

12 USC Ch. 46: GOVERNMENT SPONSORED ENTERPRISES

From Title 12—BANKS AND BANKING

CHAPTER 46—GOVERNMENT SPONSORED ENTERPRISES

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§4501. Congressional findings

The Congress finds that—

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

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

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

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

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

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct

examinations when necessary, and enforce compliance with the standards and rules that it establishes;

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

(8) the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

(Pub. L. 102–550, title XIII, §1302, Oct. 28, 1992, 106 Stat. 3941.)

REFERENCES IN TEXT

The Federal Home Loan Bank Act, referred to in par. (8), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–289, §1(a), July 30, 2008, 122 Stat. 2654, provided that: "This Act [see Tables for classification] may be cited as the 'Housing and Economic Recovery Act of 2008'."

Pub. L. 110–289, div. A, §1001, July 30, 2008, 122 Stat. 2659, provided that: "This division [see Tables for classification] may be cited as the 'Federal Housing Finance Regulatory Reform Act of 2008'."

SHORT TITLE

Pub. L. 102–550, title XIII, §1301, Oct. 28, 1992, 106 Stat. 3941, provided that: "This title [enacting this chapter, amending sections 1422a, 1430, 1430b, 1451 to 1456, 1716 to 1719, 1723, 1723a, and 1723c of this title, sections 3132 and 5313 of Title 5, Government Organization and Employees, section 1905 of Title 18, Crimes and Criminal Procedure, and section 3534 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1451, 1452, 1723, and 4562 of this title, and amending provisions set out as a note under section 1451 of this title] may be cited as the 'Federal Housing Enterprises Financial Safety and Soundness Act of 1992'."

§4502. Definitions

For purposes of this chapter:

(1) Affiliate

Except as provided by the Director, the term "affiliate" means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) Agency

The term "Agency" means the Federal Housing Finance Agency established under section 4511 of this title.

(3) Authorizing statutes

The term "authorizing statutes" means—

- (A) the Federal National Mortgage Association Charter Act;
- (B) the Federal Home Loan Mortgage Corporation Act; and
- (C) the Federal Home Loan Bank Act.

(4) Board

The term "Board" means the Federal Housing Finance Oversight Board established under section 4513a of this title.

(5) Capital distribution

(A) In general

The term "capital distribution" means—

- (i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of the enterprise;
- (ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and
- (iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) Exception

Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of the enterprise under an employee stock ownership plan that is qualified under section 401 of title 26 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(6) Compensation

The term "compensation" means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(7) Core capital

The term "core capital" means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

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

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

(8) Default; in danger of default

(A) Default

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

(B) In danger of default

The term "in danger of default" means a regulated entity with respect to which, in the opinion of the Agency

- (i) the regulated entity is not likely to be able to pay the obligations of the regulated entity in the normal course of business; or
- (ii) the regulated entity—
 - (I) has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and
 - (II) there is no reasonable prospect that the capital of the regulated entity will be replenished.

(9) Director

The term "Director" means the Director of the Federal Housing Finance Agency.

(10) Enterprise

The term "enterprise" means—

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

(11) Entity-affiliated party

The term "entity-affiliated party" means—

- (A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;
- (B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;
- (C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—
 - (i) the independent contractor knowingly or recklessly participates in—
 - (I) any violation of any law or regulation;
 - (II) any breach of fiduciary duty; or
 - (III) any unsafe or unsound practice; and
 - (ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;
- (D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and
- (E) the Office of Finance.

(12) Executive officer

The term "executive officer" means, with respect to an enterprise, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(13) Limited-life regulated entity

The term "limited-life regulated entity" means an entity established by the Agency under section 4617(i) of this title with respect to a Federal Home Loan Bank in default or in danger of default or with respect to an enterprise in default or in danger of default.

(14) Low-income

The term "low-income" means—

- (A) in the case of owner-occupied units, income not in excess of 80 percent of area median income; and

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

(15) Median income

The term "median income" means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the Director.

(16) Moderate-income

The term "moderate-income" means—

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

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

(17) Mortgage purchases

The term "mortgage purchases" includes mortgages purchased for portfolio or securitization.

(18) Multifamily housing

The term "multifamily housing" means a residence consisting of more than 4 dwelling units.

(19) Office of Finance

The term "Office of Finance" means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

(20) Regulated entity

The term "regulated entity" means—

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

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

(C) any Federal Home Loan Bank.

(21) Single family housing

The term "single family housing" means a residence consisting of 1 to 4 dwelling units.

(22) State

The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(23) Total capital

The term "total capital" means, with respect to an enterprise, the sum of the following:

(A) The core capital of the enterprise; ¹

(B) A general allowance for foreclosure losses, which—

(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) shall not include any reserves of the enterprise made or held against specific assets.

(C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(24) Very low-income

(A) In general

The term "very low-income" means—

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

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

(B) Rule of construction

For purposes of section ² 4568 and 4569 of this title, the term "very low-income" means—

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

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

(25) Violation

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

(26) Conforming mortgage

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

(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act [12 U.S.C. 1717(b)(2)]; or
(B) section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454(a)(2)].

(27) Extremely low-income

The term "extremely low-income" means—

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

(28) Low-income area

The term "low-income area" means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 4562(a)(1)(B) of this title, shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts and shall include families having incomes not greater than 100 percent of the area median income who reside in designated disaster areas.

(29) Minority census tract

The term "minority census tract" means a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of the area family median income.

(30) Shortage of standard rental units both affordable and available to extremely low-income renter households

(A) In general

The term "shortage of standard rental units both affordable and available to extremely low-income renter households" means the gap between—

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

(B) Rule of construction

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

(31) Shortage of standard rental units both affordable and available to very low-income renter households

(A) In general

The term "shortage of standard rental units both affordable and available to very low-income renter households" means the gap between—

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

(B) Rule of construction

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

(Pub. L. 102–550, title XIII, §1303, Oct. 28, 1992, 106 Stat. 3942; Pub. L. 110–289, div. A, §1002(a), title I, §1128(d), July 30, 2008, 122 Stat. 2659, 2702.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in par. (3)(A), is title III of act [June 27, 1934, ch. 847](#), 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in par. (3)(B), is title III of Pub. L. 91–351, [July 24, 1970](#), 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

The Federal Home Loan Bank Act, referred to in par. (3)(C), is act [July 22, 1932, ch. 522](#), 47 Stat. 725, which is classified generally to chapter 11 (§1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1002(a)(2)–(14), added pars. (2) to (4), (8), (11), (13), (19), (20), and (25), redesignated former pars. (2) to (12) and (16) to (19) as (5) to (7), (9), (10), (12), (14) to (18), and (21) to (24), respectively, substituted "Federal Housing Finance Agency" for "Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development" in par. (9), and struck out former pars. (13) to (15) which defined the terms "new program", "Office", and "Secretary", respectively.

Pars. (8)(B), (9), (10)(B), (19)(B). Pub. L. 110–289, §1002(a)(1), substituted "Director" for "Secretary".

Par. (24). Pub. L. 110–289, §1128(d)(1), added par. (24) and struck out former par. (24) which defined the term "very low-income".

Pars. (26) to (31). Pub. L. 110–289, §1128(d)(2), added pars. (26) to (31).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

¹ So in original. The semicolon probably should be a period.

² So in original. Probably should be "sections".

§4503. Protection of taxpayers against liability

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

(Pub. L. 102–550, title XIII, §1304, Oct. 28, 1992, 106 Stat. 3944.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "This title and the amendments made by this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

SUBCHAPTER I—SUPERVISION AND REGULATION OF ENTERPRISES

PART A—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

§4511. 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 chapter, be subject to the supervision and regulation of the Agency.

(2) Authority over Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Office of Finance

The Director shall have general regulatory authority over each regulated entity and the Office of Finance, and shall exercise such general regulatory authority, including such duties and authorities set forth under section 4513 of this title, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.

(c) Savings provision

The authority of the Director to take actions under subchapters II and III shall not in any way limit the general supervisory and regulatory authority granted to the Director under subsection (b).

(Pub. L. 102–550, title XIII, §1311, as added Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this title", meaning title XIII of Pub. L. 102–550, [Oct. 28, 1992](#), 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

This Act, referred to in subsec. (b)(2), is Pub. L. 102–550, [Oct. 28, 1992](#), 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

PRIOR PROVISIONS

A prior section 4511, Pub. L. 102–550, [title XIII, §1311, Oct. 28, 1992](#), 106 Stat. 3944, related to establishment of the Office of Federal Housing Enterprise Oversight, prior to repeal by Pub. L. 110–289, [div. A, title I, §1101, July 30, 2008](#), 122 Stat. 2661.

TRANSFER AND RIGHTS OF CERTAIN HUD EMPLOYEES

Pub. L. 110–289, [div. A, title I, §1133, July 30, 2008](#), 122 Stat. 2728, provided that:

"(a) TRANSFER.—Each employee of the Department of Housing and Urban Development whose position responsibilities primarily involve the establishment and enforcement of the housing goals under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 et seq.) shall be transferred to the Federal Housing Finance Agency for employment, not later than the effective date of the Federal Housing Finance Regulatory Reform Act of 2008 [div. A (§§1001–1605) of Pub. L. 110–289, approved July 30, 2008], and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

"(b) GUARANTEED POSITIONS.—

"(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

"(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

"(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

"(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

"(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

"(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

"(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

"(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the Federal Housing Finance Regulatory Reform Act of 2008 [div. A (§§1001–1605) of Pub. L. 110–289, approved July 30, 2008], that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

"(e) EMPLOYEE BENEFIT PROGRAMS.—

"(1) IN GENERAL.—Any employee described under subsection (a) accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on such effective date, if—

"(A) the employee does not elect to give up the benefit or membership in the program; and

"(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

"(2) COST DIFFERENTIAL.—

"(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Department of Housing and Urban Development and those provided by this section shall be paid by the Director.

"(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the

employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season."

[For definitions of terms used in section 1133 of Pub. L. 110–289, set out above, see section 1002(b) of Pub. L. 110–289, set out below.]

TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Pub. L. 110–289, div. A, title III, July 30, 2008, 122 Stat. 2794–2799, provided that:

"SUBTITLE A—OFHEO

"SEC. 1301. ABOLISHMENT OF OFHEO.

"(a) **IN GENERAL.**—Effective at the end of the 1-year period beginning on the date of enactment of this Act [July 30, 2008], 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 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Office of Federal Housing Enterprise Oversight, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

"(1) shall manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1303; and

"(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

"(c) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—The amendments made by title I [title I (§§1101–1163) of div. A of Pub. L. 110–289, see Tables for classification] and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1303.

"(d) **USE OF PROPERTY AND SERVICES.**—

"(1) **PROPERTY.**—The Director may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

"(2) **AGENCY SERVICES.**—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director shall

—
"(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

"(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

"(e) **CONTINUATION OF SERVICES.**—The Director may use the services of employees and other personnel of the Office of Federal Housing Enterprise Oversight, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

"(f) **SAVINGS PROVISIONS.**—

"(1) **EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.**—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

"(A) arises under—

"(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4501 et seq.];

"(ii) the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.];

"(iii) the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.]; or

"(iv) any other provision of law applicable with respect to such Office; and

"(B) existed on the day before the date of abolishment under subsection (a).

"(2) **CONTINUATION OF SUITS.**—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act [see Tables for classification], except that the Director of the Federal Housing

Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

"SEC. 1302. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

"(a) IN GENERAL.—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, and determinations, and shall be enforceable by or against the Director or the Secretary of Housing and Urban Development, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by the Director or the Secretary, as the case may be, any court of competent jurisdiction, or operation of law.

"(b) APPLICABILITY.—A regulation, order, or determination is described in this subsection if it—

"(1) was issued, made, prescribed, or allowed to become effective by—

"(A) the Office of Federal Housing Enterprise Oversight;

"(B) the Secretary of Housing and Urban Development, and relates to the authority of the Secretary under—

"(i) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4501 et seq.];

"(ii) the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.], with respect to the Federal National Mortgage Association; or

"(iii) the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.], with respect to the Federal Home Loan Mortgage Corporation; or

"(C) a court of competent jurisdiction, and relates to functions transferred by this Act [see Tables for classification]; and

"(2) is in effect on the effective date of the abolishment under section 1301(a).

"SEC. 1303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

"(a) TRANSFER.—Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1301(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

"(b) GUARANTEED POSITIONS.—

"(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

"(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

"(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

"(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

"(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

"(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

"(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

"(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1301(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

"(e) EMPLOYEE BENEFIT PROGRAMS.—

"(1) IN GENERAL.—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 1301(a), if—

"(A) the employee does not elect to give up the benefit or membership in the program; and

"(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

"(2) COST DIFFERENTIAL.—

"(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Office of Federal Housing Enterprise Oversight and those provided by this section shall be paid by the Director.

"(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

"SEC. 1304. TRANSFER OF PROPERTY AND FACILITIES.

"Upon the effective date of its abolishment under section 1301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Agency.

"SUBTITLE B—FEDERAL HOUSING FINANCE BOARD

"SEC. 1311. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.

"(a) IN GENERAL.—Effective at the end of the 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Federal Housing Finance Board (in this subtitle referred to as the 'Board') is abolished.

"(b) DISPOSITION OF AFFAIRS.—During the 1-year period beginning on the date of enactment of this Act [July 30, 2008], the Board, solely for the purpose of winding up the affairs of the Board—

"(1) shall manage the employees of the Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 1313; and

"(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

"(c) STATUS OF EMPLOYEES BEFORE TRANSFER.—The amendments made by titles I and II [titles I (§§1101–1163) and II (§§1201–1218) of div. A of Pub. L. 110–289, see Tables for classification] and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of the Board as an employee of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 1313.

"(d) USE OF PROPERTY AND SERVICES.—

"(1) PROPERTY.—The Director may use the property of the Board to perform functions which have been transferred to the Director, for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

"(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the 1-year period under subsection (a) in connection with functions that are transferred to the Director shall—

"(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

"(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

"(e) CONTINUATION OF SERVICES.—The Director may use the services of employees and other personnel of the Board, on a reimbursable basis, to perform functions which have been transferred to the Director for such time as is reasonable to facilitate the orderly transfer of functions pursuant to any other provision of this Act [see Tables for classification] or any amendment made by this Act to any other provision of law.

"(f) SAVINGS PROVISIONS.—

"(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

"(A) arises under the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.], or any other provision of law applicable with respect to the Board; and

"(B) existed on the day before the effective date of the abolishment under subsection (a).

"(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred under this Act [see Tables for classification] to the Director shall abate by reason of the enactment of this Act, except that the Director shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

"SEC. 1312. CONTINUATION AND COORDINATION OF CERTAIN ACTIONS.

"(a) IN GENERAL.—All regulations, orders, determinations, and resolutions described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, any court of competent jurisdiction, or operation of law.

"(b) APPLICABILITY.—A regulation, order, determination, or resolution is described under this subsection if it—

"(1) was issued, made, prescribed, or allowed to become effective by—

"(A) the Board; or

"(B) a court of competent jurisdiction, and relates to functions transferred by this Act [see Tables for classification]; and

"(2) is in effect on the effective date of the abolishment under section 1311(a).

"SEC. 1313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

"(a) TRANSFER.—Each employee of the Board shall be transferred to the Agency for employment, not later than the effective date of the abolishment under section 1311(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

"(b) GUARANTEED POSITIONS.—

"(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

"(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, if the employee is a temporary employee, separated in accordance with the terms of the appointment of the employee.

"(c) APPOINTMENT AUTHORITY FOR EXCEPTED EMPLOYEES.—

"(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

"(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1), to the extent that such authority relates to a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character.

"(d) REORGANIZATION.—If the Director determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 1311(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

"(e) EMPLOYEE BENEFIT PROGRAMS.—

"(1) IN GENERAL.—Any employee of the Board accepting employment with the Agency as a result of a transfer under subsection (a) may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 1311(a) if—

"(A) the employee does not elect to give up the benefit or membership in the program; and

"(B) the benefit or program is continued by the Director.

"(2) COST DIFFERENTIAL.—

"(A) IN GENERAL.—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director.

"(B) HEALTH INSURANCE.—If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director, the employee shall be permitted to select an alternate Federal health insurance program not later than 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

"SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.

"Upon the effective date of the abolishment under section 1311(a), all property of the Board shall transfer to the Agency."

[For definitions of terms used in title III of Pub. L. 110–289, set out above, see section 1002(b) of Pub. L. 110–289, set out below.]

DEFINITIONS

Pub. L. 110–289, div. A, §1002(b), July 30, 2008, 122 Stat. 2661, provided that: "As used in this Act [see Tables for classification], unless otherwise specified—

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

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

"(3) the terms 'enterprise', 'regulated entity', and 'authorizing statutes' have the same meanings as in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4502], as amended by this Act."

§4512. Director

(a) Establishment of position

There is established the position of the Director of the Agency, who shall be the head of the Agency.

(b) Appointment; term

(1) Appointment

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

(2) Term

The Director shall be appointed for a term of 5 years, unless removed before the end of such term for cause by the President.

(3) Vacancy

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

(4) Service after end of term

An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed.

(5) Transitional provision

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

(c) Deputy Director of the Division of Enterprise Regulation

(1) In general

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

(2) Functions

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

(d) Deputy Director of the Division of Federal Home Loan Bank Regulation

(1) In general

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

(2) Functions

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

(e) Deputy Director for Housing Mission and Goals

(1) In general

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

(2) Functions

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

(3) Considerations

In exercising such functions, powers, and duties, the Deputy Director for Housing Mission and Goals shall consider the differences between the enterprises and the Federal Home Loan Banks, including those described

in section 4513(d) of this title.

(f) Acting Director

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

(g) Limitations

The Director and each of the Deputy Directors may not—

- (1) have any direct or indirect financial interest in any regulated entity or entity-affiliated party;
- (2) hold any office, position, or employment in any regulated entity or entity-affiliated party; or
- (3) have served as an executive officer or director of any regulated entity or entity-affiliated party at any time during the 3-year period preceding the date of appointment or designation of such individual as Director or Deputy Director, as applicable.

(Pub. L. 102–550, title XIII, §1312, as added Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2662.)

REFERENCES IN TEXT

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (b)(5), probably means the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

PRIOR PROVISIONS

A prior section 4512, Pub. L. 102–550, title XIII, §1312, Oct. 28, 1992, 106 Stat. 3945, related to the Director and Deputy Director of the Office of Federal Housing Enterprise Oversight, prior to repeal by Pub. L. 110–289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.

§4513. Duties and authorities of Director

(a) Duties

(1) Principal duties

The principal duties of the Director shall be—

- (A) to oversee the prudential operations of each regulated entity; and
- (B) to ensure that—
 - (i) each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;
 - (ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities);
 - (iii) each regulated entity complies with this chapter and the rules, regulations, guidelines, and orders issued under this chapter and the authorizing statutes;
 - (iv) each regulated entity carries out its statutory mission only through activities that are authorized under and consistent with this chapter and the authorizing statutes; and
 - (v) the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.

(2) Scope of authority

The authority of the Director shall include the authority—

- (A) to review and, if warranted based on the principal duties described in paragraph (1), reject any acquisition or transfer of a controlling interest in a regulated entity; and
- (B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

(3) Coordination with the Chairman of the Board of Governors of the Federal Reserve System

(A) Consultation

The Director shall consult with, and consider the views of, the Chairman of the Board of Governors of the Federal Reserve System, with respect to the risks posed by the regulated entities to the financial system, prior to issuing any proposed or final regulations, orders, and guidelines with respect to the exercise of the additional authority provided in this Act regarding prudential management and operations standards, safe and sound operations of, and capital requirements and portfolio standards applicable to the regulated entities (as such term is defined in section 4502 of this title). The Director also shall consult with the Chairman regarding any decision to place a regulated entity into conservatorship or receivership.

(B) Information sharing

To facilitate the consultative process, the Director shall share information with the Board of Governors of the Federal Reserve System on a regular, periodic basis as determined by the Director and the Board regarding

the capital, asset and liabilities, financial condition, and risk management practices of the regulated entities as well as any information related to financial market stability.

(C) Termination of consultation requirement

The requirement of the Director to consult with the Board of Governors of the Federal Reserve System under this paragraph shall expire at the conclusion of December 31, 2009.

(b) Delegation of authority

The Director may delegate to officers and employees of the Agency any of the functions, powers, or duties of the Director, as the Director considers appropriate.

(c) Litigation authority

(1) In general

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

(2) Subject to suit

Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity with respect to any matter under this chapter or any other applicable provision of law, rule, order, or regulation under this chapter, 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.

(f) ¹ Recognition of distinctions between the enterprises and the Federal Home Loan Banks

Prior to promulgating any regulation or taking any other formal or informal agency action of general applicability and future effect relating to the Federal Home Loan Banks (other than any regulation, advisory document, or examination guidance of the Federal Housing Finance Board that the Director reissues after the authority of the Director over the Federal Home Loan Banks takes effect), including the issuance of an advisory document or examination guidance, the Director shall consider the differences between the Federal Home Loan Banks and the enterprises with respect to—

(1) the Banks'—

- (A) cooperative ownership structure;
- (B) the ² mission of providing liquidity to members;
- (C) affordable housing and community development mission;
- (D) capital structure; and
- (E) joint and several liability; and

(2) any other differences that the Director considers appropriate.

(Pub. L. 102–550, title XIII, §1313, Oct. 28, 1992, 106 Stat. 3945; Pub. L. 105–276, title II, §202(b), Oct. 21, 1998, 112 Stat. 2483; Pub. L. 105–277, div. A, §122, Oct. 21, 1998, 112 Stat. 2681–546; Pub. L. 110–289, div. A, title I, §§1102(a), 1118, title II, §1201, July 30, 2008, 122 Stat. 2663, 2688, 2782.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(B)(iii), (iv) and (c), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

This Act, referred to in subsec. (a)(3)(A), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (c)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2008—Pub. L. 110–289, §1102(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to duty and authority of the Director of Office of Federal Housing Enterprise Oversight.

Subsec. (a)(3). Pub. L. 110–289, §1118, added par. (3).

Subsec. (f). Pub. L. 110–289, §1201, added subsec. (f).

1998—Subsec. (b)(9) to (12). Pub. L. 105–276, which directed the amendment of subsec. (b) by redesignating pars. (9) to (11) as (10) to (12), respectively, and adding a new par. (9) which read "default loss protection levels under section 1454(a)(2)(D) of this title;" was repealed by Pub. L. 105–277, effective upon enactment of Pub. L. 105–276.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, §122, Oct. 21, 1998, 112 Stat. 2681–546, provided that the amendment made by section 122 is effective upon enactment of Pub. L. 105–276 (Oct. 21, 1998).

¹ So in original. No subsecs. (d) and (e) have been enacted.

² So in original. The word "the" probably should not appear.

§4513a. Federal Housing Finance Oversight Board

(a) In general

There is established the Federal Housing Finance Oversight Board, which shall advise the Director with respect to overall strategies and policies in carrying out the duties of the Director under this chapter.

(b) Limitations

The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

(c) Composition

The Board shall be comprised of 4 members, of whom—

- (1) 1 member shall be the Secretary of the Treasury;
- (2) 1 member shall be the Secretary of Housing and Urban Development;
- (3) 1 member shall be the Chairman of the Securities and Exchange Commission; and
- (4) 1 member shall be the Director, who shall serve as the Chairperson of the Board.

(d) Meetings

(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, the Secretary of Housing and Urban Development, or the Chairman of the Securities and Exchange Commission may, upon giving written notice to the Director, require a special meeting of the Board.

(e) Testimony

On an annual basis, the Board shall testify before Congress regarding—

- (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.

(Pub. L. 102–550, title XIII, §1313A, as added Pub. L. 110–289, div. A, title I, §1103(a), July 30, 2008, 122 Stat. 2665.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§4513b. Prudential management and operations standards

(a) Standards

The Director shall establish standards, by regulation or guideline, for each regulated entity relating to—

- (1) adequacy of internal controls and information systems taking into account the nature and scale of business operations;
- (2) independence and adequacy of internal audit systems;
- (3) management of interest rate risk exposure;
- (4) management of market risk, including standards that provide for systems that accurately measure, monitor, and control market risks and, as warranted, that establish limitations on market risk;
- (5) adequacy and maintenance of liquidity and reserves;
- (6) management of asset and investment portfolio growth;

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

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

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

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

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

(b) Failure to meet standards

(1) Plan requirement

(A) In general

If the Director determines that a regulated entity fails to meet any standard established under subsection (a)

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

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

(B) Contents

Any plan required under subparagraph (A) shall specify the actions that the regulated entity will take to correct the deficiency. If the regulated entity is undercapitalized, the plan may be a part of the capital restoration plan for the regulated entity under section 4622 of this title.

(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 4516(b) of this title) 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 1426(a)(5) of this title) 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.

(Pub. L. 102–550, title XIII, §1313B, as added Pub. L. 110–289, div. A, title I, §1108, July 30, 2008, 122 Stat. 2672.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(7), was in the original "this title", meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§4514. Authority to require reports by regulated entities

(a) Regular and special reports

(1) Regular reports

The Director may require, by general or specific orders, a regulated entity to submit regular reports, including financial statements determined on a fair value basis, on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate (in addition to the annual and quarterly reports required under section 1723a(k) of this title and section 1456(c) of this title).

(2) Special reports

The Director may also require, by general or specific orders, a regulated entity to submit special reports on any of the topics specified in paragraph (1) or any other relevant topics, if, in the judgment of the Director, such reports are necessary to carry out the purposes of this chapter.

(3) Limitation

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

(4) Notice and declaration

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

(b) Capital distributions

The Director may require a regulated entity to submit a report to the Director after the declaration of any capital distribution by the regulated entity and before making the capital distribution. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.

(c) Penalties for failure to make reports

(1) Violations

It shall be a violation of this section for any regulated entity—

(A) to fail to make, transmit, or publish any report or obtain any information required by the Director under this section, section 1723a(k) of this title, section 1456(c) of this title, or section 1440 of this title, within the period of time specified in such provision of law or otherwise by the Director; or

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

(2) Penalties

(A) First tier

(i) In general

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

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

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

(ii) Burden of proof

For purposes of this subparagraph, the regulated entity shall have the burden of proving that the error was inadvertent or that a report was inadvertently transmitted or published late.

(B) Second tier

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

(C) Third tier

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

(3) Assessments

Any penalty imposed under this subsection shall be in lieu of a penalty under section 4636 of this title, but shall be assessed and collected by the Director in the manner provided in section 4636 of this title for penalties imposed under that section, and any such assessment (including the determination of the amount of the penalty) shall be otherwise subject to the provisions of section 4636 of this title.

(4) Hearing

A regulated entity against which a penalty is assessed under this section shall be afforded an agency hearing if the regulated entity submits a request for a hearing not later than 20 days after the date of the issuance of the notice of assessment. Section 4634 of this title shall apply to any such proceedings.

(Pub. L. 102–550, title XIII, §1314, Oct. 28, 1992, 106 Stat. 3946; Pub. L. 110–289, div. A, title I, §1104(a), July 30, 2008, 122 Stat. 2666.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1104(a)(1), substituted "regulated entities" for "enterprises" in section catchline.

Subsec. (a). Pub. L. 110–289, §1104(a)(4)(A), substituted "Regular and special reports" for "Special reports and reports of financial condition" in subsec. heading, "Regular reports" for "Financial condition" in par. (1) heading, and "The Director may require, by general or specific orders, a regulated entity to submit regular reports, including financial statements determined on a fair value basis, on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate" for "The Director may require an enterprise to submit reports of financial condition and operations" in par. (1).

Subsec. (a)(2). Pub. L. 110–289, §1104(a)(4)(B), inserted ", by general or specific orders," after "may also require" and substituted "on any of the topics specified in paragraph (1) or any other relevant topics, if" for "whenever".

Pub. L. 110–289, §1104(a)(2), substituted "a regulated entity" for "an enterprise".

Subsec. (a)(3), (4). Pub. L. 110–289, §1104(a)(3), which directed amendment of this section by substituting "the regulated entity" for "the enterprise", was executed by making the substitution wherever appearing to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 110–289, §1104(a)(3), which directed amendment of this section by substituting "the regulated entity" for "the enterprise", was executed by making the substitution wherever appearing to reflect the probable intent of Congress.

Pub. L. 110–289, §1104(a)(2), substituted "a regulated entity" for "an enterprise".

Subsec. (c). Pub. L. 110–289, §1104(a)(5), added subsec. (c).

§4514a. Study and reports on guarantee fees

(a) Ongoing study of fees

The Director shall conduct an ongoing study of fees charged by enterprises for guaranteeing a mortgage.

(b) Collection of data

The Director shall, by regulation or order, establish procedures for the collection of data from enterprises for purposes of this subsection,¹ including the format and the process for collection of such data.

(c) Reports to Congress

The Director shall annually submit a report to Congress on the results of the study conducted under subsection (a), based on the aggregated data collected under subsection (a) for the subject year, regarding the amount of such fees and the criteria used by the enterprises to determine such fees.

(d) Contents of reports

The reports required under subsection (c) shall identify and analyze—

- (1) the factors considered in determining the amount of the guarantee fees charged;
- (2) the total revenue earned by the enterprises from guarantee fees;
- (3) the total costs incurred by the enterprises for providing guarantees;
- (4) the average guarantee fee charged by the enterprises;
- (5) an analysis of any increase or decrease in guarantee fees from the preceding year;
- (6) a breakdown of the revenue and costs associated with providing guarantees, based on product type and risk classifications; and
- (7) a breakdown of guarantee fees charged based on asset size of the originator and the number of loans sold or transferred to an enterprise.

(e) Protection of information

Nothing in this section may be construed to require or authorize the Director to publicly disclose information that is confidential or proprietary.

(Pub. L. 110–289, div. A, title VI, §1601, July 30, 2008, 122 Stat. 2824.)

CODIFICATION

Section was enacted as part of the Federal Housing Finance Regulatory Reform Act of 2008, and also as part of the Housing and Economic Recovery Act of 2008, and not as part of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 1002(b) of Pub. L. 110–289, set out as a note under section 4511 of this title.

¹ So in original. Probably should be "section".

§4515. Personnel

(a) In general

Subject to title III of the Federal Housing Finance Regulatory Reform Act of 2008, the Director may appoint and fix the compensation of such officers and employees of the Agency as the Director considers necessary to carry out the functions of the Director and the Agency. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates.

(b) Comparability of compensation with Federal banking agencies

In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

(c) Personnel of other Federal agencies

In carrying out the duties of the Agency, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

(d) Outside experts and consultants

Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the Agency.

(Pub. L. 102–550, title XIII, §1315, Oct. 28, 1992, 106 Stat. 3947; Pub. L. 110–289, div. A, title I, §1161(a)(1), July 30, 2008, 122 Stat. 2778; Pub. L. 111–203, title III, §365(1), July 21, 2010, 124 Stat. 1555.)

REFERENCES IN TEXT

The Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (a), is div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2659. Title III of div. A of the Pub. L. 110–289 is set out as a note under section 4511 of this title. For complete classification of Pub. L. 110–289 to the Code, see Short Title note under section 4501 of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "and the Federal Deposit Insurance Corporation." for "the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision."

2008—Subsec. (a). Pub. L. 110–289, §1161(a)(1)(A), substituted "In General" for "Office personnel" in heading, "Subject to title III of the Federal Housing Finance Regulatory Reform Act of 2008, the" for "The", and "the Agency" for "the Office" in two places.

Subsec. (c). Pub. L. 110–289, §1161(a)(1)(B), substituted "the Agency" for "the Office".

Subsec. (d). Pub. L. 110–289, §1161(a)(1)(D), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office."

Subsec. (e). Pub. L. 110–289, §1161(a)(1)(C), (D), substituted "the Agency" for "the Office" and redesignated subsec. (e) as (d).

Subsec. (f). Pub. L. 110–289, §1161(a)(1)(E), struck out subsec. (f). Text read as follows: "Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 4512 of this title, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

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

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

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

§4516. Funding

(a) Annual assessments

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

(1) the expenses of any examinations under section 4517 of this title and under section 1440 of this title;

(2) the expenses of obtaining any reviews and credit assessments under section 4519 of this title;

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

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

(b) Allocation of annual assessment to enterprises

(1) Amount of payment

Each enterprise shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of each enterprise bears $\frac{1}{2}$ to the total assets of both enterprises.

(2) Separate treatment of Federal home loan bank and enterprise assessments

Assessments collected from the enterprises shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the enterprises. Assessments collected from the Federal Home Loan Banks shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the Federal Home Loan Banks.

(3) Timing of payment

The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.

(4) "Total assets" defined

For the purpose of this section, the term "total assets" means, with respect to an enterprise, the sum of—

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

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

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

(c) 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 subchapter II) 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 subchapter II) 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.

(d) Surplus

Except with respect to amounts collected pursuant to subsection (a)(3), if any amount from any annual assessment collected from an enterprise remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the enterprise for the following year.

(e) 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 192 of this title 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 or under any other authority.

(4) Use of funds

The Director may use any amounts received by the Director from assessments under this section for compensation of the Director and other employees of the Agency and for all other expenses of the Director and the Agency.

(5) Availability of oversight fund amounts

Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and any amounts remaining from assessments on the Federal Home Loan Banks pursuant to section 1438(b) ² of this title), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

(6) Treasury investments

(A) Authority

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

(B) Government obligations

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

(g) Budget and financial management

(1) Financial operating plans and forecasts

The Director shall provide to the Director of the Office of Management and Budget copies of the Director's financial operating plans and forecasts, as prepared by the Director in the ordinary course of the Agency's operations, and copies of the quarterly reports of the Agency's financial condition and results of operations, as prepared by the Director in the ordinary course of the Agency's operations.

(2) Financial statements

The Agency shall prepare annually a statement of—

- (A) assets and liabilities and surplus or deficit;
- (B) income and expenses; and
- (C) sources and application of funds.

(3) Financial management systems

The Agency shall implement and maintain financial management systems that—

- (A) comply substantially with Federal financial management systems requirements and applicable Federal accounting standards; and
- (B) use a general ledger system that accounts for activity at the transaction level.

(4) Assertion of internal controls

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

(5) Rule of construction

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

(h) Audit of Agency

(1) In general

The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the United States generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31.

(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 6101 of title 41, 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.

(Pub. L. 102–550, title XIII, §1316, Oct. 28, 1992, 106 Stat. 3947; Pub. L. 104–134, title I, §101(e) [title II, §211], Apr. 26, 1996, 110 Stat. 1321–257, 1321–288; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 110–289, div. A, title I, §1106, July 30, 2008, 122 Stat. 2669.)

REFERENCES IN TEXT

The Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (a)(4), is div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2659. Title III of div. A of the Pub. L. 110–289 is set out as a note under section 4511 of this title. For complete classification of Pub. L. 110–289 to the Code, see Short Title note under section 4501 of this title and Tables.

This Act, referred to in subsec. (c)(2), (3), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (f)(5), probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

Section 1438(b) of this title, referred to in subsec. (f)(5), was repealed by Pub. L. 110–289, div. A, title II, §1204(2), July 30, 2008, 122 Stat. 2786.

CODIFICATION

In subsec. (h)(3), "section 6101 of title 41" substituted for "section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1106(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Director may, to the extent provided in appropriation

Acts, establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office, including the expenses of any examinations under section 4517 of this title. The initial annual assessment shall include any startup costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year."

Subsec. (b)(2) to (4). Pub. L. 110–289, §1106(2), realigned margins, added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (c). Pub. L. 110–289, §1106(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The semiannual payments made pursuant to subsection (b) of this section by any enterprise that is not classified (for purposes of subchapter II of this chapter) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise."

Subsec. (d). Pub. L. 110–289, §1106(4), substituted "Except with respect to amounts collected pursuant to subsection (a)(3), if" for "If".

Subsecs. (e) to (h). Pub. L. 110–289, §1106(5), added subsecs. (e) to (h) and struck out former subsecs. (e) to (g) which related, respectively, to initial special assessment, the Federal Housing Enterprises Oversight Fund, and budget and financial reports.

1996—Subsec. (b)(2). Pub. L. 104–134 added par. (2) and struck out heading and text of former par. (2). Text read as follows: "The annual assessment shall be payable semiannually on September 1 and March 1 of the year for which the assessment is made."

NON-REDUCTION OF FIRST ANNUAL ASSESSMENT

Pub. L. 103–124, title II, Oct. 28, 1993, 107 Stat. 1290, provided that notwithstanding the last sentence of subsec. (e) of this section, the amount of this first annual assessment was not to be reduced by any part of the amount of the initial special assessment under subsec. (e).

¹ So in original. Probably should be "bear".

² See References in Text note below.

§4517. Examinations

(a) Annual examination

The Director shall annually conduct an on-site examination under this section of each regulated entity to determine the condition of the regulated entity for the purpose of ensuring its financial safety and soundness.

(b) Other examinations

In addition to annual examinations under subsection (a), the Director may conduct an examination under this section of a regulated entity whenever the Director determines that an examination is necessary or appropriate.

(c) Examiners

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

(d) Inspector General

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

(e) Law applicable to examiners

The Director and each examiner shall have the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.

(f) Technical experts

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

(g) Oaths, evidence, and subpoena powers

In connection with examinations under this section, the Director shall have the authority provided under section 4641 of this title.

(h) Appointment of accountants, economists, and examiners

(1) Applicability

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

(2) Appointment authority

The Director may appoint candidates to any position described in paragraph (1)—

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

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

(i) Ombudsman

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

(Pub. L. 102–550, title XIII, §1317, Oct. 28, 1992, 106 Stat. 3949; Pub. L. 110–289, div. A, title I, §§1105(a), (b), (e), 1153(b)(1)(A), July 30, 2008, 122 Stat. 2667, 2668, 2774; Pub. L. 111–203, title III, §365(2), July 21, 2010, 124 Stat. 1555.)

REFERENCES IN TEXT

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (d), is section 3(a) of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 substituted "or the Federal Deposit Insurance Corporation" for "the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision".

2008—Subsec. (a). Pub. L. 110–289, §1105(a)(1), substituted "regulated entity" for "enterprise" in two places.

Subsec. (b). Pub. L. 110–289, §1105(a)(2), inserted "of a regulated entity" after "under this section" and substituted "or appropriate" for "to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness".

Subsec. (c). Pub. L. 110–289, §1105(a)(3), inserted "to conduct examinations under this section" after "services of examiners".

Subsecs. (d) to (f). Pub. L. 110–289, §1105(a)(4), (5), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 110–289, §1153(b)(1)(A), which directed technical amendment in subsec. (f) to reference in original act which appears in text as reference to section 4641 of this title, was executed by making the amendment in subsec. (g), to reflect the probable intent of Congress and the redesignation of subsec. (f) as (g) by Pub. L. 110–289, §1105(a)(4). See below.

Pub. L. 110–289, §1105(a)(4), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 110–289, §1105(b), added subsec. (h).

Subsec. (i). Pub. L. 110–289, §1105(e), added subsec. (i).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

§4518. Prohibition and withholding of executive compensation

(a) In general

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

(b) 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 1723a(d)(3)(B) of this title or section 1452(h)(2) of this title 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.

(d) Prohibition of setting compensation

In carrying out subsection (a), the Director may not prescribe or set a specific level or range of compensation.

(e) Authority to regulate or prohibit certain forms of benefits to affiliated parties

(1) Golden parachutes and indemnification payments

The Director may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Director shall prescribe, by regulation, the factors to be considered by the Director in taking any action pursuant to paragraph (1), which may include such factors as—

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

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

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

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

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

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

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

(3) Certain payments prohibited

No regulated entity may prepay the salary or any liability or legal expense of any affiliated party if such payment is made—

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

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

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

(ii) preferring one creditor over another.

(4) Golden parachute payment defined

(A) In general

For purposes of this subsection, the term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any affiliated party pursuant to an obligation of such regulated entity that—

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

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

(I) the regulated entity became insolvent;

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

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

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

For purposes of this subsection, the term "golden parachute payment" shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26, or other nondiscriminatory benefit plan;

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

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

(5) Other definitions

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

(A) Indemnification payment

Subject to paragraph (6), the term "indemnification payment" means any payment (or any agreement to make any payment) by any regulated entity for the benefit of any person who is or was an affiliated party, to

pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Agency which results in a final order under which such person—

- (i) is assessed a civil money penalty;
- (ii) is removed or prohibited from participating in conduct of the affairs of the regulated entity; or
- (iii) is required to take any affirmative action to correct certain conditions resulting from violations or practices, by order of the Director.

(B) Liability or legal expense

The term "liability or legal expense" means—

- (i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;
- (ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and
- (iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term "payment" includes—

- (i) any direct or indirect transfer of any funds or any asset; and
- (ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—
 - (I) the determination, after such date, of the liability for the payment of such amount; or
 - (II) the liquidation, after such date, of the amount of such payment.

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any regulated entity from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5) (A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the regulated entity which is described in paragraph (5)(A).

(Pub. L. 102–550, title XIII, §1318, Oct. 28, 1992, 106 Stat. 3949; Pub. L. 110–289, div. A, title I, §§1113(a), 1114, July 30, 2008, 122 Stat. 2678, 2679.)

AMENDMENTS

2008—Pub. L. 110–289, §1113(a)(1), substituted "and withholding of executive" for "of excessive" in section catchline.

Subsec. (a). Pub. L. 110–289, §1113(a)(2), substituted "regulated entity" for "enterprise" and "regulated entities" for "enterprises".

Subsecs. (b) to (d). Pub. L. 110–289, §1113(a)(3), (4), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

Subsec. (e). Pub. L. 110–289, §1114, added subsec. (e).

EQUITY IN GOVERNMENT COMPENSATION

Pub. L. 114–93, Nov. 25, 2015, 129 Stat. 1310, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Equity in Government Compensation Act of 2015'.

"SEC. 2. DEFINITIONS.

"In this Act:

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

"(2) ENTERPRISE.—The term 'enterprise' means—

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

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

"SEC. 3. REASONABLE PAY FOR CHIEF EXECUTIVE OFFICERS.

"(a) SUSPENSION OF CURRENT COMPENSATION PACKAGE AND LIMITATION.—The Director shall suspend the compensation packages approved for 2015 for the chief executive officers of each enterprise and, in lieu of such packages, subject to the limitation under subsection (b), establish the compensation and benefits for each such chief executive officer at the same level in effect for such officer as of January 1, 2015, and such compensation and benefits may not thereafter be increased.

"(b) LIMITATION ON BONUSES.—Subsection (a) shall not be construed to affect the applicability of section 16 of the STOCK Act (12 U.S.C. 4518a) to the chief executive officer of each enterprise.

"(c) APPLICABILITY.—Subsection (a) shall only apply to a chief executive officer of an enterprise if the enterprise is in conservatorship or receivership pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617).

"SEC. 4. FANNIE AND FREDDIE CHIEF EXECUTIVE OFFICERS NOT FEDERAL EMPLOYEES.

"Any chief executive officer affected by any provision under section 3 shall not be considered a Federal employee."

§4518a. Limitation on bonuses to executives of Fannie Mae and Freddie Mac

Notwithstanding any other provision in law, senior executives at the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are prohibited from receiving bonuses during any period of conservatorship for those entities on or after April 4, 2012.

(Pub. L. 112–105, §16, Apr. 4, 2012, 126 Stat. 303.)

CODIFICATION

Section was enacted as part of the Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act, also known as the STOCK Act, and not as part of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 which comprises this chapter.

§4519. Authority to provide for review of regulated entities

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity to conduct a review of the regulated entities.

(Pub. L. 102–550, title XIII, §1319, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 109–291, §4(b)(4), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 110–289, div. A, title I, §1105(d), July 30, 2008, 122 Stat. 2668; Pub. L. 111–203, title IX, §939(b), July 21, 2010, 124 Stat. 1886.)

AMENDMENTS

2010—Pub. L. 111–203 struck out "that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15," after "entity".

2008—Pub. L. 110–289 substituted "regulated entities" for "enterprises by rating organization" in section catchline and "regulated entities" for "enterprises" in text.

2006—Pub. L. 109–291 substituted "that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15" for "effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of this title.

§4520. Minority and women inclusion; diversity requirements

(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 1441a(r)(4)¹ of this title) (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 1723a(k) of this title, section 1456(c) of this title, and section 1440 of this title, 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.

(e) Outreach

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

(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.

(Pub. L. 102–550, title XIII, §1319A, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 110–289, div. A, title I, §§1116, 1161(a)(2), July 30, 2008, 122 Stat. 2681, 2779.)

REFERENCES IN TEXT

Section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (b), is section 1204(c) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

Section 1441a(r)(4) of this title, referred to in subsec. (b), was repealed by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

AMENDMENTS

2008—Pub. L. 110–289, §1116(1), substituted "Minority and women inclusion; diversity requirements" for "Equal opportunity in solicitation of contracts" in section catchline.

Subsec. (a). Pub. L. 110–289, §1161(a)(2)(A), which directed amendment of this section by striking out subsec. (a) designation and "In general" in subsec. (a) heading, could not be executed because of the prior amendment by Pub. L. 110–289, §1116(2), (4). See below.

Pub. L. 110–289, §1116(2), (4), added subsec. (a) and redesignated former subsec. (a) as (e).

Subsec. (b). Pub. L. 110–289, §1161(a)(2)(B), which directed the striking out of subsec. (b), was not executed to reflect the probable intent of Congress. The amendment was probably intended to strike out subsec. (b) as it existed prior to being struck out by Pub. L. 110–289, §1116(3). See below.

Pub. L. 110–289, §1116(3), (4), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: "Not later than the expiration of the 180-day period beginning on October 28, 1992, each enterprise shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken by the enterprise pursuant to subsection (a) of this section."

Subsecs. (c), (d). Pub. L. 110–289, §1116(4), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110–289, §1116(2), redesignated subsec. (a) as (e) and substituted "Outreach" for "In general" in heading and "Each regulated entity" for "Each enterprise" in text.

Subsec. (f). Pub. L. 110–289, §1116(5), added subsec. (f).

¹ See *References in Text* note below.

§4521. Annual reports by Director

(a) General report

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, not later than June 15 of each year, a written report, which shall include—

- (1) a description of the actions taken, and being undertaken, by the Director to carry out this chapter;
- (2) a description of the financial safety and soundness of each regulated entity, including the results and conclusions of the annual examinations of the regulated entities conducted under section 4517(a) of this title;
- (3) any recommendations for legislation to enhance the financial safety and soundness of the regulated entities;

(4) a description of—

(A) whether the procedures established by each regulated entity pursuant to section 4012a(b)(3) of title 42 are adequate and being complied with, and

(B) the results and conclusions of any examination, as determined necessary by the Director, to determine the compliance of the regulated entities with the requirements of section 4012a(b)(3) of title 42, which shall include a description of the methods used to determine compliance and the types and sources of deficiencies (if any), and identify any corrective measures that have been taken to remedy any such deficiencies,

except that the information described in this paragraph shall be included only in each of the first, third, and fifth annual reports under this subsection required to be submitted after the expiration of the 1-year period beginning on September 23, 1994; and ¹

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

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

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

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

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

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

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

(b) Report on enforcement actions

Not later than March 15 of each year, 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 written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subchapter III and describing the disposition of each request, which shall include statements of—

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

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

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

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

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

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

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

(Pub. L. 102–550, title XIII, §1319B, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 103–325, title V, §529(c), Sept. 23, 1994, 108 Stat. 2267; Pub. L. 110–289, div. A, title I, §§1103(b), 1161(a)(6), July 30, 2008, 122 Stat. 2665, 2779.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1161(a)(6), substituted "Committee on Financial Services" for "Committee on Banking, Finance and Urban Affairs" in introductory provisions.

Subsec. (a)(2) to (4). Pub. L. 110–289, §1103(b)(1)–(4), substituted "regulated entity" for "enterprise" and "regulated entities" for "enterprises" wherever appearing and substituted a semicolon for "; and" at end of par. (3) and "1994; and" for "1994." at end of par. (4).

Subsec. (a)(5) to (7). Pub. L. 110–289, §1103(b)(5), added pars. (5) to (7).

Subsec. (b). Pub. L. 110–289, §1161(a)(6), substituted "Committee on Financial Services" for "Committee on Banking, Finance and Urban Affairs" in introductory provisions.

1994—Subsec. (a)(4). Pub. L. 103–325 added par. (4).

¹ *So in original. The word "and" probably should not appear.*

§4522. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

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

disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

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

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

(b) Hearings

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

(c) Delay of public disclosure under exceptional circumstances

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

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing under subchapter III if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

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

(f) Disclosures to Congress

This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, §1319C, Oct. 28, 1992, 106 Stat. 3951.)

§4523. Limitation on subsequent employment

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

(Pub. L. 102–550, title XIII, §1319D, Oct. 28, 1992, 106 Stat. 3951; Pub. L. 110–289, div. A, title I, §1161(a)(5), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Pub. L. 110–289 substituted "the Agency" for "the Office" wherever appearing.

§4524. Audits by GAO

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

(Pub. L. 102–550, title XIII, §1319E, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 104–316, title I, §106(h), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 110–289, div. A, title I, §1161(a)(5), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Pub. L. 110–289 substituted "the Agency" for "the Office" in two places.

1996—Pub. L. 104–316, in first sentence, substituted "may audit" for "shall audit" and inserted ", and any such audit shall be conducted" after "Office", and struck out at end "Audits under this section shall be conducted annually for the first 2 fiscal years following October 28, 1992, and as appropriate thereafter."

§4525. Information, records, and meetings

For purposes of subchapter II of chapter 5 of title 5—

(1) the Agency, and

(2) the Department of Housing and Urban Development, with respect to activities under this chapter,

shall be considered agencies responsible for the regulation or supervision of financial institutions.

(Pub. L. 102–550, title XIII, §1319F, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 110–289, div. A, title I, §1161(a)(5), July 30, 2008, 122 Stat. 2779.)

AMENDMENTS

2008—Par. (1). Pub. L. 110–289 substituted "the Agency" for "the Office".

REFERENCES IN TEXT

This chapter, referred to in par. (2), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§4526. Regulations and orders

(a) Authority

The Director shall issue any regulations, guidelines, or orders necessary to carry out the duties of the Director under this chapter or the authorizing statutes, and to ensure that the purposes of this chapter and the authorizing statutes are accomplished.

(b) Notice and comment

Any regulations issued by the Director under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5.

(Pub. L. 102–550, title XIII, §1319G, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 110–289, div. A, title I, §1107, July 30, 2008, 122 Stat. 2672.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1107(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this chapter before the expiration of the 18-month period beginning on the appointment of the Director under section 4512 of this title. Such regulations and orders shall be subject to the approval of the Secretary only to the extent provided in subsections (b) and (c) of section 4513 of this title."

Subsec. (c). Pub. L. 110–289, §1107(2), struck out subsec. (c). Text read as follows: "The Director may not publish any regulation for comment under subsection (b) of this section unless, not less than 15 days before it is published for comment, the Director has submitted a copy of the regulation, in the form it is intended to be proposed, to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate."

PART B—ADDITIONAL AUTHORITIES OF THE DIRECTOR

SUBPART 1—GENERAL AUTHORITY

§4541. Prior approval authority for products

(a) In general

The Director shall require each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.

(b) Standard for approval

In considering any request for approval of a product pursuant to subsection (a), the Director shall make a determination that—

(1) in the case of a product of the Federal National Mortgage Association, the product is authorized under paragraph (2), (3), (4), or (5) of section 1717(b) or section 1719 of this title;

(2) in the case of a product of the Federal Home Loan Mortgage Corporation, the product is authorized under paragraph (1), (4), or (5) of section 1454(a) of this title;

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

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

(c) Procedure for approval

(1) Submission of request

An enterprise shall submit to the Director a written request for approval of a product that describes the product in such form as prescribed by order or regulation of the Director.

(2) Request for public comment

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

(3) Public comment period

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

(4) Offering of product

(A) In general

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

(B) Failure to act

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

(C) Temporary approval

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

(d) Conditional approval

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

(e) Exclusions

(1) In general

The requirements of subsections (a) through (d) do not apply with respect to—

(A) the automated loan underwriting system of an enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

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

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

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

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

(2) Expedited review

(A) Enterprise notice

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

(B) Director determination

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

(C) Failure to act

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

(f) No limitation

Nothing in this section may be construed to restrict—

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

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

(Pub. L. 102–550, title XIII, §1321, as added Pub. L. 110–289, div. A, title I, §1123, July 30, 2008, 122 Stat. 2689.)

PRIOR PROVISIONS

A prior section 4541, Pub. L. 102–550, title XIII, §1321, Oct. 28, 1992, 106 Stat. 3952, related to the Secretary of Housing and Urban Development's regulatory authority, prior to repeal by Pub. L. 110–289, div. A, title I, §1121(2), July 30, 2008, 122 Stat. 2689.

§4542. Housing Price Index

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

(Pub. L. 102–550, title XIII, §1322, as added Pub. L. 110–289, div. A, title I, §1124(d), July 30, 2008, 122 Stat. 2693.)

REFERENCES IN TEXT

The effective date of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in text, probably means the date of enactment of div. A of Pub. L. 110–289, which was approved July 30, 2008.

PRIOR PROVISIONS

A prior section 4542, Pub. L. 102–550, title XIII, §1322, Oct. 28, 1992, 106 Stat. 3953, related to the Secretary of Housing and Urban Development's prior approval authority for new programs, prior to repeal by Pub. L. 110–289, div. A, title I, §1121(2), July 30, 2008, 122 Stat. 2689.

§4543. Public access to mortgage information

(a) Availability

(1) In general

The Director shall make available to the public, in forms useful to the public (including forms accessible by computers), the data submitted by the enterprises in the reports required under section 1723a(m) of this title or section 1456(e) of this title.

(2) Census tract level reporting

Such data shall include the data elements required to be reported under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.], at the census tract level.

(b) Access

(1) Proprietary data

Except as provided in paragraph (2), the Director may not make available to the public data that the Director determines pursuant to section 4546 of this title are proprietary information.

(2) Exception

The Director shall not restrict access to the data provided in accordance with section 1723a(m)(1)(A) of this title or section 1456(e)(1)(A) of this title or with subsection (a)(2).

(c) Fees

The Director may charge reasonable fees to cover the cost of making data available under this section to the public.

(d) Timing

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

(Pub. L. 102–550, title XIII, §1323, Oct. 28, 1992, 106 Stat. 3954; Pub. L. 110–289, div. A, title I, §§1122(a)(1), 1126, July 30, 2008, 122 Stat. 2689, 2695.)

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (a)(2), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1122(a)(1), substituted "Director" for "Secretary" wherever appearing in subsecs. (a) to (c).

Subsec. (a). Pub. L. 110–289, §1126(1), substituted "Availability" for "In general" in subsec. heading, inserted par. (1) designation and heading, and added par. (2). The amendment was executed to reflect the probable intent of Congress, notwithstanding an error in the directory language which did not take into consideration the prior amendment by Pub. L. 110–289, §1122(a)(1). See above.

Subsec. (b)(2). Pub. L. 110–289, §1126(2), inserted "or with subsection (a)(2)" before period at end.

Subsec. (d). Pub. L. 110–289, §1126(3), added subsec. (d).

§4544. Annual housing report

(a) In general

After reviewing and analyzing the reports submitted under section 1723a(n) of this title and section 1456(f) of this title, the Director shall submit a report, not later than October 30 of each year, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the activities of each enterprise.

(b) Contents

The report required under subsection (a) shall—

(1) discuss—

(A) the extent to and manner in which—

(i) each enterprise is achieving the annual housing goals established under subpart 2;

(ii) each enterprise is complying with its duty to serve underserved markets, as established under section 4565 of this title;

(iii) each enterprise is complying with section 4567 of this title;

(iv) each enterprise received credit towards achieving each of its goals resulting from a transaction or activity pursuant to section 4561(b)(2) of this title; and

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

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

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

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

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

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

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

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

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

(C) the terms of the mortgage;

(D) the creditworthiness of the borrower; and

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

(c) Data collection and reporting

(1) In general

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

(2) Data points

Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

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

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

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

- (iii) the terms of the mortgage;
- (iv) the creditworthiness of the borrower or borrowers; and
- (v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise;

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

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

(3) Public availability

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

- (A) is not released in an identifiable form; and
- (B) is not otherwise obtainable from other publicly available data sets.

(4) Definition

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

(Pub. L. 102–550, title XIII, §1324, as added Pub. L. 110–289, *div. A, title I, §1125(b)*, July 30, 2008, 122 Stat. 2693.)

PRIOR PROVISIONS

A prior section 4544, Pub. L. 102–550, *title XIII, §1324, Oct. 28, 1992*, 106 Stat. 3954, related to annual housing report, prior to repeal by Pub. L. 110–289, *div. A, title I, §1125(a)*, July 30, 2008, 122 Stat. 2693.

§4545. Fair housing

The Secretary of Housing and Urban Development shall—

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

(2) by regulation, require each enterprise to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act [42 U.S.C. 3601 et seq.];

(3) by regulation, require each enterprise to submit data to the Secretary to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.], and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], for appropriate action;

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

(5) direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the Equal Credit Opportunity Act, pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5; and

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

(Pub. L. 102–550, *title XIII, §1325, Oct. 28, 1992*, 106 Stat. 3955; Pub. L. 110–289, *div. A, title I, §1122(b)*, July 30, 2008, 122 Stat. 2689.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in pars. (2) and (4) to (6), is title VIII of Pub. L. 90–284, *Apr. 11, 1968*, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

The Equal Credit Opportunity Act, referred to in pars. (3) to (5), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, *title V, §503, Oct. 28, 1974*, 88 Stat. 1521, as amended, which is classified generally to subchapter IV (§1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2008—Pub. L. 110–289 inserted "of Housing and Urban Development" after "The Secretary" in introductory provisions.

§4546. Prohibition of public disclosure of proprietary information

(a) In general

Subject to subsection (d), the Director may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 4543 of this title, section 1723a(n)(3) of this title, or section 1456(f)(3) of this title.

(b) Protection of information on housing activities

The Director shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 1723a(n) of this title or section 1456(f) of this title that the Director determines is proprietary.

(c) Nondisclosure pending consideration

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

(d) Mortgage information

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

(1) the same data from the enterprises that is required of insured depository institutions under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.]; and

(2) information collected by the Director under section 4544(b)(6) of this title.

(Pub. L. 102–550, title XIII, §1326, Oct. 28, 1992, 106 Stat. 3955; Pub. L. 110–289, div. A, title I, §§1122(a)(1), 1127, July 30, 2008, 122 Stat. 2689, 2695.)

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (d)(1), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1122(a)(1), substituted "Director" for "Secretary" wherever appearing in subsecs. (a) and (b).

Subsec. (a). Pub. L. 110–289, §1127(1), substituted "Subject to subsection (d), the Director" for "The Director".

Subsec. (d). Pub. L. 110–289, §1127(2), added subsec. (d).

§4547. Enterprise guarantee fees

(a) Definitions

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

(1) Guarantee fee

The term "guarantee fee"—

(A) means a fee described in subsection (b); and

(B) includes—

(i) the guaranty fee charged by the Federal National Mortgage Association with respect to mortgage-backed securities; and

(ii) the management and guarantee fee charged by the Federal Home Loan Mortgage Corporation with respect to participation certificates.

(2) Average fees

The term "average fees" means the average contractual fee rate of single-family guaranty arrangements by an enterprise entered into during 2011, plus the recognition of any up-front cash payments over an estimated average life, expressed in terms of basis points. Such definition shall be interpreted in a manner consistent with the annual report on guarantee fees by the Federal Housing Finance Agency.

(b) Increase

(1) In general

(A) Phased increase required

Subject to subsection (c), the Director shall require each enterprise to charge a guarantee fee in connection with any guarantee of the timely payment of principal and interest on securities, notes, and other obligations based on or backed by mortgages on residential real properties designed principally for occupancy of from 1 to 4 families, consummated after December 23, 2011.

(B) Amount

The amount of the increase required under this section shall be determined by the Director to appropriately reflect the risk of loss, as well ¹ the cost of capital allocated to similar assets held by other fully private regulated financial institutions, but such amount shall be not less than an average increase of 10 basis points for each origination year or book year above the average fees imposed in 2011 for such guarantees. The Director shall prohibit an enterprise from offsetting the cost of the fee to mortgage originators, borrowers, and investors by decreasing other charges, fees, or premiums, or in any other manner.

(2) Authority to limit offer of guarantee

The Director shall prohibit an enterprise from consummating any offer for a guarantee to a lender for mortgage-backed securities, if—

- (A) the guarantee is inconsistent with the requirements of this section; or
- (B) the risk of loss is allowed to increase, through lowering of the underwriting standards or other means, for the primary purpose of meeting the requirements of this section.

(3) Deposit in Treasury

Amounts received from fee increases imposed under this section shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. The fees charged pursuant to this section shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise.

(c) Phase-in

(1) In general

The Director may provide for compliance with subsection (b) by allowing each enterprise to increase the guarantee fee charged by the enterprise gradually over the 2-year period beginning on December 23, 2011, in a manner sufficient to comply with this section. In determining a schedule for such increases, the Director shall—

- (A) provide for uniform pricing among lenders;
- (B) provide for adjustments in pricing based on risk levels; and
- (C) take into consideration conditions in financial markets.

(2) Rule of construction

Nothing in this subsection shall be interpreted to undermine the minimum increase required by subsection (b).

(d) Information collection and annual analysis

The Director shall require each enterprise to provide to the Director, as part of its annual report submitted to Congress—

- (1) a description of—
 - (A) changes made to up-front fees and annual fees as part of the guarantee fees negotiated with lenders;
 - (B) changes to the riskiness of the new borrowers compared to previous origination years or book years; and
 - (C) any adjustments required to improve for future origination years or book years, in order to be in complete compliance with subsection (b); and

(2) an assessment of how the changes in the guarantee fees described in paragraph (1) met the requirements of subsection (b).

(e) Enforcement

(1) Required adjustments

Based on the information from subsection (d) and any other information the Director deems necessary, the Director shall require an enterprise to make adjustments in its guarantee fee in order to be in compliance with subsection (b).

(2) Noncompliance penalty

An enterprise that has been found to be out of compliance with subsection (b) for any 2 consecutive years shall be precluded from providing any guarantee for a period, determined by rule of the Director, but in no case less than 1 year.

(3) Rule of construction

Nothing in this subsection shall be interpreted as preventing the Director from initiating and implementing an enforcement action against an enterprise, at a time the Director deems necessary, under other existing enforcement authority.

(f) Expiration

The provisions of this section shall expire on October 1, 2021.

(Pub. L. 102–550, title XIII, §1327, as added Pub. L. 112–78, title IV, §401, Dec. 23, 2011, 125 Stat. 1287.)

PRIOR PROVISIONS

A prior section 4547, Pub. L. 102–550, title XIII, §1327, Oct. 28, 1992, 106 Stat. 3956; Pub. L. 110–289, div. A, title I, §1122(a)(1), July 30, 2008, 122 Stat. 2689, related to authority to require reports by enterprises, prior to repeal by Pub. L. 110–289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

¹ So in original. Probably should be followed by "as".

§4548. Regulations for use of credit scores

The Director shall—

(1) by regulation, establish standards and criteria for any process used by an enterprise to validate and approve credit scoring models pursuant to section 1717(b)(7) of this title and section 1454(d) of this title; and

(2) ensure that any credit scoring model that is validated and approved by an enterprise under section 1717(b)(7) of this title or section 1454(d) of this title meets the requirements of clauses (i), (ii), and (iii) of section 1717(b)(7)(C) of this title and subparagraphs (A), (B), and (C) of section 1454(d) of this title, respectively.

(Pub. L. 102–550, title XIII, §1328, as added Pub. L. 115–174, title III, §310(c), May 24, 2018, 132 Stat. 1355.)

PRIOR PROVISIONS

A prior section 4548, Pub. L. 102–550, title XIII, §1328, Oct. 28, 1992, 106 Stat. 3956; Pub. L. 110–289, div. A, title I, §1122(a)(1), July 30, 2008, 122 Stat. 2689, related to required annual reports, prior to repeal by Pub. L. 110–289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

SUBPART 2—HOUSING GOALS

§4561. Establishment of housing goals

(a) In general

The Director shall, by regulation, establish effective for 2010 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

(1) Single-family housing goals

Four single-family housing goals under section 4562 of this title.

(2) Multifamily special affordable housing goal

One multifamily special affordable housing goal under section 4563 of this title.

(b) Timing

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

(c) Transition

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

(d) Eliminating interest rate disparities

(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 1

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

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

(3) Annual report to Congress

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

(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.

(Pub. L. 102–550, title XIII, §1331, as added Pub. L. 110–289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2696.)

PRIOR PROVISIONS

A prior section 4561, Pub. L. 102–550, title XIII, §1331, Oct. 28, 1992, 106 Stat. 3956, related to establishment of housing goals, prior to repeal by Pub. L. 110–289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

¹ *So in original.*

§4562. Single-family housing goals

(a) In general

The Director shall, by regulation, establish annual goals for the purchase by each enterprise of the following types of mortgages for the following categories of families:

(1) Purchase-money mortgages

A goal for purchase of conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing for each of the following categories of families:

- (A) Low-income families.
- (B) Families that reside in low-income areas.
- (C) Very low-income families.

(2) Refinancing mortgages

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

(b) Goals as a percentage of total mortgage purchases

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

(c) Single-family, owner-occupied rental housing units

The Director shall require each enterprise to report the number of rental housing units affordable to low-income families each year which are contained in mortgages purchased by the enterprise financing 2- to 4-unit single-family, owner-occupied properties and may, by regulation, establish additional requirements relating to such units.

(d) Determination of compliance

(1) In general

The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 4561(a) of this title, whether each enterprise has complied with each such goal established under subsection (a) of this section and any additional requirements which may be established under subsection (c) of this section.

(2) Purchase-money mortgage goals

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

(3) Refinance goal

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

(e) Annual targets

(1) In general

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

(2) Goals targets

(A) Calculation

The Director shall calculate, for each of the types of families described in subsection (a), the percentage, for each of the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.] is publicly available—

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

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

(B) Establishment of goal targets

The Director shall, by regulation, establish targets for each of the goal categories, taking into consideration the calculations under subparagraph (A) and the following factors:

- (i) National housing needs.
- (ii) Economic, housing, and demographic conditions, including expected market developments.
- (iii) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.
- (iv) The ability of the enterprise to lead the industry in making mortgage credit available.
- (v) Such other reliable mortgage data as may be available.
- (vi) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described in subsection (a), relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively.
- (vii) The need to maintain the sound financial condition of the enterprises.

(3) Authority to adjust targets

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

(4) HMDA information

The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.] regarding conventional, conforming, single-family, owner-occupied, purchase money and refinance mortgages originated and purchased for the previous year.

(5) Conforming mortgages

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

(f) Notice of determination and enterprise comment

(1) Notice

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

(2) Comment period

The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

(g) Use of borrower income

In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 4566 of this title), the Director shall consider a mortgagor's income to be such income at the time of origination of the mortgage.

(h) Consideration of properties with rental units

Mortgages financing two- to four-unit owner-occupied properties shall count toward the achievement of the single-family housing goals under this section, if such properties otherwise meet the requirements under this section, notwithstanding the use of one or more units for rental purposes.

(i) Goals credit

The Director shall determine whether an enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals established pursuant to section 4562 and 4563 of this title. In making any such determination, the Director shall consider whether a transaction or activity of an enterprise is substantially equivalent to a mortgage purchase and either (1) creates a new market, or (2) adds liquidity to an existing market. No credit toward the achievement of the housing goals and subgoals established under this section may be given to the purchase of mortgages, including any transaction or activity of an enterprise determined to be substantially equivalent to a mortgage purchase, that is determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises, pursuant to regulations issued by the Director.

(Pub. L. 102–550, title XIII, §1332, as added Pub. L. 110–289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2697.)

REFERENCES IN TEXT

The Home Mortgage Disclosure Act of 1975, referred to in subsec. (e)(2)(A), (4), is title III of Pub. L. 94–200, Dec. 31, 1975, 89 Stat. 1125, which is classified principally to chapter 29 (§2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2801 of this title and Tables.

PRIOR PROVISIONS

A prior section 4562, Pub. L. 102–550, title XIII, §1332, Oct. 28, 1992, 106 Stat. 3956, related to low- and moderate-income housing goal, prior to repeal by Pub. L. 110–289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

EFFECTIVE DATE

Pub. L. 102–550, title XIII, §1338, Oct. 28, 1992, 106 Stat. 3964, which provided the effective date for housing goals established under former sections 4562(d), 4563(d), and 4564(d) of this title, was repealed by Pub. L. 110–289, div. A, title I, §1122(a)(2), July 30, 2008, 122 Stat. 2689.

§4563. Multifamily special affordable housing goal

(a) Establishment of goal

(1) In general

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

(2) Additional requirements for units affordable to very low-income families

When establishing the goal under this section, the Director shall establish additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families.

(3) Reporting on smaller properties

The Director shall require each enterprise to report on the purchase by each enterprise of multifamily housing of a smaller or limited size that is affordable to low-income families, which may be based on multifamily projects of 5 to 50 units (as such numbers may be adjusted by the Director) or on mortgages of up to \$5,000,000 (as such amount may be adjusted by the Director), and may, by regulation, establish such additional ¹ requirements related to such units.

(4) Factors

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

- (A) national multifamily mortgage credit needs and the ability of the enterprise to provide additional liquidity and stability for the multifamily mortgage market;
- (B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;
- (C) the size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;
- (D) the ability of the enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing described in paragraphs (1) and (2);
- (E) the availability of public subsidies; and
- (F) the need to maintain the sound financial condition of the enterprise.

(b) Units financed by housing finance agency bonds

The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 4566 of this title) to dwelling units in multifamily housing that otherwise

qualifies under such goal and that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, if such bonds, in whole or in part—

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

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

(c) Measurement of performance

The Director shall monitor the performance of each enterprise in meeting the goals established under this section and shall evaluate such performance (for purposes of section 4566 of this title) based on whether the rent levels are affordable. A rent level shall be considered to be affordable for purposes of this subsection for low-income families if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) Determination of compliance

The Director shall determine, for each year that the housing goal under this section is in effect pursuant to section 4561(a) of this title, whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

(Pub. L. 102–550, title XIII, §1333, as added Pub. L. 110–289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2700.)

PRIOR PROVISIONS

A prior section 4563, Pub. L. 102–550, title XIII, §1333, Oct. 28, 1992, 106 Stat. 3958, related to special affordable housing goal, prior to repeal by Pub. L. 110–289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

¹ *So in original.*

§4564. 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 or subgoal for such year established pursuant to this subpart.

(b) Standard for reduction

The Director may reduce the level for a goal or subgoal pursuant to such a petition only if—

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

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

(c) Determination

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

(Pub. L. 102–550, title XIII, §1334, as added Pub. L. 110–289, div. A, title I, §1128(b), July 30, 2008, 122 Stat. 2701.)

REFERENCES IN TEXT

Section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act, referred to in subsec. (b) (2), is section 301(b)(3) of Pub. L. 91–351, which is set out as a Short Title and Statement of Purpose note under section 1451 of this title.

PRIOR PROVISIONS

A prior section 4564, Pub. L. 102–550, title XIII, §1334, Oct. 28, 1992, 106 Stat. 3960, related to central cities, rural areas, and other underserved areas housing goal, prior to repeal by Pub. L. 110–289, div. A, title I, §1128(a), July 30, 2008, 122 Stat. 2696.

§4565. Duty to serve underserved markets and other requirements

(a) Duty to serve underserved markets

(1) ¹ Duty

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

(A) Manufactured housing

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

(B) Affordable housing preservation

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under 2

- (i) the project-based and tenant-based rental assistance programs under section 1437f of title 42;
- (ii) the program under section 1715z-1 of this title;
- (iii) the below-market interest rate mortgage program under section 1715l(d)(4) of this title;
- (iv) the supportive housing for the elderly program under section 1701q of this title;
- (v) the supportive housing program for persons with disabilities under section 8013 of title 42;
- (vi) the programs under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360 et seq.], but only permanent supportive housing projects subsidized under such programs;
- (vii) the rural rental housing program under section 1485 of title 42;
- (viii) the low-income housing tax credit under section 42 of title 26; and
- (ix) comparable state 3 and local affordable housing programs.

(C) Rural markets

The enterprise shall develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, and low-, and moderate-income families in rural areas.

(b) In general

To meet the housing goals established under this subpart and to carry out the duty under subsection (a) of this section, each enterprise shall—

- (1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;
- (2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;
- (3) take affirmative steps to—
 - (A) assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, and
 - (B) assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.],

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

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

(c) Additional categories

The Director may submit recommendations to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate for the establishment of additional categories under subsection (a), provided that the Director makes a preliminary determination that any such category is important to the mission of the enterprises, that the category is an underserved market, and that the establishment of such category is warranted.

(d) Evaluation and reporting of compliance

(1) In general

The Director shall, by regulation, establish effective for 2010 and thereafter a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for 2010 and each year thereafter, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 4521(a) of this title.

(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 2

- (A) the development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of such underserved markets;
- (B) the extent of outreach to qualified loan sellers and other market participants in each of such underserved markets;

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

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

(3) Manufactured housing market

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

(4) Prohibition of consideration of affordable housing fund grants for meeting duty to serve

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director may not consider any affordable housing fund grant amounts used under section 4567 of this title for eligible activities under subsection (g) of such section.

(Pub. L. 102–550, title XIII, §1335, Oct. 28, 1992, 106 Stat. 3961; Pub. L. 105–65, title V, §517(c), Oct. 27, 1997, 111 Stat. 1403; Pub. L. 110–289, div. A, title I, §§1128(c)(1), 1129(a), July 30, 2008, 122 Stat. 2701, 2703.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(1)(B)(vi), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482. Title IV of the Act is classified principally to subchapter IV (§11360 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (b)(3)(B), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289, §1129(a)(1), inserted "Duty to serve underserved markets and" before "other" in section catchline.

Subsec. (a). Pub. L. 110–289, §1129(a)(4), added subsec. (a). Former subsec. (a) redesignated (b).

Pub. L. 110–289, §1129(a)(3)(A)–(D), inserted "and to carry out the duty under subsection (a) of this section" before ", each enterprise shall" in introductory provisions and struck out par. (5) which read as follows: "assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997."

Pub. L. 110–289, §1128(c)(1), substituted "housing goals established under this subpart" for "low- and moderate-income housing goal under section 4562 of this title, the special affordable housing goal under section 4563 of this title, and the central cities, rural areas, and other underserved areas housing goal under section 4564 of this title" in introductory provisions.

Subsec. (b). Pub. L. 110–289, §1129(a)(3)(E), redesignated subsec. (a) as (b).

Pub. L. 110–289, §1129(a)(2), struck out subsec. (b). Text read as follows: "Actions taken under subsection (a)(5) of this section shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 4562, 4563, and 4564 of this title for any fiscal year, as determined by the Secretary."

Subsecs. (c), (d). Pub. L. 110–289, §1129(a)(5), added subsecs. (c) and (d).

1997—Subsec. (a). Pub. L. 105–65, §517(c)(3), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(5). Pub. L. 105–65, §517(c)(1), (2), (4), added par. (5).

Subsec. (b). Pub. L. 105–65, §517(c)(4), added subsec. (b).

¹ So in original. No par. (2) has been enacted.

² So in original.

³ So in original. Probably should be capitalized.

§4566. Monitoring and enforcing compliance with housing goals

(a) In general

(1) Authority

The Director shall monitor and enforce compliance with the housing goals established under this subpart and with the duty under section 4565(a) of this title of each enterprise with respect to underserved markets, as provided in this section.

(2) Guidelines

The Director shall establish guidelines to measure the extent of compliance with the housing goals, which, except as provided in paragraph (5), may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Director deems appropriate.

(3) Extent of compliance

In determining compliance with the housing goals established under this subpart, the Director—

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

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

(4) Enforcement of duty to provide mortgage credit to underserved markets

The duty under section 4565(a) of this title of each enterprise to serve underserved markets (as determined in accordance with section 4565(c) of this title) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall be enforceable only under this section, except that such duty shall not be subject to subsection (c)(7) of this section and shall not be enforceable under any other provision of this chapter (including subpart 3 of this part) or under any provision of the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(5) Additional credit

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

(b) Notice and preliminary determination of failure to meet goals

(1) Notice

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

(2) Response period

(A) In general

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

(B) Extended period

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

(C) Shortened period

The Director may shorten the period under subparagraph (A) for good cause.

(D) Failure to respond

The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the Director.

(3) Consideration of information and final determination

(A) In general

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

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

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

(B) Considerations

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

(C) Notice

The Director shall provide written notice, including a response to any information submitted during the response period, to the enterprise, the Committee on Banking, Housing, and Urban Affairs of the Senate, and

the Committee on Financial Services of the House of Representatives, of—

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

(c) Cease and desist, civil money penalties, and remedies including housing plans

(1) Requirement

If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart, and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 4581 of this title and impose civil money penalties in accordance with section 4585 of this title.

(2) Housing plan

If the Director requires a housing plan under this subsection, such a plan shall be—

- (A) a feasible plan describing the specific actions the enterprise will take—
 - (i) to achieve the goal for the next calendar year; and
 - (ii) if the Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of such year; and

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

(3) Deadline for submission

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

(4) Approval

The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] (as applicable), this chapter, and any other applicable provision of law.

(5) Notice of approval and disapproval

The Director shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(6) Resubmission

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

(7) Cease and desist orders; civil money penalties

Solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, if the Director requires an enterprise to submit a housing plan under this subsection and the enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with section 4581 of this title, impose civil money penalties in accordance with section 4585 of this title, exercise other appropriate enforcement authority or seek other appropriate actions.

(Pub. L. 102–550, title XIII, §1336, Oct. 28, 1992, 106 Stat. 3962; Pub. L. 110–289, div. A, title I, §§1122(a)(1), 1128(c)(2), 1129(b), (c), 1130(a), July 30, 2008, 122 Stat. 2689, 2702, 2705, 2706.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4) and (c)(4), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsecs. (a)(4) and (c)(4), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsecs. (a)(4) and (c)(4), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et

seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1122(a)(1), substituted "Director" for "Secretary" wherever appearing in pars. (1) to (3).

Subsec. (a)(1). Pub. L. 110–289, §1129(b)(1), inserted "and with the duty under section 4565(a) of this title of each enterprise with respect to underserved markets," before "as provided in this section".

Pub. L. 110–289, §1128(c)(2), substituted "this subpart" for "sections 4562, 4563, and 4564 of this title,".

Subsec. (a)(2). Pub. L. 110–289, §1129(c)(1), inserted ", except as provided in paragraph (5)," before "may assign".

Subsec. (a)(4). Pub. L. 110–289, §1129(b)(2), added par. (4).

Subsec. (a)(5). Pub. L. 110–289, §1129(c)(2), added par. (5).

Subsecs. (b), (c). Pub. L. 110–289, §1130(a), added subsecs. (b) and (c) and struck out former subsecs. (b) and (c) which related to notice and determination of failure to meet housing goals and submission of housing plans, respectively.

§4567. Affordable housing allocations

(a) Set aside and allocation of amounts by enterprises

Subject to subsection (b), in each fiscal year—

(1) the Federal Home Loan Mortgage Corporation shall—

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

(B) allocate or otherwise transfer—

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title; and

(2) the Federal National Mortgage Association shall—

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

(B) allocate or otherwise transfer—

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title.

(b) Suspension of contributions

The Director shall temporarily suspend allocations under subsection (a) by an enterprise upon a finding by the Director that such allocations—

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

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

(3) are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan under section 4622 of this title.

(c) Prohibition of pass-through of cost of allocations

The Director shall, by regulation, prohibit each enterprise from redirecting the costs of any allocation required under this section, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise.

(d) Enforcement of requirements on enterprise

Compliance by the enterprises with the requirements under this section shall be enforceable under subpart 3. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.

(e) Required amount for HOPE reserve fund

Of the aggregate amount allocated under subsection (a), 25 percent shall be deposited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

(f) Limitation

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

(Pub. L. 102–550, title XIII, §1337, as added Pub. L. 110–289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2711.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original "this title", meaning title XIII of Pub. L. 102–550, [Oct. 28, 1992](#), 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

PRIOR PROVISIONS

A prior section 4567, Pub. L. 102–550, [title XIII, §1337, Oct. 28, 1992](#), 106 Stat. 3964, related to reports during transition, prior to repeal by Pub. L. 110–289, [div. A, title I, §1131\(a\), July 30, 2008](#), 122 Stat. 2711.

§4568. Housing Trust Fund

(a) Establishment and purpose

(1) In general

The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall establish and manage a Housing Trust Fund, which shall be funded with amounts allocated by the enterprises under section 4567 of this title and any amounts as are or may be appropriated, transferred, or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States (as such term is defined in section 4502 of this title) for use—

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

(2) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided from the Housing Trust Fund shall be considered Federal financial assistance.

(b) Allocations for HOPE bond payments

(1) In general

Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts allocated pursuant to clauses (i) and (ii) of section 4567(a)(1)(B) of this title and clauses (i) and (ii) of section 4567(a)(2)(B) of this title in excess of amounts described in section 4567(e) of this title—

- (A) 100 percent of such excess shall be used to reimburse the Treasury for payments made pursuant to section 1715z–23(w)(1)(C) of this title in calendar year 2009;
- (B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and
- (C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

(2) Excess funds

At the termination of the HOPE for Homeowners Program established under section 1715z–23 of this title, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in paragraphs (1)(B) and (2)(B) of section 4567(a) of this title.

(3) Treasury fund

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

(c) Allocation for Housing Trust Fund in fiscal year 2010 and subsequent years

(1) In general

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

(2) Permissible designees

A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4103 of title 25), or any other qualified instrumentality of the State to receive such grant amounts.

(3) Distribution to States by needs-based formula

(A) In general

The Secretary shall, by regulation, establish a formula within 12 months of July 30, 2008, to distribute amounts made available under this subsection to each State to provide affordable housing to extremely low- and very low-income households.

(B) Basis for formula

The formula required under subparagraph (A) shall include the following:

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

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

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

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

(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause,¹ the term "cost of construction"—

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

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

(C) Priority

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

(4) Allocation of grant amounts

(A) Notice

Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused² to be published in the Federal Register a notice that such amounts shall be so available.

(B) Grant amount

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

(C) Minimum State allocations

If the formula amount determined under paragraph (3) for a fiscal year would allocate less than \$3,000,000 to any of the 50 States of the United States or the District of Columbia, the allocation for such State of the United States or the District of Columbia shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations made to all other of the States (as such term is defined in section 4502 of this title).

(5) Allocation plans required

(A) In general

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

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

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

(iii) comply with paragraph (6); and

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

(B) Establishment

In establishing an allocation plan under this paragraph, a State or State designated entity shall—

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

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

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

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

(C) Contents

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

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

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

(6) Selection of activities funded using Housing Trust Fund grant amounts

Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

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

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

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

(7) Eligible activities

Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

(A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 4565(a)(2)(B) of this title and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families or families with incomes at or below the poverty line (as such term is defined in section 9902 of title 42, including any revision required by such section) applicable to a family of the size involved, and not more than 25 percent for the benefit only of very low-income families; and

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

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

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

(II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act [42 U.S.C. 12721 et seq.] shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

(ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(1)];

(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(3)] and applicable to the participating jurisdiction that is the State in which such housing is located; and

(iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.³

(8) Tenant protections and public participation

All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subchapter (including housing provided with such grant amounts) shall comply with and be operated in compliance with—

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

(B) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

(C) fair housing laws and laws regarding accessibility in federally assisted housing, including section 794 of title 29.

(9) Eligible recipients

Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

(A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—

(i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

(ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

(iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period

that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts.

(10) Limitations on use

(A) Required amount for homeownership activities

Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

(B) Deadline for commitment or use

Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

(C) Use of returns

The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

(D) Prohibited uses

The Secretary shall, by regulation—

(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for

- (I) political activities;
- (II) advocacy;
- (III) lobbying, whether directly or through other parties;
- (IV) counseling services;
- (V) travel expenses; and
- (VI) preparing or providing advice on tax returns;

and for the purposes of this subparagraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26;

(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

- (I) the State or State designated entity; or
- (II) any other recipient of such grant amounts; and

(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

(E) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 4565 of this title, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(d) Reduction for failure to obtain return of misused funds

If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

(1) except as provided in paragraph (2)—

(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

(e) Accountability of recipients and grantees

(1) Recipients

(A) Tracking of funds

The Secretary shall—

(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

(B) Misuse of funds

(i) Reimbursement requirement

If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

(ii) Determination

A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

(II) the Secretary does not subsequently reverse the determination.

(2) Grantees

(A) Report

(i) In general

The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this section to submit a report, for such year, to the Secretary that—

(I) describes the activities funded under this section during such year with such grant amounts; and

(II) the ⁴ manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

(ii) Public availability

The Secretary shall make such reports pursuant to this subparagraph publicly available.

(B) Misuse of funds

If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the State or State designated entity.

(f) Definitions

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

(1) Extremely low-income renter household

The term "extremely low-income renter household" means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(2) Recipient

The term "recipient" means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

(3) Shortage of standard rental units both affordable and available to extremely low-income renter households

(A) In general

The term "shortage of standard rental units both affordable and available to extremely low-income renter households" means for any State or other geographical area the gap between—

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

(B) Rule of construction

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

(4) Shortage of standard rental units both affordable and available to very low-income renter households

(A) In general

The term "shortage of standard rental units both affordable and available to very low-income renter households" means for any State or other geographical area the gap between—

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

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of very low-income households as described in subparagraph (A)(ii), there is no shortage.

(5) Very low-income family

The term "very low-income family" has the meaning given such term in section 4502 of this title, 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 9902(2) of title 42, including any revision required by such section) applicable to a family of the size involved.

(6) Very low-income renter households

The term "very low-income renter households" means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(g) Regulations

(1) In general

The Secretary shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) a requirement that the Secretary ensure that the use of grant amounts under this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a State or State designated entity's activities to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee or recipient to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants;

(D) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity's priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

- (i) geographic diversity;
- (ii) ability to obligate amounts and undertake activities so funded in a timely manner;
- (iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;
- (iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;
- (v) the extent to which the application makes use of other funding sources; and
- (vi) the merits of an applicant's proposed eligible activity;

(E) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

(F) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

(h) Affordable housing trust fund

If, after July 30, 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this chapter for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

(i) Funding accountability and transparency

Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence.

(Pub. L. 102–550, title XIII, §1338, as added Pub. L. 110–289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2712.)

REFERENCES IN TEXT

Section 4103 of title 25, referred to in subsec. (c)(2), was in the original "section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)", and was translated as meaning section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, to reflect the probable intent of Congress.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (c)(7)(B)(i)(II), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§12721 et seq.) of chapter 130 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 132 of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (c)(7)(B)(iv), probably means section 1132 of Pub. L. 110–289, which is set out as a note under section 1701x of this title.

This chapter, referred to in subsec. (h), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (i), is Pub. L. 109–282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1338 of Pub. L. 102–550, title XIII, Oct. 28, 1992, 106 Stat. 3964, was set out as a note under section 4562 of this title, prior to repeal by Pub. L. 110–289, div. A, title I, §1122(a)(2), July 30, 2008, 122 Stat. 2689.

¹ So in original. Probably should be "this clause."

² So in original. Probably should be "cause".

³ See References in Text note below.

⁴ So in original. A word appears to be missing before "the".

§4569. Capital Magnet Fund

(a) Establishment

There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.

(b) Deposits to Trust Fund

The Capital Magnet Fund shall consist of—

- (1) any amounts transferred to the Fund pursuant to section 4567 of this title; and
- (2) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.

(c) Expenditures from Trust Fund

Amounts in the Capital Magnet Fund shall be available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for and increase investment in—

- (1) the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families; and
- (2) economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

(d) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided using amounts in the Capital Magnet Fund shall be considered Federal financial assistance.

(e) Eligible grantees

A grant under this section may be made, pursuant to such requirements as the Secretary of the Treasury shall establish for experience and success in attracting private financing and carrying out the types of activities proposed under the application of the grantee, only to—

- (1) a Treasury certified community development financial institution; or
- (2) a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing.

(f) Eligible uses

Grant amounts awarded from the Capital Magnet Fund pursuant to this section may be used for the purposes described in paragraphs (1) and (2) of subsection (c), including for the following uses:

- (1) To provide loan loss reserves.
- (2) To capitalize a revolving loan fund.
- (3) To capitalize an affordable housing fund.
- (4) To capitalize a fund to support activities described in subsection (c)(2).
- (5) For risk-sharing loans.

(g) Applications

(1) In general

The Secretary of the Treasury shall provide, in a competitive application process established by regulation, for eligible grantees under subsection (e) to submit applications for Capital Magnet Fund grants to the Secretary at such time and in such manner as the Secretary shall determine.

(2) Content of application

The application required under paragraph (1) shall include a detailed description of—

- (A) the types of affordable housing, economic, and community revitalization projects that support or sustain residents of an affordable housing project funded by a grant under this section for which such grant amounts would be used, including the proposed use of eligible grants as authorized under this section;
- (B) the types, sources, and amounts of other funding for such projects; and
- (C) the expected time frame of any grant used for such project.

(h) Grant limitation

(1) In general

Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund.

(2) Geographic diversity

(A) Goal

The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and underserved rural areas in every State.

(B) Diversity defined

For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, which may include—

- (i) the percentage of low-income families or the extent of poverty;
- (ii) the rate of unemployment or underemployment;
- (iii) extent of blight and disinvestment;
- (iv) projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or
- (v) any other criteria designated by the Secretary of the Treasury.

(3) Leverage of funds

Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.

(4) Commitment for use deadline

Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation. The Secretary of the Treasury shall recapture into the Capital Magnet Fund any amounts not so used or committed for use and allocate such amounts in the first year after such recapture.

(5) Prohibited uses

The Secretary shall, by regulation, set forth prohibited uses of grant amounts awarded under this section, which shall include use for—

- (A) political activities;
- (B) advocacy;
- (C) lobbying, whether directly or through other parties;
- (D) counseling services;
- (E) travel expenses; and
- (F) preparing or providing advice on tax returns;

and for the purposes of this paragraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26.

(6) Additional lobbying restrictions

No assistance or amounts made available under this section may be expended by an eligible grantee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement as such terms are defined in section 1352 of title 31.

(7) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining the compliance of the enterprises with the housing goals under this section and the duty to serve underserved markets under section 4565 of this title, the Director of the Federal Housing Finance Agency may not consider any Capital Magnet Fund amounts used under this section for eligible activities under subsection (f). The Director of the Federal Housing Finance Agency shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from Capital Magnet Fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(8) Accountability of recipients and grantees

(A) Tracking of funds

The Secretary of the Treasury shall—

- (i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from the Capital Magnet Fund uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and
- (ii) establish minimum requirements for agreements, between the grantee and the Capital Magnet Fund, regarding assistance from the Capital Magnet Fund, which shall include—
 - (I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and
 - (II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

(B) Misuse of funds

If the Secretary of the Treasury determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

- (i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Capital Magnet Fund grant amounts which were not used in accordance with this section;
- (ii) require the grantee to repay the Secretary any amount of the Capital Magnet Fund grant amounts which were not used in accordance with this section;
- (iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or
- (iv) terminate any assistance under this section to the grantee.

(i) Periodic reports

(1) In general

The Secretary of the Treasury shall submit a report, on a periodic basis, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the activities to be funded under this section.

(2) Reports available to public

The Secretary of the Treasury shall make the reports required under paragraph (1) publicly available.

(j) Regulations

(1) In general

The Secretary of the Treasury shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) authority for the Secretary to audit, provide for an audit, or otherwise verify an enterprise's activities, to ensure compliance with this section;

(B) a requirement that the Secretary ensure that the allocation of each enterprise is audited not less than annually to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants; and

(D) requirements for a process for application to, and selection by, the Secretary for activities to be funded with amounts from the Capital Magnet Fund, which shall provide that—

(i) funds be fairly distributed to urban, suburban, and rural areas; and

(ii) selection shall be based upon specific criteria, including a prioritization of funding based upon—

(I) the ability to use such funds to generate additional investments;

(II) affordable housing need (taking into account the distinct needs of different regions of the country);

and

(III) ability to obligate amounts and undertake activities so funded in a timely manner.

(Pub. L. 102–550, title XIII, §1339, as added Pub. L. 110–289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2723.)

SUBPART 3—ENFORCEMENT

§4581. Cease and desist proceedings

(a) Grounds for issuance

The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines that—

(1) the enterprise has failed to submit a report under section 4547 ¹ of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(2) the enterprise has failed to submit the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title;

(3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to submit a housing plan that complies with section 4566(c) of this title within the applicable period; or

(4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to comply with a housing plan under section 4566(c) of this title.

(b) Procedure

(1) Notice of charges

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

(2) Issuance of order

If the Director finds on the record made at a hearing described in paragraph (1) that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 4582(a)(4) of this title), the Director may issue and serve upon the enterprise an order requiring the enterprise to—

(A) submit a report under section 4547 ¹ of this title;

(B) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan in compliance with section 4566(c) of this title;

(C) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with the housing plan in compliance with section 4566(c) of this title; or

(D) provide the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title.

(c) Effective date

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

(Pub. L. 102–550, title XIII, §1341, as added Pub. L. 110–289, div. A, title I, §1130(c)(2), July 30, 2008, 122 Stat. 2708.)

REFERENCES IN TEXT

Section 4547 of this title, referred to in subsecs. (a)(1) and (b)(2)(A), was repealed by Pub. L. 110–289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

PRIOR PROVISIONS

A prior section 4581, Pub. L. 102–550, title XIII, §1341, Oct. 28, 1992, 106 Stat. 3964, related to cease-and-desist proceedings, prior to repeal by Pub. L. 110–289, div. A, title I, §1130(c)(1), July 30, 2008, 122 Stat. 2708.

¹ See References in Text note below.

§4582. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4581 or 4585 of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4581(b)(1) of this title or determination to impose a penalty under section 4585(c)(1) of this title, unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

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

(b) Issuance of order

(1) In general

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

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4583 of this title. Unless such a petition for review is timely filed as provided in section 4583 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, §1342, Oct. 28, 1992, 106 Stat. 3965; Pub. L. 110–289, div. A, title I, §1130(e)(3)(A), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–289 substituted "Director" for "Secretary" wherever appearing.

§4583. Judicial review

(a) Commencement

An enterprise that is a party to a proceeding under section 4581 or 4585 of this title may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4582(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subpart.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102–550, title XIII, §1343, Oct. 28, 1992, 106 Stat. 3966; Pub. L. 110–289, div. A, title I, §1130(e)(3)(B), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Pub. L. 110–289 substituted "Director" for "Secretary" wherever appearing.

§4584. Enforcement and jurisdiction

(a) Enforcement

The Director may bring a civil action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 4581 or 4585 of this title. Such court shall have jurisdiction and power to order and require compliance herewith.

(b) Limitation on jurisdiction

Except as otherwise provided in this subpart, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4581 or 4585 of this title, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, §1344, Oct. 28, 1992, 106 Stat. 3966; Pub. L. 110–289, div. A, title I, §1130(e)(1), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, which directed substitution of "The Director may bring a civil action" for "The Secretary may request the Attorney General of the United States to bring a civil action", was executed by making the substitution for "The Secretary may request the Attorney General of the United States to bring an action" to reflect the probable intent of Congress.

§4585. Civil money penalties

(a) Authority

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

- (1) submit a report under section 4547 ¹ of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;
- (2) submit the information required under subsection (m) or (n) of section 1723a of this title or subsection (e) or (f) of section 1456 of this title;
- (3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 4566(c) of this title within the required period; or
- (4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with a housing plan for the enterprise under section 4566(c) of this title.

(b) Amount of penalty

The amount of a penalty under this section, as determined by the Director, may not exceed—

- (1) for any failure described in paragraph (1), (5), or (6) of subsection (a), \$100,000 for each day that the failure occurs; and
- (2) for any failure described in paragraph (2), (3), or (4) of subsection (a), \$50,000 for each day that the failure occurs.

(c) Procedures

(1) Establishment

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

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

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 4582 of this title; and

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

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to factors including—

(A) the gravity of the offense;

(B) any history of prior offenses;

(C) ability to pay the penalty;

(D) injury to the public;

(E) benefits received;

(F) deterrence of future violations;

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

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

(d) Action to collect penalty

If an enterprise fails to comply with an order by the Director imposing a civil money penalty under this section, after the order is no longer subject to review, as provided in sections 4582 and 4583 of this title, the Director may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Deposit of penalties

The Director shall use any civil money penalties collected under this section to help fund the Housing Trust Fund established under section 4568 of this title.

(Pub. L. 102–550, title XIII, §1345, as added Pub. L. 110–289, div. A, title I, §1130(d)(2), July 30, 2008, 122 Stat. 2709.)

REFERENCES IN TEXT

Section 4547 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 110–289, div. A, title I, §1104(b), July 30, 2008, 122 Stat. 2667.

PRIOR PROVISIONS

A prior section 4585, Pub. L. 102–550, title XIII, §1345, Oct. 28, 1992, 106 Stat. 3966, related to civil money penalties, prior to repeal by Pub. L. 110–289, div. A, title I, §1130(d)(1), July 30, 2008, 122 Stat. 2709.

¹ See References in Text note below.

§4586. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

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

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subpart and that has become final in accordance with sections 4582 and 4583 of this title; and

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

(b) Hearings

All hearings with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Secretary's ¹ discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial soundness of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing under this subpart if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

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

(f) Disclosures to Congress

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, §1346, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, §1130(e)(3)(C), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsecs. (a) to (e). Pub. L. 110–289 substituted "Director" for "Secretary" wherever appearing.

¹ *So in original. Probably should be "Director's".*

§4587. Notice of service

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

(Pub. L. 102–550, title XIII, §1347, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, §1130(e)(3)(D), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Pub. L. 110–289 substituted "Director" for "Secretary" in two places in text.

§4588. Subpoena authority

(a) In general

In the course of or in connection with any administrative proceeding under this subpart, the Director shall have the authority—

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

(b) Witnesses and documents

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

(c) Enforcement

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

(d) Fees and expenses

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

(Pub. L. 102–550, title XIII, §1348, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, §1130(e)(2), (3) (E), July 30, 2008, 122 Stat. 2711.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1130(e)(3)(E), substituted "Director" for "Secretary" in introductory provisions and in par. (4).

Subsec. (c). Pub. L. 110–289, §1130(e)(3)(E), substituted "Director" for "Secretary".

Pub. L. 110–289, §1130(e)(2), inserted "may bring an action or" before "may request".

§4589. Repealed. Pub. L. 110–289, div. A, title I, §1122(a)(2), July 30, 2008, 122 Stat. 2689

Section, Pub. L. 102–550, title XIII, §1349, Oct. 28, 1992, 106 Stat. 3969, related to issuance by Secretary of final regulations to implement this part.

PART C—MISCELLANEOUS PROVISIONS

§4601. Review of underwriting guidelines

(a) Study

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

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

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

(3) the implications of implementing underwriting standards that—

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

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

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

(b) Report

Not later than the expiration of the 1-year period beginning on October 28, 1992, each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report regarding the study conducted by the enterprise under subsection (a). Each report shall include any recommendations of the enterprise for better meeting the housing needs of low- and moderate-income families.

(Pub. L. 102–550, title XIII, §1354, Oct. 28, 1992, 106 Stat. 3970.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§4602. Studies of effects of privatization of FNMA and FHLMC

(a) In general

The Comptroller General of the United States, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each conduct and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than the expiration of the 2-year period beginning on October 28, 1992, a study regarding the desirability and feasibility of repealing the Federal charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, eliminating any Federal sponsorship of the enterprises, and allowing the enterprises to continue to operate as fully private entities.

(b) Requirements

Each study shall particularly examine the effects of such privatization on—

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

(2) the cost of capital to the enterprises;

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

(c) Information

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

(d) Views of FNMA and FHLMC

(1) Consideration in studies

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

(2) Direct report

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

(Pub. L. 102–550, title XIII, §1355, Oct. 28, 1992, 106 Stat. 3970.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§4603. Transition

Before the expiration of the period ending 18 months after the appointment of the Director under section 4512 of this title, any rules and regulations promulgated before October 28, 1992, by the Secretary pursuant to the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] shall remain in effect unless modified, terminated, superseded, or revoked by operation of law or in accordance with law. Such rules and regulations shall terminate, effective upon the expiration of such period.

(Pub. L. 102–550, title XIII, §1356, Oct. 28, 1992, 106 Stat. 3971.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in text, is title III of act [June 27, 1934, ch. 847](#), 48 Stat. 1252, as amended, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in text, is title III of Pub. L. [91–351, July 24, 1970](#), 84 Stat. 451, as amended, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

SUBCHAPTER II—REQUIRED CAPITAL LEVELS FOR REGULATED ENTITIES, SPECIAL ENFORCEMENT POWERS, AND REVIEWS OF ASSETS AND LIABILITIES

§4611. 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 1426 of this title for the Federal Home Loan Banks.

(b) No limitation

Nothing in this section shall limit the authority of the Director to require other reports or undertakings, or take other action, in furtherance of the responsibilities of the Director under this Act.

(Pub. L. 102–550, title XIII, §1361, Oct. 28, 1992, 106 Stat. 3972; Pub. L. 110–289, div. A, title I, §1110(a), July 30, 2008, 122 Stat. 2675.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2008—Pub. L. 110–289 amended section generally. Prior to amendment, section related to risk-based capital levels for enterprises.

§4612. Minimum capital levels

(a) Enterprises

For purposes of this subchapter, the minimum capital level for each enterprise shall be the sum of—

- (1) 2.50 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;
- (2) 0.45 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and
- (3) 0.45 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) Federal Home Loan Banks

For purposes of this subchapter, 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 1426(a)(2) of this title.

(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 4526 of this title, establish a minimum capital level for the enterprises, for the Federal Home Loan Banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal Home Loan Banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

(d) Authority to require temporary increase

(1) In general

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

(2) Rescission

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

(3) Regulations required

The Director shall issue regulations establishing—

- (A) standards for the imposition of a temporary increase in minimum capital under paragraph (1);
- (B) the standards and procedures that the Director will use to make the determination referred to in paragraph (2); and

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

(e) Authority to establish additional capital and reserve requirements for particular purposes

The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any product or activity of a regulated entity, as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

(f) Periodic review

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

(Pub. L. 102–550, title XIII, §1362, Oct. 28, 1992, 106 Stat. 3975; Pub. L. 110–289, div. A, title I, §1111, July 30, 2008, 122 Stat. 2676.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1111(1), substituted "Enterprises" for "In general" in heading. Subsecs. (b) to (f). Pub. L. 110–289, §1111(2), added subsecs. (b) to (f) and struck out former subsec. (b) which related to minimum capital level during transition period.

§4613. Critical capital levels

(a) Enterprises

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

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

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

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

(b) Federal Home Loan Banks

(1) In general

For purposes of this subchapter, 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.

(Pub. L. 102–550, title XIII, §1363, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110–289, div. A, title I, §1141(a), July 30, 2008, 122 Stat. 2730.)

AMENDMENTS

2008—Pub. L. 110–289 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

REGULATIONS

Pub. L. 110–289, div. A, title I, §1141(b), July 30, 2008, 122 Stat. 2730, provided that: "Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4613(b)] (as added by this section) establishing the critical capital level under such section."

§4614. Capital classifications

(a) Enterprises

For purposes of this subchapter, the Director shall classify the enterprises according to the following capital classifications:

(1) Adequately capitalized

An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise under section 4611 of this title; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 4612 of this title.

(2) Undercapitalized

An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

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

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

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

(3) Significantly undercapitalized

An enterprise shall be classified as significantly undercapitalized if—

(A) the enterprise—

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

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

(iii) maintains an amount of core capital that is equal to or exceeds the critical capital level established for the enterprise under section 4613 of this title; or

(B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 4615(b) of this title.

(4) Critically undercapitalized

An enterprise shall be classified as critically undercapitalized if—

(A) the enterprise—

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

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

(B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 4616(b)(5) ¹ of this title.

(b) Federal Home Loan Banks

(1) Establishment and criteria

For purposes of this subchapter, 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 the value of collateral pledged as security has decreased significantly or that the value of the property subject to mortgages held by the regulated entity (or securitized in the case of an enterprise) has decreased significantly;

(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

(C) pursuant to section 4631(b) of this title, 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 chapter, 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.

(d) Quarterly determination

The Director shall determine the capital classification of the regulated entities for purposes of this subchapter on not less than a quarterly basis (and as appropriate under subsection (c)).

(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.

(f) Implementation

Notwithstanding any other provision of this section, during the period beginning on October 28, 1992, and ending upon the effective date of section 4615 of this title (as provided in section 4615(c) ¹ of this title), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 4612 of this title.

(Pub. L. 102–550, title XIII, §1364, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110–289, div. A, title I, §§1142(a), 1161(a)(3), July 30, 2008, 122 Stat. 2730, 2779.)

REFERENCES IN TEXT

Section 4616(b)(5) of this title, referred to in subsec. (a)(4)(B), was redesignated section 4616(b)(6) of this title by Pub. L. 110–289, div. A, title I, §1144(5)(D), July 30, 2008, 122 Stat. 2733.

This chapter, referred to in subsec. (c)(2), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

Section 4615(c) of this title, referred to in subsec. (f), was repealed and a new section 4615(c) was added by Pub. L. 110–289, div. A, title I, §1143(6), July 30, 2008, 122 Stat. 2734. The new section 4615(c) does not relate to effective date.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1142(a)(1), substituted "Enterprises" for "In general" in heading.

Subsec. (b). Pub. L. 110–289, §1142(a)(4), added subsec. (b) and struck out former subsec. (b) which related to discretionary classification.

Subsec. (c). Pub. L. 110–289, §1161(a)(3), which directed amendment of subsec. (c) by striking out the last sentence, was not executed as the probable intent of Congress. The amendment was probably intended to strike out the last sentence of former subsec. (c), now subsec. (d), as it existed prior to being struck out by Pub. L. 110–289, §1142(a)(2)(C). See below.

Pub. L. 110–289, §1142(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 110–289, §1142(a)(2)(C), struck out last sentence which read as follows: "The first such determination shall be made during the 3-month period beginning on the appointment of the Director." Pub. L. 110–289, §1142(a)(2)(A), (B), substituted "regulated entities" for "enterprises" and "subsection (c)" for "subsection (b)".

Subsec. (d). Pub. L. 110–289, §1142(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 110–289, §1142(a)(5), added subsec. (e).

Subsec. (f). Pub. L. 110–289, §1142(a)(3), redesignated subsec. (d) as (f).

REGULATIONS

Pub. L. 110–289, div. A, title I, §1142(b), July 30, 2008, 122 Stat. 2732, provided that: "Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4614(b)] (as added by this section), relating to capital classifications for the Federal Home Loan Banks."

¹ See References in Text note below.

§4615. Supervisory actions applicable to undercapitalized regulated entities

(a) Mandatory actions

(1) Required monitoring

The Director shall—

- (A) closely monitor the condition of any undercapitalized regulated entity;
- (B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and
- (C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) Capital restoration plan

A regulated entity that is classified as undercapitalized shall, within the time period provided in section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(3) Restriction on capital distributions

A regulated entity that is classified as undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as significantly undercapitalized or critically undercapitalized.

(4) Restriction of asset growth

An undercapitalized regulated entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

- (A) the Director has accepted the capital restoration plan of the regulated entity;
- (B) any increase in total assets is consistent with the capital restoration plan; and
- (C) the ratio of tangible equity to assets of the regulated entity increases during the calendar quarter at a rate sufficient to enable the regulated entity to become adequately capitalized within a reasonable time.

(5) Prior approval of acquisitions and new activities

An undercapitalized regulated entity shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

- (A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or
- (B) the Director determines that the proposed action will further the purpose of this subchapter.

(b) Reclassification from undercapitalized to significantly undercapitalized

The Director shall reclassify as significantly undercapitalized a regulated entity that is classified as undercapitalized (and the regulated entity shall be subject to the provisions of section 4616 of this title) if—

- (1) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the regulated entity; or
- (2) the Director determines that the regulated entity has failed to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director in any material respect.

(c) Other discretionary safeguards

The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 4616 of this title with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subchapter.

(Pub. L. 102–550, title XIII, §1365, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110–289, div. A, title I, §1143, July 30, 2008, 122 Stat. 2732.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1143(4)(B), added par. (1). Former par. (1) redesignated (2). Pub. L. 110–289, §1143(2), substituted "A regulated entity" for "An enterprise".

Subsec. (a)(2). Pub. L. 110–289, §1143(4)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 110–289, §1143(1), (2), substituted "the regulated entity" for "the enterprise" and "A regulated entity" for "An enterprise".

Subsec. (a)(3). Pub. L. 110–289, §1143(4)(A), redesignated par. (2) as (3).

Subsec. (a)(4), (5). Pub. L. 110–289, §1143(4)(C), added pars. (4) and (5).

Subsec. (b). Pub. L. 110–289, §1143(5)(A), (B), substituted "Reclassification" for "Discretionary reclassification" in heading and "shall" for "may" in introductory provisions.

Pub. L. 110–289, §1143(1), (3), substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise" in introductory provisions.

Subsec. (b)(1). Pub. L. 110–289, §1143(1), substituted "the regulated entity" for "the enterprise" in two places.

Subsec. (b)(2). Pub. L. 110–289, §1143(5)(C), struck out "make, in good faith, reasonable efforts necessary to" before "comply with" and inserted "in any material respect" before period at end.

Pub. L. 110–289, §1143(1), substituted "the regulated entity" for "the enterprise".

Subsec. (c). Pub. L. 110–289, §1143(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 4611(e) of this title establishing the risk-based capital test."

§4616. Supervisory actions applicable to significantly undercapitalized regulated entities

(a) Mandatory supervisory actions

(1) Capital restoration plan

A regulated entity that is classified as significantly undercapitalized shall, within the time period under section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(2) Restrictions on capital distributions

(A) Prior approval

A regulated entity that is classified as significantly undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as critically undercapitalized. A regulated entity that is classified as significantly undercapitalized may not make any other capital distribution unless the Director approves the distribution.

(B) Standard for approval

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

(b) Specific actions

In addition to any other actions taken by the Director (including actions under subsection (a)), the Director shall carry out this section by taking, at any time, 1 or more of the following actions with respect to a regulated entity that is classified as significantly undercapitalized:

(1) Limitation on increase in obligations

Limit any increase in, or order the reduction of, any obligations of the regulated entity, including off-balance sheet obligations.

(2) Limitation on growth

Limit or prohibit the growth of the assets of the regulated entity or require contraction of the assets of the regulated entity.

(3) Acquisition of new capital

Require the regulated entity to acquire new capital in a form and amount determined by the Director.

(4) Restriction of activities

Require the regulated entity to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the regulated entity.

(5) Improvement of management

Take 1 or more of the following actions:

(A) New election of board

Order a new election for the board of directors of the regulated entity.

(B) Dismissal of directors or executive officers

Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the regulated entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 4636a of this title.

(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).

(6) Reclassification from significantly to critically undercapitalized

The Director may reclassify as critically undercapitalized a regulated entity that is classified as significantly undercapitalized (and the regulated entity shall be subject to the provisions of section 4617 of this title) if—

(A) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the regulated entity; or

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

(7) Other action

Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the other actions specified in this subsection.

(c) Restriction on compensation of executive officers

A regulated entity that is classified as significantly undercapitalized in accordance with section 4614 of this title may not, without prior written approval by the Director—

(1) pay any bonus to any executive officer; or

(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became significantly undercapitalized.

(Pub. L. 102–550, title XIII, §1366, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110–289, div. A, title I, §1144, July 30, 2008, 122 Stat. 2733.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1144(3), substituted "A regulated entity" for "An enterprise".

Subsec. (a)(2)(A). Pub. L. 110–289, §1144(1)–(3), substituted "A regulated entity" for "An enterprise" in two places, "the regulated entity" for "the enterprise", and, in second sentence, "undercapitalized" for "undercapitalized enterprise".

Subsec. (a)(2)(B). Pub. L. 110–289, §1144(2), (4), substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise" wherever appearing.

Subsec. (b). Pub. L. 110–289, §1144(4), (5)(A), (B), substituted "Specific" for "Discretionary supervisory" in heading and "shall carry out this section by taking, at any time, 1 or more" for "may, at any time, take any" and "a regulated entity" for "an enterprise" in introductory provisions.

Subsec. (b)(1) to (4). Pub. L. 110–289, §1144(2), substituted "the regulated entity" for "the enterprise" wherever appearing.

Subsec. (b)(5). Pub. L. 110–289, §1144(5)(E), added par. (5). Former par. (5) redesignated (6).

Pub. L. 110–289, §1144(2), (4), substituted "a regulated entity" for "an enterprise" in introductory provisions and "the regulated entity" for "the enterprise" wherever appearing.

Subsec. (b)(6). Pub. L. 110–289, §1144(5)(C), (D), redesignated par. (5) as (6) and struck out former par. (6) which permitted the Director to appoint a conservator.

Subsec. (b)(7). Pub. L. 110–289, §1144(5)(F), added par. (7).

Subsec. (c). Pub. L. 110–289, §1144(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 4614 of this title."

§4617. Authority over critically undercapitalized regulated entities

(a) Appointment of the Agency as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal or State law, the Director may appoint the Agency as conservator or receiver for a regulated entity in the manner provided under paragraph (2) or (4). All references to the conservator or receiver under this section are references to the Agency acting as conservator or receiver.

(2) Discretionary appointment

The Agency may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

(3) Grounds for discretionary appointment of conservator or receiver

The grounds for appointing conservator or receiver for any regulated entity under paragraph (2) are as follows:

(A) Assets insufficient for obligations

The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

(B) Substantial dissipation

Substantial dissipation of assets or earnings due to—

- (i) any violation of any provision of Federal or State law; or
- (ii) any unsafe or unsound practice.

(C) Unsafe or unsound condition

An unsafe or unsound condition to transact business.

(D) Cease and desist orders

Any willful violation of a cease and desist order that has become final.

(E) Concealment

Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

(F) Inability to meet obligations

The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

(G) Losses

The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 4614(a)(1) of this title).

(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 4614(a)(3) of this title), and—

- (i) has no reasonable prospect of becoming adequately capitalized;
- (ii) fails to become adequately capitalized, as required by—
 - (I) section 4615(a)(1) of this title with respect to a regulated entity; or
 - (II) section 4616(a)(1) of this title 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 4622 of this title; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 4622 of this title.

(K) Critical undercapitalization

The regulated entity is critically undercapitalized, as defined in section 4614(a)(4) of this title.

(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 or section 5322 or 5324 of title 31.

(4) Mandatory receivership

(A) In general

The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

- (i) the assets of the regulated entity are, and during the preceding 60 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or
- (ii) the regulated entity is not, and during the preceding 60 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

(B) Periodic determination required for critically undercapitalized regulated entity

If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

- (i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and
- (ii) at least once during each succeeding 30-calendar day period.

(C) Determination not required if receivership already in place

Subparagraph (B) does not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

(D) Receivership terminates conservatorship

The appointment of the Agency as receiver of a regulated entity under this section shall immediately terminate any conservatorship established for the regulated entity under this chapter.

(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 home office of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

(B) Review

Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

(6) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

(7) Agency not subject to any other Federal agency

When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

(b) Powers and duties of the Agency as conservator or receiver

(1) Rulemaking authority of the agency

The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers

(A) Successor to regulated entity

The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

- (i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and
- (ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

(B) Operate the regulated entity

The Agency may, as conservator or receiver—

- (i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;
- (ii) collect all obligations and money due the regulated entity;
- (iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver;
- (iv) preserve and conserve the assets and property of the regulated entity; and
- (v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

(C) Functions of officers, directors, and shareholders of a regulated entity

The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

(D) Powers as conservator

The Agency may, as conservator, take such action as may be—

- (i) necessary to put the regulated entity in a sound and solvent condition; and
- (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

(E) Additional powers as receiver

In any case in which the Agency is acting as receiver, the Agency shall place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity in such manner as the Agency deems appropriate, including through the sale of assets, the transfer of assets to a limited-life regulated entity established under subsection (i), or the exercise of any other rights or privileges granted to the Agency under this paragraph.

(F) Organization of new enterprise

The Agency may, as receiver for an enterprise, organize a successor enterprise that will operate pursuant to subsection (i).

(G) Transfer or sale of assets and liabilities

The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale.

(H) Payment of valid obligations

The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver, in accordance with the prescriptions and limitations of this section.

(I) Subpoena authority

(i) In general

(I) Agency authority

The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 4588 of this title.

(II) Applicability of law

The provisions of section 4588 of this title shall apply with respect to the exercise of any power under this subparagraph, in the same manner as such provisions apply under that section.

(ii) Subpoena

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

(iii) Rule of construction

This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 4517 or 4639 of this title.

(J) Incidental powers

The Agency may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

(K) Other provisions

(i) Shareholders and creditors of failed regulated entity

Notwithstanding any other provision of law, the appointment of the Agency as receiver for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

(ii) Assets of regulated entity

Notwithstanding any other provision of law, for purposes of this section, the charter of a regulated entity shall not be considered an asset of the regulated entity.

(3) Authority of receiver to determine claims

(A) In general

The Agency may, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4).

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the date of publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

(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 requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the books of the regulated entity;
- (II) in the claim filed by the claimant; or
- (III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claim

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after filing period

Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

- (I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and
- (II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

- (I) any extension of credit from any Federal Reserve Bank, Federal Home Loan Bank, or the United States Treasury; or
- (II) any security interest in the assets of the regulated entity securing any such extension of credit.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the determination of the Agency under subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

(6) Provision for judicial determination of claims

(A) In general

The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

- (i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or
- (ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

(B) Statute of limitations

A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

(7) Review of claims

(A) Other review procedures

(i) In general

The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Agency may establish both binding and nonbinding processes under this subparagraph, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

(B) Consideration of incentives

The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

- (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 on which any claim is filed in accordance with the procedures established under subparagraph (A), the Director shall—

- (i) determine—
 - (I) whether to allow or disallow such claim; or
 - (II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the date of appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

- (i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or
- (ii) the date on which the Agency denies the claim.

(D) Statute of limitations

If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

(9) Payment of claims

(A) In general

The receiver may, in the discretion of the receiver, and to the extent that funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

- (i) allowed by the receiver;
- (ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or
- (iii) determined by the final judgment of any court of competent jurisdiction.

(B) Agreements against the interest of the Agency

No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing and executed by an authorized officer or representative of the regulated entity.

(C) Payment of dividends on claims

The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) Rulemaking authority of the Director

The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of the regulated entity, following satisfaction by the receiver of the principal amount of all creditor claims.

(10) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any receiver.

(B) Grant of stay by all courts required

Upon receipt of a request by the conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(11) Additional rights and duties

(A) Prior final adjudication

The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Agency as conservator or receiver—

- (i) shall have all of the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and
- (ii) shall not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the receiver, or upon the charter, of a regulated entity for which the Agency has been appointed receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets or charter of any regulated entity for which the Agency has been appointed receiver; or
- (ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which—

- (i) maximizes the net present value return from the sale or disposition of such assets;
- (ii) minimizes the amount of any loss realized in the resolution of cases; and

(iii) ensures adequate competition and fair and consistent treatment of offerors.

(12) Statute of limitations for actions brought by conservator or receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

- (i) in the case of any contract claim, the longer of—
 - (I) the 6-year period beginning on the date on which the claim accrues; or
 - (II) the period applicable under State law; and

- (ii) in the case of any tort claim, the longer of—
 - (I) the 3-year period beginning on the date on which the claim accrues; or
 - (II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

- (i) the date of the appointment of the Agency as conservator or receiver; or
- (ii) the date on which the cause of action accrues.

(13) Revival of expired state causes of action

(A) In general

In the case of any tort claim described under clause (ii) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitations applicable under State law.

(B) Claims described

A tort claim referred to under clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

(14) Accounting and recordkeeping requirements

(A) In general

The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(C) Availability of reports

Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

(D) Recordkeeping requirement

After the end of the 6-year period beginning on the date on which the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(15) Fraudulent transfers

(A) In general

The Agency, as conservator or receiver, may avoid a transfer of any interest of an entity-affiliated party, or any person determined by the conservator or receiver to be a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i) the initial transferee of such transfer or the entity-affiliated party or person for whose benefit such transfer was made; or
- (ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The conservator or receiver may not recover under subparagraph (B) from—

- (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(16) Attachment of assets and other injunctive relief

Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the conservator or receiver under the control of the court, and appointing a trustee to hold such assets.

(17) Standards of proof

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(18) Treatment of claims arising from breach of contracts executed by the conservator or receiver

(A) In general

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the conservator or receiver for the breach of an agreement executed or approved in writing by the conservator or receiver after the date of its appointment, shall be paid as an administrative expense of the conservator or receiver.

(B) No limitation of power

Nothing in this paragraph shall be construed to limit the power of the conservator or receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(19) General exceptions

(A) Limitations

The rights of the conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 4402 through 4407 of this title.¹

(B) Mortgages held in trust

(i) In general

Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed to expand or otherwise affect the authority of any regulated entity.

(ii) Holding of mortgages

Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

(iii) Liability of conservator or receiver

The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with the regulations of the Director.

(c) Priority of expenses and unsecured claims

(1) In general

Unsecured claims against a regulated entity, or the receiver therefor, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any other general or senior liability of the regulated entity (which is not a liability described under subparagraph (C) or (D)).²

(C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).

(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

(2) Creditors similarly situated

All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Director determines that such action is necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

(B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (e)(2).

(3) Definition

As used in this subsection, the term "administrative expenses of the receiver" includes—

(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a failed regulated entity or liquidating or otherwise resolving the affairs of a failed regulated entity; and

(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

(d) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

(A) to which such regulated entity is a party;

(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

(2) Timing of repudiation

The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be

—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term "actual direct compensatory damages" shall not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

(4) Leases under which the regulated entity is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

(5) Leases under which the regulated entity is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

- (i) treat the lease as terminated by such repudiation; or
- (ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of subparagraph (A)—

- (i) the lessee—
 - (I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and
 - (II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

- (i) treat the contract as terminated by such repudiation; or
- (ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of subparagraph (A)—

- (i) the purchaser—
 - (I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and
 - (II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

- (ii) the conservator or receiver shall—
 - (I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);
 - (II) deliver title to the purchaser in accordance with the provisions of the contract; and
 - (III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

(7) Service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or receiver shall be—

- (i) a claim to be paid in accordance with subsections (b) and (e); and
- (ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

- (i) the other party shall be paid under the terms of the contract for the services performed; and
- (ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by the conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10), and notwithstanding any other provision of this chapter (other than subsection (b)(9)(B) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

- (i) any right of that person to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;
- (ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts; or
- (iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

(D) Certain contracts and agreements defined

In this subsection the following definitions shall apply:

(i) Qualified financial contract

The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term "securities contract"—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(V) means any margin loan;

(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) means any combination of the agreements or transactions referred to in this clause;

(VIII) means any option to enter into any agreement or transaction referred to in this clause;

(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities

contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term "commodity contract" means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term "forward contract" means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date on which the contract is entered into, including a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term "repurchase agreement" (including a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in section 78c of title 15), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined for purposes of this clause as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the appropriate Federal banking authority), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) Swap agreement

The term "swap agreement" means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this section, any other Federal law, or the law of any State (other than paragraph (10) of this subsection and subsection (b)(9)(B)), no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to 1 or more such qualified financial contracts; or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay in any manner, the right or power of the Agency to transfer any qualified financial

contract in accordance with paragraphs (9) and (10), or to disaffirm or repudiate any such contract in accordance with subsection (d)(1).

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

(ii) Walkaway clause defined

For purposes of this subparagraph, the term "walkaway clause" means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the status of such party as a nondefaulting party.

(9) Transfer of qualified financial contracts

In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

(A) transfer to 1 person—

(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

(iv) all property securing, or any other credit enhancement for any contract described in clause (i), or any claim described in clause (ii) or (iii) under any such contract; or

(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

(10) Notification of transfer

(A) In general

The conservator or receiver shall notify any person that is a party to a contract or transfer by 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship, if—

(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity; and

(ii) such transfer includes any qualified financial contract.

(B) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or under section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

(I) until 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship

A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or under section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the conservator or receiver of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity, if the conservator or receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Business day defined

For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either —

- (A) disaffirm or repudiate all qualified financial contracts between—
 - (i) any person or any affiliate of such person; and
 - (ii) the regulated entity in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

(13) Authority to enforce contracts

(A) In general

Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of, or the exercise of rights or powers by, a conservator or receiver, the conservator or receiver may enforce any contract, other than a contract for liability insurance for a director or officer, or a contract or a regulated entity bond, entered into by the regulated entity.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract for an officer or director, or regulated entity bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

- (I) 45 days after the date of appointment of a conservator; or
- (II) 90 days after the date of appointment of a receiver.

(ii) Exceptions

This subparagraph shall not—

- (I) apply to a contract for liability insurance for an officer or director;
- (II) apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and
- (III) be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

(14) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section 78c(a)(47) of title 15), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(15) Exception for Federal Reserve and Federal Home Loan Banks

No provision of this subsection shall apply with respect to—

- (A) any extension of credit from any Federal Home Loan Bank or Federal Reserve Bank to any regulated entity; or
- (B) any security interest in the assets of the regulated entity securing any such extension of credit.

(e) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

(2) Maximum liability

The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall be not more than the amount that such claimant would have received if the Agency had liquidated the assets and liabilities of the regulated entity without exercising the authority of the Agency under subsection (i).

(f) Limitation on court action

Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

(g) Liability of directors and officers

(1) In general

A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action described in paragraph (2) brought by, on behalf of, or at the request or direction of the Agency, and prosecuted wholly or partially for the benefit of the Agency—

(A) acting as conservator or receiver of such regulated entity; or

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator.

(2) Actions addressed

Paragraph (1) applies in any civil action for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) No limitation

Nothing in this subsection shall impair or affect any right of the Agency under other applicable law.

(h) Damages

In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

(i) Limited-life regulated entities

(1) Organization

(A) Purpose

The Agency, as receiver appointed pursuant to subsection (a)—

(i) may, in the case of a Federal Home Loan Bank, organize a limited-life regulated entity with those powers and attributes of the Federal Home Loan Bank in default or in danger of default as the Director determines necessary, subject to the provisions of this subsection, and the Director shall grant a temporary charter to that limited-life regulated entity, and that limited-life regulated entity may operate subject to that charter; and

(ii) shall, in the case of an enterprise, organize a limited-life regulated entity with respect to that enterprise in accordance with this subsection.

(B) Authorities

Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the regulated entity to the limited-life regulated entity;

(ii) purchase such assets of the regulated entity that is in default, or in danger of default as the Agency may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

(2) Charter and establishment

(A) Transfer of charter

(i) Fannie Mae

If the Agency is appointed as receiver for the Federal National Mortgage Association, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

(I) succeed to the charter of the Federal National Mortgage Association, as set forth in the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.]; and

(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal National Mortgage Association is subject, except as otherwise provided in this subsection.

(ii) Freddie Mac

If the Agency is appointed as receiver for the Federal Home Loan Mortgage Corporation, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

(I) succeed to the charter of the Federal Home Loan Mortgage Corporation, as set forth in the Federal Home Loan Mortgage Corporation Charter Act ¹ [12 U.S.C. 1451 et seq.]; and

(II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal Home Loan Mortgage Corporation is subject, except as otherwise provided in

this subsection.

(B) Interests in and assets and obligations of regulated entity in default

Notwithstanding subparagraph (A) or any other provision of law—

(i) a limited-life regulated entity shall assume, acquire, or succeed to the assets or liabilities of a regulated entity only to the extent that such assets or liabilities are transferred by the Agency to the limited-life regulated entity in accordance with, and subject to the restrictions set forth in, paragraph (1)(B);

(ii) a limited-life regulated entity shall not assume, acquire, or succeed to any obligation that a regulated entity for which a receiver has been appointed may have to any shareholder of the regulated entity that arises as a result of the status of that person as a shareholder of the regulated entity; and

(iii) no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the Agency has been appointed receiver for the regulated entity and a limited-life regulated entity succeeds to the charter pursuant to subparagraph (A).

(C) Limited-life regulated entity treated as being in default for certain purposes

A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

(D) Management

Upon its establishment, a limited-life regulated entity shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

(E) Bylaws

The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

(3) Capital stock

(A) No agency requirement

The Agency is not required to pay capital stock into a limited-life regulated entity or to issue any capital stock on behalf of a limited-life regulated entity established under this subsection.

(B) Authority

If the Director determines that such action is advisable, the Agency may cause capital stock or other securities of a limited-life regulated entity established with respect to an enterprise to be issued and offered for sale, in such amounts and on such terms and conditions as the Director may determine, in the discretion of the Director.

(4) Investments

Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal reserve bank.

(5) Exempt tax status

Notwithstanding any other provision of Federal or State law, a limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(6) Winding up

(A) In general

Subject to subparagraphs (B) and (C), not later than 2 years after the date of its organization, the Agency shall wind up the affairs of a limited-life regulated entity.

(B) Extension

The Director may, in the discretion of the Director, extend the status of a limited-life regulated entity for 3 additional 1-year periods.

(C) Termination of status as limited-life regulated entity

(i) In general

Upon the sale by the Agency of 80 percent or more of the capital stock of a limited-life regulated entity, as defined in clause (iv), to 1 or more persons (other than the Agency)—

(I) the status of the limited-life regulated entity as such shall terminate; and

(II) the entity shall cease to be a limited-life regulated entity for purposes of this subsection.

(ii) Divestiture of remaining stock, if any

(I) In general

Not later than 1 year after the date on which the status of a limited-life regulated entity is terminated pursuant to clause (i), the Agency shall sell to 1 or more persons (other than the Agency) any remaining capital stock of the former limited-life regulated entity.

(II) Extension authorized

The Director may extend the period referred to in subclause (I) for not longer than an additional 2 years, if the Director determines that such action would be in the public interest.

(iii) Savings clause

Notwithstanding any provision of law, other than clause (ii), the Agency shall not be required to sell the capital stock of an enterprise or a limited-life regulated entity established with respect to an enterprise.

(iv) Applicability

This subparagraph applies only with respect to a limited-life regulated entity that is established with respect to an enterprise.

(7) Transfer of assets and liabilities

(A) In general

(i) Transfer of assets and liabilities

The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with and subject to the restrictions of paragraph (1).

(ii) Subsequent transfers

At any time after the establishment of a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of the regulated entity in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(iii) Effective without approval

The transfer of any assets or liabilities of a regulated entity in default or in danger of default to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(iv) Equitable treatment of similarly situated creditors

The Agency shall treat all creditors of a regulated entity in default or in danger of default that are similarly situated under subsection (c)(1) in a similar manner in exercising the authority of the Agency under this subsection to transfer any assets or liabilities of the regulated entity to the limited-life regulated entity established with respect to such regulated entity, except that the Agency may take actions (including making payments) that do not comply with this clause, if—

(I) the Director determines that such actions are necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

(II) all creditors that are similarly situated under subsection (c)(1) receive not less than the amount provided in subsection (e)(2).

(v) Limitation on transfer of liabilities

Notwithstanding any other provision of law, the aggregate amount of liabilities of a regulated entity that are transferred to, or assumed by, a limited-life regulated entity may not exceed the aggregate amount of assets of the regulated entity that are transferred to, or purchased by, the limited-life regulated entity.

(8) Regulations

The Agency may promulgate such regulations as the Agency determines to be necessary or appropriate to implement this subsection.

(9) Powers of limited-life regulated entities

(A) In general

Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

(i) the Agency may—

(I) remove the directors of a limited-life regulated entity;

(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity; and

(III) indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

(ii) the board of directors of a limited-life regulated entity—

(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

(B) Stay of judicial action

Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings

for a period of not longer than 45 days, at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

(10) No Federal status

(A) Agency status

A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5 or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

(11) Authority to obtain credit

(A) In general

A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

(B) Inability to obtain credit

If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity—

(i) with priority over any or all of the obligations of the limited-life regulated entity;

(ii) secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

(C) Limitations

(i) ³ In general

The Director, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a limited-life regulated entity that is secured by a senior or equal lien on property of the limited-life regulated entity that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an enterprise) only if—

(I) the limited-life regulated entity is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) Burden of proof

In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

(12) Effect on debts and liens

The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(j) Other Agency exemptions

(1) Applicability

The provisions of this subsection shall apply with respect to the Agency in any case in which the Agency is acting as a conservator or a receiver.

(2) Taxation

The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(3) Property protection

No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

(4) Penalties and fines

The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or

filing fees when due.

(k) Prohibition of charter revocation

In no case may the receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.

(Pub. L. 102–550, title XIII, §1367, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110–289, div. A, title I, §1145(a), July 30, 2008, 122 Stat. 2734.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4)(D) and (d)(8)(A), was in the original "this title", meaning title XIII of Pub. L. 102–550, [Oct. 28, 1992](#), 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(16), (17), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Sections 4402 through 4407 of this title, referred to in subsec. (b)(19)(A), was in the original "sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407)", and was translated as reading "sections 402 through 407A of the Federal Deposit Insurance Corporation Improvement Act of 1991", meaning sections 402 to 407A of Pub. L. 102–242, which are classified to sections 4402 to 4407 of this title, to reflect the probable intent of Congress and the renumbering of section 407 of the Act as section 407A by Pub. L. 109–8, [title IX, §906\(d\)\(1\), Apr. 20, 2005](#), 119 Stat. 169.

The Gramm-Leach-Bliley Act, referred to in subsec. (d)(14), is Pub. L. 106–102, [Nov. 12, 1999](#), 113 Stat. 1338. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (d)(14), is title IV of H.R. 5660, as enacted by Pub. L. 106–554, [§1\(a\)\(5\), Dec. 21, 2000](#), 114 Stat. 2763, [2763A-457](#), which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (d)(14), is act [Sept. 21, 1922, ch. 369](#), 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsec. (i)(2)(A)(i)(I), is title III of act [June 27, 1934, ch. 847](#), 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

This Act, referred to in subsec. (i)(2)(A)(i)(II), (ii)(II), is Pub. L. 102–550, [Oct. 28, 1992](#), 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Federal Home Loan Mortgage Corporation Charter Act, referred to in subsec. (i)(2)(A)(ii)(I), probably means the Federal Home Loan Mortgage Corporation Act, title III of Pub. L. 91–351, [July 24, 1970](#), 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289 amended section generally. Prior to amendment, section related to appointment of conservators for critically undercapitalized enterprises.

¹ *See References in Text note below.*

² *So in original. A second closing parenthesis probably should precede the period.*

³ *So in original. No cl. (ii) has been enacted.*

§4618. Notice of classification and enforcement action

(a) Notice

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

(b) Applicability

The requirements of subsection (a) shall apply to the following actions:

(1) Classification or reclassification of a regulated entity within a particular capital classification under section 4614 of this title.

(2) Any discretionary supervisory action pursuant to section 4615 of this title.

(3) Any discretionary supervisory action pursuant to section 4616 of this title except a decision to appoint a conservator under section 4616(b)(6)¹ of this title.

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

(c) Response period

(1) In general

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

(2) Extended period

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

(3) Shortened period

The Director may shorten the period under paragraph (1) if the Director determines that the condition of the regulated entity so requires or the regulated entity consents.

(4) Failure to respond

The failure of a regulated entity to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the regulated entity to comment on the proposed action of the Director.

(d) Consideration of information and determination

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

(e) Effective date of actions

An action referred to in subsection (b) shall take effect upon receipt by the regulated entity of notice of the determination of the Director under subsection (d), unless otherwise provided in such notice.

(Pub. L. 102–550, title XIII, §1368, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110–289, div. A, title I, §1145(b)(1), July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

Section 4616(b)(6) of this title, referred to in subsec. (b)(3), was repealed and a new par. (6) added by Pub. L. 110–289, div. A, title I, §1144(5)(C), (D), July 30, 2008, 122 Stat. 2733. The new par. (6) does not relate to appointment of a conservator.

AMENDMENTS

2008—Pub. L. 110–289 substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise" wherever appearing.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

¹ See References in Text note below.

Section 4619, Pub. L. 102–550, title XIII, §1369, Oct. 28, 1992, 106 Stat. 3981; Pub. L. 110–289, div. A, title I, §1161(a)(6), July 30, 2008, 122 Stat. 2779, related to appointment of conservators.

Section 4620, Pub. L. 102–550, title XIII, §1369A, Oct. 28, 1992, 106 Stat. 3983, related to powers of conservators.

Section 4621, Pub. L. 102–550, title XIII, §1369B, Oct. 28, 1992, 106 Stat. 3984, related to liability protection for conservators.

§4622. Capital restoration plans

(a) Contents

Each capital restoration plan submitted under this subchapter shall set forth a feasible plan for restoring the core capital of the regulated entity subject to the plan to an amount not less than the minimum capital level for the regulated entity and for restoring the total capital of the regulated entity to an amount not less than the risk-based capital level for the regulated entity. Each capital restoration plan shall—

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

(b) Deadlines for submission

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

(c) Approval

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

(d) Resubmission

If the Director disapproves the initial capital restoration plan submitted by the regulated entity, the regulated entity shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

(Pub. L. 102–550, title XIII, §1369C, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110–289, div. A, title I, §1145(b)(2), July 30, 2008, 122 Stat. 2767.)

AMENDMENTS

2008—Pub. L. 110–289 substituted "regulated entity" for "enterprise" wherever appearing.

§4623. Judicial review of Director action

(a) Jurisdiction

(1) Filing of petition

A regulated entity that is not classified as critically undercapitalized and is the subject of a classification under section 4614 of this title or a discretionary supervisory action taken under this subchapter by the Director (other than action to appoint a conservator under section 4616 or 4617 of this title or action under section 4619¹ of this title) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) Place for filing

A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) Scope of review

The Court may modify, terminate, or set aside an action taken by the Director and reviewed by the Court pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) Unavailability of stay

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

(d) Limitation on jurisdiction

Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subchapter (other than appointment of a conservator under section 4616 or 4617 of this title or action under section 4619¹ of this title) or to review, modify, suspend, terminate, or set aside such classification or action.

(Pub. L. 102–550, title XIII, §1369D, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110–289, div. A, title I, §1145(b)(3), July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsecs. (a)(1) and (d), was repealed by Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1145(b)(3)(B), substituted "A regulated entity" for "An enterprise".

Subsec. (c). Pub. L. 110–289, §1145(b)(3)(A), substituted "a regulated entity" for "an enterprise" in two places.

¹ *See References in Text note below.*

§4624. Reviews of enterprise assets and liabilities

(a) In general

The Director shall, by regulation, establish criteria governing the portfolio holdings of the enterprises, to ensure that the holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the enterprises. In establishing such criteria, the Director shall consider the ability of the enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to the standards specified in section 4513b of this title.

(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.

(Pub. L. 102–550, title XIII, §1369E, as added Pub. L. 110–289, div. A, title I, §1109(a)(2), July 30, 2008, 122 Stat. 2675.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

REGULATIONS

Pub. L. 110–289, div. A, title I, §1109(b), July 30, 2008, 122 Stat. 2675, provided that: "Not later than the expiration of the 180-day period beginning on the effective date of this Act [probably means date of enactment of Pub. L. 110–289, approved July 30, 2008], the Director [of the Federal Housing Finance Agency] shall issue regulations pursuant to section 1369E(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4624(a)] (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section."

§4631. Cease-and-desist proceedings

(a) Issuance for unsafe or unsound practices and violations

(1) Authority of Director

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

(2) Limitation

The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, with subsection (m) or (n) of section 1723a of this title, with subsection (e) or (f) of section 1456 of this title, or with paragraph (5) of section 1430(j) of this title.

(b) Issuance for unsatisfactory rating

If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).

(c) Procedure

(1) Notice of charges

Each notice of charges under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such practice or violation should issue, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order.

(2) Issuance of order

If the Director finds on the record made at such hearing that any practice or violation specified in the notice of charges has been established (or the regulated entity or entity-affiliated party consents pursuant to section 4633(a)(4) of this title), the Director may issue and serve upon the regulated entity, executive officer, director, or entity-affiliated party an order requiring such party to cease and desist from any such practice or violation and to take affirmative action to correct or remedy the conditions resulting from any such practice or violation.

(d) Affirmative action to correct conditions resulting from violations or activities

The authority under this section and section 4632 of this title to issue any order requiring a regulated entity, executive officer, director, or entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any practice or violation with respect to which such order is issued includes the authority to require a regulated entity or entity-affiliated party—

- (1) make ¹ restitution to, or provide reimbursement, indemnification, or guarantee against loss, if—
 - (A) such entity or party or finance facility was unjustly enriched in connection with such practice or violation;or
 - (B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;
- (2) to require a regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;
- (3) to restrict the growth of the regulated entity;
- (4) to require the regulated entity to dispose of any loan or asset involved;
- (5) to require the regulated entity to rescind agreements or contracts;
- (6) to require the regulated entity to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and
- (7) to require the regulated entity to take such other action as the Director determines appropriate.

(e) Authority to limit activities

The authority to issue an order under this section or section 4632 of this title includes the authority to place limitations on the activities or functions of the regulated entity or entity-affiliated party or any executive officer or director of the regulated entity or entity-affiliated party.

(f) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the regulated entity, finance facility,² executive officer, director, or entity-affiliated party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified

therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subchapter.

(Pub. L. 102–550, title XIII, §1371, Oct. 28, 1992, 106 Stat. 3986; Pub. L. 110–289, div. A, title I, §1151, July 30, 2008, 122 Stat. 2767.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–289, §1151(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to grounds for issuance against adequately capitalized enterprises and grounds for issuance against undercapitalized, significantly undercapitalized, and critically undercapitalized enterprises, respectively.

Subsec. (c)(1). Pub. L. 110–289, §1151(2)(A), (3)(C), substituted "practice" for "conduct" in two places and inserted ", unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order" before period at end.

Subsec. (c)(2). Pub. L. 110–289, §1151(2)(B), (3)(A), (C), inserted "or entity-affiliated party" before "consents" and substituted "director, or entity-affiliated party" for "or director", "the regulated entity" for "the enterprise" in two places, and "practice" for "conduct" wherever appearing.

Subsec. (d). Pub. L. 110–289, §1151(3)(B), (C), (4)(A), in introductory provisions, substituted "a regulated entity" for "an enterprise", "director, or entity-affiliated party" for "or director", and "practice" for "conduct", and inserted "to require a regulated entity or entity-affiliated party" after "includes the authority".

Subsec. (d)(1). Pub. L. 110–289, §1151(4)(B)(i), (ii), in introductory provisions, struck out "to require an executive officer or a director to" before "make restitution" and substituted "loss, if" for "loss to the enterprise to the extent that such person".

Subsec. (d)(1)(A). Pub. L. 110–289, §1151(3)(C), (4)(B)(iii), inserted "such entity or party or finance facility" before "was unjustly" and substituted "practice" for "conduct".

Subsec. (d)(1)(B). Pub. L. 110–289, §1151(4)(B)(iv), added subpar. (B) and struck out former subpar. (B) which read as follows: "engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 4636(b)(3) of this title;".

Subsec. (d)(2). Pub. L. 110–289, §1151(3)(B), substituted "a regulated entity" for "an enterprise".

Subsec. (d)(3). Pub. L. 110–289, §1151(3)(A), substituted "the regulated entity" for "the enterprise".

Subsec. (d)(4). Pub. L. 110–289, §1151(3)(A), (4)(C), substituted "the regulated entity" for "the enterprise" and inserted "loan or" before "asset".

Subsec. (d)(5) to (7). Pub. L. 110–289, §1151(3)(A), substituted "the regulated entity" for "the enterprise".

Subsec. (e). Pub. L. 110–289, §1151(3)(A), (5), substituted "the regulated entity" for "the enterprise" in two places and inserted "or entity-affiliated party" before "or any executive" and before period at end.

Subsec. (f). Pub. L. 110–289, §1151(6), substituted "regulated entity, finance facility," for "enterprise" and "director, or entity-affiliated party" for "or director".

¹ *So in original. Probably should be "to make".*

² *So in original.*

§4632. Temporary cease-and-desist orders

(a) Grounds for issuance

(1) In general

If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 4631(a) of this title, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 4631 and 4633 of this title, the Director may—

(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

(2) Additional requirements

An order issued under paragraph (1) may include any requirement authorized under subsection 4631(d) of this title.

(b) Effective date

An order issued pursuant to subsection (a) shall become effective upon service upon the regulated entity, executive officer, director, or entity-affiliated party and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 4631 of this title.

(c) Incomplete or inaccurate records

(1) Temporary order

If a notice of charges served under section 4631(a) or (b) of this title specifies on the basis of particular facts and circumstances that the books and records of the regulated entity served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the regulated entity or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that regulated entity, the Director may issue a temporary order requiring—

- (A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or
- (B) affirmative action to restore the books or records to a complete and accurate state.

(2) Effective period

Any temporary order issued under paragraph (1)—

- (A) shall become effective upon service; and
- (B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—
 - (i) the completion of the proceeding initiated under section 4631 of this title in connection with the notice of charges; or
 - (ii) the date the Director determines, by examination or otherwise, that the books and records of the regulated entity are accurate and reflect the financial condition of the regulated entity.

(d) Judicial review

A regulated entity, executive officer, director, or entity-affiliated party that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, executive officer, director, or entity-affiliated party under section 4631(a) or (b) of this title. Such court shall have jurisdiction to issue such injunction.

(e) Enforcement by Attorney General

In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

(Pub. L. 102–550, title XIII, §1372, Oct. 28, 1992, 106 Stat. 3988; Pub. L. 110–289, div. A, title I, §1152, July 30, 2008, 122 Stat. 2769.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1152(1), added subsec. (a) and struck out former subsec. (a) which related to grounds for issuance and scope of temporary cease-and-desist orders.

Subsec. (b). Pub. L. 110–289, §1152(2), substituted "director, or entity-affiliated party" for "or director" and "regulated entity" for "enterprise".

Subsec. (c). Pub. L. 110–289, §1152(3), substituted "regulated entity" for "enterprise" wherever appearing.

Subsec. (d). Pub. L. 110–289, §1152(4), substituted "A regulated entity" for "An enterprise" and "director, or entity-affiliated party" for "or director" in two places.

Subsec. (e). Pub. L. 110–289, §1152(5)(B), which directed the striking of "or may, under the direction and control of the Attorney General, bring such action", was executed by striking "or may, under the direction and control of the Attorney General, bring such an action" after "such order" to reflect the probable intent of Congress.

Pub. L. 110–289, §1152(5)(A), struck out "request the Attorney General of the United States to" after "Director may".

§4633. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4631, 4636(c), or 4636a of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 or 4636a of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

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

(b) Issuance of order

(1) In general

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

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4634 of this title. Unless such a petition for review is timely filed as provided in section 4634 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, §1373, Oct. 28, 1992, 106 Stat. 3989; Pub. L. 110–289, div. A, title I, §1153(b)(1)(B), July 30, 2008, 122 Stat. 2774.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1153(b)(1)(B)(i), substituted "section 4631, 4636(c), or 4636a of this title" for "section 4631 or 4636(c) of this title".

Subsec. (a)(2). Pub. L. 110–289, §1153(b)(1)(B)(ii), inserted "or 4636a" after "section 4631".

Subsec. (a)(4). Pub. L. 110–289, §1153(b)(1)(B)(iii), which directed amendment of par. (4) by inserting "or removal or prohibition" after "cease and desist", was executed by making the insertion after "cease-and-desist" to reflect the probable intent of Congress.

§4634. Judicial review

(a) Commencement

Any party to a proceeding under section 4631 ¹ 4513b, 4636, or 4636a of this title may obtain review of any final order issued under this chapter by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4633(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subchapter.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102–550, title XIII, §1374, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110–289, div. A, title I, §1153(b)(1)(C), July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289 substituted "4513b, 4636, or 4636a of this title" for "or 4636 of this title" and "this chapter" for "such section".

¹ *So in original. Probably should be followed by a comma.*

§4635. Enforcement and jurisdiction

(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 subchapter or subchapter II, 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.

(b) Limitation on jurisdiction

Except as otherwise provided in this subchapter and sections 4619¹ and 4623 of this title, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4631, 4632, 4513b, 4636, or 4636a of this title, or subchapter II, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, §1375, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110–289, div. A, title I, §1154, July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsec. (b), was repealed by Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1154(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subchapter or subchapter II of this chapter or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith."

Subsec. (b). Pub. L. 110–289, §1154(2), substituted "4513b, 4636, or 4636a of this title" for "or 4636 of this title".

¹ *See References in Text note below.*

§4636. Civil money penalties

(a) In general

The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 4585(a) of this title.

(b) Amount of penalty

(1) First tier

A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which a violation continues, if such regulated entity or party—

- (A) violates any provision of this chapter, the authorizing statutes, or any order, condition, rule, or regulation under this chapter or any authorizing statute;
- (B) violates any final or temporary order or notice issued pursuant to this chapter;
- (C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or
- (D) violates any written agreement between the regulated entity and the Director.

(2) Second tier

Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which a violation, practice, or breach continues, if—

- (A) the regulated entity or entity-affiliated party, respectively—
 - (i) commits any violation described in any subparagraph of paragraph (1);
 - (ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or
 - (iii) breaches any fiduciary duty; and

- (B) the violation, practice, or breach—
 - (i) is part of a pattern of misconduct;
 - (ii) causes or is likely to cause more than a minimal loss to the regulated entity; or
 - (iii) results in pecuniary gain or other benefit to such party.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

- (A) knowingly—
 - (i) commits any violation described in any subparagraph of paragraph (1);
 - (ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or
 - (iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

- (A) in the case of any entity-affiliated party, an amount not to exceed \$2,000,000; and
- (B) in the case of any regulated entity, \$2,000,000.

(c) Procedures

(1) Establishment

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

- (A) shall provide for the Director to notify the regulated entity or entity-affiliated party in writing of the Director's determination to impose the penalty, which shall be made on the record;
- (B) shall provide for the imposition of a penalty only after the regulated entity, executive officer, or director or entity-affiliated party has been given an opportunity for a hearing on the record pursuant to section 4633 of this title; and
- (C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of the regulated entity, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) Review of imposition of penalty

The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 4634 of this title.

(d) Action to collect penalty

If a regulated entity, executive officer, director, or 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), the Director may 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, executive officer, director, or entity-affiliated party and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Availability of other remedies

Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) Prohibition of reimbursement or indemnification

A regulated entity may not reimburse or indemnify any individual for any penalty imposed under subsection (b) (3).

(h) Deposit of penalties

The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) Applicability

A penalty under this section may be imposed only for conduct or violations under subsection (a) occurring after October 28, 1992.

(Pub. L. 102–550, title XIII, §1376, Oct. 28, 1992, 106 Stat. 3991; Pub. L. 110–289, div. A, title I, §1155, July 30, 2008, 122 Stat. 2775.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A), (B), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1155(1), added subsec. (a) and struck out former subsec. (a) which related to violations or conduct for which the Director could impose a civil money penalty in accordance with this section.

Subsec. (b). Pub. L. 110–289, §1155(2), added subsec. (b) and struck out former subsec. (b) which related to the amount of penalty the Director could impose for violations or conduct described in former subsection (a).

Subsec. (c)(1)(A). Pub. L. 110–289, §1155(3)(A), (B), substituted "regulated entity" for "enterprise" and inserted "or entity-affiliated party" before "in writing".

Subsec. (c)(1)(B). Pub. L. 110–289, §1155(3)(A), (C), substituted "regulated entity" for "enterprise" and inserted "or entity-affiliated party" before "has been given".

Subsec. (c)(2). Pub. L. 110–289, §1155(3)(A), substituted "regulated entity" for "enterprise".

Subsec. (d). Pub. L. 110–289, §1155(4)(G), struck out "and section 4634 of this title" after "subsection (c)(1)".

Pub. L. 110–289, §1155(4)(F), which directed the striking out of ", or may, under the direction and control of the Attorney General of the United States, bring such an action", was executed by striking out ", or may, under the direction and control of the Attorney General, bring such an action" after "may be available", to reflect the probable intent of Congress.

Pub. L. 110–289, §1155(4)(A)–(E), substituted "director, or entity-affiliated party" for "or director" in two places, "a regulated entity" for "an enterprise", and "the regulated entity" for "the enterprise", inserted ", or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located," after "District of Columbia", and struck out "request the Attorney General of the United States to" after "Director may".

Subsec. (g). Pub. L. 110–289, §1155(5), substituted "A regulated entity" for "An enterprise".

§4636a. Removal and prohibition authority

(a) Authority to issue order

(1) In general

The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Office of Finance a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

(2) Applicability

A party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that—

(A) that party, officer, or director has, directly or indirectly—

(i) violated—

- (I) any law or regulation;
- (II) any cease and desist order which has become final;
- (III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or
- (IV) any written agreement between such regulated entity and the Director;

(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in subparagraph (A)—

(i) such regulated entity or business institution has suffered or will probably suffer financial loss or other damage; or

(ii) such party has received financial gain or other benefit; and

(C) the violation, practice, or breach described in subparagraph (A)—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

(b) Suspension order

(1) Suspension or prohibition authority

If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

(A) determines that such action is necessary for the protection of the regulated entity; and

(B) serves such party with written notice of the order.

(2) Effective period

Any order issued under this subsection—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

(i) the date on which the Director dismisses the charges contained in the notice served under subsection

(a) with respect to such party; or

(ii) the effective date of an order issued under subsection (b).

(3) Copy of order

If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

(c) Notice, hearing, and order

(1) Notice

A notice under subsection (a) of the intention of the Director to issue an order under this section shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action.

(2) Timing of hearing

A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

(A) the party receiving such notice, and good cause is shown; or

(B) the Attorney General of the United States.

(3) Consent

Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

(4) Issuance of order of suspension

The Director may issue an order under this section, as the Director may deem appropriate, if—

(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

(5) Effectiveness of order

Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and

enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) Prohibition of certain specific activities

Any person subject to an order issued under this section shall not—

- (1) participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;
- (2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;
- (3) violate any voting agreement previously approved by the Director; or
- (4) vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

(e) Industry-wide prohibition

(1) In general

Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

(2) Exception if Director provides written consent

If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Office of Finance described in the written consent. Any such consent shall be publicly disclosed.

(3) Violation of paragraph (1) treated as violation of order

Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

(f) Applicability

This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

(g) Stay of suspension and prohibition of entity-affiliated party

Not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

(h) Suspension or removal of entity-affiliated party charged with felony

(1) Suspension or prohibition

(A) In general

Whenever any entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

(B) Provisions applicable to notice

(i) Copy

A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

(ii) Effective period

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

(2) Removal or prohibition

(A) In general

If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

(B) Provisions applicable to order

(i) Copy

A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

(ii) Effect of acquittal

A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a) or (b).

(iii) Effective period

Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

(3) Authority of remaining board members

(A) In general

If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(B) Appointment of temporary directors

If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

(4) Hearing regarding continued participation

(A) In general

Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the entity-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

(B) Timing and form of hearing

Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the entity-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

(C) Determination

Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

(5) Rules

The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.

(Pub. L. 102–550, title XIII, §1377, as added Pub. L. 110–289, div. A, title I, §1153(a)(2), July 30, 2008, 122 Stat. 2770.)

PRIOR PROVISIONS

A prior section 1377 of Pub. L. 102–550 was renumbered section 1379 and is classified to section 4637 of this title.

§4636b. Criminal penalty

Whoever, being subject to an order in effect under section 4636a of this title, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(Pub. L. 102–550, title XIII, §1378, as added Pub. L. 110–289, div. A, title I, §1156(a), July 30, 2008, 122 Stat. 2777.)

PRIOR PROVISIONS

A prior section 1378 of Pub. L. 102–550 was renumbered section 1379A and is classified to section 4638 of this title.

§4637. Notice after separation from service

The resignation, termination of employment or participation, or separation of an entity-affiliated party shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subchapter against any such entity-affiliated party, if such notice is served before the end of the 6-year period beginning on the date such entity-affiliated party ceases to be associated with the regulated entity.

(Pub. L. 102–550, title XIII, §1379, formerly §1377, Oct. 28, 1992, 106 Stat. 3992; renumbered §1379 and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(1), 1157, July 30, 2008, 122 Stat. 2770, 2777.)

PRIOR PROVISIONS

A prior section 1379 of Pub. L. 102–550 was renumbered section 1379B and is classified to section 4639 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1157(4), which directed the substitution of "regulated entity." for "enterprise." could not be executed because of the prior amendment by Pub. L. 110–289, §1156(b)(1). See below.

Pub. L. 110–289, §1157(3), which directed the substitution of "entity-affiliated party" for "director or officer" wherever appearing, was executed by making the substitution for "director or executive officer" in two places, to reflect the probable intent of Congress.

Pub. L. 110–289, §1157(2), which directed the substitution of "an entity-affiliated party" for "a director or executive officer of an enterprise", was executed by making the substitution for "a director or executive officer of a regulated entity", to reflect the probable intent of Congress and the prior amendment by Pub. L. 110–289, §1156(b)(1). See below.

Pub. L. 110–289, §1157(1), substituted "6-year" for "2-year".

Pub. L. 110–289, §1156(b)(1), substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise".

§4638. Private rights of action

This chapter shall not create any private right of action on behalf of any person against a regulated entity, or any director or executive officer of a regulated entity, or impair any existing private right of action under other applicable law.

(Pub. L. 102–550, title XIII, §1379A, formerly §1378, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379A and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(2), July 30, 2008, 122 Stat. 2770, 2777.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title and the amendments made by this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

PRIOR PROVISIONS

A prior section 1379A of Pub. L. 102–550 was renumbered section 1379C and is classified to section 4640 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1156(b)(2), which directed substitution of "a regulated entity" for "an enterprise", was executed by making the substitution in two places to reflect the probable intent of Congress.

§4639. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

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

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subchapter and that has become final in accordance with sections 4633 and 4634 of this title; and

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

(b) Hearings

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

(c) Delay of public disclosure under exceptional circumstances

If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of the regulated entity, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

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

(f) Disclosures to Congress

This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, §1379B, formerly §1379, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379B and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(3), July 30, 2008, 122 Stat. 2770, 2777.)

PRIOR PROVISIONS

A prior section 1379B of Pub. L. 102–550 was renumbered section 1379D and is classified to section 4641 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–289, §1156(b)(3), substituted "regulated entity" for "enterprise".

§4640. Notice of service

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

(Pub. L. 102–550, title XIII, §1379C, formerly §1379A, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379C, Pub. L. 110–289, div. A, title I, §1153(a)(1), July 30, 2008, 122 Stat. 2770.)

§4641. Subpoena authority

(a) In general

In the course of or in connection with any proceeding, examination, or investigation under this chapter, the Director or any designated representative thereof, including any person designated to conduct any hearing under this subchapter shall have the authority—

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

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(c) Enforcement

(1) In general

The Director, or any party to proceedings under this subchapter, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

(2) Power of court

The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1).

(d) Fees and expenses

Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an regulated entity enterprise-affiliated party¹ may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the regulated entity or from its assets.

(e) Penalties

A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

- (1) attend court;
- (2) testify in court;
- (3) answer any lawful inquiry; or
- (4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.

(Pub. L. 102–550, title XIII, §1379D, formerly §1379B, Oct. 28, 1992, 106 Stat. 3994; renumbered §1379D and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(4), 1158, July 30, 2008, 122 Stat. 2770, 2777, 2778.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

CODIFICATION

Pub. L. 110–289, §1158, which directed amendment of section "1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641)", was executed to this section, which is section 1379D, formerly section 1379B, of the Act, to reflect the probable intent of Congress and the renumbering by Pub. L. 110–289, §1153(a)(1). See 2008 Amendment notes below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1158(a)(1)(A), in introductory provisions, struck out "administrative" after "with any", inserted ", examination, or investigation" after "proceeding", substituted "chapter" for "subchapter", and inserted "or any designated representative thereof, including any person designated to conduct any hearing under this subchapter" after "Director". See Codification note above.

Subsec. (a)(4). Pub. L. 110–289, §1158(a)(1)(B), struck out "issued by the Director" before period at end. See Codification note above.

Subsec. (b). Pub. L. 110–289, §1158(a)(2), inserted "or in any territory or other place subject to the jurisdiction of the United States" after "State". See Codification note above.

Subsec. (c). Pub. L. 110–289, §1158(a)(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith." See Codification note above.

Subsec. (d). Pub. L. 110–289, §1158(a)(4), inserted "enterprise-affiliated party" before "may allow". See Codification note above.

Pub. L. 110–289, §1156(b)(4), which directed substitution of "regulated entity" for "enterprise", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 110–289, §1158(a)(5), added subsec. (e). See Codification note above.

¹ *So in original.*

§4642. Reporting of fraudulent loans

(a) Requirement to report

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

(b) Protection from liability for reports

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

(Pub. L. 102–550, title XIII, §1379E, as added Pub. L. 110–289, div. A, title I, §1115, July 30, 2008, 122 Stat. 2681.)