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HOUSE OF REPRESENTATIVES

REPORT
110–622

PROVIDING FOR CONSIDERATION OF THE SENATE AMENDMENTS 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

MAY 6, 2008.—Referred to the House Calendar and ordered to be printed

Mr. WELCH, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 1175]

The Committee on Rules, having had under consideration House Resolution 1175, by a record vote of 9–4, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of the Senate amendments to H.R. 3221, the American Housing Rescue and Foreclosure Prevention Act of 2008. The resolution makes in order a motion by the Chairman of the Committee on Financial Services to concur in the Senate amendment to the text with each of the three House amendments printed in this report. The rule waives all points of order against the motion except for clause 10 of rule XXI and provides that the Senate amendments and the motion shall be considered as read. The rule provides three hours of debate on the motion, with two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services and one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The rule also provides that the Chair shall divide the question of adoption of the motion among the three House amendments. The rule provides that upon adoption of the motion specified in the first section of the resolution, a motion that the House concur in the Senate amendment to the title shall be considered as adopted. The rule provides that the Chair may postpone further consideration of the motion to a time designated by the Speaker.

69–008

EXPLANATION OF WAIVERS

The waiver of all points of order against the motion (except clause 10 of rule XXI) includes a waiver of clause 7 of rule XVI, regarding nongermane amendments and includes a waiver of section 303 of the Congressional Budget Act, prohibiting consideration of legislation, as reported, providing new budget authority, change in revenues, change in public debt, new entitlement authority, or new credit authority for a fiscal year until the budget resolution for that year has been agreed to.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 481

Date: May 6, 2008.
Measure: Consideration of Senate amendments to H.R. 3221.
Motion by: Mr. Dreier.
Summary of motion: To grant an open rule.
Results: Defeated 4–9.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 482

Date: May 6, 2008.
Measure: Consideration of Senate amendments to H.R. 3221.
Motion by: Mr. Dreier.
Summary of motion: To report an open rule providing for the consideration of H.R. 5830, the FHA Housing Stabilization and Homeownership Retention Act of 2008, as well as a structured rule for consideration of H.R. 5720, the Housing Assistance Tax Act of 2008, which would provide for one germane amendment in the nature of a substitute offered by Rep. McCrery, or his designee, which would have to comply with all the rules of the House. The rule would also authorize the Chairman of the Committee on Energy and Commerce to move to take from the Speaker's table H.R. 3221, and to consider the Senate amendment thereto in the House and to move to strike all after the enacting clause, insert in lieu thereof the provisions of H.R. 5830 and 5720 as adopted by the House, insist on the House amendments and request a conference thereon.
Results: Defeated 4–9.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 483

Date: May 6, 2008.
Measure: Consideration of Senate amendments to H.R. 3221.
Motion by: Mr. Dreier.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Bachus (AL), Rep. Biggert (IL), and Rep. Capito (WV), #7, an amendment in the nature of a substitute, which, among other provisions, the amendment would establish a nationwide database of mortgage originators to prevent fraud; modernize the Federal Housing Administration; reform the Government Sponsored Enterprises; promote housing counseling; reform the appraisal industry; provide monies to the FBI to combat mortgage fraud; establish housing counseling opportunities for returning veterans; and improve disclosures for new mortgages and for monthly mortgage statements.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 484

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for amendments by Rep. Garrett (NJ), #8 and 9, which would have the FHA insure only 90% of each of the new loans instead of 100% as currently written. The second amendment, #9, removes the provision allowing mortgagors a 10% equity stake. Mortgagors would instead receive new loans underwritten with affordable mortgage payments on extended terms.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 485

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Mario Diaz-Balart (FL), #10, which increases the tax deduction amount for property taxes from $350 (or $700 for joint filers) to $500 (or $1,000 for joint filers).

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 486

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Price (GA), #2 and 3, which

strikes Title VI—Housing Assistance Authorization and which requires offsets for all new spending.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 487

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Price (GA), #5, which prohibits the use of funds set aside in Title I for housing and legal counseling from being used to provide, obtain, or arrange on behalf of a homeowner, legal representation involving or for the purposes of civil litigation.

Results: Defeated 4–9

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 488

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Terry, #1, which amends the Rangel amendment to create a one-time tax credit for homebuyers of 10 percent of the home's purchase price.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 489

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hensarling (TX), #6, which would limit the program to families with incomes that do not exceed 140 percent of the median income for the area in which the housing is located.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 490

Date: May 6, 2008.

Measure: Consideration of Senate amendments to H.R. 3221.
Motion by: Mr. Dreier.
Summary of motion: Add as a new section at the end of the resolution as follows: That upon adoption of this resolution, H.R. 2642 and H.R. 2638, and their accompanying papers are laid on the table.
Results: Defeated 4–9.
Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 491

Date: May 6, 2008.
Measure: Consideration of Senate amendments to H.R. 3221.
Motion by: Mr. McGovern.
Summary of motion: To report the rule.
Results: Adopted 9–4.
Vote by Members: McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENTS MADE IN ORDER

Summary of the House Amendment #1 to the Senate Amendment to H.R. 3221 made in order under the rule

The housing package amendment consists of a number of reforms that have passed the House and/or the Committee on Financial Services and have been assembled as conformed, such as bills regarding FHA refinance (H.R. 5830), FHA modernization (HR 1852), GSE reform (H.R. 1427), loan modification (H.R. 5579), community development investments (H.R. 1066), and certain housing preservation provisions from H.R. 1851, as well as a proposal to protect disabled veterans from discrimination in government mortgage programs.

Summary of the House Amendment #2 to the Senate Amendment to H.R. 3221 made in order under the rule

The amendment consists primarily of the text of H.R. 5720, the Housing Assistance Tax Act of 2008 as reported from the Ways and Means Committee on April 24, 2008. Middle class families would be eligible to receive a tax benefit that is equivalent to an interest-free loan of up to $7,500 towards the purchase of a first home and existing homeowners claiming the standard deduction would be allowed an additional standard deduction for property taxes up to $700 for a married couple filing jointly. States would receive a temporary increase in low-income housing tax credits and $10 billion of additional tax-exempt bond authority to provide low-interest loans to first time homebuyers, to build low-income rental housing and to refinance certain subprime mortgages. Additionally it provides that municipal bonds that are guaranteed by Federal home loan banks would be eligible for treatment as tax exempt bonds. It would also make necessary improvements to the low-income housing tax credit and other incentives for low-income rental housing

as well as make certain reforms to the rules governing real estate investment trusts. The amendment also includes language to provide better coordination between the housing tax credit and multifamily bond programs and housing programs under the Department of Housing and Urban Development (HUD) and the Rural Housing Service (RHS), including actions to streamline and expedite transactions involving these different programs. The amendment also extends the period following release from active duty (from 90 days to one year) during which a servicemember shall be protected from foreclosure, and require that any charges accrued during that period of time be fully disclosed to the servicemember. The cost of the amendment is offset with a tax compliance provision included in the President's Budget and by delaying the effective date of a tax benefit for multinational companies that has not yet taken effect.

Summary of the House Amendment #3 to the Senate Amendment to H.R. 3221 made in order under the rule

The Brad Miller/LaTourette amendment affirms the right of states to prevent abusive foreclosure practices and to establish rules concerning the foreclosure process by clarifying that this Act, the National Bank Act and the Home Owner's Loan Act do not preempt state laws regulating the foreclosure of residential real property or the treatment of foreclosed property.

TEXT OF AMENDMENTS MADE IN ORDER

TEXT OF THE HOUSE AMENDMENT #1 TO THE SENATE AMENDMENT TO H.R. 3221 MADE IN ORDER UNDER THE RULE

In the matter proposed to be inserted by the amendment of the Senate to the text of the bill, strike section 1 and all that follows through the end of title V and insert the following:

SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "American Housing Rescue and Foreclosure Prevention Act of 2008".

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

Sec. 1. Short title and table of contents.

TITLE I—FHA HOUSING STABILIZATION AND HOMEOWNERSHIP RETENTION

Sec. 101. Short title.

Subtitle A—Homeownership Retention

Sec. 111. Purposes.
Sec. 112. Insurance of homeownership retention mortgages.
Sec. 113. Study of Auction or Bulk Refinance Program.
Sec. 114. Temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by Secretary of Veterans Affairs.
Sec. 115. Study of possible accounting revisions relating to property at risk of foreclosure and the availability of credit for refinancing home mortgages at risk of foreclosure.
Sec. 116. GAO study of the effect of tightening credit markets in communities affected by the subprime mortgage foreclosure crises and predatory lending on prospective first-time homebuyers seeking mortgages.

Subtitle B—Office of Housing Counseling

Sec. 131. Short title.
Sec. 132. Establishment of Office of Housing Counseling.
Sec. 133. Counseling procedures.
Sec. 134. Grants for housing counseling assistance.
Sec. 135. Requirements to use HUD-certified counselors under HUD programs.
Sec. 136. Study of defaults and foreclosures.
Sec. 137. Definitions for counseling-related programs.
Sec. 138. Updating and simplification of mortgage information booklet.

Subtitle C—Combating Mortgage Fraud

Sec. 151. Authorization of appropriations to combat mortgage fraud.

TITLE II—FHA REFORM AND MANUFACTURED HOUSING LOAN INSURANCE MODERNIZATION

Subtitle A—FHA Reform

Sec. 201. Short title.
Sec. 202. Findings and purposes.
Sec. 203. Maximum principal loan obligation.
Sec. 204. Extension of mortgage term.
Sec. 205. Downpayment simplification.
Sec. 206. Mortgage insurance premiums for qualified homeownership assistance entities and higher-risk borrowers.
Sec. 207. Risk-based mortgage insurance premiums.
Sec. 208. Payment incentives for higher-risk borrowers.
Sec. 209. Protections for higher-risk borrowers.
Sec. 210. Refinancing mortgages.
Sec. 211. Annual reports on new programs and loss mitigation.
Sec. 212. Insurance for single family homes with licensed child care facilities.
Sec. 213. Rehabilitation loans.
Sec. 214. Discretionary action.
Sec. 215. Insurance of condominiums and manufactured housing.
Sec. 216. Mutual Mortgage Insurance Fund.
Sec. 217. Hawaiian home lands and Indian reservations.
Sec. 218. Conforming and technical amendments.
Sec. 219. Home equity conversion mortgages.
Sec. 220. Study on participation of mortgage brokers and correspondent lenders.
Sec. 221. Conforming loan limit in disaster areas.
Sec. 222. Failure to pay amounts from escrow accounts for single family mortgages.
Sec. 223. Acceptable identification for FHA mortgagors.
Sec. 224. Pilot program for automated process for borrowers without sufficient credit history.
Sec. 225. Sense of Congress regarding technology for financial systems.
Sec. 226. Clarification of disposition of certain properties.
Sec. 227. Valuation of multifamily properties in noncompetitive sales by HUD to states and localities.
Sec. 228. Limitation on mortgage insurance premium increases.
Sec. 229. Civil money penalties for improperly influencing appraisals.
Sec. 230. Mortgage insurance premium refunds.
Sec. 231. Savings provision.
Sec. 232. Implementation.

Subtitle B—FHA Manufactured Housing Loan Insurance Modernization

Sec. 251. Short title.
Sec. 252. Findings and purposes.
Sec. 253. Exception to limitation on financial institution portfolio.
Sec. 254. Insurance benefits.
Sec. 255. Maximum loan limits.
Sec. 256. Insurance premiums.
Sec. 257. Technical corrections.
Sec. 258. Revision of underwriting criteria.
Sec. 259. Requirement of social security account number for assistance.
Sec. 260. GAO study of mitigation of tornado risks to manufactured homes.

TITLE III—REFORM OF GOVERNMENT-SPONSORED ENTITIES FOR HOUSING FINANCE

Sec. 301. Short title.
Sec. 302. Definitions.

Subtitle A—Reform of Regulation of Enterprises and Federal Home Loan Banks

CHAPTER 1—IMPROVEMENT OF SAFETY AND SOUNDNESS

Sec. 311. Establishment of the Federal Housing Finance Agency.
Sec. 312. Duties and authorities of Director.
Sec. 313. Federal Housing Enterprise Board.
Sec. 314. Authority to require reports by regulated entities.
Sec. 315. Disclosure of income and charitable contributions by enterprises.
Sec. 316. Assessments.
Sec. 317. Examiners and accountants.
Sec. 318. Prohibition and withholding of executive compensation.
Sec. 319. Reviews of regulated entities.
Sec. 320. Inclusion of minorities and women; diversity in Agency workforce.
Sec. 321. Regulations and orders.
Sec. 322. Non-waiver of privileges.
Sec. 323. Risk-based capital requirements.
Sec. 324. Minimum and critical capital levels.
Sec. 325. Review of and authority over enterprise assets and liabilities.
Sec. 326. Corporate governance of enterprises.
Sec. 327. Required registration under Securities Exchange Act of 1934.
Sec. 328. Liaison with Financial Institutions Examination Council.
Sec. 329. Guarantee fee study.
Sec. 330. Conforming amendments.

CHAPTER 2—IMPROVEMENT OF MISSION SUPERVISION

Sec. 331. Transfer of product approval and housing goal oversight.
Sec. 332. Review of enterprise products.
Sec. 333. Conforming loan limits.
Sec. 334. Annual housing report regarding regulated entities.
Sec. 335. Annual reports by regulated entities on affordable housing stock.
Sec. 336. Mortgagor identification requirements for mortgages of regulated entities.
Sec. 337. Revision of housing goals.
Sec. 338. Duty to serve underserved markets.
Sec. 339. Monitoring and enforcing compliance with housing goals.
Sec. 340. Affordable Housing Fund.
Sec. 341. Consistency with mission.
Sec. 342. Enforcement.
Sec. 343. Conforming amendments.

CHAPTER 3—PROMPT CORRECTIVE ACTION

Sec. 345. Capital classifications.
Sec. 346. Supervisory actions applicable to undercapitalized regulated entities.
Sec. 347. Supervisory actions applicable to significantly undercapitalized regulated entities.
Sec. 348. Authority over critically undercapitalized regulated entities.
Sec. 349. Conforming amendments.

CHAPTER 4—ENFORCEMENT ACTIONS

Sec. 351. Cease-and-desist proceedings.
Sec. 352. Temporary cease-and-desist proceedings.
Sec. 353. Prejudgment attachment.
Sec. 354. Enforcement and jurisdiction.
Sec. 355. Civil money penalties.
Sec. 356. Removal and prohibition authority.
Sec. 357. Criminal penalty.
Sec. 358. Subpoena authority.
Sec. 359. Conforming amendments.

CHAPTER 5—GENERAL PROVISIONS

Sec. 361. Boards of enterprises.
Sec. 362. Report on portfolio operations, safety and soundness, and mission of enterprises.
Sec. 363. Conforming and technical amendments.

Sec. 364. Study of alternative secondary market systems.
Sec. 365. Effective date.

Subtitle B—Federal Home Loan Banks

Sec. 371. Definitions.
Sec. 372. Directors.
Sec. 373. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
Sec. 374. Joint activities of Banks.
Sec. 375. Sharing of information between Federal Home Loan Banks.
Sec. 376. Reorganization of Banks and voluntary merger.
Sec. 377. Securities and Exchange Commission disclosure.
Sec. 378. Community financial institution members.
Sec. 379. Technical and conforming amendments.
Sec. 380. Study of affordable housing program use for long-term care facilities.
Sec. 381. Effective date.

Subtitle C—Transfer of Functions, Personnel, and Property of Office of Federal Housing Enterprise Oversight, Federal Housing Finance Board, and Department of Housing and Urban Development

CHAPTER 1—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Sec. 385. Abolishment of OFHEO.
Sec. 386. Continuation and coordination of certain regulations.
Sec. 387. Transfer and rights of employees of OFHEO.
Sec. 388. Transfer of property and facilities.

CHAPTER 2—FEDERAL HOUSING FINANCE BOARD

Sec. 391. Abolishment of the Federal Housing Finance Board.
Sec. 392. Continuation and coordination of certain regulations.
Sec. 393. Transfer and rights of employees of the Federal Housing Finance Board.
Sec. 394. Transfer of property and facilities.

CHAPTER 3—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec. 395. Termination of enterprise-related functions.
Sec. 396. Continuation and coordination of certain regulations.
Sec. 397. Transfer and rights of employees of Department of Housing and Urban Development.
Sec. 398. Transfer of appropriations, property, and facilities.

TITLE IV—EMERGENCY MORTGAGE LOAN MODIFICATION

Sec. 401. Short title.
Sec. 402. Safe harbor for qualified loan modifications or workout plans for certain residential mortgage loans.

TITLE V—OTHER HOUSING PROVISIONS

Sec. 501. Depository Institution Community Development Investments Enhancement .
Sec. 502. Preservation of certain affordable housing dwelling units.
Sec. 503. Eligibility of certain projects for enhanced voucher assistance.
Sec. 504. Transfer of certain rental assistance contracts.
Sec. 505. Protection against discriminatory treatment.*ERR08*

TITLE I—FHA HOUSING STABILIZATION AND HOMEOWNERSHIP RETENTION

SEC. 101. SHORT TITLE.

This title may be cited as the "FHA Housing Stabilization and Homeownership Retention Act of 2008".

Subtitle A—Homeownership Retention

SEC. 111. PURPOSES.

The purposes of this subtitle are—

(1) to create an FHA program, which is voluntary on the part of borrowers and existing mortgage loan holders, including both existing senior mortgage loan holders and existing subordinate mortgage loan holders, to insure refinance loans for substantial numbers of borrowers at risk of foreclosure, at levels which are reasonably likely to be sustainable through enhanced affordability of debt service;

(2) to provide flexible underwriting for FHA-insured loans under such a program to provide refinancing opportunities under fiscally responsible terms, including higher fees commensurate with higher risk levels, a seasoning requirement for higher debt to income loans, and additional program controls to limit and control risk;

(3) to bar speculators and second home owners from participation in such program;

(4) to require existing mortgage loan holders to take substantial loan writedowns in exchange for having the Federal Government and the borrower assume the ongoing risk of the refinanced loan;

(5) to set a loan-to-value limit on such loans that provides the FHA with an equity buffer against potential loan losses, provides protections against the risk of future home price declines, and creates incentives for borrowers to maintain payments on the loan;

(6) to protect the FHA against losses which may exceed normal FHA loss levels by establishing higher fee levels, including an exit fee and profit sharing during the first five years of the loan, with such higher fee levels effectively being funded through the required lender writedown;

(7) to provide a fair level of incentives for junior lien holders to provide the necessary releases of their lien interests, in order to meet program requirements that all outstanding liens must be extinguished, and thereby permit the refinancing to be completed;

(8) to enhance the administrative capacity of the FHA to carry out its expanded role under the program through establishment of an Oversight Board which adds expertise from the Federal Reserve and the Department of the Treasury, through additional funding to contract out for the provision of any needed expertise in designing program requirements and oversight, and through additional funding to increase FHA personnel resources as needed to handle the increased loan volume resulting from the program;

(9) to sunset the program when it is no longer needed; and

(10) to study the need for and efficacy of an auction or bulk refinancing mechanism to facilitate more expeditious refinancing of larger volumes of existing mortgages that are at risk for foreclosure into FHA-insured mortgages.

SEC. 112. INSURANCE OF HOMEOWNERSHIP RETENTION MORTGAGES.

(a) MORTGAGE INSURANCE PROGRAM.—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. INSURANCE OF HOMEOWNERSHIP RETENTION MORTGAGES.

"(a) OVERSIGHT BOARD.—

"(1) ESTABLISHMENT.—There is hereby established the Refinance Program Oversight Board (in this section referred to as the 'Oversight Board').

"(2) MEMBERSHIP.—The Oversight Board shall consist of the following members or their designees:

"(A) The Secretary of the Treasury.

"(B) The Secretary of Housing and Urban Development.

"(C) The Chairman of the Board of Governors of the Federal Reserve System.

"(3) NO ADDITIONAL COMPENSATION.—Members of the Oversight Board shall receive no additional pay by reason of service on the Oversight Board.

"(4) RESPONSIBILITIES.—The Oversight Board shall be responsible for establishing program and oversight requirements for the program under this section, which shall include—

"(A) detailed program requirements under subsection (c);

"(B) flexible underwriting criteria under subsection (d);

"(C) a mortgage premium structure under subsection (e);

"(D) a reasonable fee and rate limitation under subsection (f);

"(E) enhancement of FHA capacity under subsection (i), including oversight of such activities and personnel as may be contracted for as provided therein;

"(F) monitoring of underwriting risk under subsection (j); and

"(G) such additional requirements as may be necessary and appropriate to oversee and implement the program.

"(5) USE OF RESOURCES.—In carrying out its functions under this section, the Oversight Board may utilize, with their consent and to the extent practical, the personnel, services, and facilities of the Department of the Treasury, the Department of Housing and Urban Development, the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, and other Federal agencies, with or without reimbursement therefore.

"(b) AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall, subject only to the absence of qualified requests for insurance under this section and to the limitations under subsection (h) of this section and section 531(a), make commitments to insure and insure any mortgage covering a 1- to 4-family residence that is made for the purpose of paying or prepaying outstanding obligations under an existing mortgage or mortgages on the residence if the mortgage being insured under this section meets the requirements of this section, as established by the Oversight Board, and of section 203, except as modified by this section.

"(2) ESTABLISHMENT AND IMPLEMENTATION OF PROGRAM REQUIREMENTS.—The Oversight Board shall establish program requirements and standards under this section and the Secretary shall implement such requirements and standards. The Oversight Board and the Secretary may establish and imple-

ment any requirements or standards through interim guidance and mortgagee letters.

"(c) REQUIREMENTS.—To be eligible for insurance under this section, a mortgage shall comply with all of the following requirements:

"(1) OWNER-OCCUPIED PRINCIPAL RESIDENCE REQUIREMENT.—The residence securing the mortgage insured under this section shall be occupied by the mortgagor as the principal residence of the mortgagor and the mortgagor shall provide a certification to the originator of the mortgage that such residence securing the mortgage insured under this section is the only residence in which the mortgagor has any present ownership interest. With regard to such certification, the Oversight Board may create exceptions for mortgagors who have only a partial ownership interest in a residence other than the residence securing the mortgage insured under this section.

"(2) LACK OF CAPACITY TO PAY EXISTING MORTGAGE OR MORTGAGES.—

"(A) BORROWER CERTIFICATION.—

"(i) The mortgagor shall provide a certification to the originator of the mortgage that the mortgagor—

"(I) has not intentionally defaulted on the existing mortgage or mortgages; and

"(II) has not knowingly, or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the existing mortgage or mortgages.

"(ii) The mortgagor shall agree in writing that the mortgagor shall be liable to repay the FHA any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made in the certifications and documentation required under this subparagraph, subject to the discretion of the Oversight Board.

"(B) CURRENT BORROWER DEBT-TO-INCOME RATIO.—As of March 1, 2008, the mortgagor shall have had a ratio of mortgage debt to income, taking into consideration all existing mortgages at such time, greater than 35 percent.

"(C) LOSS MITIGATION RESPONSIBILITIES.—This section may not be construed to alter or in any way affect the responsibilities of any party (including the mortgage servicer) to engage in any or all loan modification or other loss mitigation strategies to maximize value to investors as established by any applicable contract.

"(3) ELIGIBILITY OF MORTGAGES BY DATE OF ORIGINATION.—The existing senior mortgage shall have been originated on or before December 31, 2007.

"(4) MAXIMUM LOAN-TO-VALUE RATIO FOR NEW LOANS.—The mortgage being insured under this section shall involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve and including the mortgage insurance premium paid pursuant to subsection (e)(1)) in an amount not to exceed 90

percent of the current appraised value of the property. Section 203(d) shall not apply to mortgages insured under this section.

"(5) REQUIRED WAIVER OF PREPAYMENT PENALTIES AND FEES.—All penalties for prepayment of the existing mortgage or mortgages, and all fees and penalties related to default or delinquency on all existing mortgages or mortgages, shall be waived or forgiven.

"(6) REQUIRED LOAN REDUCTION.—

"(A) REDUCTION OF INDEBTEDNESS UNDER EXISTING SENIOR MORTGAGE.—The amount of indebtedness on the existing mortgage or mortgages on the residence shall have been substantially reduced by such percentage as the Oversight Board may require, and such reduction shall be at least sufficient to—

"(i) provide for the refinancing of such existing mortgage or mortgages in an amount not greater than 90 percent of the current appraised value of the property involved;

"(ii) pay the full amount of the single premium to be collected pursuant to subsection (e)(1) (which shall be an amount equal to 3.0 percent of the amount of the original insured principal obligation of the mortgage insured under this section and which shall serve as an additional reserve to cover possible loan losses); and

"(iii) pay the full amount of the loan origination fee and any other closing costs, not to exceed 2.0 percent of the amount of the original insured principal obligation of the mortgage insured under this section.

"(B) EXTINGUISHMENT OF DEBT BY REFINANCING.—

"(i) REQUIRED AGREEMENT.—All existing holders of mortgage liens on the property securing the mortgage to be insured under this section shall agree to accept the proceeds of the insured loan as payment in full of all indebtedness under all existing mortgages, and all encumbrances related to such mortgages shall be removed. The Oversight Board may take such actions as the Oversight Board considers necessary or appropriate to facilitate coordination and agreement between the holders of the existing senior mortgage and any existing subordinate mortgages, taking into consideration the subordinate lien status of such subordinate mortgages, to comply with the requirement under this subparagraph.

"(ii) TREATMENT OF MULTIPLE MORTGAGE LIENS.—In addition to clause (i), the Oversight Board shall adopt one of the following approaches for all mortgages or such classes of mortgages as the Oversight Board may determine and may, from time to time, reconsider:

"(I) FIXED PRICE.—As a requirement for participating in this program, all existing lien holders will agree to not provide any payment to subordinate lien holders other than such payment in accordance with a formula established by the Oversight Board as set forth in clause (iii); except that the Oversight Board may establish a short period

within which first and subordinate lien holders may negotiate to extinguish all subordinate liens for compensation that may be different from the amount determined under such formula set forth in clause (iii).

"(II) SHARED EQUITY.—The Oversight Board may require the mortgagor under a mortgage insured under this section to agree to share a portion of any future equity in the mortgaged property with holders of existing subordinate mortgages, in accordance with a formula for such shared equity established by the Oversight Board as set forth in clause (iii), except that payments of such shared equity may be made only after the Secretary recovers all amounts owed to the Secretary with respect to such mortgage pursuant to the program under this section (including amounts owed pursuant to paragraph (8)).

"(iii) FORMULA.—In determining a formula for determining any payments to subordinate lien holders pursuant to subclauses (I) and (II) of clause (ii), and in any reconsideration of such formula as the Oversight Board may from time to time undertake, the Oversight Board shall take into consideration the current market value of such liens. In no case may a formula provide for the payment of more than 1 percent of the current appraised value of the mortgaged property to a subordinate lien holder if the outstanding balance owed to more senior lien holders is equal to or exceeds such current appraised value.

"(iv) VOLUNTARY PROGRAM.—This section may not be construed to require any holder of any existing mortgage to participate in the program under this section generally, or with respect to any particular loan.

"(v) SOURCE OF PAYMENTS FOR SUBORDINATE LOANS.—Any amounts paid to holders of any existing subordinate mortgages in connection with the origination and insurance of a mortgage under this section shall derive only from—

"(I) the holder of the existing senior mortgage; or

"(II) in the case only of the shared equity approach under clause (ii)(II), the mortgagor under the mortgage insured under this section

"(7) REQUIRED REDUCTION OF DEBT SERVICE.—The debt service payments due under the mortgage insured under this section shall be in an amount that is substantially reduced from the debt service payments due under the existing mortgage or mortgages, which reduction may be achieved through a reduction of indebtedness, a reduction in the interest rate being paid, or an extension of the term of the mortgage, or any combination thereof.

"(8) FINANCIAL RECOVERY TO FEDERAL GOVERNMENT THROUGH EXIT PREMIUM.—

"(A) SUBORDINATE LIEN.—The mortgage shall provide that the Secretary shall retain a lien on the residence involved, which shall be subordinate to the mortgage insured under this section but senior to all other mortgages on the residence that may exist at any time, and which shall secure the repayment of the amount due under subparagraph (D).

"(B) NO INTEREST OR PAYMENT DURING MORTGAGE.—The amount secured by the lien retained by the Secretary pursuant to subparagraph (A) shall not bear interest and shall not be repayable to the Secretary except as provided in subparagraph (D) of this paragraph.

"(C) NET PROCEEDS AVAILABLE FOR EXIT PREMIUM.—Upon the sale, refinancing, or other disposition of the residence securing a mortgage insured under this section, any proceeds resulting from such disposition that remain after deducting the remaining insured principal balance of the mortgage insured under this section shall be available to meet the obligation under subparagraph (D). In the case of a refinance, non-arms length transaction, or such other transaction as the Oversight Board shall determine, the proceeds shall be based on the current appraised value at the time of the refinance or transaction.

"(D) EXIT PREMIUM.—Upon any refinancing of the mortgage insured under this section or any sale or disposition of the residence securing the mortgage, the Secretary shall, subject to the availability of sufficient net proceeds described in subparagraph (C), receive the greater of—

"(i) 3 percent of the amount of the original insured principal obligation of the mortgage (or the entire amount of the net proceeds described in subparagraph (C) if such net proceeds are less than 3 percent of the amount of the original insured principal obligation of the mortgage); or

"(ii) a percentage of the portion of the net proceeds available for profit-sharing, as described in subparagraph (E), which shall be—

"(I) in the case of any refinancing, sale, or disposition occurring during the first year of the term of the mortgage, 100 percent of such net proceeds;

"(II) in the case of any refinancing, sale, or disposition occurring during the second year of the term of the mortgage, 80 percent;

"(III) in the case of any refinancing, sale, or disposition occurring during the third year of the term of the mortgage, 60 percent; and

"(IV) in the case of any refinancing, sale, or disposition occurring during the fourth year of the term of the mortgage or at any time thereafter, 50 percent;

except that such percentage of proceeds shall be reduced by all fees the Secretary has collected for the mortgage prior to such refinancing, sale, or disposition.

"(E) NET PROCEEDS AVAILABLE FOR PROFIT-SHARING.—With respect to any mortgage insured under this section,

the net proceeds available for purposes of subparagraph (D)(ii) shall be any proceeds resulting from the sale, refinancing, or other disposition of the residence securing the mortgage that remain after deducting the original insured principal obligation of the mortgage. In the case of a refinance, non-arms length transaction, or such other transaction as the Oversight Board shall determine, the proceeds shall be based on the current appraised value at the time of the refinance or transaction.

"(F) AUTHORITY TO PROHIBIT NEW SECOND LIENS.—The Oversight Board shall prohibit borrowers from granting a new second lien on the mortgaged property during the first five years of the term of the mortgage insured under this section, except as the Oversight Board determines to be necessary to ensure the appropriate maintenance of the mortgaged property.

"(9) DOCUMENTATION AND VERIFICATION OF INCOME.—In complying with the FHA underwriting requirements under the program under this section, the mortgagee shall document and verify the income of the mortgagor or non-filing status by procuring (A) an income tax return transcript of the income tax returns of the mortgagor, or (B) a copy of the income tax returns for the Internal Revenue Service, for the two most recent years for which the filing deadline for such years has passed and by any other method, in accordance with procedures and standards that the Oversight Board shall establish.

"(10) FIXED RATE MORTGAGE.—The mortgage insured under this section shall bear interest at a single rate that is fixed for the entire term of the mortgage.

"(11) MAXIMUM LOAN AMOUNT.—Notwithstanding section 203(b)(2), the mortgage being insured under this section shall involve a principal obligation in an amount that does not exceed the limitation (for a property of the applicable size) on the amount of the principal obligation that would be allowable under the terms of section 202(a) of the Economic Stimulus Act of 2008 if the mortgage were insured pursuant to such section. The limitation on the amount of the principal obligation allowable under such Act shall apply for the purposes of this section until the termination under subsection (n) of the program under this section.

"(12) INELIGIBILITY FOR FRAUD CONVICTION.—The mortgagor shall not have been convicted under Federal or State law for mortgage fraud during the 7-year period ending upon the insurance of the mortgage under this section.

"(13) LENDER REVIEW.—The mortgagee under the mortgage shall conduct an electronic database search of the mortgagor's criminal history to determine if the mortgagor has had a conviction described in paragraph (12). The mortgagee may charge the mortgagor a reasonable fee for the actual cost of the search not to exceed a maximum rate established by the Oversight Board. The Oversight Board may provide clarification, if needed, to help mortgagees identify any differences among the States in how they report mortgage fraud convictions. The Oversight Board shall establish procedures sufficient to allow the mortgagor to challenge a mortgagee's determination with

respect to paragraph (12) (including to correct inaccuracies resulting from theft of the mortgagor's identity or personally identifiable information).

"(14) APPRAISALS.—Any appraisal conducted in connection with a mortgage insured under this section shall—

"(A) be based on the current value of the property;

"(B) be conducted in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.);

"(C) be completed by an appraiser who meets the competency requirements of the Uniform Standards of Professional Appraisal Practice;

"(D) be wholly consistent with the appraisal standards, practices, and procedures under section 202(e) of this Act that apply to all loans insured under this Act; and

"(E) comply with the requirements of subsection (g) of this section (relating to appraisal independence).

"(15) STATEMENT OF LOAN TERMS.—

"(A) REQUIREMENT.—The mortgagor shall have been provided by the mortgagee, not later than three days before closing for the mortgage, a form described in subparagraph (B) appropriately and accurately completed by the mortgagee.

"(B) FORM.—The form described in this subparagraph shall be a single page, written disclosure regarding the mortgage loan to be insured under this section that, when completed by the mortgagee, sets forth, in accordance with such requirements as the Secretary shall by regulation establish a best possible estimate of—

"(i) the total loan amount under the mortgage;

"(ii) the loan-to-value ratio for the mortgage;

"(iii) the final maturity date for the mortgage;

"(iv) the amount of any prepayment fee to be charged if the mortgage is paid in full before the final maturity date for the mortgage, including the percentages of any net proceeds to be received by the Secretary pursuant to paragraph (8)(D)(ii);

"(v) the amount of the exit premium under the mortgage pursuant to subsection (e)(3);

"(vi) the interest rate under the mortgage expressed as an annual percentage rate, and the amount of the monthly payment due under such rate;

"(vii) the fully indexed rate of interest under the mortgage expressed as an annual percentage rate and the amount of the monthly payment due under such rate;

"(viii) the monthly household income of the borrower upon which the mortgage is based;

"(ix) the amount of the monthly payment due under the mortgage, and the amount of such initial monthly payment plus monthly amounts due for taxes and insurance on the property for which the mortgage is made, both expressed as a percentage of the monthly household income of the borrower; and

"(x) the aggregate amount of settlement charges for all settlement services provided in connection with the mortgage, the amount of such charges that are included in the principal amount and the amount of such charges the borrower must pay at closing, the aggregate amount of mortgagee's fees connection with the mortgage, and the aggregate amount of other fees or required payments in connection with the mortgage.

"(d) FLEXIBLE UNDERWRITING CRITERIA.—

"(1) IN GENERAL.—The Oversight Board shall establish, and the Secretary acting on behalf of the Oversight Board shall implement, underwriting standards for mortgages insured under this section that—

"(A) ensure that each mortgagor under a mortgage insured under this section has a reasonable expectation of repaying the mortgage, taking into consideration the mortgagor's income, assets, liabilities, payment history, and other applicable criteria, but which shall not result in a denial of insurance solely on the basis of the mortgagor's current FICO or other credit scores, or any delinquency or default by the mortgagor under the existing mortgage or mortgages, or any case filed under title 11, United States Code, by the mortgagor; and

"(B) subject to the provisions of subparagraph (A), permit a total debt-to-income ratio of up to 43 percent.

"(2) EXCEPTION.—

"(A) IN GENERAL.—Subject to the underwriting standards established under paragraph (1)(A) and any additional requirements that the Oversight Board considers appropriate, the Oversight Board shall permit a total debt-to-income ratio of more than 43 percent, but not more than 50 percent, if the mortgagor has made, on a timely basis before the endorsement of the mortgage insured under this section, not less than six months of payments in an amount not less than the amount of the monthly payment due under the mortgage to be insured under this section. The holder of the existing senior mortgage shall exercise forbearance with respect to such mortgage during the period in which such payments are made.

"(B) COMPUTATION OF DEBT-TO-INCOME RATIO.— In computing the mortgagor's total debt-to-income ratio for purposes of mortgage qualification under the underwriting standards established pursuant to this section—

"(i) if the mortgagor is a debtor in a case under chapter 13 of title 11, United States Code, payments on recurring debts other than housing expenses shall be based on the amounts being paid on such debts under the mortgagor's confirmed plan under such chapter; and

"(ii) if the mortgagor is a debtor in a case under chapter 7 of title 11, United States Code, recurring debts that are to be discharged in that case shall not be considered.

"(3) AUTHORITY.—The Oversight Board may alter the ratios under this subsection for a particular class of borrowers subject

to such requirements as the Board determines is necessary and appropriate to fulfill the purposes of this Act.

"(4) REPRESENTATIONS AND WARRANTIES.—The Oversight Board shall require the underwriter of the insured loan to provide such representations and warranties as the Oversight Board considers necessary or appropriate for the Secretary to enforce compliance with all underwriting and appraisal standards of the program.

"(e) PREMIUMS.—For each mortgage insured under this section, the Oversight Board shall establish and the Secretary shall collect—

"(1) at the time of insurance, a single premium payment in an amount equal to 3.0 percent of the amount of the original insured principal obligation of the mortgage, which shall be paid from the proceeds of the mortgage being insured under this section, through the reduction of the amount of indebtedness on the existing senior mortgage required under subsection (c)(6)(A);

"(2) in addition to the premium under paragraph (1), annual premium payments in an amount equal to 1.50 percent of the remaining insured principal balance of the mortgage; and

"(3) an exit premium in the amount determined under subsection (c)(8), but which shall not be less than 3.0 percent of the original insured principal obligation of the mortgage, subject only to the availability of sufficient net proceeds from sale, refinancing, or other disposition of the property, as determined in subsection (c)(8).

"(f) ORIGINATION FEES AND MORTGAGE RATE.—The Oversight Board shall establish and the Secretary shall implement a reasonable limitation on origination fees for mortgages insured under this section and shall establish procedures to ensure that interest rates on such mortgages shall be commensurate with market rate interest rates on such types of loans.

"(g) APPRAISAL INDEPENDENCE.—

"(1) PROHIBITIONS ON INTERESTED PARTIES IN A REAL ESTATE TRANSACTION.—No mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, nor any other person with an interest in a real estate transaction involving an appraisal in connection with a mortgage insured under this section shall improperly influence, or attempt to improperly influence, through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, non-payment for services rendered, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with the mortgage.

"(2) EXCEPTIONS.—The requirements of paragraph (1) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

"(A) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

"(B) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

"(C) Correct errors in the appraisal report.

"(3) CIVIL MONETARY PENALTIES.—The Secretary may impose a civil money penalty for any knowing and material violation of paragraph (1) under the same terms and conditions as are authorized in section 536(a) of this Act.

"(h) LIMITATION ON AGGREGATE INSURANCE AUTHORITY.—The aggregate original principal obligation of all mortgages insured under this section may not exceed $300,000,000,000.

"(i) ENHANCEMENT OF FHA CAPACITY.—Under the direction of the Oversight Board, the Secretary shall take such actions as may be necessary to—

"(1) contract for the establishment of underwriting criteria, automated underwriting systems, pricing standards, and other factors relating to eligibility for mortgages insured under this section;

"(2) contract for independent quality reviews of underwriting, including appraisal reviews and fraud detection, of mortgages insured under this section or pools of such mortgages; and

"(3) increase personnel of the Department as necessary to process or monitor the processing of mortgages insured under this section.

"(j) MONITORING OF UNDERWRITING RISK.—

"(1) MONITORING OF DESIGNATED UNDERWRITERS.—The Oversight Board and the Secretary shall monitor independent quality reviews as established pursuant to subsection (i)(2) to—

"(A) determine compliance of designated underwriters with underwriting standards;

"(B) determine rates of delinquency, claims rates, and loss rates of designated underwriters; and

"(C) terminate eligibility of designated underwriters that do not meet minimum performance standards as the Oversight Board may establish and the Secretary implements.

"(2) REPORTS BY OVERSIGHT BOARD.—The Oversight Board shall submit monthly reports to the Congress identifying the progress of the program for mortgage insurance under this section, which shall contain the following information for each month:

"(A) The number of new mortgages insured under this section, including the location of the properties subject to such mortgages by census tract.

"(B) The aggregate principal obligation of new mortgages insured under this section.

"(C) The average amount by which the indebtedness on existing mortgages is reduced in accordance with subsection (c)(6).

"(D) The average amount by which the debt service payments on existing mortgages is reduced in accordance with subsection (c)(7).

"(E) The amount of premiums collected for insurance of mortgages under this section.

"(F) The claim and loss rates for mortgages insured under this section.

"(G) The race, ethnicity, gender, and income of the mortgagors, aggregated by geographical areas at least as specific as census tracts, except where necessary to protect privacy of the borrower.

"(H) Any other information that the Oversight Board considers appropriate.

"(3) REPORT BY INSPECTOR GENERAL.—The Inspector General of the Department of Housing and Urban Development shall conduct an annual audit of the program for mortgage insurance under this section to determine compliance with this section and program rules.

"(k) GNMA COMMITMENT AUTHORITY.—

"(1) GUARANTEES.—The Secretary shall take such actions as may be necessary to ensure that securities based on and backed by a trust or pool composed of mortgages insured under this section are available to be guaranteed by the Government National Mortgage Association as to the timely payment of principal and interest.

"(2) GUARANTEE AUTHORITY.—To carry out the purposes of section 306 of the National Housing Act (12 U.S.C. 1721), the Government National Mortgage Association may enter into new commitments to issue guarantees of securities based on or backed by mortgages insured under this section, not exceeding $300,000,000,000. The amount of authority provided under the preceding sentence to enter into new commitments to issue guarantees is in addition to any amount of authority to make new commitments to issue guarantees that is provided to the Association under any other provision of law.

"(l) SPECIAL RISK INSURANCE FUND.—The insurance of each mortgage under this section shall be the obligation of the Special Risk Insurance Fund established by section 238.

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

"(1) EXISTING MORTGAGE.—The term 'existing mortgage' means, with respect to a mortgage insured under this section, a mortgage that is to be extinguished, and paid or prepaid, from the proceeds of the mortgage insured under this section.

"(2) EXISTING SENIOR MORTGAGE.—The term 'existing senior mortgage' means, with respect to a mortgage insured under this section, the existing mortgage that has superior priority.

"(3) EXISTING SUBORDINATE MORTGAGE.—The term 'existing subordinate mortgage' means, with respect to a mortgage insured under this section, an existing mortgage that has subordinate priority to the existing senior mortgage.

"(n) SUNSET.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the authority of the Secretary to make any new commitment to insure any mortgage under this section shall terminate upon the expiration of the 2-year period beginning on the date of the enactment of the FHA Housing Stabilization and Homeownership Retention Act of 2008.

"(2) EXTENSIONS.—The Oversight Board may, not more than four times, extend the authority to enter into new commitments to insure mortgages under this section beyond the date specified in paragraph (1), except that each such extension shall—

"(A) be effective only if, before the program terminates pursuant to paragraph (1) or any previous extension pursuant to this paragraph, the Oversight Board—

"(i) certifies the need for such extension in writing to the Congress; and

"(ii) causes notice of such extension to be published in the Federal Register no later than the beginning of the 3-month period that ends upon the scheduled termination date of the program; and

"(B) be for a period of not more than 6 months.

"(o) AUTHORIZATIONS OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2008 and 2009—

"(1) $230,000,000 for providing counseling regarding loss mitigation for mortgagors with 1- to 4-family residences, including determining eligibility for the program under this section, with grants to be administered through the Neighborhood Reinvestment Corporation, except that—

"(A) funds shall be targeted to States and communities based on their levels of foreclosures and delinquencies in 2007 and 2008;

"(B) not less than 15 percent of the funds made available pursuant to this paragraph shall be provided to counseling organizations that target counseling services regarding loss mitigation to minority and low-income homeowners or provide such services in neighborhoods with high concentrations of minority and low-income homeowners;

"(C) $35,000,000 of the funds made available pursuant to this paragraph shall be used by the Neighborhood Reinvestment Corporation (referred to in this subparagraph as the 'NRC') to make grants to State and local legal organizations or attorneys that have demonstrated legal experience in home foreclosure or eviction law to provide legal assistance related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure or to counseling intermediaries that have been approved by the Department of Housing and Urban Development for the purpose of making such grants or contracting for such legal assistance; of the amount provided under this subparagraph, at least 60 percent shall be allocated for legal assistance to low-income homeowners or tenants; such attorneys shall be capable of assisting homeowners in owner-occupied homes or tenants who live in homes with mortgages in default, in danger of default, or subject to or at risk of foreclosure or eviction and who have legal issues that cannot be handled by counselors employed by NRC intermediaries; in using the amount made available under this subparagraph, the NRC shall give priority consideration to State and local legal organizations and attorneys that (i) 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 (ii) have the capacity to begin using the financial assistance within 90 days after receipt of the assistance; as a condition of the receipt of a grant under this subparagraph, the grantee shall submit to NRC information relating to the demographic characteristics of the assisted homeowners or tenants, the dollar amount and terms of the relevant mortgages and the outcome of legal proceedings related to the foreclosure or eviction proceedings, including the resolutions thereof; except that no funds under this subparagraph shall be used for class action litigation;

"(D) $20,000,000 of the funds made available pursuant to this paragraph shall be used for such counseling for veterans recently returning from active duty in the Armed Forces;

"(E) the NRC shall give priority consideration for funding with amounts made available pursuant to this paragraph, except for funds made available under subparagraphs (B), (C), and (D), to entities that have an effective plan in place for making contact, including personal contact, with defaulted mortgagors, and such a plan may include use of third parties (including both for-profit and not-for-profit entities) to make personal contact with defaulted mortgagors, or visits to such mortgagors, or both;

"(F) except with respect to funds reserved under subparagraphs (B), (C), and (D), the NRC shall give priority consideration for funding with amounts made available pursuant to this paragraph to entities that have a written plan that has been implemented for providing in-person counseling and for making contact, including personal contact, with defaulted mortgagors, for the purpose of providing counseling or providing information about available counseling, both (i) prior to commencement of any foreclosure proceedings, and (ii) in the event effective in person or phone contact has not been made with such defaulted mortgagors prior thereto, then prior to the conclusion of the foreclosure process; and

"(G) not less than 2 percent of the funds made available pursuant to this paragraph shall be used only for identifying and notifying borrowers under existing mortgages who are eligible under this section for insurance of refinancing mortgages, and in making funds reserved under this subparagraph available for such purpose, the Secretary shall give preference to assistance for programs that have a proven history of outreach within minority communities; and

"(2) $150,000,000 for costs of activities under subsection (i).

"(p) AUDIT AND REPORT BY INSPECTOR GENERAL.—

"(1) AUDIT.—The Inspector General of the Department of Housing and Urban Development shall conduct an audit of the program for loss mitigation counseling funded with amounts made available under subsection (o)(1) to determine compliance with such subsection.

"(2) REPORTS TO CONGRESS.—Not later than March 30, 2009, and every calendar quarter thereafter, the Inspector General shall submit to the appropriate committees of the Congress a report summarizing the activities of the Inspector General and the Neighborhood Reinvestment Corporation during the 120-day period ending on the date of such report. Each report shall include, for the period covered by such report, a detailed statement of all obligations, expenditures, and revenues associated with paragraphs (1) and (2) of subsection (o), including—

"(A) obligations and expenditures of appropriated funds;

"(B) the number of homeowners eligible in such program;

"(C) the number of homeowners participating in such program;

"(D) the status of homeowners within such program;

"(E) the number of homeowners who have rejected assistance from the Neighborhood Reinvestment Corporation; and

"(F) information on participating counseling services.".

(b) SPECIAL RISK INSURANCE FUND.—Section 238 of the National Housing Act (12 U.S.C. 1715z–3) is amended—

(1) in subsection (a)(1), by striking "or 243" each place such term appears and inserting "243, or 257"; and

(2) in subsection (b), by striking "and 243" each place such term appears and inserting "243, and 257".

(c) FHA REVERSE MORTGAGE PROGRAM.—Section 255(g) of the National Housing Act (12 U.S.C. 1715z–20(g)) is amended by striking the first sentence.

SEC. 113. STUDY OF AUCTION OR BULK REFINANCE PROGRAM.

(a) STUDY.—The Board of Governors of the Federal Reserve System (in this section referred to as the "Board of Governors"), in consultation with other members of the Oversight Board established by section 257(a) of the National Housing Act (as added by the amendment made by section 112(a) of this title), shall conduct a study of the need for and efficacy of an auction or bulk refinancing mechanism to facilitate refinancing of existing residential mortgages that are at risk for foreclosure into mortgages insured under the mortgage insurance program under title II of the National Housing Act. The study shall identify and examine various options for mechanisms under which lenders and servicers of such mortgages may make bids for forward commitments for such insurance in an expedited manner.

(b) CONTENT.—

(1) ANALYSIS.—The study required under subsection (a) shall analyze—

(A) the feasibility of establishing a mechanism that would facilitate the more rapid refinancing of borrowers at risk of foreclosure into performing mortgages insured under title II of the National Housing Act;

(B) whether such a mechanism would provide an effective and efficient mechanism to reduce foreclosures on qualified existing mortgages;

(C) whether the use of an auction or bulk refinance program is necessary to stabilize the housing market and re-

duce the impact of turmoil in that market on the economy of the United States;

(D) whether there are other mechanisms or authority that would be useful to reduce foreclosure; and

(E) and any other factors that the Board of Governors considers relevant.

(2) DETERMINATIONS.—To the extent that the Board of Governors finds that a facility of the type described in paragraph (1) is feasible and useful, the study shall—

(A) determine and identify any additional authority or resources needed to establish and operate such a mechanism;

(B) determine whether there is a need for additional authority with respect to the loan underwriting criteria included in the amendment made by section 112(a) of this title or with respect to eligibility of participating borrowers, lenders, or holders of liens;

(C) determine whether such underwriting criteria should be established on the basis of individual loans, in the aggregate, or otherwise to facilitate the goal of refinancing borrowers at risk of foreclosure into viable loans insured under the National Housing Act.

(c) REPORT.—Not later than the expiration of the 60-day period beginning on the date of the enactment of this Act, the Board of Governors shall submit a report regarding the results of the study conducted under this section to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include a detailed description of the analysis required under subsection (b)(1) and of the determinations made pursuant to subsection (b)(2), and shall include any other findings and recommendations of the Board of Governors pursuant to the study, including identifying various options for mechanisms described in subsection (a).

SEC. 114. TEMPORARY INCREASE IN MAXIMUM LOAN GUARANTY AMOUNT FOR CERTAIN HOUSING LOANS GUARANTEED BY 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. 115. STUDY OF POSSIBLE ACCOUNTING REVISIONS RELATING TO PROPERTY AT RISK OF FORECLOSURE AND THE AVAILABILITY OF CREDIT FOR REFINANCING HOME MORTGAGES AT RISK OF FORECLOSURE.

(a) STUDY REQUIRED.—The Securities and Exchange Commission, in consultation with the Board of Governors of the Federal Reserve System, shall conduct a study on fair value accounting standards applicable to financial institutions, including depository institutions, with respect to their residential mortgages that are at risk of foreclosure and mortgage-backed securities involving such mortgages, the effects of such accounting standards on a financial institution's balance sheet and capacity to provide refinancing to residential mortgagors that are at risk of foreclosure and to residential mortgagors during periods of market value declines and increased foreclosures, and the advisability and feasibility of modifications of such standards during periods of market fluctuation in order to maintain the ability of the institution to continue to carry mortgages on residential property at risk of foreclosure and assure the availability of credit to refinance at-risk residential mortgages.

(b) REPORT REQUIRED.—The Securities and Exchange Commission shall submit a report to the Congress before the end of the 90-day period beginning on the date of the enactment of this Act containing the findings and determinations of the Commission with respect to the study conducted under subsection (a) and such administrative and legislative recommendations as the Commission may determine to be appropriate.

SEC. 116. GAO STUDY OF THE EFFECT OF TIGHTENING CREDIT MARKETS IN COMMUNITIES AFFECTED BY THE SUBPRIME MORTGAGE FORECLOSURE CRISES AND PREDATORY LENDING ON PROSPECTIVE FIRST-TIME HOMEBUYERS SEEKING MORTGAGES.

The Comptroller General of the United States shall conduct a study to analyze the effects of tightening credit markets on prospective first-time home buyers who reside in selected communities that have been most detrimentally affected by both the current subprime mortgage foreclosure crisis and predatory mortgage lending. Such study shall also analyze the adequacy of financial literacy outreach efforts by agencies of the Federal Government tasked with implementing financial literacy education in such communities and shall assess whether the current funding levels for such efforts are at sufficient levels to reduce the levels of subprime mortgage delinquencies and foreclosures and to increase the level of financial literacy in the selected communities so as to minimize the incidences of predatory mortgage lending. Not later than the expiration of the 6-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 of the study and including recommendations regarding such funding levels.

Subtitle B—Office of Housing Counseling

SEC. 131. SHORT TITLE.

This subtitle may be cited as the "Expand and Preserve Home Ownership Through Counseling Act".

SEC. 132. ESTABLISHMENT OF OFFICE OF HOUSING COUNSELING.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding at the end the following new subsection:

"(g) OFFICE OF HOUSING COUNSELING.—

"(1) ESTABLISHMENT.—There is established, in the Office of the Secretary, the Office of Housing Counseling.

"(2) DIRECTOR.—There is established the position of Director of Housing Counseling. The Director shall be the head of the Office of Housing Counseling and shall be appointed by the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

"(3) FUNCTIONS.—

"(A) IN GENERAL.—The Director shall have ultimate responsibility within the Department, except for the Secretary, for all activities and matters relating to homeownership counseling and rental housing counseling, including—

"(i) research, grant administration, public outreach, and policy development relating to such counseling; and

"(ii) establishment, coordination, and administration of all regulations, requirements, standards, and performance measures under programs and laws administered by the Department that relate to housing counseling, homeownership counseling (including maintenance of homes), mortgage-related counseling (including home equity conversion mortgages and credit protection options to avoid foreclosure), and rental housing counseling, including the requirements, standards, and performance measures relating to housing counseling.

"(B) SPECIFIC FUNCTIONS.—The Director shall carry out the functions assigned to the Director and the Office under this section and any other provisions of law. Such functions shall include establishing rules necessary for—

"(i) the counseling procedures under section 106(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(1));

"(ii) carrying out all other functions of the Secretary under section 106(g) of the Housing and Urban Development Act of 1968, including the establishment, operation, and publication of the availability of the toll-free telephone number under paragraph (2) of such section;

"(iii) carrying out section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) for home buying information booklets prepared pursuant to such section;

"(iv) carrying out the certification program under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e));

"(v) carrying out the assistance program under section 106(a)(4) of the Housing and Urban Development Act of 1968, including criteria for selection of applications to receive assistance;

"(vi) carrying out any functions regarding abusive, deceptive, or unscrupulous lending practices relating to residential mortgage loans that the Secretary considers appropriate, which shall include conducting the study under section 136 of the Expand and Preserve Home Ownership Through Counseling Act;

"(vii) providing for operation of the advisory committee established under paragraph (4) of this subsection;

"(viii) collaborating with community-based organizations with expertise in the field of housing counseling; and

"(ix) providing for the building of capacity to provide housing counseling services in areas that lack sufficient services.

"(4) ADVISORY COMMITTEE.—

"(A) IN GENERAL.—The Secretary shall appoint an advisory committee to provide advice regarding the carrying out of the functions of the Director.

"(B) MEMBERS.—Such advisory committee shall consist of not more than 12 individuals, and the membership of the committee shall equally represent all aspects of the mortgage and real estate industry, including consumers.

"(C) TERMS.—Except as provided in subparagraph (D), each member of the advisory committee shall be appointed for a term of 3 years. Members may be reappointed at the discretion of the Secretary.

"(D) TERMS OF INITIAL APPOINTEES.—As designated by the Secretary at the time of appointment, of the members first appointed to the advisory committee, 4 shall be appointed for a term of 1 year and 4 shall be appointed for a term of 2 years.

"(E) PROHIBITION OF PAY; TRAVEL EXPENSES.—Members of the advisory committee shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

"(F) ADVISORY ROLE ONLY.—The advisory committee shall have no role in reviewing or awarding housing counseling grants.

"(5) SCOPE OF HOMEOWNERSHIP COUNSELING.—In carrying out the responsibilities of the Director, the Director shall ensure that homeownership counseling provided by, in connection with, or pursuant to any function, activity, or program of the Department addresses the entire process of homeownership, including the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including refinancing, default and foreclosure, and other financial decisions), and the sale or other disposition of a home.".

SEC. 133. COUNSELING PROCEDURES.

(a) IN GENERAL.—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 new subsection:

"(g) PROCEDURES AND ACTIVITIES.—

"(1) COUNSELING PROCEDURES.—

"(A) IN GENERAL.—The Secretary shall establish, coordinate, and monitor the administration by the Department of Housing and Urban Development of the counseling procedures for homeownership counseling and rental housing counseling provided in connection with any program of the Department, including all requirements, standards, and performance measures that relate to homeownership and rental housing counseling.

"(B) HOMEOWNERSHIP COUNSELING.—For purposes of this subsection and as used in the provisions referred to in this subparagraph, the term 'homeownership counseling' means counseling related to homeownership and residential mortgage loans. Such term includes counseling related to homeownership and residential mortgage loans that is provided pursuant to—

"(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

"(ii) in the United States Housing Act of 1937—

"(I) section 9(e) (42 U.S.C. 1437g(e));

"(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

"(III) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

"(IV) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

"(V) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

"(VI) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B));

"(VII) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

"(VIII) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4));

"(iii) section 302(a)(4) of the American Homeownership and Economic Opportunity Act of 2000 (42 U.S.C. 1437f note);

"(iv) sections 233(b)(2) and 258(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2), 12808(b));

"(v) this section and section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x, 1701w(e));

"(vi) section 220(d)(2)(G) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4110(d)(2)(G));

"(vii) sections 422(b)(6), 423(b)(7), 424(c)(4), 442(b)(6), and 443(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6), 12873(b)(7), 12874(c)(4), 12892(b)(6), and 12893(b)(6));

"(viii) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

"(ix) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

"(x) in the National Housing Act—

"(I) in section 203 (12 U.S.C. 1709), the penultimate undesignated paragraph of paragraph (2) of subsection (b), subsection (c)(2)(A), and subsection (r)(4);

"(II) subsections (a) and (c)(3) of section 237 (12 U.S.C. 1715z–2); and

"(III) subsections (d)(2)(B) and (m)(1) of section 255 (12 U.S.C. 1715z–20);

"(xi) section 502(h)(4)(B) of the Housing Act of 1949 (42 U.S.C. 1472(h)(4)(B)); and

"(xii) section 508 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–7).

"(C) RENTAL HOUSING COUNSELING.—For purposes of this subsection, the term 'rental housing counseling' means counseling related to rental of residential property, which may include counseling regarding future homeownership opportunities and providing referrals for renters and prospective renters to entities providing counseling and shall include counseling related to such topics that is provided pursuant to—

"(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(20));

"(ii) in the United States Housing Act of 1937—

"(I) section 9(e) (42 U.S.C. 1437g(e));

"(II) section 18(a)(4)(D) (42 U.S.C. 1437p(a)(4)(D));

"(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

"(IV) section 32(e)(4) (42 U.S.C. 1437z–4(e)(4));

"(V) section 33(d)(2)(B) (42 U.S.C. 1437z–5(d)(2)(B)); and

"(VI) section 302(b)(6) (42 U.S.C. 1437aaa–1(b)(6));

"(iii) section 233(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12773(b)(2));

"(iv) section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

"(v) section 422(b)(6) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12872(b)(6));

"(vi) section 491(b)(1)(F)(iii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11408(b)(1)(F)(iii));

"(vii) sections 202(3) and 810(b)(2)(A) of the Native American Housing and Self-Determination Act of 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)); and

"(viii) the rental assistance program under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

"(2) STANDARDS FOR MATERIALS.—The Secretary, in conjunction with the advisory committee established under subsection (g)(4) of the Department of Housing and Urban Development Act, shall establish standards for materials and forms to be used, as appropriate, by organizations providing homeownership counseling services, including any recipients of assistance pursuant to subsection (a)(4).

"(3) MORTGAGE SOFTWARE SYSTEMS.—

"(A) CERTIFICATION.—The Secretary shall provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. The Secretary shall require, for such certification, that the mortgage software systems take into account—

"(i) the consumer's financial situation and the cost of maintaining a home, including insurance, taxes, and utilities;

"(ii) the amount of time the consumer expects to remain in the home or expected time to maturity of the loan;

"(iii) such other factors as the Secretary considers appropriate to assist the consumer in evaluating whether to pay points, to lock in an interest rate, to select an adjustable or fixed rate loan, to select a conventional or government-insured or guaranteed loan and to make other choices during the loan application process.

If the Secretary determines that available existing software is inadequate to assist consumers during the residential mortgage loan application process, the Secretary shall arrange for the development by private sector software companies of new mortgage software systems that meet the Secretary's specifications.

"(B) USE AND INITIAL AVAILABILITY.—Such certified computer software programs shall be used to supplement, not replace, housing counseling. The Secretary shall provide that such programs are initially used only in connection with the assistance of housing counselors certified pursuant to subsection (e).

"(C) AVAILABILITY.—After a period of initial availability under subparagraph (B) as the Secretary considers appropriate, the Secretary shall take reasonable steps to make mortgage software systems certified pursuant to this paragraph widely available through the Internet and at public locations, including public libraries, senior-citizen centers, public housing sites, offices of public housing agencies that administer rental housing assistance vouchers, and housing counseling centers.

"(4) NATIONAL PUBLIC SERVICE MULTIMEDIA CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

"(A) IN GENERAL.—The Director of Housing Counseling shall develop, implement, and conduct national public service multimedia campaigns designed to make persons facing mortgage foreclosure, persons considering a subprime mortgage loan to purchase a home, elderly persons, persons who face language barriers, low-income persons, and other potentially vulnerable consumers aware that it is advisable, before seeking or maintaining a residential mortgage loan, to obtain homeownership counseling from an unbiased and reliable sources and that such homeownership counseling is available, including through programs sponsored by the Secretary of Housing and Urban Development.

"(B) CONTACT INFORMATION.—Each segment of the multimedia campaign under subparagraph (A) shall publicize the toll-free telephone number and web site of the Department of Housing and Urban Development through which persons seeking housing counseling can locate a housing counseling agency in their State that is certified by the Secretary of Housing and Urban Development and can provide advice on buying a home, renting, defaults, foreclosures, credit issues, and reverse mortgages.

"(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, not to exceed $3,000,000 for fiscal years 2008, 2009, and 2010, for the develop, implement, and conduct of national public service multimedia campaigns under this paragraph.

"(5) EDUCATION PROGRAMS.—The Secretary shall provide advice and technical assistance to States, units of general local government, and nonprofit organizations regarding the establishment and operation of, including assistance with the development of content and materials for, educational programs to inform and educate consumers, particularly those most vulnerable with respect to residential mortgage loans (such as elderly persons, persons facing language barriers, low-income persons, and other potentially vulnerable consumers), regarding home mortgages, mortgage refinancing, home equity loans, and home repair loans.".

(b) CONFORMING AMENDMENTS TO GRANT PROGRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

(1) in subclause (III), by striking "and" at the end;

(2) in subclause (IV) by striking the period at the end and inserting "; and"; and

(3) by inserting after subclause (IV) the following new subclause:

"(V) notify the housing or mortgage applicant of the availability of mortgage software systems provided pursuant to subsection (g)(3).".

SEC. 134. GRANTS FOR HOUSING COUNSELING ASSISTANCE.

Section 106(a) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended by adding at the end the following new paragraph:

"(4) HOMEOWNERSHIP AND RENTAL COUNSELING ASSISTANCE.—

"(A) IN GENERAL.—The Secretary shall make financial assistance available under this paragraph to States, units of general local governments, and nonprofit organizations providing homeownership or rental counseling (as such terms are defined in subsection (g)(1)).

"(B) QUALIFIED ENTITIES.—The Secretary shall establish standards and guidelines for eligibility of organizations (including governmental and nonprofit organizations) to receive assistance under this paragraph.

"(C) DISTRIBUTION.—Assistance made available under this paragraph shall be distributed in a manner that encourages efficient and successful counseling programs.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $45,000,000 for each of fiscal years 2008 through 2011 for—

"(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;

"(ii) the responsibilities of the Secretary under paragraphs (2) through (5) of subsection (g); and

"(iii) assistance pursuant to this paragraph for entities providing homeownership and rental counseling.".

SEC. 135. REQUIREMENTS TO USE HUD-CERTIFIED COUNSELORS UNDER HUD PROGRAMS.

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

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) REQUIREMENT FOR ASSISTANCE.—An organization may not receive assistance for counseling activities under subsection (a)(1)(iii), (a)(2), (a)(4), (c), or (d) of this section, or under section 101(e), unless the organization, or the individuals through which the organization provides such counseling, has been certified by the Secretary under this subsection as competent to provide such counseling.";

(2) in paragraph (2)—

(A) by inserting "and for certifying organizations" before the period at the end of the first sentence; and

(B) in the second sentence by striking "for certification" and inserting ", for certification of an organization, that each individual through which the organization provides counseling shall demonstrate, and, for certification of an individual,";

(3) in paragraph (3), by inserting "organizations and" before "individuals";

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

(5) by inserting after paragraph (2) the following new paragraphs:

"(3) REQUIREMENT UNDER HUD PROGRAMS.—Any homeownership counseling or rental housing counseling (as such terms are defined in subsection (g)(1)) required under, or provided in connection with, any program administered by the Department of Housing and Urban Development shall be provided only by organizations or counselors certified by the Secretary under this subsection as competent to provide such counseling.

"(4) OUTREACH.—The Secretary shall take such actions as the Secretary considers appropriate to ensure that individuals and organizations providing homeownership or rental housing counseling are aware of the certification requirements and standards of this subsection and of the training and certification programs under subsection (f).".

SEC. 136. STUDY OF DEFAULTS AND FORECLOSURES.

The Secretary of Housing and Urban Development shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as are available. The study shall also examine the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures.

Not later than 12 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a preliminary report regarding the study. Not later than 24 months after such date of enactment, the Secretary shall submit a final report regarding the results of the study, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to identify populations that need counseling the most.

SEC. 137. DEFINITIONS FOR COUNSELING-RELATED PROGRAMS.

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new subsection:

"(h) DEFINITIONS.—For purposes of this section:

"(1) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' has the meaning given such term in section 104(5) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(5)), except that subparagraph (D) of such section shall not apply for purposes of this section.

"(2) STATE.—The term 'State' means each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, or any other possession of the United States.

"(3) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' means any city, county, parish, town, township, borough, village, or other general purpose political subdivision of a State.".

SEC. 138. UPDATING AND SIMPLIFICATION OF MORTGAGE INFORMATION BOOKLET.

Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) in the section heading, by striking "SPECIAL" and inserting "HOME BUYING";

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

"(a) PREPARATION AND DISTRIBUTION.—The Secretary shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Secretary shall prepare the booklet in various languages and cultural styles, as the Secretary determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Secretary shall distribute such booklets to all lenders that make federally related mortgage loans. The Secretary shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

"(b) CONTENTS.—Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other infor-

mation as the Secretary may provide, shall include in plain and understandable language the following information:

"(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

"(A) balloon payments;

"(B) prepayment penalties; and

"(C) the trade-off between closing costs and the interest rate over the life of the loan.

"(2) An explanation and sample of the uniform settlement statement required by section 4.

"(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

"(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

"(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

"(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled 'Consumer Handbook on Adjustable Rate Mortgages', published by the Board of Governors of the Federal Reserve System pursuant to section 226.19(b)(1) of title 12, Code of Federal Regulations, or to any suitable substitute of such booklet that such Board of Governors may subsequently adopt pursuant to such section.

"(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

"(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

"(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

"(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

"(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

"(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

"(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.";

(3) in subsection (c), by inserting at the end the following new sentence: "Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender."; and

(4) in subsection (d), by inserting after the period at the end of the first sentence the following: "The lender shall provide the HUD-issued booklet in the version that is most appropriate for the person receiving it.".

Subtitle C—Combating Mortgage Fraud

SEC. 151. AUTHORIZATION OF APPROPRIATIONS TO COMBAT MORTGAGE FRAUD.

For fiscal years 2008, 2009, 2010, 2011, and 2012, there are authorized to be appropriated to the Attorney General a total of—

(1) $31,250,000 to support the employment of 30 additional agents of the Federal Bureau of Investigation and 2 additional dedicated prosecutors at the Department of Justice to coordinate prosecution of mortgage fraud efforts with the offices of the United States Attorneys; and

(2) $750,000 to support the operations of interagency task forces of the Federal Bureau of Investigation in the areas with the 15 highest concentrations of mortgage fraud.

TITLE II—FHA REFORM AND MANUFACTURED HOUSING LOAN INSURANCE MODERNIZATION

Subtitle A—FHA Reform

SEC. 201. SHORT TITLE.

This subtitle may be cited as the "Expanding American Homeownership Act of 2008".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) one of the primary missions of the Federal Housing Administration (FHA) single family mortgage insurance program

is to reach borrowers who are underserved, or not served, by the existing conventional mortgage marketplace;

(2) the FHA program has a long history of innovation, which includes pioneering the 30-year self-amortizing mortgage and a safe-to-seniors reverse mortgage product, both of which were once thought too risky to private lenders;

(3) the FHA single family mortgage insurance program traditionally has been a major provider of mortgage insurance for home purchases;

(4) the FHA mortgage insurance premium structure, as well as FHA's product offerings, should be revised to reflect FHA's enhanced ability to determine risk at the loan level and to allow FHA to better respond to changes in the mortgage market;

(5) during past recessions, including the oil-patch downturns in the mid-1980s, FHA remained a viable credit enhancer and was therefore instrumental in preventing a more catastrophic collapse in housing markets and a greater loss of homeowner equity; and

(6) as housing price appreciation slows and interest rates rise, many homeowners and prospective homebuyers will need the less-expensive, safer financing alternative that FHA mortgage insurance provides.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to provide flexibility to FHA to allow for the insurance of housing loans for low- and moderate-income homebuyers during all economic cycles in the mortgage market;

(2) to modernize the FHA single family mortgage insurance program by making it more reflective of enhancements to loan-level risk assessments and changes to the mortgage market; and

(3) to adjust the loan limits for the single family mortgage insurance program to reflect rising house prices and the increased costs associated with new construction.

SEC. 203. MAXIMUM PRINCIPAL LOAN OBLIGATION.

(a) IN GENERAL.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)(A)) is amended by striking subparagraph (A) and inserting the following new subparagraph:

"(A) not to exceed the lesser of—

"(i) in the case of a 1-family residence, 125 percent of the median 1-family house price in the area, as determined by the Secretary; and in the case of a 2-, 3-, or 4-family residence, the percentage of such median price that bears the same ratio to such median price as the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a 2-, 3-, or 4-family residence, respectively, bears to the dollar amount limitation determined under such section for a 1-family residence; or

"(ii) 175 percent of the dollar amount limitation determined under such section 305(a)(2)(A) 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 and without regard to the high-cost area limitation under such section 305(a)(2)(B));

except that the dollar amount limitation in effect under this subparagraph for any size residence for any area may not be less than the greater of: (I) the dollar amount limitation in effect under this section for the area on October 21, 1998; or (II) 65 percent of the dollar amount limitation determined under such section 305(a)(2) for a residence of the applicable size; and except that, if the Secretary determines that market conditions warrant such an increase, the Secretary may, for such period as the Secretary considers appropriate, increase the maximum dollar amount limitation determined pursuant to the preceding provisions of this subparagraph with respect to any particular size or sizes of residences, or with respect to residences located in any particular area or areas, to an amount that does not exceed the maximum dollar amount then otherwise in effect pursuant to the preceding provisions of this subparagraph for such size residence, or for such area (if applicable), by not more than $100,000; and".

(b) TREATMENT OF TEMPORARY LOAN LIMIT INCREASE.—Subsection (a) and the amendment made by such subsection may not be construed to in any way affect the effectiveness of section 202 of the Economic Stimulus Act of 2008 (Public Law 110-185; 122 Stat. 620).

SEC. 204. EXTENSION OF MORTGAGE TERM.

Paragraph (3) of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(3)) is amended—

(1) by striking "thirty-five years" and inserting "forty years"; and

(2) by striking "(or thirty years if such mortgage is not approved for insurance prior to construction)".

SEC. 205. DOWNPAYMENT SIMPLIFICATION.

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

(1) in paragraph (2)—

(A) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) not to exceed an amount equal to the sum of—

"(i) the amount of the mortgage premium paid at the time the mortgage is insured; and

"(ii) 97.75 percent of the appraised value of the property.";

(B) in the matter after and below subparagraph (B), by striking the second sentence (relating to a definition of "average closing cost") and all that follows through "title 38, United States Code."; and

(C) by striking the last undesignated paragraph (relating to counseling with respect to the responsibilities and financial management involved in homeownership); and

(2) in paragraph (9)—

(A) by striking the paragraph designation and all that follows through "*Provided further*, That for" and inserting the following:

"(9) Be executed by a mortgagor who shall have paid on account of the property, in cash or its equivalent, at least 3 percent of the Secretary's estimate of the cost of acquisition (excluding the mortgage insurance premium paid at the time the mortgage is insured). For"; and

(B) by inserting after the period at the end the following: "For purposes of this paragraph, the Secretary shall consider as cash or its equivalent any amounts gifted by a family member (as such term is defined in section 201), the mortgagor's employer or labor union, or a qualified homeownership assistance entity, but only if there is no obligation on the part of the mortgagor to repay the gift: For purposes of the preceding sentence, the term 'qualified homeownership assistance entity' means any governmental agency or charity that has a program to provide homeownership assistance to low- and moderate-income families or first-time home buyers, or any private nonprofit organization that has such a program and evidences sufficient fiscal soundness to protect the fiscal integrity of the Mutual Mortgage Insurance Fund by maintaining a minimum net worth of $4,000,000 of acceptable assets.".

SEC. 206. MORTGAGE INSURANCE PREMIUMS FOR QUALIFIED HOMEOWNERSHIP ASSISTANCE ENTITIES AND HIGHER-RISK BORROWERS.

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

(1) in subparagraph (A), in the matter preceding subparagraph (A), by striking the first comma after "section 234(c)";

(2) in subparagraph (A), by inserting after the period at the end of the second sentence the following: "In the case of a mortgage for which any amounts gifted by a qualified homeownership assistance entity (as such term is defined in paragraph (9) of subsection (b)) that is a private nonprofit organization are treated as cash or its equivalent for purposes of meeting the 3 percent requirement under such paragraph, the premium payment under this subparagraph shall not exceed 3.0 percent of the amount of the original insured principal obligation of the mortgage."; and

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

"(C) HIGHER-RISK BORROWERS.—The Secretary shall establish underwriting standards that provide for insurance under this section of mortgages described in the matter in this paragraph preceding subparagraph (A) for which the mortgagor has a credit score equivalent to a FICO score of less than 560, and may insure, and make commitments to insure, such mortgages. Such underwriting standards shall include establishing and collecting premium payments that comply with the requirements of this paragraph, except that notwithstanding subparagraph (A), the single premium payment collected at the time of insurance may be established in an amount that does not exceed 3.0 percent of the amount of the original insured principal obligation of the mortgage.".

SEC. 207. RISK-BASED MORTGAGE INSURANCE PREMIUMS.

Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new paragraphs:

"(4) FLEXIBLE RISK-BASED PREMIUMS.—In the case of a mortgage referred to in paragraph (2)(C) or a mortgage described in the third sentence of subparagraph (A) of paragraph (2) (relating to mortgages for which amounts are gifted by a nonprofit qualified homeownership assistance entity), for which the loan application is received by the mortgagee on or after the date of the enactment of the Expanding American Homeownership Act of 2008:

"(A) IN GENERAL.—The Secretary may establish a mortgage insurance premium structure involving a single premium payment collected prior to the insurance of the mortgage or annual payments (which may be collected on a periodic basis), or both, subject to the requirements of subparagraph (B) and paragraph (5). Under such structure, the rate of premiums for such a mortgage may vary according to the credit risk associated with the mortgage and the rate of any annual premium for such a mortgage may vary during the mortgage term as long as the basis for determining the variable rate is established before the execution of the mortgage. The Secretary may change a premium structure established under this subclause but only to the extent that such change is not applied to any mortgage already executed.

"(B) ESTABLISHMENT AND ALTERATION OF PREMIUM STRUCTURE.—A premium structure shall be established or changed under subparagraph (A) only by providing notice to mortgagees and to the Congress, at least 30 days before the premium structure is established or changed.

"(C) ANNUAL REPORT REGARDING PREMIUMS.—The Secretary shall submit a report to the Congress annually setting forth the rate structures and rates established and altered pursuant to this paragraph during the preceding 12-month period and describing how such rates were determined.

"(5) CONSIDERATIONS FOR PREMIUM STRUCTURE.—When establishing premiums for mortgages referred to in paragraph (2)(C), establishing premiums pursuant to paragraph (3), establishing a premium structure under paragraph (4), and when changing such a premium structure, the Secretary shall consider the following:

"(A) The effect of the proposed premiums or structure on the Secretary's ability to meet the operational goals of the Mutual Mortgage Insurance Fund as provided in section 202(a).

"(B) Underwriting variables.

"(C) The extent to which new pricing under the proposed premiums or structure has potential for acceptance in the private market.

"(D) The administrative capability of the Secretary to administer the proposed premiums or structure.

"(E) The effect of the proposed premiums or structure on the Secretary's ability to maintain the availability of mortgage credit and provide stability to mortgage markets.

"(6) AUTHORITY TO BASE PREMIUM PRICES ON PRODUCT RISK.—

"(A) AUTHORITY.—In establishing premium rates under paragraphs (2), (3), and (4), the Secretary may provide for vari-

ations in such rates according to the credit risk associated with the type of mortgage product that is being insured under this title, which may include providing that premium rates differ between fixed-rate mortgages and adjustable-rate mortgages insured pursuant to section 251, between mortgages insured pursuant to section 203(b) and mortgages for condominiums insured pursuant to section 234, and between such other products as the Secretary considers appropriate.

"(B) LIMITATION.—Subparagraph (A) may not be construed to authorize the Secretary to establish, for any mortgage product, any mortgage insurance premium rate that does not comply with the requirements and limitations under paragraphs (2) through (5).".

SEC. 208. PAYMENT INCENTIVES FOR HIGHER-RISK BORROWERS.

Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new paragraph:

"(7) PAYMENT INCENTIVES.—

"(A) AUTHORITY.—With respect to mortgages referred to in paragraph (2)(C):

"(i) DISCRETIONARY 3-YEAR PAYMENT INCENTIVE.—The Secretary may provide, in the discretion of the Secretary, that the payment incentive under subparagraph (B) shall apply upon the expiration of the 3-year period beginning upon the time of insurance of such a mortgage.

"(ii) MANDATORY 5-YEAR PAYMENT INCENTIVE.—The Secretary shall provide that the payment incentive under subparagraph (B) applies upon the expiration of the 5-year period beginning upon the time of insurance of such a mortgage.

"(B) PAYMENT INCENTIVE.—In the case of any mortgage to which the payment incentive under this subparagraph applies, if, during the period referred to in clause (i) or (ii) of subparagraph (A), as applicable, all mortgage insurance premiums for such mortgage have been paid on a timely basis, upon the expiration of such period the Secretary shall—

"(i) reduce the amount of the annual premium payments otherwise due thereafter under such mortgage to an amount that does not exceed the amount of the annual premium payable at the time of insurance of the mortgage on a mortgage of the same product type having the same terms, but for which the mortgagor has a credit score equivalent to a FICO score of 560 or more; and

"(ii) refund to the mortgagor, upon payment in full of the obligation of the mortgage, any amount by which the single premium payment for such mortgage collected at the time of insurance exceeded the amount of the single premium payment chargeable under paragraph (2)(A) at the time of insurance for a mortgage of the same product type having the same terms, but for which the mortgagor has a credit score equivalent to a FICO score of 560 or more.".

SEC. 209. PROTECTIONS FOR HIGHER-RISK BORROWERS.

Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) is amended by adding at the end the following new paragraph:

"(10) PROTECTIONS FOR HIGHER-RISK BORROWERS.—Except as otherwise specifically provided in this paragraph, in the case of any mortgage referred to in paragraph (2)(C) of subsection (c), the following requirements shall apply:

"(A) DISCLOSURES.—

"(i) REQUIRED DISCLOSURES.—In addition to any disclosures that are otherwise required by law or by the Secretary for single family mortgages, the mortgagee shall disclose to the mortgagor the following information:

"(I) AT APPLICATION.—At the time of application for the loan involved in the mortgage, a list of counseling agencies, approved by the Secretary, in the area of the applicant.

"(II) AT EXECUTION.—At the time of entering into the mortgage—

"(aa) the terms of the mandatory 5-year payment incentive required under subsection (c)(7)(A)(ii); and

"(bb) a statement that the mortgagor has a right under contract to loss mitigation.

"(III) OTHER INFORMATION.—Any other additional information that the Secretary determines is appropriate to ensure that the mortgagor has received timely and accurate information about the program under paragraph (2)(C) of subsection (c).

"(ii) PENALTIES FOR FAILURE TO PROVIDE REQUIRED DISCLOSURES.—The Secretary may establish and impose appropriate penalties for failure of a mortgagee to provide any disclosure required under clause (i).

"(iii) NO PRIVATE RIGHT OF ACTION.—This subparagraph shall not create any private right of action on behalf of the mortgagor.

"(B) COUNSELING.—

"(i) REQUIREMENT.—The Secretary shall require that the mortgagor shall have received counseling that complies with the requirements of this subparagraph.

"(ii) TERMS OF COUNSELING.—Counseling under this subparagraph shall be provided—

"(I) prior to closing for the loan involved in the mortgage;

"(II) by a third party (other than the mortgagee) who is approved by the Secretary, with respect to the responsibilities and financial management involved in homeownership;

"(III) on an individual basis to the mortgagor by a representative of the approved third-party counseling entity; and

"(IV) in person, to the maximum extent possible.

"(iii) 2- AND 3-FAMILY RESIDENCES.—In the case of a mortgage involving a 2- or 3-family residence, counseling under this subparagraph shall include (in addition to the information required under clause (iii)) information regarding real estate property management.

"(C) NOTICE OF FORECLOSURE PREVENTION COUNSELING AVAILABILITY.—

"(i) WRITTEN AGREEMENT.—To be eligible for insurance under this subsection, the mortgagee shall provide the mortgagor, at the time of the execution of the mortgage, a written agreement which shall be signed by the mortgagor and under which the mortgagee shall provide notice described in clause (ii) to a housing counseling entity that has agreed to provide the notice and counseling required under clause (iii) and is approved by the Secretary.

"(ii) NOTICE TO COUNSELING AGENCY.—The notice described in this clause, with respect to a mortgage, is notice, provided at the earliest time practicable after the mortgagor becomes 60 days delinquent with respect to any payment due under the mortgage, that the mortgagor is so delinquent and of how to contact the mortgagor. Such notice may only be provided once with respect to each delinquency period for a mortgage.

"(iii) NOTICE TO MORTGAGOR.—Upon notice from a mortgagee that a mortgagor is 60 days delinquent with respect to payments due under the mortgage, the housing counseling entity shall at the earliest time practicable notify the mortgagor of such delinquency, that the entity makes available foreclosure prevention counseling that may assist the mortgagor in resolving the delinquency, and of how to contact the entity to arrange for such counseling.

"(iv) ABILITY TO CURE.—Failure to provide the written agreement required under clause (i) may be corrected by sending such agreement to the mortgagor not later than the earliest time practicable after the mortgagor first becomes 60 days delinquent with respect to payments due under the mortgage. Insurance provided under this subsection may not be terminated and penalties for such failure may not be prospectively or retroactively imposed if such failure is corrected in accordance with this clause.

"(v) PENALTIES FOR FAILURE TO PROVIDE AGREEMENT.—The Secretary may establish and impose appropriate penalties for failure of a mortgagee to provide the written agreement required under clause (i).

"(vi) LIMITATION ON LIABILITY OF MORTGAGEE.—A mortgagee shall not incur any liability or penalties for any failure of a housing counseling entity to provide notice under clause (iii).

"(vii) NO PRIVATE RIGHT OF ACTION.—This subparagraph shall not create any private right of action on behalf of the mortgagor.

"(viii) DELINQUENCY PERIOD.—For purposes of this subparagraph, the term 'delinquency period' means, with respect to a mortgage, a period that begins upon the mortgagor becoming delinquent with respect to payments due under the mortgage and ends upon the

first subsequent occurrence of such payments under the mortgage becoming current or the property subject to the mortgage being foreclosed or otherwise disposed of.".

SEC. 210. REFINANCING MORTGAGES.

Section 203 of the National Housing Act (12 U.S.C. 1709) is amended by inserting after subsection (k) the following new subsection:

"(l) REFINANCING MORTGAGES.—

"(1) ESTABLISHMENT OF UNDERWRITING STANDARDS.—The Secretary shall establish underwriting standards that provide for insurance under this title of mortgage loans, and take actions to facilitate the availability of mortgage loans insured under this title, for qualified borrowers that are made for the purpose of paying or prepaying outstanding obligations under existing mortgages for borrowers that—

"(A) have existing mortgages with adverse terms or rates, or

"(B) do not have access to mortgages at reasonable rates and terms for such refinancings due to adverse market conditions.

"(2) INSURANCE OF MORTGAGES TO BORROWERS IN DEFAULT OR AT RISK OF DEFAULT.—In facilitating insurance for such mortgages, the Secretary may insure mortgages to borrowers who are, currently in default or at imminent risk of being in default, but only if such loans meet reasonable underwriting standards established by the Secretary.".

SEC. 211. ANNUAL REPORTS ON NEW PROGRAMS AND LOSS MITIGATION.

Section 540(b)(2) of the National Housing Act (12 U.S.C. 1735f–18(b)(2)) is amended, by adding at the end the following new subparagraphs:

"(C) The rates of default and foreclosure for the applicable collection period for mortgages insured pursuant to the program for mortgage insurance under paragraph (2)(C) of section 203(c).

"(D) Actions taken by the Secretary during the applicable collection period with respect to loss mitigation on mortgages insured pursuant to section 203.".

SEC. 212. INSURANCE FOR SINGLE FAMILY HOMES WITH LICENSED CHILD CARE FACILITIES.

(a) DEFINITION OF CHILD CARE FACILITY.—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 'child care facility' means a facility that—

"(A) has as its purpose the care of children who are less than 12 years of age; and

"(B) is licensed or regulated by the State in which it is located (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located).

Such term does not include facilities for school-age children primarily for use during normal school hours.".

(b) INCREASE IN MAXIMUM MORTGAGE AMOUNT LIMITATION.—Paragraph (2) of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(2)), as amended by the preceding provisions of this subtitle, is further amended by adding at end the following new undesignated paragraph:

"Notwithstanding any other provision of this paragraph, the amount that may be insured under this section may be increased by up to 25 percent if such increase is necessary to account for the increased cost of the residence due to an increased need of space in the residence for locating and operating a child care facility (as such term is defined in section 201) within the residence, but only if a valid license or certificate of compliance with regulations described in section 201(g)(2) has been issued for such facility as of the date of the execution of the mortgage, and only if such increase in the amount insured is proportional to the amount of space of such residence that will be used for such facility.".

SEC. 213. 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. 214. 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. 215. INSURANCE OF CONDOMINIUMS AND MANUFACTURED HOUSING.

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

(1) in subsection (c)—

(A) in the first sentence—

(i) by striking "and" before "(2)"; and

(ii) 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

(B) in clause (B) of the third sentence, by striking "thirty-five years" and inserting "forty years"; 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), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new subsection:

"(h) 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. 216. 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 par-

ticipation, 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 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 upon the expiration of the 90-day period beginning on the date of the enactment of the Expanding 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 (5), the Secretary determines that the Fund is not meeting the operational goals established under paragraph (8) 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 section 203 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 charge borrowers under loans that are obligations of the Fund an appropriate premium for the risk that such loans pose to the Fund;

"(B) to minimize the default risk to the Fund and to homeowners;

"(C) to curtail the impact of adverse selection on the Fund; and

"(D) 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 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. 217. HAWAIIAN HOME LANDS AND INDIAN RESERVATIONS.

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

(1) by striking "General Insurance Fund" the first place it appears and all that follows 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. 218. 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. 219. 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 (b)(4), by striking subparagraph (B) and inserting the following new subparagraph:

"(B) under a lease that has a term that ends no earlier than the minimum number of years, as specified by the

Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date.".

(3) in the second sentence of subsection (g), by striking "the maximum dollar amount established under section 203(b)(2)" and all that follows through "located" and inserting "132 percent of the dollar amount limitation determined under section 305(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence (without regard to any authority to increase such limitations with respect to properties located in Alaska, Guam, Hawaii, or the Virgin Islands and without regard to the high-cost area limitation under such section 305(a)(2)(B))";

(4) in subsection (i)(1)(C), by striking "limitations" and inserting "limitation"; and

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

"(o) AUTHORITY TO INSURE HOME PURCHASE MORTGAGES.—

"(1) IN GENERAL.—Notwithstanding any other provision in 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 primary purpose of the home equity conversion mortgage is to enable an elderly mortgagor to purchase a 1- to 4-family dwelling in which the mortgagor will occupy or occupies one of the units.

"(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 limitation under subsection (g) of this section on the maximum amount of the benefits of insurance under this section.".

(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) 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 striking subparagraph (B) of subsection (d)(2) and inserting the following new subparagraph:

"(B) has received adequate counseling by a third party (other than a reverse mortgage lender, servicer or investor, or an entity engaged in the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product) as provided in subsection (f);";

(2) by striking the first sentence of subsection (f) and inserting the following new sentence: "The Secretary shall provide or cause to be provided and paid for by entities other than a reverse mortgage lender, servicer or investor, or an entity engaged in the sale of annuities, investments, long-term care in-

surance, or any other type of financial or insurance product the information required in subsection (d)(2)(B).”; and

(3) by striking subsections (l) and (m) and inserting the following new subsection:

“(l) REGULATIONS TO PROTECT ELDERLY HOMEOWNERS.—

“(1) IN GENERAL.—Not later than 6 months after the date of the enactment of the Expanding American Homeownership Act of 2008, the Secretary shall, in consultation with other relevant Federal departments and agencies, prescribe 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 as a condition of obtaining any home equity conversion mortgage.

“(2) CONSULTATION.—In developing the regulations required under paragraph (1), the Secretary shall consult with consumer advocates (including recognized experts in consumer protection), industry representatives, representatives of counseling organizations, and other interested parties.”.

(d) 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) be equal to 2.0 percent of the maximum claim amount of the mortgage up to a maximum claim amount of $200,000 plus 1 percent of any portion of the maximum claim amount that is greater than $200,000, unless adjusted thereafter on the basis of an analysis of (A) costs to mortgagors, and (B) the impact on the reverse mortgage market;

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

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

“(4) include any fees paid to correspondent mortgagees approved by the Secretary or to mortgage brokers;

“(5) apply beginning upon the date that the maximum dollar amount limitation on the benefits of insurance under this section is first increased pursuant to the amendments made by section 219(a)(3) of the Expanding American Homeownership Act of 2008; and

“(6) be subject to a maximum origination fee of $6,000, except that such maximum limit shall be adjusted in accordance with the annual percentage increase in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor in increments of $500 only when the percentage increase in such index, when applied to the maximum origination fee, produce dollar increases that exceed $500.”.

(e) STUDY REGARDING MORTGAGE INSURANCE PREMIUMS.—The Secretary of Housing and Urban Development shall conduct a study regarding mortgage insurance premiums charged under the

program under section 255 of the National Housing Act (12 U.S.C. 1715z–20) for insurance of home equity conversion mortgages to analyze and determine the effects of reducing the amounts of such premiums from the amounts charged as of the date of the enactment of this Act on: (1) costs to mortgagors; and (2) the financial soundness of the program. Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Secretary shall submit a report to the Congress setting forth the results and conclusions of the study.

(f) PURCHASE AUTHORITY OF FANNIE MAE AND FREDDIE MAC.—

(1) FANNIE MAE.—Section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)) is amended by adding at the end the following:

"(7) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in any mortgage insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20), notwithstanding the limitations under paragraph (2) on the maximum original principal obligations of mortgages.".

(2) FREDDIE MAC.—Section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)) is amended by adding at the end the following:

"(6) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in any mortgage insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20), notwithstanding the limitations under paragraph (2) on the maximum original principal obligations of mortgages.".

SEC. 220. STUDY ON PARTICIPATION OF MORTGAGE BROKERS AND CORRESPONDENT LENDERS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study, which shall be completed not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, which shall analyze and determine—

(1) the extent to which the financial audit and net worth requirements impede participation by mortgage brokers and correspondent lenders in the mortgage insurance programs under the National Housing Act, as measured by the number and value of such insured mortgages, disaggregated by the States in which the properties subject to such mortgages are located;

(2) the extent and effectiveness of the financial audit and net worth requirements in protecting the Mutual Mortgage Insurance Fund;

(3) the extent and effectiveness of the supervision and quality control enforcement, by the Secretary, of mortgagees in the FHA program, separate from the financial audit and net worth requirements for participation, in protecting the Mutual Mortgage Insurance Fund;

(4) the extent to which allowing a mortgage broker to secure a surety bond in lieu of the financial audit and net worth requirements would increase participation by mortgage brokers and correspondent lenders in the mortgage insurance programs under the National Housing Act;

(5) the extent to which allowing a mortgage broker to secure a surety bond in lieu of the financial audit and net worth requirements would protect the Mutual Mortgage Insurance Fund; and

(6) the potential impact of such changes on the costs incurred by the Secretary of Housing and Urban Development in administering the mortgage insurance programs under such Act.

(b) GAO REPORT.—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 and the Secretary of Housing and Urban Development setting forth the results and conclusions of the study conducted pursuant to subsection (a).

(c) HUD REPORT.—Not later than the expiration of the 18-month period beginning upon the date of the enactment of this Act, the Secretary of Housing and Urban Development may submit a report to the Congress making recommendations regarding any changes in requirements for participation of mortgage brokers and correspondent lenders in the mortgage insurance programs under the National Housing Act arising from a review of the study conducted pursuant to subsection (a).

SEC. 221. CONFORMING LOAN LIMIT IN DISASTER AREAS.

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

(1) by inserting after "property" the following: "plus any initial service charges, appraisal, inspection and other fees in connection with the mortgage as approved by the Secretary,";

(2) by striking the second sentence (as added by chapter 7 of the Emergency Supplemental Appropriations Act of 1994 (Public Law 103–211; 108 Stat. 12)); and

(3) by adding at the end the following new sentence: "In any case in which the single family residence to be insured under this subsection is within a jurisdiction in which the President has declared a major disaster to have occurred, the Secretary is authorized, for a temporary period not to exceed 36 months from the date of such Presidential declaration, to enter into agreements to insure a mortgage which involves a principal obligation of up to 100 percent of the dollar limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a single family residence, and not in excess of 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection and other fees in connection with the mortgage as approved by the Secretary.".

SEC. 222. FAILURE TO PAY AMOUNTS FROM ESCROW ACCOUNTS FOR SINGLE FAMILY MORTGAGES.

(a) PENALTIES.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended—

(1) in subsection (a)(1), by inserting "servicers (including escrow account servicers)," after "appraisers,";

(2) in subsection (b)(1)—

(A) in the matter preceding subparagraph (A), by inserting "or other participant referred to in subsection (a)," after "lender,"; and

(B) by inserting at the end the following new subparagraphs:

"(K) In the case of a mortgage for a 1- to 4-family residence insured under title II that requires the mortgagor to

make payments to the mortgagee or other servicer of the mortgage for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, failure on the part of the servicer to make any such payment from the escrow account by the deadline to avoid a penalty with respect to such payment provided for in the mortgage, unless the servicer was not provided notice of such deadline.

"(L) In the case of any failure to make any payment as described in subparagraph (K), submitting any information to a consumer reporting agency (as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) regarding such failure that is adverse to the credit rating or interest of the mortgagor."; and

(3) in subsection (c)(3), by adding at the end the following: "In the case of any failure to make a payment described in subsection (b)(1)(K) for which the servicer fails to reimburse the mortgagor (A) before the expiration of the 60-day period beginning on the deadline to avoid a penalty with respect to such payment, in the sum of the amount not paid from the escrow account by such deadline and the amount of any penalties accruing to the mortgagor that are attributable to such failure, or (B) in the amount of any attorneys fees incurred by the mortgagor and attributable to such failure, the Secretary shall increase the amount of the penalty under subsection (a) for any such failure to reimburse, unless the Secretary determines there are mitigating circumstances.".

(b) PROHIBITION ON SUBMISSION OF INFORMATION BY HUD.—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. PROHIBITION REGARDING FAILURE ON PART OF SERVICER TO MAKE ESCROW PAYMENTS.

"In the case of any failure to make any payment as described in section 536(b)(1)(K), the Secretary may not submit any information to a consumer reporting agency (as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) regarding such failure that is adverse to the credit rating or interest of the mortgagor.".

SEC. 223. ACCEPTABLE IDENTIFICATION FOR FHA MORTGAGORS.

(a) IN GENERAL.—Title II of the National Housing Act is amended by inserting after section 209 (12 U.S.C. 1715) the following new section:

"SEC. 210. FORMS OF ACCEPTABLE IDENTIFICATION.

"The Secretary may not insure a mortgage under any provision of this title unless the mortgagor under the mortgage provides personal identification in one of the following forms:

"(1) A valid social security number verified in accordance with paragraph 3-1 C of chapter 3 of HUD Handbook 4155.1 REV-5.

"(2) 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).

"(3) A passport issued by the United States or a foreign government.

"(4) A photo identification card issued by the Secretary of Homeland Security (acting through the Director of the United States Citizenship and Immigration Services).".

(b) EFFECTIVE DATE.—The requirements of section 210 of the National Housing Act (as added by subsection (a) of this section) shall take effect 6 months after the date of the enactment of this Act.

SEC. 224. 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.), as amended by the preceding provisions of this subtitle, is further amended by adding at the end the following new section:

"SEC. 258. 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—

"(1) to first-time homebuyers; or

"(2) metropolitan statistical areas significantly impacted by subprime lending.

"(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 Expanding 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 4-year period beginning on the date that the Secretary of Housing and Urban Development first insures any mortgage pursuant to the automated process established under pilot program under section 258 of the National Housing Act (as added by the amendment made by subsection (a) of this section), the Comptroller General of the United States shall submit to the Congress a report identifying the number of additional mortgagors served using such automated process 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. 225. SENSE OF CONGRESS REGARDING TECHNOLOGY FOR FINANCIAL SYSTEMS.

(a) CONGRESSIONAL FINDINGS.—The Congress finds the following:

(1) The Government Accountability Office has cited the FHA single family housing mortgage insurance program as a "high-risk" program, with a primary reason being non-integrated and out-dated financial management systems.

(2) The "Audit of the Federal Housing Administration's Financial Statements for Fiscal—Years 2004 and 2003", conducted by the Inspector General of the Department of Housing and Urban Development reported as a material weakness that "HUD/FHA's automated data processing [ADP] system environment must be enhanced to more effectively support FHA's business and budget processes".

(3) Existing technology systems for the FHA program have not been updated to meet the latest standards of the Mortgage Industry Standards Maintenance Organization and have numerous deficiencies that lenders have outlined.

(4) Improvements to technology used in the FHA program will—

(A) allow the FHA program to improve the management of the FHA portfolio, garner greater efficiencies in its operations, and lower costs across the program;

(B) result in efficiencies and lower costs for lenders participating in the program, allowing them to better use the FHA products in extending homeownership opportunities to higher credit risk or lower-income families, in a sound manner.

(5) The Mutual Mortgage Insurance Fund operates without cost to the taxpayers and generates revenues for the Federal Government.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Secretary of Housing and Urban Development should use a portion of the funds received from premiums paid for FHA single family housing mortgage insurance that are in excess of the amounts paid out in claims to substantially increase the funding for technology used in such FHA program;

(2) the goal of this investment should be to bring the technology used in such FHA program to the level and sophistication of the technology used in the conventional mortgage lending market, or to exceed such level; and

(3) the Secretary of Housing and Urban Development should report to the Congress not later than 180 days after the date of the enactment of this Act regarding the progress the Department is making toward such goal and if progress is not sufficient, the resources needed to make greater progress.

SEC. 226. CLARIFICATION OF DISPOSITION OF CERTAIN PROPERTIES.

Notwithstanding any other provision of law, subtitle A of title II of the Deficit Reduction Act of 2005 (12 U.S.C. 1701z–11 note) and the amendments made by such title shall not apply to any transaction regarding a multifamily real property for which—

(1) the Secretary of Housing and Urban Development has received, before the date of the enactment of such Act, written expressions of interest in purchasing the property from both a city government and the housing commission of such city;

(2) after such receipt, the Secretary acquires title to the property at a foreclosure sale; and

(3) such city government and housing commission have resolved a previous disagreement with respect to the disposition of the property.

SEC. 227. VALUATION OF MULTIFAMILY PROPERTIES IN NONCOMPETITIVE SALES BY HUD TO STATES AND LOCALITIES.

Subtitle A of title II of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 7) is amended by adding at the end the following new section:

"SEC. 2004. VALUATION OF MULTIFAMILY PROPERTIES IN NONCOMPETITIVE SALES BY HUD TO STATES AND LOCALITIES.

"'Notwithstanding any other provision of law, in determining the market value of any multifamily real property or multifamily loan for any noncompetitive sale to a State or local government entity occurring during fiscal year 2008, the Secretary shall consider, but not be limited to, industry standard appraisal practices, including the cost of repairs needed to bring the property at least to minimum State and local code standards and of maintaining the existing affordability restrictions imposed by the Secretary on the multifamily real property or multifamily loan.'.".

SEC. 228. LIMITATION ON MORTGAGE INSURANCE PREMIUM INCREASES.

Notwithstanding any other provision of law, including any provision of this subtitle and any amendment made by this subtitle—

(1) the premiums charged for mortgage insurance under any program 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 by rule making in accordance with the procedures under section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

SEC. 229. CIVIL MONEY PENALTIES FOR IMPROPERLY INFLUENCING APPRAISALS.

Paragraph (2) of section 536(b) of the National Housing Act (12 U.S.C. 1735f–14(b)(2)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

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

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

"(D) in the case of an insured mortgage under title II for a 1- to 4-family residence, compensating, instructing, inducing, coercing, or intimidating any person who conducts an appraisal of the property in connection with such mortgage, or attempting to compensate, instruct, induce, coerce, or intimidate such a person, for the purpose of causing the

appraised value assigned to the property under the appraisal to be based on any other factor other than the independent judgment of such person exercised in accordance with applicable professional standards.".

SEC. 230. MORTGAGE INSURANCE PREMIUM REFUNDS.

(a) AUTHORITY.—The Secretary of Housing and Urban Development shall, to the extent that amounts are made available pursuant to subsection (c), provide refunds of unearned premium charges paid, at the time of insurance, for mortgage insurance under title II of the National Housing Act (12 U.S.C. 1707 et seq.) to or on behalf of mortgagors under mortgages described in subsection (b).

(b) ELIGIBLE MORTGAGES.—A mortgage described in this section is a mortgage on a one- to four-family dwelling that—

(1) was insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

(2) is otherwise eligible, under the last sentence of subparagraph (A) of section 203(c)(2) of such Act (12 U.S.C. 1709(c)(2)(A)), for a refund of all unearned premium charges paid on the mortgage pursuant to such subparagraph, except that the mortgage—

(A) was closed before December 8, 2004; and

(B) was endorsed on or after such date.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each fiscal year such sums as may be necessary to provide refunds of unearned mortgage insurance premiums pursuant to this section.

SEC. 231. SAVINGS PROVISION.

Any mortgage insured under title II of the National Housing Act before the date of enactment of this Act 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 Act.

SEC. 232. IMPLEMENTATION.

Except as provided in section 223(b), 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.

Subtitle B—FHA Manufactured Housing Loan Insurance Modernization

SECTION 251. SHORT TITLE.

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

SEC. 252. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) manufactured housing plays a vital role in providing housing for low- and moderate-income families in the United States;

(2) the FHA title I insurance program for manufactured home loans traditionally has been a major provider of mortgage insurance for home-only transactions;

(3) the manufactured housing market is in the midst of a prolonged downturn which has resulted in a severe contraction of traditional sources of private lending for manufactured home purchases;

(4) during past downturns the FHA title I insurance program for manufactured homes has filled the lending void by providing stability until the private markets could recover;

(5) in 1992, during the manufactured housing industry's last major recession, over 30,000 manufactured home loans were insured under title I;

(6) in 2006, fewer than 1,500 manufactured housing loans were insured under title I;

(7) the loan limits for title I manufactured housing loans have not been adjusted for inflation since 1992; and

(8) these problems with the title I program have resulted in an atrophied market for manufactured housing loans, leaving American families who have the most difficulty achieving homeownership without adequate financing options for home-only manufactured home purchases.

(b) 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. 253. 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. 254. 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 by the Secretary shall be conclusive evidence of the eligibility of such financial institution for insurance, and the validity of any contract of in-

surance 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 Act.

SEC. 255. 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 subtitle, 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 one 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. 256. 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. 257. 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, includ-

ing 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. 258. 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 subtitle, 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 Act, 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. 259. REQUIREMENT OF SOCIAL SECURITY ACCOUNT NUMBER FOR ASSISTANCE.

Section 2 of the National Housing Act (12 U.S.C. 1703) is amended by adding at the end the following new subsection:

"(j) REQUIREMENT OF SOCIAL SECURITY ACCOUNT NUMBER FOR FINANCING.—No insurance shall be granted under this section with respect to any obligation representing any loan, advance of credit, or purchase by a financial institution unless the borrower to which the loan or advance of credit was made has a valid social security number.".

SEC. 260. GAO STUDY OF MITIGATION OF TORNADO RISKS TO MANUFACTURED HOMES.

The Comptroller General of the United States shall assess how the Secretary of Housing and Urban Development utilizes the FHA

manufactured housing loan insurance program under title I of the National Housing Act, the community development block grant program under title I of the Housing and Community Development Act of 1974, and other programs and resources available to the Secretary to mitigate the risks to manufactured housing residents and communities resulting from tornados. The Comptroller General shall submit to the Congress a report on the conclusions and recommendations of the assessment conducted pursuant to this section not later than the expiration of the 12-month period beginning on the date of the enactment of this Act.

TITLE III—REFORM OF GOVERNMENT-SPONSORED ENTITIES FOR HOUSING FINANCE

SEC. 301. SHORT TITLE.

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

SEC. 302. 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.".

Subtitle A—Reform of Regulation of Enterprises and Federal Home Loan Banks

CHAPTER 1—IMPROVEMENT OF SAFETY AND SOUNDNESS

SEC. 311. 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 title, 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 of-

fice is established by the amendment made by subsection (a). This subsection shall take effect on the date of the enactment of this Act.

SEC. 312. 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. 313. 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 the preceding provisions of this title, 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. 314. 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. 315. 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 title, 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. 316. 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 subtitle C of the Federal Housing Finance Reform Act of 2008.";

(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 365 of the Federal Housing Finance Reform Act of 2008), and any amounts remaining from assessments on the Federal Home Loan banks pursuant to section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

"(6) TREASURY INVESTMENTS.—

"(A) AUTHORITY.—The Director may request the Secretary of the Treasury to invest such portions of 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, re-

ports, 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. 317. 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. 318. 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 sec-

tion 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. 319. 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. 320. 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. 321. 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. 322. 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. 323. 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. 324. 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 365, 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. 325. 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 365, 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. 326. 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 com-

pliance 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. 327. 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 title, 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. 328. 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. 329. 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. 330. 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 title, 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 subtitle C of the Federal Housing Finance Reform Act of 2008, 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".

CHAPTER 2—IMPROVEMENT OF MISSION SUPERVISION

SEC. 331. 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. 332. 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 2008, 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 the preceding provisions of this title, 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. 333. 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—

(1) in the second sentence, by redesignating clause (A) through (C) as clauses (i) through (iii), respectively;

(2) in the third sentence, by striking "clause (A)" and inserting "clause (i)";

(3) in the 4th sentence, by striking "the Resolution Trust Corporation,";

(4) by striking the 7th and 8th sentences and inserting the following new sentences: "For 2008, 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 2009, 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)).".

(5) by inserting "(A)" after "(2)"; and

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

"(B)(i) Notwithstanding subparagraph (A), for mortgages originated on or after January 1, 2009, the limitation on the maximum original principal obligation of a mortgage that may be purchased by the corporation shall be the higher of—

"(I) the limitation determined under subparagraph (A) for a residence of the applicable size; or

"(II) 125 percent of the area median price for a residence of the applicable size, but in no case to exceed 175 percent of the limitation determined under subparagraph (A) for a residence of the applicable size.

"(ii) The areas and area median prices used for purposes of the determination under this subparagraph shall be the areas and area median prices used by the Secretary of Housing and Urban Development in determining the applicable limits under section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)). A mortgage that is eligible for purchase by the corporation at the time the mortgage is originated under this subparagraph shall be eligible for such purchase for the duration of the term of the mortgage.".

(b) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended—

(1) in the first sentence, by redesignating clause (A) through (C) as clauses (i) through (iii), respectively;

(2) in the second sentence, by striking "clause (A)" and inserting "clause (i)";

(3) in the third sentence by striking "the Resolution Trust Corporation";

(4) by striking the 6th and 7th sentence and inserting the following new sentences: "For 2008, 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 2009, 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)).";

(5) by inserting "(A)" after "(2)"; and

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

"(B)(i) Notwithstanding subparagraph (A), for mortgages originated on or after January 1, 2009, the limitation on the maximum original principal obligation of a mortgage that may be purchased by the Corporation shall be the higher of—

"(I) the limitation determined under subparagraph (A) for a residence of the applicable size; or

"(II) 125 percent of the area median price for a residence of the applicable size, but in no case to exceed 175 percent of the limitation determined under subparagraph (A) for a residence of the applicable size.

"(ii) The areas and area median prices used for purposes of the determination under this subparagraph shall be the areas and area median prices used by the Secretary of Housing and Urban Development in determining the applicable limits under section 203(b)(2)

of the National Housing Act (12 U.S.C. 1709(b)(2)). A mortgage that is eligible for purchase by the Corporation at the time the mortgage is originated under this subparagraph shall be eligible for such purchase for the duration of the term of the mortgage.".

(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 title) is amended by inserting after section 1321 (as added by the preceding provisions of this title) 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 365 of the Federal Housing Finance Reform Act of 2008, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

"(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) SENSE OF CONGRESS.—It is the sense of the Congress that the securitization of mortgages by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation plays an important role in providing liquidity to the United States housing markets. Therefore, the Congress encourages the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to securitize mortgages acquired under the increased conforming loan limits established by the amendments made by this section, to the extent that such securitizations can be effected in a timely and efficient manner that does not impose additional costs

for mortgages originated, purchased, or securitized under the existing limits or interfere with the goal of adding liquidity to the market.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on, and shall apply beginning on, January 1, 2009.

SEC. 334. 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 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 334(b) of the Federal Housing Finance Reform Act of 2008) 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 365, 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. 335. 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. 336. 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 title, 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. 337. 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 365 of the Federal Housing Finance Reform Act of 2008 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 con-

ventional, 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 title, 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. 338. 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 365 of the Federal Housing Finance Reform Act of 2008, 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 subtitle, 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. 339. 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 ap-

proval 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. 340. 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 2008 through 2012, 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 2008.—

"(A) ALLOCATION PERCENTAGES FOR LOUISIANA AND MISSISSIPPI.—For purposes of subsection (d)(1)(A), the allocation percentages for 2008 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 2008 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 2008, 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 2008, 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 2008, 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 2008), 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 deter-

mines 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, 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 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 2008, 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 2008, 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 2008 pursuant to subsection (l)(2)(A)), of performance goals, benchmarks, and timetables for the production, preservation, and rehabilita-

tion 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 the Federal Housing Finance Reform Act of 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (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 365 of this title, 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. 341. 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 the preceding provisions of this title, 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. 342. 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. 343. 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 335) 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).

CHAPTER 3—PROMPT CORRECTIVE ACTION

SEC. 345. 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 365, 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. 346. 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. 347. 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 cal-

endar months preceding the calendar month in which the regulated entity became undercapitalized.".

SEC. 348. 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 enti-

ty), 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 ap-

propriate 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 uti-

lized 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 Act, 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 agree-

ment 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 mas-

ter 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.

"(l) PRESERVATION OF BANKRUPTCY LAW .—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any provision of title 11 of the United States Code, or the operation of any provision of title 28 of such Code that relates to cases under such title 11, except as otherwise provided in section 1367(b) of this Act and except that a regulated entity may not be a debtor under such title 11.".

(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. 349. CONFORMING AMENDMENTS.

Title XIII of the Housing and Community Development Act of 1992, as amended by the preceding provisions of this title, 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 349 of this title—

(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)".

CHAPTER 4—ENFORCEMENT ACTIONS

SEC. 351. 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. 352. 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. 353. 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. 354. 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 Attor-

ney 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. 355. 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. 356. 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 pun-

ishable 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 As-

sociation 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. 357. 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 title) 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 be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

SEC. 358. 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 356(a)(1) of this title, 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. 359. 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 title, 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 356(a)(1) of this title—

(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 356(a)(1) of this title, 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".

CHAPTER 5—GENERAL PROVISIONS

SEC. 361. 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 365 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 Cor-

poration until the expiration of the annual term for such position during which the effective date under section 365 occurs.

SEC. 362. 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 365, 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. 363. 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. 364. 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 365.

SEC. 365. EFFECTIVE DATE.

Except as specifically provided otherwise in this subtitle, this subtitle shall take effect on and the amendments made by this subtitle 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.

Subtitle B—Federal Home Loan Banks

SEC. 371. 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. 372. 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 2008"; 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 subtitle under section 381, 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 381 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. 373. 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 title, 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. 374. 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:

"(l) 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. 375. 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 381 of this title.

SEC. 376. 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 di-

rectors 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. 377. 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 re-

spect 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. 378. 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 371(3) of this title, 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. 379. 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) MAHRA ACT OF 1997.—Section 517(b)(4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking "Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(e) TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking "Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(f) ACCESS TO LOCAL TV ACT OF 2000.—Section 1004(d)(2)(D)(iii) of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)(iii)) is amended by striking "Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board" and inserting "Federal Housing Finance Agency".

(g) 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. 380. 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 fund required to be established by the Director of the Federal Housing Finance Agency pursuant to the amendment made by section 340 of this title. 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. 381. EFFECTIVE DATE.

Except as specifically provided otherwise in this subtitle, this subtitle shall take effect on and the amendments made by this subtitle 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.

Subtitle C—Transfer of Functions, Personnel, and Property of Office of Federal Housing Enterprise Oversight, Federal Housing Finance Board, and Department of Housing and Urban Development

CHAPTER 1—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SEC. 385. 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 em-

ployee which accrue before the effective date of the transfer of such employee pursuant to section 387; 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 subtitle A 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 387.

(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 title or any amendment made by this title 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 title, 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. 386. 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 chapter; and

(2) are in effect on the date of the abolishment under section 385(a) of this title, 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. 387. 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 385(a) of this title 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 385(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 385(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. 388. TRANSFER OF PROPERTY AND FACILITIES.

Upon the abolishment under section 385(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Federal Housing Finance Agency.

CHAPTER 2—FEDERAL HOUSING FINANCE BOARD

SEC. 391. 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 subtitle 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 393; 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 subtitles A and B 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 393.

(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 title or any amendment made by this title 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 title, 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. 392. 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 chapter; and

(2) is in effect on the effective date of the abolishment under section 391(a).

SEC. 393. 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 391(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 391(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 391(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. 394. TRANSFER OF PROPERTY AND FACILITIES.

Upon the effective date of the abolishment under section 391(a), all property of the Board shall transfer to the Director of the Federal Housing Finance Agency.

CHAPTER 3—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 395. TERMINATION OF ENTERPRISE-RELATED FUNCTIONS.

(a) TERMINATION DATE.—For purposes of this chapter, 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 chapter, 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 chapter, 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 subtitle 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 subtitle 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 397; 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 subtitles A and B 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 397.

(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 title or any amendment made by this title 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 title, 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. 396. 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 395(a).

SEC. 397. 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 395(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 395(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 395(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. 398. TRANSFER OF APPROPRIATIONS, PROPERTY, AND FACILITIES.

Upon the termination date under section 395(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.

TITLE IV—EMERGENCY MORTGAGE LOAN MODIFICATION

SEC. 401. SHORT TITLE.

This title may be cited as the "Emergency Mortgage Loan Modification Act of 2008".

SEC. 402. SAFE HARBOR FOR QUALIFIED LOAN MODIFICATIONS OR WORKOUT PLANS FOR CERTAIN RESIDENTIAL MORTGAGE LOANS.

(a) STANDARD FOR LOAN MODIFICATIONS OR WORKOUT PLANS.—Absent contractual provisions to the contrary—

(1) the duty to maximize, or to not adversely affect, the recovery of total proceeds from pooled residential mortgage loans is owed by a servicer of such pooled loans to the securitization vehicle for the benefit of all investors and holders of beneficial interests in the pooled loans, in the aggregate, and not to any individual party or group of parties; and

(2) a servicer of pooled residential mortgage loans shall be deemed to be acting on behalf of the securitization vehicle in the best interest of all investors and holders of beneficial interests in the pooled loans, in the aggregate, if for a loan that is in payment default under the loan agreement or for which payment default is imminent or reasonably foreseeable, the loan servicer makes or causes to be made reasonable and documented efforts to implement a modification or workout plan or, if such efforts are unsuccessful or such plan would be infeasible, engages or causes to engage in other loss mitigation, including accepting a short payment or partial discharge of principal, or agreeing to a short sale of the property, to the extent that the servicer reasonably believes the modification or workout plan or other mitigation actions will maximize the net present value to be realized on the loan over that which would be realized through foreclosure.

(b) SAFE HARBOR.—Absent contractual provisions to the contrary, a servicer of a residential mortgage loan that acts or causes to act in a manner consistent with the duty set forth in subsection (a), shall not be liable for entering into a qualified loan modification or workout plan, to—

(1) any person, based on that person's ownership of a residential mortgage loan or any interest in a pool of residential mortgage loans or in securities that distribute payments out of the principal, interest and other payments in loans on the pool;

(2) any person who is obligated to make payments pursuant to a derivatives instrument determined in reference to any interest referred to in paragraph (1); or

(3) any person that insures any loan or any interest referred to in paragraph (1) under any law or regulation of the United States or any law or regulation of any State or political subdivision of any State.

(c) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting the ability of a servicer to enter into loan modifications or workout plans other than qualified loan modification or workout plans.

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

(1) QUALIFIED LOAN MODIFICATION OR WORKOUT PLAN.—The term "qualified loan modification or workout plan" means a modification or plan that—

(A) is scheduled to remain in place until the borrower sells or refinances the property, or for at least 5 years from the date of adoption of the plan, whichever is sooner;

(B) does not provide for a repayment schedule that results in an increase in the outstanding principal balance of the loan, including by deferred or unpaid interest, fees, or other charges; and

(C) does not require the borrower to pay additional points and fees.

(2) RESIDENTIAL MORTGAGE LOAN DEFINED.—The term "residential mortgage loan" means a loan that is secured by a lien on an owner-occupied residential dwelling.

(3) SECURITIZATION VEHICLE.—The term "securitization vehicle" means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

(A) 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

(B) holds such loans.

(e) EFFECTIVE PERIOD.—This section shall apply only with respect to qualified loan modification or workout plans initiated prior to January 1, 2011.

TITLE V—OTHER HOUSING PROVISIONS

SEC. 501. DEPOSITORY INSTITUTION COMMUNITY DEVELOPMENT INVESTMENTS ENHANCEMENT .

(a) TECHNICAL CORRECTIONS.—

(1) NATIONAL BANKS.—The first sentence of the paragraph designated as the "Eleventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) (as amended by section 305(a) of the Financial Services Regulatory Relief Act of 2006) is amended by striking "promotes the public welfare by benefitting primarily" and inserting "is designed primarily to promote the public welfare, including the welfare of".

(2) STATE MEMBER BANKS.—The first sentence of the 23rd undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) (as amended by section 305(b) of the Financial Services Regulatory Relief Act of 2006) is amended by striking "promotes the public welfare by benefitting primarily" and inserting "is designed primarily to promote the public welfare, including the welfare of".

(b) INVESTMENTS BY FEDERAL SAVINGS ASSOCIATIONS AUTHORIZED TO PROMOTE THE PUBLIC WELFARE.—

(1) IN GENERAL.—Section 5(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended by adding at the end the following new subparagraph:

"(D) DIRECT INVESTMENTS TO PROMOTE THE PUBLIC WELFARE.—

"(i) IN GENERAL.—A Federal savings association may make investments, directly or indirectly, each of which is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families through the provision of housing, services, and jobs.

"(ii) DIRECT INVESTMENTS OR ACQUISITION OF INTEREST IN OTHER COMPANIES.—Investments under clause (i) may be made directly or by purchasing interests in an entity primarily engaged in making such investments.

"(iii) PROHIBITION ON UNLIMITED LIABILITY.—No investment may be made under this subparagraph which would subject a Federal savings association to unlimited liability to any person.

"(iv) SINGLE INVESTMENT LIMITATION TO BE ESTABLISHED BY DIRECTOR.—Subject to clauses (v) and (vi), the Director shall establish, by order or regulation, limits on—

"(I) the amount any savings association may invest in any 1 project; and

"(II) the aggregate amount of investment of any savings association under this subparagraph.

"(v) FLEXIBLE AGGREGATE INVESTMENT LIMITATION.—The aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 5 percent of the savings association's capital stock actually paid in and unimpaired and 5 percent of the savings association's unimpaired surplus, unless—

"(I) the Director determines that the savings association is adequately capitalized; and

"(II) the Director determines, by order, that the aggregate amount of investments in a higher amount than the limit under this clause will pose no significant risk to the affected deposit insurance fund.

"(vi) MAXIMUM AGGREGATE INVESTMENT LIMITATION.—Notwithstanding clause (v), the aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 15 percent of the savings association's capital stock actually paid in and unimpaired and 15 percent of the savings association's unimpaired surplus.

"(vii) INVESTMENTS NOT SUBJECT TO OTHER LIMITATION ON QUALITY OF INVESTMENTS.—No obligation a Federal savings association acquires or retains under this subparagraph shall be taken into account for purposes of the limitation contained in section 28(d) of the Federal Deposit Insurance Act on the acquisition and retention of any corporate debt security not of investment grade.

"(viii) APPLICABILITY OF STANDARDS TO EACH INVESTMENT.—The standards and limitations of this subparagraph shall apply to each investment under this subparagraph made by a savings association directly and by its subsidiaries.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Section 5(c)(3)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(3)(A)) is amended to read as follows:

"(A) [Repealed]".

SEC. 502. PRESERVATION OF CERTAIN AFFORDABLE HOUSING DWELLING UNITS.

(a) CONVERSION OF HUD CONTRACTS.—Notwithstanding any other provision of law, the Secretary of Housing and Urban Devel-

opment may, at the request of the owner of the multifamily housing project to which Section 8 Project Number NY 913 VO 0018 and RAP Contract Number 012035NIRAP are subject, convert such contracts to a contract for project-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) INITIAL RENEWAL.—

(1) ELIGIBILITY.—At the request of the owner made no later than 90 days prior to a conversion, the Secretary may, to the extent sufficient amounts are made available in appropriation Acts and notwithstanding any other law, treat the contemplated resulting contract as if such contract were eligible for initial renewal under section 524(a) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note).

(2) REQUEST.—A request by the owner pursuant to paragraph (1) shall be upon such terms and conditions as the Secretary may require.

(c) RESULTING CONTRACT.—The resulting contract shall—

(1) be subject to section 524(a) of MAHRA (42 U.S.C. 1437f note);

(2) be considered for all purposes a contract that has been renewed under section 524(a) of MAHRA (42 U.S.C. 1437f note) for a term not to exceed 20 years;

(3) be subsequently renewable at the request of the owner, under any renewal option for which the project is eligible under MAHRA (42 U.S.C. 1437f note);

(4) contain provisions limiting distributions, as the Secretary determines appropriate, not to exceed 10 percent of the initial investment of the owner;

(5) be subject to the availability of sufficient amounts in appropriation Acts; and

(6) be subject to such other terms and conditions as the Secretary considers appropriate.

(d) INCOME TARGETING.—The owner shall be deemed to be in compliance with all income-targeting requirements under the United States Housing Act of 1937 by serving low-income families, as such term is defined in the section 3(b)(2) of such Act (42 U.S.C. 1437a(b)(2)).

(e) TENANT ELIGIBILITY.—Notwithstanding any other provision of law, each family residing in an assisted dwelling unit on the date of the conversion under this section, subject to the resulting contract under subsection (a), shall be considered to meet the applicable requirements for income eligibility and occupancy.

(f) DEFINITIONS.—As used in this section—

(1) the term "assisted dwelling unit" means the dwelling units that, on the date of the conversion under this section, were subject to Section 8 Project Number NY 913 VO 0018 or RAP Contract Number 012035NIRAP;

(2) the term "conversion" means the action under which Section 8 Project Number NY 913 VO 0018 and RAP Contract Number 012035NIRAP become a contract for project-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) pursuant to subsection (a);

(3) the term "MAHRA" means the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note);

(4) the term "owner" means Starrett City Associates or any successor owner of the multifamily housing project to which Section 8 Project Number NY 913 VO 0018 and RAP Contract Number 012035NIRAP are subject;

(5) the term "resulting contract" means the new contract after a conversion of Section 8 Project Number NY 913 VO 0018 and RAP Contract Number 012035NIRAP to a contract for project-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) pursuant to subsection (a); and

(6) the term "Secretary" means the Secretary of Housing and Urban Development.

SEC. 503. ELIGIBILITY OF CERTAIN PROJECTS FOR ENHANCED VOUCHER ASSISTANCE.

Notwithstanding any other provision of law—

(1) the property known as The Heritage Apartments (FHA No. 023-44804), in Malden, Massachusetts, shall be considered eligible low-income housing for purposes of the eligibility of residents of the property for enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)), pursuant to paragraph (2)(A) of section 223(f) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f)(2)(A));

(2) such residents shall receive enhanced rental housing vouchers upon the prepayment of the mortgage loan for the property under section 236 of the National Housing Act (12 U.S.C. 1715z–1); and

(3) the Secretary shall approve such prepayment and subsequent transfer of the property without any further condition, except that the property shall be restricted for occupancy, until the original maturity date of the prepaid mortgage loan, only by families with incomes not exceeding 80 percent of the adjusted median income for the area in which the property is located, as published by the Secretary.

Amounts for the enhanced vouchers pursuant to this section shall be provided under amounts appropriated for tenant-based rental assistance otherwise authorized under section 8(t) of the United States Housing Act of 1937.

SEC. 504. TRANSFER OF CERTAIN RENTAL ASSISTANCE CONTRACTS.

(a) TRANSFER.—Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall, at the request of the owner, transfer or authorize the transfer, of the contracts, restrictions, and debt described in subsection (b)—

(1) on the housing that is owned or managed by Community Properties of Ohio Management Services LLC or an affiliate of Ohio Capital Corporation for Housing and located in Franklin County, Ohio, to other properties located in Franklin County, Ohio; and

(2) on the housing that is owned or managed by The Model Group, Inc., and located in Hamilton County, Ohio, to other properties located in Hamilton County, Ohio.

(b) CONTRACTS, RESTRICTIONS, AND DEBT COVERED.—The contracts, restrictions, and debt described in this subsection are as follows:

(1) All or a portion of a project-based rental assistance housing assistance payments contract under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(2) Existing Federal use restrictions, including without limitation use agreements, regulatory agreements, and accommodation agreements.

(3) Any subordinate debt held by the Secretary or assigned and any mortgages securing such debt, all related loan and security documentation and obligations, and reserve and escrow balances.

(c) RETENTION OF SAME NUMBER OF UNITS AND AMOUNT OF ASSISTANCE.—Any transfer pursuant to subsection (a) shall result in—

(1) a total number of dwelling units (including units retained by the owners and units transferred) covered by assistance described in subsection (b)(1) after the transfer remaining the same as such number assisted before the transfer, with such increases or decreases in unit sizes as may be contained in a plan approved by a local planning or development commission or department; and

(2) no reduction in the total amount of the housing assistance payments under contracts described in subsection (b)(1).

SEC. 505. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525 of title 11, the United States Code, is amended by adding at the end the following:

"(d) A governmental unit that operates a mortgage loan program, including a loan guarantee or subsidy program, may not deny the benefits of such program to a disabled veteran (as defined in section 3741(1) of title 38) because he or she is or has been a debtor under this title, has been insolvent before the commencement of a case under this title or during the pendency of the case but before being granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title.".

In the matter proposed to be inserted by the amendment of the Senate to the text of the bill, strike titles VII, IX, and XI.

TEXT OF THE HOUSE AMENDMENT #2 TO THE SENATE AMENDMENT TO H.R. 3221 MADE IN ORDER UNDER THE RULE

In the matter proposed to be inserted by the Senate amendment to H.R. 3221, strike titles VI (relating to tax-related provisions), VIII (relating to REIT investment diversification and empowerment), and X (relating to clean energy tax stimulus) and add at the end the following new title (and conform the table of contents accordingly):

TITLE VII—REVENUE AND OTHER PROVISIONS

SEC. 700. 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—Housing Tax Incentives

PART 1—MULTI-FAMILY HOUSING

Subpart A—Low-Income Housing Tax Credit

SEC. 701. TEMPORARY INCREASE IN VOLUME CAP FOR LOW-INCOME HOUSING TAX CREDIT.

Paragraph (3) of section 42(h) is amended by adding at the end the following new subparagraph:

"(I) INCREASE IN STATE HOUSING CREDIT CEILING FOR 2008 AND 2009.—In the case of calendar years 2008 and 2009, the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20.".

SEC. 702. DETERMINATION OF CREDIT RATE.

(a) ELIMINATION OF DISTINCTION BETWEEN NEW AND EXISTING BUILDINGS; MINIMUM CREDIT RATE FOR NON-FEDERALLY SUBSIDIZED BUILDINGS.—

(1) IN GENERAL.—Subsection (b) section 42 is amended to read as follows:

"(b) APPLICABLE PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable percentage' means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

"(A) the month in which such building is placed in service, or

"(B) at the election of the taxpayer—

"(i) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

"(ii) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

"(2) METHOD OF PRESCRIBING PERCENTAGES.—

"(A) IN GENERAL.—For purposes of paragraph (1), the percentages prescribed by the Secretary for any month shall be—

"(i) in the case of any building which is not federally subsidized for the taxable year, the greater of—

"(I) the average percentage determined under subclause (II) for months in the preceding calendar year, or

"(II) the percentage which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to 70 percent of the qualified basis of such building, and

"(ii) in the case of any other building, the percentage which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to 30 percent of the qualified basis of such building.

"(B) METHOD OF DISCOUNTING.—The present value under subparagraph (A) shall be determined—

"(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (A),

"(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under subparagraph (A) and compounded annually, and

"(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

"(3) CROSS REFERENCES.—

"(A) For treatment of certain rehabilitation expenditures as separate buildings, see subsection (e).

"(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

"(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 42(e)(3) is amended by striking "subsection (b)(2)(B)(ii)" and inserting "subsection (b)(2)(A)(ii)".

(B) Subparagraph (A) of section 42(i)(2) is amended by striking "new building" and inserting "building".

(b) MODIFICATIONS TO DEFINITION OF FEDERALLY SUBSIDIZED BUILDING.—

(1) IN GENERAL.—Subparagraph (A) of section 42(i)(2) is amended by striking ", or any below market Federal loan,".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 42(i)(2) is amended—

(i) by striking "BALANCE OF LOAN OR" in the heading thereof,

(ii) by striking "loan or" in the matter preceding clause (i), and

(iii) by striking "subsection (d)—" and all that follows and inserting "subsection (d) the proceeds of such obligation.".

(B) Subparagraph (C) of section 42(i)(2) is amended—

(i) by striking "or below market Federal loan" in the matter preceding clause (i),

(ii) in clause (i)—

(I) by striking "or loan (when issued or made)" and inserting "(when issued)", and

(II) by striking "the proceeds of such obligation or loan" and inserting "the proceeds of such obligation", and

(iii) by striking ", and such loan is repaid," in clause (ii).

(C) Paragraph (2) of section 42(i) is amended by striking subparagraphs (D) and (E).

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to buildings placed in service after the date of the enactment of this Act.

SEC. 703. MODIFICATIONS TO DEFINITION OF ELIGIBLE BASIS.

(a) INCREASE IN CREDIT FOR CERTAIN STATE DESIGNATED BUILDINGS.—Subparagraph (C) of section 42(d)(5) (relating to increase in credit for buildings in high cost areas), before redesignation under subsection (f), is amended by adding at the end the following new clause:

"(v) BUILDINGS DESIGNATED BY STATE HOUSING CREDIT AGENCY.—Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.".

(b) MODIFICATION TO REHABILITATION REQUIREMENTS.—

(1) IN GENERAL.—Clause (ii) of section 42(e)(3)(A) is amended—

(A) by striking "10 percent" in subclause (I) and inserting "20 percent", and

(B) by striking "$3,000" in subclause (II) and inserting "$6,000".

(2) INFLATION ADJUSTMENT.—Paragraph (3) of section 42(e) is amended by adding at the end the following new subparagraph:

"(D) INFLATION ADJUSTMENT.—In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.".

(3) CONFORMING AMENDMENT.—Subclause (II) of section 42(f)(5)(B)(ii) is amended by striking "if subsection (e)(3)(A)(ii)(II)" and all that follows and inserting "if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.".

(c) INCREASE IN ALLOWABLE COMMUNITY SERVICE FACILITY SPACE FOR SMALL PROJECTS.—Clause (ii) of section 42(d)(4)(C) (relating to limitation) is amended by striking "10 percent of the eligible basis of the qualified low-income housing project of which it is a part. For purposes of" and inserting "the sum of—

"(I) 15 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $5,000,000, plus

"(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of".

(d) CLARIFICATION OF TREATMENT OF FEDERAL GRANTS.—Subparagraph (A) of section 42(d)(5) is amended to read as follows:

"(A) FEDERAL GRANTS NOT TAKEN INTO ACCOUNT IN DETERMINING ELIGIBLE BASIS.—The eligible basis of a building shall not include any costs financed with the proceeds of a Federally funded grant.".

(e) SIMPLIFICATION OF RELATED PARTY RULES.—Clause (iii) of section 42(d)(2)(D), before redesignation under subsection (f)(2), is amended—

(1) by striking all that precedes subclause (II),

(2) by redesignating subclause (II) as clause (iii) and moving such clause two ems to the left, and

(3) by striking the last sentence thereof.

(f) REPEAL OF DEADWOOD.—

(1) Clause (ii) of section 42(d)(2)(B) is amended by striking "the later of—" and all that follows and inserting "the date the building was last placed in service,".

(2) Subparagraph (D) of section 42(d)(2) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(3) Paragraph (5) of section 42(d) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(g) EFFECTIVE DATE.—The amendments made by this subsection shall apply to buildings placed in service after the date of the enactment of this Act.

SEC. 704. OTHER SIMPLIFICATION AND REFORM OF LOW-INCOME HOUSING TAX INCENTIVES.

(a) REPEAL PROHIBITION ON MODERATE REHABILITATION ASSISTANCE.—Paragraph (2) of section 42(c) (defining qualified low-in-

come building) is amended by striking the flush sentence at the end.

(b) MODIFICATION OF TIME LIMIT FOR INCURRING 10 PERCENT OF PROJECT'S COST.—Clause (ii) of section 42(h)(1)(E) is amended by striking "(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)" and inserting "(as of the date which is 1 year after the date that the allocation was made)".

(c) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—Paragraph (6) of section 42(j) (relating to no recapture on disposition of building (or interest therein) where bond posted) is amended to read as follows:

"(6) NO RECAPTURE ON DISPOSITION OF BUILDING WHICH CONTINUES IN QUALIFIED USE.—

"(A) IN GENERAL.—The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

"(B) STATUTE OF LIMITATIONS.—If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

"(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

"(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(d) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—Subparagraph (C) of section 42(m)(1) (relating to plans for allocation of credit among projects) is amended by striking "and" at the end of clause (vii), by striking the period at the end of clause (viii) and inserting a comma, and by adding at the end the following new clauses:

"(ix) the energy efficiency of the project, and

"(x) the historic nature of the project.".

(e) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—Clause (i) of section 42(i)(3)(D) is amended by striking "or" at the end of subclause (I), by redesignating subclause (II) as subclause (III), and by inserting after subclause (I) the following new subclause:

"(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or".

(f) TREATMENT OF RURAL PROJECTS.—Section 42(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF RURAL PROJECTS.—For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to buildings placed in service after the date of the enactment of this Act.

(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) shall apply to—

(A) interests in buildings disposed after the date of the enactment of this Act, and

(B) interests in buildings disposed of on or before such date if—

(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

Notwithstanding the preceding sentence, the amendments made by subsection (c) shall not apply to any disposition after the date 5 years after the date of the enactment of this Act.

(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) shall apply to allocations made after December 31, 2008.

(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—The amendments made by subsection (e) shall apply to determinations made after the date of the enactment of this Act.

(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) shall apply to determinations made after the date of the enactment of this Act.

Subpart B—Modifications to Tax-Exempt Housing Bond Rules

SEC. 706. RECYCLING OF TAX-EXEMPT DEBT FOR FINANCING RESIDENTIAL RENTAL PROJECTS.

(a) IN GENERAL.—Subsection (i) of section 146 (relating to treatment of refunding issues) is amended by adding at the end the following new paragraph:

"(6) TREATMENT OF CERTAIN RESIDENTIAL RENTAL PROJECT BONDS AS REFUNDING BONDS IRRESPECTIVE OF OBLIGOR.—

"(A) IN GENERAL.—If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

"(B) LIMITATIONS.—Subparagraph (A) shall apply to only one refunding of the original issue and only if—

"(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

"(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

"(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.".

(b) LOW-INCOME HOUSING CREDIT.—Clause (ii) of section 42(h)(4)(A) is amended by inserting "or such financing is refunded as described in section 146(i)(6)" before the period at the end.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to repayments of loans received after the date of the enactment of this Act.

SEC. 707. COORDINATION OF CERTAIN RULES APPLICABLE TO LOW-INCOME HOUSING CREDIT AND QUALIFIED RESIDENTIAL RENTAL PROJECT EXEMPT FACILITY BONDS.

(a) DETERMINATION OF NEXT AVAILABLE UNIT.—Paragraph (3) of section 142(d) (relating to current income determinations) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FOR PROJECTS WITH RESPECT TO WHICH AFFORDABLE HOUSING CREDIT IS ALLOWED.—In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting 'building (within the meaning of section 42)' for 'project'.".

(b) STUDENTS.—Paragraph (2) of section 142(d) (relating to definitions and special rules) is amended by adding at the end the following new subparagraph:

"(C) STUDENTS.—Rules similar to the rules of 42(i)(3)(D) shall apply for purposes of this subsection.".

(c) SINGLE-ROOM OCCUPANCY UNITS.—Paragraph (2) of section 142(d) (relating to definitions and special rules), as amended by

subsection (b), is 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.

Subpart C—Reforms Related to the Low-Income Housing Credit and Tax-Exempt Housing Bonds

SEC. 709. HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.

(a) IN GENERAL.—Paragraph (2) of section 142(d), as amended by section 707, is further amended by adding at the end the following new subparagraph:

"(E) HOLD HARMLESS FOR REDUCTIONS IN AREA MEDIAN GROSS INCOME.—

"(i) IN GENERAL.—Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

"(ii) SPECIAL RULE FOR CERTAIN CENSUS CHANGES.—In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

"(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

"(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

"(iii) HUD HOLD HARMLESS POLICY.—The term 'HUD hold harmless policy' means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

"(iv) HUD HOLD HARMLESS IMPACTED PROJECT.—The term 'HUD hold harmless impacted project' means any

project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations of area median gross income for calendar years after 2008.

SEC. 710. EXCEPTION TO ANNUAL CURRENT INCOME DETERMINATION REQUIREMENT WHERE DETERMINATION NOT RELEVANT.

(a) IN GENERAL.—Subparagraph (A) of section 142(d)(3) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years ending after the date of the enactment of this Act.

PART 2—SINGLE FAMILY HOUSING

SEC. 712. FIRST-TIME HOMEBUYER CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

"SEC. 36. FIRST-TIME HOMEBUYER CREDIT.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed $7,500.

"(B) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting '$3,750' for '$7,500'.

"(C) OTHER INDIVIDUALS.—If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $7,500.

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

"(i) the excess (if any) of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $70,000 ($140,000 in the case of a joint return), bears to

"(ii) $20,000.

"(B) MODIFIED ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

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

"(1) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

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

"(3) PURCHASE.—

"(A) IN GENERAL.—The term 'purchase' means any acquisition, but only if—

"(i) the property is not acquired from a person related to the person acquiring it, 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 on the date the taxpayer first occupies such residence.

"(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date such residence is purchased.

"(5) RELATED PERSONS.—A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

"(d) EXCEPTIONS.—No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

"(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

"(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103,

"(3) the taxpayer is a nonresident alien, or

"(4) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year.

"(e) REPORTING.—If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

"(f) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6⅔ percent of the amount of such credit for each taxable year in the recapture period.

"(2) ACCELERATION OF RECAPTURE.—If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

"(A) the tax imposed by this chapter for the taxable year of such disposition or cessation, shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

"(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

"(3) LIMITATION BASED ON GAIN.—In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

"(4) EXCEPTIONS.—

"(A) DEATH OF TAXPAYER.—Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

"(B) INVOLUNTARY CONVERSION.—Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

"(C) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of a transfer of a residence to which section 1041(a) applies—

"(i) paragraph (2) shall not apply to such transfer, and

"(ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

"(5) JOINT RETURNS.—In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

"(6) RECAPTURE PERIOD.—For purposes of this subsection, the term 'recapture period' means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

"(g) APPLICATION OF SECTION.—This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before April 1, 2009.".

(b) CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) is amended by striking "and" at the end of subparagraph (U), by striking the period and inserting ", and" and the end of subparagraph (V), and by inserting after subparagraph (V) the following new subparagraph:

"(W) section 36(f) (relating to recapture of homebuyer credit).".

(2) Section 6211(b)(4)(A) is amended by striking "34," and all that follows through "6428" and inserting "34, 35, 36, 53(e), and 6428".

(3) Section 1324(b)(2) of title 31, United States Code, is amended by inserting ", 36," after "section 35".

(4) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting before such item the following new item:

"Sec. 36. First-time homebuyer credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to residences purchased on or after April 9, 2008, in taxable years ending on or after such date.

SEC. 713. ADDITIONAL STANDARD DEDUCTION FOR REAL PROPERTY TAXES FOR NONITEMIZERS.

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

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

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

"(7) REAL PROPERTY TAX DEDUCTION.—For purposes of paragraph (1), the real property tax deduction is the lesser of—

"(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

"(B) $350 ($700 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.".

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

PART 3—GENERAL PROVISIONS

SEC. 715. TEMPORARY LIBERALIZATION OF TAX-EXEMPT HOUSING BOND RULES.

(a) TEMPORARY INCREASE IN VOLUME CAP.—

(1) IN GENERAL.—Subsection (d) of section 146 is amended by adding at the end the following new paragraph:

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

"(A) INCREASE FOR 2008.—In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $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 housing issues.

"(ii) QUALIFIED HOUSING ISSUE.—For purposes of this paragraph, the term 'qualified housing issue' means—

"(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

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

(2) CARRYFORWARD OF UNUSED LIMITATIONS.—Subsection (f) of section 146 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULES FOR INCREASED VOLUME CAP UNDER SUBSECTION (d)(5).—No amount which is attributable to the increase under subsection (d)(5) may be used—

"(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

"(B) to issue any bond after calendar year 2010.".

(b) TEMPORARY RULE FOR USE OF QUALIFIED MORTGAGE BONDS PROCEEDS FOR SUBPRIME REFINANCING LOANS.—

(1) IN GENERAL.—Section 143(k) (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

"(12) SPECIAL RULES FOR SUBPRIME REFINANCINGS.—

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

"(B) SPECIAL RULES.—In applying subparagraph (A) to any refinancing—

"(i) subsection (a)(2)(D)(i) shall be applied by substituting '12-month period' for '42-month period' each place it appears,

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

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

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

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

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

SEC. 716. REPEAL OF ALTERNATIVE MINIMUM TAX LIMITATIONS ON TAX-EXEMPT HOUSING BONDS, LOW-INCOME HOUSING TAX CREDIT, AND REHABILITATION CREDIT.

(a) TAX-EXEMPT INTEREST ON CERTAIN HOUSING BONDS EXEMPTED FROM ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Subparagraph (C) of section 57(a)(5) (relating to specified private activity bonds) is amended by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively, and by inserting after clause (ii) the following new clause:

"(iii) EXCEPTION FOR CERTAIN HOUSING BONDS.—For purposes of clause (i), the term 'private activity bond' shall not include any bond issued after the date of the enactment of this clause if such bond is—

"(I) an exempt facility bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)),

"(II) a qualified mortgage bond (as defined in section 143(a)), or

"(III) a qualified veterans' mortgage bond (as defined in section 143(b)).

The preceding sentence shall not apply to any refunding bond unless such preceding sentence applied to the refunded bond (or in the case of a series of refundings, the original bond).".

(2) NO ADJUSTMENT TO ADJUSTED CURRENT EARNINGS.—Subparagraph (B) of section 56(g)(4) is amended by adding at the end the following new clause:

"(iii) TAX EXEMPT INTEREST ON CERTAIN HOUSING BONDS.—Clause (i) shall not apply in the case of any interest on a bond to which section 57(a)(5)(C)(iii) applies.".

(b) ALLOWANCE OF LOW-INCOME HOUSING CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4) (relating to specified credits) is amended by redesignating clauses

(ii) through (iv) as clauses (iii) through (v) and inserting after clause (i) the following new clause:

"(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,".

(c) ALLOWANCE OF REHABILITATION CREDIT AGAINST ALTERNATIVE MINIMUM TAX.—Subparagraph (B) of section 38(c)(4), as amended by subsection (b), is amended by striking "and" at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

"(v) the credit determined under section 47 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and".

(d) EFFECTIVE DATE.—

(1) HOUSING BONDS.—The amendments made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

(2) LOW INCOME HOUSING CREDIT.—The amendments made by subsection (b) shall apply to credits determined under section 42 of the Internal Revenue Code of 1986 to the extent attributable to buildings placed in service after December 31, 2007.

(3) REHABILITATION CREDIT.—The amendments made by subsection (c) shall apply to credits determined under section 47 of the Internal Revenue Code of 1986 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007.

SEC. 717. BONDS GUARANTEED BY FEDERAL HOME LOAN BANKS ELIGIBLE FOR TREATMENT AS TAX-EXEMPT BONDS.

(a) IN GENERAL.—Subparagraph (A) of section 149(b)(3) (relating to exceptions for certain insurance programs) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or" and by adding at the end the following new clause:

"(iv) any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this Act and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).".

(b) SAFETY AND SOUNDNESS REQUIREMENTS.—Paragraph (3) of section 149(b) is amended by adding at the end the following new subparagraph:

"(E) SAFETY AND SOUNDNESS REQUIREMENTS FOR FEDERAL HOME LOAN BANKS.—Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.".

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

SEC. 718. MODIFICATION OF RULES PERTAINING TO FIRPTA NONFOREIGN AFFIDAVITS.

(a) IN GENERAL.—Subsection (b) of section 1445 (relating to exemptions) is amended by adding at the end the following:

"(9) ALTERNATIVE PROCEDURE FOR FURNISHING NONFOREIGN AFFIDAVIT.—For purposes of paragraphs (2) and (7)—

"(A) IN GENERAL.—Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest—

"(i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and

"(ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

"(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.".

(b) QUALIFIED SUBSTITUTE.—Subsection (f) of section 1445 (relating to definitions) is amended by adding at the end the following new paragraph:

"(6) QUALIFIED SUBSTITUTE.—The term 'qualified substitute' means, with respect to a disposition of a United States real property interest—

"(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

"(B) the transferee's agent.".

(c) EXEMPTION NOT TO APPLY IF KNOWLEDGE OR NOTICE THAT AFFIDAVIT OR STATEMENT IS FALSE.—

(1) IN GENERAL.—Paragraph (7) of section 1445(b) (relating to special rules for paragraphs (2) and (3)) is amended to read as follows:

"(7) SPECIAL RULES FOR PARAGRAPHS (2), (3), AND (9).—Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition—

"(A) if—

"(i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or

"(ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

"(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.".

(2) LIABILITY.—

(A) NOTICE.—Paragraph (1) of section 1445(d) (relating to notice of false affidavit; foreign corporations) is amended to read as follows:

"(1) NOTICE OF FALSE AFFIDAVIT; FOREIGN CORPORATIONS.—If—

"(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

"(B) in the case of—

"(i) any transferor's agent—

"(I) such agent has actual knowledge that such affidavit is false, or

"(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

"(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.".

(B) FAILURE TO FURNISH NOTICE.—Paragraph (2) of section 1445(d) (relating to failure to furnish notice) is amended to read as follows:

"(2) FAILURE TO FURNISH NOTICE.—

"(A) IN GENERAL.—If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

"(B) LIABILITY LIMITED TO AMOUNT OF COMPENSATION.—An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.".

(C) CONFORMING AMENDMENT.—The heading for section 1445(d) is amended by striking "OR TRANSFEREE'S AGENTS" and inserting ", TRANSFEREE'S AGENTS, OR QUALIFIED SUBSTITUTES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions of United States real property interests after the date of the enactment of this Act.

SEC. 719. MODIFICATION OF DEFINITION OF TAX-EXEMPT USE PROPERTY FOR PURPOSES OF THE REHABILITATION CREDIT.

(a) IN GENERAL.—Subclause (I) of section 47(c)(2)(B)(v) is amended by striking "section 168(h)" and inserting "section 168(h), except that '50 percent' shall be substituted for '35 percent' in paragraph (1)(B)(iii) thereof".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures properly taken into account for periods after December 31, 2007.

Subtitle B—Reforms Related to Real Estate Investment Trusts

PART 1—FOREIGN CURRENCY AND OTHER QUALIFIED ACTIVITIES

SEC. 721. 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. 722. REVISIONS TO REIT ASSET TESTS.

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

(b) CLARIFICATION OF PERMISSIBLE ASSET CATEGORY.—Section 856(c)(5), as amended by section 721(d), 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. 723. 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;".

PART 2—TAXABLE REIT SUBSIDIARIES

SEC. 725. CONFORMING TAXABLE REIT SUBSIDIARY ASSET TEST.

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

PART 3—DEALER SALES

SEC. 727. 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. 728. 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,".

PART 4—HEALTH CARE REITS

SEC. 730. 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 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 directly or indirectly possesses a license, permit or similar instrument enabling it to do so.".

(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".

PART 5—EFFECTIVE DATES

SEC. 732. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle 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 721(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 721(c) shall apply to transactions entered into after the date of the enactment of this Act.

(3) The amendment made by section 721(d) shall apply after the date of the enactment of this Act.

(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

(1) The amendment made by section 723(a) shall apply to gains recognized after the date of the enactment of this Act.

(2) The amendment made by section 723(b) shall apply to gains and deductions recognized after the date of the enactment of this Act.

(d) DEALER SALES.—The amendments made by part 3 shall apply to sales made after the date of the enactment of this Act.

Subtitle C—Revenue Provisions

SEC. 741. BROKER REPORTING OF CUSTOMER'S BASIS IN SECURITIES TRANSACTIONS.

(a) IN GENERAL.—

(1) BROKER REPORTING FOR SECURITIES TRANSACTIONS.—Section 6045 (relating to returns of brokers) is amended by adding at the end the following new subsection:

"(g) ADDITIONAL INFORMATION REQUIRED IN THE CASE OF SECURITIES TRANSACTIONS, ETC.—

"(1) IN GENERAL.—If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

"(2) ADDITIONAL INFORMATION REQUIRED.—

"(A) IN GENERAL.—The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of section 1222).

"(B) DETERMINATION OF ADJUSTED BASIS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The customer's adjusted basis shall be determined—

"(I) in the case of any security (other than any stock for which an average basis method is permissible under section 1012), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

"(II) in the case of any stock for which an average basis method is permissible under section 1012, in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under section 1012 with respect to the account in which such stock is held.

"(ii) EXCEPTION FOR WASH SALES.—Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to section 1091 (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

"(3) COVERED SECURITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'covered security' means any specified security acquired on or after the applicable date if such security—

"(i) was acquired through a transaction in the account in which such security is held, or

"(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

"(B) SPECIFIED SECURITY.—The term 'specified security' means—

"(i) any share of stock in a corporation,

"(ii) any note, bond, debenture, or other evidence of indebtedness,

"(iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, and

"(iv) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

"(C) APPLICABLE DATE.—The term 'applicable date' means—

"(i) January 1, 2010, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),

"(ii) January 1, 2011, in the case of any stock for which an average basis method is permissible under section 1012, and

"(iii) January 1, 2012, or such later date determined by the Secretary in the case of any other specified security.

"(4) TREATMENT OF S CORPORATIONS.—In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

"(5) SPECIAL RULES FOR SHORT SALES.—In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.".

(2) BROKER INFORMATION REQUIRED WITH RESPECT TO OPTIONS.—Section 6045, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(h) APPLICATION TO OPTIONS ON SECURITIES.—

"(1) EXERCISE OF OPTION.—For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

"(2) LAPSE OR CLOSING TRANSACTION.—In the case of the lapse (or closing transaction (as defined in section 1234(b)(2)(A))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections (a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.

"(3) PROSPECTIVE APPLICATION.—Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2012.

"(4) DEFINITIONS.—For purposes of this subsection, the terms 'covered security' and 'specified security' shall have the meanings given such terms in subsection (g)(3).".

(3) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—

(A) IN GENERAL.—Subsection (b) of section 6045 is amended by striking "January 31" and inserting "February 15".

(B) STATEMENTS RELATED TO SUBSTITUTE PAYMENTS.—Subsection (d) of section 6045 is amended—

(i) by striking "at such time and", and

(ii) by inserting after "other item." the following new sentence: "The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made.".

(C) OTHER STATEMENTS.—Subsection (b) of section 6045 is amended by adding at the end the following: "In the case of a consolidated reporting statement (as defined in regulations) with respect to any account, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.".

(b) DETERMINATION OF BASIS OF CERTAIN SECURITIES ON ACCOUNT BY ACCOUNT OR AVERAGE BASIS METHOD.—Section 1012 (relating to basis of property–cost) is amended—

(1) by striking "The basis of property" and inserting the following:

"(a) IN GENERAL.—The basis of property",

(2) by striking "The cost of real property" and inserting the following:

"(b) SPECIAL RULE FOR APPORTIONED REAL ESTATE TAXES.—The cost of real property", and

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

"(c) DETERMINATIONS BY ACCOUNT.—

"(1) IN GENERAL.—In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

"(2) APPLICATION TO OPEN-END FUNDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any stock in an open-end fund acquired before January 1, 2011, shall be treated as a separate account from any such stock acquired on or after such date.

"(B) ELECTION BY OPEN-END FUND FOR TREATMENT AS SINGLE ACCOUNT.—If an open-end fund elects to have this subparagraph apply with respect to one or more of its stockholders—

"(i) subparagraph (A) shall not apply with respect to any stock in such fund held by such stockholders, and

"(ii) all stock in such fund which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding stock in an open-end fund as a nominee.

"(3) DEFINITIONS.—For purposes of this section—

"(A) OPEN-END FUND.—The term 'open-end fund' means a regulated investment company (as defined in section 851) which is offering for sale or has outstanding any redeemable security of which it is the issuer. Any stock

which is traded on an established securities exchange shall not be treated as stock in an open-end fund.

"(B) SPECIFIED SECURITY; APPLICABLE DATE.—The terms 'specified security' and 'applicable date' shall have the meaning given such terms in section 6045(g).

"(d) AVERAGE BASIS FOR STOCK ACQUIRED PURSUANT TO A DIVIDEND REINVESTMENT PLAN.—

"(1) IN GENERAL.—In the case of any stock acquired after December 31, 2010, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in an open-end fund.

"(2) TREATMENT AFTER TRANSFER.—In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

"(3) SEPARATE ACCOUNTS; ELECTION FOR TREATMENT AS SINGLE ACCOUNT.—Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

"(4) DIVIDEND REINVESTMENT PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'dividend reinvestment plan' means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

"(B) INITIAL STOCK ACQUISITION TREATED AS ACQUIRED IN CONNECTION WITH PLAN.—Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.".

(c) INFORMATION BY TRANSFERORS TO AID BROKERS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6045 the following new section:

"SEC. 6045A. INFORMATION REQUIRED IN CONNECTION WITH TRANSFERS OF COVERED SECURITIES TO BROKERS.

"(a) FURNISHING OF INFORMATION.—Every applicable person which transfers to a broker (as defined in section 6045(c)(1)) a security which is a covered security (as defined in section 6045(g)(3)) in the hands of such applicable person shall furnish to such broker a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such broker to meet the requirements of section 6045(g).

"(b) APPLICABLE PERSON.—For purposes of subsection (a), the term 'applicable person' means—

"(1) any broker (as defined in section 6045(c)(1)), and

"(2) any other person as provided by the Secretary in regulations.

"(c) TIME FOR FURNISHING STATEMENT.—Except as otherwise provided by the Secretary, any statement required by subsection (a) shall be furnished not later than 15 days after the date of the transfer described in such subsection.".

(2) ASSESSABLE PENALTIES.—Paragraph (2) of section 6724(d) (defining payee statement) is amended by redesignating subparagraphs (I) through (CC) as subparagraphs (J) through (DD), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(I) section 6045A (relating to information required in connection with transfers of covered securities to brokers),".

(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 6045 the following new item:

"Sec. 6045A. Information required in connection with transfers of covered securities to brokers.".

(d) ADDITIONAL ISSUER INFORMATION TO AID BROKERS.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61, as amended by subsection (b), is amended by inserting after section 6045A the following new section:

"SEC. 6045B. RETURNS RELATING TO ACTIONS AFFECTING BASIS OF SPECIFIED SECURITIES.

"(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, any issuer of a specified security shall make a return setting forth—

"(1) a description of any organizational action which affects the basis of such specified security of such issuer,

"(2) the quantitative effect on the basis of such specified security resulting from such action, and

"(3) such other information as the Secretary may prescribe.

"(b) TIME FOR FILING RETURN.—Any return required by subsection (a) shall be filed not later than the earlier of—

"(1) 45 days after the date of the action described in subsection (a), or

"(2) January 15 of the year following the calendar year during which such action occurred.

"(c) STATEMENTS TO BE FURNISHED TO HOLDERS OF SPECIFIED SECURITIES OR THEIR NOMINEES.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) with respect to a specified security shall furnish to the nominee with respect to the specified security (or certificate holder if there is no nominee) a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return,

"(2) the information required to be shown on such return with respect to such security, and

"(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the holder on or before January 15 of the year following the calendar year during which the action described in subsection (a) occurred.

"(d) SPECIFIED SECURITY.—For purposes of this section, the term 'specified security' has the meaning given such term by section 6045(g)(3)(B). No return shall be required under this section with respect to actions described in subsection (a) with respect to a spec-

ified security which occur before the applicable date (as defined in section 6045(g)(3)(C)) with respect to such security.

"(e) PUBLIC REPORTING IN LIEU OF RETURN.—The Secretary may waive the requirements under subsections (a) and (c) with respect to a specified security, if the person required to make the return under subsection (a) makes publicly available, in such form and manner as the Secretary determines necessary to carry out the purposes of this section—

"(1) the name, address, phone number, and email address of the information contact of such person, and

"(2) the information described in paragraphs (1), (2), and (3) of subsection (a).".

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (defining information return) is amended by redesignating clause (iv) and each of the clauses which follow as clauses (v) through (xxii), respectively, and by inserting after clause (iii) the following new clause:

"(iv) section 6045B(a) (relating to returns relating to actions affecting basis of specified securities),".

(B) Paragraph (2) of section 6724(d) of such Code (defining payee statement), as amended by subsection (c)(2), is amended by redesignating subparagraphs (J) through (DD) as subparagraphs (K) through (EE), respectively, and by inserting after subparagraph (I) the following new subparagraph:

"(J) subsections (c) and (e) of section 6045B (relating to returns relating to actions affecting basis of specified securities),".

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code, as amended by subsection (b)(3), is amended by inserting after the item relating to section 6045A the following new item:

"Sec. 6045B. Returns relating to actions affecting basis of specified securities.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 2010.

(2) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—The amendments made by subsection (a)(3) shall apply to statements required to be furnished after December 31, 2008.

SEC. 742. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST.

(a) IN GENERAL.—Paragraphs (5)(D) and (6) of section 864(f) are each amended by striking "December 31, 2008" and inserting "December 31, 2009".

(b) TRANSITIONAL RULE.—Subsection (f) of section 864 is amended by adding at the end the following new paragraph:

"(7) TRANSITION.—In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 78 percent of the amount of such increase determined without regard to this paragraph.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 743. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

(a) REPEAL OF ADJUSTMENT FOR 2012.—Subparagraph (B) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 is amended by striking the percentage contained therein and inserting "100 percent".

(b) MODIFICATION OF ADJUSTMENT FOR 2013.—The percentage under subparagraph (C) of section 401(1) of the Tax Increase Prevention and Reconciliation Act of 2005 in effect on the date of the enactment of this Act is increased by 13 percentage points.

Subtitle D—Coordination of Federal Housing Programs and Tax Incentives for Housing

SEC. 751. SHORT TITLE.

This subtitle may be cited as the "Housing Tax Credit Coordination Act of 2008".

SEC. 752. APPROVALS BY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(a) ADMINISTRATIVE AND PROCEDURAL CHANGES.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall, not later than the expiration of the 6-month period beginning upon after the date of the enactment of this Act, implement administrative and procedural changes to expedite approval of multifamily housing projects under the jurisdiction of the Department of Housing and Urban Development that meet the requirements of the Secretary for such approvals.

(2) PROJECTS.—The multifamily housing projects referred to in paragraph (1) shall include—

(A) projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds; and

(B) existing public housing projects and assisted housing projects, for which approval of the Secretary is necessary for transactions, in conjunction with any such low-income housing tax credits or tax-exempt housing bonds, involving the preservation or rehabilitation of the project.

(3) CHANGES.—The administrative and procedural changes referred to in paragraph (1) shall include all actions necessary to carry out paragraph (1), which may include—

(A) improving the efficiency of approval procedures;

(B) simplifying approval requirements,

(C) establishing time deadlines or target deadlines for required approvals;

(D) modifying division of approval authority between field and national offices;

(E) improving outreach to project sponsors regarding information that is required to be submitted for such approvals;

(F) requesting additional funding for increasing staff, if necessary; and

(G) any other actions which would expedite approvals.

Any such changes shall be made in a manner that provides for full compliance with any existing requirements under law or regulation that are designed to protect families receiving public and assisted housing assistance, including income targeting, rent, and fair housing provisions, and shall also comply with requirements regarding environmental review and protection and wages paid to laborers.

(b) CONSULTATION.—The Secretary shall consult with the Commissioner of the Internal Revenue Service and take such actions as are appropriate in conjunction with such consultation to simplify the coordination of rules, regulations, forms, and approval requirements for multifamily housing projects projects for which assistance is provided by such Department in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds.

(c) RECOMMENDATIONS.—In implementing the changes required under this section, the Secretary shall solicit recommendations regarding such changes from project owners and sponsors, investors and stakeholders in housing tax credits, State and local housing finance agencies, public housing agencies, tenant advocates, and other stakeholders in such projects.

(d) REPORT.—Not later than the expiration of the 9-month period beginning on the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—

(1) identifies the actions taken by the Secretary to comply with this section;

(2) includes information regarding any resulting improvements in the expedited approval for multifamily housing projects;

(3) identifies recommendations made pursuant to subsection (c);

(4) identifies actions taken by the Secretary to implement the provisions in the amendments made by sections 4 and 5 of this Act; and

(5) makes recommendations for any legislative changes that are needed to facilitate prompt approval of assistance for such projects.

SEC. 753. PROJECT APPROVALS BY RURAL HOUSING SERVICE.

Section 515(h) of the Housing Act of 1949 (42 U.S.C. 1485) is amended—

(1) by inserting "(1) CONDITION.—" after "(h)"; and

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

"(2) ACTIONS TO EXPEDITE PROJECT APPROVALS.—

"(A) IN GENERAL.—The Secretary shall take actions to facilitate timely approval of requests to transfer ownership or control, for the purpose of rehabilitation or preservation, of multifamily housing projects for which assistance is provided by the Secretary of Agriculture in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds.

"(B) CONSULTATION.—The Secretary of Agriculture shall consult with the Commissioner of the Internal Revenue Service and take such actions as are appropriate in conjunction with such consultation to simplify the coordination of rules, regulations, forms (including applications forms for project transfers), and approval requirements multifamily housing projects for which assistance is provided by the Secretary of Agriculture in conjunction with any low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 or tax-exempt housing bonds.

"(C) EXISTING REQUIREMENTS.—Any actions taken pursuant to this paragraph shall be taken in a manner that provides for full compliance with any existing requirements under law or regulation that are designed to protect families receiving Federal housing assistance, including income targeting, rent, and fair housing provisions, and shall also comply with requirements regarding environmental review and protection and wages paid to laborers.

"(D) RECOMMENDATIONS.—In implementing the changes required under this paragraph, the Secretary shall solicit recommendations regarding such changes from project owners and sponsors, investors and stakeholders in housing tax credits, State and local housing finance agencies, tenant advocates, and other stakeholders in such projects.".

SEC. 754. USE OF FHA LOANS WITH HOUSING TAX CREDITS.

(a) SUBSIDY LAYERING REQUIREMENTS.—Subsection (d) of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) is amended—

(1) in the first sentence, by inserting after "assistance within the jurisdiction of the Department" the following: ", as such term is defined in subsection (m), except that for purposes of this subsection such term shall not include any mortgage insurance provided pursuant to title II of the National Housing Act (12 U.S.C. 1707 et seq.)"; and

(2) in the second sentence, by inserting "such" before "assistance".

(b) COST CERTIFICATION.—Section 227 of National Housing Act (12 U.S.C. 1715r) is amended—

(1) in the matter preceding paragraph (a) (relating to a definition of "new or rehabilitated multifamily housing")—

(A) in the first sentence—

(i) by striking "Notwithstanding" and inserting "Except as provided in subsection (b) and notwithstanding"; and

(ii) by redesignating clauses (a) and (b) as clauses (A) and (B), respectively; and

(B) by striking "As used in this section—";

(2) in paragraph (c) (relating to a definition of "actual cost")—

(A) in clause (i), by redesignating clauses (1) and (2) as clauses (I) and (II), respectively; and

(B) in clause (ii), by redesignating clauses (1) and (2) as clauses (I) and (II), respectively;

(3) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;

(4) by inserting before paragraph (1) (as so redesignated by paragraph (3) of this subsection) the following:

"(b) EXEMPTION FOR CERTAIN PROJECTS ASSISTED WITH LOW-INCOME HOUSING TAX CREDIT.—In the case of any mortgage insured under any provision of this title that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity provided through any low-income housing tax credit pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), if the Secretary determines at the time of issuance of the firm commitment for insurance that the ratio of the loan proceeds to the actual cost of the project is less than 80 percent, subsection (a) of this section shall not apply.

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

(5) by inserting "(a) REQUIREMENT.—" after "227.".

(c) OTHER PROVISIONS REGARDING TREATMENT OF MORTGAGES COVERING TAX CREDIT PROJECTS.—Title II of the National Housing Act is amended by inserting after section 227 (12 U.S.C. 1715r) the following new section:

"SEC. 228. TREATMENT OF MORTGAGES COVERING TAX CREDIT PROJECTS.

"(a) DEFINITION.—For purposes of this section, the term 'insured mortgage covering a tax credit project' means a mortgage insured under any provision of this title that is executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which equity provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

"(b) ACCEPTANCE OF LETTERS OF CREDIT.—In the case of an insured mortgage covering a tax credit project, the Secretary may not require the escrowing of equity provided by the sale of any low-income housing tax credits for the project pursuant to Section 42 of the Internal Revenue Code of 1986, or any other form of security, such as a letter of credit.

"(c) ASSET MANAGEMENT REQUIREMENTS.—In the case of an insured mortgage covering a tax credit project for which project the applicable tax credit allocating agency is causing to be performed periodic inspections in compliance with the requirements of section 42 of the Internal Revenue Code of 1986, such project shall be exempt from requirements imposed by the Secretary regarding periodic inspections of the property by the mortgagee. To the extent that other compliance monitoring is being performed with respect to such a project by such an allocating agency pursuant to such section 42, the Secretary shall, to the extent that the Secretary determines such monitoring is sufficient to ensure compliance with any requirements established by the Secretary, accept such agency's evidence of compliance for purposes of determining compliance with the Secretary's requirements.

"(d) STREAMLINED PROCESSING PILOT PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a pilot program to demonstrate the effectiveness of streamlining the review process, which shall include all applications for mortgage insurance under any provision of this title for mortgages executed in connection with the construction, rehabilitation, purchase, or refinancing of a multifamily housing project for which

equity provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986. The Secretary shall issue instructions for implementing the pilot program under this subsection not later than the expiration of the 180-day period beginning upon the date of the enactment of the Housing Tax Credit Coordination Act of 2008.

"(2) REQUIREMENTS.—Such pilot program shall provide for—

"(A) the Secretary to appoint designated underwriters, who shall be responsible for reviewing such mortgage insurance applications and making determinations regarding the eligibility of such applications for such mortgage insurance in lieu of the processing functions regarding such applications that are otherwise performed by other employees of the Department of Housing and Urban Development;

"(B) submission of applications for such mortgage insurance by mortgagees who have previously been expressly approved by the Secretary; and

"(C) determinations regarding the eligibility of such applications for such mortgage insurance to be made by the chief underwriter pursuant to requirements prescribed by the Secretary, which shall include requiring submission of reports regarding applications of proposed mortgagees by third-party entities expressly approved by the chief underwriter.".

SEC. 755. OTHER HUD PROGRAMS.

(a) SECTION 8 ASSISTANCE.—

(1) PHA PROJECT-BASED ASSISTANCE.—Section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)) is amended—

(A) in subparagraph (D)(i)—

(i) by striking "building" and inserting "project"; and

(ii) by adding at the end the following: "For purposes of this subparagraph, the term 'project' means a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.";

(B) in the first sentence of subparagraph (F), by striking "10 years" and inserting "15 years";

(C) In subparagraph (G)—

(i) by inserting after the period at the end of the first sentence the following: "Such contract may, at the election of the public housing agency and the owner of the structure, specify that such contract shall be extended for renewal terms of up to 15 years each, if the agency makes the determination required by this subparagraph and the owner is in compliance with the terms of the contract."; and

(ii) by adding at the end the following: "A public housing agency may agree to enter into such a contract at the time it enters into the initial agreement for a housing assistance payment contract or at any time thereafter that is before the expiration of the housing assistance payment contract.";

(D) in subparagraph (H), by inserting before the period at the end of the first sentence the following: ", except that

in the case of a contract unit that has been allocated low-income housing tax credits and for which the rent limitation pursuant to such section 42 is less than the amount that would otherwise be permitted under this subparagraph, the rent for such unit may, in the sole discretion of a public housing agency, be established at the higher section 8 rent, subject only to paragraph (10)(A)";

(E) in subparagraph (I)(i), by inserting before the semicolon the following: ", except that the contract may provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the unit"; and

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

"(L) USE IN COOPERATIVE HOUSING AND ELEVATOR BUILDINGS.—A public housing agency may enter into a housing assistance payments contract under this paragraph with respect to—

"(i) dwelling units in cooperative housing; and

"(ii) notwithstanding subsection (c), dwelling units in a high-rise elevator project, including such a project that is occupied by families with children, without review and approval of the contract by the Secretary.

"(M) REVIEWS.—

"(i) SUBSIDY LAYERING.—A subsidy layering review in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) shall not be required for assistance under this paragraph in the case of a housing assistance payments contract for an existing structure, or if a subsidy layering review has been conducted by the applicable State or local agency.

"(ii) ENVIRONMENTAL REVIEW.—A public housing agency shall not be required to undertake any environmental review before entering into a housing assistance payments contract under this paragraph for an existing structure, except to the extent such a review is otherwise required by law or regulation.".

(2) VOUCHER PROGRAM RENT REASONABLENESS.—Section 8(o)(10) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(10)) is amended by adding at the end the following new subparagraph;

"(F) TAX CREDIT PROJECTS.—In the case of a dwelling unit receiving tax credits pursuant to section 42 of the Internal Revenue Code of 1986 or for which assistance is provided under subtitle A of title II of the Cranston Gonzalez National Affordable Housing Act of 1990, for which a housing assistance contract not subject to paragraph (13) of this subsection is established, rent reasonableness shall be determined as otherwise provided by this paragraph, except that—

"(i) comparison with rent for units in the private, unassisted local market shall not be required if the rent is equal to or less than the rent for other com-

parable units receiving such tax credits or assistance in the project that are not occupied by families assisted with tenant-based assistance under this subsection; and

"(ii) the rent shall not be considered reasonable for purposes of this paragraph if it exceeds the greater of—

"(I) the rents charged for other comparable units receiving such tax credits or assistance in the project that are not occupied by families assisted with tenant-based assistance under this subsection; and

"(II) the payment standard established by the public housing agency for a unit of the size involved.".

(b) SECTION 202 HOUSING FOR ELDERLY PERSONS.—Subsection (f) of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q(f)) is amended—

(1) by striking "SELECTION CRITERIA.—" and inserting "INITIAL SELECTION CRITERIA AND PROCESSING.—(1) SELECTION CRITERIA.—";

(2) by redesignating paragraphs (1) through (7) as subparagraphs (A) through (G), respectively; and

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

"(2) DELEGATED PROCESSING.—

"(A) In issuing a capital advance under this subsection for any project for which financing for the purposes described in the last two sentences of subsection (b) is provided by a combination of a capital advance under subsection (c)(1) and sources other than this section, within 30 days of award of the capital advance, the Secretary shall delegate review and processing of such projects to a State or local housing agency that—

"(i) is in geographic proximity to the property;

"(ii) has demonstrated experience in and capacity for underwriting multifamily housing loans that provide housing and supportive services;

"(iii) may or may not be providing low-income housing tax credits in combination with the capital advance under this section, and

"(iv) agrees to issue a firm commitment within 12 months of delegation.

"(B) The Secretary shall retain the authority to process capital advances in cases in which no State or local housing agency has applied to provide delegated processing pursuant to this paragraph or no such agency has entered into an agreement with the Secretary to serve as a delegated processing agency.

"(C) An agency to which review and processing is delegated pursuant to subparagraph (A) may assess a reasonable fee which shall be included in the capital advance amounts and may recommend project rental assistance amounts in excess of those initially awarded by the Secretary. The Secretary shall develop a schedule for reasonable fees under this subparagraph to be paid to delegated processing agencies, which shall take into consideration any other fees to be paid to the agency for

other funding provided to the project by the agency, including bonds, tax credits, and other gap funding.

"(D) Under such delegated system, the Secretary shall retain the authority to approve rents and development costs and to execute a capital advance within 60 days of receipt of the commitment from the State or local agency. The Secretary shall provide to such agency and the project sponsor, in writing, the reasons for any reduction in capital advance amounts or project rental assistance and such reductions shall be subject to appeal.".

(c) MCKINNEY-VENTO ACT HOMELESS ASSISTANCE UNDER SHELTER PLUS CARE PROGRAM.—

(1) TERM OF CONTRACTS WITH OWNER OR LESSOR.—Part I of subtitle F of the McKinney-Vento Homeless Assistance Act is amended—

(A) by redesignating sections 462 and 463 (42 U.S.C. 11403g, 11403h) as sections 463 and 464, respectively;

(B) by striking "section 463" each place such term appears in sections 471, 476, 481, 486, and 488 (42 U.S.C. 11404, 11405, 11406, 11407, and 11407b) and inserting "section 464"; and

(C) by inserting after section 461 (42 U.S.C. 11403f) the following new section:

"SEC. 462. TERM OF CONTRACT WITH OWNER OR LESSOR.

"An applicant under this subtitle may enter into a contract with the owner or lessor of a property that receives rental assistance under this subtitle having a term of not more than 15 years, subject to the availability of sufficient funds provided in appropriation Acts for the purpose of renewing expiring contracts for assistance payments. Such contract may, at the election of the applicant and owner or lessor, specify that such contract shall be extended for renewal terms of not more than 15 years each, subject to the availability of sufficient such appropriated funds.".

(2) PROJECT-BASED RENTAL ASSISTANCE CONTRACTS.—Section 478(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11405a(a)) is amended by inserting before the period at the end the following: "; except that, in the case of any project for which equity is provided through any low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), if an expenditure of such amount for each unit (including the prorated share of such work) is required to make the structure decent, safe, and sanitary, and the owner agrees to reach initial closing on permanent financing from such other sources within two years and agrees to carry out the rehabilitation with resources other than assistance under this subtitle within 60 months of notification of grant approval, the contract shall be for a term of 10 years (except that such period may be extended by up to 1 year by the Secretary, which extension shall be granted unless the Secretary determines that the sponsor is primarily responsible for the failure to meet such deadline)".

(d) DATA COLLECTION ON TENANTS OF HOUSING TAX CREDIT PROJECTS.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"SEC. 36. COLLECTION OF INFORMATION ON TENANTS IN TAX CREDIT PROJECTS.

"(a) IN GENERAL.—Each State agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) shall furnish to the Secretary of Housing and Urban Development, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. Such State agencies shall, to the extent feasible, collect such information through existing reporting processes and in a manner that minimizes burdens on property owners. In the case of any household that continues to reside in the same dwelling unit, information provided by the household in a previous year may be used if the information is of a category that is not subject to change or if information for the current year is not readily available to the owner of the property.

"(b) STANDARDS.—The Secretary shall establish standards and definitions for the information collected under subsection (a), provide States with technical assistance in establishing systems to compile and submit such information, and, in coordination with other Federal agencies administering housing programs, establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs.

"(c) PUBLIC AVAILABILITY.—The Secretary shall, not less than annually, compile and make publicly available the information submitted to the Secretary pursuant to subsection (a).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the cost of activities required under subsections (b) and (c) $2,500,000 for fiscal year 2009 and $900,000 for each of fiscal years 2010 through 2013.".

Subtitle E—Limitation on Sale, Foreclosure, or Seizure of Property Owned by Servicemembers

SEC. 761. LIMITATION ON SALE, FORECLOSURE, OR SEIZURE OF PROPERTY OWNED BY SERVICEMEMBERS DURING ONE-YEAR PERIOD FOLLOWING PERIOD OF MILITARY SERVICE.

(a) LIMITATION.—Section 303(c) of the Servicemembers Civil Relief Act is amended by striking "90 days" and inserting "one year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any sale, foreclosure, or seizure of property on or after the date of the enactment of this Act.

SEC. 762. PROVISION OF FINANCIAL DISCLOSURE TO SERVICEMEMBERS WHO DEFAULT ON CERTAIN OBLIGATIONS.

(a) PROVISION OF DISCLOSURE REQUIRED.—Section 303 of the Servicemembers Civil Relief Act (50 U.S.C. App. 533) is amended by adding at the end the following new subsection:

"(e) PROVISION OF FINANCIAL DISCLOSURE.—In the case of a servicemember who defaults on an obligation described in subsection (a) for two consecutive months, the mortgagor or loan

servicer of the obligation shall provide to the servicemember a written financial disclosure describing the servicemember's liability with respect to the obligation for the period during which a sale, foreclosure, or seizure of the property is not valid under subsection (c).".

(b) EFFECTIVE DATE.—Subsection (e) of section 303 of the Servicemembers Civil Relief Act (50 U.S.C. App. 533), as added by subsection (a), shall apply with respect to a servicemember who defaults on an obligation on or after the date of the enactment of this Act.

TEXT OF THE HOUSE AMENDMENT #3 TO THE SENATE AMENDMENT TO H.R. 3221 MADE IN ORDER UNDER THE RULE

"At the end of the matter proposed to be inserted by the amendment of the Senate to the text of the bill, add the following new section:

SEC. ___. RULE OF CONSTRUCTION.

(a) IN GENERAL.—No provision of this Act, the Home Owners' Loan Act, or title LXII of the Revised Statutes of the United States (commonly referred to as the "National Bank Act") may be construed as preempting the application, to any entity, of any State law regulating the foreclosure of residential real property in that State or the treatment of foreclosed property.

(b) NO NEGATIVE IMPLICATION.—This section shall not be construed as affecting in any way the applicability of any other type of State law to any Federal depository institution (as defined in section 3(c)(4) of the Federal Deposit Insurance Act) or to any agent or subsidiary of any such depository institution.

○