paragraph with respect to a geographic area or areas within the State if—

''(A) the travel time or distance involved in providing counseling with respect to such area or areas, as otherwise required under this paragraph, on an in-person basis is excessive or the cost of such travel is prohibitive; and

''(B) the State provides alternative forms of counseling for such area or areas, which may include interactive telephone counseling, on-line counseling, interactive video counseling, and interactive home study counseling and a program of financial literacy and education to promote an understanding of consumer, economic, and personal finance issues and concepts, including saving for retirement, managing credit, long-term care, and estate planning and education on predatory lending, identity theft, and financial abuse schemes relating to homeownership that is approved by the Secretary, except that entities providing such counseling shall not discriminate against any particular form of housing.

''(c) PRIORITY FOR FAMILIES ON SECTION 8 OR PUBLIC HOUSING WAITING LIST FOR 12 MONTHS OR LONGER.—A dwelling unit in rental housing or owner-occupied housing shall be considered affordable housing for purposes of this subtitle only if the dwelling unit is subject to such requirements, as the Secretary shall provide, to ensure that priority for occupancy in or, in the case of owner-occupied housing, purchase of, the dwelling unit is provided to families who are eligible for rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) or occupancy in public housing assisted under such Act, and have applied to a public housing agency for such assistance or occupancy, as applicable, and been on a waiting list of a public housing agency for such assistance or occupancy, as applicable, for at least 12 consecutive months.

''SEC. 298. OTHER PROVISIONS.

''(a) EFFECT OF ASSISTANCE UNDER PROGRAM.—Notwithstanding any other provision of law, the provision of assistance under this subtitle for a project shall not reduce the amount of assistance for which such project is otherwise eligible under subtitles A through F of this title, if the project does not exceed the cost limits established pursuant to section 296(e).

''(b) ACCOUNTABILITY OF GRANTEES AND RECIPIENTS.—

''(1) RECIPIENTS.—

''(A) TRACKING OF FUNDS.—The Secretary shall—

''(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from Trust Fund grant amounts of the grantee uses such amounts in accordance with this subtitle, the regulations issued under this subtitle, and any requirements or conditions under which such amounts were provided; and

''(ii) establish minimum requirements for agreements, between the grantee and recipients, regarding assistance from the Trust Fund grant amounts of the grantee, which shall include—

''(I) appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this subtitle and the regulations under this subtitle; and

''(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

''(B) MISUSE OF FUNDS.—

''(i) REIMBURSEMENT REQUIREMENT.—If any recipient of assistance from Trust Fund grant amounts of a grantee is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this subtitle, the regulations issued under this subtitle, or any requirements or conditions under which such amounts were provided—

''(I) such recipient shall be ineligible for any further assistance from any Trust Fund grant amounts of any grantee during the period that begins upon such determination and ends upon reinstatement by the Secretary of the eligibility of recipient for such assistance, except that the Secretary may reinstate such an ineligible recipient only pursuant to application by the recipient for such reinstatement and the recipient may not apply to the Secretary for such reinstatement during the 12-month period, or the 10-year period in the case of a second or subsequent such determination, beginning upon such determination; and

''(II) the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for such misused amounts and return to the grantee any amounts from the Trust Fund grant amounts of the grantee that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

''(ii) DETERMINATION.—A determination is made in accordance with this clause if the determination is—

''(I) made by the Secretary; or

''(II)(aa) made by the grantee;

''(bb) the grantee provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

''(cc) the Secretary does not subsequently reverse the determination.

''(2) GRANTEES.—

''(A) REPORT.—

''(i) IN GENERAL.—The Secretary shall require each grantee receiving Trust Fund grant amounts for a fiscal year to submit a report, for such fiscal year, to the Secretary that—

''(I) describes the activities funded under this subtitle during such year with the Trust Fund grant amounts of the grantee;

''(II) describes the manner in which the grantee complied during such fiscal year with the allocation plan established pursuant to section 295 for the grantee; and

''(III) certifies the number of total dwelling units of affordable housing that were constructed, preserved, or rehabilitated during such fiscal year with assistance from Trust Funds grant amounts of the grantee comply with widely accepted standards for green building.

''(ii) PUBLIC AVAILABILITY.—The Secretary shall make such reports pursuant to this subparagraph publicly available.

''(B) MISUSE OF FUNDS.—If the Secretary determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this subtitle and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

''(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Trust Fund grant amounts which were not used in accordance with this subtitle;

''(ii) require the grantee to repay the Secretary an amount equal to the amount of the Trust Fund grant amounts which were not used in accordance with this subtitle;

''(iii) limit the availability of assistance under this subtitle to the grantee to activities or recipients not affected by such failure to comply; or

''(iv) terminate any assistance under this subtitle to the grantee.

''(c) GREEN HOUSING CLEARINGHOUSE.—

''(1) ESTABLISHMENT.—The Secretary shall establish a clearinghouse of information relating to green building techniques to provide grantees and recipients of Trust Fund amounts information regarding use of Trust Fund grant amounts in a manner that increases the efficiency of buildings and their use of energy, water, and materials, and reducing building impacts on human health and the environment, through better siting, design, construction, operation, maintenance, and removal, including information regarding best practices and technical recommendations.

''(2) ACCESS THROUGH INTERNET.—The Secretary shall make the information of the clearinghouse available by means of the Internet.

''SEC. 299. DEFINITIONS.

''For purposes of this subtitle, the following definitions shall apply:

''(1) ELIGIBLE ACTIVITIES.—The term 'eligible activities' means activities relating to the construction, preservation, or rehabilitation of affordable rental housing or affordable one- to four-family owner-occupied housing, including—

''(A) the construction of new housing;

''(B) the acquisition of real property;

''(C) site preparation and improvement, including demolition;

''(D) rehabilitation of existing housing;

''(E) use of funds to facilitate affordability for homeless and other extremely low-income households of dwelling units assisted with Trust Fund grant amounts, in a combined amount not to exceed 20 percent of the project grant amount, for—

''(i) project-based rental assistance for not more than 12 months for a project assisted with Trust Fund grant amounts;

''(ii) project operating reserves for use to cover the loss of rental assistance or in conjunction with a project loan; or

''(iii) project operating accounts used to cover net operating income shortfalls for dwelling units assisted with Trust Fund grant amounts;

''(F) use of funds to facilitate affordability for families having incomes described in section 296(c)(3), in a combined amount for a grantee in any fiscal year not to exceed 10 percent of the aggregate Trust Fund grant amounts provided to the grantee for such fiscal year, for project operating accounts used to cover net operating income shortfalls for

dwelling units assisted with Trust Fund grant amounts;

''(G) providing incentives to maintain existing housing (including manufactured housing) as affordable housing and to establish or extend any low-income affordability restrictions for such housing, including covering capital expenditures and costs of establishing community land trusts to provide sites for manufactured housing provided such incentives; and

''(H) in the case of affordable one- to four-family owner-occupied housing, downpayment assistance, closing cost assistance, and assistance for interest rate buy-downs.

''(2) ELIGIBLE RECIPIENT.—The term 'eligible recipient' means an entity that meets the requirements under section 296(b) for receipt of Trust Fund grant amounts of a grantee.

''(3) EXTREMELY LOW VACANCY RATE.—The term 'extremely low vacancy rate' means a housing or rental vacancy rate of 2 percent or less.

''(4) EXTREMELY OLD HOUSING.—The term 'extremely old housing' means housing that is 45 years old or older.

''(5) FAMILIES.—The term 'families' has the meaning given such term in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

''(6) FISCAL DISTRESS; SEVERE FISCAL DISTRESS.—The terms 'fiscal distress' and 'severe fiscal distress' have the meanings given such terms in section 220(d).

''(7) GRANTEE.—The term 'grantee' means—

''(A) a State, insular area, or participating local jurisdiction for which a grant is made under section 294(e);

''(B) an Indian tribe for which a grant is made under section 294(g); or

''(C) a nonprofit or public entity for which a grant is made under section 294(i).

''(8) INDIAN TRIBE.—The term 'Indian tribe' means a federally recognized Indian tribe.

''(9) INSULAR AREA.—The term 'insular area' has the meaning given such term in section 104.

''(10) PARTICIPATING LOCAL JURISDICTION.—The term 'participating local jurisdiction' means, with respect to a fiscal year—

''(A) any unit of general local government (as such term is defined in section 104 (42 U.S.C. 12704) that qualifies as a participating jurisdiction under section 216 (42 U.S.C. 12746) for such fiscal year; and

''(B) at the option of such a consortium, any consortium of units of general local governments that is designated pursuant to section 216 (42 U.S.C. 12746) as a participating jurisdiction for purposes of title II.

''(11) POVERTY LINE.—The term 'poverty line' has the meaning given such term in section 673(2) of the Omnibus Budget Reconciliation Act of 1981, including any revision required by such section.

''(12) RECIPIENT.—The term 'recipient' means an entity that receives assistance from a grantee, pursuant to section 296(a), from Trust Fund grant amounts of the grantee.

''(13) RURAL AREA.—The term 'rural area' has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490).

''(14) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''(15) STATE.—The term 'State' has the meaning given such term in section 104.

''(16) TRUST FUND.—The term 'Trust Fund' means the National Affordable Housing Trust Fund established under section 292.

''(17) TRUST FUND GRANT AMOUNTS.—The term 'Trust Fund grant amounts' means amounts from the Trust Fund that are provided to a grantee pursuant to subsection (e), (g), or (i) of section 294.

''SEC. 299A. INAPPLICABILITY OF HOME PROVISIONS.

''Except as specifically provided otherwise in this subtitle, no requirement under, or provision of, title I or subtitles A through F of this title shall apply to assistance provided under this subtitle.

''SEC. 299B. REGULATIONS.

''Not later than 6 months after the date of enactment of the National Affordable Housing Trust Fund Act of 2008, the Secretary of Housing and Urban Development shall promulgate regulations to carry out this subtitle, which shall include regulations establishing the affordable housing needs formula in accordance with section 294(a).

''SEC. 299C. BENEFITS.

''Nothing in this subtitle allows any payments under this subtitle for any individual or head of household that is not a legal resident.''.

(b) CONFORMING AMENDMENT.—Section 201 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 note) is amended by striking ''This title'' and inserting ''Subtitles A through F of this title''.

SA 4404. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

Beginning on page 68, strike line 22 and all that follows through line 4 on page 69 and and insert the following:

''(A) IN GENERAL.—Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage which—

''(i) was originally financed by the mortgagor through a qualified subprime loan, or

''(ii) is a mortgage on a residence—

''(I) located in the Gulf Opportunity Zone (as defined in section 1400M(1)) and damaged or rendered uninhabitable by reason of Hurricane Katrina,

''(II) located in the Rita GO Zone (as defined in section 1400M(3)) and damaged or rendered uninhabitable by reason of Hurricane Rita, or

''(III) located in the Wilma GO Zone (as defined in section 1400M(5)) and damaged or rendered uninhabitable by reason of Hurricane Wilma.

On page 72, between lines 10 and 11, insert the following:

(c) WAIVER OF 3-YEAR REQUIREMENT FOR HOMES DAMAGED BY HURRICANES KATRINA, RITA, AND WILMA.—Paragraph (2) of section 143(d) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of subparagraph (C), by inserting ''and'' at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

''(E) in the case of bonds issued after the date of the enactment of this subparagraph and before January 1, 2011, financing with respect to the purchase of any residence—

''(i) located in the Gulf Opportunity Zone (as defined in section 1400M(1)) and damaged or rendered uninhabitable by reason of Hurricane Katrina,

''(ii) located in the Rita GO Zone (as defined in section 1400M(3)) and damaged or rendered uninhabitable by reason of Hurricane Rita, or

''(iii) located in the Wilma GO Zone (as defined in section 1400M(5)) and damaged or rendered uninhabitable by reason of Hurricane Wilma,''.

On page 72, line 11, strike ''(c)'' and insert ''(d)''.

On page 73, line 19, strike ''(d)'' and insert ''(e)''.

SA 4405. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 52, line 4, strike ''; and'' and insert a semicolon.

On page 52, line 7, strike the period and insert ''; and''.

On page 52, between lines 7 and 8, insert the following:

(D) the number and percentage of homes damaged or rendered uninhabitable as a result of Hurricanes Katrina, Rita, and Wilma in each State or unit of general local government.

SA 4406. Mr. VOINOVICH (for himself, Ms. STABENOW, Mr. HATCH, Mr. ROCKEFELLER, Mr. SMITH, Ms. CANTWELL, Mr. VITTER, and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI, insert the following:

SEC. _____. ELECTION TO ACCELERATE AMT AND R AND D CREDITS IN LIEU OF BONUS DEPRECIATION.

(a) IN GENERAL.—Section 168(k), as amended by this Act, is amended by adding at the end the following new paragraph:

''(5) ELECTION TO ACCELERATE AMT AND R AND D CREDITS IN LIEU OF BONUS DEPRECIATION.—

''(A) IN GENERAL.—If a corporation which is an eligible taxpayer (within the meaning of paragraph (4)) for purposes of this subsection elects to have this paragraph apply—

''(i) no additional depreciation shall be allowed under paragraph (1) for any qualified property placed in service during any taxable year to which paragraph (1) would otherwise apply, and

''(ii) the limitations described in subparagraph (B) for such taxable year shall be increased by an aggregate amount not in excess of the bonus depreciation amount for such taxable year.

''(B) LIMITATIONS TO BE INCREASED.—The limitations described in this subparagraph are—

''(i) the limitation under section 38(c), and

''(ii) the limitation under section 53(c).

''(C) BONUS DEPRECIATION AMOUNT.—For purposes of this paragraph—

''(i) IN GENERAL.—The bonus depreciation amount for any applicable taxable year is an amount equal to the product of 20 percent and the excess (if any) of—

''(I) the aggregate amount of depreciation which would be determined under this section for the taxable year if no election under this paragraph were made and if this subsection applied only to eligible qualified property, over

''(II) the aggregate amount of depreciation allowable under this section for the taxable year.

''(ii) ELIGIBLE QUALIFIED PROPERTY.—For purposes of clause (i), the term 'eligible qualified property' means qualified property under paragraph (2), except that in applying paragraph (2) for purposes of this clause—

''(I) 'March 31, 2008' shall be substituted for 'December 31, 2007' each place it appears in subparagraph (A) and clauses (i) and (ii) of subparagraph (E) thereof,

''(II) only adjusted basis attributable to manufacture, construction, or production after March 31, 2008, and before January 1, 2009, shall be taken into account under subparagraph (B)(ii) thereof, and

''(III) in the case of property which is a passenger aircraft, the written binding contract limitation under subparagraph (A)(iii)(I) thereof shall not apply.

''(iii) MAXIMUM AMOUNT.—The bonus depreciation amount for any applicable taxable year shall not exceed the applicable limitation under clause (iv), reduced (but not below zero) by the bonus depreciation amount for any preceding taxable year.

''(iv) APPLICABLE LIMITATION.—For purposes of clause (iii), the term 'applicable limitation' means, with respect to any eligible taxpayer, the lesser of—

''(I) $50,000,000, or

''(II) 50 percent of the sum of the amounts determined with respect to the eligible taxpayer under clauses (ii) and (iii) of subparagraph (D).

''(v) AGGREGATION RULE.—All corporations which are treated as a single employer under section 52(a) shall be treated as 1 taxpayer for purposes of applying the limitation under this subparagraph and determining the applicable limitation under clause (iv).

''(D) ALLOCATION OF BONUS DEPRECIATION AMOUNTS.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), the taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the bonus depreciation amount which is to be allocated to each of the limitations described in subparagraph (B).

''(ii) BUSINESS CREDIT LIMITATION.—The portion of the bonus depreciation amount allocated to the limitation described in subparagraph (B)(i) shall not exceed an amount equal to the portion of the credit allowable under section 38 for the taxable year which is allocable to business credit carryforwards to such taxable year which are—

''(I) from taxable years beginning before January 1, 2006, and

''(II) properly allocable (determined under the rules of section 38(d)) to the research credit determined under section 41(a).

''(iii) ALTERNATIVE MINIMUM TAX CREDIT LIMITATION.—The portion of the bonus depreciation amount allocated to the limitation described in subparagraph (B)(ii) shall not exceed an amount equal to the portion of the minimum tax credit allowable under section 53 for the taxable year which is allocable to the adjusted minimum tax imposed for taxable years beginning before January 1, 2006.

''(E) CREDIT REFUNDABLE.—Any aggregate increases in the credits allowed under section 38 or 53 by reason of this paragraph shall, for purposes of this title, be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A.

''(F) OTHER RULES.—

''(i) ELECTION.—Any election under this paragraph (including any allocation under subparagraph (D)) may be revoked only with the consent of the Secretary.

''(ii) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—Notwithstanding this paragraph, paragraph (2)(G) shall apply with respect to the deduction computed under this section (after application of this paragraph) with respect to property placed in service during any applicable taxable year.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2007, in taxable years ending after such date.

SA 4407. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation;

At the end add the following:

TITLE __—PRINCIPAL RESIDENCE GAIN EXCLUSION

SEC. __01. INFLATION ADJUSTMENT FOR PRINCIPAL RESIDENCE GAIN EXCLUSION DOLLAR LIMITATION.

(a) IN GENERAL.—Section 121(b) of the Internal Revenue Code of 1986 (relating to limitations) is amended by adding at the end the following new paragraph:

''(4) INFLATION ADJUSTMENT.—In the case of any calendar year after 2008, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2007' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.''.

(b) CONFORMING AMENDMENT.—So much of subparagraph (A) of section 121(b)(2) of the Internal Revenue Code of 1986 as precedes clause (i) thereof is amended to read as follows:

''(A) LIMITATION FOR CERTAIN JOINT RETURNS.—Paragraph (1) shall be applied by doubling the dollar amount specified in such paragraph if—''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2008.

SA 4408. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ——. LEGAL SAFE HARBOR FOR ENTERING INTO CERTAIN LOAN MODIFICATIONS OR WORKOUT PLANS.

Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following:

''(i) Duty of Servicers Regarding Certain Loan Modifications or Workout Plans.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, absent specific contractual provisions to the contrary, a servicer of pooled qualified residential mortgages—

''(A) owes any duty to determine if the net present value of the payments on the loan as modified is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and parties having a direct or indirect interest in the pooled loans or securitization vehicle, but not to any individual party or group of parties; and

''(B) acts in the best interests of all such investors and parties, if the servicer agrees to or implements a qualified loan modification or workout plan for a qualified residential mortgage, or if, and only if, such efforts are unsuccessful or infeasible, takes other reasonable loss mitigation actions, including accepting partial payments or short sale of the property; and

''(C) if the servicer acts in a manner consistent with the duty set forth in subparagraphs (A) and (B), shall not be liable under any law or regulation of the United States, any State or any political subdivision of any State, for entering into a qualified loan modification or workout plan in any action filed by or on behalf of any person—

''(i) based on the person's ownership of any interest in a residential mortgage, a pool of residential mortgage loans, or a securitization vehicle, that distributes payments out of the principal, interest, or other payment on loans in the pool;

''(ii) based on the person's obligation to make payments determined in reference to any loan or interest referred to in clause (i); or

''(iii) based on the person's obligation to insure any loan or any interest referred to in clause (i).

''(2) DEFINITIONS.—As used in this subsection—

''(A) the term 'qualified loan modification or workout plan' means a contract, modification, or plan relating to a qualified residential mortgage loan consummated after January 1, 2004, with respect to which—

''(i) payment default on the loan or loans has occurred, is imminent, or is reasonably foreseeable;

''(ii) the dwelling securing the loan or loans is the primary residence of the owner;

''(iii) the servicer reasonably believes that the anticipated recovery under the loan modification or workout plan will exceed the anticipated recovery through foreclosure, on a net present value basis;

''(iv) the effective period runs for at least 5 years from the date of adoption of the plan, or until the borrower sells or refinances the property, if that occurs earlier; and

''(v) the borrower is not required to pay additional fees to the servicer;

''(B) the term 'qualified residential mortgage' means a consumer credit transaction

or loan that is secured by the consumer's principal dwelling;

''(C) the term 'securitization vehicle' means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans.; and''

(D) the term ''servicer'' includes the entities listed in subsection (i)(2)(A) and (B) of RESPA (12 U.S.C. sections 2605(i)(2)(A) and (B)).

Effective Period—this section shall apply only with respect to qualified loan modifications or workout plans initiated during the 6 month period beginning on the date of enactment of this section.

SA 4409. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of the bill, insert the following:

TITLE VIII—REVERSE MORTGAGE PROTECTION PROCEEDS ACT

SEC. 801. SHORT TITLE.

This title may be cited as the ''Reverse Mortgage Proceeds Protection Act''.

SEC. 802. PROHIBITION ON REQUIRED PURCHASE OF AN ANNUITY.

Section 255 of the National Housing Act of 1937 (12 U.S.C. 1715z–20) is amended—

(1) by amending subsection (d)(1) to read as follows:

''(1) have been originated by a mortgagee approved by the Secretary;'';

(2) by amending subsection (d)(2)(B) to read as follows:

''(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in-

''(i) originating or servicing the mortgage;

''(ii) funding the loan underlying the mortgage; or

''(iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;'';

(3) in subsection (f)—

(A) by striking ''(f) INFORMATION SERVICES FOR MORTGAGORS.—'' and inserting ''(f) COUNSELING SERVICES AND INFORMATION FOR MORTGAGORS.—''; and

(B) by amending the matter preceding paragraph (1) to read as follows: ''The Secretary shall provide or cause to be provided adequate counseling for the mortgagor, as described in subsection (d)(2)(B). Such counseling shall be provided by counselors that meet qualification standards and follow uniform counseling protocols. The qualification standards and counseling protocols shall be established by the Secretary within 12 months of the date of enactment of the Reverse Mortgage Proceeds Protection Act. The protocols shall require a qualified counselor to discuss with each mortgagor information which shall include—''

(4) striking subsection (l);

(5) redesignating subsection (m) as subsection (l);

(6) amending subsection (l), as so redesignated, to read as follows:

''(l) FUNDING FOR COUNSELING.—The Secretary shall use a portion of the mortgage insurance premiums collected under the program under this section to adequately fund the counseling and disclosure activities required under subsection (f), including counseling for those homeowners who elect not to take out a home equity conversion mortgage.''; and

(7) adding at the end the following:

''(m) REQUIREMENTS ON MORTGAGE ORIGINATORS.—

''(1) IN GENERAL.—The mortgagee and any other party that participates in the origination of a mortgage to be insured under this section shall—

''(A) not participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity; or

''(B) demonstrate to the Secretary that the mortgagee or other party maintains, or will maintain, firewalls and other safeguards designed to ensure that—

''(i) individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the mortgagor with, any other financial or insurance product; and

''(ii) the mortgagor shall not be required, directly or indirectly, as a condition of obtaining a mortgage under this section, to purchase any other financial or insurance product.

''(2) APPROVAL OF OTHER PARTIES.—All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary.

''(n) PROHIBITION AGAINST REQUIREMENTS TO PURCHASE ADDITIONAL PRODUCTS.—The mortgagee or any other party shall not be required by the mortgagor or any other party to purchase an insurance, annuity, or other additional product as a requirement or condition of eligibility for a mortgage authorized under subsection (c).

''(o) REGULATIONS TO PROTECT ELDERLY HOMEOWNERS.—Not later than 12 months after the date of enactment of the Reverse Mortgage Proceeds Protection Act, the Secretary shall, in consultation with other relevant Federal departments and agencies, promulgate regulations to help protect elderly homeowners from the marketing of financial and insurance products not in the interest of such homeowners, including the marketing or sale of an annuity or investment associated with obtaining, or as a condition of obtaining, any home equity conversion mortgage.

''(p) STUDY TO DETERMINE CONSUMER PROTECTIONS AND UNDERWRITING STANDARDS.—The Secretary shall conduct a study to examine and determine appropriate consumer protections and underwriting standards to ensure that the purchase of products referred to in subsection (n) is appropriate for the consumer. In conducting such study, the Secretary shall consult with consumer advocates (including recognized experts in consumer protection), industry representatives, representatives of counseling organizations, and other interested parties.''.

SA 4410. Mrs. FEINSTEIN (for herself, Mr. MARTINEZ, Mrs. BOXER, Mr. OBAMA, Mr. SALAZAR, Mrs. DOLE, Mr. DURBIN, and Mrs. CLINTON) submitted an amendment intended to be proposed by her to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

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

SEC. 701. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Secure and Fair Enforcement for Mortgage Licensing Act of 2008'' or ''S.A.F.E. Mortgage Licensing Act of 2008''.

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

Sec. 701. Short title; table of contents.
Sec. 702. Purposes and methods for establishing a mortgage licensing system and registry.
Sec. 703. Definitions.
Sec. 704. License or registration required.
Sec. 705. State license and registration application and issuance.
Sec. 706. Standards for State license renewal.
Sec. 707. System of registration administration by Federal banking agencies.
Sec. 708. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
Sec. 709. Backup authority to establish a nationwide mortgage licensing and registry system.
Sec. 710. Fees.
Sec. 711. Background checks of loan originators.
Sec. 712. Confidentiality of information.
Sec. 713. Liability provisions.
Sec. 714. Enforcement under HUD backup licensing system.
Sec. 715. Preemption of State law.
Sec. 716. Reports and recommendations to Congress.
Sec. 717. Study and reports on defaults and foreclosures

SEC. 702. PURPOSES AND METHODS FOR ESTABLISHING A MORTGAGE LICENSING SYSTEM AND REGISTRY.

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

(1) Provides uniform license applications and reporting requirements for State-licensed loan originators.

(2) Provides a comprehensive licensing and supervisory database.

(3) Aggregates and improves the flow of information to and between regulators.

(4) Provides increased accountability and tracking of loan originators.

(5) Streamlines the licensing process and reduces the regulatory burden.

(6) Enhances consumer protections and supports anti-fraud measures.

(7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would be required to act in the best interests of the consumer, to the greatest extent possible.

SEC. 703. DEFINITIONS.

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

(1) FEDERAL BANKING AGENCIES.—The term ''Federal banking agencies'' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(2) DEPOSITORY INSTITUTION.—The term ''depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(3) LOAN ORIGINATOR.—

(A) IN GENERAL.—The term ''loan originator''—

(i) means an individual who—

(I) takes a residential mortgage loan application;

(II) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

(III) offers or negotiates terms of a residential mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(ii) includes any individual who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will provide or perform any of the activities described in clause (i);

(iii) does not include any individual who is not otherwise described in clause (i) or (ii) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause; and

(iv) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator.

(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—For purposes of this subsection, an individual ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term ''administrative or clerical tasks'' means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term ''real estate brokerage activity'' means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) listing or advertising real property for sale, purchase, lease, rental, or exchange;

(iii) providing advice in connection with sale, purchase, lease, rental, or exchange of real property;

(iv) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(v) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(vi) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(vii) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), (iv), (v), or (vi).

(4) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term ''loan processor or underwriter'' means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term ''clerical or support duties'' may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(5) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ''Nationwide Mortgage Licensing System and Registry'' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary under section 709.

(6) REGISTERED LOAN ORIGINATOR.—The term ''registered loan originator'' means any individual who—

(A) meets the definition of loan originator and is an employee of a depository institution or a wholly-owned subsidiary of a depository institution; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(7) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan'' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(9) STATE-LICENSED LOAN ORIGINATOR.—The term ''State-licensed loan originator'' means any individual who—

(A) is a loan originator;

(B) is not an employee of a depository institution or any wholly-owned subsidiary of a depository institution; and

(C) is licensed by a State or by the Secretary under section 708 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(10) SUBPRIME MORTGAGE.—The term ''subprime mortgage'' means a residential mortgage loan—

(A) that is secured by real property that is used or intended to be used as a principal dwelling;

(B) that is typically offered to borrowers having weakened credit histories and reduced repayment capacity, as measured by lower credit scores, debt-to-income ratios, and other relevant criteria; and

(C) the characteristics of which may include—

(i) low initial payments based on a fixed introductory rate that expires after a short period and then adjusts to a variable index rate plus a margin for the remaining term of the loan;

(ii) very high or no limits on how much the payment amount or the interest rate may increase (referred to as ''payment caps'' or ''rate caps'') on reset dates;

(iii) limited or no documentation of the income of the borrower;

(iv) product features likely to result in frequent refinancing to maintain an affordable monthly payment; and

(v) substantial prepayment penalties or prepayment penalties that extend beyond the initial fixed interest rate period.

(11) UNIQUE IDENTIFIER.—The term ''unique identifier'' means a number or other identifier that—

(A) permanently identifies a loan originator; and

(B) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

SEC. 704. LICENSE OR REGISTRATION REQUIRED.

(a) IN GENERAL.—An individual may not engage in the business of a loan originator without first—

(1) obtaining and maintaining, through an annual renewal—

(A) a registration as a registered loan originator; or

(B) a license and registration as a State-licensed loan originator; and

(2) obtaining a unique identifier.

(b) LOAN PROCESSORS AND UNDERWRITERS.—

(1) SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator or a registered loan originator.

(2) INDEPENDENT CONTRACTORS.—A loan processor or underwriter may not work as an independent contractor unless such processor or underwriter is a State-licensed loan originator or a registered loan originator.

SEC. 705. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.

(a) BACKGROUND CHECKS.—In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain—

(A) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) ISSUANCE OF LICENSE.—The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has never had a loan originator or similar license revoked in any governmental jurisdiction.

(2) The applicant has never been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(6) The applicant has met a minimum net worth requirement.

(c) PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.—

(1) MINIMUM EDUCATIONAL REQUIREMENTS.—In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the subprime mortgage marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

(d) TESTING OF LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) QUALIFIED TEST.—A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless—

(A) the test consists of a minimum of 100 questions; and

(B) the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

(i) ethics;

(ii) Federal law and regulation pertaining to mortgage origination;

(iii) State law and regulation pertaining to mortgage origination; and

(iv) Federal and State law and regulation, including instruction on fraud, consumer protection, subprime mortgage marketplace, and fair lending issues.

(3) MINIMUM COMPETENCE.—

(A) PASSING SCORE.—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) INITIAL RETESTS.—An individual may retake a test 3 consecutive times with each consecutive taking occurring in less than 14 days after the preceding test.

(C) SUBSEQUENT RETESTS.—After 3 consecutive tests, an individual shall wait at least 14 days before taking the test again.

(D) RETEST AFTER LAPSE OF LICENSE.—A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.

(e) MORTGAGE CALL REPORTS.—Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

SEC. 706. STANDARDS FOR STATE LICENSE RENEWAL.

(a) IN GENERAL.—The minimum standards for license renewal for State-licensed loan originators shall include the following:

(1) The loan originator continues to meet the minimum standards for license issuance.

(2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) CONTINUING EDUCATION FOR STATE-LICENSED LOAN ORIGINATORS.—

(1) IN GENERAL.—In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least—

(A) 3 hours of Federal law and regulations;

(B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) 2 hours of training related to lending standards for the subprime mortgage marketplace.

(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) CALCULATION OF CONTINUING EDUCATION CREDITS.—A State-licensed loan originator—

(A) may only receive credit for a continuing education course in the year in which the course is taken; and

(B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) INSTRUCTOR CREDIT.—A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(5) LIMITATION AND STANDARDS.—

(A) LIMITATION.—To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses.

SEC. 707. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL BANKING AGENCIES.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, develop and maintain a system for registering employees of depository institutions or subsidiaries of depository institutions as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of the enactment of this title.

(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator who is an employee of a depository institution or a wholly-owned subsidiary of a depository institution with the Nationwide Mortgage Licensing System and Registry, the appropriate Federal banking agency shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees's identity, including—

(A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(B) personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) COORDINATION.—

(1) UNIQUE IDENTIFIER.—The Federal banking agencies, through the Financial Institutions Examination Council, shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the Financial Institutions Examination Council, concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) CONSIDERATION OF FACTORS AND PROCEDURES.—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 704(a), shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this title.

SEC. 708. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.

(a) BACK UP LICENSING SYSTEM.—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering

loan originators that meets the requirements of sections 705 and 706 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) LICENSING AND REGISTRATION REQUIREMENTS.—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 705 and 706 for State-licensed loan originators.

(c) UNIQUE IDENTIFIER.—The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) STATE LICENSING LAW REQUIREMENTS.—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements:

(1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(e) TEMPORARY EXTENSION OF PERIOD.—The Secretary may extend, by not more than 12 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 705 and 706 and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(f) LIMITATION ON HUD-LICENSED LOAN ORIGINATORS.—Any loan originator who is licensed by the Secretary under a system established under this section for any State may not use such license to originate loans in any other State.

(g) CONTRACTING AUTHORITY.—The Secretary may enter into contracts with qualified independent parties, as necessary to efficiently fulfill the obligations of the Secretary under this Section.

SEC. 709. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of loan originators.

SEC. 710. FEES.

The Federal banking agencies, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.

SEC. 711. BACKGROUND CHECKS OF LOAN ORIGINATORS.

(a) ACCESS TO RECORDS.—Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) AGENT.—For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing information between the Department of Justice and the appropriate State agencies.

SEC. 712. CONFIDENTIALITY OF INFORMATION.

(a) SYSTEM CONFIDENTIALITY.—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 709, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) COORDINATION WITH OTHER LAW.—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) PUBLIC ACCESS TO INFORMATION.—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

SEC. 713. LIABILITY PROVISIONS.

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 9, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

SEC. 714. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.

(a) SUMMONS AUTHORITY.—The Secretary may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 708; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this title.

(b) EXAMINATION AUTHORITY.—

(1) IN GENERAL.—If the Secretary establishes a licensing system under section 708 for any State, the Secretary shall appoint examiners for the purposes of administering such section.

(2) POWER TO EXAMINE.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 708 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.

(3) REPORT OF EXAMINATION.—Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Secretary.

(4) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 708, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) ASSESSMENTS.—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 708 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

(1) AUTHORITY OF SECRETARY.—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision

of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 708, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY SECRETARY.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior hearing before the Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior hearing before the Secretary, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease-and-desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to licensing system established by the Secretary under section 708, if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this title or any regulation prescribed by the Secretary under this title or order issued under subsection (c).

(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $5,000 for each day the violation continues.

SEC. 715. PREEMPTION OF STATE LAW.

Nothing in this title may be construed to preempt the law of any State, to the extent that such State law provides greater protection to consumers than is provided under this title.

SEC. 716. REPORTS AND RECOMMENDATIONS TO CONGRESS.

(a) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this title, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, and streamlining communication between all stakeholders involved in residential mortgage loan origination and processing.

(b) LEGISLATIVE RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this title, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

SEC. 717. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.

(a) STUDY REQUIRED.—The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) PRELIMINARY REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this title, the Secretary shall submit to Congress a preliminary report regarding the study required by this section.

(c) FINAL REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Secretary shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

SA 4411. Mr. KOHL (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 82, between lines 7 and 8, insert the following:

TITLE VII—FORECLOSURE RESCUE FRAUD

SEC. 701. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(2) FORECLOSURE CONSULTANT.—The term ''foreclosure consultant''—

(A) means a person who directly or indirectly makes any solicitation, representation, or offer to a homeowner facing foreclosure on residential real property to perform, with or without compensation, or who performs, with or without compensation, any service that such person represents will prevent, postpone, or reverse the effect of such foreclosure; and

(B) does not include—

(i) an attorney licensed to practice law in the State in which the property is located who has established an attorney-client relationship with the homeowner;

(ii) a housing counseling agency approved by the Secretary; or

(iii) a person licensed as a real estate broker or salesperson in the State where the property is located, and such person engages in acts permitted under the licensure laws of such State.

(3) HOMEOWNER.—The term ''homeowner'', with respect to residential real property for which an action to foreclose on the mortgage or deed of trust on such real property is filed, means the person holding record title to such property as of the date on which such action is filed.

(4) LOAN SERVICER.—The term ''loan servicer'' has the same meaning as the term ''servicer'' in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

(5) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan'' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act (15 U.S.C. 1602)(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(6) RESIDENTIAL REAL PROPERTY.—The term ''residential real property'' has the meaning given the term ''dwelling'' in section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 702. MORTGAGE RESCUE FRAUD PROTECTION.

(a) LIMITS ON FORECLOSURE CONSULTANTS.—A foreclosure consultant may not—

(1) claim, demand, charge, collect, or receive any compensation from a homeowner for services performed by such foreclosure consultant with respect to residential real property until such foreclosure consultant has fully performed each service that such foreclosure consultant contracted to perform or represented would be performed with respect to such residential real property;

(2) hold any power of attorney from any homeowner, except to inspect documents, as provided by applicable law;

(3) receive any consideration from a third party in connection with services rendered to a homeowner by such third party with respect to the foreclosure of residential real property, unless such consideration is fully disclosed to such homeowner in writing before such services are rendered;

(4) accept any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation with respect to services provided by such foreclosure consultant in connection with the foreclosure of residential real property; or

(5) acquire any interest, directly or indirectly, in the residence of a homeowner with whom the foreclosure consultant has contracted.

(b) CONTRACT REQUIREMENTS.—

(1) WRITTEN CONTRACT REQUIRED.—Notwithstanding any other provision of law, a foreclosure consultant may not provide to a homeowner a service related to the foreclosure of residential real property—

(A) unless—

(i) a written contract for the purchase of such service has been signed and dated by the homeowner; and

(ii) such contract complies with the requirements described in paragraph (2); and

(B) before the end of the 3-business day period beginning on the date on which the contract is signed.

(2) TERMS AND CONDITIONS OF CONTRACT.—The requirements described in this paragraph, with respect to a contract, are as follows:

(A) The contract includes, in writing—

(i) a full and detailed description of the exact nature of the contract and the total amount and terms of compensation;

(ii) the name, physical address, phone number, email address, and facsimile number, if any, of the foreclosure consultant to whom a notice of cancellation can be mailed or sent under subsection (d); and

(iii) a conspicuous statement in at least 12 point bold face type in immediate proximity to the space reserved for the homeowner's signature on the contract that reads as follows: ''You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you sign the contract. See the attached notice of cancellation form for an explanation of this right.''.

(B) The contract is written in the principal language used by both the homeowner and the foreclosure consultant.

(C) The contract is accompanied by the form required by subsection (c)(2).

(c) RIGHT TO CANCEL CONTRACT.—

(1) IN GENERAL.—With respect to a contract between a homeowner and a foreclosure consultant regarding the foreclosure on the residential real property of such homeowner, such homeowner may cancel such contract without penalty or obligation by mailing a notice of cancellation not later than midnight of the 3rd business day after the date on which such contract is executed or would become enforceable against the parties to such contract.

(2) CANCELLATION FORM AND OTHER INFORMATION.—Each contract described in paragraph (1) shall be accompanied by a form, in duplicate, that—

(A) has the heading ''Notice of Cancellation'' in boldface type; and

(B) contains in boldface type the following statement:

''You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day after the date on which the contract is signed by you.

''To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice or any other equivalent written notice to [insert name of foreclosure consultant] at [insert address of foreclosure consultant] before midnight on [insert date].

''I hereby cancel this transaction on [insert date] [insert homeowner signature].''.

(d) WAIVER OF RIGHTS AND PROTECTIONS PROHIBITED.—

(1) IN GENERAL.—A waiver by a homeowner of any protection provided by this section or any right of a homeowner under this section—

(A) shall be treated as void; and

(B) may not be enforced by any Federal or State court or by any person.

(2) ATTEMPT TO OBTAIN A WAIVER.—Any attempt by any person to obtain a waiver from any homeowner of any protection provided by this section or any right of the homeowner under this section shall be treated as a violation of this section.

(3) CONTRACTS NOT IN COMPLIANCE.—Any contract that does not comply with the applicable provisions of this title shall be void and may not be enforceable by any party.

SEC. 703. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

(a) IN GENERAL.—If a loan servicer finds that a homeowner has failed to make 2 consecutive payments on a residential mortgage loan and such loan is at risk of being foreclosed upon, the loan servicer shall notify such homeowner of the dangers of fraudulent activities associated with foreclosure.

(b) NOTICE REQUIREMENTS.—Each notice provided under subsection (a) shall—

(1) be in writing;

(2) be included with a mailing of account information;

(3) have the heading ''Notice Required by Federal Law'' in a 14-point boldface type in English and Spanish at the top of such notice; and

(4) contain the following statement: ''Mortgage foreclosure is a complex process. Some people may approach you about saving your home. You should be careful about any such promises. There are government and nonprofit agencies you may contact for helpful information about the foreclosure process. Contact your lender immediately at [_____], call the Department of Housing and Urban Development Housing Counseling Line at (800) 569-4287 to find a housing counseling agency certified by the Department to assist you in avoiding foreclosure, or visit the Department's Tips for Avoiding Foreclosure website at http://www.hud.gov/foreclosure for additional assistance.'' (the blank space to be filled in by the loan servicer).

SEC. 704. CIVIL LIABILITY.

(a) LIABILITY ESTABLISHED.—Any foreclosure consultant who fails to comply with any provision of section 702 or 703 with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) ACTUAL DAMAGES.—The greater of—

(A) the amount of any actual damage sustained by such person as a result of such failure; or

(B) any amount paid by the person to the foreclosure consultant.

(2) PUNITIVE DAMAGES.—

(A) INDIVIDUAL ACTIONS.—In the case of any action by an individual, such amount (in addition to damages described in paragraph (1)) as the court may allow.

(B) CLASS ACTIONS.—In the case of a class action, the sum of—

(i) the aggregate of the amount which the court may allow for each named plaintiff; and

(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

(3) ATTORNEYS' FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

(b) FACTORS TO BE CONSIDERED IN AWARDING PUNITIVE DAMAGES.—In determining the amount of any liability of any foreclosure consultant under subsection (a)(2), the court shall consider, among other relevant factors—

(1) the frequency and persistence of noncompliance by the foreclosure consultant;

(2) the nature of the noncompliance;

(3) the extent to which such noncompliance was intentional; and

(4) in the case of any class action, the number of consumers adversely affected.

SEC. 705. ADMINISTRATIVE ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of a prohibition described in section 702 or a failure to comply with any provision of section 702 or 703 shall be treated as a violation of a rule defining an unfair or deceptive act or practice described under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) ACTIONS BY THE FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall enforce the provisions of sections 702 and 703 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this title.

(b) STATE ACTION FOR VIOLATIONS.—

(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating the provisions of section 702 or 703, the State—

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 704 as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees, as determined by the court.

(2) RIGHTS OF FEDERAL TRADE COMMISSION.—

(A) NOTICE TO COMMISSION.—The State shall serve prior written notice of any civil action under paragraph (1) upon the Commission and provide the Commission with a copy of

its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) INTERVENTION.—The Commission shall have the right—

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal in such actions.

(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) LIMITATION.—Whenever the Federal Trade Commission has instituted a civil action for a violation of section 702 or 703, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of section 702 or 703 that is alleged in that complaint.

SEC. 706. PREEMPTION.

Nothing in this title affects any provision of State or local law respecting any foreclosure consultant, residential mortgage loan, or residential real property that provides equal or greater protection to homeowners than what is provided under this title.

SA 4412. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 82, between lines 7 and 8, insert the following:

SEC. 605. RECYCLING OF TAX-EXEMPT DEBT FOR FINANCING RESIDENTIAL RENTAL PROJECTS.

(a) IN GENERAL.—Section 146(i) of the Internal Revenue Code of 1986 (relating to treatment of refunding issues) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CERTAIN RESIDENTIAL RENTAL PROJECT BONDS AS REFUNDING BONDS IRRESPECTIVE OF OBLIGOR.—

''(A) IN GENERAL.—Subject to subparagraph (B), if within 6 months after receipt of a repayment of a conduit loan used to finance a project described in 142(d) such repayment is used to provide a new conduit loan for any project so described, any bond which is issued to refinance the issue financing the original conduit loan shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

''(B) LIMITATIONS.—Subparagraph (A) shall apply to only one refunding of the original issue and only if—

''(i) the refunding issue is issued not later than the earlier of—

''(I) the date which is 4 years after the date on which the original issue was issued, or

''(II) December 31, 2014,

''(ii) the refunded bond is issued before January 1, 2011,

''(iii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

''(iv) the refunding issue shall have been approved in accordance with section 147(f) prior to the issuance of the refunding issue.''.

(b) CONFORMING AMENDMENT.—Clause (ii) of section 42(h)(4)(A) of the Internal Revenue Code of 1986 (relating to credits for buildings financed by tax-exempt bonds subject to volume cap not taken into account) is amended by inserting ''or such financing is refunded as described in section 146(i)(6)'' after ''provide such financing''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to repayments of conduit loans received after the date of the enactment of this Act.

SA 4413. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 82, between lines 7 and 8, insert the following:

SEC. 605. RECYCLING OF TAX-EXEMPT DEBT FOR FINANCING RESIDENTIAL RENTAL PROJECTS.

(a) IN GENERAL.—Section 146(i) of the Internal Revenue Code of 1986 (relating to treatment of refunding issues) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CERTAIN RESIDENTIAL RENTAL PROJECT BONDS AS REFUNDING BONDS IRRESPECTIVE OF OBLIGOR.—

''(A) IN GENERAL.—Subject to subparagraph (B), if within 6 months after receipt of a repayment of a conduit loan used to finance a project described in 142(d) such repayment is used to provide a new conduit loan for any project so described, any bond which is issued to refinance the issue financing the original conduit loan shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

''(B) LIMITATIONS.—Subparagraph (A) shall apply to only one refunding of the original issue and only if—

''(i) the refunding issue is issued not later than the earlier of—

''(I) the date which is 4 years after the date on which the original issue was issued, or

''(II) December 31, 2010,

''(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

''(iii) the refunding issue shall have been approved in accordance with section 147(f) prior to the issuance of the refunding issue.''.

(b) CONFORMING AMENDMENT.—Clause (ii) of section 42(h)(4)(A) of the Internal Revenue Code of 1986 (relating to credits for buildings financed by tax-exempt bonds subject to volume cap not taken into account) is amended by inserting ''or such financing is refunded as described in section 146(i)(6)'' after ''provide such financing''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to repayments of conduit loans received after the date of the enactment of this Act.

SA 4414. Mr. FEINGOLD (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 53, line 24, strike ''; and'' and insert a semicolon.

On page 53, line 25, strike the period and insert a semicolon.

On page 53, after line 25, insert the following:

(E) conduct observations of neighborhoods where abandoned or foreclosed upon homes or residential properties are located to document instances of vandalism, unauthorized use, theft, or deterioration of the abandoned or foreclosed upon homes or residential properties in order to use this documentation in code enforcement proceedings; and

(F) make efforts to bring abandoned or foreclosed upon homes or residential properties into compliance with State, county, city, or local building and property maintenance code requirements through code enforcement proceedings.

SA 4415. Ms. CANTWELL (for herself, Mr. SMITH, and Mr. KERRY) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, insert the following:

TITLE VIII—AFFORDABLE HOUSING INVESTMENT

SEC. 801. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision,

the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Facilitate Development of Housing Credit Property

SEC. 811. RENAMING THE LOW-INCOME HOUSING CREDIT AS THE AFFORDABLE HOUSING CREDIT.

(a) IN GENERAL.—The heading of section 42 (relating to low-income housing credit) is amended by striking ''**LOW-INCOME**'' and inserting ''**AFFORDABLE**''.

(b) CONFORMING AMENDMENTS.—

(1) Sections 38(b)(5), 42(a), 772(a)(7), and 772(d)(5) are each amended by striking ''low-income'' and inserting ''affordable''.

(2) The headings of subparagraphs (3)(D) and (6)(B) of section 469(i) are each amended by striking ''LOW-INCOME'' and inserting ''AFFORDABLE''.

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 42 and inserting the following:

''Sec. 42. Affordable housing credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 812. MODIFICATION OF RULES FOR DETERMINING APPLICABLE PERCENTAGE.

(a) IN GENERAL.—Subsection (b) of section 42 is amended—

(1) by striking the semicolon and all that follows to the period in the heading,

(2) by striking paragraph (1) and inserting the following new paragraph:

''(1) IN GENERAL.—For purposes of this section, the term 'applicable percentage' means the greater of the alternative applicable percentage determined under paragraph (2) or—

''(A) 9 percent in the case of any building to which subparagraph (B) does not apply, and

''(B) 4 percent in the case of—

''(i) any existing building, and

''(ii) any new building if, at any time during the taxable year or any prior taxable year, there is or was outstanding any obligation—

''(I) not taken into account under section 146,

''(II) which is exempt from tax under section 103, and

''(III) the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.'',

(3) by striking ''BUILDINGS PLACED IN SERVICE AFTER 1987'' in the heading for paragraph (2) and inserting ''ALTERNATIVE APPLICABLE PERCENTAGE'', and

(4) by striking ''In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means'' in paragraph (2)(A) and inserting ''For purposes of paragraph (1), the term 'alternative applicable percentage' means''.

(b) MODIFICATION OF RULES RELATED TO FEDERAL SUBSIDIES.—

(1) IN GENERAL.—Paragraph (2) of section 42(i) (relating to determination of whether building is Federally subsidized) is amended to read as follows:

''(2) EXCEPTIONS FOR CERTAIN NEW BUILDINGS OTHERWISE SUBJECT TO 4 PERCENT CREDIT LIMITATION.—

''(A) ELECTION TO REDUCE ELIGIBLE BASIS BY PROCEEDS OF OBLIGATIONS.—A tax-exempt obligation shall not be taken into account under subsection (b)(1)(B)(ii) if the taxpayer elects to exclude the proceeds of such obligation from the eligible basis of the building for purposes of subsection (d).

''(B) SPECIAL RULE FOR SUBSIDIZED CONSTRUCTION FINANCING.—A tax-exempt obligation used to provide construction financing for any building shall not be taken into account under subsection (b)(1)(B)(ii) if—

''(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

''(ii) such obligation is redeemed before such building is placed in service.''.

(2) CONFORMING AMENDMENT.—Section 1400N(c)(6) is amended by striking ''December 31, 2010'' and inserting ''the date of the enactment of the Affordable Housing Investment Act of 2008''.

SEC. 813. INCREASE IN CREDIT FOR BUILDINGS IN STATE DESIGNATED AREAS.

(a) IN GENERAL.—Clause (i) of section 42(d)(5)(C) (relating to increase in credit for buildings in high cost areas) is amended by striking ''or difficult development area'' and inserting '', difficult development area, or State designated project''.

(b) STATE DESIGNATED PROJECT.—Subparagraph (C) of section 42(d)(5) is amended by adding at the end the following new clause:

''(v) STATE DESIGNATED PROJECT.—For purposes of this subparagraph, the term 'State designated project' means any project published as part of a State's qualified allocation plan (as defined in subsection (m)(1)(B)) and designated by the housing credit agency as meeting such criteria for designation under this clause as the State in which such project is located may specify. The rules of clauses (ii)(II) and (iii)(II) shall not apply for purposes designations made under this clause.''.

(c) CONFORMING AMENDMENT.—The heading of subparagraph (C) of section 42(d)(5) is amended by striking ''BUILDINGS IN HIGH COST AREAS'' and inserting ''CERTAIN BUILDINGS''.

SEC. 814. MODIFICATION OF SCATTERED SITE RULE.

Paragraph (7) of section 42(g) (relating to scattered site projects) is amended to read as follows:

''(7) SCATTERED SITE PROJECTS.—Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if the rent-restricted (within the meaning of paragraph (2)) residential units of such project are distributed among such buildings in proportion to the number of residential units in each building.''.

SEC. 815. TREATMENT OF RURAL PROJECTS.

Section 42(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) TREATMENT OF RURAL PROJECTS.—For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income.''.

SEC. 816. EXPANSION OF ALLOWABLE BASIS FOR COMMUNITY SERVICE FACILITIES.

Section 42(d)(4)(C) (relating to inclusion of basis of property used to provide services for certain nontenants) is amended—

(1) by striking ''10 percent of the eligible basis'' in clause (ii)and inserting ''20 percent of the first $5,000,000 in eligible basis plus 10 percent of the remaining eligible basis'', and

(2) by adding at the end the following new flush sentences:

''For each calendar year beginning after 2008, the dollar amount in clause (ii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3), determined by substituting 'calendar year 2007' for 'calendar year 1992' in subparagraph (B) thereof. If any amount adjusted under the preceding sentence is not a multiple of $100,000, such amount shall be rounded to the next lowest multiple of $100,000.''.

Subtitle B—Improve Coordination With Other Federal Housing Programs

SEC. 821. AFFORDABLE HOUSING CREDITS ALLOWED FOR SECTION 8 MODERATE REHABILITATION DEVELOPMENTS.

Paragraph (2) of section 42(c) (relating to qualified low-income building) is amended by striking the last sentence.

SEC. 822. MODIFICATION TO LOW-INCOME HOUSING CREDIT RULES FOR REDUCTION OF ELIGIBLE BASIS BY GRANTS RECEIVED.

(a) IN GENERAL.—The Secretary of the Treasury shall modify Treasury Regulations section 1.42–16(b) to provide that none of the following shall be considered a grant made with respect to a building or its operation for purposes of section 42(d)(5)(A) of the Internal Revenue Code of 1986:

(1) Rental assistance under section 521 of the Housing Act of 1949 (42 U.S.C. 1490a).

(2) Assistance under section 538(f)(5) of the Housing Act of 1949 (42 U.S.C. 1490p–2(f)(5)).

(3) Interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1).

(4) Rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

(5) Rental assistance under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

(6) Modernization, operating, and rental assistance pursuant to section 202 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4132).

(7) Assistance under title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 et seq.).

(8) Tenant-based rental assistance under section 212 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742).

(9) Assistance under the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.).

(10) Per diem payments under section 2012 of title 38, United States Code.

(11) Rent supplements under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(12) Assistance under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r).

(13) Any other ongoing payment used to enable the property to be rented to low-income tenants.

(b) EFFECTIVE DATE.—The modifications required by this section shall take effect on the date of the enactment of this Act.

(c) NO INFERENCE.—Nothing contained in subsection (a) may be construed to create any inference with respect to the consideration of any program specified under subsection (a) as a grant made with respect to a building or its operation for purposes of section 42(d)(5)(A) of the Internal Revenue Code of 1986 as in effect on the day before such date of enactment.

Subtitle C—Facilitate Private Investment Capital to Increase the Efficiency of Affordable Housing Investment

SEC. 831. REPEAL OF RECAPTURE BOND RULE.

(a) IN GENERAL.—Paragraph (6) of section 42(j) (relating to recapture of credit) is amended to read as follows:

''(6) NO RECAPTURE ON DISPOSITION OF BUILDING (OR INTEREST THEREIN) REASONABLY EXPECTED TO CONTINUE AS A QUALIFIED LOW-INCOME BUILDING.—

''(A) IN GENERAL.—In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

''(B) STATUTE OF LIMITATIONS.—

''(i) EXTENSION OF PERIOD.—The period for assessing a deficiency attributable to the application of subparagraph (A) with respect to a building (or interest therein) during the compliance period with respect to such building shall not expire before the expiration of 3 years after the end of such compliance period.

''(ii) ASSESSMENT.—Such deficiency may be assessed before the expiration of the 3-year period referred to in clause (i) notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.''.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by inserting after section 6050V the following new section:

''SEC. 6050W. RETURNS RELATING TO PAYMENT OF LOW-INCOME HOUSING CREDIT REPAYMENT AMOUNT.

''(a) REQUIREMENT OF REPORTING.—Every person who, at any time during the taxable year, is an owner of a building (or an interest therein)—

''(1) which is in the compliance period at any time during such year, and

''(2) with respect to which recapture is required by section 42(j),

shall, at such time as the Secretary may prescribe, make the return described in subsection (b).

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of each person who, with respect to such building or interest, was formerly an investor in such owner at any time during the compliance period,

''(B) the amount (if any) of any credit recapture amount required under section 42(j), and

''(C) such other information as the Secretary may prescribe.

''(c) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

''(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished on or before March 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(d) COMPLIANCE PERIOD.—For purposes of this section, the term 'compliance period' has the meaning given such term by section 42(i).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by inserting after clause (xxi) the following new clause:

''(xxii) section 6050W (relating to returns relating to payment of low-income housing credit repayment amount),''.

(B) Paragraph (2) of section 6724(d) is amended by striking ''or'' at the end of subparagraph (BB), by striking the period at the end of subparagraph (CC) and inserting '', or'', and by adding after subparagraph (CC) the following new subparagraph:

''(DD) section 6050W (relating to returns relating to payment of low-income housing credit repayment amount).''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050V the following new item:

''Sec. 6050W. Returns relating to payment of low-income housing credit repayment amount.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to any liability for the credit recapture amount under section 42(j) of the Internal Revenue Code of 1986 that arises after the date of the enactment of this Act.

(2) SPECIAL RULE FOR LOW-INCOME HOUSING BUILDINGS SOLD BEFORE DATE OF ENACTMENT OF THIS ACT.—In the case of a building disposed of before the date of the enactment of this Act with respect to which the taxpayer posted a bond (or alternative form of security) under section 42(j) of the Internal Revenue Code of 1986 (as in effect before such date of enactment), the taxpayer may elect (by notifying the Secretary of the Treasury in writing)—

(A) to cease to be subject to the bond requirements under section 42(j)(6) of such Code, as in effect before such date of enactment, and

(B) to be subject to the requirements of section 42(j) of such Code, as amended by this section.

SEC. 832. AFFORDABLE HOUSING CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4) (relating to special rules for specified credits) is amended by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively, and by inserting after clause (i) the following new clause:

''(ii) the credit determined under section 42(a),''.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle D—Help Preserve Existing Affordable Housing

SEC. 841. REPEAL OF 10-YEAR RULE FOR ACQUISITION HOUSING CREDITS.

(a) IN GENERAL.—Subparagraph (B) of section 42(d)(2) (relating to existing buildings) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) CONFORMING AMENDMENT.—Section 42(d) is amended by striking paragraph (6) and by redesignating paragraph (7) as paragraph (6).

SEC. 842. MODIFICATION OF RELATED PERSON RULE FOR AFFORDABLE HOUSING CREDIT.

(a) IN GENERAL.—Clause (iii) of section 42(d)(2)(D) (related to related person, etc.) is amended to read as follows:

''(iii) RELATED PERSON.—For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the 'related person') is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52.''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the date of the enactment of this Act.

Subtitle E—Simplify Administration of the Housing Credit Program

SEC. 851. ELIMINATION OF CERTAIN ANNUAL RECERTIFICATIONS OF TENANT INCOMES.

Paragraph (8) of section 42(g) (relating to qualified low-income housing project) is amended—

(1) by striking ''may waive'' in the mater preceding subparagraph (A);

(2) by inserting ''may waive'' before ''any recapture'' in subparagraph (A); and

(3) by inserting ''shall waive'' before ''any annual recertification'' in subparagraph (B).

Subtitle F—Conform Multifamily Housing Bond Rules to Housing Credit Rules

SEC. 861. COORDINATION OF CERTAIN RULES APPLICABLE TO AFFORDABLE HOUSING CREDIT AND QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.

(a) DETERMINATION OF NEXT AVAILABLE UNIT.—Paragraph (3) of section 142(d) (relating to current income determinations) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FOR PROJECTS WITH RESPECT TO WHICH AFFORDABLE HOUSING CREDIT IS ALLOWED.—In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting 'building (within the meaning of section 42)' for 'project'.''.

(b) STUDENTS.—Paragraph (2) of section 142(d) (relating to definitions and special rules) is amended by adding at the end the following new subparagraph:

''(C) STUDENTS.—Students (as defined in section 152(f)(2)) shall not be treated as satisfying the requirements of subparagraph (A) or (B) of paragraph (1) except under rules similar to the rules of 42(i)(3)(D).''.

(c) SINGLE-ROOM OCCUPANCY UNITS.—Paragraph (2) of section 142(d) (relating to definitions and special rules), as amended by this Act, is further amended by adding at the end the following new subparagraph:

''(D) SINGLE-ROOM OCCUPANCY UNITS.—A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act, with respect to bonds issued before, on, or after such date.

Subtitle G—Improve the Mortgage Revenue Bond Program

SEC. 871. SPECIAL RULE FOR USE OF MORTGAGE BONDS FOR DISASTER VICTIMS, SINGLE PARENTS, AND HOMEMAKERS.

(a) IN GENERAL.—Paragraph (2) of section 143(d) (relating to exceptions to 3-year requirement) is amended by striking ''and'' at the end of subparagraph (C) and by inserting after subparagraph (D) the following new subparagraphs:

''(E) financing of residences for individuals with an ownership interest in a principal residence which—

''(i) is located in an area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and

''(ii) has been rendered uninhabitable by reason of the major disaster,

''(F) financing of residences for individuals who—

''(i) are not married, and

''(ii) have one or more qualifying children (within the meaning of section 152), and

''(G) financing of residences for displaced homemakers,''.

(b) DISPLACED HOMEMAKERS.—Section 143(d) is amended by adding at the end the following new paragraph:

''(4) DISPLACED HOMEMAKER.—For purposes of paragraph (2)(G), the term 'displaced homemaker' means any individual who is—

''(A) over 18 years of age,

''(B) is not employed or underemployed and is experiencing difficulty in obtaining or upgrading employment, and

''(C) has not worked full-time full-year in the labor force for a number of years before the date on which financing for a residence is supplied, but has, during such years, worked primarily without remuneration to care for the home and family.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 872. REPEAL OF REQUIRED USE OF CERTAIN PRINCIPAL REPAYMENTS ON QUALIFIED MORTGAGE ISSUES TO REDEEM BONDS.

(a) IN GENERAL.—Subparagraph (A) of section 143(a)(2) (relating to qualified mortgage issue defined) is amended by inserting ''and'' at the end of clause (ii), by striking '', and'' at the end of clause (iii) and inserting a period, and by striking clause (iv) and the last sentence.

(b) CONFORMING AMENDMENT.—Clause (ii) of section 143(a)(2)(D) is amended by striking ''(and clause (iv) of subparagraph (A))''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to repayments received after the date of the enactment of this Act.

Subtitle H—Effective Date

SEC. 881. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall apply to—

(1) housing credit dollar amounts allocated after the date of the enactment of this Act, and

(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

SA 4416. Ms. CANTWELL (for herself, Mr. SMITH, and Mr. KERRY) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

On page 82, between lines 7 and 8, insert the following:

SEC. 605. AFFORDABLE HOUSING CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4) of the Internal Revenue Code of 1986 (relating to specified credits) is amended—

(1) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively, and

(2) by inserting after clause (i) the following new clause:

''(ii) the credit determined under section 42(a),''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SA 4417. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

[SEC. ———. RULEMAKING PROCEDURE FOR SUBPRIME LENDING MORTGAGES AND NONTRADITIONAL MORTGAGE LOANS.

Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) or any other provision of law, the Federal Trade Commission shall conduct rulemaking proceedings with respect to subprime mortgage lending and nontraditional mortgage loans in accordance with section 553 of title 5, United States Code.

SEC. ———. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—Except as provided in subsection (f), a State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate State or district court of the United States to enforce the provisions of the Federal Trade Commission Act or any other Act enforced by the Federal Trade Commission to obtain penalties and relief provided under such Acts whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of a subprime mortgage lending rule or a nontraditional mortgage loan rule promulgated by the Federal Trade Commission.

(b) NOTICE.—The State shall serve written notice to the Commission of any civil action under subsection (a) at least 60 days prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.

(c) INTERVENTION BY FTC.—Upon receiving the notice required by subsection (b), the Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) SAVINGS CLAUSE.—Nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. Nothing in this section shall prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(e) VENUE; SERVICE OF PROCESS; JOINDER.—In a civil action brought under subsection (a)—

(1) the venue shall be a judicial district in which the lender or a related party operates or is authorized to do business;

(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

(3) a person who participated with a lender or related party an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) PREEMPTIVE ACTION BY FTC.—If the Commission has instituted a civil action or an administrative action for violation of this Act or any other Act enforced by the Commission, no State attorney general, or other official or agency of a State, may bring an action under this section during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this Act alleged in the complaint.

(g) AWARD OF COSTS AND FEES.—If the attorney general of a State prevails in any civil action under subsection (a), the State can recover reasonable costs and attorney fees from the lender or related party.

SA 4418. Mr. MARTINEZ (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill H.R. 3221 moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—REGULATION OF HOUSING ENTERPRISES

SEC. 800. SHORT TITLE.

This title may be cited as the ''Federal Housing Enterprise Regulatory Reform Act of 2008''.

Subtitle A—OFHEO

SEC. 801. DUTIES AND AUTHORITIES OF THE DIRECTOR OF OFHEO.

The Housing and Community Development Act of 1992 (12 U.S.C. 4513) is amended by striking section 1313 and inserting the following:

''SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

''(a) DUTIES.—

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

''(A) to oversee the operations of each enterprise; and

''(B) to ensure that—

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

''(ii) the operations and activities of each enterprise foster liquid, efficient, competitive, and resilient national housing finance

markets that minimize the cost of housing finance (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities);

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

''(iv) each enterprise carries out its statutory mission only through activities that are consistent with this title and the authorizing statutes.

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

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

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

''(b) DELEGATION OF AUTHORITY.—The Director may delegate to officers or employees of the Office, including each of the Deputy Directors, any of the functions, powers, or duties of the Director, as the Director considers appropriate.

''(c) LITIGATION AUTHORITY.—

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

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

''SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.

''(a) STANDARDS.—The Director shall establish standards, by regulation, guideline, or order, for each enterprise relating to—

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

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

''(3) management of credit and counterparty risk, including systems to identify concentrations of credit risk and prudential limits to restrict exposure of the enterprise to a single counterparty or groups of related counterparties;

''(4) management of interest rate risk exposure;

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

''(6) adequacy and maintenance of liquidity and reserves;

''(7) management of any asset and investment portfolio;

''(8) investments and acquisitions by an enterprise, to ensure that they are consistent with the purposes of this Act and the authorizing statutes;

''(9) maintenance of adequate records, in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of the enterprise;

''(10) issuance of subordinated debt by that particular enterprise, as the Director considers necessary;

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

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

''(b) FAILURE TO MEET STANDARDS.—

''(1) PLAN REQUIREMENT.—

''(A) IN GENERAL.—If the Director determines that an enterprise fails to meet any standard established under subsection (a)—

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

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

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

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

''(i) provide the enterprises with reasonable time to submit plans required under subparagraph (A), and generally require an enterprise to submit a plan not later than 30 days after the Director determines that the enterprise fails to meet any standard established under subsection (a); and

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

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

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

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

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

''(ii) Require the enterprise, in the case of an enterprise, to increase its ratio of core capital to assets.

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

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

''(A) the Director determines that the enterprise fails to meet any standard prescribed under subsection (a);

''(B) the enterprise has not corrected the deficiency; and

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

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

SEC. 802. AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.

Section 1314 of the Housing and Community Development Act of 1992 (12 U.S.C. 4514) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking ''SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION'' and inserting ''REGULAR AND SPECIAL REPORTS'';

(B) in paragraph (1)—

(i) in the paragraph heading, by striking ''FINANCIAL CONDITION'' and inserting ''REGULAR REPORTS''; and

(ii) by striking ''reports of financial condition and operations'' and inserting ''regular reports on the condition (including financial condition), management, activities, or operations of the enterprise, as the Director considers appropriate''; and

(C) in paragraph (2), after ''submit special reports'' insert ''on any of the topics specified in paragraph (1) or such other topics''; and

(2) by adding at the end the following:

''(c) REPORTS OF FRAUDULENT FINANCIAL TRANSACTIONS.—

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

''(2) PROTECTION FROM LIABILITY FOR REPORTS.—

''(A) IN GENERAL.—If an enterprise makes a report pursuant to paragraph (1), or an enterprise-affiliated party makes, or requires another to make, such a report, and such report is made in a good faith effort to comply with the requirements of paragraph (1), such enterprise or enterprise-afffiliated party shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other person identified in the report.

''(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

''(i) any inference that the term 'person', as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

''(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.''.

SEC. 803. DISCLOSURE OF CHARITABLE CONTRIBUTIONS BY ENTERPRISES.

Section 1314 of the Housing and Community Development Act of 1992 (12 U.S.C. 4514), as amended by the preceding provisions of this Act, is further amended by adding at the end the following:

''(d) DISCLOSURE OF CHARITABLE CONTRIBUTIONS BY ENTERPRISES.—

''(1) REQUIRED DISCLOSURE.—The Director shall, by regulation, require each enterprise to submit a report annually, in a format designated by the Director, containing the following information:

''(A) TOTAL VALUE.—The total value of contributions made by the enterprise to nonprofit organizations during its previous fiscal year.

''(B) SUBSTANTIAL CONTRIBUTIONS.—If the value of contributions made by the enterprise to any nonprofit organization during its previous fiscal year exceeds the designated amount, the name of that organization and the value of contributions.

''(C) SUBSTANTIAL CONTRIBUTIONS TO INSIDER-AFFILIATED CHARITIES.—Identification of each contribution whose value exceeds the designated amount that were made by the enterprise during the enterprise's previous fiscal year to any nonprofit organization of which a director, officer, or controlling person of the enterprise, or a spouse thereof, was a director or trustee, the name of such nonprofit organization, and the value of the contribution.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'designated amount' means such amount as may be designated by the Director by regulation, consistent with the public interest and the protection of investors for purposes of this subsection; and

''(B) the Director may, by such regulations as the Director deems necessary or appropriate in the public interest, define the terms officer and controlling person.

''(3) PUBLIC AVAILABILITY.—The Director shall make the information submitted pursuant to this subsection publicly available.''.

SEC. 804. ASSESSMENTS.

Section 1316 of the Housing and Community Development Act of 1992 (12 U.S.C. 4516) is amended—

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

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

''(1) the expenses of any examinations under section 1317;

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

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

(2) in subsection (b)—

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

(B) in paragraph (3)—

(i) in subparagraph (B), by striking ''subparagraph (A)'' and inserting ''clause (i)'';

(ii) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii) and (ii), respectively, and realigning such clauses, as so redesignated, so as to be indented 6 ems from the left margin;

(iii) by striking the matter that precedes clause (i), as so redesignated, and inserting the following:

''(3) DEFINITION OF TOTAL ASSETS.—For purposes of this section, the term 'total assets' means as follows:

''(A) ENTERPRISES.—With respect to an enterprise, the sum of—''; and

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

''(c) INCREASED COSTS OF REGULATION.—

''(1) INCREASE FOR INADEQUATE CAPITALIZATION.—The semiannual payments made pursuant to subsection (b) by any 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.

''(2) ADJUSTMENT FOR ENFORCEMENT ACTIVITIES.—The Director may adjust the amounts of any semiannual assessments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by an enterprise, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under subtitle B and C for an enterprise are borne only by such enterprise.

''(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased costs of regulation of an enterprise that is not classified (for purposes of subtitle B) as adequately captitalized or as the result of supervisory or enforcement activities under subtitle B or C for an enterprise, the amount available from any semiannual payment made by such enterprise pursuant to subsection (b) is insufficient to cover the costs of the Office with respect to such enterprise, the Director may make and collect from such enterprise an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such enterprise for the following semiannual period.'';

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

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

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

''(f) TREATMENT OF ASSESSMENTS.—

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

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

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

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

''(5) AVAILABILITY OF OVERSIGHT FUND AMOUNTS.—Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect on the day before the effective date of the Federal Housing Enterprise Regulatory Reform Act of 2008), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

''(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

''(2) FINANCIAL STATEMENTS.—The Office shall prepare annually a statement of assets and liabilities and surplus or deficit; a statement of income and expenses; and a statement of sources and application of funds.

''(3) FINANCIAL MANAGEMENT SYSTEMS.—The Office shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and that uses a general ledger system that accounts for activity at the transaction level.

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

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

''(h) AUDIT OF OFFICE.—

''(1) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Office in accordance with the U.S. generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Office are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Office pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Office shall remain in possession and custody of the Office. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

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

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

SEC. 805. EXAMINERS AND ACCOUNTANTS.

(a) EXAMINATIONS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended——

(1) in subsection (a), by adding after the period at the end the following: ''Each examination under this subsection of an enterprise shall include a review of the procedures required to be established and maintained by the enterprise pursuant to section 1314(c) (relating to fraudulent financial transactions) and the report regarding each such examination shall describe any problems with such procedures maintained by the enterprise.'';

(2) in subsection (b)—

(A) by inserting ''of an enterprise'' after ''under this section''; and

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

(3) in subsection (c)—

(A) in the second sentence, by inserting ''to conduct examinations under this section'' before the period; and

(B) in the third sentence, by striking ''from amounts available in the Federal Housing Enterprises Oversight Fund''.

(b) ENHANCED AUTHORITY TO HIRE EXAMINERS AND ACCOUNTANTS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended by adding at the end the following:

''(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS, SPECIALISTS, AND EXAMINERS.—

''(1) APPLICABILITY.—This section applies with respect to any position of examiner, accountant, specialist in financial markets, specialist in technology, and economist at the Office, with respect to supervision and regulation of the enterprises, that is in the competitive service.

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

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

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

SEC. 806. PROHIBITION AND WITHHOLDING OF EXECUTIVE COMPENSATION.

(a) IN GENERAL.—Section 1318 of the Housing and Community Development Act of 1992 (12 U.S.C. 4518) is amended—

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

SEC. 807. REVIEWS OF ENTERPRISES.

Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4519) is amended—

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

''SEC. 1319. REVIEWS OF ENTERPRISES.''; and

(2) by inserting after ''any entity'' the following: ''that the Director considers appropriate, including an entity''.

SEC. 808. REGULATIONS AND ORDERS.

Section 1319G of the Housing and Community Development Act of 1992 (12 U.S.C. 4526) is amended—

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

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

(2) in subsection (b), by inserting '', this title, or any of the authorizing statutes'' after ''under this section''; and

(3) by striking subsection (c).

SEC. 809. RISK-BASED CAPITAL REQUIREMENTS.

Section 1361 of the Housing and Community Development Act of 1992 (12 U.S.C. 4611) is amended to read as follows:

''SEC. 1361. RISK-BASED CAPITAL LEVELS FOR ENTERPRISES.

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

''(b) CONFIDENTIALITY OF INFORMATION.—Any person that receives any book, record, or information from the Director or an enterprise to enable the risk-based capital requirements established under this section to be applied shall—

''(1) 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

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

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

SEC. 810. REVIEW OF AND AUTHORITY OVER ENTERPRISE ASSETS AND LIABILITIES.

Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended—

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

''Subtitle B—Required Capital Levels for Enterprises, Special Enforcement Powers, and Reviews of Assets and Liabilities''; and

(2) by adding at the end the following:

''SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABILITIES.

''(a) IN GENERAL.—The Director shall conduct, on a periodic basis, a review of the on-balance sheet and off-balance sheet assets and liabilities of each enterprise.

''(b) AUTHORITY TO REQUIRE DISPOSITION OR ACQUISITION.—Pursuant to such a review and notwithstanding the capital classifications of the enterprises, the Director may by order require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset or liability, if the Director determines that such action is consistent with the safe and sound operation of the enterprise or with the purposes of this Act or any of the authorizing statutes.''.

SEC. 811. CORPORATE GOVERNANCE OF ENTERPRISES.

The Housing and Community Development Act of 1992 is amended by inserting before section 1323 (12 U.S.C. 4543) the following:

''SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.

''(a) BOARD OF DIRECTORS.—

''(1) INDEPENDENCE.—A majority of seated members of the board of directors of each enterprise shall be independent board members, as defined under rules set forth by the New York Stock Exchange, as such rules may be amended from time to time.

''(2) FREQUENCY OF MEETINGS.—To carry out its obligations and duties under applicable laws, rules, regulations, and guidelines,

the board of directors of an enterprise shall meet at least eight times a year and not less than once a calendar quarter.

''(3) NON-MANAGEMENT BOARD MEMBER MEETINGS.—The non-management directors of an enterprise shall meet at regularly scheduled executive sessions without management participation.

''(4) QUORUM; PROHIBITION ON PROXIES.—For the transaction of business, a quorum of the board of directors of an enterprise shall be at least a majority of the seated board of directors and a board member may not vote by proxy.

''(5) INFORMATION.—The management of an enterprise shall provide a board member of the enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

''(6) ANNUAL REVIEW.—At least annually, the board of directors of each enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

''(b) COMMITTEES OF BOARDS OF DIRECTORS.—

''(1) FREQUENCY OF MEETINGS.—Any committee of the board of directors of an enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

''(2) REQUIRED COMMITTEES.—Each enterprise shall provide for the establishment, however styled, of the following committees of the board of directors:

''(A) Audit committee.

''(B) Compensation committee.

''(C) Nominating/corporate governance committee.

Such committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 10A(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(m)), with respect to the audit committee, and under rules issued by the New York Stock Exchange, as such rules may be amended from time to time.

''(c) COMPENSATION.—

''(1) IN GENERAL.—The compensation of board members, executive officers, and employees of an enterprise—

''(A) shall not be in excess of that which is reasonable and appropriate;

''(B) shall be commensurate with the duties and responsibilities of such persons,

''(C) shall be consistent with the long-term goals of the enterprise;

''(D) shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well; and

''(E) shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

''(2) REIMBURSEMENT.—If an enterprise is required to prepare an accounting restatement due to the material noncompliance of the enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the enterprise shall reimburse the enterprise as provided under section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7243). This provision does not otherwise limit the authority of the Office to employ remedies available to it under its enforcement authorities.

''(d) CODE OF CONDUCT AND ETHICS.—

''(1) IN GENERAL.—An enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the enterprise to discharge their duties and responsibilities, on behalf of the enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7264) and other applicable laws, rules, and regulations.

''(2) REVIEW.—Not less than once every three years, an enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the enterprise and make any appropriate revisions to such code.

''(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF DIRECTORS.—The board of directors of an enterprise shall be responsible for directing the conduct and affairs of the enterprise in furtherance of the safe and sound operation of the enterprise and shall remain reasonably informed of the condition, activities, and operations of the enterprise. The responsibilities of the board of directors shall include having in place adequate policies and procedures to assure its oversight of, among other matters, the following:

''(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including prudent plans for growth and allocation of adequate resources to manage operations risk.

''(2) Hiring and retention of qualified executive officers and succession planning for such executive officers.

''(3) Compensation programs of the enterprise.

''(4) Integrity of accounting and financial reporting systems of the enterprise, including independent audits and systems of internal control.

''(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors.

''(6) Extensions of credit to board members and executive officers.

''(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

''(f) PROHIBITION OF EXTENSIONS OF CREDIT.—An enterprise may not directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any board member or executive officer of the enterprise, as provided by section 13(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(k)).

''(g) CERTIFICATION OF DISCLOSURES.—The chief executive officer and the chief financial officer of an enterprise shall review each quarterly report and annual report issued by the enterprise and such reports shall include certifications by such officers as required by section 302 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

''(h) CHANGE OF AUDIT PARTNER.—An enterprise may not accept audit services from an external auditing firm if the lead or coordinating audit partner who has primary responsibility for the external audit of the enterprise, or the external audit partner who has responsibility for reviewing the external audit has performed audit services for the enterprise in each of the five previous fiscal years.

''(i) COMPLIANCE PROGRAM.—

''(1) REQUIREMENT.—Each enterprise shall establish and maintain a compliance program that is reasonably designed to assure that the enterprise complies with applicable laws, rules, regulations, and internal controls.

''(2) COMPLIANCE OFFICER.—The compliance program of an enterprise shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer of the enterprise. The compliance officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current compliance policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the compliance officer considers necessary and appropriate.

''(j) RISK MANAGEMENT PROGRAM.—

''(1) REQUIREMENT.—Each enterprise shall establish and maintain a risk management program that is reasonably designed to manage the risks of the operations of the enterprise.

''(2) RISK MANAGEMENT OFFICER.—The risk management program of an enterprise shall be headed by a risk management officer, however styled, who reports directly to the chief executive officer of the enterprise. The risk management officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current risk management policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the risk management officer considers necessary and appropriate.

''(k) COMPLIANCE WITH OTHER LAWS.—

''(1) DEREGISTERED OR UNREGISTERED COMMON STOCK.—If an enterprise deregisters or has not registered its common stock with the Securities and Exchange Commission under the Securities Exchange Act of 1934, the enterprise shall comply or continue to comply with sections 10A(m) and 13(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(m), 78m(k)) and sections 302, 304, and 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7243, 7264), subject to such requirements as provided by subsection (l) of this section.

''(2) REGISTERED COMMON STOCK.—An enterprise that has its common stock registered with the Securities and Exchange Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of the sections of the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act of 2002, subject to such requirements as provided by subsection (l) of this section.

''(l) OTHER MATTERS.—The Director may from time to time establish standards, by regulation, order, or guideline, regarding such other corporate governance matters of the enterprises as the Director considers appropriate.

''(m) MODIFICATION OF STANDARDS.—In connection with standards of Federal or State law (including the Revised Model Corporation Act) or New York Stock Exchange rules that are made applicable to an enterprise by section 1710.10 of the Director's rules (12 C.F.R. 1710.10) and by subsections (a), (b), (g), (i), (j), and (k) of this section, the Director, in the Director's sole discretion, may modify the standards contained in this section or in part 1710 of the Director's rules (12 U.S.C. Part 1710) in accordance with section 553 of title 5, United States Code, and upon written notice to the enterprise.''.

SEC. 812. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

The Housing and Community Development Act of 1992 is amended by adding after section 1322A, as added by the preceding provisions of this Act, the following:

''SEC. 1322B. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

''(a) IN GENERAL.—Each enterprise shall register at least one class of the capital stock of such enterprise, and maintain such

registration with the Securities and Exchange Commission, under the Securities Exchange Act of 1934.

''(b) ENTERPRISES.—Each enterprise shall comply with sections 14 and 16 of the Securities Exchange Act of 1934.''.

SEC. 813. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

The Federal Financial Institutions Examination Council Act of 1978 is amended—

(1) in section 1003 (12 U.S.C. 3302)—

(A) in paragraph (1), by inserting ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development,'' after ''Supervision,''; and

(B) in paragraph (3), by striking ''or a credit union;'' and inserting ''a credit union, or an enterprise (as that term is defined in section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502)).'';

(2) in section 1004(a) (12 U.S.C. 3303)—

(A) in paragraph (4), by striking the comma at the end and inserting a semicolon;

(B) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(C) by inserting after paragraph (4) the following:

''(5) the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development; and''; and

(3) in section 1006(d) (12 U.S.C. 3305(d)), by striking ''and employees of the Federal Housing Finance Board''.

Subtitle B—Improvement of Mission Supervision

SEC. 821. TRANSFER OF PROGRAM APPROVAL AND HOUSING GOAL OVERSIGHT.

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

(1) by striking the heading for the part and inserting the following:

''PART II—ADDITIONAL AUTHORITIES OF THE DIRECTOR'';

and

(2) by striking sections 1321 and 1322.

SEC. 822. REVIEW OF ENTERPRISE PRODUCTS.

Part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act, is amended by inserting before section 1323 the following:

''SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS.

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

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

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

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

''(3) the product is in the public interest;

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

''(5) the product does not impair the stability or competitiveness of the mortgage finance system.

''(c) PROCEDURE FOR APPROVAL.—

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

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

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

''(4) OFFERING OF PRODUCT.—

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

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

''(d) EXPEDITED REVIEW.—

''(1) DETERMINATION AND NOTICE.—If an enterprise determines that any new activity, service, undertaking or offering is excluded from the definition of a product under subsection (f), then the enterprise shall provide written notice to the Director prior to the commencement of such activity, service, undertaking, or offering.

''(2) DIRECTOR DETERMINATION OF APPLICABLE PROCEDURE.—Immediately upon receipt of any notice pursuant to paragraph (1), the Director shall make a determination under paragraph (3).

''(3) DETERMINATION AND TREATMENT AS A PRODUCT.—If the Director determines that any new activity, service, undertaking, or offering consists of, relates to, or involves a product—

''(A) the Director shall notify the enterprise of the determination;

''(B) the new activity, service, undertaking, or offering described in the notice under paragraph (1) shall be considered a product for the purposes of this section; and

''(C) the enterprise shall withdraw its request or submit a written request for approval of the product pursuant to subsection (c).

''(e) CONDITIONAL APPROVAL.—The Director may conditionally approve the offering of any product by an enterprise, and may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

''(f) DEFINITION OF PRODUCT.—As used in this section, the term 'product'—

''(1) all programs, products, and activities, offered by the enterprise in the marketplace; and

''(2) does not include—

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

''(B) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing, or create significant new exposure to risk for the enterprise or the holder of the mortgage.

''(g) NO LIMITATION.—Nothing in this section shall be deemed to restrict—

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

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

SEC. 823. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

Section 1336(a)(1) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4566(a)(1)) is amended by striking ''established'' and all that follows through ''1334'' and inserting ''under this subpart''.

SEC. 824. ASSUMPTION BY DIRECTOR OF OTHER HUD RESPONSIBILITIES.

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

(1) by striking ''Secretary'' each place that term appears and inserting ''Director'' in each of sections 1323, 1324, 1326, 1331, 1332, 1333, 1334, and 1336;

(2) in section 1332 (12 U.S.C. 4562), by striking subsection (d);

(3) in section 1333 (12 U.S.C. 4563), by striking subsection (d);

(4) in section 1334 (12 U.S.C. 4564), by striking subsection (d); and

(5) by striking sections 1337, 1338, and 1349 (12 U.S.C. 4567, 4562 note, 4589).

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

SEC. 825. ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.

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

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

(2) section 1342 (12 U.S.C. 4582);

(3) section 1343 (12 U.S.C. 4583);

(4) section 1344 (12 U.S.C. 4584);

(5) section 1345 (12 U.S.C. 4585);

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

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

(8) section 1348 (12 U.S.C. 4588).

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

SEC. 826. CONFORMING LOAN LIMITS.

(a) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by striking ''The Corporation shall establish'' and all that follows through the end of the paragraph and inserting the following: ''Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, or $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date under section 163 of the Federal Housing Enterprise Regulatory Reform Act of 2008, subject to the limitations in this paragraph.

Such limitation shall be calculated with respect to the total original principal obligation of the mortgage, and not merely with respect to the interest purchased by the enterprise. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or fourth quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Office of Federal Housing Enterprise Oversight (pursuant to section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541)).''.

(b) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by striking ''The Corporation shall establish'' and all that follows through the end of the paragraph and inserting the following: ''Such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, or $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning after the effective date under section 163 of the Federal Housing Enterprise Regulatory Reform Act of 2008, subject to the limitations in this paragraph. Such limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the enterprise. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or fourth quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Office of Federal Housing Enterprise Oversight (pursuant to section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541)).''.

(c) HOUSING PRICE INDEX.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by this Act, is amended by inserting before section 1323 the following:

''SEC. 1322. HOUSING PRICE INDEX.

''(a) METHOD OF ASSESSMENT.—The Director shall establish, by regulation, and maintain a method of assessing the national average single-family housing price for use in adjusting the conforming loan limitations of the enterprises.

''(b) CONSIDERATIONS.—The Director shall take into consideration the monthly survey of all major lenders conducted by the Office to determine the national average single-family house price, the Housing Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date under section 163 of the Federal Housing Enterprise Regulatory Reform Act of 2008, any appropriate housing price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measure that the Director considers appropriate.''.

SEC. 827. REPORTING OF MORTGAGE DATA; HOUSING GOALS.

(a) REPORTING OF MORTGAGE DATA.—Section 1325 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4546), as so redesignated by this Act, is amended—

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

(2) by adding at the end the following:

''(d) MORTGAGE DATA.—The Director shall, by regulation or order, provide that certain information relating to single family mortgage data of the enterprises shall be disclosed to the public in order to make available to the public the same data from the enterprises that is required of insured depository institutions under the Home Mortgage Disclosure Act.''.

(b) DEFINITIONS.—Section 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4564), as amended by this Act, is amended by adding at the end the following:

''(d) DEFINITIONS.—For purposes of this section, the term 'underserved area' means an urban census tract that has—

''(1) an average median family income of less than 80 percent of the area median family income; or

''(2) a minority population of at least 30 percent and a median family income of less than 100 percent of the area family median income.''.

SEC. 828. DUTY TO SERVE UNDERSERVED MARKETS.

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

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

(2) by striking subsection (b);

(3) in subsection (a)—

(A) by inserting ''and to carry out the duty under subsection (a)'' before '', each enterprise shall'';

(B) in paragraph (3), by inserting ''and'' at the end;

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

(D) by striking paragraph (5); and

(4) by redesignating subsection (a) as subsection (b);

(5) by inserting before subsection (b) (as so redesignated) the following:

''(a) DUTY TO SERVE UNDERSERVED MARKETS.—

''(1) DUTY.—In accordance with the purposes of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families, involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.

''(2) UNDERSERVED MARKETS.—To meet its duty under paragraph (1), each enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market—

''(A) for mortgages on manufactured homes for very low-, low-, and moderate-income families;

''(B) to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—

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

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

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

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

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

''(vi) the rural rental housing program under section 515 of the Housing Act of 1949;

''(C) for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Director identifies as lacking adequate credit through conventional lending sources, which underserved markets may be identified by borrower type, market segment, or geographic area; and

''(D) for mortgages originated through State or local affordable or subsidized housing programs.''; and

(6) by adding at the end the following:

''(c) EVALUATION AND REPORTING OF COMPLIANCE.—

''(1) METHOD OF EVALUATION.—Not later than 6 months after the effective date of title I of the Federal Housing Enterprise Regulatory Reform Act of 2008, the Director shall establish a method for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance.

''(2) ANNUAL EVALUATIONS.—Using the method established under paragraph (1), the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to the extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).

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

''(A) the development of loan products and more flexible underwriting guidelines;

''(B) the extent of outreach to qualified loan sellers in each of such underserved markets; and

''(C) the volume of loans purchased in each of such underserved markets.''.

(b) ENFORCEMENT.—Section 1336(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4566(a)) is amended—

(1) in paragraph (1), by inserting before the period ''and with the duty under section 1335A of each enterprise with respect to underserved markets''; and

(2) by adding at the end the following:

''(4) ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—Compliance with the duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under sections 1332, 1333, and 1334 are enforceable. Such duty shall not be enforceable under any provision of this title (including subpart C), other than this section, or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act, as applicable.''.

SEC. 829. HOME PURCHASE GOAL.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

(1) by inserting after section 1334 the following:

"SEC. 1334A. HOME PURCHASE GOAL.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Director shall establish an annual home purchase goal for the purchase by each enterprise of mortgage financing of owner-occupied single family dwelling units.

''(2) COMPONENTS.—The Director may, by regulation, establish components for the goal established under paragraph (1) to include any or all of the following:

''(A) First-time home buyers.

''(B) Low- and moderate-income home buyers.

''(C) Home buyers in central cities, rural areas, and other underserved areas.

''(D) Home buyers who obtain financing through State or local affordable or subsidized housing programs.

''(3) OTHER AUTHORITY.—The Director may, by regulation, establish the goal under paragraph (1) with components as percentages of enterprise business, or by such other means as necessary to increase the secondary market financing of mortgages by the enterprises for home purchases, consistent with the missions of the enterprises.

''(4) ENFORCEABILITY.—The components of the goal established by the Director under paragraph (1) shall be enforceable as goals under subpart C.

''(b) FACTORS TO BE CONSIDERED.—In establishing the home purchase goal for an enterprise under this section, the Director shall consider—

''(1) national housing needs;

''(2) economic, housing, and demographic conditions;

''(3) the performance and effort of the enterprises toward achieving the home purchase goal in previous years;

''(4) the size of the conventional mortgage market serving home purchasers, 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 home purchasers; and

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

''(c) TRANSITION.—In order to permit a transition to the establishment of the goal under this section, such goal shall not be effective or enforceable during the 1-year period beginning on the date of its establishment under subsection (a).

''(d) IMPLEMENTATION DURING TRANSITION.—The Director shall establish, by rule, any requirements necessary to implement the transition provisions under subsection (c), after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice.

"SEC. 1334B HOUSING GOALS, ADDITIONS, MODIFICATIONS, AND RESCISSIONS.

''(a) IN GENERAL.—

''(1) AUTHORITY TO ADDRESS GOALS.—The Director may, by regulation, establish additional annual housing goals, or modify or rescind existing housing goals, to address national housing needs consistent with the missions, of the enterprises and the authorizing statutes, for the purchase of mortgages, if the Director determines, by regulation, that the housing need is greatest.

''(2) METHODOLOGY.—The Director may issue a regulation which establishes or modifies any goal under this subsection—

''(A) as a percentage of the mortgage purchases of each enterprise;

''(B) as a dollar amount of each enterprise's mortgage purchases; or

''(C) by such other means as necessary to increase the enterprises' secondary market financing of mortgages addressed by the goal.

''(b) FACTORS TO BE CONSIDERED.—In establishing any additional goals under this section, the Director shall consider—

''(1) national housing needs;

''(2) economic, housing, and demographic conditions;

''(3) the performance and effort of the enterprises toward achieving the need addressed by any such additional goal in previous years;

''(4) the size of the conventional mortgage market serving the need addressed by the goal, 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 to meet the need addressed by the goal; and

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

''(c) TRANSITION.—In order to permit a transition to the establishment of any goal under this section, such goal shall not be effective or enforceable during the 1-year period beginning on the date of its establishment under subsection (a).'';

(2) in section 1335 (12 U.S.C. 4565(a)), by striking ''meet the low-'' and all that follows through ''1334'' and inserting ''meet the goals under this subpart'';

(3) in section 1336 (12 U.S.C. 4566), by striking subsections (b) and (c) and inserting the following:

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

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

''(2) RESPONSE PERIOD.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(1) REQUIREMENT.—If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart, and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan, or the Director finds that the enterprise has failed to meet any housing goal under this subpart, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, or order other remedies as set forth in paragraph (7).

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

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

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

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

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

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

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

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

''(6) RESUBMISSION.—If the initial housing plan submitted by an enterprise under this section is disapproved, the enterprise shall submit an amended plan acceptable to the Director not later than 30 days after such disapproval, or such longer period that the Director determines is in the public interest.

''(7) ADDITIONAL REMEDIES FOR FAILURE TO MEET GOALS.—In addition to ordering a housing plan under this section, issuing a cease and desist order under section 1341, and ordering civil money penalties under section 1345, the Director may seek other actions when an enterprise fails to meet a goal, including requesting that the Director exercise appropriate enforcement authority available to the Director under this title to prohibit the enterprise from entering into new activities, to freeze any pending approval of new activities, and to order the enterprise to suspend activities pending its achievement of the goal.'';

(4) by striking section 1338 (12 U.S.C. 4568);

(5) by striking from the heading of subpart C ''**of Housing Goals**'';

(6) by striking section 1341 (12 U.S.C. 4581) and inserting the following:

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

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

''(1) the enterprise has failed to meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336;

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

''(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;

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

''(5) the enterprise has failed to submit a housing plan or perform its responsibilities under a remedial order that substantially complies with section 1336(c) within the applicable period; or

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

''(b) PROCEDURE.—

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

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

''(A) comply with the goals;

''(B) submit a report under section 1327;

''(C) comply with any provision of part 2 of this title or any order, rule, or regulation under part 2;

''(D) submit a housing plan in compliance with section 1336(c);

''(E) comply with the housing plan in compliance with section 1336(c); or

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

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

(7) by striking section 1345 and inserting the following:

''SEC. 1345. CIVIL MONEY PENALTIES.

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

''(1) meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336(b);

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

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

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

''(5) submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 1336(c) within the required period; or

''(6) comply with a housing plan for the enterprise under section 1336(c).

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

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

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

''(c) PROCEDURES.—

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

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

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

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

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

''(A) the gravity of the offense;

''(B) any history of prior offenses;

''(C) ability to pay the penalty;

''(D) injury to the public;

''(E) benefits received;

''(F) deterrence of future violations;

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

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

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

''(f) DEPOSIT OF PENALTIES.—The Director shall deposit any civil money penalties collected under this section into the General Fund of the Treasury.''.

Subtitle C—Prompt Corrective Action

SEC. 831. CRITICAL CAPITAL LEVELS.

Section 1363 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4613) is amended—

(1) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and indenting appropriately;

(2) by striking ''shall be the sum of—'' and inserting the following: ''shall be—

''(1) the sum of—''; and

(3) in paragraph (1)(C), as so designated by this section, by striking the period at the end and inserting the following: ''; or

''(2) such other level as the Director shall establish, by regulation.''.

SEC. 832. CAPITAL CLASSIFICATIONS.

Section 1364 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4614) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(A)—

(i) by striking clause (i); and

(ii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) in paragraph (4)(A), by striking ''enterprise—'' and all that follows through ''(ii) does'' and inserting ''enterprise does'';

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

''(b) DISCRETIONARY CLASSIFICATION.—

''(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify an enterprise under paragraph (2) if—

''(A) at any time, the Director determines in writing that an enterprise is engaging in conduct that could result in a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by an enterprise, or the value of collateral pledged as security, has decreased significantly;

''(B) after notice and an opportunity for hearing, the Director determines that an enterprise is in an unsafe or unsound condition; or

''(C) pursuant to section 1371(b), the Director determines that an enterprise is engaging in an unsafe or unsound practice.

''(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of an enterprise

for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may reclassify an enterprise—

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

''(B) as 'significantly undercapitalized', if the enterprise is otherwise classified as undercapitalized; and

''(C) as 'critically undercapitalized', if the enterprise is otherwise classified as significantly undercapitalized.''; and

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

''(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

''(1) IN GENERAL.—An enterprise shall make no capital distribution if, after making the distribution, the enterprise would be undercapitalized.

''(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit an enterprise to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

''(A) is made in connection with the issuance of additional shares or obligations of the enterprise in at least an equivalent amount; and

''(B) will reduce the financial obligations of the enterprise or otherwise improve the financial condition of the enterprise.''.

SEC. 833. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED ENTERPRISES.

Section 1365 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4615) is amended—

(1) in subsection (a)—

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

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

''(1) REQUIRED MONITORING.—The Director shall—

''(A) closely monitor the condition of any undercapitalized enterprise;

''(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized enterprise under this section; and

''(C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized enterprise to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.''; and

(C) by adding at the end the following:

''(4) RESTRICTION OF ASSET GROWTH.—An undercapitalized enterprise shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

''(A) the Director has accepted the capital restoration plan of the enterprise;

''(B) any increase in total assets is consistent with the capital restoration plan; and

''(C) the ratio of tangible equity to assets of the enterprise increases during the calendar quarter at a rate sufficient to enable the enterprise to become adequately capitalized within a reasonable time.

''(5) PRIOR APPROVAL OF ACQUISITIONS AND NEW ACTIVITIES.—An undercapitalized enterprise shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

''(A) the Director has accepted the capital restoration plan of the enterprise, the enterprise is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

''(B) the Director determines that the proposed action will further the purpose of this subtitle.'';

(2) in subsection (b)—

(A) in the subsection heading, by striking ''DISCRETIONARY'';

(B) in the matter preceding paragraph (1), by striking ''may'' and inserting ''shall''; and

(C) in paragraph (2)—

(i) by striking ''make, in good faith, reasonable efforts necessary to''; and

(ii) by striking the period at the end and inserting ''in any material respect.''; and

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

''(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to an undercapitalized enterprise, any of the actions authorized to be taken under section 1366 with respect to a significantly undercapitalized enterprise, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.''.

SEC. 834. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED ENTERPRISES.

Section 1366 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4616) is amended—

(1) in subsection (a)(2), by striking ''undercapitalized enterprise'' and inserting ''undercapitalized''; and

(2) in subsection (b)—

(A) in the subsection heading, by striking ''DISCRETIONARY SUPERVISORY'' and inserting ''SPECIFIC'';

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

(C) by striking paragraph (6);

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

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

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

''(A) NEW ELECTION OF BOARD.—Order a new election for the board of directors of the enterprise.

''(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the enterprise to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the enterprise became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 1377.

''(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the enterprise to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).''; and

(F) by adding at the end the following:

''(7) OTHER ACTION.—Require the enterprise to take any other action that the Director determines will better carry out the purpose of this section than any of the other actions specified in this subsection.''; and

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

''(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—An enterprise that is classified as significantly undercapitalized in accordance with section 1364 may not, without prior written approval by the Director—

''(1) pay any bonus to any executive officer; or

''(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the enterprise became significantly undercapitalized.''.

SEC. 835. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED ENTERPRISES.

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

''SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED ENTERPRISES.

''(a) APPOINTMENT OF THE OFFICE AS CONSERVATOR OR RECEIVER.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Director may appoint the Office as conservator or receiver for an enterprise in the manner provided under paragraph (2) or (4). All references to the conservator or receiver under this section are references to the Office acting as conservator or receiver.

''(2) DISCRETIONARY APPOINTMENT.—The Office may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of an enterprise.

''(3) GROUNDS FOR DISCRETIONARY APPOINTMENT OF CONSERVATOR OR RECEIVER.—The grounds for appointing conservator or receiver for any enterprise under paragraph (2) are as follows:

''(A) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

''(i) any violation of any provision of Federal or State law; or

''(ii) any unsafe or unsound practice.

''(B) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

''(C) CEASE-AND-DESIST ORDERS.—Any willful violation of a cease-and-desist order that has become final.

''(D) CONCEALMENT.—Any concealment of the books, papers, records, or assets of the enterprise, or any refusal to submit the books, papers, records, or affairs of the enterprise, for inspection to any examiner or to any lawful agent of the Director.

''(E) INABILITY TO MEET OBLIGATIONS.—The enterprise is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

''(F) LOSSES.—The enterprise has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the enterprise to become adequately capitalized (as defined in section 1364(a)(1)).

''(G) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

''(i) cause insolvency or substantial dissipation of assets or earnings; or

''(ii) weaken the condition of the enterprise.

''(H) CONSENT.—The enterprise, by resolution of its board of directors or its shareholders or members, consents to the appointment.

''(I) UNDERCAPITALIZATION.—The enterprise is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3)), and—

''(i) has no reasonable prospect of becoming adequately capitalized;

''(ii) fails to become adequately capitalized, as required by—

''(I) section 1365(a)(1) with respect to an enterprise; or

''(II) section 1366(a)(1) with respect to a significantly undercapitalized enterprise;

''(iii) fails to submit a capital restoration plan acceptable to the Office within the time prescribed under section 1369C; or

''(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

''(J) CRITICAL UNDERCAPITALIZATION.—The enterprise is critically undercapitalized, as defined in section 1364(a)(4).

''(K) MONEY LAUNDERING.—The Attorney General notifies the Director in writing that the enterprise has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

''(4) MANDATORY RECEIVERSHIP.—

''(A) IN GENERAL.—The Director shall appoint the Office as receiver for an enterprise if the Director determines, in writing, that—

''(i) the assets of the enterprise are, and during the preceding 30 calendar days have been, less than the obligations of the enterprise to its creditors and others; or

''(ii) the enterprise is not, and during the preceding 30 calendar days has not been, generally paying the debts of the enterprise (other than debts that are the subject of a bona fide dispute) as such debts become due.

''(B) PERIODIC DETERMINATION REQUIRED FOR CRITICALLY UNDERCAPITALIZED ENTERPRISE.—If an enterprise is critically undercapitalized, the Director shall make a determination, in writing, as to whether the enterprise meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

''(i) not later than 30 calendar days after the enterprise initially becomes critically undercapitalized; and

''(ii) at least once during each succeeding 30-calendar day period.

''(C) DETERMINATION NOT REQUIRED IF RECEIVERSHIP ALREADY IN PLACE.—Subparagraph (B) does not apply with respect to an enterprise in any period during which the Office serves as receiver for the enterprise.

''(D) RECEIVERSHIP TERMINATES CONSERVATORSHIP.—The appointment of the Office as receiver of an enterprise under this section shall immediately terminate any conservatorship established for the enterprise under this title.

''(5) JUDICIAL REVIEW.—

''(A) IN GENERAL.—If the Office is appointed conservator or receiver under this section, the enterprise may, within 30 days of such appointment, bring an action in the United States district court for the judicial district in which the home office of such enterprise is located, or in the United States District Court for the District of Columbia, for an order requiring the Office to remove itself as conservator or receiver.

''(B) REVIEW.—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Office to remove itself as such conservator or receiver.

''(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an enterprise shall not be liable to the shareholders or creditors of the enterprise for acquiescing in or consenting in good faith to the appointment of the Office as conservator or receiver for that enterprise.

''(7) OFFICE NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as conservator or receiver, the Office shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Office.

''(b) POWERS AND DUTIES OF THE OFFICE AS CONSERVATOR OR RECEIVER.—

''(1) RULEMAKING AUTHORITY OF THE OFFICE.—The Office may prescribe such regulations as the Office determines to be appropriate regarding the conduct of conservatorships or receiverships.

''(2) GENERAL POWERS.—

''(A) SUCCESSOR TO ENTERPRISE.—The Office shall, as conservator or receiver, and by operation of law, immediately succeed to—

''(i) all rights, titles, powers, and privileges of the enterprise, and of any stockholder, officer, or director of such enterprise with respect to the enterprise and the assets of the enterprise; and

''(ii) title to the books, records, and assets of any other legal custodian of such enterprise.

''(B) OPERATE THE ENTERPRISE.—The Office may, as conservator or receiver—

''(i) take over the assets of and operate the enterprise with all the powers of the shareholders, the directors, and the officers of the enterprise and conduct all business of the enterprise;

''(ii) collect all obligations and money due the enterprise;

''(iii) perform all functions of the enterprise in the name of the enterprise which are consistent with the appointment as conservator or receiver;

''(iv) preserve and conserve the assets and property of the enterprise; and

''(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Office as conservator or receiver.

''(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF AN ENTERPRISE.—The Office may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any enterprise for which the Office has been named conservator or receiver.

''(D) POWERS AS CONSERVATOR.—The Office may, as conservator, take such action as may be—

''(i) necessary to put the enterprise in a sound and solvent condition; and

''(ii) appropriate to carry on the business of the enterprise and preserve and conserve the assets and property of the enterprise.

''(E) ADDITIONAL POWERS AS RECEIVER.—In any case in which the Office is acting as receiver, the Office shall place the enterprise in liquidation and proceed to realize upon the assets of the enterprise in such manner as the Office deems appropriate, including through the sale of assets, the transfer of assets to a limited-life enterprise established under subsection (i), or the exercise of any other rights or privileges granted to the Office under this paragraph.

''(F) ORGANIZATION OF NEW ENTERPRISE.—The Office shall, as receiver for an enterprise, organize a successor enterprise that will operate pursuant to subsection (i).

''(G) TRANSFER OR SALE OF ASSETS AND LIABILITIES.—The Office may, as conservator or receiver, transfer or sell any asset or liability of the enterprise in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale.

''(H) PAYMENT OF VALID OBLIGATIONS.—The Office, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of an enterprise, pay all valid obligations of the enterprise that are due and payable at the time of the appointment of the Office as conservator or receiver, in accordance with the prescriptions and limitations of this section.

''(I) SUBPOENA AUTHORITY.—

''(i) IN GENERAL.—

''(I) OFFICE AUTHORITY.—The Office may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to an enterprise (including determining any claim against the enterprise and determining and realizing upon any asset of any person in the course of collecting money due the enterprise), exercise any power established under section 1348.

''(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power under this subparagraph, in the same manner as such provisions apply under that section.

''(ii) SUBPOENA.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

''(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit any rights that the Office, in any capacity, might otherwise have under section 1317 or 1379B.

''(J) INCIDENTAL POWERS.—The Office may, as conservator or receiver—

''(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

''(ii) take any action authorized by this section, which the Office determines is in the best interests of the enterprise or the Office.

''(K) OTHER PROVISIONS.—

''(i) SHAREHOLDERS AND CREDITORS OF FAILED ENTERPRISE.—Notwithstanding any other provision of law, the appointment of the Office as receiver for an enterprise pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all rights and claims that the stockholders and creditors of the enterprise may have against the assets or charter of the enterprise or the Office arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

''(ii) ASSETS OF ENTERPRISE.—Notwithstanding any other provision of law, for purposes of this section, the charter of an enterprise shall not be considered an asset of the enterprise.

''(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

''(A) IN GENERAL.—The Office may, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4).

''(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed enterprise, shall—

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

''(ii) republish such notice approximately 1 month and 2 months, respectively, after the date of publication under clause (i).

''(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the enterprise—

''(i) at the last address of the creditor appearing in such books; or

''(ii) upon discovery of the name and address of a claimant not appearing on the books of the enterprise, within 30 days after the discovery of such name and address.

''(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

''(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

''(A) DETERMINATION PERIOD.—

''(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against an enterprise is filed with the Office as receiver, the Office shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

''(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Office.

''(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

''(I) on the books of the enterprise;

''(II) in the claim filed by the claimant; or

''(III) in documents submitted in proof of the claim.

''(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

''(I) a statement of each reason for the disallowance; and

''(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

''(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

''(C) DISALLOWANCE OF CLAIMS FILED AFTER FILING PERIOD.—Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

''(D) AUTHORITY TO DISALLOW CLAIMS.—

''(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

''(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against an enterprise which is secured by any property or other asset of such enterprise, the receiver—

''(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the enterprise; and

''(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the enterprise.

''(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

''(I) any extension of credit from any Federal Reserve Bank or the United States Treasury; or

''(II) any security interest in the assets of the enterprise securing any such extension of credit.

''(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (d).—No court may review the determination of the Office under subparagraph (D) to disallow a claim.

''(F) LEGAL EFFECT OF FILING.—

''(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

''(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

''(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

''(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the enterprise is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

''(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against an enterprise for which the Office is receiver; or

''(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

''(B) STATUTE OF LIMITATIONS.—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

''(7) REVIEW OF CLAIMS.—

''(A) OTHER REVIEW PROCEDURES.—

''(i) IN GENERAL.—The Office shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

''(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Office shall strive for procedures which are expeditious, fair, independent, and low cost.

''(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Office may establish both binding and nonbinding processes under this subparagraph, which may be conducted by any government or private party. All parties, including the claimant and the Office, must agree to the use of the process in a particular case.

''(B) CONSIDERATION OF INCENTIVES.—The Office shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

''(8) EXPEDITED DETERMINATION OF CLAIMS.—

''(A) ESTABLISHMENT REQUIRED.—The Office shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

''(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any enterprise for which the Office has been appointed receiver; and

''(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

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

''(i) determine—

''(I) whether to allow or disallow such claim; or

''(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

''(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining Office review or judicial determination.

''(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the date of appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

''(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

''(ii) the date on which the Office denies the claim.

''(D) STATUTE OF LIMITATIONS.—If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

''(E) LEGAL EFFECT OF FILING.—

''(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

''(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

''(9) PAYMENT OF CLAIMS.—

''(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent that funds are available from the assets of the enterprise, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

''(i) allowed by the receiver;

''(ii) approved by the Office pursuant to a final determination pursuant to paragraph (7) or (8); or

''(iii) determined by the final judgment of any court of competent jurisdiction.

''(B) AGREEMENTS AGAINST THE INTEREST OF THE OFFICE.—No agreement that tends to diminish or defeat the interest of the Office in any asset acquired by the Office as receiver under this section shall be valid against the Office unless such agreement is in writing and executed by an authorized officer or representative of the enterprise.

''(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the enterprise dividends on proved claims at any time, and no liability shall attach to the Office by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

''(D) RULEMAKING AUTHORITY OF THE DIRECTOR.—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of any enterprise, following satisfaction by the receiver of the principal amount of all creditor claims.

''(10) SUSPENSION OF LEGAL ACTIONS.—

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

''(i) 45 days, in the case of any conservator; and

''(ii) 90 days, in the case of any receiver.

''(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

''(11) ADDITIONAL RIGHTS AND DUTIES.—

''(A) PRIOR FINAL ADJUDICATION.—The Office shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Office as conservator or receiver.

''(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable

judgment, the Office as conservator or receiver—

''(i) shall have all of the rights and remedies available to the enterprise (before the appointment of such conservator or receiver) and the Office, including removal to Federal court and all appellate rights; and

''(ii) shall not be required to post any bond in order to pursue such remedies.

''(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver, or upon the charter, of an enterprise for which the Office has been appointed receiver.

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

''(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets or charter of any enterprise for which the Office has been appointed receiver; or

''(ii) any claim relating to any act or omission of such enterprise or the Office as receiver.

''(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of an enterprise for which the Office has been appointed conservator or receiver, the Office shall conduct its operations in a manner which—

''(i) maximizes the net present value return from the sale or disposition of such assets;

''(ii) minimizes the amount of any loss realized in the resolution of cases; and

''(iii) ensures adequate competition and fair and consistent treatment of offerors.

''(12) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

''(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Office as conservator or receiver shall be—

''(i) in the case of any contract claim, the longer of—

''(I) the 6-year period beginning on the date on which the claim accrues; or

''(II) the period applicable under State law; and

''(ii) in the case of any tort claim, the longer of—

''(I) the 3-year period beginning on the date on which the claim accrues; or

''(II) the period applicable under State law.

''(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

''(i) the date of the appointment of the Office as conservator or receiver; or

''(ii) the date on which the cause of action accrues.

''(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

''(A) IN GENERAL.—In the case of any tort claim described under subparagraph (B) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Office as conservator or receiver, the Office may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitations applicable under State law.

''(B) CLAIMS DESCRIBED.—A tort claim referred to under subparagraph (A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the enterprise.

''(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

''(A) IN GENERAL.—The Office as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Office, maintain a full accounting of each conservatorship and receivership or other disposition of an enterprise in default.

''(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Office shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

''(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Office upon request to any shareholder of an enterprise or any member of the public.

''(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date on which the conservatorship or receivership is terminated by the Director, the Office may destroy any records of such enterprise which the Office, in the discretion of the Office, determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

''(15) FRAUDULENT TRANSFERS.—

''(A) IN GENERAL.—The Office, as conservator or receiver, may avoid a transfer of any interest of an enterprise-affiliated party, or any person determined by the conservator or receiver to be a debtor of the enterprise, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Office was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the enterprise, the Office, the conservator, or receiver.

''(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the enterprise, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

''(i) the initial transferee of such transfer or the enterprise-affiliated party or person for whose benefit such transfer was made; or

''(ii) any immediate or mediate transferee of any such initial transferee.

''(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The conservator or receiver may not recover under subparagraph (B) from—

''(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

''(ii) any immediate or mediate good faith transferee of such transferee.

''(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

''(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the conservator or receiver under the control of the court, and appointing a trustee to hold such assets.

''(17) STANDARDS OF PROOF.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

''(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CONSERVATOR OR RECEIVER.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the conservator or receiver for the breach of an agreement executed or approved in writing by the conservator or receiver after the date of its appointment, shall be paid as an administrative expense of the conservator or receiver.

''(B) NO LIMITATION OF POWER.—Nothing in this paragraph shall be construed to limit the power of the conservator or receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

''(19) GENERAL EXCEPTIONS.—

''(A) LIMITATIONS.—The rights of the conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

''(B) MORTGAGES HELD IN TRUST.—

''(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by an enterprise for the benefit of any person other than the enterprise shall not be available to satisfy the claims of creditors generally.

''(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

''(iii) LIABILITY OF CONSERVATOR OR RECEIVER.—The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with in the regulations of the Director.

''(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

''(1) IN GENERAL.—Unsecured claims against an enterprise, or the receiver therefor, that are proven to the satisfaction of the receiver shall have priority in the following order:

''(A) Administrative expenses of the receiver.

''(B) Any other general or senior liability of the enterprise (which is not a liability described under subparagraph (C) or (D).

''(C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).

''(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

''(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

''(A) the Director determines that such action is necessary to maximize the value of the assets of the enterprise, to maximize the present value return from the sale or other disposition of the assets of the enterprise, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the enterprise assets; and

''(B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (e)(2).

''(3) DEFINITION.—As used in this subsection, the term 'administrative expenses of the receiver' includes—

''(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a failed enterprise or liquidating or otherwise resolving the affairs of a failed enterprise; and

''(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the enterprise.

''(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

''(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any enterprise may disaffirm or repudiate any contract or lease—

''(A) to which such enterprise is a party;

''(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

''(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the enterprise.

''(2) TIMING OF REPUDIATION.—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

''(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

''(A) IN GENERAL.—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

''(i) limited to actual direct compensatory damages; and

''(ii) determined as of—

''(I) the date of the appointment of the conservator or receiver; or

''(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

''(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term 'actual direct compensatory damages' shall not include—

''(i) punitive or exemplary damages;

''(ii) damages for lost profits or opportunity; or

''(iii) damages for pain and suffering.

''(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

''(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

''(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

''(4) LEASES UNDER WHICH THE ENTERPRISE IS THE LESSEE.—

''(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the enterprise was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

''(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

''(i) be entitled to the contractual rent accruing before the later of the date on which—

''(I) the notice of disaffirmance or repudiation is mailed; or

''(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

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

''(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

''(5) LEASES UNDER WHICH THE ENTERPRISE IS THE LESSOR.—

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

''(i) treat the lease as terminated by such repudiation; or

''(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

''(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of subparagraph (A)—

''(i) the lessee—

''(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

''(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the enterprise under the lease after such date; and

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

''(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

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

''(i) treat the contract as terminated by such repudiation; or

''(ii) remain in possession of such real property.

''(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of subparagraph (A)—

''(i) the purchaser—

''(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

''(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the enterprise under the contract; and

''(ii) the conservator or receiver shall—

''(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

''(II) deliver title to the purchaser in accordance with the provisions of the contract; and

''(III) have no obligation under the contract other than the performance required under subclause (II).

''(C) ASSIGNMENT AND SALE ALLOWED.—

''(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

''(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

''(7) SERVICE CONTRACTS.—

''(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any enterprise for which the Office has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or receiver shall be—

''(i) a claim to be paid in accordance with subsections (b) and (e); and

''(ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

''(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

''(i) the other party shall be paid under the terms of the contract for the services performed; and

''(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

''(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

''(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

''(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10), and notwithstanding any other provision of this title (other than subsection (b)(9)(B) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

''(i) any right of that person to cause the termination, liquidation, or acceleration of any qualified financial contract with an enterprise that arises upon the appointment of the Office as receiver for such enterprise at any time after such appointment;

''(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts; or

''(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

''(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (b)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the enterprise for which such receiver was appointed, by any party to

a contract or agreement described under subparagraph (A)(i) with such enterprise.

''(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

''(i) IN GENERAL.—Notwithstanding paragraph (11), or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Office, whether acting as such or as conservator or receiver of an enterprise, may not avoid any transfer of money or other property in connection with any qualified financial contract with an enterprise.

''(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an enterprise if the Office determines that the transferee had actual intent to hinder, delay, or defraud such enterprise, the creditors of such enterprise, or any conservator or receiver appointed for such enterprise.

''(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection the following definitions shall apply:

''(i) QUALIFIED FINANCIAL CONTRACT.—The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Office determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan, unless the Office determines by regulation, resolution, or order to include any such agreement within the meaning of that term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date on which the contract is entered into, including a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (including a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as that term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined for purposes of this clause as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the appropriate Federal banking authority), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Office determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the enterprise.

''(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this section, any other Federal law, or the law of any State (other than paragraph (10) of this subsection and subsection (b)(9)(B)), no person shall be stayed or prohibited from exercising—

''(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an enterprise in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

''(ii) any right under any security agreement or arrangement or other credit enhancement relating to 1 or more such qualified financial contracts; or

''(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Office, or authorizing any court or agency to limit or delay in any manner, the right or power of the Office to transfer any qualified financial contract in accordance with paragraphs (9) and (10), or to disaffirm or repudiate any such contract in accordance with subsection (d)(1).

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an enterprise in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the status of such party as a nondefaulting party.

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of an enterprise in default which includes any qualified financial contract, the conservator or receiver for such enterprise shall either—

''(A) transfer to 1 person—

''(i) all qualified financial contracts between any person (or any affiliate of such person) and the enterprise in default;

''(ii) all claims of such person (or any affiliate of such person) against such enterprise under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such enterprise);

''(iii) all claims of such enterprise against such person (or any affiliate of such person) under any such contract; and

''(iv) all property securing, or any other credit enhancement for any contract described in clause (i), or any claim described in clause (ii) or (iii) under any such contract; or

''(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

''(10) NOTIFICATION OF TRANSFER.—

''(A) IN GENERAL.—The conservator or receiver shall notify any person that is a party to a contract or transfer by 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship, if—

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

''(ii) such transfer includes any qualified financial contract.

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an enterprise may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or under section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the enterprise (or the insolvency or financial condition of the enterprise for which the receiver has been appointed)—

''(I) until 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an enterprise may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or under section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the enterprise (or the insolvency or financial condition of the enterprise for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the conservator or receiver of an enterprise shall be deemed to have notified a person who is a party to a qualified financial contract with such enterprise, if the conservator or receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term 'business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an enterprise is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the enterprise in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

''(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any enterprise, except where such an interest is taken in contemplation of the insolvency of the enterprise, or with the intent to hinder, delay, or defraud the enterprise or the creditors of such enterprise.

''(13) AUTHORITY TO ENFORCE CONTRACTS.—

''(A) IN GENERAL.—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of, or the exercise

of rights or powers by, a conservator or receiver, the conservator or receiver may enforce any contract, other than a contract for liability insurance for a director or officer, or a contract or an enterprise bond, entered into by the enterprise.

''(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract for an officer or director, or enterprise bond under other applicable law.

''(C) CONSENT REQUIREMENT.—

''(i) IN GENERAL.—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which an enterprise is a party, or to obtain possession of or exercise control over any property of the enterprise, or affect any contractual rights of the enterprise, without the consent of the conservator or receiver, as appropriate, for a period of—

''(I) 45 days after the date of appointment of a conservator; or

''(II) 90 days after the date of appointment of a receiver.

''(ii) EXCEPTIONS.—This subparagraph shall not—

''(I) apply to a contract for liability insurance for an officer or director;

''(II) apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and

''(III) be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

''(14) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

''(e) VALUATION OF CLAIMS IN DEFAULT.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Office determines to utilize with respect to an enterprise in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such enterprise.

''(2) MAXIMUM LIABILITY.—The maximum liability of the Office, acting as receiver or in any other capacity, to any person having a claim against the receiver or the enterprise for which such receiver is appointed shall be not more than the amount that such claimant would have received if the Office had liquidated the assets and liabilities of the enterprise without exercising the authority of the Office under subsection (i).

''(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Office as a conservator or a receiver.

''(g) LIABILITY OF DIRECTORS AND OFFICERS.—

''(1) IN GENERAL.—A director or officer of an enterprise may be held personally liable for monetary damages in any civil action described in paragraph (2) brought by, on behalf of, or at the request or direction of the Office, and prosecuted wholly or partially for the benefit of the Office—

''(A) acting as conservator or receiver of such enterprise; or

''(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator.

''(2) ACTIONS ADDRESSED.—Paragraph (1) applies in any civil action for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct, as such terms are defined and determined under applicable State law.

''(3) NO LIMITATION.—Nothing in this subsection shall impair or affect any right of the Office under other applicable law.

''(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an enterprise, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the enterprise shall include principal losses and appropriate interest.

''(i) LIMITED-LIFE ENTERPRISES.—

''(1) ORGANIZATION.—

''(A) PURPOSE.—The Office, as receiver appointed pursuant to subsection (a), shall, in the case of an enterprise, organize a limited-life enterprise with respect to that enterprise in accordance with this subsection.

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

''(i) assume such liabilities of the enterprise that is in default or in danger of default as the Office may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the enterprise to the limited-life enterprise;

''(ii) purchase such assets of the enterprise that is in default, or in danger of default as the Office may, in its discretion, determine to be appropriate; and

''(iii) perform any other temporary function which the Office may, in its discretion, prescribe in accordance with this section.

''(2) CHARTER AND ESTABLISHMENT.—

''(A) TRANSFER OF CHARTER.—

''(i) FANNIE MAE.—If the Office is appointed as receiver for the Federal National Mortgage Association, the limited-life enterprise established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

''(I) succeed to the charter of the Federal National Mortgage Association, as set forth in the Federal National Mortgage Association Charter Act; and

''(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal National Mortgage Association is subject, except as otherwise provided in this subsection.

''(ii) FREDDIE MAC.—If the Office is appointed as receiver for the Federal Home Loan Mortgage Corporation, the limited-life enterprise established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

''(I) succeed to the charter of the Federal Home Loan Mortgage Corporation, as set forth in the Federal Home Loan Mortgage Corporation Charter Act; and

''(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal Home Loan Mortgage Corporation is subject, except as otherwise provided in this subsection.

''(B) INTERESTS IN AND ASSETS AND OBLIGATIONS OF ENTERPRISE IN DEFAULT.—Notwithstanding subparagraph (A) or any other provision of law—

''(i) a limited-life enterprise shall assume, acquire, or succeed to the assets or liabilities of an enterprise only to the extent that such assets or liabilities are transferred by the Office to the limited-life enterprise in accordance with, and subject to the restrictions set forth in, paragraph (1)(B);

''(ii) a limited-life enterprise shall not assume, acquire, or succeed to any obligation that an enterprise for which a receiver has been appointed may have to any shareholder of the enterprise that arises as a result of the status of that person as a shareholder of the enterprise; and

''(iii) no shareholder or creditor of an enterprise shall have any right or claim against the charter of the enterprise once the Office has been appointed receiver for the enterprise and a limited-life enterprise succeeds to the charter pursuant to subparagraph (A).

''(C) LIMITED-LIFE ENTERPRISE TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life enterprise shall be treated as an enterprise in default at such times and for such purposes as the Office may, in its discretion, determine.

''(D) MANAGEMENT.—Upon its establishment, a limited-life enterprise shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Office.

''(E) BYLAWS.—The board of directors of a limited-life enterprise shall adopt such bylaws as may be approved by the Office.

''(3) CAPITAL STOCK.—

''(A) NO REQUIREMENT.—The Office is not required to pay capital stock into a limited-life enterprise or to issue any capital stock on behalf of a limited-life enterprise established under this subsection.

''(B) AUTHORITY.—If the Director determines that such action is advisable, the Office may cause capital stock or other securities of a limited-life enterprise established with respect to an enterprise to be issued and offered for sale, in such amounts and on such terms and conditions as the Director may determine, in the discretion of the Director.

''(4) INVESTMENTS.—Funds of a limited-life enterprise shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Office, or any Federal reserve bank.

''(5) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a limited-life enterprise, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

''(6) WINDING UP.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), not later than 2 years after the date of its organization, the Office shall wind up the affairs of a limited-life enterprise.

''(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of a limited-life enterprise for 3 additional 1-year periods.

''(C) TERMINATION OF STATUS AS LIMITED-LIFE ENTERPRISE.—

''(i) IN GENERAL.—Upon the sale by the Office of 80 percent or more of the capital stock of a limited-life enterprise, as defined in clause (iv), to 1 or more persons (other than the Office)—

''(I) the status of the limited-life enterprise as such shall terminate; and

''(II) the enterprise shall cease to be a limited-life enterprise for purposes of this subsection.

''(ii) DIVESTITURE OF REMAINING STOCK, IF ANY.—

''(I) IN GENERAL.—Not later than 1 year after the date on which the status of a limited-life enterprise is terminated pursuant to clause (i), the Office shall sell to 1 or more persons (other than the Office) any remaining capital stock of the former limited-life enterprise.

''(II) EXTENSION AUTHORIZED.—The Director may extend the period referred to in subclause (I) for not longer than an additional 2 years, if the Director determines that such action would be in the public interest.

''(iii) SAVINGS CLAUSE.—Notwithstanding any provision of law, other than clause (ii), the Office shall not be required to sell the capital stock of an enterprise or a limited-life enterprise established with respect to an enterprise.

''(iv) APPLICABILITY.—This subparagraph applies only with respect to a limited-life enterprise that is established with respect to an enterprise.

''(7) TRANSFER OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—

''(i) TRANSFER OF ASSETS AND LIABILITIES.—The Office, as receiver, may transfer any assets and liabilities of an enterprise in default, or in danger of default, to the limited-life enterprise in accordance with and subject to the restrictions of paragraph (1).

''(ii) SUBSEQUENT TRANSFERS.—At any time after the establishment of a limited-life enterprise, the Office, as receiver, may transfer any assets and liabilities of the enterprise in default, or in danger of default, as the Office may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

''(iii) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities of an enterprise in default or in danger of default to a limited-life enterprise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

''(iv) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Office shall treat all creditors of an enterprise in default or in danger of default that are similarly situated under subsection (c)(1) in a similar manner in exercising the authority of the Office under this subsection to transfer any assets or liabilities of the enterprise to the limited-life enterprise established with respect to such enterprise, except that the Office may take actions (including making payments) that do not comply with this clause, if—

''(I) the Director determines that such actions are necessary to maximize the value of the assets of the enterprise, to maximize the present value return from the sale or other disposition of the assets of the enterprise, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the enterprise; and

''(II) all creditors that are similarly situated under subsection (c)(1) receive not less than the amount provided in subsection (e)(2).

''(v) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of an enterprise that are transferred to, or assumed by, a limited-life enterprise may not exceed the aggregate amount of assets of the enterprise that are transferred to, or purchased by, the limited-life enterprise.

''(8) REGULATIONS.—The Office may promulgate such regulations as the Office determines to be necessary or appropriate to implement this subsection.

''(9) POWERS OF LIMITED-LIFE ENTERPRISES.—

''(A) IN GENERAL.—Each limited-life enterprise created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the enterprise in default or in danger of default to which it relates, except that—

''(i) the Office may—

''(I) remove the directors of a limited-life enterprise;

''(II) fix the compensation of members of the board of directors and senior management, as determined by the Office in its discretion, of a limited-life enterprise; and

''(III) indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life enterprise on such terms as the Office determines to be appropriate; and

''(ii) the board of directors of a limited-life enterprise—

''(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Office; and

''(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Office.

''(B) STAY OF JUDICIAL ACTION.—Any judicial action to which a limited-life enterprise becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of an enterprise in default shall be stayed from further proceedings for a period of not longer than 45 days, at the request of the limited-life enterprise. Such period may be modified upon the consent of all parties.

''(10) NO FEDERAL STATUS.—

''(A) AGENCY STATUS.—A limited-life enterprise is not an agency, establishment, or instrumentality of the United States.

''(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life enterprise are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Office or of any Federal instrumentality who serves at the request of the Office as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life enterprise shall not—

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

''(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life enterprise in addition to such salary or benefits as are obtained through employment with the Office or such Federal instrumentality.

''(11) AUTHORITY TO OBTAIN CREDIT.—

''(A) IN GENERAL.—A limited-life enterprise may obtain unsecured credit and issue unsecured debt.

''(B) INABILITY TO OBTAIN CREDIT.—If a limited-life enterprise is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life enterprise—

''(i) with priority over any or all of the obligations of the limited-life enterprise;

''(ii) secured by a lien on property of the limited-life enterprise that is not otherwise subject to a lien; or

''(iii) secured by a junior lien on property of the limited-life enterprise that is subject to a lien.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a limited-life enterprise that is secured by a senior or equal lien on property of the limited-life enterprise that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an enterprise) only if—

''(I) the limited-life enterprise is unable to otherwise obtain such credit or issue such debt; and

''(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

''(12) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

''(13) AFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

''(j) OTHER OFFICE EXEMPTIONS.—

''(1) APPLICABILITY.—The provisions of this subsection shall apply with respect to the Office in any case in which the Office is acting as a conservator or a receiver.

''(2) TAXATION.—The Office, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Office shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

''(3) PROPERTY PROTECTION.—No property of the Office shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Office, nor shall any involuntary lien attach to the property of the Office.

''(4) PENALTIES AND FINES.—The Office shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

''(k) PROHIBITION OF CHARTER REVOCATION.—In no case may the receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1369, 1369A, and 1369B (12 U.S.C. 4619, 4620, and 4621).

Subtitle D—Enforcement Actions

SEC. 841. CEASE-AND-DESIST PROCEEDINGS.

Section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS.—If, in the opinion of the Director, an enterprise or any enterprise-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise or any enterprise-affiliated party is about to engage, in an unsafe or unsound practice in

conducting the business of the enterprise or the Finance Facility, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the enterprise or the Finance Facility or any written agreement entered into with the Director, the Director may issue and serve upon the enterprise or enterprise-affiliated party a notice of charges in respect thereof.

''(b) ISSUANCE FOR UNSATISFACTORY RATING.—If an enterprise receives, in its most recent report of examination, a less-than-satisfactory rating for credit risk, market risk, operations, or corporate governance, the Director may (if the deficiency is not corrected) deem the enterprise to be engaging in an unsafe or unsound practice for purposes of subsection (a).'';

(2) in subsection (c)—

(A) in paragraph (1), by inserting before the period at the end the following: '', unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease-and-desist order''; and

(B) in paragraph (2)—

(i) by striking ''or director'' and inserting ''director, or enterprise-affiliated party''; and

(ii) by inserting ''or enterprise-affiliated party'' before ''consents'';

(3) in each of subsections (c), (d), and (e), by striking ''conduct'' each place that term appears and inserting ''practice'';

(4) in subsection (d)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''or director'' and inserting ''director, or enterprise-affiliated party'';

(ii) by inserting ''to require a enterprise or enterprise-affiliated party'' after ''includes the authority'';

(B) in paragraph (1)—

(i) by striking ''to require an executive officer or a director to''; and

(ii) by striking ''loss'' and all that follows through ''person'' and inserting ''loss, if'';

(iii) in subparagraph (A), by inserting ''such entity or party or finance facility'' before ''was''; and

(iv) by striking subparagraph (B) and inserting the following:

''(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;''; and

(C) in paragraph (4), by inserting ''loan or'' before ''asset'';

(5) in subsection (e), by inserting ''or enterprise-affiliated party''—

(A) before ''or any executive''; and

(B) before the period at the end; and

(6) in subsection (f)—

(A) by striking ''enterprise'' and inserting ''enterprise, finance facility,''; and

(B) by striking ''or director'' and inserting ''director, or enterprise-affiliated party''.

SEC. 842. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.

Section 1372 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4632) is amended—

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

''(a) GROUNDS FOR ISSUANCE.—

''(1) IN GENERAL.—If the Director determines that the actions specified in the notice of charges served upon an enterprise or any enterprise-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that enterprise, or is likely to weaken the condition of that enterprise prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may—

''(A) issue a temporary order requiring that enterprise or enterprise-affiliated party to cease and desist from any such violation or practice; and

''(B) require that enterprise or enterprise-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

''(2) ADDITIONAL REQUIREMENTS.—An order issued under paragraph (1) may include any requirement authorized under subsection 1371(d).'';

(2) in subsection (b), by striking ''or director'' and inserting ''director, or enterprise-affiliated party''; and

(3) in subsection (d), by striking ''or director'' each place that term appears and inserting ''director, or enterprise-affiliated party''; and

(4) in subsection (e)—

(A) by striking ''request the Attorney General of the United States to''; and

(B) by striking ''or may, under the direction and control of the Attorney General, bring such action''.

SEC. 843. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Part 1 of subtitle C of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.) is amended—

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

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

''SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

''(a) AUTHORITY TO ISSUE ORDER.—

''(1) IN GENERAL.—The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Finance Facility a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the enterprise.

''(2) APPLICABILITY.—A party described in this paragraph is an enterprise-affiliated party or any officer, director, or management of the Finance Facility, if the Director determines that—

''(A) that party, officer, or director has, directly or indirectly—

''(i) violated—

''(I) any law or regulation;

''(II) any cease-and-desist order which has become final;

''(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise; or

''(IV) any written agreement between such enterprise and the Director;

''(ii) engaged or participated in any unsafe or unsound practice in connection with any enterprise or business institution; or

''(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

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

''(i) such enterprise or business institution has suffered or will probably suffer financial loss or other damage; or

''(ii) such party has received financial gain or other benefit; and

''(C) the violation, practice, or breach described in subparagraph (A)—

''(i) involves personal dishonesty on the part of such party; or

''(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such enterprise or business institution.

''(b) SUSPENSION ORDER.—

''(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the enterprise, if the Director—

''(A) determines that such action is necessary for the protection of the enterprise; and

''(B) serves such party with written notice of the order.

''(2) EFFECTIVE PERIOD.—Any order issued under this subsection—

''(A) shall become effective upon service; and

''(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

''(i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

''(ii) the effective date of an order issued under subsection (b).

''(3) COPY OF ORDER.—If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any enterprise with which such party is affiliated at the time such order is issued.

''(c) NOTICE, HEARING, AND ORDER.—

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

''(2) TIMING OF HEARING.—A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

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

''(B) the Attorney General of the United States.

''(3) CONSENT.—Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

''(4) ISSUANCE OF ORDER OF SUSPENSION.—The Director may issue an order under this section, as the Director may deem appropriate, if—

''(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

''(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

''(5) EFFECTIVENESS OF ORDER.—Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant enterprise and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

''(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

''(1) participate in any manner in the conduct of the affairs of any enterprise or the Finance Facility;

''(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy,

consent, or authorization with respect to any voting rights in any enterprise;

''(3) violate any voting agreement previously approved by the Director; or

''(4) vote for a director, or serve or act as an enterprise-affiliated party of an enterprise or as an officer or director of the Finance Facility.

''(e) INDUSTRY-WIDE PROHIBITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in an enterprise or the Finance Facility, or prohibited from participating in the conduct of the affairs of an enterprise or the Finance Facility, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any enterprise or the Finance Facility.

''(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of an enterprise or the Finance Facility, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the enterprise or such Finance Facility described in the written consent. Any such consent shall be publicly disclosed.

''(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

''(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

''(g) STAY OF SUSPENSION AND PROHIBITION OF ENTERPRISE-AFFILIATED PARTY.—Not later than 10 days after the date on which any enterprise-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of an enterprise under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the enterprise is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

''(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AFFILIATED PARTY CHARGED WITH FELONY.—

''(1) SUSPENSION OR PROHIBITION.—

''(A) IN GENERAL.—Whenever any enterprise-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the enterprise or impair public confidence in the enterprise, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any enterprise.

''(B) PROVISIONS APPLICABLE TO NOTICE.—

''(i) COPY.—A copy of any notice under subparagraph (A) shall be served upon the relevant enterprise.

''(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

''(2) REMOVAL OR PROHIBITION.—

''(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an enterprise-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the enterprise or impair public confidence in the enterprise, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise without the prior written consent of the Director.

''(B) PROVISIONS APPLICABLE TO ORDER.—

''(i) COPY.—A copy of any order under subparagraph (A) shall be served upon the relevant enterprise, at which time the enterprise-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such enterprise.

''(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of an enterprise pursuant to subsection (a) or (b).

''(iii) EFFECTIVE PERIOD.—Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

''(3) AUTHORITY OF REMAINING BOARD MEMBERS.—

''(A) IN GENERAL.—If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of an enterprise less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

''(B) APPOINTMENT OF TEMPORARY DIRECTORS.—If all of the directors of an enterprise are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the enterprise and their respective successors take office.

''(4) HEARING REGARDING CONTINUED PARTICIPATION.—

''(A) IN GENERAL.—Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the enterprise-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the enterprise by such party does not, or is not likely to, pose a threat to the interests of the enterprise, or threaten to impair public confidence in the enterprise.

''(B) TIMING AND FORM OF HEARING.—Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the enterprise-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

''(C) DETERMINATION.—Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the enterprise-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the enterprise will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the enterprise will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

''(5) RULES.—The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.''.

(b) CONFORMING AMENDMENTS.—

(1) SAFETY AND SOUNDNESS ACT.—Subtitle C of title XIII of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (42 U.S.C. 4501 et seq.) is amended—

(A) in section 1317(f), by striking ''section 1379B'' and inserting ''section 1379D'';

(B) in section 1373(a)—

(i) in paragraph (1), by striking ''or 1376(c)'' and inserting '', 1376(c), or 1377'';

(ii) in paragraph (2), by inserting ''or 1377'' after''1371''; and

(iii) in paragraph (4), by inserting ''or removal or prohibition'' after ''cease and desist''; and

(C) in section 1374(a)—

(i) by striking ''or 1376'' and inserting '', 1376, or 1377''; and

(ii) by striking ''such section'' and inserting ''this title''.

(2) FANNIE MAE CHARTER ACT.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended in the second sentence, by striking ''The'' and inserting ''Except to the extent that action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the''.

(3) FREDDIE MAC CHARTER ACT.—Section 303(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended, in the second sentence, by striking ''The'' and inserting ''Except to the extent action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the''.

SEC. 844. ENFORCEMENT AND JURISDICTION.

(a) IN GENERAL.—Section 1375 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4635) is amended—

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

''(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice, order, or subpoena issued under this title, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice, order, or subpoena.''; and

(2) in subsection (b)—

(A) by striking ''section 1371, 1372, or 1376 or'';

(B) by inserting ''subtitle C, or section 1313A'' after ''subtitle B,''; and

(C) by inserting '', standard,'' after ''notice'' each place that term appears.

(b) CONFORMING AMENDMENT.—Section 1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12

U.S.C. 4641) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

SEC. 845. CIVIL MONEY PENALTIES.

Section 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4636) is amended—

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

''(a) IN GENERAL.—The Director may impose a civil money penalty in accordance with this section on any enterprise, or any executive offices of an enterprise or any enterprise-affiliated party.'';

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

''(b) AMOUNT OF PENALTY.—

''(1) FIRST TIER.—An enterprise or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than $10,000 for each day during which a violation continues, if such enterprise or party—

''(A) violates any provision of this title, the authorizing statutes, or any order, condition, rule, or regulation under this title or any authorizing statute;

''(B) violates any final or temporary order or notice issued pursuant to this title;

''(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such enterprise;

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

''(E) engages in any conduct that the Director determines to be an unsafe or unsound practice.

''(2) SECOND TIER.—Notwithstanding paragraph (1), a enterprise or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which a violation, practice, or breach continues, if—

''(A) the enterprise or enterprise-affiliated party, respectively—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the enterprise; or

''(iii) breaches any fiduciary duty; and

''(B) the violation, practice, or breach—

''(i) is part of a pattern of misconduct;

''(ii) causes or is likely to cause more than a minimal loss to the enterprise; or

''(iii) results in pecuniary gain or other benefit to such party.

''(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any enterprise or enterprise-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such enterprise or enterprise-affiliated party—

''(A) knowingly—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) engages in any unsafe or unsound practice in conducting the affairs of the enterprise; or

''(iii) breaches any fiduciary duty; and

''(B) knowingly or recklessly causes a substantial loss to the enterprise or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

''(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

''(A) in the case of any enterprise-affiliated party, an amount not to exceed $2,000,000; and

''(B) in the case of any enterprise, $2,000,000.'';

(3) in subsection (c)—

(A) by inserting ''or enterprise-affiliated party'' before ''in writing''; and

(B) by inserting ''or enterprise-affiliated party'' before ''has been given''; and

(4) in subsection (d)—

(A) by striking ''or director'' each place that term appears and inserting ''director, or enterprise-affiliated party'';

(B) by striking ''request the Attorney General of the United States to'';

(C) by inserting '', or the United States district court within the jurisdiction of which the headquarters of the enterprise is located,'' after ''District of Columbia'';

(D) by striking '', or may, under the direction and control of the Attorney General of the United States, bring such an action''; and

(E) by striking ''and section 1374''.

SEC. 846. CRIMINAL PENALTY.

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

''SEC. 1378. CRIMINAL PENALTY.

''Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any enterprise shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.''.

SEC. 847. NOTICE AFTER SEPARATION FROM SERVICE.

Section 1379 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4637), as so designated by this Act, is amended—

(1) by striking ''2-year'' and inserting ''6-year''; and

(2) by inserting ''or an enterprise-affiliated party'' after ''enterprise'' each place that term appears.

SEC. 848. SUBPOENA AUTHORITY.

Section 1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''administrative'';

(ii) by inserting '', examination, or investigation'' after ''proceeding'';

(iii) by striking ''subchapter'' and inserting ''title''; and

(iv) by inserting ''or any designated representative thereof, including any person designated to conduct any hearing under this subtitle'' after ''Director''; and

(B) in paragraph (4), by striking ''issued by the Director'';

(2) in subsection (b), by inserting ''or in any territory or other place subject to the jurisdiction of the United States'' after ''State'';

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

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—The Director, or any party to proceedings under this subtitle, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

''(2) POWER OF COURT.—The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1)'';

(4) in subsection (d), by inserting ''enterprise-affiliated party'' before ''may allow''; and

(5) by adding at the end the following:

''(e) PENALTIES.—A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

''(1) attend court;

''(2) testify in court;

''(3) answer any lawful inquiry; or

''(4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.''.

SA 4419. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE VIII—CLEAN ENERGY TAX STIMULUS

SEC. 801. SHORT TITLE; ETC.

(a) SHORT TITLE.—This title may be cited as the ''Clean Energy Tax Stimulus Act of 2008''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A—Extension of Clean Energy Production Incentives

SEC. 811. EXTENSION AND MODIFICATION OF RENEWABLE ENERGY PRODUCTION TAX CREDIT.

(a) EXTENSION OF CREDIT.—Each of the following provisions of section 45(d) (relating to qualified facilities) is amended by striking ''January 1, 2009'' and inserting ''January 1, 2010'':

(1) Paragraph (1).

(2) Clauses (i) and (ii) of paragraph (2)(A).

(3) Clauses (i)(I) and (ii) of paragraph (3)(A).

(4) Paragraph (4).

(5) Paragraph (5).

(6) Paragraph (6).

(7) Paragraph (7).

(8) Paragraph (8).

(9) Subparagraphs (A) and (B) of paragraph (9).

(b) PRODUCTION CREDIT FOR ELECTRICITY PRODUCED FROM MARINE RENEWABLES.—

(1) IN GENERAL.—Paragraph (1) of section 45(c) (relating to resources) is amended by striking ''and'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', and'', and by adding at the end the following new subparagraph:

''(I) marine and hydrokinetic renewable energy.''.

(2) MARINE RENEWABLES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraph:

''(10) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—

''(A) IN GENERAL.—The term 'marine and hydrokinetic renewable energy' means energy derived from—

''(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

''(ii) free flowing water in rivers, lakes, and streams,

''(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

''(iv) differentials in ocean temperature (ocean thermal energy conversion).

''(B) EXCEPTIONS.—Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.''.

(3) DEFINITION OF FACILITY.—Subsection (d) of section 45 is amended by adding at the end the following new paragraph:

''(11) MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES.—In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term 'qualified facility' means any facility owned by the taxpayer—

''(A) which has a nameplate capacity rating of at least 150 kilowatts, and

''(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2010.''.

(4) CREDIT RATE.—Subparagraph (A) of section 45(b)(4) is amended by striking ''or (9)'' and inserting ''(9), or (11)''.

(5) COORDINATION WITH SMALL IRRIGATION POWER.—Paragraph (5) of section 45(d), as amended by subsection (a), is amended by striking ''January 1, 2010'' and inserting ''the date of the enactment of paragraph (11)''.

(c) SALES OF ELECTRICITY TO REGULATED PUBLIC UTILITIES TREATED AS SALES TO UNRELATED PERSONS.—Section 45(e)(4) (relating to related persons) is amended by adding at the end the following new sentence: ''A taxpayer shall be treated as selling electricity to an unrelated person if such electricity is sold to a regulated public utility (as defined in section 7701(a)(33).''.

(d) TRASH FACILITY CLARIFICATION.—Paragraph (7) of section 45(d) is amended—

(1) by striking ''facility which burns'' and inserting ''facility (other than a facility described in paragraph (6)) which uses'', and

(2) by striking ''COMBUSTION''.

(e) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to property originally placed in service after December 31, 2008.

(2) MODIFICATIONS.—The amendments made by subsections (b) and (c) shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(3) TRASH FACILITY CLARIFICATION.—The amendments made by subsection (d) shall apply to electricity produced and sold before, on, or after December 31, 2007.

SEC. 812. EXTENSION AND MODIFICATION OF SOLAR ENERGY AND FUEL CELL INVESTMENT TAX CREDIT.

(a) EXTENSION OF CREDIT.—

(1) SOLAR ENERGY PROPERTY.—Paragraphs (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) (relating to energy credit) are each amended by striking ''January 1, 2009'' and inserting ''January 1, 2017''.

(2) FUEL CELL PROPERTY.—Subparagraph (E) of section 48(c)(1) (relating to qualified fuel cell property) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2017''.

(3) QUALIFIED MICROTURBINE PROPERTY.—Subparagraph (E) of section 48(c)(2) (relating to qualified microturbine property) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2017''.

(b) ALLOWANCE OF ENERGY CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) (relating to specified credits) is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', and'', and by adding at the end the following new clause:

''(v) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48.''.

(c) REPEAL OF DOLLAR PER KILOWATT LIMITATION FOR FUEL CELL PROPERTY.—

(1) IN GENERAL.—Section 48(c)(1) (relating to qualified fuel cell), as amended by subsection (a)(2), is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(2) CONFORMING AMENDMENT.—Section 48(a)(1) is amended by striking ''paragraphs (1)(B) and (2)(B) of subsection (c)'' and inserting ''subsection (c)(2)(B)''.

(d) PUBLIC ELECTRIC UTILITY PROPERTY TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 48(a) is amended by striking the second sentence thereof.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 48(c), as amended by this section, is amended by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C).

(B) Paragraph (2) of section 48(c), as amended by subsection (a)(3), is amended by striking subparagraph (D) and redesignating subparagraph (E) as subparagraph (D).

(e) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

(3) FUEL CELL PROPERTY AND PUBLIC ELECTRIC UTILITY PROPERTY.—The amendments made by subsections (c) and (d) shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

SEC. 813. EXTENSION AND MODIFICATION OF RESIDENTIAL ENERGY EFFICIENT PROPERTY CREDIT.

(a) EXTENSION.—Section 25D(g) (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) NO DOLLAR LIMITATION FOR CREDIT FOR SOLAR ELECTRIC PROPERTY.—

(1) IN GENERAL.—Section 25D(b)(1) (relating to maximum credit) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(2) CONFORMING AMENDMENTS.—Section 25D(e)(4) is amended—

(A) by striking clause (i) in subparagraph (A),

(B) by redesignating clauses (ii) and (iii) in subparagraph (A) as clauses (i) and (ii), respectively, and

(C) by striking '', (2),'' in subparagraph (C).

(c) CREDIT ALLOWED AGAINST ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 25D is amended to read as follows:

''(c) LIMITATION BASED ON AMOUNT OF TAX; CARRYFORWARD OF UNUSED CREDIT.—

''(1) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

''(2) CARRYFORWARD OF UNUSED CREDIT.—

''(A) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(B) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 23(b)(4)(B) is amended by inserting ''and section 25D'' after ''this section''.

(B) Section 24(b)(3)(B) is amended by striking ''and 25B'' and inserting '', 25B, and 25D''.

(C) Section 25B(g)(2) is amended by striking ''section 23'' and inserting ''sections 23 and 25D''.

(D) Section 26(a)(1) is amended by striking ''and 25B'' and inserting ''25B, and 25D''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (c)(2) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 in the same manner as the provisions of such Act to which such amendments relate.

SEC. 814. EXTENSION AND MODIFICATION OF CREDIT FOR CLEAN RENEWABLE ENERGY BONDS.

(a) EXTENSION.—Section 54(m) (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) INCREASE IN NATIONAL LIMITATION.—Section 54(f) (relating to limitation on amount of bonds designated) is amended—

(1) by inserting '', and for the period beginning after the date of the enactment of the Clean Energy Tax Stimulus Act of 2008 and ending before January 1, 2010, $400,000,000'' after ''$1,200,000,000'' in paragraph (1),

(2) by striking ''$750,000,000 of the'' in paragraph (2) and inserting ''$750,000,000 of the $1,200,000,000'', and

(3) by striking ''bodies'' in paragraph (2) and inserting ''bodies, and except that the Secretary may not allocate more than ⅓ of the $400,000,000 national clean renewable energy bond limitation to finance qualified projects of qualified borrowers which are public power providers nor more than ⅓ of

such limitation to finance qualified projects of qualified borrowers which are mutual or cooperative electric companies described in section 501(c)(12) or section 1381(a)(2)(C)''.

(c) PUBLIC POWER PROVIDERS DEFINED.—Section 54(j) is amended—

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

''(6) PUBLIC POWER PROVIDER.—The term 'public power provider' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).'', and

(2) by inserting ''; PUBLIC POWER PROVIDER'' before the period at the end of the heading.

(d) TECHNICAL AMENDMENT.—The third sentence of section 54(e)(2) is amended by striking ''subsection (l)(6)'' and inserting ''subsection (l)(5)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 815. EXTENSION OF SPECIAL RULE TO IMPLEMENT FERC RESTRUCTURING POLICY.

(a) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—

(1) IN GENERAL.—Section 451(i)(3) (defining qualifying electric transmission transaction) is amended by striking ''January 1, 2008'' and inserting ''January 1, 2010''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to transactions after December 31, 2007.

(b) INDEPENDENT TRANSMISSION COMPANY.—

(1) IN GENERAL.—Section 451(i)(4)(B)(ii) (defining independent transmission company) is amended by striking ''December 31, 2007'' and inserting ''the date which is 2 years after the date of such transaction''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by section 909 of the American Jobs Creation Act of 2004.

Subtitle B—Extension of Incentives to Improve Energy Efficiency

SEC. 821. EXTENSION AND MODIFICATION OF CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) EXTENSION OF CREDIT.—Section 25C(g) (relating to termination) is amended by striking ''December 31, 2007'' and inserting ''December 31, 2009''.

(b) QUALIFIED BIOMASS FUEL PROPERTY.—

(1) IN GENERAL.—Section 25C(d)(3) is amended—

(A) by striking ''and'' at the end of subparagraph (D),

(B) by striking the period at the end of subparagraph (E) and inserting '', and'', and

(C) by adding at the end the following new subparagraph:

''(F) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent.''.

(2) BIOMASS FUEL.—Section 25C(d) (relating to residential energy property expenditures) is amended by adding at the end the following new paragraph:

''(6) BIOMASS FUEL.—The term 'biomass fuel' means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.''.

(c) MODIFICATIONS OF STANDARDS FOR ENERGY-EFFICIENT BUILDING PROPERTY.—

(1) ELECTRIC HEAT PUMPS.—Subparagraph (B) of section 25C(d)(3) is amended to read as follows:

''(A) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2008.''.

(2) CENTRAL AIR CONDITIONERS.—Section 25C(d)(3)(D) is amended by striking ''2006'' and inserting ''2008''.

(3) WATER HEATERS.—Subparagraph (E) of section 25C(d) is amended to read as follows:

''(E) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.80 or a thermal efficiency of at least 90 percent.''.

(4) OIL FURNACES AND HOT WATER BOILERS.—Paragraph (4) of section 25C(d) is amended to read as follows:

''(4) QUALIFIED NATURAL GAS, PROPANE, AND OIL FURNACES AND HOT WATER BOILERS.—

''(A) QUALIFIED NATURAL GAS FURNACE.—The term 'qualified natural gas furnace' means any natural gas furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

''(B) QUALIFIED NATURAL GAS HOT WATER BOILER.—The term 'qualified natural gas hot water boiler' means any natural gas hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

''(C) QUALIFIED PROPANE FURNACE.—The term 'qualified propane furnace' means any propane furnace which achieves an annual fuel utilization efficiency rate of not less than 95.

''(D) QUALIFIED PROPANE HOT WATER BOILER.—The term 'qualified propane hot water boiler' means any propane hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.

''(E) QUALIFIED OIL FURNACES.—The term 'qualified oil furnace' means any oil furnace which achieves an annual fuel utilization efficiency rate of not less than 90.

''(F) QUALIFIED OIL HOT WATER BOILER.—The term 'qualified oil hot water boiler' means any oil hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 90.''.

(d) EFFECTIVE DATE.—The amendments made this section shall apply to expenditures made after December 31, 2007.

SEC. 822. EXTENSION AND MODIFICATION OF TAX CREDIT FOR ENERGY EFFICIENT NEW HOMES.

(a) EXTENSION OF CREDIT.—Subsection (g) of section 45L (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(b) ALLOWANCE FOR CONTRACTOR'S PERSONAL RESIDENCE.—Subparagraph (B) of section 45L(a)(1) is amended to read as follows:

''(B)(i) acquired by a person from such eligible contractor and used by any person as a residence during the taxable year, or

''(ii) used by such eligible contractor as a residence during the taxable year.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to homes acquired after December 31, 2008.

SEC. 823. EXTENSION AND MODIFICATION OF ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.

(a) EXTENSION.—Section 179D(h) (relating to termination) is amended by striking ''December 31, 2008'' and inserting ''December 31, 2009''.

(b) ADJUSTMENT OF MAXIMUM DEDUCTION AMOUNT.—

(1) IN GENERAL.—Subparagraph (A) of section 179D(b)(1) (relating to maximum amount of deduction) is amended by striking ''$1.80'' and inserting ''$2.25''.

(2) PARTIAL ALLOWANCE.—Paragraph (1) of section 179D(d) is amended—

(A) by striking ''$.60'' and inserting ''$0.75'', and

(B) by striking ''$1.80'' and inserting ''$2.25''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 824. MODIFICATION AND EXTENSION OF ENERGY EFFICIENT APPLIANCE CREDIT FOR APPLIANCES PRODUCED AFTER 2007.

(a) IN GENERAL.—Subsection (b) of section 45M (relating to applicable amount) is amended to read as follows:

''(b) APPLICABLE AMOUNT.—For purposes of subsection (a)—

''(1) DISHWASHERS.—The applicable amount is—

''(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle, and

''(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

''(2) CLOTHES WASHERS.—The applicable amount is—

''(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

''(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

''(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.0 modified energy factor and does not exceed a 6.0 water consumption factor, and

''(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds 2.2 modified energy factor and does not exceed a 4.5 water consumption factor.

''(3) REFRIGERATORS.—The applicable amount is—

''(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

''(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

''(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards, and

''(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards.''.

(b) ELIGIBLE PRODUCTION.—

(1) SIMILAR TREATMENT FOR ALL APPLIANCES.—Subsection (c) of section 45M (relating to eligible production) is amended—

(A) by striking paragraph (2),

(B) by striking ''(1) IN GENERAL'' and all that follows through ''the eligible'' and inserting ''The eligible'', and

(C) by moving the text of such subsection in line with the subsection heading and redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(2) MODIFICATION OF BASE PERIOD.—Paragraph (2) of section 45M(c), as amended by paragraph (1) of this section, is amended by

striking ''3-calendar year'' and inserting ''2-calendar year''.

(c) TYPES OF ENERGY EFFICIENT APPLIANCES.—Subsection (d) of section 45M (defining types of energy efficient appliances) is amended to read as follows:

''(d) TYPES OF ENERGY EFFICIENT APPLIANCE.—For purposes of this section, the types of energy efficient appliances are—

''(1) dishwashers described in subsection (b)(1),

''(2) clothes washers described in subsection (b)(2), and

''(3) refrigerators described in subsection (b)(3).''.

(d) AGGREGATE CREDIT AMOUNT ALLOWED.—

(1) INCREASE IN LIMIT.—Paragraph (1) of section 45M(e) (relating to aggregate credit amount allowed) is amended to read as follows:

''(1) AGGREGATE CREDIT AMOUNT ALLOWED.—The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2007.''.

(2) EXCEPTION FOR CERTAIN REFRIGERATOR AND CLOTHES WASHERS.—Paragraph (2) of section 45M(e) is amended to read as follows:

''(2) AMOUNT ALLOWED FOR CERTAIN REFRIGERATORS AND CLOTHES WASHERS.—Refrigerators described in subsection (b)(3)(D) and clothes washers described in subsection (b)(2)(D) shall not be taken into account under paragraph (1).''.

(e) QUALIFIED ENERGY EFFICIENT APPLIANCES.—

(1) IN GENERAL.—Paragraph (1) of section 45M(f) (defining qualified energy efficient appliance) is amended to read as follows:

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) any dishwasher described in subsection (b)(1),

''(B) any clothes washer described in subsection (b)(2), and

''(C) any refrigerator described in subsection (b)(3).''.

(2) CLOTHES WASHER.—Section 45M(f)(3) (defining clothes washer) is amended by inserting ''commercial'' before ''residential'' the second place it appears.

(3) TOP-LOADING CLOTHES WASHER.—Subsection (f) of section 45M (relating to definitions) is amended by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) TOP-LOADING CLOTHES WASHER.—The term 'top-loading clothes washer' means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.''.

(4) REPLACEMENT OF ENERGY FACTOR.—Section 45M(f)(6), as redesignated by paragraph (3), is amended to read as follows:

''(6) MODIFIED ENERGY FACTOR.—The term 'modified energy factor' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.''.

(5) GALLONS PER CYCLE; WATER CONSUMPTION FACTOR.—Section 45M(f) (relating to definitions), as amended by paragraph (3), is amended by adding at the end the following:

''(9) GALLONS PER CYCLE.—The term 'gallons per cycle' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

''(10) WATER CONSUMPTION FACTOR.—The term 'water consumption factor' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2007.

SA 4420. Mr. NELSON of Florida (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI, insert the following:

SEC. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR FORECLOSURE RECOVERY RELIEF FOR INDIVIDUALS WITH MORTGAGES ON THEIR PRINCIPAL RESIDENCES.

(a) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 shall not apply to any qualified foreclosure recovery distribution.

(b) LIMITATIONS.—

(1) IN GENERAL.—For purposes of this section, the aggregate amount of distributions received by an individual which may he treated as qualified foreclosure recovery distributions for any taxable year shall not exceed the excess (if any) of—

(A) the lesser of

(i) the individual's qualified mortgage expenditures for the taxable year, or

(ii) $25,000, over

(B) the aggregate amounts treated as qualified foreclosure recovery distributions received by such individual for all prior taxable years.

(2) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would (without regard to paragraph (1)) be a qualified foreclosure recovery distribution, a plan shall not be treated as violating any requirement of the Internal Revenue Code of 1986 merely because the plan treats such distribution as a qualified foreclosure recovery distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $25,000.

(3) CONTROLLED GROUP.—For purposes of paragraph (2), the term ''controlled group'' means any group treated as a single employer under subsection (b), (e), (m), or (o) of section 414 of such Code.

(c) AMOUNT DISTRIBUTED MAY BE REPAID.—

(1) IN GENERAL.—Any individual who receives a qualified foreclosure recovery distribution may, at any time during the 3–year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(h)(8), 408(d)(3), or 457(e)(16) of the Internal Revenue Code of 1986, as the case may be.

(2) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of such Code, if a contribution is made pursuant to paragraph (1) with respect to a qualified foreclosure recovery distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified foreclosure recovery distribution in an eligible rollover distribution (as defined in section 402(e)(4) of such Code) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(3) TREATMENT OF REPAYMENTS FOR DISTRIBUTIONS FROM IRAS.—For purposes of such Code, if a contribution is made pursuant to paragraph (1) with respect to a qualified foreclosure recovery distribution from an individual retirement plan (as defined by section 7701(a)(37) of such Code), then, to the extent of the amount of the contribution, the qualified foreclosure recovery distribution shall be treated as a distribution described in section 408(d)(3) of such Code and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) APPLICATION TO ELIGIBLE RETIREMENT PLANS.—

(A) IN GENERAL.—Nothing in this section shall be treated as requiring an eligible retirement plan to accept any contributions described in this subsection.

(B) QUALIFICATION.—An eligible retirement plan shall not be treated as violating any requirement of Federal law solely by reason of the acceptance of contributions described in this subparagraph.

(d) DEFINITIONS.—FOR PURPOSES OF THIS SECTION

(1) QUALIFIED FORECLOSURE RECOVERY DISTRIBUTION.—The term ''qualified foreclosure recovery distribution'' means any distribution to an individual from an eligible retirement plan which is made—

(A) on or after the date of the enactment of this Act and before January 1, 2010, and

(B) during a taxable year during which the individual has qualifying mortgage expenditures.

(2) QUALIFYING MORTGAGE EXPENDITURES.—

(A) IN GENERAL.—The term ''qualifying mortgage expenditures'' means any of the following expenditures:

(i) Payment of principal or interest on an applicable mortgage.

(ii) Payment of costs paid or incurred in refinancing, or modifying the terms of, an applicable mortgage.

(B) Applicable Mortgage.—The term ''applicable mortgage'' means a mortgage which—

(i) was entered into after December 31, 1999, and before the date of the enactment of this Act, and

(ii) constitutes a security interest in the principal residence of the mortgagor.

(C) JOINT FILERS.—In the case of married individuals filing a joint return under section 6013 of the Internal Revenue Code of 1986, the qualifying mortgage expenditures of the taxpayer may be allocated between the spouses in such manner as they elect.

(3) Eligible Retirement Plan.—The term ''eligible retirement plan'' shall have the meaning given such term by section 402(c)(8)(B) of such Code.

(4) Principal Residence.—The term ''principal residence'' has the same meaning as when used in section 121 of such Code.

(e) INCOME INCLUSION SPREAD OVER 3–YEAR PERIOD FOR QUALIFIED FORECLOSURE RECOVERY DISTRIBUTIONS.—

(1) IN GENERAL.—In the case of any qualified foreclosure recovery distribution, unless the taxpayer elects not to have this subsection apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3–taxable year period beginning with such taxable year.

(2) SPECIAL RULE.—For purposes of paragraph (1), rules similar to the rules of subparagraph

(E) of section 408A(d)(3) of the Internal Revenue Code of 1986 shall apply.

(f) SPECIAL RULES.

(1) EXEMPTION OF DISTRIBUTIONS FROM TRUSTEE TO TRUSTEE TRANSFER AND WITHHOLDING RULES.—For purposes of sections 401(a)(31), 402(f), and 3405 of the Internal Revenue Code of 1986, qualified foreclosure recovery distributions shall not be treated as eligible rollover distributions.

(2) QUALIFIED FORECLOSURE RECOVERY DISTRIBUTIONS TREATED AS MEETING PLAN DISTRIBUTION REQUIREMENTS.—For purposes of such Code, a qualified foreclosure recovery distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A) of such Code.

(3) SUBSTANTIALLY EQUAL PERIODIC PAYMENTS.—A qualified foreclosure recovery distribution—

(A) shall be disregarded in determining whether a payment is a part of a series of substantially equal periodic payment under section 72(t)(2)(A)(iv) of such Code, and

(B) shall not constitute a change in substantially equal periodic payments under section 72(t)(4) of such Code.

(g) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) AMENDMENTS TO WHICH SUBSECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to the provisions this section, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2010, or such later date as the Secretary of the Treasury may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) CONDITIONS.—This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date the legislative or regulatory amendment described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, any later effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

SA 4421. Mr. CARDIN (for himself and Mr. ENSIGN) proposed an amendment to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, insert the following:

TITLE—FIRST-TIME HOMEBUYERS' TAX CREDIT

SEC. __01. CREDIT FOR FIRST-TIME HOMEBUYERS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

"SEC. 25E. PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—In the case of an individual who is a first-time homebuyer of a principal residence in the United States during any taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to so much of the purchase price of the residence as does not exceed $7,000.

''(2) ALLOCATION OF CREDIT AMOUNT.—The amount of the credit allowed under paragraph (1) shall be equally divided among the 2 taxable years beginning with the taxable year in which the purchase of the principal residence is made.

''(b) LIMITATIONS.—

''(1) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this subsection) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the credit so allowable as—

''(i) the excess (if any) of—

''(I) the taxpayer's modified adjusted gross income for such taxable year, over

''(II) $70,000 ($110,000 in the case of a joint return), bears to

''(ii) $20,000.

''(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (1), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

''(2) LIMITATION BASED ON AMOUNT OF TAX.—In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 23) for the taxable year.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) FIRST-TIME HOMEBUYER.—

''(A) IN GENERAL.—The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i).

''(B) ONE-TIME ONLY.—If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

''(C) MARRIED INDIVIDUALS FILING JOINTLY.—In the case of married individuals who file a joint return, the credit under this section is allowable only if both individuals are first-time homebuyers.

''(D) OTHER TAXPAYERS.—If 2 or more individuals who are not married purchase a principal residence—

''(i) the credit under this section is allowable only if each of the individuals is a first-time homebuyer, and

''(ii) the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe.

''(2) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

''(3) PURCHASE.—

''(A) IN GENERAL.—The term 'purchase' means any acquisition, but only if—

''(i) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants), and

''(ii) the basis of the property in the hands of the person acquiring it is not determined—

''(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

''(II) under section 1014(a) (relating to property acquired from a decedent).

''(B) CONSTRUCTION.—A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer.

''(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date of acquisition (within the meaning of section 72(t)(8)(D)(iii)).

''(d) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

''(e) RECAPTURE IN THE CASE OF CERTAIN DISPOSITIONS.—In the event that a taxpayer—

''(1) disposes of the principal residence with respect to which a credit is allowed under subsection (a), or

''(2) fails to occupy such residence as the taxpayer's principal residence,

at any time within 24 months after the date on which the taxpayer purchased such residence, then the remaining portion of the credit allowed under subsection (a) shall be disallowed in the taxable year during which such disposition occurred or in which the taxpayer failed to occupy the residence as a principal residence, and in any subsequent taxable year in which the remaining portion of the credit would, but for this subsection, have been allowed.

''(f) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

''(g) PROPERTY TO WHICH SECTION APPLIES.—The provisions of this section shall apply to a principal residence if the taxpayer's date of acquisition of the residence (within the meaning of section 72(t)(8)(D)(iii)) and date of settlement on such residence are during the period beginning on the date of the enactment of this section and ending on the date that is 1 year after such date.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) of the Internal Revenue Code of 1986 is amended by striking ''and 25B'' and inserting '', 25B, and 25E''.

(2) Section 25(e)(1)(C)(ii) of such Code is amended by inserting ''25E,'' after ''25D,''.

(3) Section 25B(g)(2) of such Code is amended by striking ''section 23'' and inserting ''sections 23 and 25E''.

(4) Section 25D(c)(2) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25E''.

(5) Section 26(a)(1) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25E''.

(6) Section 904(i) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25E''.

(7) Subsection (a) of section 1016 of such Code is amended by striking ''and'' at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting '', and'', and by adding at the end the following new paragraph:

''(38) to the extent provided in section 25E(f).''.

(8) Section 1400C(d)(2) of such Code is amended by striking ''and 25D'' and inserting ''25D, and 25E''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

''Sec. 25E. Purchase of principal residence by first-time homebuyer.''.

SA 4422. Mr. ROBERTS (for himself and Mr. BROWNBACK) submitted an amendment intended to be proposed to amendment SA 4389 submitted by Ms. LANDRIEU (for herself, Mr. COCHRAN, Mr. VITTER, and Mr. WICKER) to the amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end add the following:

TITLE—DISASTER TAX RELIEF ASSISTANCE

SEC. _____. TEMPORARY TAX RELIEF FOR KIOWA COUNTY, KANSAS AND SURROUNDING AREA.

The following provisions of or relating to the Internal Revenue Code of 1986 shall apply, in addition to the areas described in such provisions, to an area with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (FEMA-1699-DR, as in effect on the date of the enactment of this Act) by reason of severe storms and tornados beginning on May 4, 2007, and determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act with respect to damages attributed to such storms and tornados:

(1) SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES.—Section 1400S(b)(1) of the Internal Revenue Code of 1986, by substituting ''May 4, 2007'' for ''August 25, 2005''.

(2) EXTENSION OF REPLACEMENT PERIOD FOR NONRECOGNITION OF GAIN.—Section 405 of the Katrina Emergency Tax Relief Act of 2005, by substituting ''on or after May 4, 2007, by reason of the May 4, 2007, storms and tornados'' for ''on or after August 25, 2005, by reason of Hurricane Katrina''.

(3) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY MAY 4 STORMS AND TORNADOS.—Section 1400R(a) of the Internal Revenue Code of 1986—

(A) by substituting ''May 4, 2007'' for ''August 28, 2005'' each place it appears,

(B) by substituting ''January 1, 2008'' for ''January 1, 2006'' both places it appears, and

(C) only with respect to eligible employers who employed an average of not more than 200 employees on business days during the taxable year before May 4, 2007.

(4) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED ON OR AFTER MAY 5, 2007.—Section 1400N(d) of such Code—

(A) by substituting ''qualified Recovery Assistance property'' for ''qualified Gulf Opportunity Zone property'' each place it appears,

(B) by substituting ''May 5, 2007'' for ''August 28, 2005'' each place it appears,

(C) by substituting ''December 31, 2008'' for ''December 31, 2007'' in paragraph (2)(A)(v),

(D) by substituting ''December 31, 2009'' for ''December 31, 2008'' in paragraph (2)(A)(v),

(E) by substituting ''May 4, 2007'' for ''August 27, 2005'' in paragraph (3)(A),

(F) by substituting ''January 1, 2009'' for ''January 1, 2008'' in paragraph (3)(B), and

(G) determined without regard to paragraph (6) thereof.

(5) INCREASE IN EXPENSING UNDER SECTION 179.—Section 1400N(e) of such Code, by substituting ''qualified section 179 Recovery Assistance property'' for ''qualified section 179 Gulf Opportunity Zone property'' each place it appears.

(6) EXPENSING FOR CERTAIN DEMOLITION AND CLEAN-UP COSTS.—Section 1400N(f) of such Code—

(A) by substituting ''qualified Recovery Assistance clean-up cost'' for ''qualified Gulf Opportunity Zone clean-up cost'' each place it appears, and

(B) by substituting ''beginning on May 4, 2007, and ending on December 31, 2009'' for ''beginning on August 28, 2005, and ending on December 31, 2007'' in paragraph (2) thereof.

(7) TREATMENT OF PUBLIC UTILITY PROPERTY DISASTER LOSSES.—Section 1400N(o) of such Code.

(8) TREATMENT OF NET OPERATING LOSSES ATTRIBUTABLE TO STORM LOSSES.—Section 1400N(k) of such Code—

(A) by substituting ''qualified Recovery Assistance loss'' for ''qualified Gulf Opportunity Zone loss'' each place it appears,

(B) by substituting ''after May 3, 2007, and before on January 1, 2010'' for ''after August 27, 2005, and before January 1, 2008'' each place it appears,

(C) by substituting ''May 4, 2007'' for ''August 28, 2005'' in paragraph (2)(B)(ii)(I) thereof,

(D) by substituting ''qualified Recovery Assistance property'' for ''qualified Gulf Opportunity Zone property'' in paragraph (2)(B)(iv) thereof, and

(E) by substituting ''qualified Recovery Assistance casualty loss'' for ''qualified Gulf Opportunity Zone casualty loss'' each place it appears.

(9) TREATMENT OF REPRESENTATIONS REGARDING INCOME ELIGIBILITY FOR PURPOSES OF QUALIFIED RENTAL PROJECT REQUIREMENTS.—Section 1400N(n) of such Code.

(10) SPECIAL RULES FOR USE OF RETIREMENT FUNDS.—Section 1400Q of such Code—

(A) by substituting ''qualified Recovery Assistance distribution'' for ''qualified hurricane distribution'' each place it appears,

(B) by substituting ''on or after May 4, 2007, and before January 1, 2009'' for ''on or after August 25, 2005, and before January 1, 2007'' in subsection (a)(4)(A)(i),

(C) by substituting ''qualified storm distribution'' for ''qualified Katrina distribution'' each place it appears,

(D) by substituting ''after November 4, 2006, and before May 5, 2007'' for ''after February 28, 2005, and before August 29, 2005'' in subsection (b)(2)(B)(ii),

(E) by substituting ''beginning on May 4, 2007, and ending on November 5, 2007'' for ''beginning on August 25, 2005, and ending on February 28, 2006'' in subsection (b)(3)(A),

(F) by substituting ''qualified storm individual'' for ''qualified Hurricane Katrina individual'' each place it appears,

(G) by substituting ''December 31, 2007'' for ''December 31, 2006'' in subsection (c)(2)(A),

(H) by substituting ''beginning on June 4, 2007, and ending on December 31, 2007'' for ''beginning on September 24, 2005, and ending on December 31, 2006'' in subsection (c)(4)(A)(i),

(I) by substituting ''May 4, 2007'' for ''August 25, 2005'' in subsection (c)(4)(A)(ii), and

(J) by substituting ''January 1, 2008'' for ''January 1, 2007'' in subsection (d)(2)(A)(ii).

SA 4423. Mr. NELSON of Florida (for himself and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI, insert the following:

SEC. ____. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR FORECLOSURE RECOVERY RELIEF FOR INDIVIDUALS WITH MORTGAGES ON THEIR PRINCIPAL RESIDENCES.

(a) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 shall not apply to any qualified foreclosure recovery distribution.

(b) LIMITATIONS.—

(1) IN GENERAL.—For purposes of this section, the aggregate amount of distributions received by an individual which may be treated as qualified foreclosure recovery distributions for any taxable year shall not exceed the lesser of—

(A) the individual's qualified mortgage expenditures for the taxable year, or

(B) the excess (if any) of—

(i) $25,000, over

(ii) the aggregate amounts treated as qualified foreclosure recovery distributions received by such individual for all prior taxable years.

(2) TREATMENT OF PLAN DISTRIBUTIONS.—If a distribution to an individual would (without regard to paragraph (1)) be a qualified foreclosure recovery distribution, a plan shall not be treated as violating any requirement of the Internal Revenue Code of 1986 merely because the plan treats such distribution as a qualified foreclosure recovery distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $25,000.

(3) CONTROLLED GROUP.—For purposes of paragraph (2), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of such Code.

(c) AMOUNT DISTRIBUTED MAY BE REPAID.—

(1) IN GENERAL.—Any individual who receives a qualified foreclosure recovery distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16) of the Internal Revenue Code of 1986, as the case may be.

(2) TREATMENT OF REPAYMENTS OF DISTRIBUTIONS FROM ELIGIBLE RETIREMENT PLANS OTHER THAN IRAS.—For purposes of such Code, if a contribution is made pursuant to paragraph (1) with respect to a qualified foreclosure recovery distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified foreclosure recovery distribution in an eligible rollover distribution (as defined in section 402(c)(4) of such Code) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(3) TREATMENT OF REPAYMENTS FOR DISTRIBUTIONS FROM IRAS.—For purposes of such Code, if a contribution is made pursuant to paragraph (1) with respect to a qualified foreclosure recovery distribution from an individual retirement plan (as defined by section 7701(a)(37) of such Code), then, to the extent of the amount of the contribution, the qualified foreclosure recovery distribution shall be treated as a distribution described in section 408(d)(3) of such Code and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) APPLICATION TO ELIGIBLE RETIREMENT PLANS.—

(A) IN GENERAL.—Nothing in this section shall be treated as requiring an eligible retirement plan to accept any contributions described in this subsection.

(B) QUALIFICATION.—An eligible retirement plan shall not be treated as violating any requirement of Federal law solely by reason of the acceptance of contributions described in this subparagraph.

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

(1) QUALIFIED FORECLOSURE RECOVERY DISTRIBUTION.—The term ''qualified foreclosure recovery distribution'' means any distribution to an individual from an eligible retirement plan which is made—

(A) on or after the date of the enactment of this Act and before January 1, 2010, and

(B) during a taxable year during which the individual has qualifying mortgage expenditures.

(2) QUALIFYING MORTGAGE EXPENDITURES.—

(A) IN GENERAL.—The term ''qualifying mortgage expenditures'' means any of the following expenditures:

(i) Payment of principal or interest on an applicable mortgage.

(ii) Payment of costs paid or incurred in refinancing, or modifying the terms of, an applicable mortgage.

(B) APPLICABLE MORTGAGE.—The term ''applicable mortgage'' means a mortgage which—

(i) was entered into after December 31, 1999, and before the date of the enactment of this Act, and

(ii) constitutes a security interest in the principal residence of the mortgagor.

(C) JOINT FILERS.—In the case of married individuals filing a joint return under section 6013 of the Internal Revenue Code of 1986, the qualifying mortgage expenditures of the taxpayer may be allocated between the spouses in such manner as they elect.

(3) ELIGIBLE RETIREMENT PLAN.—The term ''eligible retirement plan'' shall have the meaning given such term by section 402(c)(8)(B) of such Code.

(4) PRINCIPAL RESIDENCE.—The term ''principal residence'' has the same meaning as when used in section 121 of such Code.

(e) INCOME INCLUSION SPREAD OVER 3-YEAR PERIOD FOR QUALIFIED FORECLOSURE RECOVERY DISTRIBUTIONS.—

(1) IN GENERAL.—In the case of any qualified foreclosure recovery distribution, unless the taxpayer elects not to have this subsection apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable year.

(2) SPECIAL RULE.—For purposes of paragraph (1), rules similar to the rules of subparagraph (E) of section 408A(d)(3) of the Internal Revenue Code of 1986 shall apply.

(f) SPECIAL RULES.—

(1) EXEMPTION OF DISTRIBUTIONS FROM TRUSTEE TO TRUSTEE TRANSFER AND WITHHOLDING RULES.—For purposes of sections 401(a)(31), 402(f), and 3405 of the Internal Revenue Code of 1986, qualified foreclosure recovery distributions shall not be treated as eligible rollover distributions.

(2) QUALIFIED FORECLOSURE RECOVERY DISTRIBUTIONS TREATED AS MEETING PLAN DISTRIBUTION REQUIREMENTS.—For purposes of such Code, a qualified foreclosure recovery distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A) of such Code.

(3) SUBSTANTIALLY EQUAL PERIODIC PAYMENTS.—A qualified foreclosure recovery distribution—

(A) shall be disregarded in determining whether a payment is a part of a series of substantially equal periodic payment under section 72(t)(2)(A)(iv) of such Code, and

(B) shall not constitute a change in substantially equal periodic payments under section 72(t)(4) of such Code.

(g) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) AMENDMENTS TO WHICH SUBSECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to the provisions this section, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2010, or such later date as the Secretary of the Treasury may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) CONDITIONS.—This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date the legislative or regulatory amendment described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, any later effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

SA 4424. Mrs. HUTCHISON (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title IV, insert the following:

SEC. 605. NEW RESTAURANT PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(E) of the Internal Revenue Code of 1986 (defining 15-year property) is amended by striking ''and'' at the end of clause (vii), by striking the period at the end of clause (viii) and inserting '', and'', and by adding at the end the following new clause:

''(ix) any qualified new restaurant property placed in service before the date that is 12 months after the date of the enactment of this clause.''.

(b) QUALIFIED NEW RESTAURANT PROPERTY.—Subsection (e) of section 168 of such Code is amended by adding at the end the following new paragraph:

''(8) QUALIFIED NEW RESTAURANT PROPERTY.—The term 'qualified new restaurant property' means any section 1250 property which is a building if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SA 4425. Mrs. HUTCHISON (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end of title VI, insert the following:

SEC. 605. NEW RESTAURANT PROPERTY TREATED AS 20-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (F) of section 168(e)(3) of the Internal Revenue Code of 1986 (defining 20-year property) is amended to read as follows:

''(F) 20-YEAR PROPERTY.—The term '20-year property' means—

''(i) initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant, and

''(ii) any qualified new restaurant property placed in service before the date that is 12 months after the date of the enactment of this clause.''.

(b) QUALIFIED NEW RESTAURANT PROPERTY.—Subsection (e) of section 168 of such Code is amended by adding at the end the following new paragraph:

''(8) QUALIFIED NEW RESTAURANT PROPERTY.—The term 'qualified new restaurant property' means any section 1250 property which is a building if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SA 4426. Mr. MARTINEZ (for himself and Mr. CARPER) submitted an amendment intended to be proposed to amendment SA 4387 submitted by Mr. DODD (for himself and Mr. SHELBY) to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION 2

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Division may be cited as the ''Federal Housing Finance Reform Act of 2007''.

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

Sec. 1. Short title and table of contents.
Sec. 2. Definitions.

TITLE I—REFORM OF REGULATION OF ENTERPRISES AND FEDERAL HOME LOAN BANKS

Subtitle A—Improvement of Safety and Soundness

Sec. 101. Establishment of the Federal Housing Finance Agency.
Sec. 102. Duties and authorities of Director.
Sec. 103. Federal Housing Enterprise Board.
Sec. 104. Authority to require reports by regulated entities.
Sec. 105. Disclosure of income and charitable contributions by enterprises.
Sec. 106. Assessments.
Sec. 107. Examiners and accountants.
Sec. 108. Prohibition and withholding of executive compensation.
Sec. 109. Reviews of regulated entities.
Sec. 110. Inclusion of minorities and women; diversity in Agency workforce.
Sec. 111. Regulations and orders.
Sec. 112. Non-waiver of privileges.
Sec. 113. Risk-Based capital requirements.
Sec. 114. Minimum and critical capital levels.
Sec. 115. Review of and authority over enterprise assets and liabilities.
Sec. 116. Corporate governance of enterprises.
Sec. 117. Required registration under Securities Exchange Act of 1934.
Sec. 118. Liaison with Financial Institutions Examination Council.
Sec. 119. Guarantee fee study.
Sec. 120. Conforming amendments.

Subtitle B—Improvement of Mission Supervision

Sec. 131. Transfer of product approval and housing goal oversight.
Sec. 132. Review of enterprise products.
Sec. 133. Conforming loan limits.
Sec. 134. Annual housing report regarding regulated entities.
Sec. 135. Annual reports by regulated entities on affordable housing stock.
Sec. 136. Mortgagor identification requirements for mortgages of regulated entities.
Sec. 137. Revision of housing goals.
Sec. 138. Duty to serve underserved markets.
Sec. 139. Monitoring and enforcing compliance with housing goals.
Sec. 140. Affordable Housing Fund.
Sec. 141. Consistency with mission.
Sec. 142. Enforcement.
Sec. 143. Conforming amendments.

Subtitle C—Prompt Corrective Action

Sec. 151. Capital classifications.
Sec. 152. Supervisory actions applicable to undercapitalized regulated entities.
Sec. 153. Supervisory actions applicable to significantly undercapitalized regulated entities.
Sec. 154. Authority over critically undercapitalized regulated entities.
Sec. 155. Conforming amendments.

Subtitle D—Enforcement Actions

Sec. 161. Cease-and-desist proceedings.
Sec. 162. Temporary cease-and-desist proceedings.
Sec. 163. Prejudgment attachment.
Sec. 164. Enforcement and jurisdiction.
Sec. 165. Civil money penalties.
Sec. 166. Removal and prohibition authority.
Sec. 167. Criminal penalty.
Sec. 168. Subpoena authority.
Sec. 169. Conforming amendments.

Subtitle E—General Provisions

Sec. 181. Boards of enterprises.
Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.
Sec. 183. Conforming and technical amendments.
Sec. 184. Study of alternative secondary market systems.
Sec. 185. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

Sec. 201. Definitions.
Sec. 202. Directors.
Sec. 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
Sec. 204. Joint activities of Banks.
Sec. 205. Sharing of information between Federal Home Loan Banks.
Sec. 206. Reorganization of Banks and voluntary merger.
Sec. 207. Securities and Exchange Commission disclosure.
Sec. 208. Community financial institution members.
Sec. 209. Technical and conforming amendments.
Sec. 210. Study of affordable housing program use for long-term care facilities.
Sec. 211. Effective date.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD, AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of Federal Housing Enterprise Oversight

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

Subtitle B—Federal Housing Finance Board

Sec. 321. Abolishment of the Federal Housing Finance Board.
Sec. 322. Continuation and coordination of certain regulations.
Sec. 323. Transfer and rights of employees of the Federal Housing Finance Board.
Sec. 324. Transfer of property and facilities.

Subtitle C—Department of Housing and Urban Development

Sec. 341. Termination of enterprise-related functions.
Sec. 342. Continuation and coordination of certain regulations.
Sec. 343. Transfer and rights of employees of Department of Housing and Urban Development.
Sec. 344. Transfer of appropriations, property, and facilities.

SEC. 2. DEFINITIONS.

Section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) is amended—

(1) in paragraph (7), by striking ''an enterprise'' and inserting ''a regulated entity'';

(2) by striking ''the enterprise'' each place such term appears (except in paragraphs (4) and (18)) and inserting ''the regulated entity'';

(3) in paragraph (5), by striking ''Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Federal Housing Finance Agency'';

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

(5) in paragraph (13), by inserting '', with respect to an enterprise,'' after ''means'';

(6) by redesignating paragraphs (16) through (19) as paragraphs (20) through (23), respectively;

(7) by striking paragraphs (14) and (15) and inserting the following new paragraphs:

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

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

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

''(C) each Federal home loan bank.

''(19) REGULATED ENTITY-AFFILIATED PARTY.—The term 'regulated entity-affiliated party' means—

''(A) any director, officer, employee, or agent for, a regulated entity, or controlling shareholder of an enterprise;

''(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, except that a shareholder of a regulated entity shall not be considered to have participated in the affairs of that regulated entity solely by reason of being a member or customer of the regulated entity;

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

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

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

''(II) any breach of fiduciary duty; or

''(III) any unsafe or unsound practice; and

''(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; and

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

(8) by redesignating paragraphs (8) through (13) as paragraphs (12) through (17), respectively; and

(9) by inserting after paragraph (7) the following new paragraph:

''(11) FEDERAL HOME LOAN BANK.—The term 'Federal home loan bank' means a bank established under the authority of the Federal Home Loan Bank Act.'';

(10) by redesignating paragraphs (2) through (7) as paragraphs (5) through (10), respectively; and

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

''(2) AGENCY.—The term 'Agency' means the Federal Housing Finance Agency.

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

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

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

''(C) the Federal Home Loan Bank Act.

''(4) BOARD.—The term 'Board' means the Federal Housing Enterprise Board established under section 1313B.''.

TITLE I—REFORM OF REGULATION OF ENTERPRISES AND FEDERAL HOME LOAN BANKS

Subtitle A—Improvement of Safety and Soundness

SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FINANCE AGENCY.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1311 and 1312 and inserting the following:

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

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

''(b) GENERAL SUPERVISORY AND REGULATORY AUTHORITY.—

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

''(2) AUTHORITY OVER FANNIE MAE, FREDDIE MAC, AND FEDERAL HOME LOAN BANKS.—The Director of the Federal Housing Finance Agency shall have general supervisory and regulatory authority over each regulated entity and shall exercise such general regulatory and supervisory authority, including such duties and authorities set forth under section 1313 of this Act, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out. The Director shall have the same supervisory and regulatory authority over any joint office of the Federal home loan banks, including the Office of Finance of the Federal Home Loan Banks, as the Director has over the individual Federal home loan banks.

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

''SEC. 1312. DIRECTOR.

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

''(b) APPOINTMENT; TERM.—

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

''(2) TERM AND REMOVAL.—The Director shall be appointed for a term of 5 years and may be removed by the President only for cause.

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

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

''(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development shall serve as the Director until a successor has been appointed under paragraph (1).

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

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

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

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

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

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

''(e) DEPUTY DIRECTOR FOR HOUSING.—

''(1) IN GENERAL.—The Agency shall have a Deputy Director for Housing, who shall be appointed by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of the housing markets and housing finance and of community and economic development.

''(2) FUNCTIONS.—The Deputy Director for Housing shall have such functions, powers, and duties with respect to the oversight of the housing mission and goals of the enterprises, and with respect to oversight of the housing finance and community and economic development mission of the Federal home loan banks, as the Director shall prescribe.

''(f) LIMITATIONS.—The Director and each of the Deputy Directors may not—

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

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

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

''(g) OMBUDSMAN.—The Director shall establish the position of the Ombudsman in the Agency. The Director shall provide that the Ombudsman will consider complaints and appeals from any regulated entity and any person that has a business relationship with a regulated entity and shall specify the duties and authority of the Ombudsman.''.

(b) APPOINTMENT OF DIRECTOR.—Notwithstanding any other provision of law or of this Division, the President may, any time after the date of the enactment of this Act, appoint an individual to serve as the Director of the Federal Housing Finance Agency, as such office is established by the amendment made by subsection (a). This subsection shall take effect on the date of the enactment of this Act.

SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 (12 U.S.C. 4513) is amended by striking section 1313 and inserting the following new sections:

''SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

''(a) DUTIES.—

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

''(A) to oversee the operations of each regulated entity and any joint office of the Federal Home Loan Banks; and

''(B) to ensure that—

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

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

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

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

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

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

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

''(b) DELEGATION OF AUTHORITY.—The Director may delegate to officers or employees of the Agency, including each of the Deputy Directors, any of the functions, powers, or duties of the Director, as the Director considers appropriate.

''(c) LITIGATION AUTHORITY.—

''(1) IN GENERAL.—In enforcing any provision of this title, any regulation or order prescribed under this title, or any other provision of law, rule, regulation, or order, or in

any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys, or request that the Attorney General of the United States act on behalf of the Director.

''(2) CONSULTATION WITH ATTORNEY GENERAL.—The Director shall provide notice to, and consult with, the Attorney General of the United States before taking an action under paragraph (1) of this subsection or under section 1344(a), 1345(d), 1348(c), 1372(e), 1375(a), 1376(d), or 1379D(c), except that, if the Director determines that any delay caused by such prior notice and consultation may adversely affect the safety and soundness responsibilities of the Director under this title, the Director shall notify the Attorney General as soon as reasonably possible after taking such action.

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

''SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.

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

''(1) adequacy of internal controls and information systems, including information security and privacy policies and practices, taking into account the nature and scale of business operations;

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

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

''(4) management of interest rate risk exposure;

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

''(6) adequacy and maintenance of liquidity and reserves;

''(7) management of any asset and investment portfolio;

''(8) investments and acquisitions by a regulated entity, to ensure that they are consistent with the purposes of this Act and the authorizing statutes;

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

''(10) issuance of subordinated debt by that particular regulated entity, as the Director considers necessary;

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

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

''(b) FAILURE TO MEET STANDARDS.—

''(1) PLAN REQUIREMENT.—

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

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

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

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

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

''(i) provide the regulated entities with reasonable time to submit plans required under subparagraph (A), and generally require a regulated entity to submit a plan not later than 30 days after the Director determines that the entity fails to meet any standard established under subsection (a); and

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

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

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

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

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

''(ii) Require the regulated entity—

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

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

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

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

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

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

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

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

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

SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.

(a) IN GENERAL.—Title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.) is amended by inserting after section 1313A, as added by section 102 of this Division, the following new section:

''SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.

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

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

''(c) COMPOSITION.—The Board shall be comprised of 3 members, of whom—

''(1) one member shall be the Secretary of the Treasury;

''(2) one member shall be the Secretary of Housing and Urban Development; and

''(3) one member shall be the Director, who shall serve as the Chairperson of the Board.

''(d) MEETINGS.—

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

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

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

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

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

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

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

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

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

(b) ANNUAL REPORT OF THE DIRECTOR.—Section 1319B(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 4521 (a)) is amended—

(1) in paragraph (3), by striking ''and'' at the end; and

(2) by striking paragraph (4) and inserting the following new paragraphs:

''(4) an assessment of the Board or any of its members with respect to—

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

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

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

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

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

''(6) a description of the demographic makeup of the workforce of the Agency and the actions taken pursuant to section 1319A(b) to provide for diversity in the workforce; and

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

SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGULATED ENTITIES.

Section 1314 of the Housing and Community Development Act of 1992 (12 U.S.C. 4514) is amended—

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

(2) in subsection (a)—

(A) in the subsection heading, by striking ''SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION'' and inserting ''REGULAR AND SPECIAL REPORTS'';

(B) in paragraph (1)—

(i) in the paragraph heading, by striking ''FINANCIAL CONDITION'' and inserting ''REGULAR REPORTS''; and

(ii) by striking ''reports of financial condition and operations'' and inserting ''regular reports on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate''; and

(C) in paragraph (2), after ''submit special reports'' insert ''on any of the topics specified in paragraph (1) or such other topics''; and

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

''(c) REPORTS OF FRAUDULENT FINANCIAL TRANSACTIONS.—

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

''(2) PROTECTION FROM LIABILITY FOR REPORTS.—

''(A) IN GENERAL.—If a regulated entity makes a report pursuant to paragraph (1), or a regulated entity-affiliated party makes, or requires another to make, such a report, and such report is made in a good faith effort to comply with the requirements of paragraph (1), such regulated entity or regulated entity-affiliated party shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other person identified in the report.

''(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

''(i) any inference that the term 'person', as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

''(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.''.

SEC. 105. DISCLOSURE OF INCOME AND CHARITABLE CONTRIBUTIONS BY ENTERPRISES.

Section 1314 of the Housing and Community Development Act of 1992 (12 U.S.C. 4514), as amended by the preceding provisions of this Division, is further amended by adding at the end the following new subsections:

''(d) DISCLOSURE OF CHARITABLE CONTRIBUTIONS BY ENTERPRISES.—

''(1) REQUIRED DISCLOSURE.—The Director shall, by regulation, require each enterprise to submit a report annually, in a format designated by the Director, containing the following information:

''(A) TOTAL VALUE.—The total value of contributions made by the enterprise to nonprofit organizations during its previous fiscal year.

''(B) SUBSTANTIAL CONTRIBUTIONS.—If the value of contributions made by the enterprise to any nonprofit organization during its previous fiscal year exceeds the designated amount, the name of that organization and the value of contributions.

''(C) SUBSTANTIAL CONTRIBUTIONS TO INSIDER-AFFILIATED CHARITIES.—Identification of each contribution whose value exceeds the designated amount that were made by the enterprise during the enterprise's previous fiscal year to any nonprofit organization of which a director, officer, or controlling person of the enterprise, or a spouse thereof, was a director or trustee, the name of such nonprofit organization, and the value of the contribution.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'designated amount' means such amount as may be designated by the Director by regulation, consistent with the public interest and the protection of investors for purposes of this subsection; and

''(B) the Director may, by such regulations as the Director deems necessary or appropriate in the public interest, define the terms officer and controlling person.

''(3) PUBLIC AVAILABILITY.—The Director shall make the information submitted pursuant to this subsection publicly available.

''(e) DISCLOSURE OF INCOME.—Each enterprise shall include, in each annual report filed under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), the income reported by the issuer to the Internal Revenue Service for the most recent taxable year. Such income shall—

''(1) be presented in a prominent location in each such report and in a manner that permits a ready comparison of such income to income otherwise required to be included in such reports under regulations issued under such section; and

''(2) be submitted to the Securities and Exchange Commission in a form and manner suitable for entry into the EDGAR system of such Commission for public availability under such system.''.

SEC. 106. ASSESSMENTS.

Section 1316 of the Housing and Community Development Act of 1992 (12 U.S.C. 4516) is amended—

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

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

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

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

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

''(4) the wind up of the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board under title III of the Federal Housing Finance Reform Act of 2007.'';

(2) in subsection (b)—

(A) in the subsection heading, by striking ''ENTERPRISES'' and inserting ''REGULATED ENTITIES'' ;

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

(C) in paragraph (1)—

(i) by striking ''Each enterprise'' and inserting ''Each regulated entity'';

(ii) by striking ''each enterprise'' and inserting ''each regulated entity''; and

(iii) by striking ''both enterprises'' and inserting ''all of the regulated entities''; and

(D) in paragraph (3)—

(i) in subparagraph (B), by striking ''subparagraph (A)'' and inserting ''clause (i)'';

(ii) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii) and (ii), respectively, and realigning such clauses, as so redesignated, so as to be indented 6 ems from the left margin;

(iii) by striking the matter that precedes clause (i), as so redesignated, and inserting the following:

''(3) DEFINITION OF TOTAL ASSETS.—For purposes of this section, the term 'total assets' means as follows:

''(A) ENTERPRISES.—With respect to an enterprise, the sum of—''; and

(iv) by adding at the end the following new subparagraph:

''(B) FEDERAL HOME LOAN BANKS.—With respect to a Federal home loan bank, the total assets of the Bank, as determined by the Director in accordance with generally accepted accounting principles.'';

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

''(c) INCREASED COSTS OF REGULATION.—

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

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

''(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.'';

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

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

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

''(f) TREATMENT OF ASSESSMENTS.—

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

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

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

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

''(5) AVAILABILITY OF OVERSIGHT FUND AMOUNTS.—Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date under section 185 of the Federal Housing Finance Reform Act of 2007), and any amounts remaining from assessments on the Federal Home Loan banks pursuant to section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

''(6) TREASURY INVESTMENTS.—

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

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

''(g) BUDGET AND FINANCIAL MANAGEMENT.—

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

''(2) FINANCIAL STATEMENTS.—The Agency shall prepare annually a statement of assets and liabilities and surplus or deficit; a statement of income and expenses; and a statement of sources and application of funds.

''(3) FINANCIAL MANAGEMENT SYSTEMS.—The Agency shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and that uses a general ledger system that accounts for activity at the transaction level.

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

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

''(h) AUDIT OF AGENCY.—

''(1) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the U.S. generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

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

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

SEC. 107. EXAMINERS AND ACCOUNTANTS.

(a) EXAMINATIONS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended—

(1) in subsection (a), by adding after the period at the end the following: ''Each examination under this subsection of a regulated entity shall include a review of the procedures required to be established and maintained by the regulated entity pursuant to section 1314(c) (relating to fraudulent financial transactions) and the report regarding each such examination shall describe any problems with such procedures maintained by the regulated entity.'';

(2) in subsection (b)—

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

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

(3) in subsection (c)—

(A) in the second sentence, by inserting ''to conduct examinations under this section'' before the period; and

(B) in the third sentence, by striking ''from amounts available in the Federal Housing Enterprises Oversight Fund''.

(b) ENHANCED AUTHORITY TO HIRE EXAMINERS AND ACCOUNTANTS.—Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended by adding at the end the following new subsection:

''(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS, SPECIALISTS, AND EXAMINERS.—

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

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

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

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

''(3) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under the authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.''.

(c) REPEAL.—Section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440) is amended—

(1) by striking the section heading and inserting the following: ''EXAMINATIONS AND GAO AUDITS'';

(2) in the third sentence, by striking ''the Board and'' each place such term appears; and

(3) by striking the first two sentences and inserting the following: ''The Federal home loan banks shall be subject to examinations by the Director to the extent provided in section 1317 of the Federal Housing Enterprises

Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517).''.

SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE COMPENSATION.

(a) IN GENERAL.—Section 1318 of the Housing and Community Development Act of 1992 (12 U.S.C. 4518) is amended—

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

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

(3) by inserting after subsection (a) the following new subsections:

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

''(l) WITHHOLDING OF COMPENSATION.—Notwithstanding any other provision of this section, a Federal home loan bank shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).''.

SEC. 109. REVIEWS OF REGULATED ENTITIES.

Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4519) is amended—

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

''SEC. 1319. REVIEWS OF REGULATED ENTITIES.''; and

(2) by striking ''is a nationally recognized'' and all that follows through ''1934'' and inserting the following: ''the Director considers appropriate, including an entity that is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a) as a nationally registered statistical rating organization''.

SEC. 110. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

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

(1) in the section heading, by striking ''**EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS**'' and inserting ''**MINORITY AND WOMEN INCLUSION; DIVERSITY REQUIREMENTS**'';

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

(3) by striking subsection (b);

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

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

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

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

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

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

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

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

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

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

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

SEC. 111. REGULATIONS AND ORDERS.

Section 1319G of the Housing and Community Development Act of 1992 (12 U.S.C. 4526) is amended—

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

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

(2) in subsection (b), by inserting '', this title, or any of the authorizing statutes'' after ''under this section''; and

(3) by striking subsection (c).

SEC. 112. NON-WAIVER OF PRIVILEGES.

Part 1 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4511) is amended by adding at the end the following new section:

''SEC. 1319H. PRIVILEGES NOT AFFECTED BY DISCLOSURE.

''(a) IN GENERAL.—The submission by any person of any information to the Agency for any purpose in the course of any supervisory or regulatory process of the Agency shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the Agency.

''(b) RULE OF CONSTRUCTION.—No provision of subsection (a) may be construed as implying or establishing that—

''(1) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which subsection (a) does not apply; or

''(2) any person would waive any privilege applicable to any information by submitting the information to the Agency, but for this subsection.''.

SEC. 113. RISK-BASED CAPITAL REQUIREMENTS.

(a) IN GENERAL.—Section 1361 of the Housing and Community Development Act of 1992 (12 U.S.C. 4611) is amended to read as follows:

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

''(a) IN GENERAL.—

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

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

''(b) CONFIDENTIALITY OF INFORMATION.—Any person that receives any book, record, or information from the Director or a regulated entity to enable the risk-based capital requirements established under this section to be applied shall—

''(1) 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 regulated entity; and

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

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

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

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

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

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

SEC. 114. MINIMUM AND CRITICAL CAPITAL LEVELS.

(a) MINIMUM CAPITAL LEVEL.—Section 1362 of the Housing and Community Development Act of 1992 (12 U.S.C. 4612) is amended—

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

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

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

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

''(d) AUTHORITY TO REQUIRE TEMPORARY INCREASE.—Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity on a temporary basis for such period as the Director may provide if the Director—

''(1) makes any determination specified in subparagraphs (A) through (C) of section 1364(c)(1);

''(2) determines that the regulated entity has violated any of the prudential standards established pursuant to section 1313A and, as a result of such violation, determines that an unsafe and unsound condition exists; or

''(3) determines that an unsafe and unsound condition exists, except that a temporary increase in minimum capital imposed on a regulated entity pursuant to this paragraph shall not remain in place for a period of more than 6 months unless the Director makes a renewed determination of the existence of an unsafe and unsound condition.

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

''(f) PERIODIC REVIEW.—The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal home loan banks, and the minimum capital levels established for such regulated entities pursuant to this section. The Director shall rescind any temporary minimum capital level increase if the Director determines that the circumstances or facts justifying the temporary increase are no longer present.''.

(b) CRITICAL CAPITAL LEVELS.—

(1) IN GENERAL.—Section 1363 of the Housing and Community Development Act of 1992 (12 U.S.C. 4613) is amended—

(A) by striking ''For'' and inserting ''(a) ENTERPRISES.—FOR''; and

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

''(b) FEDERAL HOME LOAN BANKS.—

''(1) IN GENERAL.—For purposes of this subtitle, the critical capital level for each Federal home loan bank shall be such amount of capital as the Director shall, by regulation require.

''(2) CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.—In establishing the critical capital level under paragraph (1) for the Federal home loan banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.''.

(2) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Housing and Community Development Act of 1992 (as added by paragraph (1) of this subsection) establishing the critical capital level under such section.

SEC. 115. REVIEW OF AND AUTHORITY OVER ENTERPRISE ASSETS AND LIABILITIES.

(a) IN GENERAL.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended—

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

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

and

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

''SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABILITIES.

''(a) IN GENERAL.—The Director shall, by regulation, establish standards by which the portfolio holdings, or rate of growth of the portfolio holdings, of the enterprises will be deemed to be consistent with the mission and the safe and sound operations of the enterprises. In developing such standards, the Director shall consider—

''(1) the size or growth of the mortgage market;

''(2) the need for the portfolio in maintaining liquidity or stability of the secondary mortgage market (including the market for the mortgage-backed securities the enterprises issue);

''(3) the need for an inventory of mortgages in connection with securitizations;

''(4) the need for the portfolio to directly support the affordable housing mission of the enterprises;

''(5) the liquidity needs of the enterprises;

''(6) any potential risks posed to the enterprises by the nature of the portfolio holdings; and

''(7) any additional factors that the Director determines to be necessary to carry out the purpose under the first sentence of this subsection to establish standards for assessing whether the portfolio holdings are consistent with the mission and safe and sound operations of the enterprises.

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

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

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1369E(a) of the Housing and Community Development Act of 1992 (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section.

SEC. 116. CORPORATE GOVERNANCE OF ENTERPRISES.

The Housing and Community Development Act of 1992 is amended by inserting before section 1323 (12 U.S.C. 4543) the following new section:

''SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.

''(a) BOARD OF DIRECTORS.—

''(1) INDEPENDENCE.—A majority of seated members of the board of directors of each enterprise shall be independent board members, as defined under rules set forth by the New York Stock Exchange, as such rules may be amended from time to time.

''(2) FREQUENCY OF MEETINGS.—To carry out its obligations and duties under applicable laws, rules, regulations, and guidelines, the board of directors of an enterprise shall meet at least eight times a year and not less than once a calendar quarter.

''(3) NON-MANAGEMENT BOARD MEMBER MEETINGS.—The non-management directors of an enterprise shall meet at regularly scheduled executive sessions without management participation.

''(4) QUORUM; PROHIBITION ON PROXIES.—For the transaction of business, a quorum of the

board of directors of an enterprise shall be at least a majority of the seated board of directors and a board member may not vote by proxy.

''(5) INFORMATION.—The management of an enterprise shall provide a board member of the enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

''(6) ANNUAL REVIEW.—At least annually, the board of directors of each enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

''(b) COMMITTEES OF BOARDS OF DIRECTORS.—

''(1) FREQUENCY OF MEETINGS.—Any committee of the board of directors of an enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

''(2) REQUIRED COMMITTEES.—Each enterprise shall provide for the establishment, however styled, of the following committees of the board of directors:

''(A) Audit committee.

''(B) Compensation committee.

''(C) Nominating/corporate governance committee.

Such committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 10A(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(m)), with respect to the audit committee, and under rules issued by the New York Stock Exchange, as such rules may be amended from time to time.

''(c) COMPENSATION.—

''(1) IN GENERAL.—The compensation of board members, executive officers, and employees of an enterprise—

''(A) shall not be in excess of that which is reasonable and appropriate;

''(B) shall be commensurate with the duties and responsibilities of such persons;

''(C) shall be consistent with the long-term goals of the enterprise;

''(D) shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well; and

''(E) shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

''(2) REIMBURSEMENT.—If an enterprise is required to prepare an accounting restatement due to the material noncompliance of the enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the enterprise shall reimburse the enterprise as provided under section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7243). This provision does not otherwise limit the authority of the Agency to employ remedies available to it under its enforcement authorities.

''(d) CODE OF CONDUCT AND ETHICS.—

''(1) IN GENERAL.—An enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the enterprise to discharge their duties and responsibilities, on behalf of the enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7264) and other applicable laws, rules, and regulations.

''(2) REVIEW.—Not less than once every three years, an enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the enterprise and make any appropriate revisions to such code.

''(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF DIRECTORS.—The board of directors of an enterprise shall be responsible for directing the conduct and affairs of the enterprise in furtherance of the safe and sound operation of the enterprise and shall remain reasonably informed of the condition, activities, and operations of the enterprise. The responsibilities of the board of directors shall include having in place adequate policies and procedures to assure its oversight of, among other matters, the following:

''(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including prudent plans for growth and allocation of adequate resources to manage operations risk.

''(2) Hiring and retention of qualified executive officers and succession planning for such executive officers.

''(3) Compensation programs of the enterprise.

''(4) Integrity of accounting and financial reporting systems of the enterprise, including independent audits and systems of internal control.

''(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors.

''(6) Extensions of credit to board members and executive officers.

''(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

''(f) PROHIBITION OF EXTENSIONS OF CREDIT.—An enterprise may not directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any board member or executive officer of the enterprise, as provided by section 13(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(k)).

''(g) CERTIFICATION OF DISCLOSURES.—The chief executive officer and the chief financial officer of an enterprise shall review each quarterly report and annual report issued by the enterprise and such reports shall include certifications by such officers as required by section 302 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

''(h) CHANGE OF AUDIT PARTNER.—An enterprise may not accept audit services from an external auditing firm if the lead or coordinating audit partner who has primary responsibility for the external audit of the enterprise, or the external audit partner who has responsibility for reviewing the external audit has performed audit services for the enterprise in each of the five previous fiscal years.

''(i) COMPLIANCE PROGRAM.—

''(1) REQUIREMENT.—Each enterprise shall establish and maintain a compliance program that is reasonably designed to assure that the enterprise complies with applicable laws, rules, regulations, and internal controls.

''(2) COMPLIANCE OFFICER.—The compliance program of an enterprise shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer of the enterprise. The compliance officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current compliance policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the compliance officer considers necessary and appropriate.

''(j) RISK MANAGEMENT PROGRAM.—

''(1) REQUIREMENT.—Each enterprise shall establish and maintain a risk management program that is reasonably designed to manage the risks of the operations of the enterprise.

''(2) RISK MANAGEMENT OFFICER.—The risk management program of an enterprise shall be headed by a risk management officer, however styled, who reports directly to the chief executive officer of the enterprise. The risk management officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current risk management policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the risk management officer considers necessary and appropriate.

''(k) COMPLIANCE WITH OTHER LAWS.—

''(1) DEREGISTERED OR UNREGISTERED COMMON STOCK.—If an enterprise deregisters or has not registered its common stock with the Securities and Exchange Commission under the Securities Exchange Act of 1934, the enterprise shall comply or continue to comply with sections 10A(m) and 13(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(m), 78m(k)) and sections 302, 304, and 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7243, 7264), subject to such requirements as provided by subsection (l) of this section.

''(2) REGISTERED COMMON STOCK.—An enterprise that has its common stock registered with the Securities and Exchange Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of the sections of the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act of 2002, subject to such requirements as provided by subsection (l) of this section.

''(l) OTHER MATTERS.—The Director may from time to time establish standards, by regulation, order, or guideline, regarding such other corporate governance matters of the enterprises as the Director considers appropriate.

''(m) MODIFICATION OF STANDARDS.—In connection with standards of Federal or State law (including the Revised Model Corporation Act) or New York Stock Exchange rules that are made applicable to an enterprise by section 1710.10 of the Director's rules (12 CFR 1710.10) and by subsections (a), (b), (g), (i), (j), and (k) of this section, the Director, in the Director's sole discretion, may modify the standards contained in this section or in part 1710 of the Director's rules (12 CFR Part 1710) in accordance with section 553 of title 5, United States Code, and upon written notice to the enterprise.''.

SEC. 117. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

The Housing and Community Development Act of 1992 is amended by adding after section 1322A, as added by the preceding provisions of this Division, the following new section:

''SEC. 1322B. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

''(a) IN GENERAL.—Each regulated entity shall register at least one class of the capital stock of such regulated entity, and maintain such registration with the Securities and Exchange Commission, under the Securities Exchange Act of 1934.

''(b) ENTERPRISES.—Each enterprise shall comply with sections 14 and 16 of the Securities Exchange Act of 1934.''.

SEC. 118. LIAISON WITH FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

Section 1007 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3306) is amended—

(1) in the section heading, by inserting after ''STATE'' the following: ''AND FEDERAL HOUSING FINANCE AGENCY''; and

(2) by inserting after ''financial institutions'' the following: '', and one representative of the Federal Housing Finance Agency,''.

SEC. 119. GUARANTEE FEE STUDY.

(a) IN GENERAL.—The Director of the Federal Housing Finance Agency, in consultation with the heads of the federal banking agencies, shall, not later than 18 months after the date of the enactment of this Act, submit to the Congress a study concerning the pricing, transparency and reporting of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks with regard to guarantee fees and concerning analogous practices, transparency and reporting requirements (including advances pricing practices by the Federal Home Loan Banks) of other participants in the business of mortgage purchases and securitization.

(b) FACTORS.—The study required by this section shall examine various factors such as credit risk, counterparty risk considerations, economic value considerations, and volume considerations used by the regulated entities (as such term is defined in section 1303 of the Housing and Community Development Act of 1992) included in the study in setting the amount of fees they charge.

(c) CONTENTS OF REPORT.—The report required under subsection (a) shall identify and analyze—

(1) the factors used by each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992) in determining the amount of the guarantee fees it charges;

(2) the total revenue the enterprises earn from guarantee fees;

(3) the total costs incurred by the enterprises for providing guarantees;

(4) the average guarantee fee charged by the enterprises;

(5) an analysis of how and why the guarantee fees charged differ from such fees charged during the previous year;

(6) a breakdown of the revenue and costs associated with providing guarantees, based on product type and risk classifications; and

(7) other relevant information on guarantee fees with other participants in the mortgage and securitization business.

(d) PROTECTION OF INFORMATION.—Nothing in this section may be construed to require or authorize the Director of the Federal Housing Finance Agency, in connection with the study mandated by this section, to disclose information of the enterprises or other organization that is confidential or proprietary.

(e) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 120. CONFORMING AMENDMENTS.

(a) 1992 ACT.—Part 1 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4511 et seq.), as amended by the preceding provisions of this Division, is further amended—

(1) by striking ''an enterprise'' each place such term appears in such part (except in sections 1313(a)(2)(A), 1313A(b)(2)(B)(ii)(I), and 1316(b)(3)) and inserting ''a regulated entity'';

(2) by striking ''the enterprise'' each place such term appears in such part (except in section 1316(b)(3)) and inserting ''the regulated entity'';

(3) by striking ''the enterprises'' each place such term appears in such part (except in sections 1312(c)(2), and 1312(e)(2)) and inserting ''the regulated entities'';

(4) by striking ''each enterprise'' each place such term appears in such part and inserting ''each regulated entity'';

(5) by striking ''Office'' each place such term appears in such part (except in sections 1311(b)(2), 1312(b)(5), 1315(b), and 1316(a)(4), (g), and (h), 1317(c), and 1319A(a)) and inserting ''Agency'';

(6) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) in the subsection heading, by striking ''OFFICE PERSONNEL'' and inserting ''IN GENERAL''; and

(ii) by striking ''The'' and inserting ''Subject to title III of the Federal Housing Finance Reform Act of 2007, the'';

(B) by striking subsections (d) and (f); and

(C) by redesignating subsection (e) as subsection (d);

(7) in section 1319B (12 U.S.C. 4521), by striking ''Committee on Banking, Finance and Urban Affairs'' each place such term appears and inserting ''Committee on Financial Services''; and

(8) in section 1319F (12 U.S.C. 4525), striking all that follows ''United States Code'' and inserting '', the Agency shall be considered an agency responsible for the regulation or supervision of financial institutions.''.

(b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—The Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) is amended—

(1) by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place such term appears, and inserting ''Director of the Federal Housing Finance Agency'', in—

(A) section 303(c)(2) (12 U.S.C. 1718(c)(2));

(B) section 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)); and

(C) section 309(k)(1); and

(2) in section 309—

(A) in subsections (d)(3)(A) and (n)(1), by striking ''Banking, Finance and Urban Affairs'' each place such term appears and inserting ''Financial Services''; and

(B) in subsection (m)—

(i) in paragraph (1), by striking ''Secretary'' the second place such term appears and inserting ''Director'';

(ii) in paragraph (2), by striking ''Secretary'' the second place such term appears and inserting ''Director''; and

(iii) by striking ''Secretary'' each other place such term appears and inserting ''Director of the Federal Housing Finance Agency''; and

(C) in subsection (n), by striking ''Secretary'' each place such term appears and inserting ''Director of the Federal Housing Finance Agency''.

(c) AMENDMENTS TO FREDDIE MAC ACT.—The Federal Home Loan Mortgage Corporation Act is amended—

(1) by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' each place such term appears, and inserting ''Director of the Federal Housing Finance Agency'', in—

(A) section 303(b)(2) (12 U.S.C. 1452(b)(2));

(B) section 303(h)(2) (12 U.S.C. 1452(h)(2)); and

(C) section 307(c)(1) (12 U.S.C. 1456(c)(1));

(2) in sections 303(h)(1) and 307(f)(1) (12 U.S.C. 1452(h)(1), 1456(f)(1)), by striking ''Banking, Finance and Urban Affairs'' each place such term appears and inserting ''Financial Services'';

(3) in section 306(i) (12 U.S.C. 1455(i))—

(A) by striking ''1316(c)'' and inserting ''306(c)''; and

(B) by striking ''section 106'' and inserting ''section 1316''; and

(4) in section 307 (12 U.S.C. 1456))—

(A) in subsection (e)—

(i) in paragraph (1), by striking ''Secretary'' the second place such term appears and inserting ''Director'';

(ii) in paragraph (2), by striking ''Secretary'' the second place such term appears and inserting ''Director''; and

(iii) by striking ''Secretary'' each other place such term appears and inserting ''Director of the Federal Housing Finance Agency''; and

(B) in subsection (f), by striking ''Secretary'' each place such term appears and inserting ''Director of the Federal Housing Finance Agency''.

Subtitle B—Improvement of Mission Supervision

SEC. 131. TRANSFER OF PRODUCT APPROVAL AND HOUSING GOAL OVERSIGHT.

Part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4541 et seq.) is amended—

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

''PART 2—PRODUCT APPROVAL BY DIRECTOR, CORPORATE GOVERNANCE, AND ESTABLISHMENT OF HOUSING GOALS'';

and

(2) by striking sections 1321 and 1322.

SEC. 132. REVIEW OF ENTERPRISE PRODUCTS.

(a) IN GENERAL.—Part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 is amended by inserting before section 1323 (12 U.S.C. 4543) the following new section:

''SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS OF ENTERPRISES.

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

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

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

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

''(3) the product is in the public interest;

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

''(5) the product does not materially impair the efficiency of the mortgage finance system.

''(c) PROCEDURE FOR APPROVAL.—

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

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

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

''(4) OFFERING OF PRODUCT.—

''(A) IN GENERAL.—Not later than 30 days after the close of the public comment period

described in paragraph (3), the Director shall approve or deny the product, specifying the grounds for such decision in writing.

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

''(d) EXPEDITED REVIEW.—

''(1) DETERMINATION AND NOTICE.—If an enterprise determines that any new activity, service, undertaking, or offering is not a product, as defined in subsection (f), the enterprise shall provide written notice to the Director prior to the commencement of such activity, service, undertaking, or offering.

''(2) DIRECTOR DETERMINATION OF APPLICABLE PROCEDURE.—Immediately upon receipt of any notice pursuant to paragraph (1), the Director shall make a determination under paragraph (3).

''(3) DETERMINATION AND TREATMENT AS PRODUCT.—If the Director determines that any new activity, service, undertaking, or offering consists of, relates to, or involves a product—

''(A) the Director shall notify the enterprise of the determination;

''(B) the new activity, service, undertaking, or offering described in the notice under paragraph (1) shall be considered a product for purposes of this section; and

''(C) the enterprise shall withdraw its request or submit a written request for approval of the product pursuant to subsection (c).

''(e) CONDITIONAL APPROVAL.—The Director may conditionally approve the offering of any product by an enterprise, and may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

''(f) DEFINITION OF PRODUCT.—For purposes of this section, the term 'product' does not include—

''(1) the automated loan underwriting system of an enterprise in existence as of the date of the enactment of the Federal Housing Finance Reform Act of 2007, including any upgrade to the technology, operating system, or software to operate the underwriting system; or

''(2) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise: *Provided*, That such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing, or create significant new exposure to risk for the enterprise or the holder of the mortgage.

''(g) NO LIMITATION.—Nothing in this section shall be deemed to restrict—

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

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

(b) CONFORMING AMENDMENTS.—

(1) FANNIE MAE.—Section 302(b)(6) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(6)) is amended—

(A) by striking ''implement any new program'' and inserting ''initially offer any product'';

(B) by striking ''section 1303'' and inserting ''section 1321(f)''; and

(C) by striking ''before obtaining the approval of the Secretary under section 1322'' and inserting ''except in accordance with section 1321''.

(2) FREDDIE MAC.—Section 305(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(c)) is amended—

(A) by striking ''implement any new program'' and inserting ''initially offer any product'';

(B) by striking ''section 1303'' and inserting ''section 1321(f)''; and

(C) by striking ''before obtaining the approval of the Secretary under section 1322'' and inserting ''except in accordance with section 1321''.

(3) 1992 ACT.—Section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502), as amended by section 2 of this Division, is further amended—

(A) by striking paragraph (17) (relating to the definition of ''new program''); and

(B) by redesignating paragraphs (18) through (23) as paragraphs (17) through (22), respectively.

SEC. 133. CONFORMING LOAN LIMITS.

(a) FANNIE MAE.—

(1) GENERAL LIMIT.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended—

(A) in the 4th sentence, by striking ''the Resolution Trust Corporation,''; and

(B) by striking the 7th and 8th sentences and inserting the following new sentences: ''For 2007, such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or four-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).''.

(2) HIGH-COST AREA LIMIT.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act is (12 U.S.C. 1717(b)(2)) is amended by adding after the period at the end the following: ''Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 133(d)(3) of the Federal Housing Finance Reform Act of 2007, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the corporation.''.

(b) FREDDIE MAC.—

(1) GENERAL LIMIT.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended—

(A) in the 3rd sentence, by striking ''the Resolution Trust Corporation,''; and

(B) by striking the 6th and 7th sentences and inserting the following new sentences: ''For 2007, such limitations shall not exceed $417,000 for a mortgage secured by a single-family residence, $533,850 for a mortgage secured by a 2-family residence, $645,300 for a mortgage secured by a 3-family residence, and $801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or four-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).''

(2) HIGH-COST AREA LIMIT.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by adding after the period at the end the following: ''Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 133(d)(3) of the Federal Housing Finance Reform Act of 2007, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the Corporation.''.

(c) HOUSING PRICE INDEX.—Subpart A of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (as amended by the preceding provisions of this Division) is amended by inserting after section 1321 (as added by section 132 of this Division) the following new section:

''SEC. 1322. HOUSING PRICE INDEX.

''(a) IN GENERAL.—The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date under section 185 of the Federal Housing Finance Reform Act of 2007, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

''(b) GAO AUDIT.—

''(1) IN GENERAL.—At such times as are required under paragraph (2), the Comptroller General of the United States shall conduct an audit of the methodology established by the Director under subsection (a) to determine whether the methodology established is an accurate and appropriate means of measuring changes to the national average 1-family house price.

''(2) TIMING.—An audit referred to in paragraph (1) shall be conducted and completed not later than the expiration of the 180-day period that begins upon each of the following dates:

''(A) ESTABLISHMENT.—The date upon which such methodology is initially established under subsection (a) in final form by the Director.

''(B) MODIFICATION OR AMENDMENT.—Each date upon which any modification or amendment to such methodology is adopted in final form by the Director.

''(3) REPORT.—Within 30 days of the completion of any audit conducted under this subsection, the Comptroller General shall submit a report detailing the results and conclusions of the audit to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.''.

(d) CONDITIONS ON CONFORMING LOAN LIMIT FOR HIGH-COST AREAS.—

(1) STUDY.—The Director of the Federal Housing Finance Agency shall conduct a study under this subsection during the six-month period beginning on the effective date under section 185 of this Division.

(2) ISSUES.—The study under this subsection shall determine—

(A) the effect that restricting the conforming loan limits for high-cost areas only to mortgages on which are based securities issued and sold by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (as provided in the last sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act and the last sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act, pursuant to the amendments made by subsections (a)(2) and (b)(2) of this section) would have on the cost to borrowers for mortgages on housing in such high-cost areas;

(B) the effects that such restrictions would have on the availability of mortgages for housing in such high-cost areas; and

(C) the extent to which the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation will be able to issue and sell securities based on mortgages for housing located in such high-cost areas.

(3) DETERMINATION.—

(A) IN GENERAL.—Not later than the expiration of the six-month period specified in paragraph (1), the Director of the Federal Housing Finance Agency shall make a determination, based on the results of the study under this subsection, of whether the restriction of conforming loan limits for high-cost areas only to mortgages on which are based securities issued and sold by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (as provided in the amendments made by subsections (a)(2) and (b)(2) of this section) will result in an increase in the cost to borrowers for mortgages on housing in such high-cost areas.

(B) ORDER.—If such determination is that costs to borrowers on housing in such high-cost areas will be increased by such restrictions, the Director may issue an order terminating such restrictions, in whole or in part.

(4) PUBLICATION.—Not later than the expiration of the six-month period specified in paragraph (1), the Director of the Federal Housing Finance Agency shall cause to be published in the Federal Register—

(A) a report that—

(i) describes the study under this subsection; and

(ii) sets forth the conclusions of the study regarding the issues to be determined under paragraph (2); and

(B) notice of the determination of the Director under paragraph (3); and

(C) the order of the Director under paragraph (3).

(5) DEFINITION.—For purposes of this subsection, the term ''conforming loan limits for high-cost areas'' means the dollar amount limitations applicable under the section 302(b)(2) of the Federal National Mortgage Association Charter Act and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as amended by subsections (a) and (b) of this section) for areas described in the last sentence of such sections (as so amended).

SEC. 134. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 is amended by striking section 1324 (12 U.S.C. 4544) and inserting the following new section:

''SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

''(a) IN GENERAL.—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act, section 307(f) of the Federal Home Loan Mortgage Corporation Act, and section 10(j)(11) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)(11)), the Director shall submit a report, not later than October 30 of each year, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on the activities of each regulated entity.

''(b) CONTENTS.—The report shall—

''(1) discuss the extent to which—

''(A) each enterprise is achieving the annual housing goals established under subpart B of this part;

''(B) each enterprise is complying with section 1337;

''(C) each Federal home loan bank is complying with section 10(j) of the Federal Home Loan Bank Act; and

''(D) each regulated entity is achieving the purposes of the regulated entity established by law;

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

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

''(4) examine actions that—

''(A) each enterprise has undertaken or could undertake to promote and expand the annual goals established under subpart B and the purposes of the enterprise established by law; and

''(B) each Federal home loan bank has taken or could undertake to promote and expand the community investment program and affordable housing program of the bank established under section subsections (i) and (j) of section 10 of the Federal Home Loan Bank Act;

''(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 regulated entity has undertaken and could undertake to promote and expand opportunities for first-time homebuyers, including the use of alternative credit scoring;

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

''(8) discuss and analyze existing conditions and trends, including conditions and trends relating to pricing, in the housing markets and mortgage markets; and

''(9) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime loans (as identified in accordance with the regulations issued pursuant to section 134(b) of the Federal Housing Finance Reform Act of 2007) and compare the characteristics of subprime loans purchased and securitized by the enterprises to other loans purchased and securitized by the enterprises.

''(c) DATA COLLECTION AND REPORTING.—

''(1) IN GENERAL.—To assist the Director in analyzing the matters described in subsection (b) and establishing the methodology described in section 1322, the Director shall conduct, on a monthly basis, a survey of mortgage markets in accordance with this subsection.

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

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

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

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

''(iii) the terms of the mortgage;

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

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

''(B) such other matters as the Director determines to be appropriate.

''(3) PUBLIC AVAILABILITY.—The Director shall make any data collected by the Director in connection with the conduct of a monthly survey available to the public in a timely manner, provided that the Director may modify the data released to the public to ensure that the data is not released in an identifiable form.

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

(b) STANDARDS FOR SUBPRIME LOANS.—The Director shall, not later than one year after the effective date under section 185, by regulations issued under section 1316G of the Housing and Community Development Act of 1992, establish standards by which mortgages purchased and mortgages purchased and securitized shall be characterized as subprime for the purpose of, and only for the purpose of, complying with the reporting requirement under section 1324(b)(9) of such Act.

SEC. 135. ANNUAL REPORTS BY REGULATED ENTITIES ON AFFORDABLE HOUSING STOCK.

The Housing and Community Development Act of 1992 is amended by inserting after section 1328 (12 U.S.C. 4548) the following new section:

''SEC. 1329. ANNUAL REPORTS ON AFFORDABLE HOUSING STOCK.

''(a) IN GENERAL.—To obtain information helpful in applying the formula under section 1337(c)(2) for the affordable housing program under such section and for other appropriate uses, the regulated entities shall conduct, or provide for the conducting of, a study on an annual basis to determine the levels of affordable housing inventory, and the changes in such levels, in communities throughout the United States.

''(b) CONTENTS.—The annual study under this section shall determine, for the United States, each State, and each community within each State—

''(1) the level of affordable housing inventory, including affordable rental dwelling units and affordable homeownership dwelling units;

''(2) any changes to the level of such inventory during the 12-month period of the study under this section, including—

''(A) any additions to such inventory, disaggregated by the category of such additions (including new construction or housing conversion);

''(B) any subtractions from such inventory, disaggregated by the category of such subtractions (including abandonment, demolition, or upgrade to market-rate housing);

''(C) the number of new affordable dwelling units placed in service; and

''(D) the number of affordable housing dwelling units withdrawn from service;

''(3) the types of financing used to build any dwelling units added to such inventory level and the period during which such units are required to remain affordable;

''(4) any excess demand for affordable housing, including the number of households on rental housing waiting lists and the tenure of the wait on such lists; and

''(5) such other information as the Director may require.

''(c) REPORT.—For each annual study conducted pursuant to this section, the regulated entities shall submit to the Congress, and make publicly available, a report setting forth the findings of the study.

''(d) REGULATIONS AND TIMING.—The Director shall, by regulation, establish requirements for the studies and reports under this section, including deadlines for the submission of such annual reports and standards for determining affordable housing.''.

SEC. 136. MORTGAGOR IDENTIFICATION REQUIREMENTS FOR MORTGAGES OF REGULATED ENTITIES.

(a) IN GENERAL.—Subpart A of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4541 et seq.), as amended by the preceding provisions of this Division, is further amended by adding at the end the following new section:

''SEC. 1330. MORTGAGOR IDENTIFICATION REQUIREMENTS FOR MORTGAGES OF REGULATED ENTITIES.

''(a) LIMITATION.—The Director shall by regulation establish standards, and shall enforce compliance with such standards, that—

''(1) prohibit the enterprises from the purchase, service, holding, selling, lending on the security of, or otherwise dealing with any mortgage on a one- to four-family residence that will be used as the principal residence of the mortgagor that does not meet the requirements under subsection (b); and

''(2) prohibit the Federal home loan banks from providing any advances to a member for use in financing, and from accepting as collateral for any advance to a member, any mortgage on a one- to four-family residence that will be used as the principal residence of the mortgagor that does not meet the requirements under subsection (b).

''(b) IDENTIFICATION REQUIREMENTS.—The requirements under this subsection with respect to a mortgage are that the mortgagor have, at the time of settlement on the mortgage, a Social Security account number.''.

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

''(g) PROHIBITION REGARDING MORTGAGOR IDENTIFICATION REQUIREMENT.—Nothing in this Act may be construed to authorize the corporation to purchase, service, hold, sell, lend on the security of, or otherwise deal with any mortgage that the corporation is prohibited from so dealing with under the standards issued under section 1330 of the Housing and Community Development Act of 1992 by the Director of the Federal Housing Finance Agency.''.

(c) FREDDIE MAC.—Section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) is amended by adding at the end the following new subsection:

''(d) PROHIBITION REGARDING MORTGAGOR IDENTIFICATION REQUIREMENTS.—Nothing in this Act may be construed to authorize the Corporation to purchase, service, hold, sell, lend on the security of, or otherwise deal with any mortgage that the Corporation is prohibited from so dealing with under the standards issued under section 1330 of the Housing and Community Development Act of 1992 by the Director of the Federal Housing Finance Agency.''.

(d) FEDERAL HOME LOAN BANKS.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following new paragraph:

''(6) PROHIBITION REGARDING MORTGAGOR IDENTIFICATION REQUIREMENTS.—Nothing in this Act may be construed to authorize a Federal Home Loan Bank to provide any advance to a member for use in financing, or accept as collateral for an advance under this section, any mortgage that a Bank is prohibited from so accepting under the standards issued under section 1330 of the Housing and Community Development Act of 1992 by the Director of the Federal Housing Finance Agency.''.

SEC. 137. REVISION OF HOUSING GOALS.

(a) HOUSING GOALS.—The Housing and Community Development Act of 1992 is amended by striking sections 1331 through 1334 (12 U.S.C. 4561–4) and inserting the following new sections:

''SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

''(a) IN GENERAL.—The Director shall establish, effective for the first year that begins after the effective date under section 185 of the Federal Housing Finance Reform Act of 2007 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

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

''(2) MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOALS.—A multifamily special affordable housing goal under section 1333.

''(b) ELIMINATING INTEREST RATE DISPARITIES.—

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

''(2) REMEDIAL ACTIONS UPON PRELIMINARY FINDING.—Upon a preliminary finding by the Director that a pattern of disparities in interest rates with respect to any lender or lenders exists pursuant to the data provided by an enterprise in paragraph (1), the Director shall—

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

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

''(C) require the enterprise to undertake remedial actions, as appropriate, pursuant to section 1325(5) (12 U.S.C. 4545(5)).

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

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

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

''SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

''(a) IN GENERAL.—The Director shall establish annual goals for the purchase by each enterprise of conventional, conforming, single-family, purchase money mortgages financing owner-occupied and rental housing for each of the following categories of families:

''(1) Low-income families.

''(2) Families that reside in low-income areas.

''(3) Very low-income families.

''(b) REFINANCE SUBGOAL.—

''(1) IN GENERAL.—The Director shall establish a separate subgoal within each goal under subsection (a)(1) for the purchase by each enterprise of mortgages for low-income families on single family housing given to pay off or prepay an existing loan secured by the same property. The Director shall, for each year, determine whether each enterprise has complied with the subgoal under this subsection in the same manner provided under this section for determining compliance with the housing goals.

''(2) ENFORCEMENT.—For purposes of section 1336, the subgoal established under paragraph (1) of this subsection shall be considered to be a housing goal established under this section. Such subgoal shall not be enforceable under any other provision of this title (including subpart C of this part) other than section 1336 or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

''(c) DETERMINATION OF COMPLIANCE.—The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing goals established under this section for such year. An enterprise shall be considered to be in compliance with such a goal for a year only if, for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages purchased by each enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (d).

''(d) ANNUAL TARGETS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), for each of the types of families described in subsection (a), the target under this subsection for a year shall be the average percentage, for the three years that most recently precede such year and for

which information under the Home Mortgage Disclosure Act of 1975 is publicly available, of the number of conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages originated in such year that serves such type of family, as determined by the Director using the information obtained and determined pursuant to paragraphs (3) and (4).

''(2) AUTHORITY TO INCREASE TARGETS.—

''(A) IN GENERAL.—The Director may, for any year, establish by regulation, for any or all of the types of families described in subsection (a), percentage targets that are higher than the percentages for such year determined pursuant to paragraph (1), to reflect expected changes in market performance related to such information under the Home Mortgage Disclosure Act of 1975.

''(B) FACTORS.—In establishing any targets pursuant to subparagraph (A), the Director shall consider the following factors:

''(i) National housing needs.

''(ii) Economic, housing, and demographic conditions.

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

''(iv) The size of the conventional mortgage market serving each of the types of families described in subsection (a) relative to the size of the overall conventional mortgage market.

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

''(vi) The need to maintain the sound financial condition of the enterprises.

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

''(4) CONFORMING MORTGAGES.—In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (3), as rounded to the nearest thousand dollars.

''(e) NOTICE OF DETERMINATION AND ENTERPRISE COMMENT.—

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

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

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

''(g) CONSIDERATION OF UNITS IN SINGLE-FAMILY RENTAL HOUSING.—In establishing any goal under this subpart, the Director may take into consideration the number of housing units financed by any mortgage on single-family rental housing purchased by an enterprise.

''SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOAL.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Director shall establish, by regulation, an annual goal for the purchase by each enterprise of each of the following types of mortgages on multifamily housing:

''(A) Mortgages that finance dwelling units for low-income families.

''(B) Mortgages that finance dwelling units for very low-income families.

''(C) Mortgages that finance dwelling units assisted by the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986.

''(2) ADDITIONAL REQUIREMENTS FOR SMALLER PROJECTS.—The Director shall establish, within the goal under this section, additional requirements for the purchase by each enterprise of mortgages described in paragraph (1) for multifamily housing projects of a smaller or limited size, which may be based on the number of dwelling units in the project or the amount of the mortgage, or both, and shall include multifamily housing projects of such smaller sizes as are typical among such projects that serve rural areas.

''(3) FACTORS.—In establishing the goal under this section relating to mortgages on multifamily housing for an enterprise for a year, the Director shall consider—

''(A) national multifamily mortgage credit needs;

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

''(C) the size of the multifamily mortgage market;

''(D) the ability of the enterprise to lead the industry in making mortgage credit available, especially for underserved markets, such as for small multifamily projects of 5 to 50 units, multifamily properties in need of rehabilitation, and multifamily properties located in rural areas; and

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

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

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

''(2) are not investment grade and are purchased by the enterprise.

''(c) USE OF TENANT INCOME OR RENT.—The Director shall monitor the performance of each enterprise in meeting the goals established under this section and shall evaluate such performance (for purposes of section 1336) based on—

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

''(2) where the data referred to in paragraph (1) are not available, rent levels affordable to low-income and very low-income families.

A rent level shall be considered to be affordable for purposes of this subsection for an income category referred to in this subsection if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

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

''SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS.

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

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

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

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

''(c) DETERMINATION.—The Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend such period for a single additional 15-day period, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to the United States District Court for the District of Columbia or the United States district court in the jurisdiction in which the headquarters of an enterprise is located.''.

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

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

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

(c) DEFINITIONS.—Section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502), as amended by the preceding provisions of this Division, is further amended—

(1) in paragraph (22) (relating to the definition of ''very low-income''), by striking ''60 percent'' each place such term appears and inserting ''50 percent'';

(2) by redesignating paragraphs (19) through (22) as paragraphs (23) through (26), respectively;

(3) by inserting after paragraph (18) the following new paragraph:

''(22) RURAL AREA.—The term 'rural area' has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490), except that such term includes micropolitan areas and tribal trust lands.''.

(4) by redesignating paragraphs (13) through (18) as paragraphs (16) through (21), respectively;

(5) by inserting after paragraph (12) the following new paragraph:

''(15) LOW-INCOME AREA.—The term 'low income area' means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 1332(a)(2), shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts.'';

(6) by redesignating paragraphs (11) and (12) as paragraphs (13) and (14), respectively;

(7) by inserting after paragraph (10) the following new paragraph:

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

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

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

(8) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11), respectively; and

(9) by inserting after paragraph (6) the following new paragraph:

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

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

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

SEC. 138. DUTY TO SERVE UNDERSERVED MARKETS.

(a) ESTABLISHMENT AND EVALUATION OF PERFORMANCE.—Section 1335 of the Housing and Community Development Act of 1992 (12 U.S.C. 4565) is amended—

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

(2) by striking subsection (b);

(3) in subsection (a)—

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

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

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

(D) by striking paragraph (5); and

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

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

''(a) DUTY TO SERVE UNDERSERVED MARKETS.—

''(1) DUTY.—In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.

''(2) UNDERSERVED MARKETS.—To meet its duty under paragraph (1), each enterprise shall comply with the following requirements with respect to the following underserved markets:

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

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

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

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

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

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

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

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

''(vii) the rural rental housing program under section 515 of the Housing Act of 1949.

''(C) RURAL AND OTHER UNDERSERVED MARKETS.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Secretary identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area.''; and

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

''(c) EVALUATION AND REPORTING OF COMPLIANCE.—

''(1) IN GENERAL.—Not later than 6 months after the effective date under section 185 of the Federal Housing Finance Reform Act of 2007, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).

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

''(A) the development of loan products and more flexible underwriting guidelines;

''(B) the extent of outreach to qualified loan sellers in each of such underserved markets; and

''(C) the volume of loans purchased in each of such underserved markets.

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

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

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

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

''(4) ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—The duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall not be enforceable under any other provision of this title (including subpart C of this part) other than this section or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.''.

SEC. 139. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

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

(1) in paragraph (2), by inserting '', except as provided in paragraph (4),'' after ''which''; and

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

''(5) ADDITIONAL CREDIT.—The Director shall assign more than 125 percent credit toward achievement, under this section, of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support—

''(A) housing that meets energy efficiency or other environmental standards that are established by a Federal, State, or local governmental authority with respect to the geographic area where the housing is located or are otherwise widely recognized; or

''(B) housing that includes a licensed childcare center.

The availability of additional credit under this paragraph shall not be used to increase any housing goal, subgoal, or target established under this subpart.''.

(b) MONITORING AND ENFORCEMENT.—Section 1336 of the Housing and Community Development Act of 1992 (12 U.S.C. 4566) is amended—

(1) in subsection (b)—

(A) in the subsection heading, by inserting ''PRELIMINARY'' before ''DETERMINATION'';

(B) by striking paragraph (1) and inserting the following new paragraph:

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

(C) in paragraph (2)—

(i) in subparagraph (A), by inserting ''finally'' before ''determining'';

(ii) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

''(B) EXTENSION OR SHORTENING OF PERIOD.—The Director may—

''(i) extend the period under subparagraph (A) for good cause for not more than 30 additional days; and

''(ii) shorten the period under subparagraph (A) for good cause.''; and

(iii) by redesignating subparagraph (D) as subparagraph (C); and

(D) in paragraph (3)—

(i) in subparagraph (A), by striking ''determine'' and inserting ''issue a final determination of'';

(ii) in subparagraph (B), by inserting ''final'' before ''determinations''; and

(iii) in subparagraph (C)—

(I) by striking ''Committee on Banking, Finance and Urban Affairs'' and inserting ''Committee on Financial Services''; and

(II) by inserting ''final'' before ''determination'' each place such term appears; and

(2) in subsection (c)—

(A) by striking the subsection designation and heading and all that follows through the end of paragraph (1) and inserting the following:

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

''(1) REQUIREMENT.—If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan or the Director finds that the enterprise has failed to meet any housing goal under this subpart, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, or order other remedies as set forth in paragraph (7) of this subsection.'';

(B) in paragraph (2)—

(i) by striking ''CONTENTS.—Each housing plan'' and inserting ''HOUSING PLAN.—If the Director requires a housing plan under this section, such a plan''; and

(ii) in subparagraph (B), by inserting ''and changes in its operations'' after ''improvements'';

(C) in paragraph (3)—

(i) by inserting ''comply with any remedial action or'' before ''submit a housing plan''; and

(ii) by striking ''under subsection (b)(3) that a housing plan is required'';

(D) in paragraph (4), by striking the first two sentences and inserting the following: ''The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines such extension necessary.''; and

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

''(7) ADDITIONAL REMEDIES FOR FAILURE TO MEET GOALS.—In addition to ordering a housing plan under this section, issuing cease and desist orders under section 1341, and ordering civil money penalties under section 1345, the Director may seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this Act to prohibit the enterprise from initially offering any product (as such term is defined in section 1321(f)) or engaging in any new activities, services, undertakings, and offerings and to order the enterprise to suspend products and activities, services, undertakings, and offerings pending its achievement of the goal.''.

SEC. 140. AFFORDABLE HOUSING FUND.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 is amended by striking sections 1337 and 1338 (12 U.S.C. 4562 note) and inserting the following new section:

''SEC. 1337. AFFORDABLE HOUSING FUND.

''(a) ESTABLISHMENT AND PURPOSE.—The Director, in consultation with the Secretary of Housing and Urban Development, shall establish and manage an affordable housing fund in accordance with this section, which shall be funded with amounts allocated by the enterprises under subsection (b). The purpose of the affordable housing fund shall be to provide formula grants to grantees for use—

''(1) to increase homeownership for extremely low-and very low-income families;

''(2) to increase investment in housing in low-income areas, and areas designated as qualified census tracts or an area of chronic economic distress pursuant to section 143(j) of the Internal Revenue Code of 1986 (26 U.S.C. 143(j));

''(3) to increase and preserve the supply of rental and owner-occupied housing for extremely low- and very low-income families;

''(4) to increase investment in public infrastructure development in connection with housing assisted under this section; and

''(5) to leverage investments from other sources in affordable housing and in public infrastructure development in connection with housing assisted under this section.

''(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

''(1) IN GENERAL.—In accordance with regulations issued by the Director under subsection (m) and subject to paragraph (2) of this subsection and subsection (i)(5), each enterprise shall allocate to the affordable housing fund established under subsection (a), in each of the years 2007 through 2011, an amount equal to 1.2 basis points for each dollar of the average total mortgage portfolio of the enterprise during the preceding year.

''(2) SUSPENSION OF CONTRIBUTIONS.—The Director shall temporarily suspend the allocation under paragraph (1) by an enterprise to the affordable housing fund upon a finding by the Director that such allocations—

''(A) are contributing, or would contribute, to the financial instability of the enterprise;

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

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

''(3) 5-YEAR SUNSET AND REPORT.—

''(A) SUNSET.—The enterprises shall not be required to make allocations to the affordable housing fund in 2012 or in any year thereafter.

''(B) REPORT ON PROGRAM CONTINUANCE.—Not later than June 30, 2011, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report making recommendations on whether the program under this section, including the requirement for the enterprises to make allocations to the affordable housing fund, should be extended and on any modifications for the program.

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

''(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

''(1) ALLOCATION FOR 2007.—

''(A) ALLOCATION PERCENTAGES FOR LOUISIANA AND MISSISSIPPI.—For purposes of subsection (d)(1)(A), the allocation percentages for 2007 for the grantees under this section for such year shall be as follows:

''(i) The allocation percentage for the Louisiana Housing Finance Agency shall be 75 percent.

''(ii) The allocation percentage for the Mississippi Development Authority shall be 25 percent.

''(B) USE IN DISASTER AREAS.—Affordable housing grant amounts for 2007 shall be used only as provided in subsection (g) only for such eligible activities in areas that were subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in connection with Hurricane Katrina or Rita of 2005.

''(2) ALLOCATION FORMULA FOR OTHER YEARS.—The Secretary of Housing and Urban Development shall, by regulation, establish a formula to allocate, among the States (as such term is defined in section 1303) and federally recognized Indian tribes, the amounts provided by the enterprises in each year referred to subsection (b)(1), other than 2007, to the affordable housing fund established under this section. The formula shall be based on the following factors, with respect to each State and tribe:

''(A) The ratio of the population of the State or federally recognized Indian tribe to the aggregate population of all the States and tribes.

''(B) The percentage of families in the State or federally recognized Indian tribe that pay more than 50 percent of their annual income for housing costs.

''(C) The percentage of persons in the State or federally recognized Indian tribe that are members of extremely low- or very low-income families.

''(D) The cost of developing or carrying out rehabilitation of housing in the State or for the federally recognized Indian tribe.

''(E) The percentage of families in the State or federally recognized Indian tribe that live in substandard housing.

''(F) The percentage of housing stock in the State or for the federally recognized Indian tribe that is extremely old housing.

''(G) Any other factors that the Secretary determines to be appropriate.

''(3) FAILURE TO ESTABLISH.—If, in any year referred to in subsection (b)(1), other than 2007, the regulations establishing the formula required under paragraph (2) of this subsection have not been issued by the date that the Director determines the amounts described in subsection (d)(1) to be available for affordable housing fund grants in such year, for purposes of such year any amounts for a State (as such term is defined in section 1303 of this Act) that would otherwise be determined under subsection (d) by applying the formula established pursuant to paragraph (2) of this subsection shall be determined instead by applying, for such State, the percentage that is equal to the percentage of the total amounts made available for such year for allocation under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.) that are allocated in such year, pursuant to such subtitle, to such State (including any insular area or unit of general local government, as such terms are defined in section 104 of such Act (42 U.S.C. 12704), that is treated as a State under section 1303 of this Act) and to participating jurisdictions and other eligible entities within such State.

''(d) ALLOCATION OF FORMULA AMOUNT; GRANTS.—

''(1) FORMULA AMOUNT.—For each year referred to in subsection (b)(1), the Director shall determine the formula amount under this section for each grantee, which shall be the amount determined for such grantee—

''(A) for 2007, by applying the allocation percentages under subparagraph (A) of subsection (c)(1) to the sum of the total amounts allocated by the enterprises to the affordable housing fund for such year, less

any amounts used pursuant to subsection (i)(1); and

''(B) for any other year referred to in subsection (b)(1) (other than 2007), by applying the formula established pursuant to paragraph (2) of subsection (c) to the sum of the total amounts allocated by the enterprises to the affordable housing fund for such year and any recaptured amounts available pursuant to subsection (i)(4), less any amounts used pursuant to subsection (i)(1).

''(2) NOTICE.—In each year referred to in subsection (b)(1), not later than 60 days after the date that the Director determines the amounts described in paragraph (1) to be available for affordable housing fund grants to grantees in such year, the Director shall cause to be published in the Federal Register a notice that such amounts shall be so available.

''(3) GRANT AMOUNT.—

''(A) IN GENERAL.—For each year referred to in subsection (b)(1), the Director shall make a grant from amounts in the affordable housing fund to each grantee in an amount that is, except as provided in subparagraph (B), equal to the formula amount under this section for the grantee. A grantee may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)) or other qualified instrumentality of the grantee to receive such grant amounts.

''(B) REDUCTION FOR FAILURE TO OBTAIN RETURN OF MISUSED FUNDS.—If in any year a grantee fails to obtain reimbursement or return of the full amount required under subsection (j)(1)(B) to be reimbursed or returned to the grantee during such year—

''(i) except as provided in clause (ii)—

''(I) the amount of the grant for the grantee for the succeeding year, as determined pursuant to subparagraph (A), shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

''(II) the amount of the grant for the succeeding year for each other grantee whose grant is not reduced pursuant to subclause (I) shall be increased by the amount determined by applying the formula established pursuant to subsection (c)(2) to the total amount of all reductions for all grantees for such year pursuant to subclause (I); or

''(ii) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this subsection will not be made, the grantee shall pay to the Director for reallocation among the other grantees an amount equal to the amount of the reduction for the grantee that would otherwise apply under clause (i)(I).

''(e) GRANTEE ALLOCATION PLANS.—

''(1) IN GENERAL.—For each year that a grantee receives affordable housing fund grant amounts, the grantee shall establish an allocation plan in accordance with this subsection, which shall be a plan for the distribution of such grant amounts of the grantee for such year that—

''(A) is based on priority housing needs, as determined by the grantee in accordance with the regulations established under subsection (m)(2)(C);

''(B) complies with subsection (f); and

''(C) includes performance goals, benchmarks, and timetables for the grantee for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts that comply with the requirements established by the Director pursuant to subsection (m)(2)(F).

''(2) ESTABLISHMENT.—In establishing an allocation plan, a grantee shall notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.

''(3) CONTENTS.—An allocation plan of a grantee shall set forth the requirements for eligible recipients under subsection (h) to apply to the grantee to receive assistance from affordable housing fund grant amounts, including a requirement that each such application include—

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

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

''(f) SELECTION OF ACTIVITIES FUNDED USING AFFORDABLE HOUSING FUND GRANT AMOUNTS.—Affordable housing fund grant amounts of a grantee may be used, or committed for use, only for activities that—

''(1) are eligible under subsection (g) for such use;

''(2) comply with the applicable allocation plan under subsection (e) of the grantee; and

''(3) are selected for funding by the grantee in accordance with the process and criteria for such selection established pursuant to subsection (m)(2)(C).

''(g) ELIGIBLE ACTIVITIES.—Affordable housing fund grant amounts of a grantee shall be eligible for use, or for commitment for use, only for assistance for—

''(1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B), except that such grant amounts may be used for the benefit only of extremely low- and very low-income families;

''(2) the production, preservation, and rehabilitation of housing for homeownership, including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs, that—

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

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

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

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

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

''(D) is made available for purchase only by, or in the case of assistance under this paragraph, is made available only to, homebuyers who have, before purchase—

''(i) completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Director; except that the Director may, at the request of a State, waive the requirements of this subparagraph with respect to a geographic area or areas within the State if: (I) the travel time or distance involved in providing counseling with respect to such area or areas, as otherwise required under this subparagraph, on an in-person basis is excessive or the cost of such travel is prohibitive; and (II) the State provides alternative forms of counseling for such area or areas, which may include interactive telephone counseling, online counseling, interactive video counseling, and interactive home study counseling and a program of financial literacy and education to promote an understanding of consumer, economic, and personal finance issues and concepts, including saving for retirement, managing credit, long-term care, and estate planning and education on predatory lending, identity theft, and financial abuse schemes relating to homeownership that is approved by the Director, except that entities providing such counseling shall not discriminate against any particular form of housing; and

''(ii) demonstrated, in accordance with regulations as the Director shall issue setting forth requirements for sufficient evidence, that they are lawfully present in the United States; and

''(3) public infrastructure development activities in connection with housing activities funded under paragraph (1) or (2).

''(h) ELIGIBLE RECIPIENTS.—Affordable housing fund grant amounts of a grantee may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, and a faith-based organization) that—

''(1) has demonstrated experience and capacity to conduct an eligible activity under (g), as evidenced by its ability to—

''(A) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

''(B) design, construct or rehabilitate, and market affordable housing for homeownership;

''(C) provide forms of assistance, such as downpayments, closing costs, or interest-rate buy-downs, for purchasers; or

''(D) construct related public infrastructure development activities in connection with such housing activities;

''(2) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

''(3) demonstrates its familiarly with the requirements of any other Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

''(4) makes such assurances to the grantee as the Director shall, by regulation, require to ensure that the recipient will comply with the requirements of this section during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under subsection (g) that are engaged in by the recipient and funded with such grant amounts.

''(i) LIMITATIONS ON USE.—

''(1) REQUIRED AMOUNT FOR REFCORP.—Of the aggregate amount allocated pursuant to subsection (b) in each year to the affordable housing fund, 25 percent shall be used as provided in section 21B(f)(2)(E) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(E)).

''(2) REQUIRED AMOUNT FOR HOMEOWNERSHIP ACTIVITIES.—Of the aggregate amount of affordable housing fund grant amounts provided in each year to a grantee, not less than 10 percent shall be used for activities under paragraph (2) of subsection (g).

''(3) MAXIMUM AMOUNT FOR PUBLIC INFRASTRUCTURE DEVELOPMENT ACTIVITIES IN CONNECTION WITH AFFORDABLE HOUSING ACTIVITIES.—Of the aggregate amount of affordable

housing fund grant amounts provided in each year to a grantee, not more than 12.5 percent may be used for activities under paragraph (3) of subsection (g).

''(4) DEADLINE FOR COMMITMENT OR USE.—Any affordable housing fund grant amounts of a grantee shall be used or committed for use within two years of the date of that such grant amounts are made available to the grantee. The Director shall recapture into the affordable housing fund any such amounts not so used or committed for use and allocate such amounts under subsection (d)(1) in the first year after such recapture.

''(5) USE OF RETURNS.—The Director shall, by regulation provide that any return on a loan or other investment of any affordable housing fund grant amounts of a grantee shall be treated, for purposes of availability to and use by the grantee, as affordable housing fund grant amounts.

''(6) PROHIBITED USES.—The Director shall—

''(A) by regulation, set forth prohibited uses of affordable housing fund grant amounts, which shall include use for—

''(i) political activities;

''(ii) advocacy;

''(iii) lobbying, whether directly or through other parties;

''(iv) counseling services;

''(v) travel expenses; and

''(vi) preparing or providing advice on tax returns;

''(B) by regulation, provide that, except as provided in subparagraph (C), affordable housing fund grant amounts of a grantee may not be used for administrative, outreach, or other costs of—

''(i) the grantee; or

''(ii) any recipient of such grant amounts; and

''(C) by regulation, limit the amount of any affordable housing fund grant amounts of the grantee for a year that may be used for administrative costs of the grantee of carrying out the program required under this section to a percentage of such grant amounts of the grantee for such year, which may not exceed 10 percent.

''(7) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 1335, the Director may not consider any affordable housing fund grant amounts used under this section for eligible activities under subsection (g). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from affordable housing fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

''(8) ACCEPTABLE IDENTIFICATION REQUIREMENT FOR OCCUPANCY OR ASSISTANCE.—

''(A) IN GENERAL.—Any assistance provided with any affordable housing grant amounts may not be made available to, or on behalf of, any individual or household unless the individual provides, or, in the case of a household, all adult members of the household provide, personal identification in one of the following forms:

''(i) SOCIAL SECURITY CARD WITH PHOTO IDENTIFICATION CARD OR REAL ID ACT IDENTIFICATION.—

''(I) A social security card accompanied by a photo identification card issued by the Federal Government or a State Government; or

''(II) A driver's license or identification card issued by a State in the case of a State that is in compliance with title II of the REAL ID Act of 2005 (title II of division B of Public Law 109-13; 49 U.S.C. 30301 note).

''(ii) PASSPORT.—A passport issued by the United States or a foreign government.

''(iii) USCIS PHOTO IDENTIFICATION CARD.—A photo identification card issued by the Secretary of Homeland Security (acting through the Director of the United States Citizenship and Immigration Services).

''(B) REGULATIONS.—The Director shall, by regulation, require that each grantee and recipient take such actions as the Director considers necessary to ensure compliance with the requirements of subparagraph (A).

''(j) ACCOUNTABILITY OF RECIPIENTS AND GRANTEES.—

''(1) RECIPIENTS.—

''(A) TRACKING OF FUNDS.—The Director shall—

''(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from affordable housing fund grant amounts of the grantee uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

''(ii) establish minimum requirements for agreements, between the grantee and recipients, regarding assistance from the affordable housing fund grant amounts of the grantee, which shall include—

''(I) appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

''(II) any other requirements that the Director determines are necessary to ensure appropriate grant administration and compliance.

''(B) MISUSE OF FUNDS.—

''(i) REIMBURSEMENT REQUIREMENT.—If any recipient of assistance from affordable housing fund grant amounts of a grantee is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for such misused amounts and return to the grantee any amounts from the affordable housing fund grant amounts of the grantee that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

''(ii) DETERMINATION.—A determination is made in accordance with this clause if the determination is—

''(I) made by the Director; or

''(II)(aa) made by the grantee;

''(bb) the grantee provides notification of the determination to the Director for review, in the discretion of the Director, of the determination; and

''(cc) the Director does not subsequently reverse the determination.

''(2) GRANTEES.—

''(A) REPORT.—

''(i) IN GENERAL.—The Director shall require each grantee receiving affordable housing fund grant amounts for a year to submit a report, for such year, to the Director that—

''(I) describes the activities funded under this section during such year with the affordable housing fund grant amounts of the grantee; and

''(II) the manner in which the grantee complied during such year with the allocation plan established pursuant to subsection (e) for the grantee.

''(ii) PUBLIC AVAILABILITY.—The Director shall make such reports pursuant to this subparagraph publicly available.

''(B) MISUSE OF FUNDS.—If the Director determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Director is satisfied that there is no longer any such failure to comply, the Director shall—

''(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount affordable housing fund grant amounts which were not used in accordance with this section;

''(ii) require the grantee to repay the Director an amount equal to the amount of the amount affordable housing fund grant amounts which were not used in accordance with this section;

''(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or

''(iv) terminate any assistance under this section to the grantee.

''(k) CAPITAL REQUIREMENTS.—The utilization or commitment of amounts from the affordable housing fund shall not be subject to the risk-based capital requirements established pursuant to section 1361(a).

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

''(1) AFFORDABLE HOUSING FUND GRANT AMOUNTS.—The term 'affordable housing fund grant amounts' means amounts from the affordable housing fund established under subsection (a) that are provided to a grantee pursuant to subsection (d)(3).

''(2) GRANTEE.—The term 'grantee' means—

''(A) with respect to 2007, the Louisiana Housing Finance Agency and the Mississippi Development Authority; and

''(B) with respect to the years referred to in subsection (b)(1), other than 2007, each State (as such term is defined in section 1303) and each federally recognized Indian tribe.

''(3) RECIPIENT.—The term 'recipient' means an entity meeting the requirements under subsection (h) that receives assistance from a grantee from affordable housing fund grant amounts of the grantee.

''(4) TOTAL MORTGAGE PORTFOLIO.—The term 'total mortgage portfolio' means, with respect to a year, the sum, for all mortgages outstanding during that year in any form, including whole loans, mortgage-backed securities, participation certificates, or other structured securities backed by mortgages, of the dollar amount of the unpaid outstanding principal balances under such mortgages. Such term includes all such mortgages or securitized obligations, whether retained in portfolio, or sold in any form. The Director is authorized to promulgate rules further defining such term as necessary to implement this section and to address market developments.

''(5) VERY-LOW INCOME FAMILY.—The term 'very low-income family' has the meaning given such term in section 1303, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section) applicable to a family of the size involved.

''(m) REGULATIONS.—

''(1) IN GENERAL.—The Director, in consultation with the Secretary of Housing and Urban Development, shall issue regulations to carry out this section.

''(2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—

''(A) a requirement that the Director ensure that the program of each grantee for use of affordable housing fund grant amounts of the grantee is audited not less than annually to ensure compliance with this section;

''(B) authority for the Director to audit, provide for an audit, or otherwise verify a grantee's activities, to ensure compliance with this section;

''(C) requirements for a process for application to, and selection by, each grantee for activities meeting the grantee's priority housing needs to be funded with affordable housing fund grant amounts of the grantee, which shall provide for priority in funding to be based upon—

''(i) greatest impact;

''(ii) geographic diversity;

''(iii) ability to obligate amounts and undertake activities so funded in a timely manner;

''(iv) in the case of rental housing projects under subsection (g)(1), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

''(v) in the case of rental housing projects under subsection (g)(1), the extent of the duration for which such rents will remain affordable;

''(vi) the extent to which the application makes use of other funding sources; and

''(vii) the merits of an applicant's proposed eligible activity;

''(D) requirements to ensure that amounts provided to a grantee from the affordable housing fund that are used for rental housing under subsection (g)(1) are used only for the benefit of extremely low- and very-low income families;

''(E) limitations on public infrastructure development activities that are eligible pursuant to subsection (g)(3) for funding with affordable housing fund grant amounts and requirements for the connection between such activities and housing activities funded under paragraph (1) or (2) of subsection (g); and

''(F) requirements and standards for establishment, by grantees (including the grantees for 2007 pursuant to subsection (l)(2)(A)), of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with affordable housing fund grant amounts.

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

''(o) AFFORDABLE HOUSING TRUST FUND.—If, after the enactment of this Act, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (b)(1), the Director shall in such subsequent year and any remaining years referred to in subsection (b)(1) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (b) in such year to the affordable housing fund under this section, less any amounts used pursuant to subsection (i)(1). For such subsequent and remaining years, the provisions of subsections (c) and (d) shall not apply. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (i)(6). Nothing in this subsection shall be construed to alter the terms and conditions of the affordable housing fund under this section or to extend the life of such fund.

''(p) FUNDING ACCOUNTABILITY AND TRANSPARENCY.—Any grant under this section to a grantee from the affordable housing fund established under subsection (a), any assistance provided to a recipient by a grantee from affordable housing fund grant amounts, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (o) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Director of the Federal Housing Finance Agency shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable pursuant to the preceding sentence.''.

(b) TIMELY ESTABLISHMENT OF AFFORDABLE HOUSING NEEDS FORMULA.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development shall, not later than the effective date under section 185 of this Division, issue the regulations establishing the affordable housing needs formulas in accordance with the provisions of section 1337(c)(2) of the Housing and Community Development Act of 1992, as such section is amended by subsection (a) of this section.

(2) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act.

(c) REFCORP PAYMENTS.—Section 21B(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)) is amended—

(1) in subparagraph (E), by striking ''and (D)'' and inserting ''(D), and (E)'';

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following new subparagraph:

''(E) PAYMENTS BY FANNIE MAE AND FREDDIE MAC.—To the extent that the amounts available pursuant to subparagraphs (A), (B), (C), and (D) are insufficient to cover the amount of interest payments, each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (42 U.S.C. 4502)) shall transfer to the Funding Corporation in each calendar year the amounts allocated for use under this subparagraph pursuant to section 1337(i)(1) of such Act.''.

(d) GAO REPORT.—The Comptroller General shall conduct a study to determine the effects that the affordable housing fund established under section 1337 of the Housing and Community Development Act of 1992, as added by the amendment made by subsection (a) of this section, will have on the availability and affordability of credit for homebuyers, including the effects on such credit of the requirement under such section 1337(b) that the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation make allocations of amounts to such fund based on the average total mortgage portfolios, and the extent to which the costs of such allocation requirement will be borne by such entities or will be passed on to homebuyers. Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress setting forth the results and conclusions of such study. This subsection shall take effect on the date of the enactment of this Act.

SEC. 141. CONSISTENCY WITH MISSION.

Subpart B of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4561 et seq.) is amended by adding after section 1337, as added by section 139 of this Division, the following new section:

''SEC. 1338. CONSISTENCY WITH MISSION.

''This subpart may not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.''.

SEC. 142. ENFORCEMENT.

(a) CEASE-AND-DESIST PROCEEDINGS.—Section 1341 of the Housing and Community Development Act of 1992 (12 U.S.C. 4581) is amended—

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

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

''(1) the enterprise has failed to meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336;

''(2) the enterprise has failed to submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

''(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, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

''(4) the enterprise has violated any provision of this part or any order, rule or regulation under this part;

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

''(6) the enterprise has failed to comply with a housing plan under section 1336(c).'';

(2) in subsection (b)(2), by striking ''requiring the enterprise to'' and all that follows through the end of the paragraph and inserting the following: ''requiring the enterprise to—

''(A) comply with the goal or goals;

''(B) submit a report under section 1314;

''(C) comply with any provision this part or any order, rule or regulation under such part;

''(D) submit a housing plan in compliance with section 1336(c);

''(E) comply with a housing plan submitted under section 1336(c); or

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

(3) in subsection (c), by inserting ''date of the'' before ''service of the order''; and

(4) by striking subsection (d).

(b) AUTHORITY OF DIRECTOR TO ENFORCE NOTICES AND ORDERS.—Section 1344 of the Housing and Community Development Act of 1992 (12 U.S.C. 4584) is amended by striking subsection (a) and inserting the following new subsection:

''(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under section 1341 or 1345, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.''.

(c) CIVIL MONEY PENALTIES.—Section 1345 of the Housing and Community Development Act of 1992 (12 U.S.C. 4585) is amended—

(1) by striking subsections (a) and (b) and inserting the following new subsections:

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

''(1) meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336(b);

''(2) submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

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

''(4) comply with any provision of this part or any order, rule or regulation under this part;

''(5) submit a housing plan pursuant to section 1336(c) within the required period; or

''(6) comply with a housing plan for the enterprise under section 1336(c).

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

''(1) for any failure described in paragraph (1), (5), or (6) of subsection (a), $50,000 for each day that the failure occurs; and

''(2) for any failure described in paragraph (2), (3), or (4) of subsection (a), $20,000 for each day that the failure occurs.'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting ''and'' after the semicolon at the end;

(ii) in subparagraph (B), by striking ''; and'' and inserting a period; and

(iii) by striking subparagraph (C); and

(B) in paragraph (2), by inserting after the period at the end the following: ''In determining the penalty under subsection (a)(1), the Director shall give consideration to the length of time the enterprise should reasonably take to achieve the goal.'';

(3) in the first sentence of subsection (d)—

(A) by striking ''request the Attorney General of the United States to'' and inserting '', in the discretion of the Director,''; and

(B) by inserting '', or request that the Attorney General of the United States bring such an action'' before the period at the end;

(4) by striking subsection (f); and

(5) by redesignating subsection (g) as subsection (f).

(d) ENFORCEMENT OF SUBPOENAS.—Section 1348(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4588(c)) is amended—

(1) by striking ''request the Attorney General of the United States to'' and inserting '', in the discretion of the Director,''; and

(2) by inserting ''or request that the Attorney General of the United States bring such an action,'' after ''District of Columbia,''.

(e) CONFORMING AMENDMENT.—The heading for subpart C of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 is amended to read as follows:

''Subpart C—Enforcement''.

SEC. 143. CONFORMING AMENDMENTS.

Part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4541 et seq.) is amended—

(1) by striking ''Secretary'' each place such term appears in such part and inserting ''Director'';

(2) in the section heading for section 1323 (12 U.S.C. 4543), by inserting ''**OF ENTERPRISES**'' before the period at the end;

(3) by striking section 1327 (12 U.S.C. 4547);

(4) by striking section 1328 (12 U.S.C. 4548);

(5) by redesignating section 1329 (as amended by section 135) as section 1327;

(6) in sections 1345(c)(1)(A), 1346(a), and 1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and 4586(b)), by striking ''Secretary's'' each place such term appears and inserting ''Director's''; and

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

Subtitle C—Prompt Corrective Action

SEC. 151. CAPITAL CLASSIFICATIONS.

(a) IN GENERAL.—Section 1364 of the Housing and Community Development Act of 1992 (12 U.S.C. 4614) is amended—

(1) in the heading for subsection (a), by striking ''IN GENERAL'' and inserting ''ENTERPRISES''.

(2) in subsection (c)—

(A) by striking ''subsection (b)'' and inserting ''subsection (c)'';

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

(C) by striking the last sentence;

(3) by redesignating subsections (c) (as so amended by paragraph (2) of this subsection) and (d) as subsections (d) and (f), respectively;

(4) by striking subsection (b) and inserting the following new subsections:

''(b) FEDERAL HOME LOAN BANKS.—

''(1) ESTABLISHMENT AND CRITERIA.—For purposes of this subtitle, the Director shall, by regulation—

''(A) establish the capital classifications specified under paragraph (2) for the Federal home loan banks;

''(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

''(C) shall classify the Federal home loan banks according to such capital classifications.

''(2) CLASSIFICATIONS.—The capital classifications specified under this paragraph are—

''(A) adequately capitalized;

''(B) undercapitalized;

''(C) significantly undercapitalized; and

''(D) critically undercapitalized.

''(c) DISCRETIONARY CLASSIFICATION.—

''(1) GROUNDS FOR RECLASSIFICATION.—The Director may reclassify a regulated entity under paragraph (2) if—

''(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;

''(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

''(C) pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

''(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify a regulated entity—

''(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

''(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

''(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.''; and

(5) by inserting after subsection (d) (as so redesignated by paragraph (3) of this subsection), the following new subsection:

''(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

''(1) IN GENERAL.—A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

''(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

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

''(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.''.

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Housing and Community Development Act of 1992 (as added by paragraph (4) of this subsection), relating to capital classifications for the Federal home loan banks.

SEC. 152. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED REGULATED ENTITIES.

Section 1365 of the Housing and Community Development Act of 1992 (12 U.S.C. 4615) is amended—

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

(2) in subsection (a)—

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

(B) by inserting before paragraph (2), as so redesignated by subparagraph (A) of this paragraph, the following paragraph:

''(1) REQUIRED MONITORING.—The Director shall—

''(A) closely monitor the condition of any regulated entity that is classified as undercapitalized;

''(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and

''(C) periodically review the plan, restrictions, and requirements applicable to the undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.''; and

(C) by inserting at the end the following new paragraphs:

''(4) RESTRICTION OF ASSET GROWTH.—A regulated entity that is classified as undercapitalized shall not permit its average total assets (as such term is defined in section 1316(b) during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

''(A) the Director has accepted the capital restoration plan of the regulated entity;

''(B) any increase in total assets is consistent with the plan; and

''(C) the ratio of total capital to assets for the regulated entity increases during the calendar quarter at a rate sufficient to enable the entity to become adequately capitalized within a reasonable time.

''(5) PRIOR APPROVAL OF ACQUISITIONS, NEW PRODUCTS, AND NEW ACTIVITIES.—A regulated entity that is classified as undercapitalized

shall not, directly or indirectly, acquire any interest in any entity or initially offer any new product (as such term is defined in section 1321(f)) or engage in any new activity, service, undertaking, or offering unless—

''(A) the Director has accepted the capital restoration plan of the regulated entity, the entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

''(B) the Director determines that the proposed action will further the purpose of this section.'';

(3) in the subsection heading for subsection (b), by striking ''FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED''; and

(4) by striking subsection (c) and inserting the following new subsection:

''(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to a regulated entity that is classified as undercapitalized, any of the actions authorized to be taken under section 1366 with respect to a regulated entity that is classified as significantly undercapitalized, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.''.

SEC. 153. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED REGULATED ENTITIES.

Section 1366 of the Housing and Community Development Act of 1992 (12 U.S.C. 4616) is amended—

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

(2) in subsection (a)(2)(A), by striking ''enterprise'' the last place such term appears;

(3) in subsection (b)—

(A) in the subsection heading, by striking ''DISCRETIONARY SUPERVISORY ACTIONS'' and inserting ''SPECIFIC ACTIONS''.

(B) in the matter preceding paragraph (1), by striking ''may, at any time, take any'' and inserting ''shall carry out this section by taking, at any time, one or more'';

(C) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively;

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

''(5) IMPROVEMENT OF MANAGEMENT.—Take one or more of the following actions:

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

''(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the Director's enforcement powers provided in section 1377.

''(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).''; and

(E) by inserting at the end the following new paragraph:

''(8) OTHER ACTION.—Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph.'';

(4) by redesignating subsection (c) as subsection (d); and

(5) by inserting after subsection (b) the following new subsection:

''(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—A regulated entity that is classified as significantly undercapitalized may not, without prior written approval by the Director—

''(1) pay any bonus to any executive officer; or

''(2) provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became undercapitalized.''.

SEC. 154. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

(a) IN GENERAL.—Section 1367 of the Housing and Community Development Act of 1992 (12 U.S.C. 4617) is amended to read as follows:

''SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

''(a) APPOINTMENT OF AGENCY AS CONSERVATOR OR RECEIVER.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if any of the grounds under paragraph (3) exist, at the discretion of the Director, the Director may establish a conservatorship or receivership, as appropriate, for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

''(2) APPOINTMENT.—In any conservatorship or receivership established under this section, the Director shall appoint the Agency as conservator or receiver.

''(3) GROUNDS FOR APPOINTMENT.—The grounds for appointing a conservator or receiver for a regulated entity are as follows:

''(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

''(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

''(i) any violation of any provision of Federal or State law; or

''(ii) any unsafe or unsound practice.

''(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

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

''(E) CONCEALMENT.—Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

''(F) INABILITY TO MEET OBLIGATIONS.—The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

''(G) LOSSES.—The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).

''(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

''(i) cause insolvency or substantial dissipation of assets or earnings; or

''(ii) weaken the condition of the regulated entity.

''(I) CONSENT.—The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

''(J) UNDERCAPITALIZATION.—The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3) or in regulations issued pursuant to section 1364(b), as applicable), and—

''(i) has no reasonable prospect of becoming adequately capitalized;

''(ii) fails to become adequately capitalized, as required by—

''(I) section 1365(a)(1) with respect to an undercapitalized regulated entity; or

''(II) section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;

''(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

''(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

''(K) CRITICAL UNDERCAPITALIZATION.—The regulated entity is critically undercapitalized, as defined in section 1364(a)(4) or in regulations issued pursuant to section 1364(b), as applicable.

''(L) MONEY LAUNDERING.—The Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

''(4) MANDATORY RECEIVERSHIP.—

''(A) IN GENERAL.—The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

''(i) the assets of the regulated entity are, and during the preceding 30 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or

''(ii) the regulated entity is not, and during the preceding 30 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

''(B) PERIODIC DETERMINATION REQUIRED FOR CRITICALLY UNDER CAPITALIZED REGULATED ENTITY.—If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

''(i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and

''(ii) at least once during each succeeding 30-calendar day period.

''(C) DETERMINATION NOT REQUIRED IF RECEIVERSHIP ALREADY IN PLACE.—Subparagraph (B) shall not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

''(D) RECEIVERSHIP TERMINATES CONSERVATORSHIP.—The appointment under this section of the Agency as receiver of a regulated entity shall immediately terminate any conservatorship established under this title for the regulated entity.

''(5) JUDICIAL REVIEW.—

''(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

''(B) REVIEW.—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

''(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

''(7) AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any

State in the exercise of the rights, powers, and privileges of the Agency.

''(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

''(1) RULEMAKING AUTHORITY OF THE AGENCY.—The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

''(2) GENERAL POWERS.—

''(A) SUCCESSOR TO REGULATED ENTITY.—The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

''(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

''(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

''(B) OPERATE THE REGULATED ENTITY.—The Agency may, as conservator or receiver—

''(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

''(ii) collect all obligations and money due the regulated entity;

''(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver; and

''(iv) preserve and conserve the assets and property of such regulated entity.

''(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

''(D) POWERS AS CONSERVATOR.—The Agency may, as conservator, take such action as may be—

''(i) necessary to put the regulated entity in a sound and solvent condition; and

''(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity, including, if two or more Federal home loan banks have been placed in conservatorship contemporaneously, merging two or more such banks into a single Federal home loan bank.

''(E) ADDITIONAL POWERS AS RECEIVER.—The Agency may, as receiver, place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity, having due regard to the conditions of the housing finance market.

''(F) ORGANIZATION OF NEW REGULATED ENTITIES.—The Agency may, as receiver, organize a successor regulated entity that will operate pursuant to subsection (i).

''(G) TRANSFER OF ASSETS AND LIABILITIES.—The Agency may, as conservator or receiver, transfer any asset or liability of the regulated entity in default without any approval, assignment, or consent with respect to such transfer. Any Federal home loan bank may, with the approval of the Agency, acquire the assets of any Bank in conservatorship or receivership, and assume the liabilities of such Bank.

''(H) PAYMENT OF VALID OBLIGATIONS.—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity in accordance with the prescriptions and limitations of this section.

''(I) SUBPOENA AUTHORITY.—

''(i) IN GENERAL.—

''(I) IN GENERAL.—The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

''(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power exercised under this subparagraph in the same manner as such provisions apply under that section.

''(ii) AUTHORITY OF DIRECTOR.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

''(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379D.

''(J) CONTRACTING FOR SERVICES.—The Agency may, as conservator or receiver, provide by contract for the carrying out of any of its functions, activities, actions, or duties as conservator or receiver.

''(K) INCIDENTAL POWERS.—The Agency may, as conservator or receiver—

''(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

''(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

''(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

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

''(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

''(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

''(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

''(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

''(i) at the last address of the creditor appearing in such books; or

''(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity within 30 days after the discovery of such name and address.

''(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

''(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

''(A) DETERMINATION PERIOD.—

''(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

''(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

''(iii) MAILING OF NOTICE SUFFICIENT.—The notification requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

''(I) on the books of the regulated entity;

''(II) in the claim filed by the claimant; or

''(III) in documents submitted in proof of the claim.

''(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

''(I) a statement of each reason for the disallowance; and

''(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

''(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i), or the date specified in the notice required under paragraph (3)(C), which is proved to the satisfaction of the receiver.

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

''(D) AUTHORITY TO DISALLOW CLAIMS.—

''(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

''(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

''(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

''(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

''(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to any extension of credit from any Federal Reserve Bank, Federal home loan bank, or the Treasury of the United States.

''(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the determination of the Agency under subparagraph (D) to disallow a claim. This subparagraph shall not affect the authority of a claimant to obtain de novo judicial review of a claim pursuant to paragraph (6).

''(F) LEGAL EFFECT OF FILING.—

''(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

''(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

''(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

''(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

''(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

''(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

''(B) STATUTE OF LIMITATIONS.—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

''(7) REVIEW OF CLAIMS.—

''(A) OTHER REVIEW PROCEDURES.—

''(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

''(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

''(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Agency may establish both binding and nonbinding processes, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

''(B) CONSIDERATION OF INCENTIVES.—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

''(8) EXPEDITED DETERMINATION OF CLAIMS.—

''(A) ESTABLISHMENT REQUIRED.—The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

''(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

''(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

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

''(i) determine—

''(I) whether to allow or disallow such claim; or

''(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

''(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

''(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

''(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

''(ii) the date the Agency denies the claim.

''(D) STATUTE OF LIMITATIONS.—If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

''(E) LEGAL EFFECT OF FILING.—

''(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

''(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

''(9) PAYMENT OF CLAIMS.—

''(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

''(i) allowed by the receiver;

''(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

''(iii) determined by the final judgment of any court of competent jurisdiction.

''(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing, and executed by an authorized official of the regulated entity, except that such requirements for qualified financial contracts shall be applied in a manner consistent with reasonable business trading practices in the financial contracts market.

''(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency, by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

''(D) RULEMAKING AUTHORITY OF THE DIRECTOR.—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of regulated entities following satisfaction by the receiver of the principal amount of all creditor claims.

''(10) SUSPENSION OF LEGAL ACTIONS.—

''(A) IN GENERAL.—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

''(i) 45 days, in the case of any conservator; and

''(ii) 90 days, in the case of any receiver.

''(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

''(11) ADDITIONAL RIGHTS AND DUTIES.—

''(A) PRIOR FINAL ADJUDICATION.—The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

''(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Agency as conservator or receiver shall—

''(i) have all the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

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

''(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

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

''(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any regulated entity for which the Agency has been appointed receiver; or

''(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

''(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which maintains stability in the housing finance markets and, to the extent consistent with that goal—

''(i) maximizes the net present value return from the sale or disposition of such assets;

''(ii) minimizes the amount of any loss realized in the resolution of cases; and

''(iii) ensures adequate competition and fair and consistent treatment of offerors.

''(12) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

''(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

''(i) in the case of any contract claim, the longer of—

''(I) the 6-year period beginning on the date the claim accrues; or

''(II) the period applicable under State law; and

''(ii) in the case of any tort claim, the longer of—

''(I) the 3-year period beginning on the date the claim accrues; or

''(II) the period applicable under State law.

''(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

''(i) the date of the appointment of the Agency as conservator or receiver; or

''(ii) the date on which the cause of action accrues.

''(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

''(A) IN GENERAL.—In the case of any tort claim described under subparagraph (B) for

which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

''(B) CLAIMS DESCRIBED.—A tort claim referred to under subparagraph (A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

''(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

''(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

''(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

''(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

''(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

''(15) FRAUDULENT TRANSFERS.—

''(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of a regulated entity-affiliated party, or any person who the conservator or receiver determines is a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

''(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

''(i) the initial transferee of such transfer or the regulated entity-affiliated party or person for whose benefit such transfer was made; or

''(ii) any immediate or mediate transferee of any such initial transferee.

''(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The conservator or receiver may not recover under subparagraph (B) from—

''(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

''(ii) any immediate or mediate good faith transferee of such transferee.

''(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

''(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Agency or such conservator under the control of the court, and appointing a trustee to hold such assets.

''(17) STANDARDS OF PROOF.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

''(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for the breach of an agreement executed or approved in writing by such receiver or conservator after the date of its appointment, shall be paid as an administrative expense of the receiver or conservator.

''(B) NO LIMITATION OF POWER.—Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

''(19) GENERAL EXCEPTIONS.—

''(A) LIMITATIONS.—The rights of a conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

''(B) MORTGAGES HELD IN TRUST.—

''(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, held in trust, custodial, or agency capacity by a regulated entity for the benefit of persons other than the regulated entity shall not be available to satisfy the claims of creditors generally.

''(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, described under clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in a pool of mortgages in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

''(iii) LIABILITY OF RECEIVER.—The liability of a receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance set forth in the regulations of the Director.

''(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

''(1) IN GENERAL.—Unsecured claims against a regulated entity, or a receiver, that are proven to the satisfaction of the receiver shall have priority in the following order:

''(A) Administrative expenses of the receiver.

''(B) Any other general or senior liability of the regulated entity and claims of other Federal home loan banks arising from their payment obligations (including joint and several payment obligations).

''(C) Any obligation subordinated to general creditors.

''(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

''(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Agency may make such other payments to creditors necessary to maximize the present value return from the sale or disposition or such regulated entity's assets or to minimize the amount of any loss realized in the resolution of cases so long as all creditors similarly situated receive not less than the amount provided under subsection (e)(2).

''(3) DEFINITION.—The term 'administrative expenses of the receiver' shall include the actual, necessary costs and expenses incurred by the receiver in preserving the assets of the regulated entity or liquidating or otherwise resolving the affairs of the regulated entity. Such expenses shall include obligations that are incurred by the receiver after appointment as receiver that the Director determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

''(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

''(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

''(A) to which such regulated entity is a party;

''(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

''(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

''(2) TIMING OF REPUDIATION.—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

''(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

''(A) IN GENERAL.—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

''(i) limited to actual direct compensatory damages; and

''(ii) determined as of—

''(I) the date of the appointment of the conservator or receiver; or

''(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

''(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term 'actual direct compensatory damages' shall not include—

''(i) punitive or exemplary damages;

''(ii) damages for lost profits or opportunity; or

''(iii) damages for pain and suffering.

''(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

''(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

''(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

''(4) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.—

''(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

''(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

''(i) be entitled to the contractual rent accruing before the later of the date—

''(I) the notice of disaffirmance or repudiation is mailed; or

''(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

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

''(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

''(5) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.—

''(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

''(i) treat the lease as terminated by such repudiation; or

''(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

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

''(i) the lessee—

''(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

''(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

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

''(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

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

''(i) treat the contract as terminated by such repudiation; or

''(ii) remain in possession of such real property.

''(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of such subparagraph—

''(i) the purchaser—

''(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

''(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

''(ii) the conservator or receiver shall—

''(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

''(II) deliver title to the purchaser in accordance with the provisions of the contract; and

''(III) have no obligation under the contract other than the performance required under subclause (II).

''(C) ASSIGNMENT AND SALE ALLOWED.—

''(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

''(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

''(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

''(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

''(i) a claim to be paid in accordance with subsections (b) and (e); and

''(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

''(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

''(i) the other party shall be paid under the terms of the contract for the services performed; and

''(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

''(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

''(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

''(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) and notwithstanding any other provision of this Division, any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

''(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

''(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts described in clause (i); or

''(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

''(B) APPLICABILITY OF OTHER PROVISIONS.—Paragraph (10) of subsection (b) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

''(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

''(i) IN GENERAL.—Notwithstanding paragraph (11) or any other Federal or State laws relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

''(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

''(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection:

''(i) QUALIFIED FINANCIAL CONTRACT.—The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any

swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the regulated entity's equity of redemption.

''(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (13) of this subsection), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

''(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

''(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more such qualified financial contracts; or

''(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (d)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

''(A) transfer to 1 person—

''(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

''(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

''(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

''(iv) all property securing or any other credit enhancement for any contract described in clause (i) or any claim described in clause (ii) or (iii) under any such contract; or

''(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

''(10) NOTIFICATION OF TRANSFER.—

''(A) IN GENERAL.—If—

''(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity, and

''(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Agency as receiver or conservator of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity if the Agency has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term 'business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the regulated entity in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

''(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

''(13) AUTHORITY TO ENFORCE CONTRACTS.—

''(A) IN GENERAL.—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver, the conservator or receiver may enforce any contract or regulated entity bond entered into by the regulated entity.

''(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or surety bond under other applicable law.

''(C) CONSENT REQUIREMENT.—

''(i) IN GENERAL.—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

''(I) 45 days after the date of appointment of a conservator; or

''(II) 90 days after the date of appointment of a receiver.

''(ii) EXCEPTIONS.—This paragraph shall—

''(I) not apply to a director's or officer's liability insurance contract;

''(II) not apply to the rights of parties to any qualified financial contracts under subsection (d)(8); and

''(III) not be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

''(14) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of

2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

''(15) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

''(A) any extension of credit from any Federal home loan bank or Federal Reserve Bank to any regulated entity; or

''(B) any security interest in the assets of the regulated entity securing any such extension of credit.

''(e) VALUATION OF CLAIMS IN DEFAULT.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

''(2) MAXIMUM LIABILITY.—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall equal the lesser of—

''(A) the amount such claimant would have received if the Agency had liquidated the assets and liabilities of such regulated entity without exercising the authority of the Agency under subsection (i) of this section; or

''(B) the amount of proceeds realized from the performance of contracts or sale of the assets of the regulated entity.

''(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

''(g) LIABILITY OF DIRECTORS AND OFFICERS.—

''(1) IN GENERAL.—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Agency, which action is prosecuted wholly or partially for the benefit of the Agency—

''(A) acting as conservator or receiver of such regulated entity, or

''(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

''(2) NO LIMITATION.—Nothing in this paragraph shall impair or affect any right of the Agency under other applicable law.

''(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

''(i) LIMITED-LIFE REGULATED ENTITIES.—

''(1) ORGANIZATION.—

''(A) PURPOSE.—If a regulated entity is in default, or if the Agency anticipates that a regulated entity will default, the Agency may organize a limited-life regulated entity with those powers and attributes of the regulated entity in default or in danger of default that the Director determines necessary, subject to the provisions of this subsection. The Director shall grant a temporary charter to the limited-life regulated entity, and the limited-life regulated entity shall operate subject to that charter.

''(B) AUTHORITIES.—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

''(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, provided that the liabilities assumed shall not exceed the amount of assets of the limited-life regulated entity;

''(ii) purchase such assets of the regulated entity that is in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate; and

''(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

''(2) CHARTER.—

''(A) CONDITIONS.—The Agency may grant a temporary charter if the Agency determines that the continued operation of the regulated entity in default or in danger of default is in the best interest of the national economy and the housing markets.

''(B) TREATMENT AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

''(C) MANAGEMENT.—A limited-life regulated entity, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

''(D) BYLAWS.—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

''(3) CAPITAL STOCK.—No capital stock need be paid into a limited-life regulated entity by the Agency.

''(4) INVESTMENTS.—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal Reserve bank.

''(5) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

''(6) WINDING UP.—

''(A) IN GENERAL.—Subject to subparagraph (B), unless Congress authorizes the sale of the capital stock of the limited-life regulated entity, not later than 2 years after the date of its organization, the Agency shall wind up the affairs of the limited-life regulated entity.

''(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of the limited-life regulated entity for 3 additional 1-year periods.

''(7) TRANSFER OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—

''(i) TRANSFER OF ASSETS AND LIABILITIES.—The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with paragraph (1).

''(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is transferred to a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of such regulated entity in default, or in danger in default, as the Agency may, in its discretion, determine to be appropriate in accordance with paragraph (1).

''(iii) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities of a regulated entity in default, or in danger of default, transferred to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

''(8) PROCEEDS.—To the extent that available proceeds from the limited-life regulated entity exceed amounts required to pay obligations, such proceeds may be paid to the regulated entity in default, or in danger of default.

''(9) POWERS.—

''(A) IN GENERAL.—Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

''(i) the Agency may—

''(I) remove the directors of a limited-life regulated entity; and

''(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity;

''(ii) the Agency may indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

''(iii) the board of directors of a limited-life regulated entity—

''(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

''(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

''(B) STAY OF JUDICIAL ACTION.—Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of up to 45 days at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

''(10) OBTAINING OF CREDIT AND INCURRING OF DEBT.—

''(A) IN GENERAL.—The limited-life regulated entity may obtain unsecured credit and incur unsecured debt in the ordinary course of business.

''(B) INABILITY TO OBTAIN CREDIT.—If the limited-life regulated entity is unable to obtain unsecured credit the Director may authorize the obtaining of credit or the incurring of debt—

''(i) with priority over any or all administrative expenses;

''(ii) secured by a lien on property that is not otherwise subject to a lien; or

''(iii) secured by a junior lien on property that is subject to a lien.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by the regulated entity) only if—

''(I) the limited-life regulated entity is unable to obtain such credit otherwise; and

''(II) there is adequate protection of the interest of the holder of the lien on the property which such senior or equal lien is proposed to be granted.

''(ii) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

''(D) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this paragraph to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

''(11) ISSUANCE OF PREFERRED DEBT.—A limited-life regulated entity may, subject to the approval of the Director and subject to such terms and conditions as the Director may prescribe, issue notes, bonds, or other debt obligations of a class to which all other debt obligations of the limited-life regulated entity shall be subordinate in right and payment.

''(12) NO FEDERAL STATUS.—

''(A) AGENCY STATUS.—A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

''(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

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

''(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

''(13) ADDITIONAL POWERS.—In addition to any other powers granted under this subsection, a limited-life regulated entity may—

''(A) extend a maturity date or change in an interest rate or other term of outstanding securities;

''(B) issue securities of the limited-life regulated entity, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purposes; and

''(C) take any other action not inconsistent with this section.

''(j) OTHER EXEMPTIONS.—When acting as a receiver, the following provisions shall apply with respect to the Agency:

''(1) EXEMPTION FROM TAXATION.—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, country, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

''(2) EXEMPTION FROM ATTACHMENT AND LIENS.—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

''(3) EXEMPTION FROM PENALTIES AND FINES.—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

''(k) PROHIBITION OF CHARTER REVOCATION.—In no case may a receiver appointed pursuant to this section revoke, annul, or terminate the charter of a regulated entity.''.

(b) CONFORMING AMENDMENTS.—

(1) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 is amended by striking sections 1369 (12 U.S.C. 4619), 1369A (12 U.S.C. 4620), and 1369B (12 U.S.C. 4621).

(2) FEDERAL HOME LOAN BANKS.—Section 25 of the Federal Home Loan Bank Act (12 U.S.C. 1445) is amended to read as follows:

''SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.

''Each Federal Home Loan Bank shall have succession until it is voluntarily merged with another Bank under this Act, or until it is merged, reorganized, rehabilitated, liquidated, or otherwise wound up by the Director in accordance with the provisions of section 1367 of the Housing and Community Development Act of 1992, or by further Act of Congress.''.

SEC. 155. CONFORMING AMENDMENTS.

Title XIII of the Housing and Community Development Act of 1992, as amended by the preceding provisions of this Division, is further amended—

(1) in sections 1365 (12 U.S.C. 4615) through 1369D (12 U.S.C. 4623), but not including section 1367 (12 U.S.C. 4617) as amended by section 154 of this Division—

(A) by striking ''An enterprise'' each place such term appears and inserting ''A regulated entity'';

(B) by striking ''an enterprise'' each place such term appears and inserting ''a regulated entity''; and

(C) by striking ''the enterprise'' each place such term appears and inserting ''the regulated entity'';

(2) in section 1366 (12 U.S.C. 4616)—

(A) in subsection (b)(7), by striking ''section 1369 (excluding subsection (a)(1) and (2))'' and inserting ''section 1367''; and

(B) in subsection (d), by striking ''the enterprises'' and inserting ''the regulated entities'';

(3) in section 1368(d) (12 U.S.C. 4618(d)), by striking ''Committee on Banking, Finance and Urban Affairs'' and inserting ''Committee on Financial Services'';

(4) in section 1369C (12 U.S.C. 4622)—

(A) in subsection (a)(4), by striking ''activities (including existing and new programs)'' and inserting ''activities, services, undertakings, and offerings (including existing and new products (as such term is defined in section 1321(f))''; and

(B) in subsection (c), by striking ''any enterprise'' and inserting ''any regulated entity''; and

(5) in subsections (a) and (d) of section 1369D, by striking ''section 1366 or 1367 or action under section 1369)'' each place such phrase appears and inserting ''section 1367)''.

Subtitle D—Enforcement Actions

SEC. 161. CEASE-AND-DESIST PROCEEDINGS.

Section 1371 of the Housing and Community Development Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following new subsections:

''(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.—If, in the opinion of the Director, a regulated entity or any regulated entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or is violating or has violated, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or such party a notice of charges in respect thereof. The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

''(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of this subsection.'';

(2) in subsection (c)(2), by striking ''enterprise, executive officer, or director'' and inserting ''regulated entity or regulated entity-affiliated party''; and

(3) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''enterprise, executive officer, or director'' and inserting ''regulated entity or regulated entity-affiliated party'';

(B) in paragraph (1)—

(i) by striking ''an executive officer or a director'' and inserting ''a regulated entity affiliated party''; and

(ii) by inserting ''(including reimbursement of compensation under section 1318)'' after ''reimbursement'';

(C) in paragraph (6), by striking ''and'' at the end;

(D) by redesignating paragraph (7) as paragraph (8); and

(E) by inserting after paragraph (6) the following new paragraph:

''(7) to effect an attachment on a regulated entity or regulated entity-affiliated party subject to an order under this section or section 1372; and''.

SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.

Section 1372 of the Housing and Community Development Act of 1992 (12 U.S.C. 4632) is amended—

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

''(a) GROUNDS FOR ISSUANCE.—Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the

notice of charges served upon the regulated entity or any regulated entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the regulated entity, or is likely to weaken the condition of the regulated entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the regulated entity or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).''.

(2) in subsection (b), by striking ''enterprise, executive officer, or director'' and inserting ''regulated entity or regulated entity-affiliated party'';

(3) in subsection (d)—

(A) by striking ''An enterprise, executive officer, or director'' and inserting ''A regulated entity or regulated entity-affiliated party''; and

(B) by striking ''the enterprise, executive officer, or director'' and inserting ''the regulated entity or regulated entity-affiliated party''; and

(4) by striking subsection (e) and in inserting the following new subsection:

''(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this section, the Director may apply to the United States District Court for the District of Columbia or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.''.

SEC. 163. PREJUDGMENT ATTACHMENT.

The Housing and Community Development Act of 1992 is amended by inserting after section 1375 (12 U.S.C. 4635) the following new section:

''SEC. 1375A. PREJUDGMENT ATTACHMENT.

''(a) IN GENERAL.—In any action brought pursuant to this title, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought pursuant to this title, the court may, upon application of the Director or Attorney General, as applicable, issue a restraining order that—

''(1) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

''(2) appoints a person on a temporary basis to administer the restraining order.

''(b) STANDARD.—

''(1) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subsection (a) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

''(2) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by paragraph (1)), the relief sought under subsection (a) may be requested under the laws of such State.''.

SEC. 164. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Housing and Community Development Act of 1992 (12 U.S.C. 4635) is amended—

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

''(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.''; and

(2) in subsection (b), by striking ''or 1376'' and inserting ''1376, or 1377''.

SEC. 165. CIVIL MONEY PENALTIES.

Section 1376 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking '', or any executive officer or director'' and inserting ''or any regulated-entity affiliated party''; and

(B) in paragraph (1)—

(i) by striking ''the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act'' and inserting ''any provision of any of the authorizing statutes'';

(ii) by striking ''or Act'' and inserting ''or statute'';

(iii) by striking ''or subsection'' and inserting '', subsection''; and

(iv) by inserting '', or paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act'' before the semicolon at the end;

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

''(b) AMOUNT OF PENALTY.—

''(1) FIRST TIER.—Any regulated entity which, or any regulated entity-affiliated party who—

''(A) violates any provision of this title, any provision of any of the authorizing statutes, or any order, condition, rule, or regulation under any such title or statute, except that the Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;

''(B) violates any final or temporary order or notice issued pursuant to this title;

''(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

''(D) violates any written agreement between the regulated entity and the Director, shall forfeit and pay a civil money penalty of not more than $10,000 for each day during which such violation continues.

''(2) SECOND TIER.—Notwithstanding paragraph (1)—

''(A) if a regulated entity, or a regulated entity-affiliated party—

''(i) commits any violation described in any subparagraph of paragraph (1);

''(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such regulated entity; or

''(iii) breaches any fiduciary duty; and

''(B) the violation, practice, or breach—

''(i) is part of a pattern of misconduct;

''(ii) causes or is likely to cause more than a minimal loss to such regulated entity; or

''(iii) results in pecuniary gain or other benefit to such party,

the regulated entity or regulated entity-affiliated party shall forfeit and pay a civil penalty of not more than $50,000 for each day during which such violation, practice, or breach continues.

''(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any regulated entity which, or any regulated entity-affiliated party who—

''(A) knowingly—

''(i) commits any violation or engages in any conduct described in any subparagraph of paragraph (1);

''(ii) engages in any unsafe or unsound practice in conducting the affairs of such regulated entity; or

''(iii) breaches any fiduciary duty; and

''(B) knowingly or recklessly causes a substantial loss to such regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

''(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

''(A) in the case of any person other than a regulated entity, an amount not to exceed $2,000,000; and

''(B) in the case of any regulated entity, $2,000,000.'';

(3) in subsection (c)(1)(B), by striking ''enterprise, executive officer, or director'' and inserting ''regulated entity or regulated entity-affiliated party'';

(4) in subsection (d), by striking the first sentence and inserting the following: ''If a regulated entity or regulated entity-affiliated party 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, in the discretion of the Director, bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity or regulated entity affiliated party and such other relief as may be available, or request that the Attorney General of the United States bring such an action.''; and

(5) in subsection (g), by striking ''subsection (b)(3)'' and inserting ''this section, unless authorized by the Director by rule, regulation, or order''.

SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Subtitle C of title XIII of the Housing and Community Development Act of 1992 is amended—

(1) by redesignating sections 1377, 1378, 1379, 1379A, and 1379B (12 U.S.C. 4637–41) as sections 1379, 1379A, 1379B, 1379C, and 1379D, respectively; and

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

''SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

''(a) AUTHORITY TO ISSUE ORDER.—Whenever the Director determines that—

''(1) any regulated entity-affiliated party has, directly or indirectly—

''(A) violated—

''(i) any law or regulation;

''(ii) any cease-and-desist order which has become final;

''(iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

''(iv) any written agreement between such regulated entity and the Director;

''(B) engaged or participated in any unsafe or unsound practice in connection with any regulated entity; or

''(C) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

''(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—

''(A) such regulated entity has suffered or will probably suffer financial loss or other damage; or

''(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

''(3) such violation, practice, or breach—

''(A) involves personal dishonesty on the part of such party; or

''(B) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity, the Director may serve upon such party a written notice of the Director's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any regulated entity.

''(b) SUSPENSION ORDER.—

''(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) to any regulated entity-affiliated party of the Director's intention to issue an order under such subsection, the Director may—

''(A) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

''(i) determines that such action is necessary for the protection of the regulated entity; and

''(ii) serves such party with written notice of the suspension order; and

''(B) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party.

''(2) EFFECTIVE PERIOD.—Any suspension order issued under this subsection—

''(A) shall become effective upon service; and

''(B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—

''(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

''(ii) the effective date of an order issued by the Director to such party under subsection (a).

''(3) COPY OF ORDER.—If the Director issues a suspension order under this subsection to any regulated entity-affiliated party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

''(c) NOTICE, HEARING, AND ORDER.—A notice of intention to remove a regulated entity-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of a regulated entity shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the regulated entity, as it may deem appropriate, together with an order prohibiting compensation described in subsection (b)(1)(B). Any such order shall become effective at the expiration of 30 days after service upon such regulated entity and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

''(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

''(1) participate in any manner in the conduct of the affairs of any regulated entity;

''(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

''(3) violate any voting agreement previously approved by the Director; or

''(4) vote for a director, or serve or act as a regulated entity-affiliated party.

''(e) INDUSTRY-WIDE PROHIBITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or prohibited from participating in the conduct of the affairs of a regulated entity may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity.

''(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any regulated entity-affiliated party or prohibits such party from participating in the conduct of the affairs of a regulated entity, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

''(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

''(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

''(g) STAY OF SUSPENSION AND PROHIBITION OF REGULATED ENTITY-AFFILIATED PARTY.—Within 10 days after any regulated entity-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension and/or prohibition and any prohibition under subsection (b)(1)(B) pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

''(h) SUSPENSION OR REMOVAL OF REGULATED ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.—

''(1) SUSPENSION OR PROHIBITION.—

''(A) IN GENERAL.—Whenever any regulated entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party—

''(i) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity; and

''(ii) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the period of any such suspension or with any resignation, removal, retirement, or other termination of employment or office of the party.

''(B) PROVISIONS APPLICABLE TO NOTICE.—

''(i) COPY.—A copy of any notice under paragraph (1)(A) shall also be served upon the regulated entity.

''(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

''(2) REMOVAL OR PROHIBITION.—

''(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against a regulated entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order that—

''(i) removes such party from office or prohibits such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director; and

''(ii) prohibits the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the termination of employment or office of the party.

''(B) PROVISIONS APPLICABLE TO ORDER.—

''(i) COPY.—A copy of any order under paragraph (2)(A) shall also be served upon the regulated entity, whereupon the regulated entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

''(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in regulated

entity affairs, and to prohibit compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party, pursuant to subsections (a), (d), or (e) of this section.

''(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

''(3) AUTHORITY OF REMAINING BOARD MEMBERS.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

''(4) HEARING REGARDING CONTINUED PARTICIPATION.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the regulated entity-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity or threaten to impair public confidence in the regulated entity. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity, and prohibiting compensation in connection with termination will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

''(i) HEARINGS AND JUDICIAL REVIEW.—

''(1) VENUE AND PROCEDURE.—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the regulated entity is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

''(2) REVIEW OF ORDER.—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the regulated entity or the regulated entity-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the regulated entity is located, 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. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

''(3) PROCEEDINGS NOT TREATED AS STAY.—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.''.

(b) CONFORMING AMENDMENTS.—

(1) 1992 ACT.—Section 1317(f) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(f)) is amended by striking ''section 1379B'' and inserting ''section 1379D''.

(2) FANNIE MAE CHARTER ACT.—The second sentence of subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by striking ''The'' and inserting ''Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the''.

(3) FREDDIE MAC ACT.—The second sentence of subparagraph (A) of section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by striking ''The'' and inserting ''Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the''.

SEC. 167. CRIMINAL PENALTY.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377 (as added by the preceding provisions of this Division) the following new section:

''SEC. 1378. CRIMINAL PENALTY.

''Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.''.

SEC. 168. SUBPOENA AUTHORITY.

Section 1379D(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4641(c)), as so redesignated by section 166(a)(1) of this Division, is further amended—

(1) by striking ''request the Attorney General of the United States to'' and inserting '', in the discretion of the Director,'';

(2) by inserting ''or request that the Attorney General of the United States bring such an action,'' after ''District of Columbia,''; and

(3) by striking ''or may, under the direction and control of the Attorney General, bring such an action''.

SEC. 169. CONFORMING AMENDMENTS.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.), as amended by the preceding provisions of this Division, is amended—

(1) in section 1372(c)(1) (12 U.S.C. 4632(c)), by striking ''that enterprise'' and inserting ''that regulated entity'';

(2) in section 1379 (12 U.S.C. 4637), as so redesignated by section 166(a)(1) of this Division—

(A) by inserting '', or of a regulated entity-affiliated party,'' before ''shall not affect''; and

(B) by striking ''such director or executive officer'' each place such term appears and inserting ''such director, executive officer, or regulated entity-affiliated party'';

(3) in section 1379A (12 U.S.C. 4638), as so redesignated by section 166(a)(1) of this Division, by inserting ''or against a regulated entity-affiliated party,'' before ''or impair'';

(4) by striking ''An enterprise'' each place such term appears in such subtitle and inserting ''A regulated entity'';

(5) by striking ''an enterprise'' each place such term appears in such subtitle and inserting ''a regulated entity'';

(6) by striking ''the enterprise'' each place such term appears in such subtitle and inserting ''the regulated entity''; and

(7) by striking ''any enterprise'' each place such term appears in such subtitle and inserting ''any regulated entity''.

Subtitle E—General Provisions

SEC. 181. BOARDS OF ENTERPRISES.

(a) FANNIE MAE.—

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

(A) in the first sentence, by striking ''eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom'' and inserting ''13 persons, or such other number that the Director determines appropriate, who'';

(B) in the second sentence, by striking ''appointed by the President'';

(C) in the third sentence—

(i) by striking ''appointed or''; and

(ii) by striking '', except that any such appointed member may be removed from office by the President for good cause'';

(D) in the fourth sentence, by striking ''elective''; and

(E) by striking the fifth sentence.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply

to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under Section 185 occurs.

(b) FREDDIE MAC.—

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

(A) in subparagraph (A)—

(i) in the first sentence, by striking ''18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom'' and inserting ''13 persons, or such other number as the Director determines appropriate, who''; and

(ii) in the second sentence, by striking ''appointed by the President of the United States'';

(B) in subparagraph (B)—

(i) by striking ''such or''; and

(ii) by striking '', except that any appointed member may be removed from office by the President for good cause''; and

(C) in subparagraph (C)—

(i) by striking the first sentence; and

(ii) by striking ''elective''.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under Section 185 occurs.

SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY AND SOUNDNESS, AND MISSION OF ENTERPRISES.

Not later than the expiration of the 12-month period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall submit a report to the Congress which shall include—

(1) a description of the portfolio holdings of the enterprises (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) in mortgages (including whole loans and mortgage-backed securities), non-mortgages, and other assets;

(2) a description of the risk implications for the enterprises of such holdings and the consequent risk management undertaken by the enterprises (including the use of derivatives for hedging purposes), compared with off-balance sheet liabilities of the enterprises (including mortgage-backed securities guaranteed by the enterprises);

(3) an analysis of portfolio holdings for safety and soundness purposes;

(4) an assessment of whether portfolio holdings fulfill the mission purposes of the enterprises under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act; and

(5) an analysis of the potential systemic risk implications for the enterprises, the housing and capital markets, and the financial system of portfolio holdings, and whether such holdings should be limited or reduced over time.

SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.

(a) 1992 ACT.—Title XIII of the Housing and Community Development Act of 1992 is amended by striking section 1383 (12 U.S.C. 1451 note).

(b) TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking ''Office of Federal Housing Enterprise Oversight'' and inserting ''Federal Housing Finance Agency''.

(c) FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking ''Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'' and inserting ''Director of the Federal Housing Finance Agency''.

(d) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(e) TITLE 5, UNITED STATES CODE.—

(1) DIRECTOR'S PAY RATE.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:

''Director of the Federal Housing Finance Agency.''.

(2) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(D) of title 5, United States Code, is amended—

(A) by striking ''the Federal Housing Finance Board,''; and

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

(f) INSPECTOR GENERAL ACT OF 1978.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(g) FEDERAL DEPOSIT INSURANCE ACT.—Section 11(t)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C.1821(t)(2)(A)) is amended by adding at the end the following new clause:

''(vii) The Federal Housing Finance Agency.''.

(h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT.—Section 10001 of the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those In Bosnia (42 U.S.C. 3548) is amended—

(1) by striking ''the Government National Mortgage Association, and the Office of Federal Housing Enterprise Oversight'' and inserting ''and the Government National Mortgage Association''; and

(2) by striking '', the Government National Mortgage Association, or the Office of Federal Housing Enterprise Oversight'' and inserting ''or the Government National Mortgage Association''.

(i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Section 302(b)(4) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12851(b)(4)) is amended by striking ''the chairperson of the Federal Housing Finance Board'' and inserting ''the Director of the Federal Housing Finance Agency''.

SEC. 184. STUDY OF ALTERNATIVE SECONDARY MARKET SYSTEMS.

(a) IN GENERAL.—The Director of the Federal Housing Finance Agency, in consultation with the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, and the Secretary of Housing and Urban Development, shall conduct a comprehensive study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance, taking into consideration changes in the structure of financial and housing finance markets and institutions since the creation of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(b) CONTENTS.—The study under this section shall—

(1) include, among the alternatives to the current secondary market system analyzed—

(A) repeal of the chartering Acts for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) establishing bank-like mechanisms for granting new charters for limited purposed mortgage securitization entities;

(C) permitting the Director of the Federal Housing Finance Agency to grant new charters for limited purpose mortgage securitization entities, which shall include analyzing the terms on which such charters should be granted, including whether such charters should be sold, or whether such charters and the charters for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should be taxed or otherwise assessed a monetary price; and

(D) such other alternatives as the Director considers appropriate;

(2) examine all of the issues involved in making the transition to a completely private secondary mortgage market system;

(3) examine the technological advancements the private sector has made in providing liquidity in the secondary mortgage market and how such advancements have affected liquidity in the secondary mortgage market; and

(4) examine how taxpayers would be impacted by each alternative system, including the complete privatization of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(c) REPORT.—The Director of the Federal Housing Finance Agency shall submit a report to the Congress on the study not later than the expiration of the 24-month period beginning on the effective date under section 185.

SEC. 185. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, this title shall take effect on and the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 6-month period beginning on the date of the enactment of this Act.

TITLE II—FEDERAL HOME LOAN BANKS

SEC. 201. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) by striking paragraphs (1), (10), and (11);

(2) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively;

(3) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10), respectively; and

(4) by adding at the end the following:

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

''(12) AGENCY.—The term 'Agency' means the Federal Housing Finance Agency.''.

SEC. 202. DIRECTORS.

(a) ELECTION.—Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

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

''(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

''(1) IN GENERAL.—The management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate, each of whom shall be a citizen of the United States. All directors of a Bank who are not independent directors pursuant to paragraph (3) shall be elected by the members.

''(2) MEMBER DIRECTORS.—A majority of the directors of each Bank shall be officers or directors of a member of such Bank that is located in the district in which such Bank is located.

''(3) INDEPENDENT DIRECTORS.—At least two-fifths of the directors of each Bank shall be independent directors, who shall be appointed by the Director of the Federal Housing Finance Agency from a list of individuals

recommended by the Federal Housing Enterprise Board. The Federal Housing Enterprise Board may recommend individuals who are identified by the Board's own independent process or included on a list of individuals recommended by the board of directors of the Bank involved, which shall be submitted to the Federal Housing Enterprise Board by such board of directors. The number of individuals on any such list submitted by a Bank's board of directors shall be equal to at least two times the number of independent directorships to be filled. All independent directors appointed shall meet the following criteria:

''(A) IN GENERAL.—Each independent director shall be a bona fide resident of the district in which such Bank is located.

''(B) PUBLIC INTEREST DIRECTORS.—At least 2 of the independent directors under this paragraph of each Bank shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, community development, economic development, or financial consumer protections.

''(C) OTHER DIRECTORS.—

''(i) QUALIFICATIONS.—Each independent director that is not a public interest director under subparagraph (B) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

''(ii) CONSULTATION WITH BANKS.—In appointing other directors to serve on the board of a Federal home loan bank, the Director of the Federal Housing Finance Agency may consult with each Federal home loan bank about the knowledge, skills, and expertise needed to assist the board in better fulfilling its responsibilities.

''(D) CONFLICTS OF INTEREST.—Notwithstanding subsection (f)(2), an independent director under this paragraph of a Bank may not, during such director's term of office, serve as an officer of any Federal Home Loan Bank or as a director or officer of any member of a Bank.

''(E) COMMUNITY DEMOGRAPHICS.—In appointing independent directors of a Bank pursuant to this paragraph, the Director shall take into consideration the demographic makeup of the community most served by the Affordable Housing Program of the Bank pursuant to section 10(j).'';

(2) in the first sentence of subsection (b), by striking ''elective directorship'' and inserting ''member directorship established pursuant to subsection (a)(2)'';

(3) in subsection (c)—

(A) by striking ''elective'' each place such term appears and inserting ''member'', except—

(i) in the second sentence, the second place such term appears; and

(ii) each place such term appears in the fifth sentence;

(B) in the first sentence, by inserting after ''less than one'' the following: ''or two, as determined by the board of directors of the appropriate Federal home loan bank,''; and

(C) in the second sentence—

(i) by inserting ''(A) except as provided in clause (B) of this sentence,'' before ''if at any time''; and

(ii) by inserting before the period at the end the following: '', and (B) clause (A) of this sentence shall not apply to the directorships of any Federal home loan bank resulting from the merger of any two or more such banks''; and

(4) by striking ''elective'' each place such term appears (except in subsections (c), (e), and (f)).

(b) TERMS.—

(1) IN GENERAL.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(A) in the first sentence, by striking ''3 years'' and inserting ''4 years''; and

(B) in the second sentence—

(i) by striking ''Federal Home Loan Bank System Modernization Act of 1999'' and inserting ''Federal Housing Finance Reform Act of 2007''; and

(ii) by striking ''1/3'' and inserting ''1/4''.

(2) SAVINGS PROVISION.—The amendments made by paragraph (1) shall not apply to the term of office of any director of a Federal home loan bank who is serving as of the effective date of this title under section 211, including any director elected to fill a vacancy in any such office.

(c) CONTINUED SERVICE OF INDEPENDENT DIRECTORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2)) is amended—

(1) in the second sentence, by striking ''or the term of such office expires, whichever occurs first'';

(2) by adding at the end the following new sentence: ''An independent Bank director may continue to serve as a director after the expiration of the term of such director until a successor is appointed.'';

(3) in the paragraph heading, by striking ''APPOINTED'' and inserting ''INDEPENDENT''; and

(4) by striking ''appointive'' each place such term appears and inserting ''independent''.

(d) CONFORMING AMENDMENTS.—Section 7(f)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(3)) is amended—

(1) in the paragraph heading, by striking ''ELECTED'' and inserting ''MEMBER''; and

(2) by striking ''elective'' each place such term appears in the first and third sentences and inserting ''member''.

(e) COMPENSATION.—Subsection (i) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended to read as follows:

''(i) DIRECTORS' COMPENSATION.—

''(1) IN GENERAL.—Each Federal home loan bank may pay the directors on the board of directors for the bank reasonable and appropriate compensation for the time required of such directors, and reasonable and appropriate expenses incurred by such directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors and subject to the approval of the Director.

''(2) ANNUAL REPORT BY THE BOARD.—The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks.''.

(f) TRANSITION RULE.—Any member of the board of directors of a Federal Home Loan Bank serving as of the effective date under section 211 may continue to serve as a member of such board of directors for the remainder of the term of such office as provided in section 7 of the Federal Home Loan Bank Act, as in effect before such effective date.

SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVERSIGHT OF FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), other than in provisions of that Act added or amended otherwise by this Division, is amended—

(1) by striking sections 2A and 2B (12 U.S.C. 1422a, 1422b);

(2) in section 6 (12 U.S.C. 1426(b)(1))—

(A) in subsection (b)(1), in the matter preceding subparagraph (A), by striking ''Finance Board approval'' and inserting ''approval by the Director''; and

(B) in each of subsections (c)(4)(B) and (d)(2), by striking ''Finance Board regulations'' each place that term appears and inserting ''regulations of the Director'';

(3) in section 8 (12 U.S.C. 1428), in the section heading, by striking ''BY THE BOARD'';

(4) in section 10(b) (12 U.S.C. 1430(b)), by striking ''by formal resolution'';

(5) in section 10 (12 U.S.C. 1430), by adding at the end the following new subsection:

''(k) MONITORING AND ENFORCING COMPLIANCE WITH AFFORDABLE HOUSING AND COMMUNITY INVESTMENT PROGRAM REQUIREMENTS.—The requirements under subsection (i) and (j) that the Banks establish Community Investment and Affordable Housing Programs, respectively, and contribute to the Affordable Housing Program, shall be enforceable by the Director with respect to the Banks in the same manner and to the same extent as the housing goals under subpart B of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4561 et seq.) are enforceable under section 1336 of such Act with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.'';

(6) in section 11 (12 U.S.C. 1431)—

(A) in subsection (b)—

(i) in the first sentence—

(I) by striking ''The Board'' and inserting ''The Office of Finance, as agent for the Banks,''; and

(II) by striking ''the Board'' and inserting ''such Office''; and

(ii) in the second and fourth sentences, by striking ''the Board'' each place such term appears and inserting ''the Office of Finance'';

(B) in subsection (c)—

(i) by striking ''the Board'' the first place such term appears and inserting ''the Office of Finance, as agent for the Banks,''; and

(ii) by striking ''the Board'' the second place such term appears and inserting ''such Office''; and

(C) in subsection (f)—

(i) by striking the two commas after ''permit'' and inserting ''or''; and

(ii) by striking the comma after ''require'';

(7) in section 15 (12 U.S.C. 1435), by inserting ''or the Director'' after ''the Board'';

(8) in section 18 (12 U.S.C. 1438), by striking subsection (b);

(9) in section 21 (12 U.S.C. 1441)—

(A) in subsection (b)—

(i) in paragraph (5), by striking ''Chairperson of the Federal Housing Finance Board'' and inserting ''Director''; and

(ii) in the heading for paragraph (8), by striking ''FEDERAL HOUSING FINANCE BOARD'' and inserting ''DIRECTOR''; and

(B) in subsection (i), in the heading for paragraph (2), by striking ''FEDERAL HOUSING FINANCE BOARD'' and inserting ''DIRECTOR'';

(10) in section 23 (12 U.S.C. 1443), by striking ''Board of Directors of the Federal Housing Finance Board'' and inserting ''Director'';

(11) by striking ''the Board'' each place such term appears in such Act (except in section 15 (12 U.S.C. 1435), section 21(f)(2) (12 U.S.C. 1441(f)(2)), subsections (a), (k)(2)(B)(i), and (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), subsections (f)(2)(C), and (k)(7)(B)(ii) of section 21B (12 U.S.C. 1441b), and the first two places such term appears in section 22 (12 U.S.C. 1442)) and inserting ''the Director'';

(12) by striking ''The Board'' each place such term appears in such Act (except in sections 7(e) (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b)) and inserting ''The Director'';

(13) by striking ''the Board's'' each place such term appears in such Act and inserting ''the Director's'';

(14) by striking ''The Board's'' each place such term appears in such Act and inserting ''The Director's'';

(15) by striking ''the Finance Board'' each place such term appears in such Act and inserting ''the Director'';

(16) by striking ''Federal Housing Finance Board'' each place such term appears and inserting ''Director'';

(17) in section 11(i) (12 U.S.C. 1431(i), by striking ''the Chairperson of''; and

(18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)), by striking ''Chairperson of the''.

SEC. 204. JOINT ACTIVITIES OF BANKS.

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

''(1) JOINT ACTIVITIES.—Subject to the regulation of the Director, any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for, or providing services to, the Banks on a common or collective basis, or may require that the Office of Finance perform such functions or services, but only if the Banks are otherwise authorized to perform such functions or services individually.''.

SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

(a) IN GENERAL.—The Federal Home Loan Bank Act is amended by inserting after section 20 (12 U.S.C. 1440) the following new section:

''SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

''(a) REGULATORY AUTHORITY.—The Director shall prescribe such regulations as may be necessary to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability.

''(b) NO WAIVER OF PRIVILEGE.—The Director shall not be deemed to have waived any privilege applicable to any information concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purpose of enabling the recipient to evaluate the nature and extent of its joint and several liability.''.

(b) REGULATIONS.—The regulations required under the amendment made by subsection (a) shall be issued in final form not later than 6 months after the effective date under section 211 of this Division.

SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY MERGER.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended—

(1) by inserting ''(a) REORGANIZATION.—'' before ''Whenever''; and

(2) by striking ''liquidated or'' each place such phrase appears;

(3) by striking ''liquidation or''; and

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

''(b) VOLUNTARY MERGERS.—Any two or more Banks may, with the approval of the Director, and the approval of the boards of directors of the Banks involved, merge. The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any such voluntary merger, including the procedures for Bank member approval.''.

SEC. 207. SECURITIES AND EXCHANGE COMMISSION DISCLOSURE.

(a) IN GENERAL.—The Federal Home Loan Banks shall be exempt from compliance with—

(1) sections 13(e), 14(a), 14(c), and 17A of the Securities Exchange Act of 1934 and related Commission regulations; and

(2) section 15 of that Act and related Securities and Exchange Commission regulations with respect to transactions in capital stock of the Banks.

(b) MEMBER EXEMPTION.—The members of the Federal Home Loan Banks shall be exempt from compliance with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Securities Exchange Act of 1934 and related Securities and Exchange Commission regulations with respect to their ownership of, or transactions in, capital stock of the Federal Home Loan Banks.

(c) EXEMPTED AND GOVERNMENT SECURITIES.—

(1) CAPITAL STOCK.—The capital stock issued by each of the Federal Home Loan Banks under section 6 of the Federal Home Loan Bank Act are—

(A) exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933; and

(B) ''exempted securities'' within the meaning of section 3(a)(12)(A) of the Securities Exchange Act of 1934.

(2) OTHER OBLIGATIONS.—The debentures, bonds, and other obligations issued under section 11 of the Federal Home Loan Bank Act are—

(A) exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933;

(B) ''government securities'' within the meaning of section 3(a)(42) of the Securities Exchange Act of 1934;

(C) excluded from the definition of ''government securities broker'' within section 3(a)(43) of the Securities Exchange Act of 1934;

(D) excluded from the definition of ''government securities dealer'' within section 3(a)(44) of the Securities Exchange Act of 1934; and

(E) ''government securities'' within the meaning of section 2(a)(16) of the Investment Company Act of 1940.

(d) EXEMPTION FROM REPORTING REQUIREMENTS.—The Federal Home Loan Banks shall be exempt from periodic reporting requirements pertaining to—

(1) the disclosure of related party transactions that occur in the ordinary course of business of the Banks with their members; and

(2) the disclosure of unregistered sales of equity securities.

(e) TENDER OFFERS.—The Securities and Exchange Commission's rules relating to tender offers shall not apply in connection with transactions in capital stock of the Federal Home Loan Banks.

(f) REGULATIONS.—In issuing any final regulations to implement provisions of this section, the Securities and Exchange Commission shall consider the distinctive characteristics of the Federal Home Loan Banks when evaluating the accounting treatment with respect to the payment to Resolution Funding Corporation, the role of the combined financial statements of the twelve Banks, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of the obligations of the Banks.

SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.

(a) TOTAL ASSET REQUIREMENT.—Paragraph (10) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(10)), as so redesignated by section 201(3) of this Division, is amended by striking ''$500,000,000'' each place such term appears and inserting ''$1,000,000,000''.

(b) USE OF ADVANCES FOR COMMUNITY DEVELOPMENT ACTIVITIES.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

(1) in paragraph (2)(B)—

(A) by striking ''and''; and

(B) by inserting '', and community development activities'' before the period at the end;

(2) in paragraph (3)(E), by inserting ''or community development activities'' after ''agriculture,''; and

(3) in paragraph (6)—

(A) by striking ''and''; and

(B) by inserting '', and 'community development activities' '' before ''shall''.

SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.

(a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1113(o) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(o)) is amended—

(1) by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''; and

(2) by striking ''Federal Housing Finance Board's'' and inserting ''Federal Housing Finance Agency's''.

(b) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(c) TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by striking ''Federal Housing Finance Board'' each place such term appears in each of sections 212, 657, 1006, 1014, and inserting ''Federal Housing Finance Agency''.

(d) MARA ACT OF 1997.—Section 517(b)(4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(e) TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(f) ACCESS TO LOCAL TV ACT OF 2000.—Section 1004(d)(2)(D)(iii) of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)(iii)) is amended by striking ''Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''.

(g) SARBANES-OXLEY ACT OF 2002.—Section 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting ''and the Director of the Federal Housing Finance Agency'' after ''Commission,''.

SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE FOR LONG-TERM CARE FACILITIES.

The Comptroller General shall conduct a study of the use of affordable housing programs of the Federal home loan banks under section 10(j) of the Federal Home Loan Bank Act to determine how and the extent to which such programs are used to assist long-term care facilities for low- and moderate-income individuals, and the effectiveness and adequacy of such assistance in meeting the needs of affected communities. The study shall examine the applicability of such use to the affordable housing programs required to be established by the enterprises pursuant to the amendment made by section 139 of this Division. The Comptroller General shall submit a report to the Director of the Federal Housing Finance Agency and the Congress regarding the results of the study not later than the expiration of the 1-year period beginning on the date of the enactment of this Act. This section shall take effect on the date of the enactment of this Act.

SEC. 211. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, this title shall take effect on

and the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 6-month period beginning on the date of the enactment of this Act.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD, AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of Federal Housing Enterprise Oversight

SEC. 301. ABOLISHMENT OF OFHEO.

(a) IN GENERAL.—Effective at the end of the 6-month period beginning on the date of the enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) DISPOSITION OF AFFAIRS.—During the 6-month period beginning on the date of the enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight shall, for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight and in addition to carrying out its other responsibilities under law—

(1) manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee pursuant to section 303; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee pursuant to section 303.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director of the Federal Housing Finance Agency may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred pursuant to any other provision of this Division or any amendment made by this Division to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under or pursuant to the title XIII of the Housing and Community Development Act of 1992, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of law applicable with respect to such Office; and

(B) existed on the day before the abolishment under subsection (a) of this section.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

All regulations, orders, determinations, and resolutions that—

(1) were issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight; or

(B) a court of competent jurisdiction and that relate to functions transferred by this subtitle; and

(2) are in effect on the date of the abolishment under section 301(a) of this Division, shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, as the case may be, any court of competent jurisdiction, or operation of law.

SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

(a) TRANSFER.—Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Federal Housing Finance Agency for employment no later than the date of the abolishment under section 301(a) of this Division and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(d) REORGANIZATION.—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the date of the abolishment under section 301(a), that a reorganization of the combined work force is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Director of the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Office of Federal Housing Enterprise Oversight, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 301(a) if—

(1) the employee does not elect to give up the benefit or membership in the program; and

(2) the benefit or program is continued by the Director of the Federal Housing Finance Agency,

The difference in the costs between the benefits which would have been provided by such agency and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.

Upon the abolishment under section 301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Federal Housing Finance Agency.

Subtitle B—Federal Housing Finance Board

SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.

(a) IN GENERAL.—Effective at the end of the 6-month period beginning on the date of enactment of this Act, the Federal Housing Finance Board (in this title referred to as the ''Board'') is abolished.

(b) DISPOSITION OF AFFAIRS.—During the 6-month period beginning on the date of enactment of this Act, the Board, for the purpose of winding up the affairs of the Board and in addition to carrying out its other responsibilities under law—

(1) shall manage the employees of such Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 323; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by titles I and II and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of such Board as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 323.

(d) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director of the Federal Housing Finance Agency may use the property of the Board to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Division or any amendment made by this Division to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

(A) arises under the Federal Home Loan Bank Act or any other provision of law applicable with respect to such Board; and

(B) existed on the day before the effective date of the abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) IN GENERAL.—All regulations, orders, determinations, and resolutions described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, determination, or resolution is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Board; or

(B) a court of competent jurisdiction and relates to functions transferred by this subtitle; and

(2) is in effect on the effective date of the abolishment under section 321(a).

SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

(a) TRANSFER.—Each employee of the Board shall be transferred to the Federal Housing Finance Agency for employment not later than the effective date of the abolishment under section 321(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 321(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Board accepting employment with the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 321(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.

Upon the effective date of the abolishment under section 321(a), all property of the Board shall transfer to the Director of the Federal Housing Finance Agency.

Subtitle C—Department of Housing and Urban Development

SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNCTIONS.

(a) TERMINATION DATE.—For purposes of this subtitle, the term ''termination date'' means the date that occurs 6 months after the date of the enactment of this Act.

(b) DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.—

(1) IN GENERAL.—Not later than the expiration of the 3-month period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Director of the Office of Federal Housing Enterprise Oversight, shall determine—

(A) the functions, duties, and activities of the Secretary of Housing and Urban Development regarding oversight or regulation of the enterprises under or pursuant to the authorizing statutes, title XIII of the Housing and Community Development Act of 1992, and any other provisions of law, as in effect before the date of the enactment of this Act, but not including any such functions, duties, and activities of the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and such Office; and

(B) the employees of the Department of Housing and Urban Development necessary to perform such functions, duties, and activities.

(2) ENTERPRISE-RELATED FUNCTIONS.—For purposes of this subtitle, the term ''enterprise-related functions of the Department'' means the functions, duties, and activities of the Department of Housing and Urban Development determined under paragraph (1)(A).

(3) ENTERPRISE-RELATED EMPLOYEES.—For purposes of this subtitle, the term ''enterprise-related employees of the Department'' means the employees of the Department of Housing and Urban Development determined under paragraph (1)(B).

(c) DISPOSITION OF AFFAIRS.—During the 6-month period beginning on the date of enactment of this Act, the Secretary of Housing and Urban Development (in this title referred to as the ''Secretary''), for the purpose of winding up the affairs of the Secretary regarding the enterprise-related functions of the Department of Housing and Urban Development (in this title referred to as the ''Department'') and in addition to carrying out the Secretary's other responsibilities under law regarding such functions—

(1) shall manage the enterprise-related employees of the Department and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of any such employee under section 343; and

(2) may take any other action necessary for the purpose of winding up the enterprise-related functions of the Department.

(d) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by titles I and II and the termination of the enterprise-related functions of the Department under subsection (b) may not be construed to affect the status of any employee of the Department as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 343.

(e) USE OF PROPERTY AND SERVICES.—

(1) PROPERTY.—The Director of the Federal Housing Finance Agency may use the property of the Secretary to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Division or any amendment made by this Division to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Secretary regarding enterprise-related functions of the Department before the termination date under subsection (a) in connection with such functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(f) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or

obligation of the United States, the Secretary, or any other person, which—

(A) arises under the authorizing statutes, title XIII of the Housing and Community Development Act of 1992, or any other provision of law applicable with respect to the Secretary, in connection with the enterprise-related functions of the Department; and

(B) existed on the day before the termination date under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Secretary in connection with the enterprise-related functions of the Department shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Secretary or any member thereof as a party to any such action or proceeding.

SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) IN GENERAL.—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, or determination is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Secretary; or

(B) a court of competent jurisdiction and that relate to the enterprise-related functions of the Department; and

(2) is in effect on the termination date under section 341(a).

SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(a) TRANSFER.—

(1) IN GENERAL.—Except as provided in paragraph (2), each enterprise-related employee of the Department shall be transferred to the Federal Housing Finance Agency for employment not later than the termination date under section 341(a) and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(2) AUTHORITY TO DECLINE.—An enterprise-related employee of the Department may, in the discretion of the employee, decline transfer under paragraph (1) to a position in the Federal Housing Finance Agency and shall be guaranteed a position in the Department with the same status, tenure, grade, and pay as that held on the day immediately preceding the date that such declination was made. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date that the transfer would otherwise have occurred, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(b) GUARANTEED POSITIONS.—Each enterprise-related employee of the Department transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the termination date under section 341(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any enterprise-related employee of the Department accepting employment with the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Department, as applicable, including insurance, to which such employee belongs on the termination date under section 341(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—The difference in the costs between the benefits which would have been provided by the Department and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

SEC. 344. TRANSFER OF APPROPRIATIONS, PROPERTY, AND FACILITIES.

Upon the termination date under section 341(a), all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department in connection with enterprise-related functions of the Department shall transfer to the Director of the Federal Housing Finance Agency. Unexpended funds transferred by this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, April 3, 2008, at 9:30 a.m., in open session to consider pending nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on April 3, 2008, at 10:00 A.M., to conduct a hearing entitled ''turmoil in U.S. credit markets: examining the recent actions of Federal Financial Regulators.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, April 3, 2008, at 10 a.m., in Room 253 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATIONAL RESOURCES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on Thursday, April 3, 2008, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Thursday, April 3, 2008 at 10 a.m. in room 406 of the Dirksen Senate Office Building to hold a hearing entitled, ''Examining Strategies to Reduce Greenhouse Gas Emissions at U.S. Colleges and Universities.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, April 3, 2008, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Outside the Box on Estate Tax Reform: Reviewing Ideas to Simplify Planning''.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the