

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

#### Executive Documents

##### 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.

#### § 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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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 ef-

fective 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 des-

ignated 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.)

**Editorial Notes****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.

**CONSTITUTIONALITY**

For information regarding the constitutionality of provisions of subsection (b)(2) of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, [constitution.congress.gov](http://constitution.congress.gov).

**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 Enter-

prise 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) <sup>1</sup> 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—

<sup>1</sup> So in original. No subsecs. (d) and (e) have been enacted.

(1) the Banks’—

- (A) cooperative ownership structure;
- (B) the<sup>2</sup> 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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).

#### § 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.)

#### Editorial Notes

##### 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;

<sup>2</sup> So in original. The word “the” probably should not appear.

(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.)

**Editorial Notes**

**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.)

**Editorial Notes**

**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,<sup>1</sup> 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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.

### § 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 con-

<sup>1</sup> So in original. Probably should be “section”.

sultants 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.)

#### Editorial Notes

##### 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.”

#### Statutory Notes and Related Subsidiaries

##### 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<sup>1</sup> 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 en-

<sup>1</sup> So in original. Probably should be “bear”.

sure 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)<sup>2</sup> 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.

<sup>2</sup> See References in Text note below.

**(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.)

**Editorial Notes****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.”

#### Statutory Notes and Related Subsidiaries

##### 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).

### § 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 403(a) of title 5.

#### (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; Pub. L. 117-286, §4(b)(34), Dec. 27, 2022, 136 Stat. 4347.)

#### Editorial Notes

##### AMENDMENTS

2022—Subsec. (d). Pub. L. 117-286 substituted “section 403(a) of title 5.” for “section 3(a) of the Inspector General Act of 1978.”

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).

#### **Statutory Notes and Related Subsidiaries**

##### **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.)

**Editorial Notes**

**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).

**Statutory Notes and Related Subsidiaries**

**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 BONUS.—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.)

**Editorial Notes**

**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.)

**Editorial Notes**

**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”.

**Statutory Notes and Related Subsidiaries**

**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)<sup>1</sup> 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 in-

<sup>1</sup> See References in Text note below.

stitutions, 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.)

### Editorial Notes

#### 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).

### § 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<sup>1</sup>

(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;

<sup>1</sup> So in original. The word “and” probably should not appear.

(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.)

#### Editorial Notes

##### 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).

#### § 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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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.

##### AMENDMENTS

2008—Par. (1). Pub. L. 110-289 substituted “the Agency” for “the Office”.

#### § 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.)

#### Editorial Notes

##### 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.”

#### § 4527. Data standards

##### (a) Requirement

The Agency shall, by rule, adopt data standards for all collections of information that are regularly filed with or submitted to the Agency.

##### (b) Consistency

The data standards required under subsection (a) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of this title, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(Pub. L. 102-550, title XIII, §1319H, as added Pub. L. 117-263, div. E, title LVIII, §5881, Dec. 23, 2022, 136 Stat. 3437.)

#### Statutory Notes and Related Subsidiaries

##### RULEMAKING

Pub. L. 117-263, div. E, title LVIII, §5883, Dec. 23, 2022, 136 Stat. 3437, provided that:

“(a) IN GENERAL.—The Director of the Federal Housing Finance Agency shall issue rules to carry out the amendments made by this subtitle [subtitle H (§§5881–5884) of title LVIII of div. E of Pub. L. 117-263, enacting this section and section 4528 of this title], which shall take effect not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title.

“(b) MINIMIZING DISRUPTION.—In issuing the regulations required under subsection (a), the Director of the Federal Housing Finance Agency shall seek to minimize disruptive changes to the persons affected by those rules.”

##### RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Pub. L. 117-263, div. E, title LVIII, §5884, Dec. 23, 2022, 136 Stat. 3438, provided that: “Nothing in this subtitle [subtitle H (§§5881–5884) of title LVIII of div. E of Pub. L. 117-263, enacting this section, section 4528 of this title, and provisions set out as a note under this section], or the amendments made by this subtitle, shall

be construed to require the Federal Housing Finance Agency to collect or make publicly available additional information under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), beyond information that was collected or made publicly available under that Act, as of the day before the date of enactment of this Act [Dec. 23, 2022].”

#### § 4528. Open data publication

All public data assets published by the Agency shall be—

- (1) made available as an open Government data asset (as defined in section 3502 of title 44);
- (2) freely available for download;
- (3) rendered in a human-readable format; and
- (4) accessible via application programming interface where appropriate.

(Pub. L. 102-550, title XIII, §1319I, as added Pub. L. 117-263, div. E, title LVIII, §5882, Dec. 23, 2022, 136 Stat. 3437.)

#### Statutory Notes and Related Subsidiaries

##### RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Enactment of section not to be construed to require certain additional information to be collected or disclosed, see section 5884 of Pub. L. 117-263, set out as a note under section 4527 of this title.

#### 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.)

**Editorial Notes**

**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.)

**Editorial Notes**

**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.)

**Editorial Notes**

**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.)

#### Editorial Notes

##### 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.)

#### Editorial Notes

##### 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, 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, 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.)

#### Editorial Notes

##### 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<sup>1</sup> 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 origina-

tors, 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

<sup>1</sup> So in original. Probably should be followed by “as”.

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, 2032.

(Pub. L. 102-550, title XIII, §1327, as added Pub. L. 112-78, title IV, §401, Dec. 23, 2011, 125 Stat. 1287; Pub. L. 117-58, div. I, §90005, Nov. 15, 2021, 135 Stat. 1346.)

**Editorial Notes**

**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.

**AMENDMENTS**

2021—Subsec. (f). Pub. L. 117-58 substituted “2032” for “2021”.

**§ 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.)

**Editorial Notes**

**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<sup>1</sup>

(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 Rep-

<sup>1</sup> So in original.

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.)

**Editorial Notes**

**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.

**§ 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 determina-

tion 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.)

**Editorial Notes**

**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.

**Statutory Notes and Related Subsidiaries**

**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<sup>1</sup> 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.)

**Editorial Notes**

**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.

**§ 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 re-

<sup>1</sup> So in original.

garding 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.)

#### Editorial Notes

##### 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)<sup>1</sup> 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   <sup>2</sup>

(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 1715(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<sup>3</sup> 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 compli-

<sup>1</sup> So in original. No par. (2) has been enacted.

<sup>2</sup> So in original.

<sup>3</sup> So in original. Probably should be capitalized.

ance. 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<sup>2</sup>

(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.)

## Editorial Notes

### 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).

## § 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 enter-



prise 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.)

## Editorial Notes

### 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.)

**Editorial Notes**

**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 allo-

cated 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,<sup>1</sup> 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 caused<sup>2</sup> 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;

<sup>1</sup> So in original. Probably should be “this clause.”

<sup>2</sup> So in original. Probably should be “cause”.

- (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.<sup>3</sup>

**(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;

<sup>3</sup> See References in Text note below.

(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 sec-

tion 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<sup>4</sup> 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

<sup>4</sup>So in original. A word appears to be missing before “the”.

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.)

**Editorial Notes****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.

**§ 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 oppor-

tunity 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<sup>1</sup> 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<sup>1</sup> 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

<sup>1</sup> See References in Text note below.

(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.)

**Editorial Notes**

**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.

**§ 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.)

**Editorial Notes**

**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.)

**Editorial Notes****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.)

**Editorial Notes****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<sup>1</sup> 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.)

<sup>1</sup> See References in Text note below.

**Editorial Notes**

## 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.

**§ 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<sup>1</sup> 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<sup>1</sup> 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.

<sup>1</sup> So in original. Probably should be "Director's".

**(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.)

**Editorial Notes**

## AMENDMENTS

2008—Subsecs. (a) to (e). Pub. L. 110-289 substituted "Director" for "Secretary" wherever appearing.

**§ 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.)

**Editorial Notes**

## 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.)

#### Editorial Notes

##### 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.)

#### Statutory Notes and Related Subsidiaries

##### 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.)

**Statutory Notes and Related Subsidiaries**

**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.)

**Editorial Notes**

**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, 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, 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.)

**Editorial Notes**

**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